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**Recognition of Forest Rights and  
Livelihoods of Tribal Communities**  
A Study of Western Ghats Region, Kerala State

Jyothis Sathyapalan  
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RESEARCH UNIT FOR LIVELIHOODS AND NATURAL RESOURCES  
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## Foreword

The Centre for Economic and Social Studies (CESS) was established in 1980 to undertake research in the field of economic and social development in India. The Centre recognizes that a comprehensive study of economic and social development issues requires an interdisciplinary approach and tries to involve researchers from various disciplines. The Centre's focus has been on policy relevant research through empirical investigation with sound methodology. Being a Hyderabad based think tank, it has focused on, among other things, several distinctive features of the development process of Andhra Pradesh, though its sphere of research activities has expanded beyond the state, covering other states apart from issues at the nation level. In keeping with the interests of the faculty, CESS has developed expertise on several themes which included, among others, growth, equity, rural development, poverty, agriculture, food security, irrigation, water management, public finance, health, and environment. It is important to recognize the need to reorient the priorities of research taking into account the contemporary and emerging problems. Social science research needs to respond to the challenges posed by the shifts in the development paradigms like economic reforms and globalization as well as emerging issues such as optimal use of environmental and natural resources, role of new technology, and inclusive growth.

Dissemination of research findings to fellow researchers and policy thinkers is an important dimension of policy relevant research which directly or indirectly contributes to policy formulation and evaluation. CESS has published several books, journal articles, working papers and monographs over the years. The monographs are basically research studies and project reports done at the Centre. They provide an opportunity for CESS faculty, visiting scholars and students to disseminate their research findings in an elaborate form.

The present monograph by Dr Jyothis Sathyapalan and Dr Gopinath Reddy is an attempt to understand the implementation processes of the Forest Rights Act 2006 in Kerala. The study also tried to evaluate the scope and feasibility of taking up the implementation of community rights and conservation duties in an integrated manner with the Participatory Forest Management (PFM) programmes of the state. The study reports considerable progress in filling up of the claims for individual land rights during the study period 2009-10. But, some lacuna in the democratic process of selecting members for Forest Rights Committees (FRC) was also observed during the study period. The basic constraint of implementing the Act was lack of co-

ordination and common understanding among government department. As far as the integrated approach of FRA and PFM are concerned, one of the basic issue is that PFM organizations cannot be considered as a statutory body constituted under any law, therefore, they can't come in front of the implementation of FRA 2006. But, this study noted sufficient institutional capacity in PFM programmes, that can be utilized for FRA implementation especially community rights and conservation duties.

This monograph thus contributes to our understanding of various dimensions of the implementation of Forest Rights Act in the Western Ghats. I hope that the research community, policy makers and development practitioners shall find it useful.

**Manoj Panda**  
Director, CESS.

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# CHAPTER. I

## Introduction

### Introduction

The Forest Rights Act 2006 (FRA), is considered an important land mark in the history of forest resource use and management in India. The Act aims at restoring traditional rights of forest dwellers on the one hand, and maintaining ecological balance, on the other, with a view to providing sustainable livelihood options to forest-dwelling scheduled tribes and other traditional forest dwellers, including those forced to relocating their dwellings due to state intervention e.g displacement due to construction of dams, establishment of wildlife sanctuaries etc. Thus, the objective underlying the Act has been to strike a balance between the potentially conflicting interests of the forest-dwelling communities and protection of bio-diversity resources.

Section 3 of the FRA recognises the traditional forest rights of communities living in the forests, at both the individual and community levels. At the individual level, it recognises their right, in that they can hold a piece of forest land either for subsistence cultivation or for any other common occupation or habitation for securing their livelihood. At the community level, it recognizes their right in terms of accessing minor forest products, other than commercial timber, including fish from water bodies (together denoted as non-timber forest products<sup>1</sup>). In addition, FRA recognizes communities and nomadic tribes' traditional and seasonal access to pastoral resources for livestock grazing, and community forests for making use of biodiversity, resources for livelihood besides their claim on intellectual property rights over traditional knowledge and cultural diversity<sup>2</sup>. The FRA also empowers the government to divert forest lands to collective uses such as schools, dispensaries, anganwadies, fair price shops, installing for establishing electric and telecommunication lines, supplying drinking water etc. However, the FRA makes it clear that the forest land that can be diverted to other uses is less than one hectare (for any single use) provided the felling of trees does not exceeds 75 trees per hectare.

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<sup>1</sup> Non-timber forest products are understood as all plant and animal products from forested landscapes other than commercial timber, that are extracted for subsistence use or for trade (Ros-Tonen and Wiersum 2005).

<sup>2</sup> For more details (of these rights) refer Section 3 of the Forest Rights Act, 2006.

Section 5 of the FRA deals with the responsibilities of forest rights holders in terms of protecting biodiversity, ecologically sensitive areas, habitats of forest dwelling scheduled tribes and other forest dwellers or any other activity which adversely affects them.

The procedural details of implementing this Act are provided in Section 6 of the FRA and also in the FRA rules notified in 2008. The central government is empowered to issue directions from time to time and every authority is subject to such directions. The ministry of the central government dealing with tribal affairs is the nodal agency for implementation of the provisions of Act. The state government take part in the process of implementation by constituting a state level monitoring cell, district level, and sub divisional level committees. The Gram Sabha is the authority responsible for initiating the implementation process by constituting a forest right committee (FRC). Then the FRC decides on the nature and extent of individual and/or community forest rights that can be bestowed on the forest-dwelling communities under their jurisdiction. These procedures are examined by a sub-divisional level committee which forwards the same to district level committees for final decision making. The state level committee will monitor the process of recognising and vesting of forest rights. All committees consist of members from the Revenue, Forest, and Tribal Affairs Departments and members from local self government bodies.

The implementation process of FRA was initiated in Kerala by constituting a state level committee which issued orders to complete various activities under the 2006 Forest Rights Act. The state level committee envisaged a target completion date (30th April 2009) for implementing the Act. However, data available with the government departments shows that they could not achieve the target due to various constraints and that the process was still going on with difficulties being faced in tackling those issues.

In this context, the study tries to examine the implementation process of the Forest Rights Act 2006 in Kerala, in terms of providing individual holding land rights and community rights over forest products. The study also tries to evaluate the scope and feasibility of taking up the implementation of community rights and conservation duties consistent with the participatory forest management programmes of the state.

### **Historical setting of the Act**

The historical evidences show that the colonial regime had asserted control over extensive forestlands, resulting in a decline in the traditional conservation and management systems around the forests (Gadgil and R 1992). After independence, the early post-colonial forest policy differed little from the colonial period. The National Forest Policy 1952 did not consider the needs of the local people, with its main aim being to supply timber

for industrial needs. Commercialisation of forests was emphasised, like during the colonial regime, at the cost of the local people. The post-colonial government, in the Forest Policy of 1952, continued to envisage the commercial exploitation of forests, now for the 'national' rather than 'colonial' interest. It is evident that prior to 1988, forest policies had focused mainly on the productive and profit making aspects such as the exploitation of timber for industrial requirements. Moreover, they had restricted the local communities in terms of using the forest resources. This effectively represented heavy subsidies flowing towards industry, and the alienation of forest dwellers and dependents adversely affecting their livelihoods. These policies did not consider the legitimate needs of forest-dwellers and users. This kind of an approach led to several conflicts resulting in the reorientation i.e., from a commercial-oriented forest policy to a more 'people-oriented forest policy in 1988.

The Forest Policy of 1988 has been considered a watershed in the history of forest use and management in the country. The salient features of the new policy included preservation and restoration of ecological balance, conservation of the natural heritage of the country by preserving the remaining natural forests, protecting the vast genetic resources for the benefit of posterity, fulfilling the basic requirements of the rural and tribal communities residing near the forests and maintaining of the intrinsic relationship between forests and the tribal and other ethnic groups living in and around forests by protecting their customary rights on the natural resources like forests. This resulted in the promulgation of Joint Forest Management (JFM) in the early 1990s and the subsequent adoption by most of the states in India as a strategy for forest management. Kerala represents one of the most progressive forest departments in India, being credited to have gone 'beyond' JFM to 'Participatory Forest Management' (PFM) with financial support from the World Bank. This process has initiated a wide range of micro and macro level changes in forest management in terms of governance and livelihoods of people. Participatory Forest Management (PFM) was introduced in Kerala as part of the National Forest Policy of 1988 and implemented in 1998 with initial financial support from the World Bank. The State Government had issued guidelines in this regard in October 1997 with an objective of developing PFM in selected forest areas of the State. But, as per the suggestions of the World Bank appraisal mission, the State government modified the PFM guidelines in January 1998 for effective implementation (GoK 2008). According to these new guideline, forest dependent households in the selected villages were to be made partners in improving the quality of forests by assuring them access to forest produce on which they were dependent for the security of their livelihood, and at the same time, by ensuring sustainable management of forest resources. In short, the PFM programme in Kerala, as elsewhere, envisaged its activities towards attaining twin

objectives of sustainable forest management<sup>3</sup> and livelihood security of the forest dependents. In simpler terms, sustainable forest management amounts to attaining a critical balance between society's increasing demand for forest based products and benefits, and preserving of forest health and diversity. This is critical to the survival of the forest ecosystems, and wellbeing of the forest-dependent communities. In order to achieve these twin objectives, the PFM framework linked the state forest department with community organizations and forest dependent people. In this respect, two major initiatives undertaken by the Kerala government related to the Forest Protection Committees (*Vana Samrakshana Samathis* (VSS)) in territorial forest areas and *Eco Development Committees (EDCs)* in protected areas. Both were micro level committees, consisting of people living in the forested areas and representatives from the Forest Department, having their own agendas for implementing programmes integrating conservation and development.

The guidelines issued in favour of these committees recognised the community usufruct rights over the collection and marketing of non timber forest products. It is reported that these committees even succeeded in organising and rehabilitating certain tribal population in specific localities, though they did not provide a complete property right over the land they inhabited<sup>4</sup>. (GoK 2008).

As far as the protected areas are concerned, attempts to recognise forest dwellers' rights over collection of NTFPs had been observed in mid 1990,s through Eco-development committees (Sathyapalan 2005); but in early 2000, there was a deficit of clarity observed in the functioning of these committees with regard to collecting of non timber forest products, following a Supreme Court order on a writ petition (Civil) No 202/1995, suspending of many forest products from National Parks and Game Sanctuaries or forests. In short, the PFM could recognise the tribal communities and other forest dwellers' rights to use the land or forest products, as a matter of policy. But the Forest rights Act, 2006 went beyond the forest policy of 1988 and PFM programme as far as the recognition of rights are concerned. As background to the Forest Rights Act, it was mentioned "*the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of the State forests during the colonial period as well as in independent*

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<sup>3</sup>The Food and Agriculture Organization (FAO) defines sustainable forest management as "the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfill, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems".

<sup>4</sup> Based on personal discussion held with forest officials at PFM cell of the forest department on 11-10-2008

*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".* Now the government is liable to implement the Act fully, which recognises individual as well as community rights over the use and management of forest resources. In this context, we try to address the following aspects with respect to the implementation process of the Act in the Western Ghats region of Kerala.

### **Research Questions and Objectives of the Study**

The important questions that we are addressing in this study are:

- How is the Act being interpreted in the implementation process?
- What are the factors constraining the implementation process of FRA in Kerala?
- What is the role played by PFM programmes in implementing the FRA?
- Is there any scope for integrating PFM and FRA to ensure community rights and conservation duty provisions of the Act?

Consistent with these questions, the basic objectives of the study are:

- To examine the factors that constrain the implementation process of the FRA in the Western Ghats region of Kerala
- To examine the linkages between PFM and FRA while conferring forest rights
- To assess the capacity of PFM to support FRA implementation.

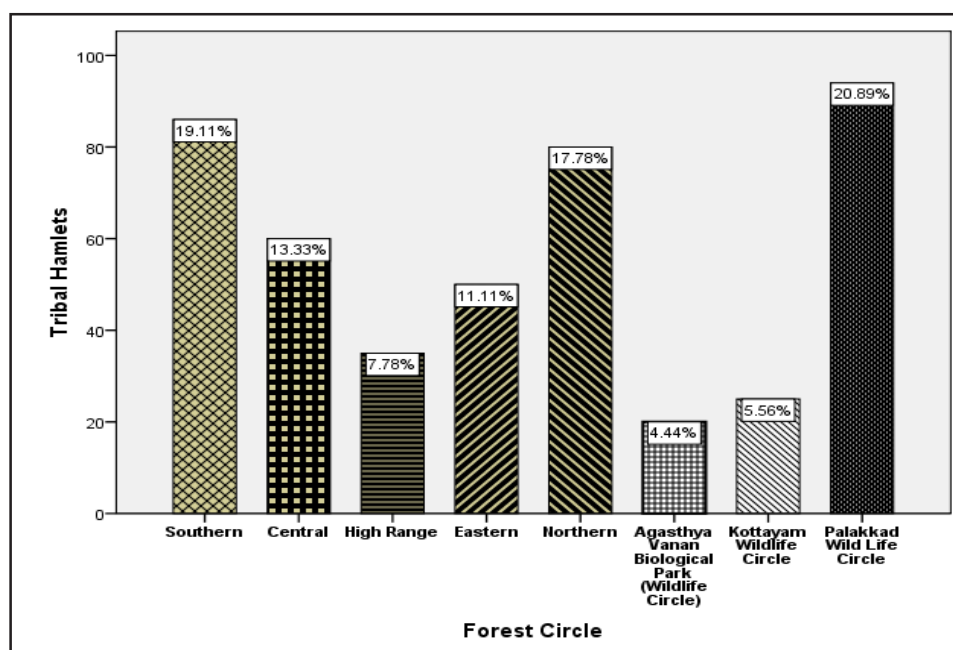
### **Data sets, Sources and Methodology**

The study has used both secondary and primary data. The secondary data for this study has been collected from the government records. In addition to this, we interviewed key officials from different departments involved in FRA implementation. This has been supplemented with primary data collected from tribal settlements through focus group discussions and survey methods. The distribution of sample households across different forest circles is presented in Figure 1. A Sample of 450 households was selected randomly for the purpose of the study.

The survey team interviewed 450 representatives of households having at least one member each directly involved in forest based livelihood activities. Where ever possible, the individual actively involved in forest product collection was interviewed. A survey was conducted among 450 households that spread across thirty tribal settlements in the forest region including wildlife areas, having VSS or EDCs.

In the absence of reliable sample frames, we adopted what we have labelled as the ‘random walk method’ to collect data for the study. The survey enumerators selected households for collecting data by moving about in different directions in the tribal settlements in a systematic manner until the predetermined size of each sub-sample was reached. A structured interview schedule was used for collecting data from the selected households.

**Figure 1** Distribution of sample households across different forest circles of Kerala



Source: Based on primary survey data

The qualitative field notes prepared as part of this study were used as basis to formulate appropriate questions related to various aspects such as the caste composition of tribal settlements, labour and capital market structure, and livelihood and institutional aspects related to the use and management of forest resources.

The distribution of the sample households across revenue districts, panchayats and tribal settlements are presented in Table 1. The sample households spread across ten districts and 24 Panchayats of the State with tribal settlements having a functioning VSS or EDC. Some of the settlements also were found characterised by the presence of tribal co-operative societies and *Kudumba sree* activities.

The distribution of the sample households across these tribal settlements are presented in table 2 which shows nine settlements located within the wildlife protected areas. We

have taken this representation to understand the implementation status of the Act across these settlements. These settlements were selected from all the three wildlife circles in Kerala.

**Table 1 Location of Sample households (Districts, Panchayats, tribal settlements)**

Districts	Panchayats	Tribal settlements with type of PFM	Total Sample households
<b>Pathanamthitta</b>	Aruvapuram Naranammuzhy Seethathoodu	Avanipara (VSS) Kochandi (VSS) Manakkayam (VSS) Kurumbanmuzy(VSS)	56
<b>Kollam</b>	Ariyankavu	Achancoil (VSS)	15
<b>Thrissur</b>	Panacherry Athirappally Mattathur	Tamaravellachal (VSS) Anapandam (VSS) Poovanchira(VSS) Malakapara (VSS)	50
<b>Palakkad</b>	Nenmara Agali Muthalamada	Mattai (VSS) Moolakombu (VSS) Karuvara (EDC) Anchaam Coloney (EDC) Poopara (EDC)	60
<b>Kannur</b>	Kelakam Kanichal	Elapeedika (VSS)	50
<b>Wayanad</b>	Thondarnad Thavinjal Puthur	Perincherimala (VSS) Periya (VSS) Muthanga (EDC) Ponkuzhi (EDC)	89
<b>Malappuram</b>	Karulayi Pothunkal	Manchery ((VSS) Vaniyampuzha (VSS)	25
<b>Ernakulam</b>	Kuttambuzha	Kunchipara (VSS) Elamplasery(VSS)	20
<b>Idukki</b>	Adimali Mangulam Maravoor Kumili	Chikkanamkudi(VSS) Kurathikudi (VSS) Eruttalakudi (EDC) Mannakudi (EDC)	50
<b>Thiruvanthapuram</b>	Perimangalla Kuttichal	Pottamav (VSS) Podiyam (EDC) Kottur (EDC)	35
<b>10</b>	24	30	450

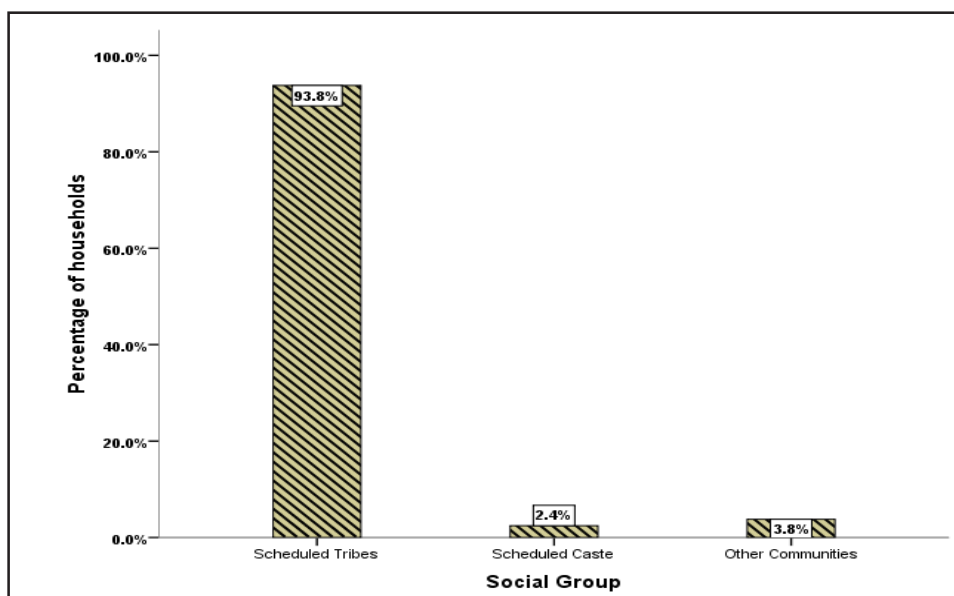
Table 2 Distribution of sample households across tribal settlements and forest circles

Tribal settlements	Number of households	Forest circles
1. Avanipara	10	Southern Circle
2. Pottamav	15	Southern Circle
3. Kochandi	15	Southern Circle
4. Manakkayam	11	Southern Circle
5. Kurumbanmuzy	20	Southern Circle
6. Achancoil	15	Southern Circle
7. Elapeedika	50	Northern Circle
8. Perincherimala	10	Northern Circle
9. Periya	20	Northern Circle
10. Kunchipara	10	Central Circle
11. Tamaravellachal	10	Central Circle
12. Anapandam	10	Central Circle
13. Poovanchira	15	Central Circle
14. Manchery	10	Eastern Circle
15. Malakapara	15	Eastern Circle
16. Mattai	15	Eastern Circle
17. Moolakombu	10	Eastern Circle
18. Vaniyampuzha	15	Eastern Circle
19. Elamplasery	10	High Range Circle
20. Chikkanamkudi	10	High Range Circle
21. Kurathikudi	15	High Range Circle
22. Eruttalakudi (Chinnar)	15	Kottayam Wild life Circle
23. Mannakudi (Periyar)	10	Kottayam Wild life Circle
24. Podiyam (Pepara)	10	Agasthya Vanam Biological Park
25. Kottur (Pepara)	10	Agasthya Vanam Biological Park
26. Muthanga (Wayand)	28	Palakkad Wild Life Circle
27. Ponkuzhi (Wayanad)	31	Palakkad Wild Life Circle
28. Karuvara (Silent Valley)	15	Palakkad Wild Life Circle
29. Anchaam Colony (Parambikulam)	10	Palakkad Wild Life Circle
30. Poopara (Parambikulam)	10	Palakkad Wild Life Circle
<b>Total</b>	<b>450</b>	<b>All Forest Area</b>

*Note:* Sample hamlets were selected from the list available with the Department of forest, Kerala

After completion of the survey, we found the presence of non tribal households also in the tribal settlements, though on the fringe area settlements of forests. The distribution of scheduled tribe, scheduled caste and other communities is shown in Figure 2. The figures indicate that 93.8 per cent of the total sample households belonged to scheduled tribe communities, while 6.2 per cent to other communities.

Figure 2 Distribution of sample households across scheduled tribe and non scheduled tribe communities



This report analyses the implementation of the FRA from an institutional perspective, following the notion of ‘action arena’ developed by Ostrom (2005) that consists of ‘participants’ and an ‘action situation’. The focal point of the analysis is the ‘action arena’ of FRA implementation. Participants in an ‘action situation’ are decision-making agents assigned to a position and capable of taking actions from a set of alternatives made available at nodes in a decision making process (Ostrom 2005). Positions are the connecting link between participants and an action situation. The participants occupy different positions in the implementation process who in many action situations are individual persons, or may represent a team or composite actors. Here, we have treated each government department as a group involved in the implementation of the FRA. In some situations, participants in any position may be authorized to take any of the allowable actions in a given situation. However, in most “organized” situations, the capabilities for taking particular actions are assigned to specific positions and not necessarily all positions. The nature of position assigned to participants in an action situation defines the ‘standing’ of the participants in that situation (ibid 40-41). Therefore, while examining the action situation of FRA, it is important to take a look at the ‘standing’ of each participant and how each participant is linked to a given action situation. In the present context, the participants involved in implementing the Act, represent different government departments having a ‘common purpose’ under the FRA that assigns individual and community rights to forest-dwelling communities. In a government set up, they do not

depend on the preferences of their own members and beneficiaries, and further activities are carried out by staff members whose own private preferences are supposed to be neutral. The important players in this process are the Department of Tribal Affairs, the Forest Department, Revenue Department, and Local Self Government Department. The tribal communities also play a vital role in terms of articulation of their rights over forest lands.

Factors affecting the structure of an action arena include a set of three variables: (a) the attributes of bio-physical world (b) attributes of the community within which any particular arena is placed and (c) the rules used by participants (Kiser and Ostrom 1982). The concept of rule is central to the analysis of institutions used in specific contexts. For some institutional scholars, the important difference in terms of rules relates to the system of property rights in use (Bromely et al. 1992) e.g. government property, private property, and non-property (open access). While a rule configuration affects all of an action situation, some of the variables of an action situation also affect attributes of the bio-physical world being acted up on or transformed. The same set of rules may throw up an entirely different type of action situation depending upon the type of events in the world being acted upon by participants. The third set of variables that affect the structure of an action arena concerns the concept of community within which any focal action arena is situated. The attributes of the community that are considered important in terms of affecting an action arena, include the value of behaviour generally accepted in the community, the level of common understanding participants generally share about the action structure, the extent of homogeneity in the preferences of those living in a community, the size and composition of the relevant community and the inequality of basic assets among those affected (Ostrom, 2005).

Finally, the implementation of the FRA may interact with the other Acts, which are concerned with resource governance, land use and tribal welfare. In this respect, the most important ones are the Acts related to forest conservation and protection such as the Wild Life Protection Act 1972, Forest Conservation Act 1980, and the Biodiversity Act 2002. Both these Acts are important in that they deal not only with the conservation of forest land resources but also empower the Forest Department as a guardian or a custodian of the natural ecosystem. Here, we attempt a partial analysis of the possibilities of an interaction between these Acts while highlighting the compatibilities of FRA and other rules pertaining to forest administration. On the basis of this theoretical perception, the present action situation of implementing the FRA can be traced by explaining the role of bio-geographical characteristics of the area (the Western Ghats region), various attributes of tribal communities living in the area, besides various rules applicable to the area especially the use and management of land.

### Study Area

The Western Ghats region of Kerala covers approximately an area of 21,861 square kilometres (56.25 per cent of the total geographical area). Administratively, the forest area covers about 9,400 sq kms, with a maximum elevation of 2,670 mts (Nair 1991). Considering areas of 1,500 metres and above mean sea level, the Western Ghats region has two major high elevations, namely the Nilgiri plateau and the Anamalai high range. At present, the upper reaches of these mountains are thickly forested and the lower ranges fragmented with plantations specialized in the cultivation of varieties of plants such as teak, eucalyptus, etc. (Narayanan 1996). The forest area of this region also has high biodiversity values (Sathyapalan 2002). A summary of the basic characteristics of the study area is presented in Table 3, while the location of the selected tribal settlements is provided in figure 2.

Table 3 Characteristics of Western Ghats Region, Kerala

Particulars	Explanation or Magnitude
Administrative Forest Area	9400 sq. kilometre
Latitude	8o 30' N E to 12o 30' N E
Longitude	75o 15'E to 77o 45' E.
High elevation areas	Nilgiri and Anamali
Maximum elevation	2670 metre
Soil	Alluvial, red and lateritic soil
Climate	Monsoonal
Average rainfall	3106mm
Total flowering species	3500
Mammals	48 genera
Birds	275 genera
Reptiles	60 genera
Total tribal Population	364,189

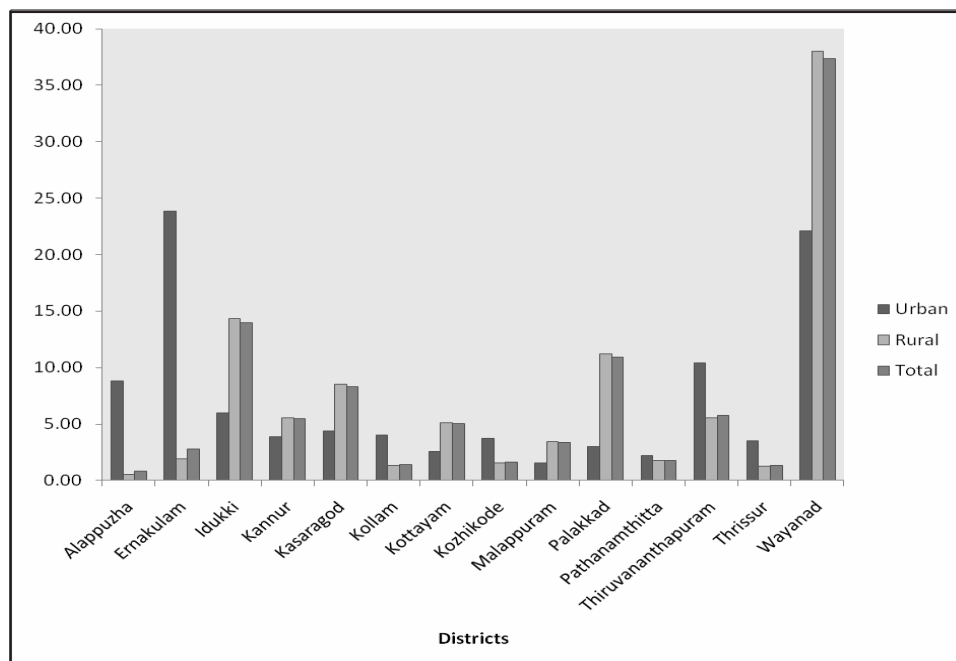
Source: (Nair 1991) (Ramesh and Bawa 1997), (GoI 2001)

### Tribal Communities of the Western Ghats

There are 35 tribal communities as recorded in the list of scheduled tribes in Kerala, accounting for about 1.10 per cent of the total population. In the 2001 census, the total population of tribal communities in Kerala stood at 364,189 (37000 families). The total population of the tribal community grew by 13.46 per cent between 1991 and 2001 census period. The scheduled tribe population is mainly concentrated in the Western Ghats forest areas of Wayanad, Idukki, and Palakkad districts of Kerala. Approximately 36 percent of the total tribal population of the state is concentrated in Wayanad district

alone (Figure 3). From livelihood point of view, the tribal communities are classified into four categories: (1) hunters and gatherers, (2) agricultural labours (3) shifting cultivators and (4) settled cultivators.

Figure 3 Distribution of scheduled tribes population across districts (in percentages)



Source: (GoI 2001)

Today, however, a majority of the tribal population are landless agriculturists. A community wise main source of livelihood of the tribal population is presented in Table 4. The table reveals that a majority of the tribal communities are engaged in traditional occupations for their livelihoods, like non-timber forest product collection and manual wage labour. The composition of communities also indicates that they are not a homogenous group with many of them leading a traditional way of life.

In Kerala, Cholanaikan, Kattunaikans, Kurumbas, Kadras, Koranga etc., are classified as 'primitive tribes'. They constitute nearly 5 per cent of the total scheduled tribe population of the state. Considering the significance of non-timber forest products in the livelihoods of tribal communities, it is very important to take appropriate steps in FRA implementation to recognise their community rights over these resources.

Another important characteristic feature of the distribution of tribal population is that many communities are still found living inside the forest areas which are reserved for the

**Table 4 Community wise main source of livelihood of scheduled tribe population in Kerala**

Tribal community	Main Livelihood source
Adiyan	Traditionally slaves, but today labours.
Arandan	Traditionally nomadic hunters and gatherers
Eravallan	Traditionally agricultural labours
Hill pulaya	Agriculture labours and non timber forest product collectors
Irular	Settled cultivators, and agriculture labours
Kadar	Non-timber forest product collection
Kammara	Non-timber forest product collection
Kanikkaran	Settled cultivators and agriculture labours
Kattunayakan	Non-timber forest product collection
Kochuvelan	Non-timber forest product collection
Konda Kapus	Non timber forest product collection
Kondereddis	Non-timber forest product collection
Koraga	Basket making and agriculture labours
Kota	Non-timber forest product collection
Kudiya, Melekudi	Settled cultivators and agriculture labours
Kurichiyan	Settled cultivators
Kurumans	Settled cultivators and labours
Kurumbas	Non-timber forest product collection
Maha malasar	Non-timber forest product collection
Mala Arayan	Settled cultivators
Malai pandaram	Non-timber forest product collection
Malai Vedan	Non-timber forest product collection
Malakkuravan	Non-timber forest product collection
Malayan	Non-timber forest product collection
Malayarayar	Non-timber forest product collection and agriculture
Mannan	Settled cultivators
Marati	Agriculture and labour
Mudhuvan	Non-timber forest product collection and farming
Palleyan	Labour
Palliyan	Labour
Palliyar	Labour
Paniyan	Agriculture labour
Ulladan	Non-timber forest product collection
Uraly	Hunters and gatherers

Source: (KIRTADS 2003); and focus group discussions

Table 5 Distribution of tribal settlements and families in protected areas of Kerala

Protected Areas	Number of Settlements	Number of Families	Area of settlement (ha)	Remarks about data
Neyyar Wild Life Sanctuary	18	392	-	Extent not available in the Plan
Peppara Wild Life Sanctuary	13	192	-	Extent not available in the Plan
Agasthyavanam Biological Park Range	-	-	-	Working Plan not available.
Shendurny Wild Life Sanctuary	0	0	0	No settlement as per Plan
Periyar Tiger Reserve	3	-	239.74	Family Nos not available in the Plan
Idukki Wild Life Sanctuary	12	-	711.26	Family Nos not available in the Plan
Thattekkad Bird Sanctuary	0	0	0	No settlements as per Plan
Eravikulam National Park	1	40	?	Extent not available in the Plan
Chinnar Wild Life Sanctuary	11	417	?	Extent not available in the Plan
Parambikkulam Wild Life Sanctuary	6	277	34.27	
Peechi-vazhani	2	78	115.00	
Chimmony Wild Life Sanctuary	1	-	7.00	Family Nos not available in the Plan
Wayanadu Wild Life Sanctuary	42	-	101.50	Appr 100 ha of leaseland with tribes
Silent Valley National Park	0	0	0.00	No settlements as per Plan
Aralam Wild Life Sanctuary	0	0	0.00	No settlements as per Plan
<b>Total</b>	<b>109</b>	<b>1396</b>	<b>1208.77</b>	

Source Forest Department, Government of Kerala

Note Data compiled from the present management plans of the protected areas in Kerala

purpose of wildlife protection. An estimate based on the current management plans of the Kerala Forest department shows that nearly 109 settlements are located in wildlife sanctuaries and national parks with approximately 1,396 families (Table 5). The total area of these settlements comes to 1,209 hectares. This is an important issue, where the participation of Forest Department in implementing the Act is warranted. In this context, it is also important ask again, how much relative control will communities and officials have; what customary rights and benefits would be ensured; and what level of conservation will tribal communities have to ensure in return (Kothari 1996). It is also important to remember that most of the communities living in protected area are nomadics and primitive tribal groups, cut off from the mainstream people.

The tribal communities living inside wildlife sanctuaries are extensively engaged in non timber forest product collection irrespective of the forest department effort to divert their livelihood dependency to other sources of income through eco-development committees. But still, life and livelihood options of many tribal communities living inside these protected areas remain unresolved even today. Taking into account both tribal communities living inside wild life areas and territorial forest, we have estimated 610 tribal settlements consisting of 14926 families which live inside the forest areas. They occupy approximately 14565 ha of land as per forest department records. This indicated an approximate number of eligible tribal families entitled to individual land rights as per forest records.

**Table 6 Comparative details of tribal settlements as per working plans/management plans & ccf p register**

Forest Circles or Wild Life divisions	No of settlement	No of Families	Area ha
Southern High Range	181	1689	2832.9
Central Circle	117	6900	9004.04
Eastern Circle	33	1132	595.885
Northern Circle	64	1644	474.37
Agasthyamala Biosphere	106	2165	452.56
Kottayam Wild life Division	31	584	0
Palghat Wild Life Division	27	457	951
<b>Total</b>	<b>610</b>	<b>14926</b>	<b>14568.53</b>

*Source:* compiled from working and management plans of the forest department, government of Kerala

A detailed analysis of the implementation process of FRA has been carried out separately with respect to recognition of individual rights, community rights, and conservation duty provisions. We have also tried to look into the process of implementation in protected areas.

#### Chapter Organisation

The study is presented in five chapters. The following chapter 2 presents an analysis of the implementation process of FRA and the basic constraints involved in the implementation process; Chapter 3 analyses the significance of PFM programme while implementing the community rights over collecting NTFPs and conservation duty provisions of the Act. This part also discusses the issues concerning the collection and marketing of NTFPS in the study area; Chapter 4 presents an assessment of the scope and constraints of implementing the Act with the PFM programmes.

## CHAPTER. II

### The Implementation Process of FRA 2006

#### **Introduction**

The first part of this chapter explains the two components of an 'action arena', i.e., 'participants' and 'action situation' in terms of assigning individual and community rights to the forest-dwelling communities under the FRA. The second part deals with various factors that influence the action situation in implementing FRA, with an objective to identify the important constraints underlying the implementation process. This part covers factors that relate to the biophysical and material conditions of the Western Ghats region, common understanding of the departments concerned about the Act, and finally the interaction of FRA with other Acts related to forest and land.

#### **Participants**

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

The Forest Department is the second most important agency involved in implementing the FRA. Today, 'tribal welfare', as an important aspect of forest governance, is reflected in the recent management and working plans of the department, mainly as part of the participatory forest management (PFM) programmes. This section of the forest department has a chief conservator of forests who is exclusively, responsible for managing eco-development and welfare of the tribal communities under the PFM programmes. Today, the Forest Department is also one of the important sources of employment generation for the tribal communities through various programmes like afforestation and eco-development programmes. As a result, it appears that the forest department occupies an important position in implementing the FRA without making any

compromises on its main objective, that is, protection of forest resources, particularly given the fact that the Act envisages a marginal role for the Forest Department. In a sense, it has a slightly different role as compared to the Department of Scheduled Tribe Development as far as the implementation of the FRA is concerned.

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

With the decentralization of political powers to local self-government institutions, the Local administration department has an important role to play in the formulation of policy and implementation of developmental works at the grass roots level. The implementation of the Act starts from the bottom level that is Gram Sabhas. The Gram Sabhas of the local self governments play a quasi judicial role in implementing the rights. Our discussions with some of the officials at the state level revealed that their role was also limited to a facilitating one.

The fifth actor in the implementation of the FRA is the tribal communities, who are the ultimate beneficiaries of the Act. They differ in terms of various community specific aspects that we will be discussing later. Their benefiting from the Act depends upon how effectively they articulate their rights over the land they occupy and other forest products they collect.

### **Action situation**

The above mentioned five actors make decisions with respect to the implementation of FRA through various committees constituted at different levels of the state administration. At the bottom level, we have Gram Sabhas and FRCs which recommend the potentially eligible right holders. The Gram Sabhas are the critical institutions in identifying forest rights of scheduled tribes in a transparent and participatory manner. Its objective is to ensure that the basic identification of the forest rights takes place in an inclusive manner with everyone having a say before taking a collective view on the matter. This institution of interactive democracy assumes a quasi judicial character under the Act (GoK 2008a).

In Kerala, because of various structural and socio-political constraints (and keeping in view the larger interest of the tribal population), the Gram Sabhas were constituted at the tribal hamlet level for the purpose of implementing FRA. It was also recommended by the state level committee that the official machinery put in sufficient efforts to ensure maximum attendance at the Gram Sabhas so that free elections could be conducted for selecting members to the FRCs<sup>5</sup>.

In the action situation, the second upper level committee is at the sub divisional level, headed by a sub collector or a revenue divisional officer. Its official members could be forest range officers, tribal extension officers, under the jurisdiction of the Revenue Department. Usually, the block Panchayat nominates scheduled tribe members to this committee. This committee verifies and forwards applications related to forest rights to the divisional committees for taking a final decision. The divisional level committee is headed by a district collector with the divisional forest officer representing the Forest Department and officials from the tribal department.

The progress of the implementation process is monitored at the state level by a state level committee consisting of an additional chief secretary, principal secretary to the Scheduled Caste and Scheduled Tribe Development Department, director survey and land records, director scheduled tribe development department, and additional principal chief conservator for eco-development and tribal welfare.

### **Process Implementation**

The implementation process has been divided into two periods for the convenience of analysis that is the period before the targeted completion date of FRA implementation process (30<sup>th</sup> April 2009) and afterwards.

#### *First Phase of Implementation*

The Act was passed in December 2006 and came into force in January 2008 with the notification of the Rules made under this Act. The first phase of the implementation in Kerala started with the issuing of government orders related to the time schedule of implementation on 17<sup>th</sup> June 2008. The time schedule of the first phase was given in

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<sup>5</sup> Details regarding the procedure of selecting members to the forest rights committee are available in the report of the working group for implementing the forest right Act in Kerala (GoK 2008a)

### First Phase FRA implementation Activities

Meeting of the Gram Sabha and election of forest rights committees	15 <sup>th</sup> November 2008
Survey and demarcation on request from the Forest Rights Committees	15 <sup>th</sup> December 2008 onwards
Decision by the Gram Sabha on the recommendations of the Forest Rights Committees	10 December 2009
Decision by the sub divisional level committees on resolutions of Gram Sabha	28 February 2009
Final Approval by district level committee	31 <sup>st</sup> March 2009
Constitution of new forest villages	30 <sup>th</sup> April 2009

*Source:* (GoK 2008a)

We have already mentioned that the process of implementation starts at the bottom of local administration that is Gram Sabha<sup>6</sup>. The Government permitted the Gram Panchayats to utilize up to Rs. 5000 towards the expenses incurred in conducting elections to the Forest Right Committees (FRCs) by Gram Sabhas. Secondly, following the recommendations of the Forest rights committees, Gram Sabhas demarcate the land and forward the facts to the sub divisional and divisional level committees for taking a final decision.

An estimate, as on March 2009, shows that 504 Forest Rights Committees had been formed and approximately 85.45 per cent of the total claims of 37000 claims were filled in Kerala State<sup>7</sup>. These claims spread across 1086 tribal settlements of the state in which households of the 742 settlements filled all the claims.

However, we observed that the number of settlements reported from the tribal department exceeded the number of settlements in forest records<sup>8</sup>. It seems that the tribal department asked all tribal families of Kerala state to fill their claims, and that might be the reason the estimated total number of claims (37000) exceeded?

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<sup>6</sup> Gram Sabhas is a critical institution in identifying the Forest Rights of Scheduled Tribes and other forest dwellers in a transparent and participatory manner. Its objective is to ensure that the basic identification of forest rights is inclusive with everyone having a say before taking a collective view on the matter (Kerala, 2008).

<sup>7</sup> No one knows at the official level how the total numbers of claims were estimated before they got filled. It might have been an approximation of the total number of tribal families in Kerala!

<sup>8</sup> We don't have a clear answer as to why these two statistics differ.

The available data also shows that constituting FRCs and filling claims had progressed significantly in the state during the first phase of implementation. But in our enquiries, we could find that the democratic process of selecting members for forest right committees and filling up the claims was not followed any Gram Sabha; instead, the officials and tribal development promoters played an important role in getting the claims filed on behalf of the tribal communities. This was a procedural violation of the Act observed in the first phase itself at the Gram Sabha level.

**Table 7 Details of Claims of land received under Forest Rights Act 2006**

Name of District/ ITDP	Total Claims to be filed	Claims filed so far	Percentage of claims filled to total claims
Thiruvananthapuram	5500	4855	88.27
Kollam	1056	1056	100.00
Pathanamthitta	1309	967	73.87
Kottayam	1339	1240	92.61
Idukki	12300	10083	81.98
Eranakulam	1290	704	54.57
Thrissur	1322	1115	84.34
Malappuram	1377	981	71.24
ITDP Attapadi	2100	1868	88.95
TDO, Palakkad	1354	1363	100.66
Kozhikkode	19	19	100.00
ITDP Wayanad	1811	1291	71.29
TDO Mananthawady	1668	1668	100.00
TDO Sulthanbathery	3289	3289	100.00
Kannur	1266	1117	88.23
<b>TOTAL</b>	<b>37000</b>	<b>31616</b>	<b>85.45</b>

*Source:* Department of Tribal development, Government of Kerala

The procedures related to proper verification of claims and survey of lands were found slow during the first phase. This was the stage where all practical problems cropped up at grassroots level. For example, the survey operations started in the settlements of Wayanad district in the first week of December 2008, did not progress satisfactorily due to the unavailability of sufficient survey personnel and an increase in the number of settlements at the time of survey<sup>9</sup>. Finally, it was reported that the department had

<sup>9</sup> The reasons for increase in the number of settlements have to be further explored. The available data is not sufficient to explain this increase.

distributed a total 2.05 acres of land to a few tribal families. On an average, they received 30 cents of land per family.

It was also reported that the tribal communities had been given only very small parcels of land which fell below the one acre norm. But it is important to note that any such decision (one acre norm) on behalf of the claimants is also a violation of the Act because, “the forest rights recognised and vested by sub section (1) are in respect of land mentioned in clause (a) of subsection one of section (3) such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under occupation and shall in no case exceed an area of four hectares”.

While issuing the legal title deeds (patta) to the forest dwelling communities of Wayanad, the government had made it clear that it was a “provisional patta”. This happened due to delays in conducting meetings at the district and divisional level committees with regard to issuing of title deeds. The title deeds issued without following proper procedures also create doubts about its validity.

The process of implementation of FRA during the first phase showed a slow progress due to lack of co-ordination between various departments at the operational level. The lack of coordination also led to short cuts in filling claims and recognising land rights. During the first phase, issues related to community rights and conservation duties were not properly addressed. This also shows that the implementation process was biased towards land distribution since beginning.

#### *The Second phase of implementation*

We explored the second phase of the implementation from May 1<sup>st</sup> 2009 till now. An estimate, as on March 2010, shows that 512 Forest Rights Committees (FRCs) were formed in Kerala State during this period, i.e., an increase of 8 more FRCs during the second phase. The table shows that approximately 35658 claims had been filled as of March 2010, spreading across 1,008 tribal settlements of the state. It seems some of the tribal settlements were dropped during this period.

I have been reported that as of March 2010, 13691 claims had been processed and received at the district level committees, accounting for 38 per cent of the total claims. The current data (till 2010 March) also shows that 6004 families (16.83 per cent of the total claims) had received title deeds over area of 6000 acres as per the Act<sup>10</sup>. This indicates a recognition of of approximately one acre of land per family.

<sup>10</sup> Data source: Stared Question number 428 (23-3-2010) Kerala Legislative Assembly

Although our enquiry reveals that although the government could overcome some of the technical issues at the operational level in the second phase, it faced various socio-political and bureaucratic hurdles right from the state to panchayat levels, with the implementation process finding itself in a chaotic situation.

The slow progress of implementation also created apprehensions at the state level. As a result, a state level meeting on forest rights was held on 23<sup>rd</sup> September, 2009 in the presence of ministers from the ministries of forest, revenue and tribal development. Some of the key points discussed in the meeting (based on the minutes) are presented here.

In the meeting it was expressed that, the government should act immediately on implementing the 'Kerala Restriction on Transfer by and Restoration of land to Scheduled Tribes Act 1999' following an order delivered by the supreme court of India; otherwise the government might face contempt of court', problem as a result, it was decided to take up all pending cases and claims related to this Act. This responsibility was entrusted to the district collectors.

The meeting also discussed the status of the implementation process of the Forest Rights Act, especially in the context of the prime minister's letter stating that the implementation procedure be completed on or before 31<sup>st</sup> December 2009. With the realisation that the implementation process was lagging behind, the committee decided to transfer all the resolutions of FRCs with respect to claims to the forest department.

Most interestingly, the committee decided to return claims of less than 1 acre on or before 15<sup>th</sup> October 2009 with a view to rectifying them with minimum 1 acre. The committee also noted that all survey operations be completed before January 2010 so as to complete the distribution of title deeds to all the claimants. It was reported to us during the field work that some members of a civil society organisation questioned the 1 acre norm in the Kerala High court and that they were waiting for the verdict.

Bringing in issues related to the Kerala 'Restriction on Transfer by and Restoration of land to Scheduled Tribes Act 1999' along with the implementation of the 'Recognition of Forest Rights Act 2006' might create a situation of non verifiability of implementation procedures, affecting the well-being of the tribal communities. The mixing of the implementation of these two Acts might create confusion especially among the landless tribal communities, since FRA 2006 is silent on issues related to the landless tribal communities.

Table 8 Status of FRA implementation across districts

District	No. of Settlements	No. of FRCS Constituted	No. of individual claims received so far	Individual claims passed by Grama Sabha & forwarded to collectorate	No. of claims rejected	No. of community Right claims received so far	No. of claims perambulated on preliminary verification completed	No. of claims where survey completed and records received by collectorate	No. of claims passed by SDLC	No. of claims passed by DLC	No. of titles issued / ready for issue
1	2	3	4	5	6	7	8	9	10	11	12
Trivandrum ITDP Nedumangad	196	35	5241	5240	1	30	5241	2382	2047	2047	2047
Pathanamthitta TDO, Ranni	18	18	1082	1036	10	25	995	776	378	314	314
Kottayam P.O.ITDP, Kanjirapally	13	13	1661	1659	2	58	1659	747	411	411	411
Ernakulam TDO, Muvattupuzha	11	14	1472	1472	0	14	1472	250	82	82	82
Thrissur, TDO, Ckalakkudy	55	36	1341	1061	280	53	1341	877	187	85	85
Kozhikkode TDO, Calicut	4	2	20	11	9	4	11	11	11	11	11
Kollam TDO, Punalur	18	14	1152	1052	70	15	1088	1074	1074	1074	1074
Idukki P.O., ITDP Thodupuzha	124	93	10720	10720	0	80	10720	473	0	0	0

Table 8 contd..

District	No. of Settlements	No. of FRCS Constituted	No. of individual claims received so far	Individual claims passed by Grama Sabha & forwarded to collectorate	No. of claims rejected	No. of community Right claims received so far	No. of claims perambulated on preliminary verification completed	No. of claims where survey completed and records received by collectorate	No. of claims passed by SDLC	No. of claims passed by DLC	No. of titles issued / ready for issue
1	2	3	4	5	6	7	8	9	10	11	12
Malapparam P.O., ITDP, Nilambur	58	28	1230	1187	0	35	896	832	832	324	324
Palakkade TDO Palakkad	61	34	1548	802	746	61	945	945	774	707	707
TDO Attappady	58	58	2215	2157	0	45	1851	567	522	375	375
Wayanad, P.O., ITDP, Kalpetta	69	37	1642	1642	0	75	674	508	364	364	364
TDO S Bathery	213	47	3537	3537	0	201	3537	2018	1986	1986	1986
TDO Mananthavady	77	28	1758	1412	346	218	1194	1194	753	753	753
Kannur P.O., ITDP, Kannur	33	57	1039	1037	2	48	1037	1037	916	872	872
<b>Grand Total</b>	<b>1008</b>	<b>512</b>	<b>35658</b>	<b>34025</b>	<b>1466</b>	<b>962</b>	<b>32661</b>	<b>13691</b>	<b>10337</b>	<b>9405</b>	<b>9405</b>

Source: Department of SC/ST Development , Note: ITDP is integrated tribal development programme; TDO is tribal development office.

The data on the current status shows that the government had distributed lands to almost 18 per cent (6000) of the total claimants. Unfortunately, some of the households (based on the information provided by the ponkuzhi tribal hamlet of Noolpuzha Panchayath) who got lands under FRA were not even aware of what purpose they got the title deeds for! The second phase of the implementation process was also slow and restricted to official procedures of issuing a few title deeds.

Although the individual land rights provide tenure security over a small piece of land occupied by them, it is very much doubtful whether they can support the livelihood of the households due to various reasons like small land holding sizes, inadequate skill related to cultivation etc. That is why the community rights especially over non timber forest products become very relevant in the context of livelihoods of the tribal communities.

In the *silent valley* and *Attapadi* areas of the Palakkad wildlife division, we have observed unresolved issues with respect to the assignment of land rights in certain forest areas, generally used as a common property for cultivation (*Panchakadu*)<sup>11</sup>. The conflict between tribal's and the forest department in deciding on the land rights in Panchakadu arose due to the nature of land use and ecological characteristics of *Panchakadu*. Now the conflict going on is in terms of deciding whether the *Panchakadu* comes under individual or community right of the Act.

#### *Recognising Community Rights*

The implementation procedures of recognising community rights over non timber forest products picked up in the second stage of implementation. We have already noted that the main source of livelihoods of many tribal communities is the collection of non timber forest products (Table 4), which is at present managed and owned by the forest department, but the *adivasi* communities are allowed to collect these products especially in the reserved forest areas, therefore, their rights to collect the product is restricted as a 'usufruct right'. Secondly, the tribal co-operative societies also act as a monopsony (single buyer) in the market in that it is mandatory for forest produce collectors to sell the products to the co-operative societies. In other words, they do not have rights to sell their products at a higher price in the open market. In the true sense, the tribal communities don't have ownership rights over NTFP resources.

Although, the implementation of community rights in respect of collection of NTFPS is more relevant in ensuring the livelihood of the people, it seems that the implementation of the community rights (in terms of ownership) over forest products still remains vague

<sup>11</sup> A common forested area utilized by certain tribal communities for cultivating crops like millets

and incomplete. The data from the government, as presented in Table 7, shows 962 applications on community claims submitted so far at the state level. But the recognition of these claims remains incomplete due to various reasons which are mostly institutional in nature. The basic questions are: what community based institutional mechanisms can take care of their governance? How do we ensure the sustainability of these products? Whether the current PFM activities can be involved while recognising these rights etc? We will try to answer some of these questions in the next chapter while discussing the role of? In the recognition of community rights.

The officials from the PFM cell of Kerala forest department also opine that rights over minor forest produce are an important aspect of the Forest Rights Act. Once the rights are awarded, the communities will be free to collect process and market MFPs. Since the term 'community' is not defined in the Act, one can attribute any nomination to the term subsequent to the awarding of rights. Therefore, it is logically consistent to bring the right holders into PFM institutions (VSSs/EDCs) which are grass roots level forest dependent communities, recognized by the Forest Department as the legitimate managers of MFPs. The department also claims that the Forest Rights Act corresponds to that of the Forest Department if all forest right holders are accommodated in the PFM institutional framework as communities<sup>12</sup>. We will be discussing these issues also in detail in the following chapter.

The reason for the present standstill in the implementation of community rights is the lack of knowledge and skills at the Panchayat or Gramsabha level for forest resource management. Gram Sabhas have never been part of managing forest resources in the state. In the state, peoples' involvement in forest resource management has been made possible through the forest department programme called participatory forest management programme. Even in community based forest management, local self government bodies (like Gram Sabhas) have never played any role except marking of attendance by the Panchayat ward member occasionally in general body meetings of VSSs or EDCs. If we want to bring local self government bodies into forest resource management, it needs a big push in terms of knowledge and skill in forest resource management which is found lacking at present. Even if we mobilise the knowledge and skill of the communities involved in the PFM programme at the Gram Sabha, level, the question is will it be sufficient to ensure the sustainable use of diverse NTFPs of Kerala Forest?

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<sup>12</sup> This is the view expressed by the MoEF during the deliberations of the Forest Ministers on 18<sup>th</sup> August 2009 in New Delhi. This is also the position taken by the Tribal Department in the GO (MS)No.62/2008/SCSTDD dated, 03/06/2008 as a sequel to the recommendations of the FRA Implementation Committee.

Table 9 Distribution of households across communities and main sources of livelihoods

Communities	NTFP Collection	Wage Labour	Agriculture	Others	Total
Malai pandaram	28.0 (77.8)	8.0 (22.2)	0.0(0.0)	0.0 (0.0)	36.0 (100.0)
Malayan	30.0 (93.8)	2.0(6.3)	0.0(0.0)	0.0(.0)	32.0 (100.0)
Kurichiyar	5.0 (11.1)	36.0(80.0)	3.0(6.7)	1.0(2.2)	45.0(100.0)
Paniyan	14.0 (33.3)	27.0(64.3)	0.0(0.0)	(1.0)2.4	42.0(100.0)
Ulladan	14.0(50.0)	13.0(46.4)	1.0(3.6)	(0.0)0	28.0(100.0)
Mudhuvan	26.0(46.4)	15.0(26.8)	15.0(26.8)	(0.0)0	56.0(100.0)
Uraly	6.0(60.0)	2.0(20.0)	1.0 (10.0)	(1.0)10.0	10.0(100.0)
Kattunayakan	33.0(80.5)	7.0(17.1)	1.0 (2.4)	(0.0)0	41.0(100.0)
Kadar	14.0(56.0)	10.0(40.0)	1.0 (4.0)	0.0.0	25.0(100.0)
Kanikkaran	46.0(79.3)	10.0(17.2)	2.0 (3.4)	0.0.0	58.0(100.0)
Mudukar	1.0(6.7)	14.0(93.3)	0.0(0.0)	0.0.0	15.0(100.0)
Maha malasar	9.0(90.0)	1.0(10.0)	0.0(0.0)	0.0.0	10.0(100.0)
Mannan	1.0(10.0)	0.0(.0)	9.0(90.0)	0.0.0	10.0(100.0)
Hill pulaya	3.0(23.1)	6.0(46.2)	2.0(15.4)	2.0 (15.4)	13.0(100.0)
Scheduled Caste	9.0 (75.0)	2.0(16.7)	0.0(0.0)	1.0 (8.3)	12.0(100.0)
Others	2.0 (11.8)	15.0(88.2)	0.0(0.0)	0.0(.0)	17.0(100.0)
<b>Total</b>	<b>241.0 (53.6)</b>	<b>168.0(37.3)</b>	<b>35.0(7.8)</b>	<b>6.0 (1.3)</b>	<b>450.0 (100.0)</b>

Source: Based on primary data

#### *Implementation of the Conservation duty provisions*

The section 5 of the FRA says the right holders of any forest rights, including the Gram Sabhas and village level institutions in areas where there are forest right holders of any forest right are empowered to (a) protect wildlife, forest and biodiversity; (b) ensure that adjoining catchment areas, water sources and other ecologically sensitive areas are adequately protected; (c) ensure that the habitats of forest dwelling Scheduled Tribes and other traditional forest dwellers are protected from any form of destructive practices affecting the cultural and forest heritage of the community concerned; (d) ensure implementation of decisions taken in the Gram Sabhas to regulate access to community forest resources, and stop activities which adversely affect wild animals, forests and biodiversity. This section is closely linked to the section on recognising community rights. The idea is that by empowering the communities to protect wild life and biodiversity, we are ensuring the sustainability of the forest ecosystem and livelihoods.

The focus group discussions conducted as part of this study in tribal settlements revealed that none of the officials had given a thought to the issue of conservation duty provisions while implementing the Act. Our enquiries at the field level reveal that these issues were

not a concern either at the Gram Sabha or community level. So the most neglected part of the Act during the process of implementation was conservation duty provisions. The FRA rules also remain silent on this demand an amendment to the same or some notification from the GOI nodal agency clarifying the position. The basic reason might be that it was not a day to day subject matter of either the tribal department or local self governments.

Many officials believe that proper scientific advice for managing biodiversity can come only from the Forest Department since it is the statutory custodian of the forest biodiversity. The Forest Rights Act is too optimistic about the ability of the 'right holders' to practise sustainable collection of biodiversity products. It is also noted that no institutional mechanism is suggested in the Act for this purpose<sup>13</sup>. So what is the option left to us? Should we go about it with the forest department and its PFM programme? Or should we carry positive aspects of PFM into gramsabhas level for executing the programme? So some of these questions also will be addressed in the next chapter.

#### **Implementation in Critical Wildlife habitats<sup>14</sup>**

The section 2(b) of the FRA defines "critical wildlife habitat" in that such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolative for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4. The forest rights recognized under this Act in critical wildlife habitats of National Parks and Sanctuaries, may subsequently be modified or resettled, provided that no forest right holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:

- (a) The process of recognition and vesting of rights as specified in section 6 is complete in all areas under consideration;

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<sup>13</sup> From the discussions with the additional principal conservator of forest, (eco development and tribal welfare) government of Kerala

<sup>14</sup> This part of the report contains a substantial contribution from P S Easa, Wild Life Consultant

- (b) It has been established by the agencies concerned of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972, that the activities of impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
- (c) The State Government has concluded that other reasonable options such as co-existence are not available;
- (d) A resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
- (e) The priorinformed consent of the Gram Sabhas in the area concerned to the proposed resettlement and to the package provided has been obtained in writing;
- (f) No resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package:

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses. As envisaged in the Act, critical wildlife habitats are to be declared in forest areas in consultation with an expert committee. In this regard, a guide line also has been issued from the ministry of forest and environment, government of India<sup>15</sup>. Accordingly, the state government should initiate the process for notification of critical wildlife habitats by submitting application case by case to the ministry of environment and forest, under intimation to the nodal agency under the FRA 2006. Nevertheless, we did not get any evidence from the forest department regarding the initiation of this process. But the implementation of the Act in the critical wildlife habitats is quite crucial in the western Ghats since many human settlements are still found in the wildlife areas of the region (refer Table 5). Moreover, an earlier study reports that the increasing number of protected areas also put high opportunity cost over the tribes and other forest dwellers by restricting their access to the forest (Sathyapalan 2002).

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<sup>15</sup> [http://envfor.nic.in/divisions/wildlife/Guidelines\\_wildlife.pdf](http://envfor.nic.in/divisions/wildlife/Guidelines_wildlife.pdf) accesses on 13th July 2010.

Table 10 Details regarding the protected areas of Kerala

S.No	Protected area	Status of the area NP/WLS/Cons/ Comm. Reserve	Year of Formation		Area (Sq.Km)		Total Area (Sq. Km)
			Initial Notification	Final Notification	Core	Buffer	
1	Neyyar	Wildlife Sanctuary	GO(MS)871/58 dated 6.08.1958	Ratified under 1991 Amendment of W(P) Act 1972	68	60	128.00
2	Peppara	Wildlife Sanctuary	GO(P)379/83/AD dated 21.12.1983	Ratified under 1991 Amendment of W(P) Act 1972	23	30	53.00
3	Schendurney	Wildlife Sanctuary	GO(P) 258/84/AD dated 25.08.1984	Ratified under 1991 Amendment of W(P) Act 1972	75.5	47.13	171.00
4	Periyar	Wildlife Sanctuary (Core area of 350 sq km declared as NP)	F1-2854/AD dated 11.08.1950 G-11025/34/FRY (PT) dated 29.08.1977	Ratified under 1991 Amendment of W(P) Act 1972	350	427	777.00
5	Idukki	Wildlife Sanctuary	GO.7898/FM3/76/AD dated 09.02.76	Ratified under 1991 Amendment of W(P) Act 1972	15	40	70.00
6	Thettekkad	Bird Sanctuary	GO.35743/FM3/83AD dated 27.08.83	Ratified under 1991 Amendment of W(P) Act 1972		25	25.00
7	Eravikulam	National Park	GO(MS) 142/78 dated 19.05.1978	Ratified under 1991 Amendment of W(P) Act 1972	97		97.00
8	Kurinjimala	Wildlife Sanctuary	GO(P) 36/2006/F&WLD dated 06.10.2006	Final notification not issued		32	32.00
9	Chinnar	Wildlife Sanctuary	GO(P) 229/84/AD dated 04.08.1984	Ratified under 1991 Amendment of W(P) Act 1972		90.44	90.44
10	Anamudi Shola	National Park	GO 12876/F2/2003/F&WLD dated 14.12.2003	Final notification not issued		7.50	7.50
11	Mathikettan Shola	National Park	GO(MS)No.50/2003/F&WLD dated 10.10.2003	Final notification not issued		12.817	12.817

Table 10 contd....

S.No	Protected area	Status of the area NP/WLS/Cons/ Comm. Reserve	Year of Formation		Area (Sq.Km)		Total Area (Sq. Km)
			Initial Notification	Final Notification	Core	Buffer	
12	Pambadum Shola	National Park	GO12875/F2/2003/F&WLD dated 14.12.2003	Final notification not issued		1.318	1.318
13	Mangalavanam	Bird Sanctuary	GO(MS) No.42/04/F&WLD dated 31.08.2004	Final notification not issued		0.0274	0.0274
14	Peechi-Vazhni	Wildlife Sanctuary	GO(MS)871/58 dated 06.08.1958	Ratified under1991 Amendment of W(P) Act 1972	50	75	125.00
15	Chommony	Wildlife Sanctuary	GO(P) 259/84/AD dated 25.08.1984	Ratified under1991 Amendment of W(P) Act 1972	35	35	85.00
16	Choolannur	Peafowl Sanctuary	GO(P) 24/2007/F&WLD dated 15.05.2007	Final notification not issued		3.42	3.42
17	Parambikulam	Wildlife Sanctuary	GO(P) 39/73/AD dated 12.02.1973	Ratified under1991 Amendment of W(P) Act 1972	113.7	139.8	285.00
18	Silent Valley	National Park	GO 5462/FSA3/82/AD dated 15.11.84	Ratified under1991 Amendment of W(P) Act 1972	89.52	148	237.52
19	Wayanad	Wildlife Sanctuary	GO(MS) 182/73/AD dated 30.05.1973	Ratified under1991 Amendment of W(P) Act 1972	111	233.44	344.44
20	Aralam	Wildlife Sanctuary	GO (P) 3008/84/AD dated 15.10.1984	Ratified under1991 Amendment of W(P) Act 1972	22	27	55.00
21	Kadalundi-Vallikunnu Community Reserve	Community Reserve	GO(MS)No. 66/2007/F&WL dated 17.10.2007	Final notification not issued			1.5
	TOTAL						2601.9824

Note: 148 Sq.Km Reserve Forest area has been added to Silent Valley N.P as its buffer zone as per GO (MS) No.36/07/F&WLD dated 11.06.07

Source: Compiled from the Management plans of protected Areas in Kerala (Department of Forest, Government of Kerala)

The total protected area during the period 1950 to 1960 constituted 10.96 per cent of the total forest area and reached to as high as 24.63 per cent in 1990. The government have declared new areas and added more areas to the existing protected areas after 1990. The table shows the present status of protected areas in Kerala State.

Given the high value of biodiversity in the Western Ghats, it is necessary to minimise the anthropogenic pressures on all these areas. Therefore, it is crucial to identify critical wildlife habitats in these protected areas. Nevertheless, there is a lack of scientific information about the critical wildlife habitats of Western Ghats. So the question is, how do we ensure the protection of those areas that fall outside protected areas? Are all protected areas declared scientifically? How many communities are living at present in critical wild life habitats? The only available information from the department of forest shows that 109 settlements are still located in protected areas with 1396 households, occupying approximately 1208 hectares of land (Table 5). It is also important to remember that most of the communities living inside protected areas are nomadics and primitive tribal groups totally cut off from the mainstream people. It is also important to know how many of these households fall under critical wildlife habitats. What are the socio-cultural characteristics of these communities? We recommend forest department or any other government agency to initiate in-depth case studies in this respect. The implementation of the Act in critical wildlife habitats still awaits an initiation. Some of the reasons for non implementation are as follows.

- Lack of scientific clarity over the critical wildlife habitats of Kerala Forest
- No attempt made so far to examine whether the people residing within protected areas come under critical wildlife habitats.
- Tribal communities living in protected areas are still under the day to day watch and control of the forest department.
- Panchayats and Gram Sabhas are less inclined to carry out any developmental activities since the people belonging to protected areas are mostly tribal communities and are less articulate in terms of asserting on their rights.

Considering the present geographical locations and characteristics of these communities, it is very important to devise a proper co-ordination map all the government departments including forest, for keeping for such critical wildlife areas beyond the reach of all development activities in the true spirit of the FRA.

#### **The Case of other forest dwelling communities**

The Act has not been implemented among other forest dwelling communities simply on the ground because there is no 'other forest dwellers' category? Occupying forest land

in the Western Ghats of Kerala. As per the FRA, 'other forest dwellers' are defined as those living for more than 75 years in forest lands. Since Kerala demarcated the forest land in 1977, the question of occupying forest land by communities other than tribes was completely ruled out. However, we noticed during our primary survey that there were 'other forest dwellers' in tribal settlements who had reported their livelihood was solely dependent on forest resources. Some of them were also found engaged in producing value added products using forest resources (e.g., basket weaving). The communities coming under this category (mostly pulaya, and sambava) constituted 2.4 per cent of the total sample households. We also found that 3.6 per cent of the total sample households belonged to migrants from other Forest areas (mostly Roman Catholic and Ezhava community).

In relation to this, another important issue that cropped up during the focus group discussions related to the forest rights of the communities who had got married to nontribal people. There were queries regarding the transfer of rights to the next of kin of the people who got married to other communities. In this regard, the government had taken a stand that 'there was no provision in the Act to bar the registration of the forest rights conferred under the Act, jointly on both the spouses who belonged to different castes, provided the applicant was a schedule tribe, if not, the applicant was required to fulfil the criteria of other traditional forest dwellers. The issue related to OFDC have to be studied further, instead of taking a rigid position that no other forest dwellers exist in the Kerala forests. We recommend such studies in this respect.

#### **Factors influencing the implementation process**

As mentioned earlier the factors affecting the structure of the implementation arena include a cluster of three variables: (a) the attributes of the bio-physical world; (b) attributes of the community within which any particular arena is placed; and (c) the rules followed by participants (Kiser and Ostrom, 1982). The concept of rule is central to the analysis of institutions used in a specific Context. For some institutional scholars, the important difference, among rules, relates to the system of property rights in use (Bromely, et al., 1992), e.g. government property, private property, and non-property (open access). While a rule configuration affects all of an action situation, some of the variables of an action situation also affect attributes of the bio-physical world being acted up on or transformed. The same set of rules may throw up an entirely different type of 'action situation' depending upon the type of events in the world being acted upon by participants. The third set of variables that affect the structure of action arena relates to the concept of community within which any focal action arena is located. The attributes of the community considered important in terms of affecting action arena, include the behaviour generally accepted in the community, the level of common understanding

participants generally share about the action structure, the extent of homogeneity in the preferences of those living in a community, the size and composition of the relevant community and the inequality of basic assets among those affected (Ostrom, 2005). Finally, the implementation of FRA may interact with other Acts, concerned with resource management, land use and tribal welfare.

#### *Bio-geographical factors*

At the outset, it is important to mention that an insufficient bio-physical base available with the tribal communities for undertaking self cultivation or any other productive activities due to migration induced deforestation in the past, contributed to the vulnerability of tribal communities in this region. The high anthropogenic pressures on the forest lands of western Ghats, in the past, was due to various reasons ranging from post world war food insecurity leading to the 'grow more food' campaign, to high immigration in the forest areas, which inevitably led to the conversion of forest lands in to other land uses.

The literature related to deforestation in the Western Ghats area shows that this area had witnessed a high deforestation rate (Chattopadyay, 1985) (Ramesh and Bawa, 1997). The Forest Statistics published by the Government of Kerala, also show some changes in the vegetation type in this region in the past<sup>16</sup>, which is an indication of high anthropogenic pressures. The Forest Statistics show that the most depleted part of the natural vegetation cover has been the evergreen and semi-evergreen forests (Sathyapalan 2002). Further, the dry deciduous forests also show a declining trend. The evergreen and semi-evergreen forests declined from 3,684 sq.kms in 1973 to 3,470 sq.kms in 1994. The dry deciduous forests have also declined from 112 sq.kms in 1973 to 100 sq.kms in 1994. While moist deciduous forests, grasslands, temperate sholas and plantations showed an increasing trend.

Since the Western Ghats region lies in the high land and high range ecological zones of Kerala, the conversion of forest tracts mainly growing cash crops<sup>17</sup> like rubber, pepper,

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<sup>16</sup> Percentages are estimated based on *Forest Statistics* published by the Department of Forest (*various issues*), Government of Kerala.

<sup>27</sup> Kerala Agriculture University divides the agricultural land of Kerala into four different agro-ecological zones based on elevation, rainfall and temperature-each of these zones varies in terms of crops and production. The zones are lowland (elevation 0-7 metres), midland (elevation 7-75 metres), highland (elevation 75-750metres) and high ranges with elevation above 750 metres. In the high land and high ranges, the important crops grown are rubber, pepper, cardamom, cashew, etc(KAU, 1989).

cardamom, etc. Took place the negative impact of this historical process of deforestation was faced by the tribal population. They became vulnerable to poverty trap in the absence of the basic factors of production, like land, and gradually the subsistence base of the tribal community got further eroded. They began to migrate seasonally to urban areas in search of work. Many tribal people lost their right to collect and sell non-timber forest products. Deforestation reduced their accessibility not only to forest sources of food, fuel and fodder, but also to other things essential for daily life such as twigs of *neem* for cleaning teeth, leaves for making disposable plates, bamboo for hut construction and basket weaving, grass for making brooms and plants and their products for preparing herbal medicines. Tribal women were the worst sufferers (Kalathil, 2004). This clearly shows that there is no sufficient bio-physical base for the tribal communities to undertake self cultivation or any other productive activities.

The above said process has pushed many tribal communities into landless category. The claims of the landless tribal population over their land and the associated political movements also put immense pressure on the government, affecting the smooth implementation of the FRA. In response to the injustice done to these tribal communities, adivasi movements - movements of landless peasants - were started in Kerala. The recent adivasi movements organised strikes to restore their lost land. This has created immense political pressure in Kerala to implement the Forest Right Act in favour of them. As a result, the land rights of the landless tribes have become a crucial issue in the government and bureaucracy deliberations. In our interviews with government officials and politicians, we understood that this was an important issue from a political angle, but difficult to resolve while implementing the FRA.

We have already noted that there are approximately 37,000 families today living in different tribal hamlets scattered across the Western Ghats region. Many of these hamlets are located quite far from the head quarters of their respective panchayats. Therefore, the first constraint the implementing agency faced was in terms of organizing Gram Sabhas at the ward level for constituting FRCs<sup>18</sup>. The tribal communities were not able to represent adequately the Gram Sabha meetings due to hilly terrain and scattered nature of tribal hamlets and interior locations. In order to protect the larger interests of the tribal communities, the government considered various options before finally deciding to organize Gram Sabhas at the hamlet level. The government issued an order for constituting forest rights committees at the hamlet level<sup>19</sup>. The issuing of government order was an important move in reaching out to tribal communities during the

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<sup>18</sup> In Kerala, Gram Sabhas are constituted at panchayat ward level.

<sup>19</sup> (G.O(Ms)No.82/2008/SCSTDD Dated 26.07.2008)

implementation process. However, empirical evidences indicate the failure of Gram Sabhas at the hamlet level in terms of functioning as desired.

Although, there was a proper guideline in place for constituting FRCs, we could not observe any properly constituted FRC in any of our sample hamlets during the field visits. The responsibility of constituting these committees happened to be delinked from the overall responsibility of Gram Sabhas although that was not the original spirit of constituting FRCs at the hamlet level. Moreover, there were practical problems in many of these hamlets especially with regard to organizing FRCs e.g. passing information to people, inaccessible locations etc. The picture was no different in the case of divisional and district level committees as far as the functions and the process of the implementation were concerned. While concluding one must say, the geographical disadvantage of tribal hamlets adversely affected the democratic process of claiming their rights. The Panchayats were also lethargic in reaching out to these hamlets for conducting FRCs.

#### *Lack of Common Understanding among participants*

An important question is about the common understanding of the department concerned and how the Act was being interpreted by the officials concerned? Our discussions with officials from the Department for Tribal Affairs, Forest and Revenue Departments revealed that each department interpreted the provisions of FRA in terms of their own departmental objective. For example, officials of the Department for Tribal Affairs reported that the FRA was an exclusive programme for the welfare of the communities. They expected the FRA to be implemented like any other tribal welfare programme of the country. They were also of the opinion that the Forest Department should facilitate the implementation process in a smooth manner.

The officials concerned from the departments of revenue and local administration opined that their role was limited to being a facilitator. As a result, the Act was being interpreted by different departments at differently. For example, there were apprehensions from the Forest Department with respect to the implementation of the Act from the beginning. The Forest Department, in its turn, expected the implementation process to be part and a continuation of the present national forest policy (1988). It is pointed out that the national conservation policy (1988) assumed importance in the wake of widespread debates about conservation and development. The socioeconomic role of the natural ecosystem had been unequivocally accepted in this policy. The role of forests in protecting the well being of forest-dependent communities was recognized for the first time in the forest policy of India. The 1988 forest policy was some improvement in that it recognised peoples' involvement and some protection for customary access rights, though with some riders like linking the access rights to the carrying capacity of the forest ecosystem.

There was also some thought given to the idea of conception of capacity building among forest communities and regenerating forests through silviculture. This policy also gave rise to a concept called participatory forest management in Kerala since 1990. Therefore, it is argued that the Forest Rights Act 2006 was a continuation and natural evolution of Indian conservation policy (Unnikrishnan 2009). But this stand was not acceptable to the other counterparts and politicians involved in the implementation process. Therefore, one may conclude that the possible reasons for these conflicting attitudes arose in the context of the original policy framework of the respective departments.

The slow response from other departments like revenue and local self governments also sometimes delayed the action situation, resulting in inaction (for example, slow survey process, difficulty in identifying land boundaries etc). As a result, the FRA implementation process made a slow progress in Kerala because of lack of co-ordination between various departments at the operational level and also inter-departmental conflicts.

The officials of the Revenue Department pointed out that a delay in survey operations (Wayanad example) was mainly due to the interference from the Forest Department. We have already mentioned that the survey operations of Wayanad district started with proper directions from the officials, but got delayed due to the interference of the forest officials at the field level. The Gram Sabhas did not show any interest in solving these issues. Inaction and lack of political will at Gram Sabhas resulted in the whole process of implementation becoming as the sole responsibility of the tribal development departments. So it became an issue of conflict between tribal department and forest department.

#### *Attributes of the communities*

The attributes of the community is another set of variables that affected the action arena of FRA implementation. The concept of community has many definitions and contextual meanings across social sciences. The attributes of a community that generally affect the action arena are the size and composition of the relevant community; the extent of inequality between the households with regard to basic assets; common understanding of the action programme that is generally shared, behavioural issues, etc. (Ostrom, 2005). As far as the size of the community is concerned, we have already mentioned that there are 35 tribal communities in the list of scheduled tribes in Kerala, accounting for about 1.10 per cent of the total population. In the 2001 census, the total population of tribal communities in Kerala stood at 364,189. The scheduled tribe population is mainly concentrated in the Western Ghats forest areas of Wayanad, Idukki, Palakkad districts of Kerala. The cultural practices of these populations vary across communities.

From an occupational point of view, the tribal communities are classified into four categories: (1) hunters and gatherers; (2) agricultural labours; (3) shifting cultivators; and (4) settled cultivators. Today, however, the majority of the tribal population are landless agriculturists. In an earlier table (Table 4), we have mentioned that the majority of the tribal communities are engaged in traditional occupations like non-timber forest product collection and wage labour.

The composition of communities also indicates that they are not a homogenous group with many of them leading a traditional way of life. In Kerala, Cholanaikan, Kattunaikans, Kurumbas, Kadars, Koranga etc. are classified as 'primitive tribes'. They constitute nearly 5 per cent of the total scheduled tribe population of the state. We have observed that some of the primitive tribes, like Kadar, stay in the forests for several consecutive days, which means that they were excluded at the time of claiming forest rights. Focus group discussions revealed that the information about FRA and forest rights did not reach Kadar and Cholanaikkan communities.

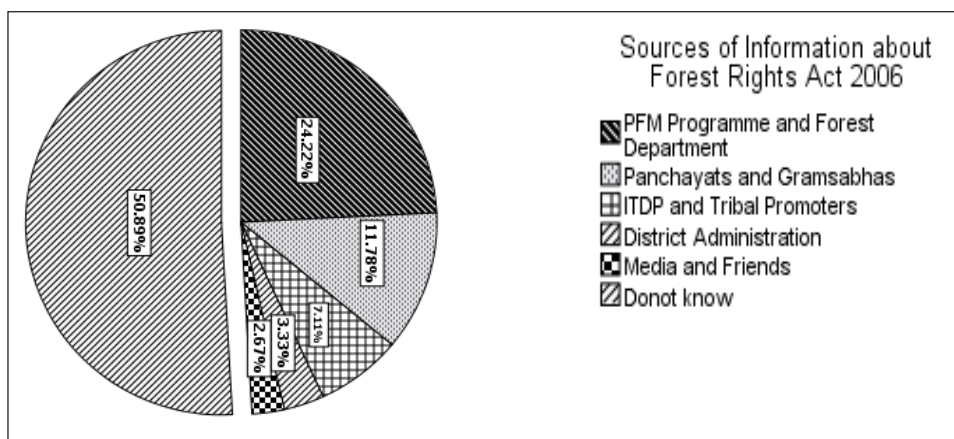
In order to sensitize the communities to the FRA implementation programme, tribal promoters were recruited to the FRCs. They were trained by the state government research and training institution called Kerala KIRTADS<sup>20</sup>. But they could not reach out extensively to the entire tribal areas of the state due to various reasons such as limited number of trained personnel, hilly terrain, etc. The primary data collected for this study shows that many people were still unaware of the provisions of the Act and their potential benefits (Figure 4 and Figure 5). We found that only 7.11 per cent of the sample tribal households got information from the tribal promoters appointed by the ITDP. They generally passed on the information to them orally, with no communication possible in writing form<sup>21</sup>. The tribal communities also faced difficulties in sharing the FRA information with one another. No interpersonal communication was found existing among primitive tribes regarding the provisions of the Act. Therefore, it is important to devise an effective mechanism for imparting information related to the FRA provisions to the tribal communities so that they over forest resources become more empowered to articulate their rights.

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<sup>20</sup> It is reported that training for 338 tribal promoters was organized by KIRTADS on various days from 19.11.2008 to 28.11.2008. KIRTADS also organized training for all officers of the scheduled tribe development department at the Kerala institute of local administration on 22.12.2008.

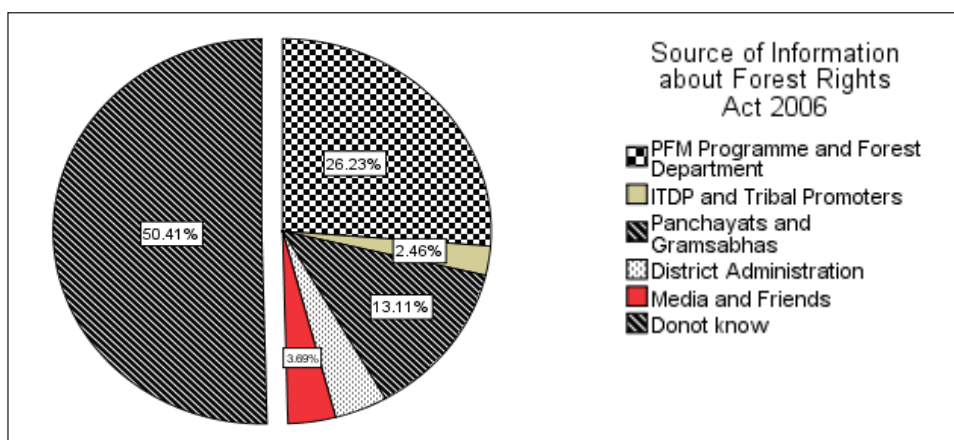
<sup>21</sup> This is also due to illiteracy of tribal communities.

Figure 4 Sources of information on Forest Rights Act 2006 (Entire sample)



Source: Based on Primary data

Figure 5 Sources of information on Forest Rights Act 2006 (sample without possession title)



Source: Based on Primary data

*Other legal matters*

The primary issue, as far as other legal aspects of tribal land rights are concerned, is the partial or non implementation of various Acts. Some of the observations we have made in relation to the implementation of various Acts are presented in Table 11

**Table 11 Various Acts related to the tribal land rights and their implementation status**

What are the important Legislations?	How does it benefit tribal communities?	What is the status of implementation?
The Kerala Private Forests (Vesting and Assignment) Act in 1974	The Act has a provision for assignment of forest land to the tribal communities	Provisions are not implemented
Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) Act 1975	The transfer of immovable property, possessed, enjoyed or owned by tribals to non-tribal people was declared invalid and restored and future transfers prohibited	Rules related to this Act were not formed till 1986. In 1986 although rules were formed, the state government said it was impracticable to implement the act.
Panchayat Raj (Extension to the Scheduled Areas (PESA) Act 1996	To apply the provisions of the PESA that provides for the possibility of self-governance following the pattern of Schedule V and Schedule VI of the Constitution, it is mandatory for the state to form scheduled areas.	No declaration of scheduled areas in the State as per this Act
Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act 1999	According to the new act, the restoration of land to adivasis was not needed if the land alienated was below two hectares. Instead of a loan, as in the case of 1975 Act, the 1999 Act offered a grant for payment of compensation to the landholder. The Act also promised one acre of land to all tribal families.	The process of implementation is still going on; there is a considerable delay in implementation.
Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act 2006	Provisions for individual and Community rights over land and forest resources	The process of implementation is still going on with considerable delay observed in achieving the target date of implementation

The Kerala Private Forests (Vesting and Assignment) Act, 1974, contained provisions for assigning forestlands to the tribal communities, but the provisions of the said act never got implemented in the State. Another important enactment with respect to land rights of tribal communities was the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) Act 1975. As per the act, all transfers of immovable property, possessed, enjoyed or owned by tribals to non-tribal people were to be made invalid. The Act also made provisions for restoring the lands and prohibiting future transfers<sup>22</sup>.

In 1986, the rules operationalising this act were formulated with retrospective effect from January 1982. The state government's inaction towards its implementation was justified because of the "impracticality" of the act. In 1988, a public interest litigation (PIL) was filed in the Kerala High Court by Nalla Thampi Thera against the delay in the implementation of the act. In 1996, the Kerala High Court ordered the implementation of the 1975 Act within a time frame of six weeks. However, the state government expressed its inability to implement the 1975 Act as it wanted to avert a conflict between the tribals and non-tribals. In order to deal with this legal emergency, the state government passed a new law in February 1999, called the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act. According to the new act, the restoration of land to adivasis was not needed if the land alienated happened to be below two hectares. Instead of a loan, as in the case of 1975 Act, the 1999 Act offered a grant for payment of compensation to the landholder. The new act also promised one acre of land to all the tribal communities. However, the implementation process was going on with considerable delays.

We have already noted that a state level meeting on forest rights on 23<sup>rd</sup> September, 2009, in the presence of ministers, had come out with a view that the government act immediately on implementing the Kerala Restriction on Transfer by and Restoration of land to Scheduled Tribes Act 1999, following an order from the supreme court of India; Otherwise the government might have to face contempt of court case. It seems the government tried to implement both these Acts in an integrated manner, creating in the process, a chaotic scenario as far as implementation of FRA was concerned.

As far as the restrictions on community rights to access forest resources were concerned,

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<sup>22</sup> It said the land was to be returned to the original owners who would be required to pay a sum equal to the total amount received as compensation. To facilitate this, the government would advance a loan to each of the tribal families that were to be repaid in 20 years time.

<sup>23</sup> Preservation means keeping the natural forest as it is to achieve certain well-defined conservation objectives sometimes combined with recreation activities, such as, national parks and wildlife sanctuaries.

the Indian Wildlife Act 1972 came into the forefront. This Act supported the preservation of forest lands with a well-defined objective namely preserving wild flora and fauna for protecting biodiversity<sup>23</sup>. In Kerala, the Indian Wildlife Act (1972) got implemented in 1973 through an order (G.S.R. 293 E) issued by the Central Government. In addition to the rules of Indian Wildlife Act 1972, the Government of Kerala enacted certain rules with respect to wildlife protection, called the Kerala Wildlife (Protection) Rules, 1978. The important policy changes effected in the subsequent years with respect to the conservation of forests related to the 1980 Forest Conservation Act, the 1986 Kerala Preservation of Trees Act, and the 1978 Kerala Forest Produce (for fixing of selling price) Act.

### **Conclusion**

This chapter explains two components of the action arena, i.e. 'participants' and 'action situation' in terms of assigning individual and community rights to the forest-dwelling communities under the FRA. Secondly, it deals with various factors that influence the action situation in terms of implementing FRA, with an objective to identify the important constraints involved in the implementation process. One of the general conclusions we have drawn is that the implementation process has progressed at a very slow pace due to a number of institutional hurdles coming in the way of implementation at different levels. The study observes co-ordination failure at different levels of implementation both at the state and grass root levels.

## CHAPTER. III

### THE PFM PROGRAMMES: IS THERE ANY CAPACITY TO SUPPORT FRA?

#### **Introduction**

Any discussion on forest rights without a due reference to the forest resource governance may end up lacking in rigour. This is mainly due to the fact that the *in situ* conservation of many biological species in the forested areas is essentially a question of land use (Panayotou 1994). As the *in situ* conservation takes up large tracts of forest area, it implies a reduced flow of extractive benefits<sup>24</sup> to the population who depend on it for livelihoods. As a result there is a limit to the livelihood created per unit flow of non-timber forest products. So the debates mostly, focus on the trade-off between conservation and peoples rights over the resource use and also on how to strike a balance between these two. The FRA is also concerned about the balance between the two. Keeping this perception on forest resource use and governance as a backdrop, this chapter examine the capacity of PFM to support gramsabhas while implementing the forest rights especially in the context of recognising community rights and conservation duties.

#### **Participatory forest management in Kerala: An assessment**

Participatory Forest Management (PFM) evolved in Kerala as part of the National Forest Policy of 1988 with the initial financial support from the World Bank. The State Government issued Guidelines in this regard in October 1997 with an objective of developing PFM in selected forest areas of the State. However, as per the suggestions of the World Bank appraisal mission, the State government modified the PFM guidelines in January 1998 and reissued the same for effective implementation of PFM (GoK 2008). According to these guidelines, forest dependent households in the selected villages were to be made partners in improving the quality of forests by assuring them of access to forest produce on which they depended for the security of their livelihood, and at the same time, by ensuring sustainable management of the forests and its resources. In short,

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<sup>24</sup> Extractive use of the forest land means the use of it for various tangible or extractive benefits such as conversion of forest land to agriculture or grazing purpose, use of the land for forest product collection, *etc.* The value arising out of these benefits can be called extractive or tangible benefit to the economy. Conservation of forest land puts limits over the flow of extractive benefits.

the PFM programmes of Kerala, as elsewhere, envisaged their activities towards attaining twin objectives of sustainable forest management<sup>25</sup> and livelihood security of the forest dependents. The forest policy also envisaged that ecological balance was essential for the sustenance of all life forms. The key feature of this policy was the environmental and social security concerns. The policy foresaw the importance of societal commitment towards the forest communities by recognizing their livelihood dependency on the forests. These concerns had been incorporated into the PFM guide lines although there were practical hurdles coming in the way of implementing the program. From the very objective of the program, one can say that the two important expected outcomes of PFM program were livelihood security and sustainable forest management. Although this programme had a well defined objective, it is important to remember that the programme was not based on an Act passed by the parliament. Therefore, it still remained as a policy based resource management strategy of the forest department by providing a link between the state departments, and forest dependent people. Hence, the committees (VSS and EDC) formed under the programme were not statutory in nature.

Participation of civil society organisations in the PFM programme was also found very limited. In 1998, the Kerala Forest Department invited the NGOs in Kerala to suggest locations/communities for implementation of the Participatory Forest Management Programme. The first to respond to the invitation of the Department was 'Anugraha' a local NGO of Elappadika, of the Kottiyoor Range in Kannur Division. Subsequently many other NGOs volunteered leading to the formation of VSSs like Plachikara, Kinanoor in Kanjangadu Range of Kannur Division, Kakkadu, Thamarassery (Kozhikode), Valiyakavu VSS, Ranni Division and others. The role of NGOs was found encouraging in terms of campaigning, creating awareness and capacity building. However, later only a few service oriented NGOs continued to remain active. Now, the programme, solely depended on the forest department and occasional government funding for its activities. Therefore, the main challenge of the PFM programme was to move beyond the government controlled funding and attain autonomy from the forest department.

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<sup>25</sup>The Food and Agriculture Organization (FAO) defines sustainable forest management as "the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfill, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems". In simpler terms, the concept can be described as the attainment of a balance between society's increasing demand for forest products and benefits, and the preservation of forest health and diversity. This balance is critical to the survival of forests, and the prosperity of forest-dependent communities.

The main participants in the PFM programme were government departments, local administration (pachayats) and forest dependent communities. The role played by the Panchayat was limited to a mere marking attendance of an elected member in the general body or executive committee of the PFM. The focus group discussions conducted across 24 VSS and 6 EDCs of Kerala state reveal that elected members of Panchayats were not directly involved in any PFM activities. Generally, the secretary of the programme was a forest official at the rank of a guard or forester. Forest department also provided officials as divisional and state level co-ordinators to the programme. At the State level, over all control of the programme was with a chief conservator of forests (eco-development and tribal welfare). The structure of the management of the programme shows that the whole programme was under the complete control of the forest department. This domination of the department was quite obvious in the functioning of the whole programme. As a result, wherever a community was weak in terms of articulating their rights over forest products, the department officials showed a very passive and dominant approach to the programme.

Irrespective of all these issues, as mentioned in the previous chapter, the forest department held a view that PFM was logically consistent in bringing the right holders into PFM as per FRA, who were grass root level forest dependent communities recognized by the Forest Department as the legitimate managers of MFPs. Their position was that the Forest Rights Act would converge with PFM if all forest right holders were accommodated in the PFM institutional framework as communities. The MoEF also expressed this view during the deliberations of the Forest Ministers on 18th August 2009 in New Delhi. This was also the position taken by the Tribal Department in the GO (MS) No.62/2008/SCSTDD dated, 03/06/2008 as a sequel to the recommendations of the FRA Implementation Committee. Hence, it is appropriate that the Forest Department was fully geared up to reinforce PFM strategies for sustainable management of MFPs<sup>26</sup>. In the light of this view, we have examined how the PFM has been working in Kerala with regard to the welfare of the people; hence we present the results of PFM implementation.

#### *An evaluation of PFM programme in Kerala*

This evaluation assessed two important aspects of PFM programme: one, improvement in peoples' livelihood in terms of increased income; and second, whether PFM was successful in bringing its members close conservation of the forest ecosystem. Firstly, an evaluation in terms of the people's perception on the benefit of the programme was

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<sup>26</sup>This part is based in the discussion with the additional principal conservator of forest Mr P N Unnikrishan and other officials of the PFM cell of Kerala forest department.

examined using the primary data collected from the field. We specified a logit model for this purpose. In this regard, we asked the sample households to reveal their assessment regarding the benefit in terms of an improvement in the household income due to the functioning of the PFM institutions like VSS and EDC in their villages. So, the generated dependent variable was dichotomous, with 1 representing the programme as beneficial to them and 0 representing the absence of an improvement in income levels.

The logit model can be written as:

$$\Pr\{Yes\} = (1 + e^{-\Delta V})^{-1}$$

$$F\eta(\Delta V) = a_0 + \sum b_j X_j$$

$\Delta V$  is the probability to observe change in the level of income in the presence of PFM programme. A multivariate extension is feasible to  $j$  explanatory variables. Maximum likelihood estimation fits a curve to the observed responses, which traces the probability to observe change in income. The variables were included based on the field experiences as well as due to the theoretical possibilities. On the independent side, we selected three groups of variables consistent with the household socio-economic characteristics, community characteristics, and the presence of other supporting institutions like tribal societies in the villages.

The important variables selected for the regression and its rationale are presented in Table 12. Data on last seven days consumer expenditure (*House\_Exe*) of the household was used as a proxy variable representing the purchasing power of the households. It was assumed that higher the purchasing power better their economic position in relation to other households. Secondly households who spent more money in a week generally have multiple sources of income like, NTFP collection, wage labour, working in PFM generated activities, agriculture, livestock etc. Based on this we hypothesised a positive relation between household consumption expenditure and benefit from PFM programmes. In the regression result, we found the variable on consumption expenditure (*House\_Exe*) significant at 10 per cent level. Our understanding from the focus group discussions also support this view that those better off households within the community were actively involved in PFM programmes. Consistent with this view, we also observed that households with lands having possession certificate (not full ownership title) had become members of PFM programmes. The hamlet level focus group discussions also revealed that very poor households (without any assets) were not actively involved in PFM activities.

Table 12 Rationale underlying the Variables used in the logit regression

Variable	Definition	Measurement of variables	Rational and Expected sign
Dependent variable	Households' perception on the role of PFM in improving their income.	Yes =1 , Otherwise = 0	
House_Exe	Per capita expenditure of the household	Household expenditure in rupees	One week total expenditure of the household is taken as proxy to their income. (+)
Land	Area of land	Area of land in cents	Total reported area of land occupied by the households in cents (+)
Title_pos	Ownership Title	Yes =1 Otherwise = 0	Land tenure security (possession certificate or title deeds) (+)
Tri_society	Selling NTFP to tribal co-operative society	Selling NTFP to tribal co-operative society =1 Otherwise =0	Role of tribal co-operative society in terms of buying NTFP from tribal households
ntfp_oc	Households reporting NTFP collection as their main source of income	Households reporting their main source of income that is NTFP collection =1, Otherwise = 0	Forest dependency for NTFP collection (+)
Lab_oc	Households reporting as their main source of income wage employment	Households reporting as their main source of income is wage employment = 1 Otherwise =0	Wage labour households (+)

Table 12 Contd...

Variable	Definition	Measurement of variables	Rational and Expected sign
Tri_prim	Primitive society	(only Kadar and Kattunayakkan or Cholanaikkan community)= 1 Otherwise = 0	Communities spending more time forest for their livelihoods (+)
South	Southern Circle	Yes =1, Otherwise =0	Dummy variable representing southern region
Central	Central Circle	Yes =1, Otherwise =0	Dummy variable representing central region
Eastern	Eastern Circle	Yes =1, Otherwise =0	Dummy variable representing eastern region
Northern	Northern Circle	Yes =1, Otherwise =0	Dummy variable representing eastern region
PWL	Palakkad Wild Life Division	Yes =1, Otherwise =0	Dummy variable representing Palakkad wild life division region
ABR	Agasthya Vanan Biological Reserve	Yes =1, Otherwise =0	Dummy variable representing southern (Agasthya Vanam Biological Park) wild life division region

Table 13 Maximum Likelihood estimation of the logit regression

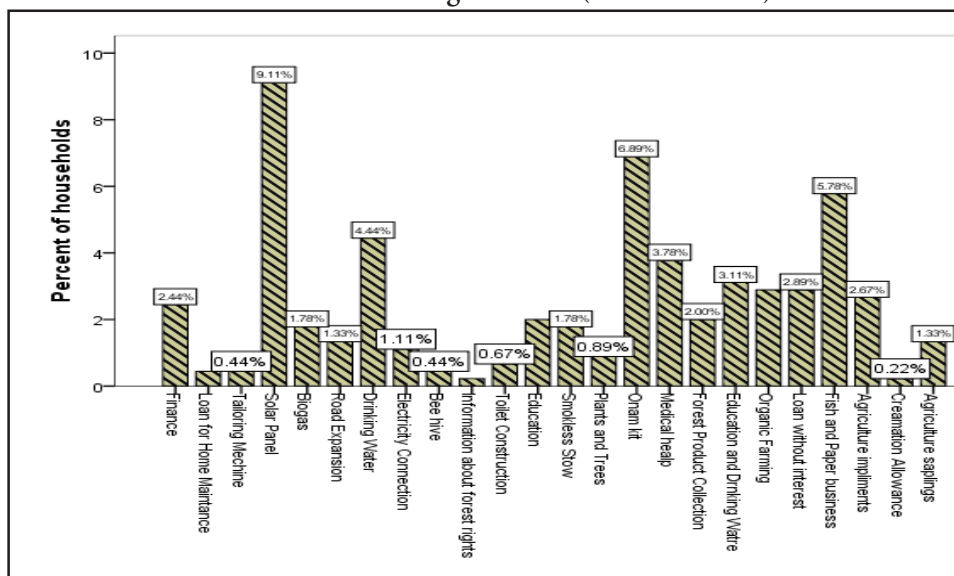
Variables	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
Per_Exe	.0007679	.000455	1.69	0.091	-.0001238	.0016595
Land	.0011847	.0012751	0.93	0.353	-.0013144	.0036838
Title_pos	.7386893	.3554233	2.08	0.038	.0420723	1.435306
Tri_society	-.7545731	.2952303	-2.56	0.011	-1.333214	-.1759324
ntfp_oc	-.2939263	.2822557	-1.04	0.298	-.8471374	.2592848
Lab_oc	-.1336852	.4347414	-0.31	0.758	-.9857626	.7183923
Tri_prim	-.1823896	.4097989	-0.45	0.656	-.9855807	.6208014
South	.2036404	.4147983	0.49	0.623	-.6093493	1.01663
Central	-.532813	.532809	-1.00	0.317	-1.577099	.5114735
Eastern	2.095089	.4796842	4.37	0.000	1.154925	3.035253
Northern	.9527869	.4011788	2.37	0.018	.1664908	1.739083
PWL	-.3858866	.4096238	-0.94	0.346	-1.188734	.4169614
ABR	1.821954	.6233197	2.92	0.003	.6002697	3.043638
Constant	-1.610469	.506775	-3.18	0.001	-2.60373	-.6172083
Logistic regression		Number of obs = 450				
		LR chi2(13) = 104.90				
		Prob > chi2 = 0.0000				
Log likelihood = -247.80532		Pseudo R2 = 0.1747				

Source: based on primary data

As a result, we hypothesised that the households having lands (*land*) with possession certificates (*Title\_pos*) from the village had a higher likelihood to say that the PFM programme was beneficial to them. As expected, the variable on possession certificate (*Title\_pos*) showed a positive sign to its coefficient which was found statistically significant, but the size of the land was not statistically significant. The behaviour of these two variables (land and possession certificate) indicates the importance of tenure security over the land (irrespective of the land size they occupy) as important determinant of accessing benefits from PFM institutions.

We also observed that those enjoying tenure security availed grant or loan from tribal welfare department, PFM institutions or banks for constructing houses or for maintaining of their houses. Many households reported that they had benefited from PFM in terms of finance for house maintenance, drinking water, toilet construction etc. The total number of beneficiaries of PFM came to around 58.7 per cent of the total sample households (Figure 6).

Figure 6 Percentage distribution of households receiving benefits other than cash income from PFM organisations (VSS and EDCs)



As for the forest use, the main activity was forest product collection. Approximately 53.56 per cent of the respondents reported that while their main source of income was non timber forest product collection, wage labour was the secondary source. The NTFP collection was generally monitored through PFM organisations like VSS or EDCs. The PFM programmes are not playing any major role, at present, in marketing or processing the NTFP collections. Presently, the right to collect NTFP is recognised as a usufruct right. Secondly, households sell their NTFP products to tribal co-operative societies as it is mandatory. The monopoly procurement of the tribal societies is a major constraint in terms of selling their products at market price. In such as situation, the people (*ntfp\_ocu*) engaged in NTFP collection and marketing of their produce to tribal societies (*Tri\_society*) to benefit in terms of an increase in their household income in the presence of PFM activities, rather they might see both organisations as a constraint in their NTFP collection activity. In the regression, we found the variable representing tribal society (*Tri\_society*) negative and statistically significant at 1 per cent level. The basic reason for this result is that today tribal societies are functioning more as a monopoly procurement agency rather than facilitating various ways to ensure maximum benefits to these households. The monopoly procurement also has reduced the tribal communities mere collectors of the products. In some places, we found societies (or their middleman representative) issuing instructions to them what to be collected and how much etc, reducing people to being mere labourers in NTFP collection.

The variable representing people engaged in ntfp collection as a main source of income (ntfp\_ocu) was found not significant, indicating no statistical pattern in terms of benefits from PFM in improving their household income. Similarly, the people reporting their main source of income as wage labour (labour\_ocu) were also found not significant in the regression. The reason is whatever employment the PFM provided was seasonal and dependent on the government funding which in way helped them to have a permanent source of livelihoods. In consistent with these results, we also observed that the variable (tri\_prim) representing primitive categories of scheduled tribes (Kadar, Cholanaikar, Kattunaikar) was not statistically significant. In a relative assessment of PFM programmes in different forest circles<sup>27</sup>, we found that eastern and northern circle performed much better than others. The variables representing eastern (*Eastern*) and northern (Northern) circle were found positive and significant in the regression analysis. Among the wildlife divisions<sup>28</sup>, tribal communities from the Agasthyavana biological reserve (southern area) reported that the EDC activities had benefited them in terms of improved income levels. The Palakkad wild life division (PWL) showed a negative sign which was not significant. Therefore, we can't observe any definitive trend in the Palakkad division of wild life.

In summary, we can observe that PFM programmes have made differential impact on tribal communities in terms of improving their household incomes. Although a certain group of the tribal communities' seems to have benefited from VSS and EDC programmes, a larger group is found still waiting for access to these benefits.

In the second part of our evaluation, we observed that tribal communities who have exposed to forest conservation efforts through PFM programmes were more willing to protect forest resource base. Some evidences drawn from the primary survey data show there is a willingness on the part of the people in terms of co-operating with conservation programmes irrespective of payments from the government. Out of a total of 450 sample households, 38.2 per cent of the families reported that they had spent a considerable amount of time voluntarily on conservation activities, especially with 23.8 percent (majority) of them lending their time to extinguish forest fire in emergency situation. The remaining 14.4 percent were involved in various other activities such as preventing forest product theft, planting trees, sample plot checking, saving wildlife from risks,

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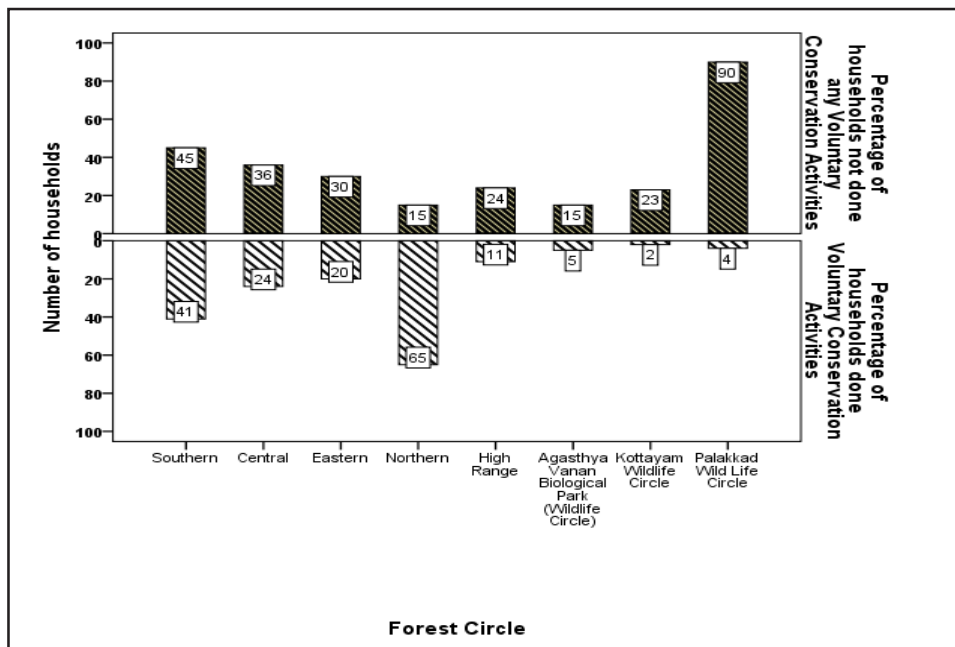
<sup>27</sup> Total five circles, therefore the number of dummy variables used are 4 where High Range circle is kept as controlled variable

<sup>28</sup> There are a total of three wild life divisions in Kerala (Agasthyavanam Biological Park, Kottayam Wildlife Division, Palkkad Wildlife Division), therefore, we have generated 2 variables for the analysis in which Kottayam has been kept as a controlled variable.

preventing illegal brewing of liquor in forest areas etc. This information indicates peoples' willingness to participate in various conservation activities even voluntarily (Figure 7). This can be seen as a changing attitude of forest dependent communities in the presence of PFM programme. That means PFM programmes has an achievement in terms of generating conservation awareness among the tribal communities.

The regression only supports the view that PFM benefited certain groups of tribal communities, and not the entire tribal population. In this assessment, we also noted that irrespective of all institutional and financial constrains, the PFM programme had made their presence felt the grassroots level as an agency of the forest department in terms of playing a differential role in improving household incomes of a small segment of the tribal population. The programme facilitated the forest management in terms of bringing people closer to conservation activities. But the main limitation was that it could not reach out to a larger section of the tribal population who happened to be the poorest of the poor in this group. Hence, the challenge before the government now is to recognise the forests rights (under FRA) in the context of improving quality of life of a larger section of the tribal communities.

Figure 7 Distribution of households participating in voluntary conservation works across Forest Circle



### **Significance of PFM in Recognising Individual and Community Rights**

We have already seen that PFM programme (VSS and EDCs) at grassroots level constituted as part of a resource management strategy, emerged out of 1988 forest policy. Most of the PFM organisations are now registered societies of forest dependent communities with a well planned operational strategy devised in the form of micro plans. But the focus group discussions across tribal settlements show that micro plans never got fully operationalised. We observed diversion of micro plans and actual activities of VSS and EDCs. In our assessment, the PFM organisations had immense functional scope, but, never utilised it fully just because of the power games within forest department from top to bottom. So the basic challenge is how to make PFM programmes more autonomous? What is their relative control over forest resource management as compared to the forest department?

The basic dilemma that we identified is: PFM organisations cannot be considered as a statutory body constituted under any law, therefore, they can't come in the front of the implementation process of the FRA. At the same time FRCs constituted by Gram Sabhas are defunct and are not following any democratic process. Then the question is, how do we implement the community rights on NTFPs and ensure conservation duty provisions as per the Act? Will the community manage the resource base without any external assistance? Who others come under the term 'community' as per the Act? The irony is that neither a statutory body like Gram Sabha nor other agencies like PFM or civil societies, are keen to take up the issue of forest rights effectively at grassroots level, adversely affecting the communities who are entitled to forest rights.

In our assessment, the capacity of the PFM should be made available in the issues of implementation of community rights either at the FRC or Gram Sabhas level instead of simply filling up applications under the direction of tribal promoters or the forest department. A collective action is required from the tribal communities side to prove their individual and community rights over forest resources, otherwise, the present trend may reinforce what the Act intended to undo<sup>29</sup>.

The only forum which is quite aware of both rights and conservation issues is PFM institutions; therefore, these organisations have to take forward the duty of articulating community rights (as an independent society) at the grass root level through Gram Sabhas and FRCs, and not the other way around. It will complement and strengthen the statutory bodies involved in it.

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<sup>29</sup> The historical injustice to the tribal communities

The interviews conducted among tribal department officials also reveal that issues related to community rights and conservation duties were never a concern for these officials. They narrowed down their functions to the level of issuing title deeds to those occupying forest lands; even that has come to a standstill.

### **Common property issues while Recognising Land rights**

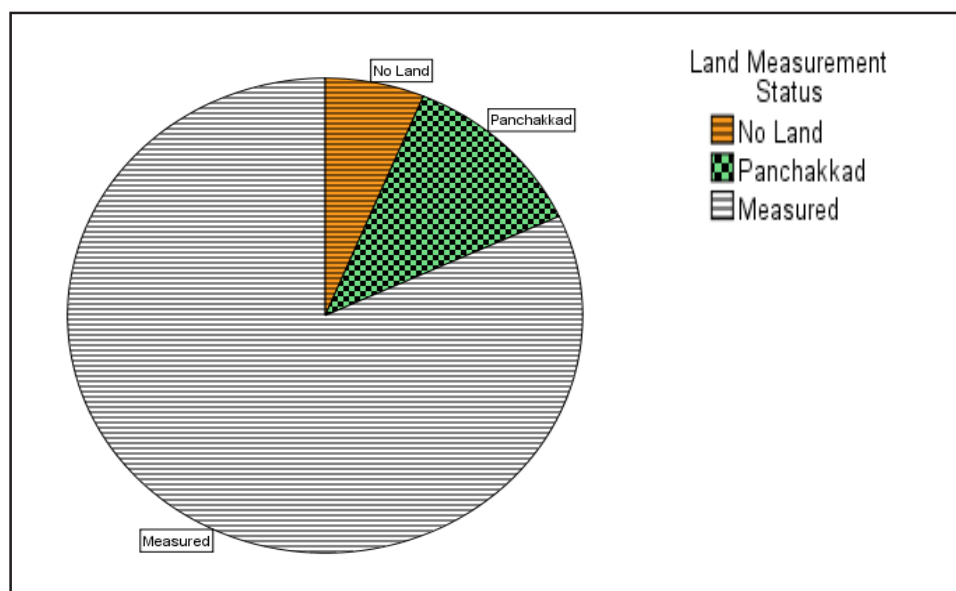
The Study has come across two types of issues with respect to the recognition of individual and community rights due to the common pool character of resource under use. As far as the individual rights over land are concerned, the Panchakkads of Attapadi and Salient Valley areas were generally used as a common area for cultivating millets by mudukar and a few other tribal communities in the past. The cultivation was carried out under the directions of the tribal leader (moopan). Now while the department of tribal development wanted to recognise it under the individual rights the forest department has an opinion that it should remain as Panchakkad reserve (community rights) of tribal community due to its biodiversity and ecological values<sup>30</sup>. The cultivation of millets was carried on in the past on a sustainable basis (without spoiling the ecosystem). But today the department fears the ecological consequences of dividing this land among households and assigning individual rights. Those claiming rights over Panchakkad also reported that they had no idea about the extent of land they were occupying inside the forest. In our understanding, there was an attempt made by the tribal department to take a decision on the extent of land communities were occupying. For example, it was orally reported to us that the tribal department had divided Panchakkads keeping in view the one acre norm for each household which was also a violation of the Act. The distribution of sample households reporting right over Panchakkad is given in Figure 8. Another category of tribal population without any claims over land (perceived themselves as landless) is given Figure 8. This category mostly belongs to cholnayakkan community, a primitive category. They are not even aware of what we mean by land rights! These sort of issues are never discussed in FRCs of Gram Sabhas, simply because FRCs are defunct; so it remains as an issue between the forest and tribal departments.

Secondly, in settlements of chinnar wild life sanctuary and Edamalakudi of munnar, we found tribal communities like mudhuvan who were against the implementation of the Act because of the fear that they might lose excess land over the upper limit of 4 hectare.

Some of these examples show the undemocratic way of accepting or rejecting claims at the grassroots level and of recurring resource use conflicts. Given the fact that FRCs at the hamlet level are defunct, Gram Sabhas should take the initiative to discuss these issues with tribal communities, preferably PFM members.

<sup>30</sup> Discussions with forest officials of the rank of chief conservator of forest

Figure 8 Distribution of households by status of individual land they occupy



#### Rights over Non Timber Forest Products, some conceptual issues

As per the government list, 145 different types of non timber forest products are collected from the forest areas of Kerala. These products are called minor forest products (MFP). The MFP in the Forest Rights Act is defined as: “*all non timber forest produce (NTFP) of plant origin including Bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu, leaves, medicinal plants and herbs, roots, tubers and the like*”. The forest officials have reservations about this definition because, as per the definition, any plant part in the forest, except timber becomes MFP. The forest conservators’ view is that MFPs are not living plants found in forests just as timber does not naturally occur in forests in the sense that trees have to be converted to timber. Similarly, MFPs should be understood as derivatives or parts of plants collected ready for use/sale. A plant exudation like dammer becomes MFP only after it is collected. It is not an MFP before collection but exists as part of a tree/plant. Hence, we should understand that the term MFP refers to only the collected parts and not the living plants and trees in the forests. The living plants and trees in the forests form part of the forest biodiversity. When the Forest Rights Act refers to MFP it can mean only the collected parts/derivatives and not the living plants and trees<sup>31</sup>.

<sup>31</sup> From the discussions with conservators and PFM specialists of Kerala forest department, Mr P N Unnikrishnan and Mr Jacob Mathew actively participated in this discussion. We also discussed this issue with other forest officials at forest circle and division levels.

The next issue is when communities are conferred on the rights to MFPs, the state cannot claim a share in these collected parts/derivatives which means that the communities can process, use or sell these collected parts/derivatives based on community decisions. The state cannot sell/auction away the right of collection of MFPs to anyone as in the past. In other words, there exist no nationalized MFPs hereafter. According to the officials of the department, it does not in any way weaken the provisions of the Forest Act or the Wildlife Protection Act which empower and authorize the Forest Department to function as the custodian of the wild plant biodiversity because the living plant biodiversity in forests remains a common trust property.

The transfer of ownership of MFPs (the collected parts/derivatives) to the right holder communities was precisely intended to deny only the revenue to the state exchequer from the sale or auction of such products. This discussion with forest department officials reveals that they also endorsed community rights on MFP, if it is collected sustainably (traditionally collected parts/derivatives of living plants without affecting the stock). That means MFP include all parts/derivatives of plant origin other than timber, traditionally extracted by the community, including Bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu, leaves, medicinal plants and herbs, roots, tubers and the like, collected and kept ready for use or sale. Then the questions are: what are the products we are collecting? And how do we ensure the sustainability of these products? Do we have proper institutional mechanisms in place at the Gram Sabhas level to manage the resource sustainably?

The primary survey data collected from the tribal settlement shows collection of 278 non timber forest products. An important characteristic of this flow of product is the diversity<sup>32</sup>. Today these products play a very significant role in the livelihoods of many tribal communities especially the tribal communities coming under primitive category. Therefore, one can argue that the recognition of tribal communities' right over these NTFPs and their responsibilities to conserve these resources needs to be given a prime concern while implementing the Forest Rights Act 2006. But, it is also important to see that these rights are exercised without negative impacts on biodiversity and ecosystems which can only be ensured through peoples' participatory resource management institutions.

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<sup>32</sup> The difference between the official list and primary list may be due to various reasons: main reason is improper accounting of these products at government level. But we observed that the situation had improved due to PFM programmes.

Table 14 Diversity of the NTFPs collected from the Western Ghats Region

Local Name (in Malayalam)	Scientific Names (for plants) and English for other products
Nooron Kizhangu	
Panampodu	
Kodampuli	Garcinia gummi-gutta
Kundirikkam	Vateria indica
Elam	Elettaria cardamomum
Inchi	Zingiber officinale
Honey	
Cheevakai	Acacia sinuate
Punnapoovu	Dillenia pentagyna
Parandakai	Entada rheedei
Bee wax	
Manjal	Curcuma longa
Incha	Acacia caesia
Pathirippoo	Myristica beddomei
Nellikai	Phyllanthus emblica
Pattincha	Acacia torta
Maravetti Ari	Aporosa lindleyana
Kasthurimanjal	Cucuma aromatic
Amalpori	Rauvolfia serpentine
Cheenikkai	Acacia sinuate
Pantham	Canarium strictum
Sathavarikizhangu	Asparagus racemosus
Oda	Sarcostigma kleinii
Nooran	Dioscorea pentaphylla
Kurunthotti	Sida rhombifolia L. ssp. Retusa
Orila	Desmodium gangeticum
Madurakurinji	Barleria prattensis
Ilanthakuru	Ziziphus mauritiana
Chavali	Dioscorea tomentosa
Thelli	Canarium strictum
Moovila	Pseudarthria viscid
Karimkurinji	Strobilanthes ciliatus, S. barbatus
Eetta	Ochlandra travancorica
Mula	Bambusa arundinacea
Manja koova	Curcuma zedoaria
Maramanjalkolu	Cosciniium fenestratum
Padakizhangu	Cyclea peltata
Jeevakam	Malaxis rheedei

Local Name (in Malayalam)	Scientific Names (for plants) and English for other products
Chooral	Calamus hookerianus
Meen	Fish
Viraku (Firewood)	Viraku (Firewood)
Nilachakka	Balanophora fungosa ssp. Indica
Manga	Mangifera indica
Narankizhangu	Dioscorea oppositifolia
Thalu	Colocasia esculenta
Athi thippali	Rhaphidophora pertusa
Njaval kai	Syzygiun cumini
Kattukurumulaku	Piper sp.
Chakka	Artocarpus heterophyllus
Cheera	Amaranthus gangeticus
Narunotti	Hemidesmus indicus
Idampiri	Helicteres isora
Keerikizhangu	Anaphyllum wightii
Kattuchena	Amorphophallus paeoniifolius
Koova nooru	Maranta arundinacea
Pulinchi	Hibiscus surattensis
Pana (Karimpana)	Borassus flabellifer
Illy	Bambusa arundinacea
Idana poovu	Cinnamomum verum
Sopinkai	Sapindus trifoliatus
Kudavanchikai	
Muthanga	Cyperus rotundus
Naruneendi kizhangu	Hemidesmus indicus
Alpam	Thottea siliquosa
Muthukkan kizhangu	Pueraria tuberosa
Charulli	
Kattupadavalam	Trichosanthes cucumerina
Mancha (Manchatti ?)	Rubia cordifolia
Aangu (Ungu ?)	Pongamia pinnata
Kodukasikkai	
Kavalan	Dioscorea oppositifolia
Channa	Costus speciosus
Parandakai	Entada rheedei
Vayana poovu	Cinnamomum malabattrum
Chithira poovu	Myristica beddomei
Thaali poovu	
Thara venna	

Local Name (in Malayalam)	Scientific Names (for plants) and English for other products
<p>Neduvan Marottikuru Para kizhangu Ponna poovu Undappanu Thalikkai Manja valli Azhathan pana Choonda pana Mukkizhangu Cheevakkai Ottapraka Njandu Kalippana Koova Kattuchakka Kooran kodi Kallu vazha Makkanan thumba Kallu thuru Chatti chodayan Rajakantham Keezharnelli Thottavadi Anamayakki Adu thanuran poovu Karutha kollan thandu Pullani kodi Adalodakam Choolam Kodithuva Plakammal Alpam Thakara Analivenga Kodungali Pulimothadakka Chathaveli Modakkan moodu kizhangu</p>	<p>Hydnocarpus pentandra Stephania wightii Myristica malabarica Gymnacranthera farquhariana Ipomoea nil* Coscinium fenestratum Arenga wightii Caryota urens  Acacia sinuate  Crab Caryota urens Maranta arundinacea Artocarpus heterophyllus  Ensete superbum  Phyllanthus amarus Mimosa pudica Dendrocnide sinuata (Laportea crenulata)  Calycopteris floribunda Adhatoda zeylanica  Tragia involucrate  Thottea siliquosa (Apama siliquosa) Cassia occidentalis Pittosporum tetraspermum  Asparagus racemosus Adenia hondala (Adenia palmata)</p>

Local Name (in Malayalam)	Scientific Names (for plants) and English for other products
Vallikizhangu Thulasi Mukkuti Karinochi Murikooti Marakka mallam pakku Kacholam Kimmannu Vayambu Adakkachaveeru Avan peruki Mattipalu Valamuriyan Eerayila Mula Arapputhen Cheruthen Koppuvella Garudakodi Sarpagandhi Nilanarakam Neerootti Pachotti patta Arogya pacha Kalloorvanchi Valliyarayal Cheriyaarayal Pullu Kalluvazhayari Kalmadam (Kanmadam) Kudukkamooli Theepacha Pannivally Akaram kolli Chembu thittu Muthi mutta Kuda naru Sithari Ilavankam	Ocimum tenuiflorum (Ocimum sanctum) Biophytum reinwardtii Vitex negundo Hemigraphis colorata  Kaempferia galangal  Acorus calamus  Ailanthus triphysa  Ochlandra travancorica leaf Bambusa arundinacea  Vateria indica Aristolochia indica Rauvolfia serpentine Naregamia alata Chlorophytum tuberosum Symplocos cochinchinensis ssp. laurina Trichopus zeylanicus ssp. travancoricus Rotula aquatic Ficus religiosa  Ensete superbum Exudate from rocks Aristolochia indica  Lycopodium phlegmarium Gymnema sylvestre  Vateria indica Cinnamomum verum

Local Name (in Malayalam)	Scientific Names (for plants) and English for other products
Karipulli	
Maravetti	Litsea coriacea
Kasandikkuru	
Kurakka nooli	
Ananpetta	
Parimanam	
Thikuthen	
Karappan kolli	
Vathamveratti	Justicia gendarussa
Theemokki	
Kozhivalan	Agrostistachys borneensis
Chekiyangu	
Nooru mutta	Red ants eggs
Kamala mattu	
Chempoom mattu	
Poovarani	Schleichera oleosa
Idampiri valampiri	Helicteres isora
Orila	Desmodium gangeticum
Ila narakam	
Sharkarakkolli	Gymnema sylvestre
Amukkuram?	Withania somnifera
Koozha	
Dharbha ola	Imperata cylindrical
Venkurunji	Justicia betonica var. Betonica
arandi kizhangu	Salacia fruitcosa
Pannimooru	Dioscorea bulbifera
Moovila	Pseudarthria viscid
Thippalli	Piper longum
Kananka	Cananga odorata
Adalodakam	
Maakku	
Thoon koon	Agaricus sp.
Chedayan kayar	
Puli	Tamarindus indica
Erivalli	Spilanthes calva
Kolakka	Anamirta cocculus
Jathipathri	Myristica fragrans
Vennikizhangu	Dioscorea sp.
Noorakizhangu	Dioscorea pentaphylla

Local Name (in Malayalam)	Scientific Names (for plants) and English for other products
Ambazham	Spondias pinnata
Thaanikkai	Terminalia bellirica
Mezhuku	Bee wax
Adapathiyam	Holostemma ada-kodien
Charakkavali	
Kattuzhunnu	Vigna radiata var. Sublobata
Mannan	
Kachil	Dioscorea alata
Kaattukambu	
Poovamkrunnil	Vernonia cinerea
Kattadi	
Karam pazham	Carissa carandas
Kaiuman	
Kattupazhangal	Wild edible fruits
Neervettikkuru	Glochidion zeylanicum
Valliuzhinja	Cardiospermum halicacabum
Muyalcheviyan	Emilia sonchifolia
Kudangal	Centella asiatica
Poovamkuruvar	Vernonia cinerea
Pachotti	Symplocos cochinchinensis ssp. laurina
Neelayamari	Indigofera tinctoria
Kumbil	Gmelina arborea
Koovalam	Aegle marmelos
Arogya Pacha	
Ponampuli	Garcinia gummi-gutta
Pullanji valli	Calycopteris floribunda
Naikurana	Mucuna pruriens
Oruveran	Elephantopus scaber
Chitharu	
Channaku	Crotalaria juncea
Krishnakranthi	Evolvulus alsinoides
Ramacham	Vetiveria zizanioides
Nialmthengu	Biophytum sensitivum
Chinthurkizhangu	
Malavazha	Musa acuminata
Pazham pali	
Koon	Mushrooms
Kattuvalli	
Ilanjipoovu	Mimusops elengi

Local Name (in Malayalam)	Scientific Names (for plants) and English for other products
Nilapanakizhangu	Curculigo orchioides
Kontha	Coix lacryma-jobi
Thottavadi	Mimosa pudica
Kattu vepila	Clausena indica
Anachunda	Solanum torvum
Chenninayakam	
Konnaveeru	Cassia fistula
Nannari	Hemidesmus indicus
Panambodi	
Kodasari	Polygala chinensis
Kattuthakkali	
Thumba veru	Leucas zeylanica
Ananguthoti	
Naikurana parippu	Mucuna pruriens
Kanjiram	Strychnos nux-vomica
Kattupayar	Centrosema molle
Mukkali	Polygonum chinense
Kunkilliyam	Boswellia serrata
Kallu	
Cherumarangal	
Mikemokku	
Pathiri	Stereospermum colais
Ilavargangal	Leaf items
Thekkinkuru	Tectona grandis
Kodithuva	Tragia involucrate
Vettialakizhangu	
Chinnumaram valli	
Malamkizhangu	
Pathimukam	Caesalpinia sappan
Chaval	
Kariyalanchi	Smilax zeylanica
Cherukadaladi	
Tinospora cordifolia	
Sangupushpam	Clitoria ternatea

Source: Based on Primary Sample survey 2010

At present, the two important institutions involved in the monitoring collection of these products are tribal co-operative societies and PFM institutions like vana samrksana samities (VSS) and Eco-development Committees. However these institutions have

recognised tribal communities right to collect these products as an usufruct right. But the status of usufruct right will change after the recognition of forest rights under FRA. But the anticipated danger is in the context of the present globalized market economy is biodiversity loss because, the communities have the right to collect, process and sell the products as they like. The state has no control over the decisions of the communities. The collection practices may be traditional but the global market which is throwing up great opportunities for such products is a relatively recent and absolutely non-traditional in terms of resource use. This incompatible combination of tradition and modernity could be a disaster for the biodiversity unless guided by proper scientific advice and institutional control.

We have already mentioned that the tribal cooperative societies also play a crucial role in marketing of these products. They act as a monopoly in procuring these products, in that people have a right only to collect these products; but no right to sell these products wherever they want to. Therefore, one can argue say that the customary rights of the tribal communities to collect NTFP remains a de facto withdrawal right in the presence of forest and tribal departments involved in collecting and marketing of these products. The situation also points to a question what is the legitimacy of monopoly procurement of NTFPs by tribal societies after assigning community rights over MFPs? How will we change this scenario?

At present PFM is one of the programmes, where in communities can articulate their right to collect, process and sell these products, since most of them are registered societies today. This also depends up on the degree of autonomy they enjoy in relation to the forest department. In our sample, some of the VSS and EDCs are found functioning with a relatively fair degree of autonomy as compared to others. It is very important for them to be autonomous, sustainable, to function as an agency for collection, processing and marketing of ntfps in a sustainable manner. So the challenge before the present VSS and EDCs is how to attain autonomy from the forest department while working towards community rights over NTFPs. In this context, we recommend that the local self government (Gram Sabha), the implementing agency of FRA-take the initiative in making these exclusive tribal PFM organisations more as autonomous and scientific intuitions in collecting, processing and marketing of MFPs. The forest department and other civil society organisations can act as a facilitator of this process.

During our discussions with tribal communities, we come to know that they were in need of proper training for collecting NTFPS in a sustainable manner. Further, they agreed that the NTFP collection was not sustainable due to unscientific collection methods.

The NTFPs are used for different purposes like fuel, food, medicine, forage, fiber etc. Some are important mainstays in the household economy, while others are infrequently used to supplement household food needs. It is also a fact that the availability of these products is less during the monsoon period except in the case of honey. The forest products like fruits, gum, bark are mostly available during March to April. The collection of fuel wood and fodder during monsoon is limited due to heavy rain.

In the present case, forest products are collected from the western Ghats for both home consumption and sale in the market. Fodder is collected mostly for feeding household livestock. The other products like fuel wood, honey, bark, fruits, bamboo, and medicinal products etc., are collected for both self-consumption and marketing purposes. We have made a rough estimate on both gross and net value of forest products collected from the forest. The gross value of forest products has been estimated without factoring the cost of collection, and the net values of forest product has been estimated after deducting the opportunity cost of labour for the unskilled worker, that is, Rs 125 per day. An estimate of the gross value of various non-timber forest products collected shows an average value of Rs 14500 per households per year in the study area<sup>33</sup>. The value in monetary terms also indicates the significance of MFP in the livelihood of tribal communities.

### **Conclusion**

In this chapter we have examined the scope for convergence between FRA and PFM while implementing the forest rights especially in the context of recognising community rights and conservation duties. After doing an evaluation of PFM programme in terms of improving household livelihood and generating conservation awareness among them, we have come to a conclusion that the PFM programmes have made a differential impact on tribal communities in terms improving their household income. Although a certain group of the tribal communities' benefited from the VSS and EDC programmes, we find a larger group still waiting to get access to these benefits. The programme also has made an impact in terms of spreading conservation awareness among tribal communities. The major limitation observed is that it still operates under the control of the forest department with less autonomy. There is a scope for integrating the programme with FRA implementation, but it depends on the degree of autonomy it enjoys in the decision making process. The programme will have to come out of the power politics of the department if it wanted to serve as a community organisation under Gram Sabhas to protect peoples' livelihoods and forest biodiversity. We also recommend more studies and plans in this direction.

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<sup>33</sup>This is a quick estimate made based on the primary data we collected. A detailed analysis of the economic valuation of the NTFP products will be done later, it is not so relevant here as far as the scope of the study is concerned.

## CHAPTER. IV

### SUMMARY AND CONCLUSION

The Government of India, realizing the importance of recognizing forest dwellers' rights over forest land and non-timber forest products, enacted the "Recognition of Forest Rights Act" (FRA) in 2006. This Act aimed to undo the historical injustice done to the scheduled tribe communities during the colonial as well as the post independence India. Kerala happens to be one of the states where the FRA implementation process began on time. The implementation process got under way in August 2008 and is still continuing with various constraints cropping up at the operational level. In this context, the study tries to examine the implementation processes of the Forest Rights Act 2006 in Kerala, in terms of conferring individual land rights and community rights over Non Timber Forest Products (NTFPs). The study also tries to evaluate the scope and feasibility of taking up the implementation of community rights and conservation duties in an integrated manner with the Participatory Forest Management (PFM) programmes of the state. In this respect we have tried to address questions like, How is the Act being interpreted while implementing? What are the factors that constraining the implementation process of FRA 2006 in Kerala? What role do PFM programmes play while implementing forest rights Act 2006? Is there any scope for integrating PFM and FRA to ensure community rights and conservation duty provisions of the Act?

We have used both secondary and primary data for the purpose of the study. The secondary data for this study has been collected from the government records maintained by the departments concerned engaged in the implementation of the Act. In addition to this, we have interviewed key officials from different government departments. The primary data has been collected from 450 *adivasi* households spread across 30 settlements, through focus group discussions and survey methods using semi structured interview schedules. The study has been presented in four chapters. Both qualitative and quantitative analysis has been carried out using these data sets for drawing inferences on the implementation processes of the Act. The implementation processes of FRA in Kerala started around June 2008 and set a target date to complete the work before 30<sup>th</sup> of April. Therefore an analysis of the implementation process has been carried out in this study by dividing the period of implementation into two phases that is, the period before the targeted completion date (30<sup>th</sup> April 2009) and afterwards.

The study report consists of 4 chapters. Chapter 1 provides an introduction of FRA. Chapter 2 presents an analysis of the implementation process of FRA and the basic constraints involved in the implementation process. Chapter 3 analyses the scope for PFM programme to have a convergence with FRA while implementing the community rights for collecting NTFPs and conservation duty provisions of the Act. This part also discusses the issues involved in the collection and marketing of NTFPS in the study area. This is followed by summary and conclusion.

There are 35 tribal communities in the list of scheduled tribes in Kerala, accounting for about 1.10 per cent of the total population. In 2001 census, the total population of tribal communities in Kerala stood at 364,189 (37000 families). The scheduled tribe population is mainly concentrated in the forested areas of Wayanad, Idukki, and Palakkad districts of the state. An important characteristic of the distribution of tribal population is that many communities are still found living inside the forest areas which have reserved for the purpose of wildlife protection. An estimate based on the current management plans of the Kerala Forest department shows that 109 settlements are located in wildlife sanctuaries and national parks containing approximately 1,396 scheduled tribe families. The total area of these settlements comes to around 1,209 hectares of land. In addition to this, there are settlements located in territorial forests. If we put together these two categories (wild life, and territorial) we get a total of 14926 families living in forest areas that spread across 610 settlements. Further the total occupied area comes to around 14568.53 hectares of land. This is the present status of human habitation in wild life areas and territorial forests as per the forest records.

In the first phase we observed that the number of settlements as reported by the tribal department had exceeded the number of settlements found in forest records. It seems that the tribal department had asked all the tribal families of Kerala state to file their claims and that might be the reason that the estimated total number of claims (37000) equated with the total number of tribal families in Kerala. Any way Kerala had achieved filling up of 85 per cent of the claims during the first phase itself. This can be considered as an important achievement of the first phase. The data also shows that constituting FRCs and filling up of claims had progressed significantly during the first phase of implementation.

But in our enquiries, we could find that the democratic process of selecting members for Forest Rights Committees (FRC) and filling up the claims had been hardly followed by Gram Sabhas; instead the officials and tribal promoters played an important role in getting the claims filled on behalf of the tribal communities. This was a procedural violation of the Act in the first phase itself at the Gram Sabha level.

The procedures related to proper verification of claims and survey of lands was found slow paced during the first phase. This was the stage where all practical issues cropped up at grassroots level. There were protests from the forest department in many places. Therefore, the basic constraint in implementing the Act was the lack of co-ordination between government departments at all levels, because each department tried to take a 'standing' that was based on its original mandate and objectives and the 'set of rules' in a given action arena.

It was also found that the department concerned had no idea about the implementation process. The Act got interpreted by the officials on the basis of the mandates of their own departments. As a result, the implementation process suffered a setback in terms of very slow progress made in this period. During the first phase, the study did not come across any attempt made on the part of the authorities to recognise community rights over non timber forest products and ensure conservation duty provisions. This was an area that was completely ignored during the first phase of implementation. The issues related to critical wild life habitats were also left untouched, though sometimes it was attributed to the shortage of time during the first phase.

However, the Government could overcome some of the technical issues during the second phase of its implementation. As of march 2010, 13691 claims had been processed and received at the district level committees accounting for 38 per cent of the total claims. The latest data (till 2010 March) also shows that 6004 families (16.83 per cent of the total claim) received title deeds over a total area of 6000 acres of land as per the Act. This works out approximately to one acre of land distribution per family. This can be considered as an achievement in the second phase of implementation.

During the second phase, there was an attempt made to bring together issues related to the Kerala Restriction on Transfer by and Restoration of land to Scheduled Tribes Act 1999' and the implementation of the 'Recognition of Forest Rights Act 2006'. But, it could create a situation of non verifiability of implementation procedures, not good for tribal communities. The mixing of the implementation processes of these two Acts might create confusion especially among landless tribal communities, since FRA remained silent on issues related to individual rights of landless tribal communities. The second phase of the implementation was also slow and restricted its activities to official procedures of issuing a few title deeds. As a result, the implementation made a slow progress in the second phase also.

The implementation procedures of recognising community rights over non timber forest products picked up in the second phase of implementation. The study noted that, today,

the tribal communities had only a usufruct right to collect the NTFPs from the forest and that they did not even possess rights to sell their products at a higher price in the open market. It is mandatory to sell these products to tribal cooperative societies, because it functions as a monopoly procurement agency of NTFPs collected by tribal communities. But in many places it was found operated by middlemen and shop keepers adversely affecting the livelihoods of these communities. Both usufruct right from the forest department and monopoly procurement of ntfps by tribal co-operative societies had reduced *adivasi* community mere collectors of the products. In that sense, the tribal communities don't have any ownership rights over NTFP resources at present, as was observed during our study.

Although, the implementation of community rights on collecting NTFPS is more relevant in ensuring the livelihood of the people, it seems that the implementation of the community rights over forest products still remains vague and incomplete. The data available with the government sources shows that 962 applications concerning community claims have been received so far at state level. But the recognition of these claims remains incomplete due to various reasons which are mostly institutional in nature.

The reason for the present situation is the lack of knowledge and skill at the Panchayat or Gramsabha level to manage the community rights on non timber forest product collection. Panchayats and Gram Sabhas of Kerala had never been part of managing forest resources in the past which was the sole responsibility of the forest department. Therefore, both the parties were unable even to visualize a sudden change in the NTFP management which required immense political will at the grassroots level.

The implementation of the Act in the critical wildlife habitats is also quite crucial in the western Ghats, since many human settlements are still found in the wildlife areas of the region. It is an issue of conserving high biodiversity value on the one side and minimizing the opportunity cost borne by the tribal communities due to conservation, on the other in Kerala, an earlier study reported that the increasing numbers of protected areas are putting high opportunity cost on tribes and other forest dwellers by restricting their access rights. It is also important to remember that most of the communities living inside protected areas are nomadics and primitive tribal groups cut off from the mainstream people. Therefore, it is crucial to identify critical wildlife habitats in these protected areas. So it is important to know how many of these families fall under critical wildlife habitats. What are the socio-cultural characteristics of these communities? etc., but the implementation of the Act in critical wildlife habitats still awaits a beginning. Some of the reasons for non implementation are as follows.

- Few scientific studies and clarity over the critical wildlife habitats of Kerala Forest
- Few studies on the opportunity cost borne by the local communities due to wildlife protection
- Fewer attempts to examine whether the people residing within protected areas come under critical wildlife habitats.
- Tribal communities living in protected areas are still under the day to day watch and control of the forest department.
- Panchayats and Gram Sabhas are less inclined to do any developmental activities since the people belonging to protected areas are mostly tribal communities and less articulate with regard to their rights.

We strongly recommend studies in this respect so that the government will get more informed on these issues. It could also help us keep such critical wildlife habitats out of bounds for all development activities in the true spirit of the FRA.

The Act has not been implemented among other forest dwelling communities because it is argued that there are no 'other forest dwellers' occupying forest land in the western Ghats of Kerala. As per the FRA, 'other forest dwellers' are defined as those who have been living more than 75 years in forest land. Since Kerala had demarcated the forest land in 1977, the question of occupying forest land by communities other than scheduled tribes was completely precluded. But, we had noticed during the primary survey that there were 'other forest dwellers' in tribal settlements whose livelihood solely depended on forest resources. Some of them were also engaged in producing value added products using forest resources (e.g., basket weaving). The communities coming under this category (mostly pulaya, and sambava communities) constituted 2.4 per cent of the total sample households.

In relation to this, another important issue that cropped up during the focus group discussions was with respect to the forest rights of the individuals who had got married to nontribal people. There were queries regarding the transfer of rights to the next of kin of the people who had got married to other communities. In this regard, the government had taken a stand that 'there was no provision in the Act to bar the registration of the forest right conferred under the Act, jointly in the name of both the spouses who belonged to different castes, provided the applicant was a schedule tribes, if not a scheduled tribe would fulfill the criteria of other traditional forest dwellers'. The issues related to OFDC have to be studied further, instead of taking a rigid position that no other forest dwellers exist in Kerala forests. We recommend further studies in this respect.

In the third chapter, we examined the scope for convergence of FRA and PFM while implementing the forest rights especially in the context of recognising community rights and conservation duties. In this respect, an evaluation of PFM was carried out on two important aspects of PFM programme, one whether there was improvement in peoples livelihood in terms of increased income levels and second, whether PFM was successful in bringing its members close to conservation of forest ecosystems.

A maximum likelihood estimate of the logit regression used for the analysis of evaluating PFM programme showed that the programmes had made differential impact on tribal communities in terms improving their household income. Although it was well rooted in many places of Kerala forest, a certain group of the tribal communities' had benefited from the programmes of VSS and EDC activities while a larger group still was waiting for access to these benefits. This might be achieved only by providing more autonomy to these organizations.

In the second part of evaluation, it was observed that tribal communities who had exposure to forest conservation through PFM programmes. Were more inclined to protect forest resources. The programme helped the forest management in terms of bringing people close to conservation activities. But the main limitation was that the PFM could not reach a larger section of tribal population who happened to be the poorest of the poor in this group. Hence, the challenge before the government was to recognize the forests rights (under FRA) and improve the quality of life of a larger section of the tribal communities.

As for an integrated approach of FRA and PFM, one of the basic issues that we identified was that PFM organizations couldn't be considered as statutory bodies constituted under law, therefore, they could not come to the forefront in the implementation of FRA. At the same time, FRCs constituted by Gram Sabhas had become defunct not following any democratic process. Then the question was how were we to implement the community rights with respect to NTFPs and ensure conservation duty provisions as per the Act? Would the community manage the resource base without external assistance? Who else would come under the term 'community' as per the Act? The irony was that either a statutory body like Gram Sabha or other agencies like PFM or civil societies, were keen to take up the issue of community forest rights effectively at the grassroots level, which, in fact had adversely affected the livelihoods of communities entitled to forest rights.

The primary survey data collected from the tribal settlements show a collection of 278 non timber forest products. An important characteristic of this flow was its diversity. Today these products play a very significant role in the livelihoods of many tribal

communities especially the tribal communities coming under primitive category. Therefore, one can argue that the recognition of tribal communities' rights over these NTFPs and their responsibilities to conserve these resources need to be given prime concern while implementing the FRA; and that could be ensured only through participatory resource management institutions. Therefore, the people involved in PFM activities should take up the issues of implementation of community rights with the FRCs or Gram Sabhas instead of simply filling up applications under the directions of officials. In this context we recommend that the local self government (Gram Sabhas), the implementation agency of FRA, take initiatives in making these exclusive tribal PFM organisations more autonomous intuitions for collecting processing and marketing of MFPs.

In general, the study has found that the implementation process has progressed at a very slow pace due to various issues at different levels of implementation which are mostly institutional in character. The study observes a co-ordination failure at different levels of the government. A collective action is required from the tribal communities side to prove their individual and community rights over occupied forest lands and non timber forest products at gramsabhas, where members from the PFM programmes can play a vital role, otherwise, the present trend may reinforce what the Act intended to undo.

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