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ARTICLE

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* In this paper, both the terms 'Adivasi' and 'tribe' are used interchangeably. This is mainly because tribes of Kerala in general and Kadar in particular refer themselves as Adivasis. Tribe is the formal and administrative usage according to the State records. As the State is also an important part of this study, the term tribe is also used. The term Adivasi is used to refer to the original inhabitants, whereas the term tribe is considered as an administrative term. Adivasi is the synonym used for 'Indigenous People'.

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1

INTRODUCTION

India is considered as one of the ten richest forest countries in the world with forestry claiming a long history within the country. In this paper, the history of Indian forestry has been divided into three phases. The first phase is described under the larger frame of forest Management. Management of forests and its resources has always been an important concern for the colonial and post-colonial States because of its enormous economic value. It is due to this economic concern that the idea of 'scientific forestry' became popular and the State started implementing its monotonous programmes and policies for forest protection. The notion of scientific forestry indicates the replacement of natural forest with high value timber trees, and results in habitat loss of wildlife and curtailed the resource ownership rights of indigenous people. In this context, the centralised State planning and scientific forestry are connected to each other and are mutually supplementing. The meaning of forest has been reduced into a commodity and has been largely influenced by the evolution of forestry science in Germany. The ramifications of this change on meaning had impacted various ecologically significant locations in India and Western Ghat in Southern India can be identified as one such location. As a result of the monocropping experience, a portion of the high rainfall areas of Western Ghats has turned into a man-made desert.¹

In the Post-Independent era, the Indian State, which pursued the same British forest management system, established scientific management and hence, the alienation of local communities from resources continued. Since the 1970s, an array of remarkable movements by the tribal and local people have emerged across the country against the devastation of forest resources. Indira Gandhi, the prime minister of

India in the second half of the 1960s and in the 1970s, played a crucial role in shaping India's environmental politics.² Her personal interest in conservation along with the lobbying of both national and international conservation groups resulted in the creation of single-headed government departments which later turned dictatorial in nature.³ The project tiger which was initiated in India in 1973 consisted of the large networks of tiger reserves. This project was largely praised by the international conservation circle, however the reserves were established against the interests of the poor peasants.⁴ During the same period, the Wildlife Protection Act, 1972 (WLPA) was enacted and protected areas such as tiger reserves and wildlife sanctuaries began to be declared. Maintenance of pristine wilderness and absence of human interventions are the basic principles behind the protected area approach and this resulted in the total ban of humans from the core areas.⁵

These forest conservation efforts were based on the framework of deep ecology and could be considered as the second phase of the Indian forestry. Deep ecology conceived the significance of

forest by emphasising its inherent value and thus making a clear separation between nature and culture. It is noteworthy that the concept of national parks is American by origin. The Yellowstone National Park of America, established in 1872, was first of its kind in the world to protect wilderness and this idea was exported across the globe.⁶ Through this paradigm,

2 Mahesh Rangarajan, 'The Politics of Ecology: The Debates on Wildlife and People in India, 1970-1975' in Vasant K Saberwal and Mahesh Rangarajan (eds), *Battles over Nature: Science and the Politics of Conservation* (Orient Blackswan 2003) 194.

3 *ibid.*

4 Ramachandran Guha, 'Radical American Environmentalism and Wilderness Preservation: A Third World Critique' [1989] *Environmental Ethics* 71.

5 Ramachandran Guha, 'The Authoritarian Biologist and the Arrogance of Anti-Humanism: Wildlife Conservation in the Third World' in Saberwal and Rangarajan (eds) (n 3) 152.

6 Roderick Nash, 'The American Invention of National Parks' [1970] 22 *American Quarterly* 726.

1 Madhav Gadgil and Ramachandra Guha, *The Use and Abuse of Nature* (Oxford University Press 2000) 159.

they tried to reestablish a situation which was believed to be present before the advent of civilisation and was basically free from human interventions. Given this, the idea of deep ecology must be scrutinised from a third world perspective.⁷ Guha raises some fundamental questions regarding the creation of an artificial dichotomy between anthropocentrism and biocentrism, issues of universalizing and spreading this idea to other countries (with different cultures and histories), the preservation of wilderness and the tendency to undermine other environmental issues etc. He further calls deep ecology as conservation imperialism.⁸ Management of protected areas alienated local communities from accessing the resources and hence, violated their fundamental rights.⁹ These strategies were, in fact, shortsighted and resulted in the cultural breakdown and integration of tribal community members into an industrial economy.

By the late 1980s and 1990s, the State began to reform its conservation programmes by bringing in more participatory initiatives, but it was not a complete shift from the existing conservation philosophy. The rights of the local people on the resources and the customary rights of the tribal people also remained unrecognised in these programmes. Rather than increasing local involvement or generating local support for conservation, eco development visualised by the State aims to reduce local dependency on forest resources by providing various alternative employments.¹⁰ The schemes under the National Forest Policy (1988) were critiqued that they 'lacked the necessary legal foothold and democratic vision, and their implementers lacked the intention to relinquish power, they did not fully address many critical issues such as tenure security,

access and rights to resources, and community rights to decision making'.¹¹

The most recent step in the history of Indian forestry is the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, popularly known as 'Forest Rights Act' (FRA). The enactment of this act can be considered as the beginning of the third phase called forest governance. Unlike the forest management and deep ecology based forest conservation practices initiated in the past, it is based on the concept of democratising forest governance by giving rights to the people in regards to resources that have been historically denied. It recognises ownership rights of the people to manage, conserve and protect their own forest areas through Gram Sabha.¹² This central act gives strong legitimacy to the rights of the Adivasis on the resources and democratisation of forest governance. The basic philosophy of the legislation was based on coexistence and it attempted to reinstate and recognise the rights of the Adivasis in protected areas that were restricted after the implementation of the WLPA and formation of protected areas. This can also be considered as shredding of some of the powers of the State to recognise people's rights over forest.

In spite of the fact that the FRA offered various provisions for the Adivasis and to a great extent recognised their community and customary rights, this paper argues that in a broader sense both the colonial and postcolonial States in India failed to acknowledge the cultural institutions of the local communities. Cultural institutions of the community and the conservation initiatives of the State meet at certain

7 Guha (n 5).

8 Guha (n 6) 154.

9 Ashish Kothari, 'Is Joint Management of Protected Areas Desirable and Possible' in Ashish Kothari, Neena Singh and Saloni Suri (eds), *People and Protected Areas: Towards Participatory Conservation in India* (Sage Publications 1996) 18.

10 Vasant K Saberwal, 'Conservation by State Fiat' in Saberwal and Rangarajan (eds) (n 3)255.

11 Neema Pathak Broome and others., 'Changing Paradigms in Wildlife Conservation in India' in Sharachandra Lele and Ajit Menon (eds), *Democratizing Forest Governance in India* (Oxford University Press 2014) 181.

12 Under the 73rd Amendment of the Constitution of India, 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village. This is the ideal forum for people to participate directly in governance and development.

historical junctures and in some specific occasions, influence each other, contributing to the larger agenda of conservation.¹³ Hence, the main aim of this paper is to look at this interface and conceptualise it by referring to Kadar Adivasi community in Kerala, India. They are the food gathering, seasonally nomadic and forest dwelling community endemic to the Anamalai hills of southern Western Ghats.¹⁴ Collecting jungle products and hunting were their two primary means of livelihood for them. Food gathering is an ecologically viable subsistence activity as far the activities of the Kadar are concerned.¹⁵ Though the community can claim a long history of conserving, managing and governing the forest resources, this has never been recognised by the State and other mainstream actors of forest governance. In this context, this paper makes an attempt to critically understand the policy measures and other initiatives in reference to conservation in the study areas and their impact on the Kadar community has been analyzed.

2 THEORETICAL FRAMEWORK AND METHODOLOGY

Cultural institutions and social interface are the two conceptual axes through which the paper has been theoretically framed. Cultural institutions function as a mechanism to protect natural resources. The study brings out this theoretical framework to understand the informal institutions among Kadar. This study has been largely inspired from North's understanding of institutions as 'humanly devised constraints' and Colding and Folke's further addition to it as taboos as informal institutions.¹⁶ 'Taboos have been identified as being an important cultural institution among the Kadar communities, contributing to the conservation of the forest and its wildlife'.¹⁷ Four different kinds of taboos have been identified among Kadar, namely: Habitat Taboo, Segment Taboo, Method Taboo, and Specific Species Taboo.

The second major concept used in the study is social interface. The studies focusing on social interface enable us to gain insights regarding the nature of the relations between State and local actors. These insights help us to understand the level of existing political space available for local initiatives aimed at changing the patterns of resource distribution or improving the benefits received by the local groups. They also facilitate an understanding of the character and significance of specific types of policy intervention processes. Norman Long further adds that an interface approach mainly aims to explore how various State and non-State powers are constituted and reconstituted in the settings and practices of everyday life. This study has been done mainly based on a single actor oriented perspective, but supplemented with the narrations of other direct and indirect actors involved in the development scenario. Different sort of interfaces that exist between

13 Communities establish informal institutions in a collective fashion as a response to their collective needs and requirements through the evolution of community life. These institutions are not stagnant but making internal changes according to the new demands, sustaining with them without making fundamental compromises in their core values and principles and still prevalent and functional among the communities. See section 2 for a detailed discussion.

14 'The life of the Kadar is based wholly on the resources of the forest. The Kadar are nature-spirit worshippers and their socioeconomic life relates to each and every woodland grove on the Anamalai slopes. All the mountains and hills in this area have been named by Kadar. Karimala Gopuram (literally, black mountain), the highest mountain in the Vazhachal Forest Division, is the central place of their worship. The Kadar compare themselves with the elephant and the guar (Indian bison) in order to describe their nomadic nature. By comparing themselves with the elephants, the Kadar give us an insight into their relationship with their landscape and their own nomadic nature in the forest. By not settling in a particular region, they make their livelihood from their entire habitat, and in doing so, their activities put no pressure on the resources of a specific area'. Divya Kalathingal, *Ecocultural Ethics: Critical Essays* (Lexington Books 2017) 152.

15 M S Mahendrakumar 'Ecocultural Adaptation of the Kadars of Kerala' (2005) 3(2) *Studies of Adivasis and Tribals* 99.

16 Kalathingal (n 15)155 .

17 *ibid.*

the cultural institutions of the Kadar community and Forest Department (one of the important state actors) is the core of the analysis of this paper. Through the enactment of various conservation policies and acts, the social taboo as a strong cultural institution among Kadar have either been subjected to change or neglected, where as previously it would have acted as an important everyday practice that ensures conservation and livelihood for them. Hence, this paper specially looks at how the legislation as a modern institution and the cultural institutions of the Kadar work through the conceptual frame of interface. On a whole, this study brings out the various dimensions of interfaces between cultural institutions of Kadar and the State in the context of conservation.

Kadar Adivasis in the areas of Vazhachal and Parambikulam have some stark differences from other tribal populations in Kerala. Kadar are highly dependent on the forest for their livelihood and they have access to a larger area of forest. Unlike other tribal regions of Kerala, their area is not as mixed with that of the non-Adivasi population. Hence, every day conflict between Adivasis and non-Adivasis, which is very visible in other tribal areas, is absent here. They live in a continuous stretch of forest where their everyday conflict is more directed towards various state mechanisms. Both the State's development projects and conservation initiatives at different points have impacted them in various ways. There have been evictions and subsequent migrations in the Kadar inhabitant areas. Large scale migration of Kadar from Parambikulam to Vazhachal started after the demolition of the tramway line and during the construction of Parambikulam dams as part of Parambikulam –Aliyar Inter Basin River Linking Project (PAP).¹⁸ Out of the four total Kadar populated

areas, both Parambikulam and Vazhachal have the largest population. Therefore, two forest areas with different forest status have been taken in the study for an easy comparison. Vazhachal is a place where various participatory conservation programmes are undergoing. It is also the site for the proposed Athirappilly Hydro Electric Project, which is just 400 metres away from the Vazhachal Kadar hamlet. Kadar tribe has been protesting against the proposed dam project during the last 20 years. Kadar community is one of the Particularly Vulnerable Tribal Groups¹⁹ of Kerala with a population of 1,805²⁰ and makes up just 0.03% of the total tribal population of Kerala.

This study has been conducted in two forest divisions of Kerala, namely Vazhachal (Thrissur district) and Parambikulam (Palakkad district). The tract of Vazhachal selected for the study falls between 10° 14" and 10° 23" North latitudes and 76° 25" and 76° 54" East longitudes. The total extent of the forests coming under this Division is 41394.398 ha (413.94 km²) which includes natural forests and plantations. Variation of altitude of this region is 200m to 1300 metres.²¹ The total extent of Parambikulam tiger conservation landscape within Kerala is 3225.73Km². It was declared as tiger reserve during 2009 with total area of 643.66 Sq Km, which includes a core area of 390.89Km² and 252.77Km² a buffer zone. The location of the area is, longitude 76° 35'- 76° 50'E and latitude 10° 20'-10° 26'N.²²

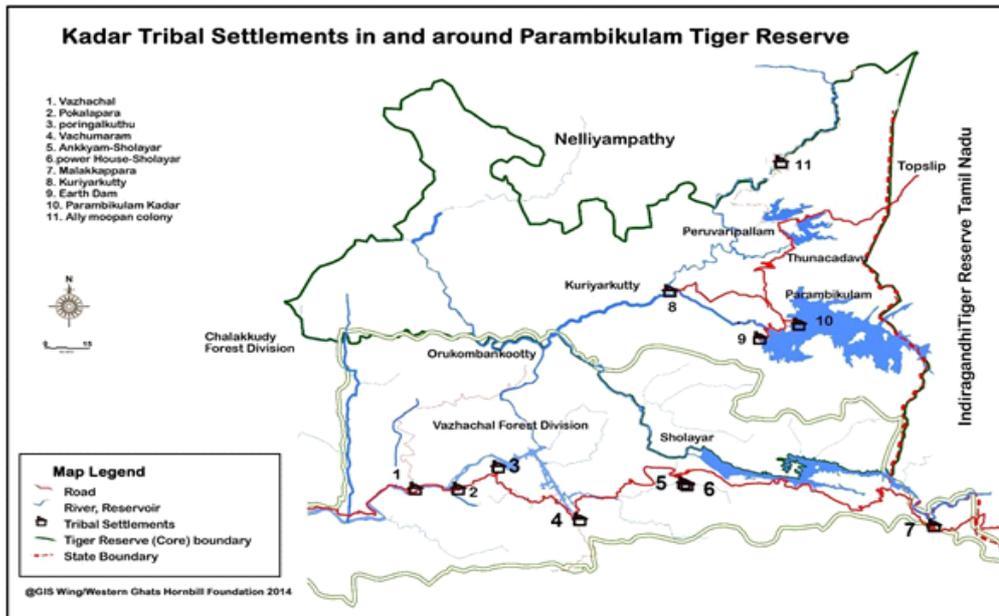
18 K Divya, 'Development Experience of Adivasis: Case Studies from Kerala' (2016) 2 Indian Journal of Sustainable Development 29.

19 A section of the Scheduled Adivasis who are even more backward than others has been historically classified as Primitive Tribal Groups (PTGs) since 1973. The criteria used for identification of PTGs are: pre-agricultural level of technology, remote isolated enclaves, and the smallness of number, stagnating or diminishing population and low levels of literacy. The term 'Primitive' has been changed and now it is known as Particularly Vulnerable Tribal Groups (The draft National Tribal Policy 2006).

20 See the survey of Kerala Institute of Local Administration (2008).

21 Biodiversity conservation plan for Vazhachal High Value biodiversity area (2010-2020), (KFRI 2010).

22 1st Tiger Conservation Plan for Core and Buffer, 2011-12 to 2020-21 (Kerala Forests and Wildlife Department 2011).



(Map not to scale)

Map prepared by : Western Ghats Hornbill Foundation 2014.

The design drawn for doing the research is ethnography. In this study, the researcher tries to describe and interpret the shared values and beliefs of Kadar pertaining to conservation. This paper gives detailed description through in-depth understanding of the invisible systems among Kadar. The research has incorporated the views of the participants (emic) as well as the views of the researcher (etic). This study design gives the researcher the freedom to understand the subject more closely through different methods. Participant observation, oral history method, focus group discussions and in-depth interviews were the major methods used to collect data from the participants. Field study was conducted during the period of 1st August 2013 to 30th October 2013. Secondary data was also used in this study. Various policies and acts of both central and State origin on conservation since colonial period to the recent time (1894 to 2011) have been analysed. The timeline set up in the paper concludes with the year 2006 because no other major legislations or policies on conservation have been enacted by the State since then. Besides, various documents available from forest department,

such as forest working plans, management plans, forest administrative reports, reports of different forest management programmes etc. have been examined as part of the analysis.

3 THE ACTS/POLICY AT CENTRAL LEVEL AND THE LIVES OF KADAR

This section mainly analyses four aspects: how the acts and policies perceive a) the rights of the Adivasis over resources; b) loss of natural forest due to plantations in their area; c) livelihood shifts; and d) development projects in the area. It gives a larger picture on how the resource dependent population were included both conceptually and practically in the act of protecting forests. The period considered in this analysis is from the first National Forest Policy 1892 to the Kerala Tourism Policy 2012.

3.1 The Forest Tramway

The main intention behind the formation of the first forest Policy Resolutions 1892 in British India was to serve the agricultural interests of the colonial state. The policy relegates the entire forest into four categories. A first class forest must be preserved for the protection of cultivated lands in the plains and also for protection from the wild animals. Timber was mainly extracted from the second class forests for commercial undertakings such as railways. The third class forest was the minor forest which supplied fuel, fodder and space for grazing for local consumption and was managed in the interest of the local people. A fourth category was 'pastures and grazing grounds,' where the local communities got higher priority than the conservation practices of forest department. In the third and the fourth class forests, rights were recorded and regulated and the forests were managed in the interest of the local community. This policy made considerable changes in the Kadar inhabiting areas of Parambikulam.

The year 1894 was characterised by two noteworthy developments in Cochin.²³ One was the opening of the rich teak forest in Parambikulam by replacing the natural forest and the other was the conception of forest tramway by the then conservator Mr. Kolhoff. Hence it is obvious that the Parambikulam forest area was classified as second class forest under the policy which mainly meant being a source to increase State revenue and the rights of the users were given less importance. This has laid foundation to the development of scientific forestry in this area.²⁴

By 1907, the tramway became operational and it was extended till Chalakudy, the nearest town.²⁵ The

tramway served as the 40 kilometres long railway through forest to transport timber from the Parambikulam forest. In the same year, the Cochin Forest Steam Tramway Act 1907 was enacted to manage the forest tramway and to regulate the conduct and procedure of the forest tramway officers. The act did not have any single mention of the hill men/inhabitants/users of the area and their rights. The only context where the act mentions human beings is the context of punitive fine for the owners of the trespassed cattle into the forest area. The colonial regime considered forest as an indefinite source of timber extraction and revenue generation. The opening of forest tramway line for the transportation of timber forest was a factor that contributed to significant changes in the Kadar economy.²⁶ Kadar was a scattered community residing in different parts of the forest along the bank of the Chalakudy river till the establishment of tramway. With the construction of the tramway the community became the main labour force which led to greater changes in their economy and culture.²⁷ Eventually, the tramway, emblematic of modern scientific development, limited Kadar Adivasi communities' habitation area to a specific location called Kuriarkutty.

3.2 When 'Scientific Forestry' Turns a Villain

After independence, the princely states were merged into the Indian Union and full autonomy was conferred on the Indian State and the entire forest resources came under its control. It is difficult to observe a large level shift in the nature of the policy when it moved from colonial rule to independent India in terms of natural forest protection and protection of the rights of the local people.

23 Before the formation of the state of Kerala, the region was ruled under three Kingdoms, namely Travancore, Cochin and Malabar. Parambikulam area was under the Cochin Kingdom.

24 Detailed discussion of scientific forestry will be covered in the upcoming section.

25 Mammen Chundamannil, History of Forest Management in Kerala (KFRI Research Report 89 1993) 28.

26 U R Ehrenfels, Kadar of Cochin (University of Madras Press 1952).

27 Divya (n 19) 29.

Under the National Forest Policy, 1952 (NFP), forests were classified into four categories— Protection Forests, National Forests, Village Forests, and Tree Lands. This policy emphasised, for larger national interest, that the regulation of the rights and restrictions of local communities on forest had to be valued as a prime requisite of scientific forest management. The policy took a strong position against grazing and shifting cultivation by stating that it was incompatible with scientific forestry. The Second Five Year Plan (1956-1961) had recommended the government to revise policy for developing wood based industry. As suggested by the NFP for forest regeneration, Teak Plantation Division Parambikulam was formed in 1960. This was the first Special Plantation Division to artificially regenerate 6070 hectares of forests in the Parambikulam area, which had been over exploited in the past due to the functioning of the tramway. Between 1961 and 1967, 6500 hectares of plantation was cultivated in Parambikulam. The NFP 1952 made a long lasting impact on the Kadar community through the introduction of exotic species, mainly teak, in their area. Kadar lost a large area of natural forest on which they used to depend for livelihood for generations. 'Other than mono culturing of crops, this also resulted in increased atmospheric temperature even in the interior forests of the tiger reserve. Replacement of natural forests with exotic plants resulted in soil erosion and drying up of river in early summer'.²⁸ Kadar also observed that the conversion of natural forest resulted in habitat loss for many endangered bird species like Hornbills. As Baviskar observed, the policy has served the interest of State, industry and rich peasantry instead of serving the national interests (1995). In this process, the rights of the local people and Adivasis were side-lined.

As part of the State's project of implementing 'scientific forestry', which was inspired by the NFP, a large area of natural forest was converted into plantation in the Parambikulam and Vazhachal forest divisions. Once

the clear felling was completed, these areas were given to the people from plains for tapioca cultivation. Then the taungya cultivators planted tapioca in between the teak saplings to protect the teak saplings from any harm. This system of taungya cultivation was prevalent globally in the initial phase of plantation forestry. Clear felling and selection felling were the two important initiatives of the State that led to the loss of most of the important forest areas of Kadar from where they used to collect Non Timber Forest Produces (NTFPs). Since the evergreen forests are very fragile in nature, loss of individual trees also destroyed other small plants that grow around them. In brief, the State project of scientific forestry became very hegemonic in nature.²⁹

Social forestry made impacts on the lives of the Kadar at multiple levels which are outlined below. The plantation work in the protected area opened the door for the outsiders to settle down in the Kadar inhabitation areas. As a result, the Parambikulam Kadar hamlet is currently a mixed hamlet of Adivasis and other settlers. The participants of the study also complained that many settlers got job as watchers in the forest department by claiming that they belong to the Kadar community. It is also important to notice the disparity in the usage of timber by the State and the Kadar. Kadar do not usually use the high value timber for their domestic use. Instead they prefer to use bamboo and reed for house construction. On the contrary, the State is extensively extracting timber from these areas.

Poaching in the area has a strong historical connection with taungya cultivation in 1960s. Creation of the plantation was one of the important management programmes of forest department. The quick and easy way adopted for the creation of the plantation was taungya cultivation where the cultivators used to stay back and protect the teak. In this case, they used to cultivate tapioca till the teak saplings grow. Participants

²⁸ FGD in Kuriarkutty Kadar hamlet (Parambikulam Tiger Reserve 27 September 2013).

²⁹ James C Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University 1998) 19.

of the interview stressed the fact that most of the taungya cultivators returned to the same area and started smuggling timber and poaching wild animals. So Kadar as well as the forest resources suffered from multiple negative impacts of the programme. Other than the State functionaries, the State introduced group had also started dominating the cultural institutions of Kadar through wildlife poaching. This went against the basic beliefs of Kadar on coexistence and the habitat protection of other animals.

Taungya cultivation and the related concerns also highlight the importance and relevance of the cultural institutions of Kadar. These cultivators were coming to a place which had been conserved for hundreds of years by the Kadar with the help of their cultural institutions. But the cultivators didn't possess any such cultural or institutional capital. As no taboos prevented them and no headmen controlled them, they did not feel anything wrong in poaching and smuggling. As the cultivation was a State sponsored programme, one can easily find the visionary inadequacy of that programme as the State failed to anticipate the possibility of taungya cultivators turning to poachers and smugglers. The State miserably failed to prevent the illegal activities by the plainsmen.

3.3 When Protection Turns into Curbing of Rights

The Wildlife Protection Act 1972 (WLPA) brought a different imagination to the entire forest conservation practice. The philosophical foundation of the formation of protected areas was wilderness creation and evacuation of humans from the forest for the protection of forest and wildlife. In 1986, after the reorganisation of the wild life wing, collection of minor forest produce (MFP) from sanctuaries and national parks was prohibited by a government order from the chief conservator of forests. The declaration of protected areas led to the massive constitution of sanctuaries and total ban on human beings in the core areas of national parks.³⁰

The WLPA is the ever-enacted legislation for the protection of wildlife in Indian forests which mandates strict regulations, banning and punishment for poaching of wildlife. The act did not offer any relaxation for the traditional hunting practices of the Adivasis. It was adopted with a presumption that all local/ tribal people would destroy the natural resources and wildlife and they would not be able to coexist with each other. It has affected the lives of Kadar in four major ways: 1) traditional hunting rights; 2) mobility/alienation; 3) collection of NTFPs; and 4) dietary needs.

In the reserved forest area, people are banned from collection of wild animals, even if it is a left over by the carnivores. They are not, however, restricted from the collection of NTFPs or roam in the forest. In that sense, their habitat is not controlled by the act. The habitat of the Kadar is considered to be very large and extending beyond their immediate living spaces. They have their traditional boundary system and trails to be followed during the collection of resources.³¹ It becomes an issue only if they are moving to forest areas near to the protected forest. This has resulted in a change in their food habits. They have lost their food diversity and their food habits have become limited to items such as rationed rice, cereals provided through government schemes etc. The habit of sharing hunted meat could be seen as an indication of the strength of the complex mutuality existed among the people. The banning of such traditional practices had also affected the feeling of togetherness among them. The following narrative of an informant clearly indicates the adverse impact of the declaration of tiger reserve in Parambikulam on Kadar community. He states: 'mobility and collection from the Parambikulam area becomes problematic after the declaration of tiger reserve'.³²

While legislations such as the WLPA mostly affects the dietary needs of forest dwelling communities in the reserved forest, in protected areas it produces

³⁰ Guha (n 6) 140.

³¹ Kalathingal (n 15) 156.

³² Interview with the head man, Poringalkkuthu Kadar Hamlet (Vazhachal FD, 18 August 2013).

multiple impacts. It restricts the movement of a person in the forest and thus restricts the expansion of his knowledge on resources. When the status of the forest shifts to higher orders, the restrictions are increased and people are increasingly alienated from the resources. These purposeful attempts to alienate people from the resources are conveniently masking the contribution of the community in resource conservation of that particular area. The act of a community using the minimum product from the forest for their basic living is considered a crime. Hence the WLPA does not attempt to understand and respect the cultural institutions of Kadar which works as a code of conduct among the community. The instrumental rationality of the act totally ignores the taboos of Kadar which had substantial roles in the conservation. For example, the habitat taboo which valued the ecological significance of Karimala Gopuram becomes irrelevant as per the WLPA as the act totally prevents the entry of Kadar to forest.³³ Once the entry to forest is restricted to people, they are being externalised and taboos

become meaningless. Habitat taboo is the regulation of access to and use of resources from a particular habitat in time and space which leads to the protection of the entire habitat.³⁴

Parambikulam area was upgraded from a wildlife sanctuary to a tiger reserve in 2009. After that, there was a proposal to relocate Kuriarkutty Kadar hamlet from the core area. There was a mixed response to this proposal from the tribal hamlet. Forest Department suggested forest areas in Vazhachal Forest Division, some areas in Palakkad plains and Tamil Nadu for relocation. Finally, the lack of consensus from the hamlet itself rejected the plan of relocation. Kadar used to roam in the forest areas of Parambikulam and Vazhachal and their roaming is now limited to the Chalakudy river basin. Within the geographical boundary, they have some invisible boundary system, beyond which they usually prefer not to explore, since their understanding of this terrain is limited as well. This habitat taboo, one of the significant informal cultural institutions as far as the conservation of the area is concerned is completely ignored by the Forest Department. Here the department even prefers areas in the plains for relocation, which is in direct conflict with the basic interests of Kadar. Though the Kadar relocation plan was abandoned, the State and its machinery could successfully create an imagination that the Kadar are the ones to be evicted and the plan was abandoned due to some technical difficulties.

3.4 Detrimental Initiatives of Sedentarisation³⁵

The Forest Conservation Act 1980 prescribes strong conservation measures for the forest resources. The

³³ 'Karimala Gopuram, is the highest mountain in the Vazhachal forest division and the central place of their worship and it's a major resource- gathering areas for gather. They believe that their origins have arisen from Karimala Gopuram. Here the ecosystem works as an important agent of formation of human behaviour and this is ultimately leading to the protection of the same. Culture is not an inseparable one from the nature. In this way all Taboos lost the significance as Taboos work in the environment. They believe that there is existence of spirits in water and forest and which brings a strong sense of code of conduct to be followed in the forest. There has been an invisible boundary system exists within the community for resource collection. These traditional boundaries invisible boundaries are separated by hills, streams or rivers. These traditional boundaries are restricting the communities from extracting resources from other areas. Their ancestors used to introduce the forest routes (traditional trails) to the younger generations. As they are mainly rainforest collectors, even in the dark green forest of Anamalais, they could easily find out their ways. Here, Thurston's (1909) comments should be genuinely appreciated, 'Kadar are the Kings of Anamalais'. The Habitat Taboo develops and practices in the entire area, it also leads to the protection of the entire habitat, including Kadar and wildlife. The concept of the boundary system still exists among Kadar and continued to be unaltered'. Kalathingal (n 15) 155.

³⁴ Johan Colding and Carl Folke, 'Social Taboos: 'Invisible' Systems of Local Resource Management and Biological Conservation' [2001] *Ecological Applications* 584.

³⁵ It is the term quoted by James Scott to describe the efforts of the state to settle people in order to make the ruling easy in the book, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University 1998) 2.

act also requires approval from the central government for any sort of clearance of forest/de-reserve/ converting for non-forest purposes. According to the Forest Conservation Rules 1981, the committee set up under the act will supervise the concerned State's responsibility to ensure afforestation. This act demands the detailed description of the area to be diverted. According to the act, the displacement details and rehabilitation plan (especially related to SC/ST population) due to the forest diversion needs to be produced. Even after the enactment of the act, the selection felling could not be fully stopped. It has been banned in Kerala since 1987 due to the intense lobbying from conservation groups in the state. The act actively discourages the participation of individuals and communities in forest plantation and protection.³⁶ In the State's view, the historically existing intertwined relationship between forest (broadly nature) and people has to be disintegrated in order to execute their idea of sedentarisation. This is profoundly clear in the Forest Conservation Rules, discussed above. Furthermore, the State has always appeared to be the enemy of 'people who move around', and therefore, permanently settled down, the mobile people become an enduring project of the State.³⁷ Imposition of governmental power is effective only when the population has settled down in specific geographic locations. This political agenda has been laid out by the State in a systematic manner in the FC rules enacted in 1981. The following experience of the Kadar community shows how the political agenda of sedentarisation executed through forest conservation rules made an impact on the nomadic Adivasi community in Kerala.

Kadar is a semi nomadic community and used to live in different forest areas of Vazhachal and Parambukulam. As mentioned in the methodology section, all the eight hamlets, which we see now in the Vazhachal forest division, are the migrated Kadar from

Parambukulam due to eviction which has taken place since 1950. These eight hamlets are distributed in the 65 kilometres forest area. Three important routes of migration in different times have been identified from Parambukulam to Vazhachal.³⁸ Then, they started living in different parts of the Vazhachal forest and along the banks of Chalakudy river and other streams for almost thirty years. Since 1980s, Kadar of the Vazhachal started settling down on both sides of the Anamalai road. It can be assumed that the forest conservation act has forced the Kadar to settle down in new areas of the Vazhachal forests.

3.5 Bringing Participation in Forest Conservation

The National Forest Policy 1988 advocated support for the rural and tribal requirements of fuel, fodder and minor produces. In principle, it gives the tribal population the rights to collect of MFPs, to create protocols for resource conservation and livelihood protection and to safeguard the customary rights of people. However, their traditional practices like shifting cultivation came to be regarded as a destructive practice. In 2009, Kerala government formulated the guidelines for Participatory Forest Management based on the National Forest Policy 1988 and the guidelines of 1990. Participatory forest management functions through units called Vana Samrakshana Samithis (Forest Protection Councils), which comprises of a general body and an executive committee. Preparation of micro plans is one of the important steps envisaged by the guidelines for ensuring the participation. Development of appropriate participatory approaches to forest management was one of the objectives of PFM. Vana Samrakshana Samithis (hereafter VSSs) are termed as Eco Development Committees (EDC) in the protected areas. There are five Adivasi VSSs in the Vazhachal forest division (registered in 2002) and six

36 Madhav Gadgil and Ramachandra Guha, *The Use and Abuse of Nature* (Oxford University Press 2000)112.

37 Scott (n 30) 1.

38 Divya (n 19) 29.

Eco Development Committees (EDCs) in the Parambikulam Tiger Reserve. This section attempts to analyse the gap between theory and practice of PFM which was envisaged under the plan and the level of interfaces that have been taking place in different phases of the implementation.

Micro plan is the basic planning element of VSS under which the activities are implemented through the PFM. Kadar follows an 'invisible' boundary system in the case of resource usage. Kadar have their own habitat for forest produce collection. However, VSS has their own management areas for fire protection and there they do not consider the traditional resource uses of the areas. When the VSS officials make resource maps of the area with the help of the community, they also mark resource utilisation area out of the jurisdiction of the respective forest ranges, but no effort has been made for the protection of the already existing system. Here it can be seen that the micro plan is prepared from pre-set plans which attempt to fit the existing practices into it for practical convenience. There had been instances where Kadar's sacred worship areas were not considered in the micro plans. Kadar have been protecting resources inside the areas of their traditional boundary through their cultural institutions, and these aspects were completely neglected in the micro plan. Thus, habitat taboo system of the community was completely disregarded here. This is a very clear example of how modern State institutions come into conflict with the cultural institutions of Kadar. In other words, contrary to what the objective proposes, policy neglects the customary practices of the communities.

Planting of endangered species in the forest areas was claimed to be an important activity under VSS in the Vazhachal Forest Division. However, *canarium strictum*, one of the endangered species, was never considered for planting though its numbers were reducing in this area. The selection of species was also carried out directly by the department. This non-recognition of local knowledge on species selection is even contrary to the basic vision of PFM. Even though the planting in the forest was considered as an important step in forest regeneration, Kadar were only involved at the last phase. From these experiences, it can be deduced that the forest department considers Kadar only as an easily available local labour force to satisfy their goals. Participants of the study also highlighted that perennial streams started drying up

during summer due to the replacement of natural forests and that these natural streams can only be rejuvenated by the planting of some local specific trees.

The concept of participation is impossible when the State prefers a top-bottom approach, unless the community is already empowered and is able to assert their right to participation. Thus, this participatory programme which was intended to empower the community functioned as yet another agent of oppression. True participation is only possible between equal actors. For this to happen, participation must take place outside the institutional development agenda and within the social, political and cultural context of grassroots struggle.³⁹ Power has been working as the centre of the development paradigm. The examples from the above mentioned work shows that participation is simply not possible without sharing the power. Otherwise empowerment will just remain as the management of power by the powerful actors. Approaches to participation should aim at deep social transformation.⁴⁰ The level of assertion that is shown by the participants of some hamlets in Vazhachal is completely non-existent in other areas, especially in the tiger reserve area. In the protected area, officials have a strong control on the VSS members because Kadar do not have an alternate option for livelihood other than tourism.

Participatory Hornbill Conservation and Monitoring programmes with the involvement of Kadar tribe is also a noteworthy initiative. After identifying that the habitat loss has resulted in the vulnerability of hornbills, this programme was initiated by an individual researcher with the collaboration of the Kerala Forest Department by selecting the tribal guards for regular monitoring of nests and nesting old growth trees of the rainforests.⁴¹ They were also

39 Pablo Alejandro Leal, 'Participation: the Ascendancy of a Buzzword in the Neo-liberal Era'(2007) *Development in Practice* 17.

40 *ibid.*

41 KH Amitha Bachan and others, 'Participatory Conservation and Monitoring of Great Hornbills and Malabar Pied Hornbills with the Involvement of Endemic Kadar Tribe in the Anamalai Hills of Southern Western Ghats, India' (2011) 24 *The Raffles Bulletin of Zoology* 37.

trained to use the scientific equipment for the survey. Involving the Kadar in the conservation of the endangered flagship bird of the state while ensuring the livelihood of the people, i.e., supporting their traditional practices in forest dwelling, has been recognised as a good example of participatory conservation and monitoring process. The programme indirectly supported the full Kadar family by involving the women in the process. This participatory programme was completely visualized on the basis of traditional trails of Kadar. This endeavor does not give space for conflict with the kind of traditional activities they are involved in. This is a successful story where the status of Kadar turned to protectors of hornbills from 'hunters'.

3.6 Ecotourism as a Form of 'Monoculturing'

Ecotourism is operationalized through the VSS involving local people/Adivasis. Both the study areas covered here are well known ecotourism spots. Kadar of the Vazhachal hamlet in the Vazhachal forest division and Kadar of Parambikulam tiger reserve are involved in ecotourism activities of the forest department. Ecotourism in the forest areas has been evaluated as a sustainable livelihood option for the tribal people by the Forest Department. But the fact is that, in the reserved forests, ecotourism based livelihood is just optional, while in the protected area, people are forced to take up this mode of livelihood. Ecotourism comes to the protected area where the rights of the people on resources are already denied. In the areas where ecotourism initiatives operate, the power of the officials is really high, especially in protected areas, where there is no other option for the community to work.

Violation of several rights can be observed in the ecotourism spot of the reserved forest, where the Forest Department is allowing maximum leniency for tourists and minimum recognition for the rights of the Kadar. Kadar hamlet is located on the side of Vazhachal waterfalls, a well-known tourism spot and people of this hamlet are involved in the tourism management activities through VSS. This is the only tribal hamlet of the Vazhachal forest division that provides regular employment through VSS. As one side of the hamlet is a road and the other side of the

hamlet is a trek-path for tourists to enjoy waterfalls, tourists constantly move around the hamlet and no kind of privacy is available for the tribal people. Though the river is in their doorstep, Kadar cannot make use of any of the facilities the river provides unless the tourists were to leave, as tourists also daily pass over the hamlet to reach the main road. The author also overheard some comments by the tourists such as 'where do the Adivasis live here'. This question is arising from the preconceived notion that Adivasis live in a pre-modern style by wearing leaves and speaking sign language. In this area, the Kadar and wildlife are equally affected by the tourism. The Kadar and the tourists have conflict of interest in using the resources. The Anamalai road entirely goes through the forest areas of Vazhachal and frequent tourist vehicles in this road disturb the movement of Kadar women in other hamlets that situated upstream to Vazhachal. The fear element that was expressed by the participants shows the threats to the security of women due to tourism. As far as Vazhachal VSS is concerned, everyday work related issues are higher due to the tourism management.

Since tourism is strictly managed in the tiger reserve, the immediate or direct conflict with the tourists are comparatively low. The physical harm from the part of tourists is almost absent; rather, the concept of ecotourism as such has disturbed the already prevailing practices of the area such as fishing and resource collection. Irrespective of the protection status of the area, what ecotourism does is to transfer resources from a certain category of people to another category. Even though the people of the protected area are near to their important resource area and worshipping place, Karimala, their direct livelihood dependency in this forest area is impossible. Ecotourism is generally praised as sustainable livelihood for the tribal people, but this sustainable livelihood is established by the total/partial banning of the already existing livelihood patterns through various coercive legal mechanisms. Ecotourism is an area of development intervention where there is no conflict between different governmental departments. It's also important to note that the policy has impacted the gender relations in the community. Gender concerns are unevenly incorporated into the policies aimed at the management of natural resources. In the protected area, labour is majorly for men as watchers and tourist

guides, whereas women's role in access and control over resources are hugely curtailed and their contribution to economy has become nil.⁴²

Ecotourism projects are mostly planned without local consent and support.⁴³ They often threaten local cultures, economies and natural resource bases. It is also a tactic of the consumptive tourism industry by greening it. It is highly consumer centered and oriented towards the urban middle class. Diverse local, social and economic activities have been replaced by ecotourism as some kind of 'monoculturing'.⁴⁴ The data from the field also supports these observations that various livelihood options of the Kadar have been replaced by the ecotourism work. These ecotourism activities are also unidirectionally decided by the government without having any kind of consultation. Kadar tourist watchers accompany the tourist groups to different destinations of the protected area. These kinds of trekking are planned with an intention to see wildlife. Traditionally, Kadar have the belief that they are not supposed to see any wildlife when they go to forest, but their current job roles goes completely against this concept. Besides, ecotourism projects demand the Kadar to use new and easy pathways to the forest and they are supposed to give up the traditional paths they used earlier. If the pre-ecotourism relationship of Kadar with forest respected the forest, the ecotourism projects prioritises the convenience of tourists, not of the forest. On the one hand, the State is alienating Kadar from their resources and thereby they lose access and control over resources. On the other hand, Kadar is forced to be a part of State initiatives though it is against their own belief systems and cultural institutions.

3. 7 Gram Sabha and the Right of Forest Governance

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

(FRA) is regarded as a historical legislation for recognising the forest rights of the tribal people. This act is considered as the first inclusive mechanism for considering the rights of the Adivasis. It recognises the conservation of traditional resource use areas of tribal people and envisages the coexistence of people and wildlife by the recognition of their rights in the protected areas. The act ensures a bottom-up approach from the claiming process onwards. The FRA talks about the customary rights of the people, rights on minor forest produces, water bodies and, very significantly, habitat rights in the case of particularly vulnerable tribal groups. Indeed, this is a remarkable effort to deepen the democratic process in forest governance and that has been captured in the following observation:

Spatial decentralisation, devolution of actual power to lower tiers, and the functioning of all tiers and all arms (political, executive, and judicial) in ways that are democratic, transparent and accountable. It means the turning of institutions of governance to the socio-ecological context in ways that enable the participation of the weakest and the feasibility of addressing environmental sustainability and justice goals.⁴⁵

The case against Vedanta, a multinational metals and mining company, is an example of how the judiciary acted as a facilitator of the democratisation of forest governance. The supreme court judgment (*Orissa Mining Corporation Ltd v Ministry of Environment & Forest* on 18 April, 2013, writ petition (civil) No. 180 OF 2011) in favour of the Dongria Kondh tribal community of Odisha against the Vedanta was a historical intervention of the court. In this case, the court directed the concerned Grama Sabhas to take a decision by considering all their claims in reference to various rights (cultural, community and individual)

42 Divya (n 19) 29.

43 Anita Pleumarom, 'The Politics of Tourism, Poverty Reduction and Sustainable Development' (2012) 17 *Environment and Development Series* 25.

44 *ibid* 41.

45 Sharachchandra Lele and Ajit Menon, 'Introduction' in Sharachchandra Lele and Ajit Menon (eds), *Democratizing Forest Governance in India* (Oxford University Press 2014) 11.

offered under the provisions of the Forest Rights Act 2006.

However, there have been continuous attempts from various State machineries to dilute the sections of the act since its inception. A few more examples are worth mentioning here. For instance, on 23rd March 2017, the National Tiger Conservation Authority (NTCA) under the Ministry of Environment, Forest and Climate Change (MoEFCC) brought a letter⁴⁶ saying no rights shall be conferred under Critical Tiger Habitat (CTH) in the absence of proper guidelines for demarcating Critical Wildlife Habitat (CWH).⁴⁷ Unlike any other act, the FRA recognises the rights of the Adivasis in the protected areas which were taken away after the implementation of WLPA1972. And in a letter dated 4th July 2017, National Commission for Scheduled Tribe (NCST) convinced with the arguments of NTCA of not settling the rights in CTH and relocation of Adivasis from CTH.⁴⁸ In addition to that, NCST recommended to use the Compensatory Afforestation Fund Management and Planning Authority (CAMP) to increase the relocation fund from 10 lakh to 20 lakh. Both these moves, contrary to the guidelines of the MoTA, emphasised that the rights of the forest dwellers has to be recognised even if the critical wildlife habitats have not been declared in national parks and sanctuaries.⁴⁹

In an another letter issued by MoEFCC on 2nd February 2019 to all the state departments neglected

the forest rights act provisions including the consent of Grama Sabha in the first stage of the forest clearance. This letter was challenged by the MoTA and sent orders to the states saying that the MoEFCC letter should not be followed by violating the FRA. In the same letter of MoTA, they clarified that no agency can violate provisions of FRA.⁵⁰ In a recent order by the supreme court of India declared on 13th February 2019, directed the state government to evict 10 lakh Adivasis from the forests and by which whose individual claims have been rejected by the court. The petitioners who wanted to evict the tribal people and traditional forest dwellers were retired forest officials and NGOs work for wildlife protection. Due to the conscious silence of the present BJP government in the court and absence of putting proper defense in the court on behalf of Adivasis, it resulted in such a problematic court order. Later, under the pressure of nationwide protests and voice from the Adivasi organisations and opposition parties, the central government approached the court and argued that rejection were all illegal.⁵¹ In light of this, the supreme court put the order on hold and asked 17 states to submit the affidavit.

Amidst all the attempts by the State to dilute the provisions of the act and bypass it for the development projects, the Kadar are using this piece of legislation to protect the forest through their Grama Sabhas. Individual rights of the Kadar on both the areas are settled under the FRA. Community Forest Resource (CFR) rights were conferred to the Kadar of the Vazhachal forest division, under which section 3(1) (c), (d), (e), (i), and (k) are recognized. It gives rights over resources such as water bodies, and minor forest produces and protection of intellectual property rights.

46 F.No.1-7/93-PT(Vol.I), dated 28th March, 2017. Conferring rights under FRA, 2006 in Critical Tiger Habitats Reg.

47 CWH is a provision under FRA and CTH is a provision under WLPA.

48 Proceedings of the meeting held on 4.7.2017 under the chairmanship of secretary, National commission for scheduled Tribes regarding press clipping under the caption 'no forest rights for tribals in critical tiger habitats' <https://ncst.nic.in/sites/default/files/copy_of_minutes_of_meeting/912.pdf>.

49 No. 23011/32/2010-FRA [Vol.II (Pt.)], dated 12th July, 2012, Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 - Guidelines regarding. <<https://forestrights.nic.in/pdf/Guidelines.pdf>>.

50 F.No.23011/23/2010-FRA on the subject 'Compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – reg'. <<https://tribal.nic.in/fra/data/ComplianceoftheSOTFDRecognitionForestRightsAct2006regarding05042019.pdf>>.

51 Explainer: Millions Face Possible Eviction – What is the Supreme Court Forest Rights Case About? (The Forest Rights Act) <<https://forestrightsact.com/2019/07/23/explainer-millions-face-possible-eviction-what-is-the-supreme-court-forest-rights-case-about/>>.

Vazhachal is the first area where the community forest rights have been implemented in the state. Total CFR area declared under the FRA in Vazhachal area is for 40000 hectare.⁵² Through the formation of the CFR management committee, a large forest area can be governed through the Gram Sabha. But in protected area, CFR claims are still pending with the sub-divisional level committee and the forest department does not show any interest for the passing of claims and conferring of traditional rights. Through the recognition of community forest resource rights, the Kadar have obtained a legal recognition for their resource dependency and economy. The Kadar have used the act as a governance mechanism of their forest area in many instances. There is a proposed dam project in the area, which is just 400 metres away from the Vazhachal hamlet. The Kadar have consistently stood against the dam project for the last 20 years and the project was stalled by their legal intervention. In 2015, Vazhachal Grama Sabha passed a resolution against the dam and other development projects in their area and submitted a copy of the resolution to the High Court of Kerala.⁵³ There are a total of nine Grama Sabhas in the Vazhachal forest division. In support of the Vazhachal Gram Sabha, all other eight Gram Sabhas also passed resolutions against the proposed dam.

On 4th November 2018, the Vazhachal Grama Sabha took some important decisions regarding their work and forest protection.⁵⁴ In the meeting, they discussed the need of getting high wage for the Adivasis when they work at the forest depot which otherwise goes to the non-Adivasis. High wage is paid for the work such as loading and unloading of the first quality wood. Generally, Adivasis only get chance to get involved in the loading work of low quality wood and hence they get low wages. Later on, the trade unions have admitted their demands to ensure the high wage labour for the Adivasis. Secondly, they had asked the forest department to appoint only Adivasis as forest watchers

in the CFR areas of Vazhachal. Initially, in two of the general panchayat wards, the forest department used to appoint non Adivasis, hence Adivasis of two hamlets never used to get the chance to work as forest watchers. The forest department has agreed to their decision. Thirdly, there was a proposal to widen the road in the Charpa area of Vazhachal by cutting the trees from both sides. Grama Sabha passed a resolution against it and sent it to the officials such as District collector, Divisional Forest Officer and Tribal Development Officer. Following this, the road widening project to public works department was cancelled by the forest department and limited to just maintenance.

During the Kerala floods of 2018, Anakkayam Kadar hamlet was washed away due to debris and consequently, they now live in temporary shelters. Even the Vazhachal Gram Sabha discussed this matter in their own Gram Sabha to find out the possible areas for relocation. Kadar are successfully using this piece of legislation for the governance of their CFR area. Geetha, the Vazhachal hamlet head woman says that 'forest rights act is the only way to attain the self-governance in our area'.

4

INCLUSIVITY OF THE ACTS/POLICY AT THE STATE LEVEL AND THE LIVES OF KADAR

In this section, the state level policies and acts are discussed.

4.1 Kerala Forest Act, 1961

The Kerala Forest Act 1961 was enacted with the intention of protecting and managing forests in the state of Kerala. Forest Settlement Rules 1965 came under this and discussed issues related to claims and settlement of the local community and the duty of the settlement officer. The act states that the customary rights or the rights enjoyed by any forests tribe in the forest should be given special attention and brought up to the forest settlement officer. No clearance was

⁵² See the FRA Document of the 'Title to community forest resources' (n.d.).

⁵³ See the Minutes of the Vazhachal Gram Sabha meeting (03 August 2015).

⁵⁴ See the Minutes of the Vazhachal Gram Sabha meeting (04 November 2018).

allowed for cultivation, forest produce collection etc. The Kerala Forest Produce Transit Rule 1975 elaborates more about the technical issues related to the exploitation and transportation of timber from forests. When I interviewed a former director of the Kerala Forest Research Institute, he said:

Kerala Forest Act is a virtual copy of the Indian Forest Act 1927. Adivasis were allowed to collect the non-traded items or the item which was not in demand for the mainstream economy; thereby some of the local needs were indirectly satisfied. The contribution of the Adivasis made insignificant by the colonial rule by non-recognition of their rights.⁵⁵

No rights of the Adivasis on timber or forest resources are discussed in the act. Timber extraction and management are limited as a matter controlled by the state and contractors only. As far as Kadar are concerned, the Kerala Forest Act did not impact their rights even though their rights were not conferred in it.

4.2 Kerala Hillmen Settlement Rules, 1964

Kerala Government set up a rule for the protection, advancement, treatment and management of the Hill Adivasis under Section 76 of the Kerala Forest Act 1961. This rule aims to preserve the forests for the protection and advancement of the Hillmen. This rule was not different from the Travancore Hillmen Rules, 1911. According to the hill men settlement rule, headman selection was considered as a main step. On the one hand, it gives protection against land alienation, indebtedness and encroachment of tribal land etc. On the other hand, it restricts the mobility of Hillmen from their own settlements. Even though Hillmen was granted the licenses for cultivation, they

were granted no power to claim the land. According to this rule, the forest department had the authority on both the resources and the Adivasis. This has also been a unique rule which gave power to Hillmen to use timber for domestic and agricultural purposes and usage of bamboo and cane with government permission. Besides this, it allowed the Hillmen hunting rights for about six months in a year except some animals prohibited explicitly. The Hillmen's fishing rights were also recognized under these rules. It was also allowed to keep guns in the custody of the headman for protection. Some conditions were also set with the traders/middlemen for the protection of the Hillmen. Other minor produces were supposed to be delivered to the department, but the Kerala Hillmen Rules 1964 was struck down and declared void and illegal by the High Court of Kerala against a petition filed by Eacheran Ittiathi, a Malay Araya Adivasi, challenging the constitutional competence of the state legislature in framing such rules at the state level.⁵⁶ In the writ filed by the petitioner, it is argued that, 'rules are beyond the competence of the state legislature and the state Government as the rules deal with a subject which is not included either in the state List or in the Concurrent List of Schedule VII of the Constitution'.⁵⁷ He also contends that 'the subject falls within the Fifth Schedule of the Constitution'.⁵⁸ Referring to article 244, article 338, 339, 342 in the judgement, the court concluded that legislation regarding the welfare, protection, advancement, etc. of scheduled tribes is specially provided for and power is vested in the president and in the parliament to deal with those matters on which state legislature has no power to legislate.

This has been the only legislation ever enacted in the history of the state of Kerala for recognising the tribal agriculture, headmen system and hunting. Even after considering all the limitations of the rule, this was still a unique piece of forest legislation which discusses the rights of the tribal people to hunt and cultivate.

⁵⁵ Interview (over phone) with Dr CTS Nair, Director (Ex), KFRI (09 March 2014).

⁵⁶ Eacheran Ittiathi v State of Kerala [1966] CDJ 1969 Ker HC 254 Ind 3373.

⁵⁷ *ibid* 1.

⁵⁸ *ibid*.

After the striking down of this rule, such initiatives have not been made either by the state government or by the central government. This would have been an effective legislation for the Kadar, had it been in effect.

5 CONCLUSION

This paper attempted to analyse some of the important policies and laws which are meant for forest conservation and how they impacted a particular Adivasi community living in the Southern part of the Western Ghats in Kerala. The analysis based on the interfaces between the cultural institutions of the Kadar and the modern legislations of the State unravels the fact that modern institutions have over ruled the community's forest governance mechanism – termed as cultural institutions – in most of the cases. It is clear that both philosophically and methodologically there have been attempts to exclude the local communities, especially the Adivasi communities within the purview of the conservation. The mostly praised shift in forest protection, which was in 1988, also did not hand over the forest governance to the Adivasis and the concept, 'participation' has been hugely critiqued. On the contrary, the participatory programme has further distanced the people from the natural resources through initiatives such as ecotourism. There has been reluctance and apathy on the part of the forest department in recognising the rights of the Adivasis in the protected areas even after a decade of the enactment of the FRA. At the same time, this paper does not intend to create a dichotomy between modern and traditional in a strict fashion; rather it highlighted the complex coexistence of both and attempted to bring out this through the conceptual vantage point of interface. Therefore, this paper argues that the existing policy and institutional arrangements need to be restructured and reformed in constructive ways to improve forest governance in a more democratic way.

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