**Unpacking Indigenous Self-Governance amidst FRA: Comparative Insights from Nilambur and Sigur areas of the Nilgiri Biosphere Reserve**

**Keystone Foundation, 2022**

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# LIST OF ABBREVIATIONS

FRA - Forest Right Act, 2006

OTFD - Other Traditional Forest

Dwellers

JFMC - Joint Forest Management

Committee

VFC – Village level Forest committee

CFR - Community Forest Resources

DLC - District Level Committee

MoEF - Ministry of Environment and

Forests

MoTA - Ministry of Tribal Affairs

DFO - Divisional Forest Officer

NTFP - Non-Timber Forest Produce

JFM - Joint Forest Management

PRI – Panchayati Raj Institutions

MGNREGA: Mahatma Gandhi National Rural Employment Guarantee Act

MOTA – Ministry of Tribal Affairs

ITDP: Department for Tribal Development, Kerala

FGD: Focused Group Discussions

EB – Electricity Board

FCA - Forest Conservation Act

FGD - Focused Group Discussion

IFR - Individual Forest Rights

CFR – Community Forest Rights

FRC - Forest Rights Committee

MFP - Minor Forest Produce

NTFP - Non-Timber Forest Produce

PESA - Panchayat Extension to Scheduled

Areas Act

SC - Scheduled Caste

SDLC - Sub Divisional Level Committee

SDM - Sub Divisional Magistrate

SDO - Sub Divisional Officer

ST - Scheduled Tribe

# PREFACE

This study is a conception resulting out of a 15 year struggle and work as an organisation envisioned to aid in the realisation of rights of indigenous communities to land and forest governance. Our NGO has been working in the NBR landscape for over 25 years in striving to provide sustainable livelihoods for the socio-cultural and economic betterment of forest dwellers. The FRA which had come into place in 2006, has been a massive step in the direction of realisation of indigenous welfare.

While the FRA came into effect nationally in 2006, an untimely ruling ordaining a stay on its implementation by the Madras High Court severely hampered the integration of the FRA into Tamil Nadu’s state politics, hindering the creation of the bureaucratic and institutional bodies necessary to ensure effective processes for vesting rights to traditional forest-dwelling peoples, until 2016.

The system of participatory forest management was designed to include indigenous and other forest-dependent communities in forest management and to give them a voice in the decision-making process, and yet, what is evident is- participation in title but much less so in practice. On-ground, power relations that impact implementation such as the relationship between the FD in Tamil Nadu and indigenous communities is a contentious one. The FD severely limits indigenous people’s access to the forest, and even if community-members do manage to engage in traditional collection of NTFPs, they often must sell them through Village Forest Committees (VFCs) set-up as part of JFM. These organizations act as intermediaries between the community and the market. Post 2016, the FRA implementation process continues to be met with resistance on the ground.

In Kerala, the FRA was implemented in a similar way as it was in Tamil Nadu, with very limited community involvement or capacity-building on the state level. The challenges surrounding community involvement around the FRA are present in Kerala just as it is across Tamil Nadu. However, in Kerala this is arguably the case for different reasons. Nevertheless, the situation in Kerala today is slightly more favourable to FRA-claimants, but there is still lack of cohesion in the process. Moreover, rapid turnover at low-level bureaucratic positions in government has caused a delay in processing claims applications.

Hence an empirical study to understand factors that act as hurdles in each stage of implementation of the Act has been employed to understand issues specific to this landscape. We begin with trying to understand the gaps in decentralised institutions namely the Gram Panchayat and the Gram Sabha. Each of these institutions play an integral role in the claim process as the process was envisioned to work bottom-up. Next, we try and understand the working of administrative institutions such as Line departments tasked with implementation to gain an insight into the hurdles posed by these departments. Finally, we make some observations and recommendations that can facilitate a smooth implementation process by adopting some innovative methods that can function as factors of change. Over the long term, we strive to use the findings of the study to devise stronger implementation mechanisms and speed up the rights claim process.

# INTRODUCTION

Ambitious de jure legislations and less-than appealing de facto conditions portray a chasm. What causes for this chasm to become deeper and complex has been the subject of constant concern. One of the reasons consistently cited is reluctance on the state’s part to devolve powers to local institutions despite having progressive legislations, such as PESA, 1996, and FRA, 2006, in place. It is in this regard that it has previously been amply reiterated that equating ‘decentralization’ to “devolution of power” and a mere portrayal of engagement in “democratic” processes would be an oversimplification of the de facto workings of such legislations. Legal and democratic processes become further complicated when equally-relevant, pro-environmental exclusionary laws try to function in tandem with inclusive legislations.

Historically, indigenous persons have been subjected to bear the direct impact of colonialism and colonial policies around the world (C. Samsom, C. Gigoux 2017). Colonial policies primarily focused on dispossession of indigenous peoples from land, forced assimilation and sedentarization of mobile groups. More importantly land policies such as dispossession, forced relocation is shown to have a long-term impact on their social and psychological lives (C. Samsom, C. Gigoux 2017). The United Nations Declaration on Rights of Indigenous Persons (UNDRIP) is one of the most important instruments to formalise rights claims of indigenous persons in a post-colonial era.

From a human dimension perspective, this has to do with the multiple stakeholders that have stake over the landscape with different priorities making democratic processes and governance rather perplexing. Local democratic processes in the context of forest-based governance have always had a complicated narrative due to the presence of powerful stakeholders such as the forest department, conservation groups, pro-people NGOs, and the primary stakeholders who have been subjected to historical injustices and still seeking justice. These complications are evident in the context of the Forest Rights Act (FRA) 2006, a constitutionally-approved legislation that incorporates democratic processes and offers indigenous communities full property rights over their traditional lands. The Forest Rights Act, 2006(hereinafter referred to as FRA), for the first time was an attempt to recognise rights of forest dwelling communities and to redress the historical injustices inflicted upon the community (Kundan Kumar, Neera Singh, Giri Rao 2017). This Act legitimised Village level decision making through institutions known as the “Gram Sabha”. Although, FRA implementation in India began in 2008, progress has been slow, particularly of the community forest rights (CFR), which stands at approximately 3%.

The required strength for these institutions is lent by local governments or Panchayati Raj institutions established by the 73rd and 74th amendment. Yet, the performance of Panchayati Raj institutions vary across states owing to reluctance on the part of some states to devolve resources and autonomy. Even where Panchayat Institutions have effective decentralisation, units of forest decentralisation such as the Gram Sabha/village level assemblies are relatively weak in claiming Forest Rights. FRA, has also not been recognised as a development right to be included in Tribal development plans.

The Nilgiri Biosphere Reserve (NBR), given that it is a biodiversity rich landscape of 5,520 sq. km., cutting across the states of Tamil Nadu, Kerala, and Karnataka, and home to various Particularly Vulnerable Tribal Groups (PVTGs) upholding tribe-specific, community-specific, and area-specific cultural and traditional practices, offers an excellent context to observe these democratic processes pertaining to forest governance, at work.

Keystone Foundation has worked in the landscape for over 27 years with local indigenous groups. Over this time, we have observed and experienced the complex dynamics embedded within the local democratic processes and the nuanced differences apparent in the different socio-political settings. A classic difference has been in the context of FRA implementation in Tamil Nadu versus Kerala. These differences are particularly obvious at the local institutional level. The first part of the report discusses Panchayati Raj Institutions from two states and draws a comparative analysis on forms of decentralisation. It further discusses the interplay between PRIs and indigenous self-governing institutions. The second part discusses indigenous self-governing institutions, their strengths and weaknesses as working institutions from two states. The third part discusses the administrative hurdles posed by administrative institutions delegated with the power of implementation. Finally, based on the study suggestions are made as to how to take the process forward by drawing insights from the study in both states.

# REVIEW OF LITERATURE

On the face of it, some of the selling points for the decentralization-fervour beginning in the 1980s were greater “participation”; “ownership of local resources”; “decision-making power” and (partial) “autonomy” for the local communities. In order to understand why or why not decentralization has worked in a particular setting, it is crucial first to identify the form of decentralization practiced. Perhaps even more pertinent is zeroing-in on the motive behind the form of decentralization chosen.

**Decentralization, with a catch?**

Based on their analysis of six case-studies from Africa and South Asia, Agarwal & Ribot (1999) define two forms of decentralization: administrative decentralization and political decentralization, wherein the former is characteristic of reallocation of powers to central government appointees who are, in turn, upwardly accountable. While the latter means an actual devolution of powers to local actors/elected representatives and are downwardly accountable.

Further, they show that despite several pro-community legislations in place, central authorities have tended to have the last say. For instance, in Senegal, Rural Councils, despite having the ‘power’ to approve or disapprove of a particular development, were inescapably tied to an exploitative central regime whose primary aim was to bind local communities in a commercial set-up, thereby, having influence over how the forests were used. Within the Nepal case-study it is interesting to note how user-groups were ‘allowed’ increased decision-making power and retention of profits from community forests by the state. At the same time, however, the very state played a limiting role in giving impetus for user-groups in the Terai region, due to the presence of high-valued Timber forests. Basis their findings, the authors steer the conversation towards how (economic and governance) reforms can in fact prove influential on how the process of decentralization gets acted out. To quote the authors “…it is political and economic calculations and pressures that actually prompt and thus shape reforms” (Agarwal and Ribot 1999). Further, Shylendra (2020) quite poignantly asks through his work informed by the Gujarat landscape- If economic reforms pursued by nations today are fundamentally predicated upon logics of capital-accumulation, how are disaggregated bundles with nullified power (local institutions) expected to thrive?

The other factor that may undermine ‘democratic decentralization’ is its mode of implementation. Especially speaking about forestry-decentralization policies Lund, Rutt, & Ribot (2018) point that most often the implementers (e.g. central/state government departments) of these policies tend to work with “…project committees, non-governmental organizations, customary authorities, and forestry department appointees in the local arena”. This, they argue, undermines the very powers of the local governments, thereby, not manifesting into actual democratic decentralization.

In what could be taken as an extension of the central authorities’ tendency to retain power in some form or the other, Ribot, Chhatre, & Lankina (2008), borrowing from Bates’ (1981) concept of “institutional choices” and “recognition”, demonstrate how certain choices made by the government and/or international organizations can have implications for on-ground decentralization efforts. Larson’s work with Guatemalan indigenous leaders, destabilizes the long-standing rhetoric of whether liberal democracy that equates to giving various stakeholders equal opportunities to voice their opinions through participation in integrationist models of working, can be taken as a thumb-rule to move ahead (Ribot, Chhatre and Lankina 2008). According to Larson and Ribot (2007), authorities who implement/enforce participatory rules or legislations, systematically favour more powerful stakeholders and create multi-layered access-barriers to communities and smallholders despite them holding secure rights to the forest land. Therefore, a rights-based approach is successful only when the power dynamics of access is altered and favours the marginalized right-holders. The case study by Chhatre on Himachal Pradesh, India demonstrates how the local people’s “political articulation” in having their panchayat to be chosen as their local interlocutor influenced the legislators’ decision to recognize and ordain the same (Ribot, Chhatre and Lankina 2008). **Democracy: High cost for everyday lives!**

However, for most, going the democratic-route does not come at an easy price. Shackleton et al (2002) poignantly notice that the effects of devolution vary across local communities. Most importantly they point out that “negative-trade-offs” associated with devolution are quite commonly encountered among the marginalized sections. Shylendra (2020), about two decades later makes a similar argument in noticing that certain social and economic inequalities may in themselves act as hindrances to active participation. Similarly, while presenting quite a contradictory yet intriguing finding to the one proposed by Larson and Ribot (2007), Kashwan (2010) observes how, in India, the presence of strong local leaders can have negative implications on a community’s claim-making process for rights under FRA. This argument draws attention to how private interests of local leaders (by associating with entities that they stand to privately benefit from) can, at times, act as impediments to the overall growth of a community.

The FRA, 2006 has drawn as much flak for its subscription to vagueness as it has received praises for its right intent. In fact, it would perhaps be safe to assume that the country still hosts a plethora of Gram Sabhas finding themselves in a flux of identity-crisis, especially, with several conflicting laws in place, viz., Wildlife Protection Act, 1986; PESA, 1996; FRA 2006; and a controversial DWAP in the pipeline. After a short stint of JFMs, Forest Department (FD) -backed Vana Samarakshana Samitis (VSSs) that continue to be promoted against the FRA-backed FRCs, appear to be just another manifestation of the state’s inability to fully devolve powers to local institutions. Satpathy (2017) notes that the presence of FD in the Mayurbhanj district of Odisha, is perceived as deliberately attempting to obstruct the claim-making processes. Satpathy also points to the inherent incompetency within and among the various line departments, evident through uncoordinated nature of working and interests. The author cites this as a case of misplaced sense of autonomy because the officers-in-charge often do not feel obligated to report to officers not belonging to their own departments/verticals. The author also points to the simultaneous and often overlapping presence of legislations and government welfare schemes such as MGNREGA that can have implications on the implementation of long-term, “legislative projects” such as the FRA. Further, Satpathy argues that devolution, thereby, establishment and formalization of new forms of institutions may not actually be effective if the state itself is fraught with opacity and self-serving intentions.

Another important factor to be considered as a potential hindrance to realization of democracy is the presence of external entities with conflicting (often exploitative) self-

interests viz. private players staking claims on natural resources often found in heavily forested tracts and extremist groups as shown through a case-study on Jharkhand (Tatpati 2015). Further, the author argues that for democratic processes to function effectively, bringing-in external intervention in the form of NGOs etc. may be helpful.

**Beyond Devolution: India’s Forest Rights Act 2006**

An important question to also consider is what happens once the FRA claims have been approved and received. Various studies (Larson and Ribot 2007; Satpathy 2017) have highlighted instances of how despite having the right (whether legislated or not), community-members often face restrictions, get charged or fined for collecting MFPs from their own forests. This depicts the tumultuous relationship between forest-communities and representatives of the state. But, the pertinent question is, what could be the factors that keep local communities from organizing after claiming their titles? Is it a lack of capacity of the right-holders, or the state’s inefficiency to facilitate post-claims support processes?

Gupta, Lele, & Sahu (2020), opine that NGOs may, in fact, be essential mobilizers to fill-in the gaps left behind by the state’s inefficiencies and giving forest-communities with the much-needed exposure and tools on their journey from learning about their rights to, developing management protocols, and finding market-connections.

Proposing a more inclusive and equitable approach, Rana & Chhatre (2017) warn against ‘segmentation’ of resources and, thereby, power promoted through lobbying for single-entity management of natural resources, i.e. state-managed forests or community-managed forests etc. The authors further argue that entities such as the state; community; and elected-government are unequipped in their isolated and rather linear workings. Instead, they propose for a ‘hybridization’ of forest-governance where all these entities come together synergistically to ensure positive outcomes for all stakeholders involved. However, it requires cautioning that while such an approach may seem enticing on-paper, the basic premise of the state’s larger intention is still in question.

Our review highlights some of the key factors that are likely to influence local democratic process and outcomes, specifically in the context of decentralized forest-based governance, and more devolved approaches to governance as in the case of India, with the implementation of FRA 2006. Some of the insights are relevant and generally applicable to effective forest governance, irrespective of the geographical, and the socio-political context. However, it is also important to recognize the nuanced insights context-specific assessments may offer. This is particularly relevant in the context of FRA implementation, where differences in the pace of implementation, receipt of claims (both IFR and CFR), and the post-claim status, are noted. With “progressive states” of the south such as Kerala and TN, continuing to lag in terms of FRA (particularly CFR) implementation, it requires an in-depth scrutiny to understand the key factors influencing decision processes and governance outcomes.

# SCOPE & METHODOLOGY

**Research Objectives & Questions:**

1. To understand what factors, influence democratic processes and its outcomes at the local institutional level:

* Decentralisation and democratic set-up of Local/Gram Panchayat and its outcomes in Tamil Nadu and Kerala.
* What is the type of traditional governance systems in place and what factors influence their strengths and weaknesses in the respective regions of Nilambur and Sigur?
* What is the nature and role of local leadership in the two study areas, at the Gram Sabha level and the local panchayats?
* What role does the Gram Sabha play and how is it linked to the local Panchayats, in each of the two study areas?
* What kind of presence and influence do external entities (line departments, local government bodies, NGOs, private stakeholders/traders etc.) have on local communities and institutions, in each of the two study areas?

1. How have the various bodies of local governance and democracy worked in the context of FRA and other developmental projects? This includes:

* What factors affect the processing of CFR claims?
* Factors affecting implementation at the panchayat level
* Factors affecting implementation at the level of Gram Sabha
* Role of implementing authorities, SDLC&DLC in implementation, hurdles posed to the path of implementation
* Does convergence with various line departments and the local panchayat (LSGD) on claiming of developmental rights take place? If, yes, how and if no, why?

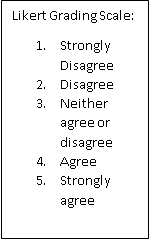
**Methodology:**

Focus of the study was on the Irula (Sigur) and the Kattunaickan (Nilambur) communities. We have been involved with both these communities through our facilitation work undertaken towards materializing FRA-claims in the two regions. We have focused on 2 villages each in Nilambur and Sigur (20% of villages in each area).

1. Focused Group Discussions (FGD) – 4 discussions (one in each area) with 8 members from Village Level Assemblies, with equal representation of men and women
2. Semi – structured interviews – 12 interviews in total, 3 for each panchayat from 4 study areas, with a representation of both appointed and elected individuals.
3. Semi- structured interviews – 10 interviews of implementing authorities for each area.
4. Household level surveys – 80 Households from four areas were surveyed comprising of 20% of total HH from each study area.

We have used a combination of participatory, qualitative, and survey-based quantitative approaches for data collection and analysis. The former allows for collecting grounded information, contextualizing the results and findings, and interpretation of data; the latter will help standardize data and accurately represent the status-quo. For qualitative approaches, focus group discussions (FGD) comprising 5-8 participants, with community stakeholders will be conducted, using a set of questions to provide a structured direction to the interactions. Using the data gathered through participatory and qualitative approach, a short and comprehensive survey will be designed for quantitative assessments.

Interpretation and analysis:

* Data collected through FGDs was transcribed and analysed to draw broad themes for creation of the Household survey tool
* A Likert scale was used to measure opinions on the scale of 1-5, options being scored as follows, strongly disagree was scored as 1 and strongly agree as 5.
* Mean values and standard deviation was then calculated to understand the average opinion of population surveyed. These values were backed with descriptive analysis using qualitative data collected from FGDs.
* 

**I**

# Decentralised governance, factors influencing democratic processes and its outcomes- the roleof Gram Panchayats and indigenous self-governing institutions in Kerala and Tamil Nadu

## Working of Gram Panchayats in Tamil Nadu & Kerala – an overview

### Forms of decentralisation – an Introduction

Differing definitions of decentralisation is drawn by (J. Ribot, A. Agarwal and Larson 2006) based on the kinds of powers devolved where administrative decentralisation is referred to as Deconcentration, different from political or democratic decentralisation. Where political decentralization is shaped in such a way that elected local authorities’ accountability is tied to superiors owing to election and funding arrangements, it is termed Deconcentration. Where devolution of powers is in such a way that downward accountability is realised, the model resembles that of political decentralisation. A comparative study of PRIs in the states of Tamil Nadu and Kerala portray an example of each of the above-mentioned principles.

Another important factor that characterises effective decentralisation is the efficient devolution of three Fs’ namely, “Functions, Functionaries and Funds” (R. Banerjee, 2013). This classification was based on the Balwant Rai Mehta Committee that was set up to suggest the means of effective local-governance in the year 1957(R. Banerjee, 2013. The author specifies that along with these, periodical reviews of PRIs have insisted on capacity building and staff training. Since then, evaluation of PRIs effectiveness has been on these criteria. In a comparative study of panchayats in three states, Kerala, Tamil Nadu and Madhya Pradesh, it was concluded that without devolution of powers, resources and capacity building, realising effective local governments is a far cry (D. Narayana 2005). A CAG report on the devolution of the 3 F’s defines functions as devolution of implementation powers on the 29 subjects listed in the 11th schedule of the constitution. Devolution of functionaries means making institutions and the people elected under it downwardly accountable for the performance of functions. Finally, funding refers to the ability to generate adequate resources through taxation and devolution of funds through states. Keeping these criteria’ as guiding themes for our research in studying the working of PRIs in Tamil Nadu and Kerala we discuss the “decentralized” workings of the Grama Panchayats in our study areas.

### Tamil Nadu – a case for Deconcentration

For any decentralization to be effective, it is necessary to construct domains of autonomy in decision making, without placing any restrictions, so as to ensure accountability of these institutions are downward (J. Ribot, A. Agarwal and Larson 2006). The working of PRIs in Tamil Nadu portrays a case where they act as mere agents of the state government (D.Narayana 2005).

Data collected through semi-structured interviews administered on panchayat officials belonging to our study site in TN, elicited the following features:

#### Autonomous bodies or mere agents of the – devolution of Functions:

The study pointed out that in the state of Tamil Nadu, panchayats acted as mere agents of the state characterised by “tight bureaucratic control” (D.Narayanan 2005). The basis of rules governing panchayats seem to be drawn from executive orders which has a lower legitimacy in the hierarchy of laws and is easier to change from time to time. Allocation of areas of functioning are mere state administrative orders. The drawback of this is that such orders are susceptible to be withdrawn as easily as they are passed owing to the simplicity in procedure and lack of need for public consultation (M. Pal 2001). A scrutiny of the working group report shows that this method is ineffective if the necessary laws are not amended to give actual legitimacy to the allocated functions as executive orders can easily be overridden. Hence, Tamil Nadu seemed to have a “comparatively weaker legislative framework and activity maps for assignment of core functions to panchayats (A. Sharma, D. Chakravarty 2018).

In our study, ground reality reflects the above-mentioned fragility. For instance, amongst the ward members interviewed, there was a common feeling that ward members were not paid what was due to them when a contract is implemented whereas this was provided for under an executive order. The Higher officials such as the Secretary and Presidents, were of the view that such an order does not exist in reality. The below quotes demonstrate this confusion regarding payments:

“*We do not have any honorarium as a ward member. We do not get any commission for execution of contracts in our areas. We’ve been told that such commissions are there and provided for under executive orders but I haven’t received any. In these last two years. In fact, two works have been completed, and I didn’t receive anything. They have told us that it is there and they will give but it was not given.”* – Pnachayat Official, Masinagudi Gram Panchayat.

This has been the case for all ward members interviewed. The following quote is the response of the Panchayat Secretary which paints a contrary picture as they allege that no such support or commission for ward members exist under any order.

#### “The only pay the ward member gets is an amount of Rs. 50 for attending a meeting and not all members are locally residing. So, it is just Rs. 10 for bus fare. Only Anaikatty is far. So far in my panchayat no ward member has gotten a commission for the execution of a project. There is no legal order regarding the same either. For every person there is no concept such as commission in the panchayati raj system.” – Panchayat Official, Ebbanad PanchayatResource Augmentation and flow of funding from states/Funds

The case of Tamil Nadu highlights the lack of fiscal autonomy enjoyed by panchayats through encumbrances set on amount of funds that can be granted under each scheme. There is also an inadequate base to raise their own resources. One of the crucial aspects for effective functioning of decentralized bodies charged with development is devolution of fiscal powers, and untied funds to provide public services (M.G. Rao and U.A.V. Rao 2008). The authors point out that either provisions must exist to augment their own resources through tax and non-tax means or there must be a higher devolution from the states. Neither of these exist and to increase tax rates in rural areas works detrimental to development goals, particularly in a low income setting such as our study areas.

Based on the interviews, all panchayat officials, especially those in the higher strata have replied that the funds they currently have is majorly spent on maintenance. Upon further elaboration, maintenance was pointed out to include day to day expenditure and electricity charges for villages. It is only upon completion of these payments that the remaining is distributed under schemes such as housing, roads, etc. The following quote demonstrates the above discussed information,

“*In a year we receive an amount of Rs. 25 lakhs, 3 lakhs through tax collection which all goes for maintenance. Whatever funds are allocated for us we pay the EB costs with the same. There is a general fund with that we pay the EB for services such as water supply, street lights maintenance. Ours is a weaker panchayat.* – Panchayat Official, Ebbanad Panchayat.

Caps on spending and resulting accountability to higher authorities:

In Tamil Nadu, Gram Panchayats enjoy limited autonomy in decision making as control over expenditure is placed by setting limits on fund disposal under welfare schemes. According to the members interviewed, the Gram Panchayat can only take decisions on schemes that entail an expenditure of Rs. 2-2.5 lakh rupees. For any amount of expenditure/resource greater than this, approval from the block panchayat is required. For this the District Panchayat and Collector’s approval is required. Hence development services that Gram Panchayats are enabled to deliver are restricted to this minimum amount. This also creates an upward accountability owing to the dependence created by funding arrangements. The below quote emphasises this example:

*“If a panchayat must implement project, budget is less for us, the funds are insufficient. Now for drainage and roads if it is up to Rs. 2 lakhs we can do it ourselves but if it goes beyond that we have to go to the collector and that is a little difficult for us. We have to go to the collector if it is beyond Rs. 5 lakhs. First, we have to go to the Block District Officer, then AD and then the collector.”*- Panchayat Official, Masinagudi Gram Panchayat.

This also posed severe hurdles for service recipients as they had to spend, out of pocket to persuade contractors to complete work allotted under development schemes allocated by Gram Panchayats.

#### Elections and devolution of Functionaries

It is argued that to provide for a status of legitimacy for local governments, regular elections and representation of all classes is important (G.Mathew, 2003). A typical political decentralisation involves devolving powers and autonomy to local actors and ensuring that they are downwardly accountable (J. Ribot, A, Agarwal, A.Larson, 2006). Elections are a crucial mechanism to achieve this. It is noted that in several states in India, including Tamil Nadu, elections were delayed by the State Election Commissions (A. Sarma, D. Chakravarty, 2018). Local body elections in Tamil Nadu saw a long delay between 2016 – 2019. Elections were finally held in 2020. The interviews from ward members and people from villages showed that the people hardly had access to their elected representatives.

In Focused Group discussions the following statement was made by community members “*Until the recent elections the panchayat president has not even visited our village to see how things are. They never come to visit on their own regard, not once have they come to check on our issues*.” – Community members from Vazhaithottam and Chemmanatham.

Moreover, this method of decentralization acts detrimental to rural poor as panchayat offices are largely inaccessible for forest villages and ward members themselves are unable to visit offices. Tamil Nadu lagged far behind in providing for an adequate remuneration for its members as compared to Kerala. It Tamil Nadu an honorarium of Rs. 2000 is given for Panchayat Presidents to no honorarium for ward members. In the case of Tamil Nadu, ward members are often in a position where they cannot participate in decision making as they cannot afford basic travel costs. These are a few excerpts from ward members in Tamil Nadu:

“*There is no salary/honorarium for ward members. So, there is no income for me as a ward member. If I go to a meeting, I get about 50 or 100 rupees. But my travel expenses to go to the panchayat is more, and my travel expenses haven’t been reimbursed either. Hence, it is very difficult for me to attend all board meetings held. The President informs prior to the meetings if my presence is needed or not and I attend accordingly*”. – Panchayat member

*“If there is a meeting that has been convened for the attendance of the same they give Rs. 50 but that is also paid to us only by the end of the year. That is all.”* – Panchayat member, Masinagudi Panchayat.

Kerala on the other hand, presented a different experience and perhaps more aligned with the true spirit of decentralized governance as envisaged by the State.

* Kerala: Pinnacle of political decentralisation

A world bank study in 2002 had declared Kerala as having one of the best decentralised governments with complete fiscal decentralisation measures (V. Venugopal and S. Yilmaz, 2009). P. Evans, 2002 reflects on how Sen has used Kerala as an example of effective social service delivery and the use of institutions for the same. The historic background for effective and intensified decentralisation in Kerala culminated with the People’s Campaign for Decentralised Planning in 2006 (C. Johnson 2001)

In a state such as Kerala and a few other states, poverty is viewed as a human rights issue where decentralisation is sought to be an effective tool to address this problem, (G. Mathew 2003). Actual improvement in accountability is seen as a result of political pressure generated by fierce competition amongst political parties contesting in state elections. This has also made funding more transparent, accountable and autonomous. Data collected through semi-structured interviews administered on panchayat officials belonging to our study site in Kerala, reiterated and elicited the following features:

#### Elections and devolution of functionaries

Kerala is one of the few states that has implemented the Model Code of Conduct for panchayat elections (A. Sarma, D. Chakravarty 2018). Decentralised bodies being downwardly accountable and seen as the closest service delivery mechanism, elections to these bodies cannot be delayed as the same will be questioned by the people. Our interviews elicit that, even secretaries who are Central Government appointees are accountable to the people and this mirrors the concept of ‘political decentralisation as defined by (J. Ribot, A, Agarwal, A. Larson, 2006). The state of Kerala does not reserve the right to make appointments to Panchayats (C. Johnson 2003). It follows a separation of powers principle wherein; administrative bodies are appointed by the State and Legislative bodies are elected.

#### Devolution of Funds and Gram Panchayats as autonomous decision-making bodies

An important aspect of decentralisation is that local governing institutions are not dependent on higher authorities for funding (J. Ribot, A, Agarwal, A.Larson, 2006). Through the interviews of Panchayat Secretaries, we had the opportunity to view a draft of Gram Panchayat fiscal plans which are reviewed every year. The secretary also pointed out that Kerala is one of the few states that still follows a Five-year plan for PRIs. Where indigenous population resides, special allocation is made under the tribal sub-plan for fulfilling development needs of indigenous population. This is in proportion to their population. This did not exist in the case of Tamil Nadu, where a majority felt that tribal development did not receive as much attention as a majority of the funds were used for the development of other communities who were a majority. They conduct social audits for major schemes such as MGNREGA. These social audits are carried out by the social audit committee where performance evaluation is conducted by citizens (V. Venugopal and S. Yilmaz, 2009). The authors point out that it is one of the most fiscally decentralised state where, 62% of the total budget allocated by the state is devolved to Gram Panchayats.

“*We are the only state that still formulates five-year plans for Gram Panchayats. The Gram Panchayats get a yearly allocation from the State budget which is independent of the Block and District level panchayats. Apart from this where there is a tribal population, 10% of the funds are segregated for them under the Tribal Sub-plan. We provide for realisation of development rights under this.”* – Pothukal Gram Panchayat.

#### Devolution of Functions

Kerala was one of the few states that had taken up the task of harmonizing laws and Kerala is lauded for enacting a strong legislation that carries the 73rd amendment in its form and spirit. Harmonizing means amending state laws to provide for jurisdiction of functions to be brought under direct control of panchayats (A. Sarma, D. Chakravarty 2018). All 29 functions have been assigned to the panchayats with effective amendment to legislations rather than executive orders like in the state of Tamil Nadu.

## Gram Sabha/ Oor Kuttams – Traditional institution of self-governance amongst indigenous communities

### Introduction:

“Gram Sabha” or “Oor Kuttams” is the traditional institution of self-governance at the village or hamlet level. It is also recognized as the unit of decentralised forest governance under the FRA. It is a mechanism through which indigenous members can achieve self-determination and make key decisions of relevance to their respective village and the wellbeing of its residents. Although these institutions continue to serve important traditional roles linked to the communities’ socio-cultural practices, under the FRA, the Gram Sabha has the following powers and functions (K. Kumar, N. Singh, J. Kerr, 2014):

* The power to collect, verify and determine the extent of rights based on applications from the community,
* Power to recommend the clearance of certain amount of forest land for development purposes
* Power to determine the use of forest land – (Consent of the village assembly is required for clearance of forests by state for development projects)
* Consent of Gram Sabha to approve resettlement packages
* Protection of wild life, forest biodiversity, water resources and habitat of Forest dwelling communities

The primary and most important consequence of making the Gram Sabha or the village assembly as the central decision-making body in these key areas is in effect a recognition of right to self-determination. Autonomy is viewed as a legal instrument that empowers indigenous communities to “discuss, prioritise and specify” sets of capabilities that they have reason to value (C. Binder &C. Binder, 2016). This is primary for development as defined under the Capability approach. The author also emphasises that, such autonomy helps them choose their own path of development as prescribed for under FRA, and hence grounding the powers of Gram Sabha into the Capability approach is essential. This is because the central aim of the theory, is ensuring freedom to choose what one has reason to value.

### Working of the Gram Sabhas – Factors influencing its working, strengths and weaknesses in both study areas

Indigenous self-governing institutions have existed since pre-colonial times all over the world. In fact, historians were of the view that forest villages were self-sustaining villages, with a political structure that governed resource ownership (Guha 1989). Guha, also emphasises that prior to Colonialism, the native rulers had little interest on forest dwelling communities and their use of resources. Ownership of forest were vested with forest communities living within each village boundary. Guha stresses that, this forest dependence was “*institutionalized through a variety of cultural- and religious mechanisms which enabled the forest dwellers to reproduce their existence*”.

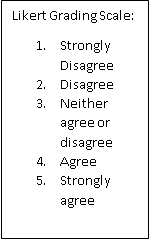
Hence the event of colonisation, laid direct interference with indigenous self-governance and their autonomy (A. Nimesh, 2022). Here, it is argued that the powers of self-governing institutions were such that several revolts, tribal insurgencies and peasant movements were seen as derived from a basic instinct to protect self-governing institutions. That is to say, protection and preservation of self-governance was seen as the key factor behind such movements.

Although a legislation exists to empower communities, actual benefits of such empowerment is yet to reach the community. With reference to Community Forest Rights, Gram Sabhas have lagged behind in claiming their rights owing to the authoritative superiority of the Forest department (K. Kundan, N. Singh, Y. Rao 2017). Lack of capacity building and knowledge from the side of communities have weakened Gram Sabhas often leading to exploitation and distortion of the rights claim process by the State. Given below are certain crucial aspects that are required for empowered Gram Sabhas which are lacking in both states surveyed and Gram Sabhas studied.

#### Role of trust in self-governing institutions, assessing members’ interest in participation and frequency of occurrence of Gram Sabhas

Results:

The graph below shows the mean scores of two questions, frequency with which Gram Sabhas take place and people’s interest in attending them:



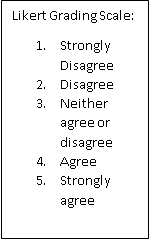
*Figure 1.1 represents responses on frequency of occurrence of GS meetings as compared to earlier days*

*.*

*Figure 1.2 measures interests of people in participating in Gram Sabha meetings*

Our analysis indicates that in Figure 1.1, the question was in the form of an affirmative statement that GS’s took place as frequently as in earlier days. The average population in three villages felt that Gram Sabhas do not take place as regularly as it used to when they were younger or as it did in the previous generation as the majority disagreed to the statement.. In Appankappu as per figure 1.1, Gram Sabhas was a rare occasion and the population size and general unavailability of people were cited as reasons for not conducting Gram Sabhas. Majority had neither agreed or disagreed to this question. In Pulimunda as well a majority have disagreed that GS’s took place with the same frequency as it used to.

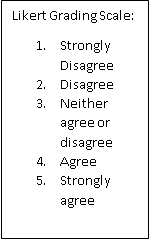
Figure 1.2 shows that in Tamil Nadu when asked if they were disinterested in taking part in Gram Sabha proceedings, an average has answered that they disagreed in Vazhaithottam while the average remained neutral in Anaikatty. A possible reason for the reply in village 2 can be because, a majority surveyed were women, who replied that they preferred to stay in their homes as their husbands attended these meetings, while some believed that there was no use for their participation. In Tamil Nadu the question was in a negative format while in Kerala the question was a positive statement due to differences in translation from English to Malayalam. Hence in Pulimunda majority answered that they were still interested in attending GS meetings whereas in Appankappu the majority answered that they were disinterested.

Indigenous self-governing institutions are formed and continue to work on trust and cohesion amongst its population (W. Nikolakis & H. Nelson 2018). A study conducted by the authors reviewed the role of trust in self-governing institutions and factors that build and influence this trust. Kinship and informal ties formed a part of this and the Tribal hamlets studied consisted of persons tied by kinship relations either biological or affinal. Another study by (Da-Wei, Ai-Ching 2009) reported on how the ability to effectively manage communal resources, was influenced by the strength of trust amongst communities. 

*Figure 1.3, The above table shows our assessment on people’s responses to the affirmative question on whether they trust and believed, their self-governing institutions to aid in resolution of their issues and problems*.

Our analysis indicates that in vazhaithottam the average responded that they neither agreed nor disagreed on the issue. Upon insisting on an explanation it was pointed out that the Gram Sabhas rarely took place in this area and factions amongst indigenous persons existed where those in opposing factions felt that their issues will not be resolved adequately. Some also felt that personal issues should not be taken to the public forefront. In Anaikatty the average agreed that they will get a resolution through their self-governing institutions as people still gathered to talk on important issues. In Pulimunda, people had a neutral opinion on the efficacy of Gram Sabhas to resolve issues pertaining to them and in Appankappu some have agreed to a certain extent that they may get a solution.

*Figure 1.4 represents opinions of people on whether they believed that there exists a lack of cohesion in their village*



Our analysis indicates that in both the villages in Tamil Nadu, the average opinion was that there exists a lack of cohesion amongst the cmmunity which according to them has majorly impacted the frequency of GS. In Kerala both villages have neither agreed not disagreed on the same.

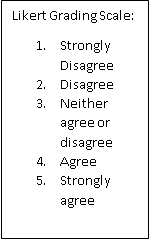
*Figure 1.5 represents opinion on the impact of strengthened unity within the village on the GS and its functioning.*

Our analysis shows that in Table 1.5 a majority of members in Tamil Nadu believe that strengthening their unity will help strengthen Gram Sabhas and help indigenous persons claim their rights and determine autonomy. In Kerala, members in Pulimunda had agreed on the same while members in Appankappu remained neutral on the issue which. The possible explanation for taking a neutral opinion can be that they do not understand the functions of the Gram Sabha and given the large population find it tough to mobilise support. To support this reasoning, given below is an excerpt from members of Appankappu which was brought out during the FGD. Upon asking what the members understood were the powers of the GS with specific reference to NTFPs collected the following was the response,

“*The people do not know that they can use oor kuttam to determine the rates (for the sale of NTFPs). Yes, we do have ‘oor kuttams’ but they do not gather for such issues as these.” – Member Appankappu colony.*

#### Role of Joint Forest Committee bodies and parallel state bodies- Influence on Indigenous self-governing institutions

Figures 1.6 & 1.7 represents the responses on whether indigenous members viewed JFM bodies as state exploitation and subsequently whether this has crippled the roles and functions of GS respectively.



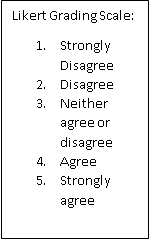
In the state of Tamil Nadu as per figure 1.6, where JFMs have a stronger presence, the respondents felt that there was increased state exploitation. This was also because these bodies perpetuated colonial mechanisms of forest exploitation such as contractual forestry where indigenous persons were reduced to mere labourers with no power to determine prices for forest products collected by them (Guha 1983). In Kerala on the other hand, villages did not feel the same, due to more streamlined arrangements for the collection, value addition and sale of forest products through JFM bodies ( such as the Vana Samrakshana Samiti). These arrangements continue to have a strong presence and it also enjoys more legitimacy and support from the Forest department, due to the joint nature of governance and decision making embedded within these arrangements. The community members however, did not understand the nuances of the right to determine prices and the power to self-govern that CFR and its provisions offer, that can be enjoyed if such bodies were not present.

Figure 1.7 shows that for both villages in Tamil Nadu respondents agreed to some extent that existence of JFMs hampered functioning of Gram Sabhas, while others did not know that JFM functions can be performed by the GS as well. For Pulimunda in Kerala, after explanation on the powers of Gram Sabha to collect and determine prices of forest produce, they were of the opinion that Gram Sabha’s powers were being hampered. Whereas in Appankappu in Kerala, the members still felt that JFM bodies were their best connect to a market place and since they were unaware of the role of Gram Sabhas and its powers under the Act, the respondents neither agreed nor disagreed on the same.

Joint Forest Management (JFM) was envisaged to include indigenous communities and other forest dwelling communities in forest management plans formulated by the Forest Department. JFMC’s came into being after the National Forest Policy,1988 which in turn led to the formulation of central guidelines for Joint Forest Management (JFM handbook). But this was sought to be replaced by FRA which sought to devolve powers of governance with respect to forests directly to indigenous self-governing bodies. Although JFM’s have been constituted by way of an executive decision as a participatory model, it is only on paper that community participation exists. In reality, the unequal power relations that exist between the state and the indigenous community places the state in a superior role, often making unilateral decisions (S. Kumar 2020). Climate change policies also reiterate the role of JFMs in conservation, not introducing into mainstream narratives, FRA and the role of indigenous communities (A. Aga. C. Choudhury 2019).

#### Non- participation - socio-economic disadvantage, knowledge gap and fear of authority

In continuation with the above theory, some reasons cited for non-participation in self-governance efforts is the lack of resources. Majority of the participants were daily wage labourers and some had replied that attending a Gram Sabha meeting would mean that they would have to forgo a day’s wage.



*Figure 1.8 represents responses on whether people felt that attending GS meetings, and discussions on rights was difficult as they were daily wage labourers.*

*Figure 1.9, additionally people were also asked if the rights claim process was an expensive affair and they require NGO’s to bear the cost burden.*

Our analysis as per figure 1.8 indicated that the average opinion was that they agreed that they require support economically and that they felt it was difficult to forgo a day’s wage and attend GS meetings and awareness programs. As per figure 1.9, the mean score of villages in Tamil Nadu the average have agreed that it is an economic burden to follow up and an NGO was required to bear the costs of travel to administrative offices for following up.

Knowledge gap:

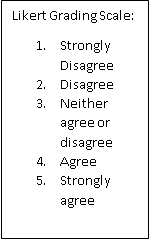
For indigenous communities, historical injustices coupled with isolation from mainstream society makes them vulnerable to be at the receiving end of the resulting information asymmetry. Given fast paced societal transition, marginalised communities sit at the bottom of such asymmetry (C. Falck 2013). Hence to improve upon such knowledge gap, affirmative action goes a step further than mere equal treatment laws (A. Wickerlgren 2005). Most forest dwellers are beneficiaries of affirmative action programs yet, affirmative action to make forest dwellers aware of their rights especially forest rights is lacking. NGOs have tried to bridge this gap, but departments still pose a threat by way of cancellation of permits etc. T

he following excerpt from community members of Appankappu, one of the study areas, collected through our FGDs , portray this:

*“Because they do not know about the law, they are scared of the forest department, to even attend meetings that are supposed to sensitize them about the law. The previous generation especially was scared. A few years ago, it was all under the control of the forest department, now we have ITDP and a person from the ITDP is present to talk to, but before to talk to these officers we were scared. Before all when the kids used to see them, they used to run out of fear. Since the community has been living inside of the forests when any outsider comes, they are afraid.”*

### Nature and Role of village leaders and impact on indigenous self-governance:

Our analysis on the opinions of community members on the roles and responsibilities that they denote to village leaders and their perceptions on performance of their leaders on the same, gave the following results:



*Figure 1.10 represents data on the opinion of the community on whether they felt that village leaders had a major role and responsibility in taking forward the rights claim process.*

For our research purposes, the leader in each village is the current leader and in case of change in leadership that is recent such as a 1-2 months difference, the leadership of the immediately preceding member was assessed. When our respondents from the different sets of village in TN and Kerala were asked if the village leaders had a major role in initiating self-governance efforts and in the rights claim process, the average as per figure 1.10 in the three villages were of the opinion that the leader had a major role. In Appankappu neither agreed nor disagreed (figure 1.10). Once again this might possibly be due to the limited knowledge they have about the powers of self-governing institutions and its major actors. Village leader in this village was respected but also referred to as not capable of performing day to day activities owing to his old age.

*Figure 1.11 shows the assessment by the people of their own village leaders on the leader’s fulfilment of roles and responsibilities.*

Additionally, we asked respondents about their perception on the actual performance of their leaders in terms of their roles and responsibilities (See figure 1.11). When asked if they believed that their leaders did not do much to fulfil their responsibilities as leaders, average opinion of members in vazhaithottam in Tamil Nadu agreed to this. This is possibly because, most members interviewed believed that the leader acted to fulfil selfish interests and did not prioritize the interests of the village. Members in Anaikatty believed that they had a strong leader who took positive steps to realise their rights and other issues. Therefore, the average score represents disagreement to this question. Both villages in Kerala have neither agreed or disagreed to this question (See figure 1.11).

While presenting an intriguing finding, Kashwan (2010) observes how, in India, the presence of strong local leaders can have negative implications on a community’s claim-making process for rights under FRA. This argument draws attention to how private interests of local leaders (by associating with entities that they stand to privately benefit from) can, at times, act as impediments to the overall growth of a community. Larson’s work with Guatemalan indigenous leaders, destabilizes the long-standing rhetoric of whether liberal democracy that equates to giving various stakeholders equal opportunities to voice their opinions through participation in integrationist models of working, can be taken as a thumb-rule to move ahead (Ribot, Chhatre and Lankina 2008).

Mode of appointment:

Village leaders are viewed as heads of Gram Sabhas and the final decision-making authority or vote holder. In some cases such as in Anaikatty in Tamil Nadu the Village leader is elected by a majority vote in the Village assembly/ Gram Sabha, whereas in Vazhaithottam in Tamil Nadu and in most instances in Kerala, it is through kinship ties. A particular bloodline/family is seen as carrying and passing on the role of leadership. The graph above represents peoples’ opinion on how they viewed the leader of the village and their responsibilities, and whether in actuality these leaders have fulfilled such responsibilities. Unlike Panchayat elections, for determining village leaders, election here is more informal in nature and legitimacy of leadership is derived from existing norms and cultural values.

### Linkage between Panchayat Gram Sabhas and indigenous self-governing institutions- The story so far:

The central decision-making unit under the FRA is also termed as the “Gram Sabha”. But the Act carries its own definition of the Gram Sabha to include a larger and more specific definition of a village, and also areas where no panchayat exists. This is the nuanced difference between the “Gram Sabha” under the FRA and the Panchayati Raj Act (Sourish Jha 2010). It is to be noted that these terms should not be used interchangeably as each state has its own definition of “Gram Sabha” under the Panchayati Raj Act. For instance, in West Bengal where rules were notified by the state converting “Gram Sabhas” under FRA into “Gram Sansad” units under Panchayati Raj Act, led to severe consequences as it restricted freedom of diverse communities living in different hamlets within the same Gram Panchayat (Sourish Jha 2010). This will be the case if Gram Sabhas under FRA were interpreted to mean the same as a Gram Sabha under the Panchayati Raj Act, where individual tribal hamlets may not have a say in decision making, and their issues will not be brought to the foray.

The term “Gram Sabha”, is often used interchangeably to refer to local governance assemblies. Both the Panchayati Raj Act and FRA make reference to such village assemblies but they carry different and specific meanings to it. The unit of “Gram Sabha” under the Panchayati Raj system is used to refer to ‘village assemblies’ and are called by different names in different states, for instance in West Bengal it is known as the “Gram Sansad” (Sourish Jha 2010). “Gram Sabhas” considered the epitome of decentralisation and the back bone of grass roots democracy (M. Nambiar 2001). For states definitions of these terms differ. Our interviews elicited the following differences in how Panchayat level Gram Sabhas work in the two states- TN and Kerala.

In TN, Gram Sabha was seen not to be held at each village/hamlet level. Gram Sabhas took place on specific dates where all villages under each panchayat gathered and only on other very special occasions were the Gram Sabhas convened. This was similar to the situation in Rajasthan and Haryana (M. Nambiar 2001). A member from the Masinagudi Gram Panchayat states as follows “*We conduct it four times a year. January 26th, May 1st, August 15th and October 2nd”.* Since the dates are fixed, and the law mandates that Gram Panchayats conduct Gram Sabhas at least four times a year, any Gram Sabha that occurs outside of this is referred to as a special Gram Sabha – “*This is for 100 days work, energies, women’s self-help group and for children’s programs.*”. But these are not considered as regular Gram Sabhas. Since the frequency of occurrence of such meetings are fewer in number, and the tribal hamlets are scattered across different panchayats, there is a common feeling that issues specific to forest dwelling tribes are not taken up. In fact, members have stated that issues such as FRA are often not discussed in Gram Sabhas making them less representative in character. This disconnects the (panchayat) Sabha from the Gram Sabha (M. Nambiar 2001). A few excerpts from interviews that mirror this in Tamil Nadu are given below:

“*In the Ebbanad panchayat only Anaikatty is a tribal hamlet other than that there are some SCs. For all other villages it is non-tribal and SC. In the Gram Sabha, the topic of FRA is not dealt with at all. We take the topic and speak about it but the panchayat does not talk about it.” -* Member, Masinagudi GP

*“Usually what the people ask for are about the need for houses. They will ask for house repairs, water supply, almost all their problems are brought to the Gram Sabha. They haven’t spoken about FRA in the Gram Sabha.” -* Member, Masinagudi panchayat.

In each of these instances since the Gram Sabhas are held as a congregation of all villages, individual village issues tend to be left out. To improve decentralisation efforts, it is suggested that a sense of belonging is created amongst the people in a Gram Sabha (M. Nambiar, 2001). But this is not the case for Tamil Nadu. An insight into Kerala’s working of the Gram Sabha on the other hand portrays how Panchayat Gram Sabhas based on their working are more receptive to local needs.

Kerala: In the case of Kerala, Gram Sabhas conducted by the Gram Panchayats, have a well-defined structure as per the law. The powers and functions provided for under the Kerala Panchayati Raj Act, 1994 gives a specific definition to the body that comprises the Gram Sabha unlike the Tamil Nadu Act, where the definition is ambiguous and vast. Some quotes from interviews of Panchayat members are given below for a better understanding of its working:

*“We conduct Gram Sabha with the help of the ‘Oor Kuttams’. Earlier we conducted so many times, before the commencement of Covid we had conducted many times. For the forest rights purpose also and other Gram Panchayat purpose also it is conducted”-* Karulai Gram Panchayat.

There is also a better understanding in the case of Kerala about how Gram Panchayats interact with the indigenous self-governing institutions. This is observed by the below quote on how resolutions by indigenous self-governing institutions are given sanctity “

“*When an oor kuttam takes a resolution, if it has to be approved by a member of the board the authority is the President. If the resolution has to be submitted to the panchayat for some works then the board member signature is required to authorise the resolution and sanction these works. In case for a work that needs the authorisation of other departments then the president is the one that forwards these claims to other departments. We have given requests by colony members to reside in a particular area through the president only.”* – Karulai Gram Panchayat.

The above quote indicates the symbiotic relationship that Gram Panchayats have with indigenous villages and their respective grama sabhas or “ooru koottams” where, when there is a need, indigenous members in each village invite their ward members separately. The general procedure that could be gathered through these interviews is as follows, an issue is raised by members of a particular village and ward member is summoned, here a date is derived at for conducting the Gram Sabha in the presence of the ward member/ President and a resolution is sought to be passed on the same. Therefore, there was more support for local issues from each village. This also shows the way in which tribal communities and their Gram Sabhas, having the legitimacy under FRA, utilizes the provision and works in conjunction with the Panchayat Gram Sabha and other line departments as envisioned within decentralized arrangements under PRI and legislations such as FRA (2006)

### Influence of external entities on local communities and institutions

During the FGD’s conducted, members, especially in the state of Tamil Nadu had described that meetings sometimes even “oor kuttam” meetings that involved discussions on FRA and other rights based issues were only discussed when an external entity such as an NGO was present. Hence a survey question was posed to understand if meetings pertaining to FRA only took place if an external entity such as an NGO initiated the same.

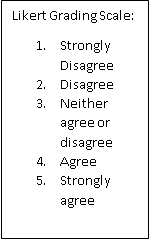


Figure 1.12 represents responses to the question whether NGOs influence the occurrence of GS meetings where rights-based issues are discussed.

Our analysis shows that in the case of Tamil Nadu, in vazhaithottam, “oor kuttams” were a rare occurrence in itself. A majority of our respondents ‘agreed’ that meetings or gatherings in the village were only held if an external entity was present. This is especially in the case of discussions on FRA and other development issues. In the case of Anaikatty, the respondents were mostly neutral on the issue. Some reasons- for this was a community with a proactive leadership with members who have filed for CFR and repeatedly followed up with the process. Amongst the women interviewed they were mostly of the opinion that they did not attend most meetings and hence were not aware of these meetings facilitated by NGOs. Others were of the opinion that members participated in meetings irrespective of the presence of an external entity. An external entity according to them was required to only generate the required awareness or provide a start to the process.

In the case of Kerala, a majority of members in both villages were of the opinion that presence of NGO’s didn’t have an impact on the functioning of their self-governance bodies. This was because in the case of Kerala, NGOs spread awareness from outside of their villages and discussions on FRA and other community/village development related concerns were held most often outside of their villages, and inviting few members from the different villages.

# II.

# Working of various bodies of local governance and democracy in the context of FRA implementation and development rights

### Role of panchayats and factors influencing the implementation of FRA

Under the Forest Rights Act (FRA), it is the panchayat that is tasked with the convening of the Village assemble/ Gram Sabha, for the purpose of beginning the FRA process. The Panchayat is to be present in the election of members from the Gram Sabha to for the committee (the Forest Rights Committee (FRC) tasked with the responsibility of implementation of FRA. In a case study of Badugada Gram Panchayat, belonging to Kalyansingpur block, Rayagada in Odisha, it was the gram panchayat that was acknowledged to have played a crucial role, especially in the beginning stages of implementation (S. Rout, 2018). A continuous series of events, led and monitored by the Panchayat beginning from convening the Gram Sabha to start the process to capacity building and aiding in follow up had led to the village being granted Community Forest Rights.

Even though the two states portray two different workings of local governments, with respect to the implementation of FRA some commonalities can be noticed. These are:

#### Lack of knowledge/ understanding of the law

Almost the majority of the officials interviewed in both states have stated that they have minimal to negligent understanding of the law. The panchayat secretary of one of the panchayats in Kerala has stated the following, “*FRA is not a subject matter that panchayats are responsible to deal with but it is the responsibility of the respective state administrative departments”.* No efforts have been made to build such capacity as implementation of FRA is not viewed as a development right. Lack of capacity hampers the ability to plan and execute implementation and allocate the required financial resources for the same (D. Narayana 2005).

#### Lack of Political will

In one of the interviews, the Panchayat secretary of Kerala elicits the following response “*For these things I think political will is a must here. They (tribals) are not a big vote bank. I am frankly saying everything you know. They are a simple vote bank for a ward with only 300 votes maximum. So, the political leaders are not interested in doing something. These tribals are very small groups and very powerless people. So, no officer is interested in that, no political leader is interested.”*

In Tamil Nadu one of the ward members commented as follows: “*Since we are the only tribal hamlet in our panchayat, they do not even list our issues, especially FRA issues in the minutes of a Gram Sabha meeting”.* It is argued that the strengthening of panchayats in certain states has been a result of political will. It is a lack of political will that leads to “bureaucratic creativity in minimalistic interpretations of the law” (M. Pal 2004). Amongst the elected representatives, there was also no representation of forest dwelling communities in the panchayat body, in our study sites, in both the states.

#### Dominance of Forest Department/ Convergence with line departments on claiming developmental rights:

The most prominent hurdle to achieving decentralised forest governance is the presence of colonial institutions that deter such efforts. In India, the Forest department set up as a colonial mechanism to govern and preserve forests plays that role (Guha 1983). The region of Kerala being home to teak and rubber plantations (Guha 1983) and Tamil Nadu home to Tiger Reserves follows colonial concepts of fortress conservation. The forest department has been a major impediment in the implementation of the Act in such areas. Several Panchayat members were also of the opinion that since the land comes within the jurisdiction of the department the will to implement rests on this department. In one of the interviews the panchayat secretary commented the following

*“FRA implementation is not through the Panchayat, it is through the forest department and the ITDP. These are the ones involved in the implementation. This comes under conservation which is under the central government and state government act and forest department.”*

*This is both an interesting and startling perspective and indicates the power of long historical associations between the FD, the tribal communities and the forest. Despite constitutional legal provisions where role of the FD is delegated to mainly work in conjunction with other departments (as part of the DLC and SDLC) in the approval of recognition process, it continues to exercise its exclusive power and will over the forest.*

#### Peoples’ opinion on panchayat aid for implementation of FRA

Figure 2.0 represents responses for the question whether knowledge of any aid from panchayat institutions for implementation of FRA exists.

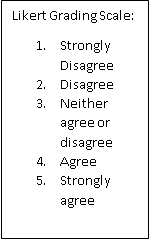


Figure 2.1 represents responses on whether people felt that being a part of non-tribal panchayats, they perceived spending on tribal issues to be of lesser importance.

Our analysis of both these questions shows that the average for all villages is within the range of 3-3.4 (See figure 2.0). This shows that people were not aware of whether they had received any spending and hence neither agreed or disagreed. Figure 2.1 shows that most of the people agreed that they had received less attention and spending from panchayats owing to the fact that they were non-tribal panchayats. Even though Kerala has a separate fund allocated for the benefit of ST development and welfare, the general perception was the same as TN.

### Kerala -moving towards a positive example of decentralised decision-making aiding indigenous self-governance:

A case study of the Pulimunda village (one of the four study areas) shows us how, strengthening indigenous self-governing institutions can put adequate pressure on Panchayats to aid in realisation of development goals. Pulimunda colony is one of the three villages that split post the Kerala floods to occupy different parts of the forest, away from their originally allotted forest land as it was found to be flood prone and inappropriate for cultivation.

Their settlement had been unrecognised for a period of two years, often being referred to as a ‘colony’, such as every other tribal settlement in Kerala, the term denoting unrecognised settlements. Through continuous meetings of the Gram Sabhas in Pulimunda, a final Gram Sabha was held along with the panchayat in which the panchayat had aided the passage of the resolution to convert the ‘colony’ into a ‘village’, providing for legal recognition as an authorised settlement. The panchayat had called upon revenue officials to witness the process as well. This is a slow movement and an indication of how strengthening indigenous governing institutions can in turn use functioning decentralised state bodies to aid realisation of specific development needs.

NGOs have also been able to organise awareness campaigns with the aid and participation of panchayats. This has led to positive outcomes with ward members responsible for tribal wards coming forward in instituting discussions amongst tribal groups.

## Factors influencing FRA implementation at the level of the Gram Sabha

Apart from the factors listed in the above chapter on what determines the strengths and weaknesses of Gram Sabhas, a more specific problem with respect to FRA implementation is capacity building.

#### Decentralisation without capacity building

It is often a conflicted opinion that powers should not be devolved if the necessary capacity is not present (J. Ribot, 2003). The author argues that there should be devolution of power first followed by capacity building and lack of capacity should not be a reason to not devolve powers. FRA is the first step to manifest such devolution of power. But in practice, implementing authorities and conservationists continue to deny Gram Sabhas their rights citing lack of capacity. Here, the status quo is maintained and used to continually justify denial of rights. There is sufficient evidence to show that once actual power is devolved and granted, capacity building follows and hence rights must be granted irrespective of capacity and not denied. (J. Ribot 1999).

When respondents were asked if lack of awareness on FRA influenced poor participation of GS, majority were in agreement, particularly in Kerala, indicating a lack of capacity. Similarly when respondents were asked of their perceptions of implementing authorities and their lack of awareness on FRA, majority of the respondents, particularly in TN, indicated a strong agreement, also an indication of lack of capacity. While in Kerala a majority in Village 1 have agreed, in Village 2, majority neither agreed nor disagreed on the same.

Figure 2.2 shows responses to whether they agree that “unawareness of FRA and its provision was a reason for non-participation in GS”,

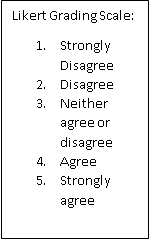


Figure 2.3 shows the awareness of people of the implementing authorities about the Act..

Our analysis shows that, in all areas, the average have agreed to the statement that their lack of understanding of FRA poses as a hurdle to discuss the same in GS’s and inturn affecting their participation in GS (See figure 2.2). The analysis also indicates that neither of the villages are aware of who are their implementing authorities. The first three villages have agreed that they are unaware of their implementing authorities whereas members in Appankappu have largely neither agreed or disagreed to this statement (See figure 2.3).

A study of decentralisation efforts in Zimbabwe has indicated that decentralisation must accompany capacity building, but this is a long drawn and often frustrating exercise owing to certain human factors (D. Conyers 2003). In our survey the human factors were illiteracy, gender, type of work engaged in, where in Tamil Nadu and Kerala a majoriy of women surveyed indicated that they are unaware as they do not participate in decision making.

A few excerpts from focused group discussion from the villages of Appankappu and Pulimunda in Kerala reiterate this point:

“*Things such as where one should go and the path forward, how to go about in securing these rights, in knowing and imparting this knowledge to us is what I think that an NGO must do for us. We need guidance with respect to procedural things such as where do we submit our applications, where do we submit our pleas, what is to be given to the panchayat. Such information must be relayed to us. Because there are a lot of things we do not know and there is no point in going forward without knowing. If we know the way we will do it.”*

These are surprising outcomes, particularly in the Kerala context where literacy and women’s empowerment are generally touted as a success and above the curve. The fact that these assessments were carried out in the context of tribal communities and their efforts to access their rights under FRA, highlights the neglect and/or poor access and priority these communities have experienced, despite the above average developmental outcomes and political awareness and engagement demonstrated by the state.

## Role of implementing authorities, SDLC&DLC in implementation, hurdles posed to the path of implementation – convergence and other issues

Forestry in India continues to be embedded in colonial policies. During the colonial era, creation of protected and reserved areas for exploitation of timber ensured that communities living within and around these areas suffered colonial injustices (Guha 1983). Post-colonial forestry carried on the same notion of state-owned forests and exploitation continued under the garb of industrialisation and modernisation (Guha 1983). The ever-expanding creation and maintenance of ‘protected’ and ‘reserved’ is one such example. This method of conservation known as “fortress” conservation works on the assumption that biodiversity conservation is best realised through the creation of areas isolated from human interference (L. Domínguez and C. Luoma 2020). This is done by penalising local entry into forests through ranger patrolling and only allowing certain activities such as tourism, co-management and collection of specific NTFP, and research etc to function in the demarcated areas (L. Domínguez and Colin Luoma 2020).

Given the pretext, the key departments and administrative bodies formed to implement the Forest Rights Act, are as listed below:

* Sub – District Level Committee (SDLC): Consists of three members from different departments, authorities at the sub-district level and three members belonging to STs from the Block panchayat.
* District Level Committee (DLC): Consists of three members from the departments, authorities at the district level and three members belonging to STs from the District level panchayat

Departments charged with implementation:

* The State Forest Department
* The State Revenue Department
* The State Tribal Welfare Department (Implementation of FRA comes under the Ministry of Tribal Welfare).

### A review of the working of implementing mechanisms in Tamil Nadu and Kerala

Semi-structured interviews were held with members of both SDLC and DLC in the states of Tamil Nadu and Kerala. To simplify the understanding of barriers to the process of implementation, we will analyse interviews department wise, and within each department the working of the department in each state. Later, the communities’ views and perceptions will be looked into. Finally departmental barriers and hurdles which stay unresolved by FRA will be discussed to understand how processes do not take into account the historical injustices faced by the community and its slow-paced implementation efforts.

#### Forest Department:

In each of the two states, the biggest barrier to implementation was posed by the forest department. Literature on issues pertaining to the implementation of the Forest Rights Act, have pointed that the Forest Department through measures of authority has obstructed the implementation, often with the use of powers delegated to it under the FRA itself (J. Lee, S. Wolf 2018). Moreover, even though the Act did not place any restrictions on the grant of rights in protected and reserved forest areas, the department in these areas continue to resist implementation on the grounds that these are protected and reserved areas, as in the case of implementation of CFR in Odisha (K. Sarap, T. Sarangi & J. Naik, 2013). Some common themes were drawn for each of the states (TN and Kerala), to understand the department’s view on Tribal rights, barriers they pose to the claim process and continuing treatment of indigenous persons.

Tamil Nadu**:**

From our study sites, two authorities from the department were interviewed, one belonging to the SDLC, and a higher-level authority. Neither of the members were aware of the committees namely, SDLC and DLC, nor were they aware of the kinds and extent of rights provided for under the FRA. Discussed below are some of the common themes drawn from the responses given to us and an analysis of the results is provided for by the end of the discussion.

NTFP collection and livelihoods: The lower authority was of the opinion that NTFP collection cannot be allowed for commercial purposes and used only to ensure sustainability for indigenous persons. To quote “*We are ok with NTFP collection so far it is not commercial. They can collect it for their own consumption, this is because if everything is collected nothing will be left for the wildlife. Hence, we can only allow for the purpose of Self-sustenance.”* In the case of the higher authority, the officer wanted to provide for alternate livelihood opportunities within their areas so that dependence on collection of forest resources reduce. Upon further questioning if CFR should be granted, the response was “*It is an unwritten law and nobody has stopped them from taking resources. They do not necessarily need it on paper as the definition of ST includes certain sets of rights.”*

Relocation, Rehabilitation and right to development: The lower authority favoured the relocation of indigenous persons, as the study area was a protected area, and he felt that alternate livelihood arrangements can be made through relocation. To quote “*We can provide them with sewing machines, jeeps and trucks and these have been successful in states like Madhya Pradesh where tribes have been safely relocated from inside of the forests*”. This in his opinion was also the measure to prevent increasing human deaths owing to wildlife movement. The higher authority did not have much to say on this but also stated that *“Relocation can be done for their own safety as in the case of Tiger Reserves or Protected areas where wildlife movement is to be kept unhindered*”.

Concept of tribes: To quote the response of the authorities on this issue, “*All tribes here are not original in the sense that now a days tribes do not solely rely upon forests, they derive income from sources outside and have multiple ventures. Those original inhabitants who solely depend on forests for livelihood cannot be obstructed from taking forest resources.”* The higher authority makes a statement trying to further define who ‘pure’ tribes are. To quote the response “*Traditional practices have been lost over time and we see a sense of greediness creeping in. This is why they are not pure tribes anymore*”.

Kerala:

When SDLC and higher authorities who are part of the DLC were interviewed, the responses to the the above-mentioned common themes, are as follows:

NTFP collection and livelihoods: In this case both officials were of the view that there exist no barriers to collection of NTFPs. To quote “*we have not imposed any barriers on the collection of NTFPs and we allow free movement inside of the forests as these communities reside inside of forests*”. The DFO further emphasised that “*there exists no right to ownership of NTFP collected, what is granted for them under the Act is the mere usage right to collect NTFP for livelihood purposes. There maybe a right to manage NTFP collection. That is all*”.

Relocation, Rehabilitation and right to development: The lower authority was of the view that tribals have to be relocated and they do not find a place inside the forests. This is because they have grown to ask for more and more development rights such as “solar fencing, building colonies inside forests, electricity facilities etc”. To quote “*the definition of forests only include wildlife and there is no room for people inside it. If all forest resources were allowed to be collected and solar fences built and electrification done, then it will be a threat for the wildlife inside of these forests”.*

The higher authority was of the opinion that if better alternatives exist, then indigenous people should be relocated and development provided from outside of forests. These responses also perhaps had to do with how they perceived the “tribal communities”. For example, both officials were of the view that true tribes don’t exist anymore. To quote the lower authority “*Right now indigenous people want to own jeeps for transportation, ask for development infrastructure inside of forests. These are not what pure/true tribes wanted. Currently they are more money minded*”. Further he goes on to say, contradicting the earlier statement- *“It is also true that if these people were brought out to live in the mainstream it will be difficult for them to adapt as they do not like to sit in chairs and rooms like we do”* although in the end stuck to his opinion that true tribes don’t exist anymore as their asks and needs have become greater..

Responsibility of implementation: The forest administrators took the view that the responsibility to implement the Act lay only with the Tribal department, in Kerala the ITDP. The Forest administrators are present in bodies such as SDLC & DLC to only “object” in case of wrong surveys being drawn or to challenge the forest area mapped for CFR and CFM recognition. It was also claimed by the department that no surveys or maps for rights applications have been submitted to them. The Ranger further went onto say that “*I have no interest in giving them ‘Patta’. It is the Forest’s land and I am being persisted to take part in proceedings such as SDLC by the state revenue and tribal departments although I have no interest in the same*.”

#### Tribal Welfare Department

In the case of the Forest Rights Act, the nodal Ministry charged with implementation is the Ministry of Tribal Affairs (MOTA). While this is the case, bodies such as the SDLC & DLC comprise two other departments such as the revenue and forest. Although vast literature exists on how the Forest Department has hindered implementation, it is complemented by the lack of capacity to implement the Act efficiently by the MOTA (G. Sahu, T. Dash & S. Dubey 2017). It is also pointed out by the authors that no budgetary allocation is made and no training given at the state level for the tribal welfare department and this is of significance as this department only dealt with distribution of ‘welfare schemes’. This lack of capacity is reflected in our interviews of department officials, especially in Kerala who feel that they lack any authority to implement the Act. Some of the key themes for discussion that emerged out of the interviews are as follows:

**Tamil Nadu:**

The Tribal Department in Tamil Nadu which is also known as the “Adi Dravidar welfare department portrays a picture where officials present in both SDLC and DLC are completely aware of FRA and that no objection exists in its implementation. While this is the case, in reality the people feel otherwise. Both the SDLC & DLC members were interviewed from the Tribal welfare department.

Awareness, Role and capacity efforts: Both members were of the view that adequate capacity building measures have been provided to the department and it is also imparted to the people. They view their role as follows “*It is our duty to ensure that title* (recognition of rights under FRA*) reaches them*”. It is also claimed that awareness on survey tools such as ‘satellite surveys’ have also been provided. Upon further questioning as to what the Ministry considered as CFR it was stated that “*CFR means right to common places such as temples, wells, hospitals and community buildings. NTFP collection has not been given as a right as it has not been claimed.”* They further stated that the role of the department was to “*co-ordinate with other departments and provide the necessary information to the revenue department*”.

Hurdles faced during implementation: They stated that the only hurdles they faced was “*lack of capacity/awareness on the part of village leaders*”. While the DLC member stated that another hurdle they faces was “*from the side of RDO and DFO the survey maps and identification that needs to be given to us is not provided by these departments*”, the SDLC member was of the view that no such hurdles exist. It was claimed that “*all forest officials co-operate with the claim process beginning from survey to mapping and no such hurdles were faced by them*”.

As a part of the household survey, we surveyed the community’s views on whether they had received any aid from tribal welfare department as an implementing authority, the following graph represents their response:

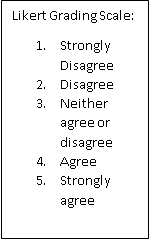


Figure 3.0 shows responses on whether people believed that they did not receive any aid from the ST Welfare Department, in TN for implementation of FRA

Our analysis showed that both the villages had agreed that they did not receive any aid from the department with respect to forest rights. Aid was explained in the form of conducting awareness campaigns, monetary aid for expenses incurred in the claim and follow up process. Also,most of the population was not aware that it is the ST welfare department that is charged with the implementation of FRA.

**Kerala**

In Kerala, the Assistant Programme Officer(PO) and the Tribal Education Officer (TEO) belonging to the DLC and SDLC respectively were interviewed. The common themes derived from the interviews mirrored a complete lack of awareness and lack of authority in implementation. The discussion is as follows:

Awareness, role and capacity: The PO has stated that “*the administrative set up is in such a way that any officer who gain awareness, by the term a complete awareness is gained, such officers are transferred thereby, thwarting implementation efforts*”. It was further stated that “*No staff has awareness of the law especially the newer members*”. The PO also claims that “*its role in implementation is diminished owing to the lack of capacity from side of the community*”. There is also a shortage of staff to implement as even if a separate budget is allocated, requisite staffing to implement the Act is not present. The SDLC member was not at all aware of his roles or functions.

Hurdles faced by implementation: The states that the main hurdle in implementation is ‘*lack of co-ordination amongst the line departments’*. Further it was stated that “*Although the Forest Department claims that duty to implement rests with the ITDP, when the ITDP makes an initiative, the forest department does not give the required sanction and pose permission hurdles to access village areas*”. Another major hurdle was stated to be “*although DLC meetings take place, community members’ participation is minimal as they have no voice in the committee. They lack the necessary awareness on the legislation*”.

Community’s view on support from ST welfare department:

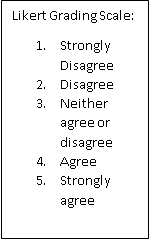


Figure 3.1 represents the average opinion of people on non-receipt of aid from the ST Welfare Department for implementation of FRA

Our analysis indicated that members in Pulimunda had some idea about the responsibilities of ST department and hence some agreed that no aid was received whereas members in Appankappu had no awareness on whether they had received any aid at all and if the ST department was responsible for implementation.

#### Revenue Department:

As per the Act, the revenue department bears a large responsibility to implement the Act. In fact, each of the committees, namely SDLC and DLC is chaired by the revenue department. The department is present right from the beginning of the survey till the end of the process. In the state of Kerala, we did not get the opportunity to meet the sub-collector and the collector and hence the Village Officer who is in charge of the survey process was interviewed. In Tamil Nadu, the RDO who is a member of the SDLC was interviewed and we had the opportunity to take part in the DLC proceedings chaired by the collector. The following are the common themes that arose in both states. .

Awareness: In both states, the Revenue department was unaware of the procedures to be followed under FRA. In the state of Tamil Nadu, the RDO being a new appointee stated that “*he is unaware of the provisions and the progress of implementation so far*”. The officials in the office stated that the office was the repository of maps and that they have taken every step necessary to grant rights and that “*no one is opposed to granting these rights for indigenous persons*”. Yet, no specific knowledge existed on what rights are guaranteed under the Act and the procedural aspects to claim such rights. Both officers in Kerala and Tamil Nadu have stated that no training is imparted regarding the implementation of FRA.

Lack of title to land and impact on claiming welfare schemes and development rights: In the state of Kerala the Village Officer was questioned upon the lack of title to land and impact on indigenous people to claim welfare rights such as flood relief etc. The officer stated that *“Tribals merely have the right to settle in forest land but they do not possess any ownership title to land”.* It was further stated that “*unlike other communities who have to provide Patta to claim relief such as building houses, the same is not required for tribals. A fixed amount is given to them which tribals have chosen to spend on housing and other expenditure*.”

*DLC proceedings- Our observations and insights*

Rather than interviewing key officials heading the DLC, we got the opportunity to be present and observe the proceedings of the DLC, in TN. The following observations made suggests the dysfunctional nature of DLC proceedings, lack of will among the officials to be present for the meeting, or grant the recognition, or expedite the process, and representation of community leaders in the committee more a tokenism than a free, unbiased, representative voice of the people. As a result, multiple instances of set back and delays are experienced by the triabl communities seeking the right, leaving them feeling discouraged, instilling a lack of faith in the system.

* With respect to Community Forest Rights, the sub-collector had claimed that “*the Forest Department has demanded that only satellite mapping be provided as evidence and survey maps and no means of traditional mapping can be accepted as a part of the claims*”. This is expected to cause considerable delay in processing of claims, where it was pointed out that the community had considerably low expertise in using and understanding “satellite mapping”. Although the community representatives in the committee have pointed out that other forms of mapping exist and the the authority cannot demand for one form of mapping alone. In fact it is the duty of the Forest department to provide maps and help with the process. Despite this, a decision to revert the need for digital maps was not taken
* The DFO was not present and the Collector demanded an explanation for his absence as no official from the Forest department was present. On checking with some community representatives who are part of the DLC, the response was that this has become a regular practice in most meetings, where the DFO is not present and often, a lower-level official is sent to make a representation.
* The Collector who is the chairperson of the committee was aware of certain provision with respect to Individual Forest Rights but not with respect to CFR. Community members in the current scenario were well versed with the provisions of the law and aided the meeting by making the necessary opposition and representation from the community. However, to what extent this had a significant influence or outcome is not clear.

#### Community representation in implementing bodies – a community’s perspective:

In both the states of Tamil Nadu and Kerala, community members who were a part of SDLC &DLC were interviewed. This was relatively easier in the state of Tamil Nadu as community members were aware of their membership in the committees whereas, in Kerala, several members were unaware of their membership. Given below are excerpts from interviews in each state;

Tamil Nadu:

The case of Tamil Nadu is different from many states such that, although the Act provides for an elected member from the panchayat to be a part of the SDLC & DLC, an executive order of the Government has overruled this provision. As per the order, representatives from the community such as community leaders are chosen by the State to represent the community in each of these bodies. Hence, they are not elected, but nominated by the state from the community itself. The following excerpts from interviews suggest that these members have a better understanding of the processes than members in Kerala.

Community representatives from SDLC: A member from the SDLC was interviewed and these are his perceptions of the working of SDLC. He has been a part of the SDLC for the last 12 years and is a representative of the “Irula” community. He claims that all CFR applications that have been submitted by the village has not reached the SDLC and no meetings have been kept in the last two years. But no pending IFR applications remain as we have made sure to provide them. SDLC meetings only occur if claims are made and there is no mandate regarding number of times that they should meet or a minimum quorum prescribed. He further states that in the case of IFR claims- *“initially a wrong survey was carried out where measurement of land was done only for the house and even the compound wall was left out. This ensured that title was given for a very less portion of the land. Upon further struggle and opposition, a re-survey was ordered”*. The community member did not have a response to objectors in the process and felt that the SDLC had been responsible in disposing off claims.

Community representatives from DLC: Two community representatives from the DLC were interviewed. Their concerns were similar in nature with respect to these meetings. They stated that these meetings do not take place with the frequency that is required to take place if a speedier disposal of claims is to be done. With respect to CFR both members pointed out that “*department officials especially forest officials had opposed these claims and delayed the grant process”.*

A more important statement is with respect to the period of notice given before the commencement of meetings. Members reported that, they were given a very short notice, for instance a day’s notice or a few hours before the meeting is to be held. This caused considerable problems as these members had to travel from remote areas with no adequate means of transportation. There were instances where they were informed about the meeting, but upon reaching the venue declared that the meeting had been cancelled.

Community members pointed out that department officials had an upper hand in deciding claims while community members did not enjoy an equal say. One of the community members stated that “*I am currently disinterested in attending these meetings as no good emerges for my village from these meetings*”. Claims taken forward by the community are disregarded by the Tribal welfare department as well. They pointed out that, low awareness, disregard for submitted claims by the revenue department as often maps are claimed to be lost, lack of issuance of official acknowledge or receipt of claims application received, disinterest on the part of forest officials, all has been major factors stalling the rights claim process.

erala:

In Kerala no such order exits, hence most often elected representatives are unaware of their membership in each of these committees. Two SDLC members were interviewed and no DLC member could be interviewed as they were unaware of their membership, and claimed that they hadn’t attended any meetings. One of the members interviewed is a new member and hence claimed to have minimal knowledge regarding the Act. He further stated that “*when the sub-collector enquired if I have any knowledge, I said no as I have not received any training on the law*”. Both members interviewed were not part of forest dwelling communities. Both members commonly acknowledged that “*a major responsibility to implement the Act lay with the Forest Department and only if the Department supported the initiative to grant rights then this process can be realised*”. Neither member was aware of CFR and the kinds of rights granted under it.

Community’s response on awareness of existence of SDLC/DLC, knowledge of members in these committees was measured in the HH survey and the following is the response for Tamil Nadu and Kerala:

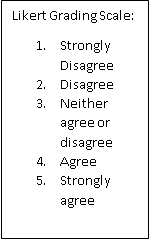


Figure 3.2 represents mean scores regarding awareness about key implementing authorities by community members in TN. Figure 3.3 represents mean score regarding awareness about the key committees by community members in Kerala

Our analysis indicate that in TN the members agreed that they were unaware of these bodies and their composition. The majority were unaware of the existence of such bodies and had not heard of them before. In Kerala the response is similar, although in Appankappu some have disagreed that they were unaware of the existence of such committees and its composition (see figure 3.3).

Some key insights drawn from our interactions and analysis of collected data are as follows:

#### Changing concept of tribes and exploitation by officials resulting from excessive delegation of powers:

It is argued by sociologists and anthropologists that the term ‘tribe’ in India is often misconstrued to denote a degree of social backwardness, primitiveness, illiteracy and simplicity which is not present in mainstream societies (V. Xaxa, 1999). This being the case, the author argues that this connotation mentioned above given to the term ‘tribe’ does not allow for tribes to identify as rights in themselves, representing a particular community governed by certain cultural aspects. The repeated usage of the term “pure tribes” by forest authorities and their claim that such tribes do not exist anymore is again nothing but a reiteration of such misconstrued notion. By calling them “greedy” and not “original” as literacy has crept in, and a desire to find better livelihood opportunities, this does not disown tribals of their identity as an “Irula” or “Kattunaiyakan” irrespective of their choice to continue living in their original habitat or not. It is about continuation of their socio-cultural practices and norms passed down from generations. What must be kept in mind in granting of rights is the fact that the majority still view CFR as integral to them, representing a symbiotic relationship with the physical environment that they reside in (A. Jaiswal 2020).

By using this as an excuse to deny indigenous persons rights under the FRA, is an abuse of authority and delegated powers. The FRA delegates powers of implementation to departments of the state. A problem with such a delegation is that, without proper checks and balances, it can be used as an instrument of control by administrative units who are only answerable to the top and not to the people (H.Aranson, E. Gellhorn, R. Robinson 1982). The department using its own interpretation to deny rights is an instance of this. No checks exist as the FRA does not place any safeguard for downward accountability of bodies such as SDLC/DLC.

#### Community participation in decision making bodies:

The Act is said to be unclear regarding power sharing equations between the community members, NGOs, and the governmental authorities who form a part of the SDLC/DLC (S. Kumar 2020). The author studied three districts in Himachal Pradesh which housed many communities dependent on forests for their livelihood. It was observed that there existed no transparency in the proceedings of SDLC & DLC and even community members forming a part of the committee were not informed of its proceedings. When community members in these committees expressed dissent, these were not recorded or paid heed to. It is similar to the situation in Tamil Nadu and Kerala where in Tamil Nadu the tribal department claims that no objections are raised by the community. According to community members, they say that they enjoy very nominal powers and their dissent is not recorded, they are mere rubber stamps as resolutions are passed and signed off by all, without their real participation. In Kerala, the situation is even worse as members are not aware of their membership in these committees and a majority do not belong to forest dwelling communities.

#### Region specific Socio-political conditions and their impact on implementation:

A study conducted in Wayanad which houses a majority of Adivasis in Kerala, traces the history of dispossession of Adivasis in Kerala from forest land. The author lays down that this region has faced a major impact of colonial forestry and is home to several timber plantations (U. Munster &S. Vishnudas 2012). Further creation of reserved forests and protected areas led to more alienation from land, denial of community rights and criminalisation. They also point that it was the Traditional Knowledge of the tribal communities that was used for forest conservation post-independence. But the socio-political context ensured that the Tribes lived at the mercy of the department often being relocated at the whims of the department to work on plantations etc. This alienation and use of authority to criminalise tribal communities, instilled fear in them, and this has led to their suppression. Lack of community participation and minimal awareness in Kerala can be placed in this context and the Forest Department continues to wield considerable amount of control.

Nilambur is home to India’s oldest and largest teak plantation, a manifestation of colonial authority and resulting stronghold of the forest department. Communities continue to be denied CFR on this context and as panchayat officials point out, no form of decentralised mechanism is effective in fighting this.

#### Departmental inequalities and incapacities:

Literature on the implementation of FRA have all pointed out the inadequacy of the Tribal Welfare department and the Revenue department in realising the rights under FRA (G. Sahu, T. Dash & S. Dubey 2017). The stated reason for this is that the Tribal Department does not have the required capacity. Moreover, there is a demonstrated inequality amongst departments in the implementation as the Forest Department is seen as the sole ‘owner’ of forest land. This vests in the department the authority to impose hurdles on efforts made to create awareness amongst the people. This authority of the Forest Department finds its roots in colonial policy that charged the department with the alienation of people from forests (GUHA 1989). Capacity building is minimal in revenue and tribal departments in both states as pointed out by the interviews administered upon them in both areas. This power asymmetry obviously has implications in the effective functioning of the key committees responsible for the implementation of FRA, as discussed previously. What is also to be noted is the mode of functioning of these government line departments, which are bureaucratic in nature and follow orders, with upward accountability. Under such circumstances, when they are expected to work in conjunction with decentralized institutions such as the grama panchayat and tribal grama sabhas, a collaborative and cooperative system of functioning as envisaged in the FRA, is difficult to see in practice.

## LSGDs perceptions on people led forest management and the importance of right to manage forests for local communities

It was difficult to ascertain convergence/association between departments in development of forest management plans as this has not commenced in each of these areas. CFR’s have not been awarded yet in any of our study areas, but perceptions of department officials on this issue were collected. Further, the importance of the right to manage forest for communities was also documented through the household level survey.

### Forest Department on the role of communities in forest management:

We interviewed department officials from each State, on how they view community led forest management, and their responses were as follows. Tamil Nadu: One of the lower-level officials was of the opinion that tribes should be provided livelihood opportunities to work with the state in the conservation of forests. He stated that almost 80% of the anti-poaching squad and forest staff are tribals and forest management already takes place through them. According to a higher official, tribals were stated to have never traditionally managed forests. To quote “*forest management has never been a traditional practice and hence we can only allow for collection and teach them sustainable harvesting techniques. Grant of management rights is not ideal as I doubt, they can manage forest resources”*.

Kerala:

Forest management: Both the officials interviewed were of the opinion that indigenous persons are incapable of forest management. With specific reference to wildlife, the higher-level authority stated that “*they cannot be entrusted to preserve wildlife*”. The higher-level authority further stated that “*the forest land is owned by the department and it is what the department says, that is the law. Under the Act we cannot give indigenous persons any right to own land or for indiscriminate access. The real owners are the Forest Department*”.

While in the case of communities, members were asked if they played a significant role in forest conservation and management, and the following was their response:

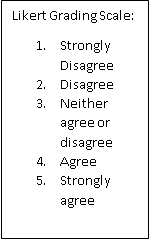


Figure 10 represents Mean score of agreement by community members in TN and Kerala on their role in forest conservation and management.

Our analysis indicated that in both the states the community members agreed that they played a significant role in the conservation and management of forests (See figure 10). Some believed that this role could be taken upon by the people without the intervention of the forest department. While some others believed that since forests were vast, they could do this better with the participation of the department. This view of the community is different to and contradictory to what the Forest department believes, which once again making it difficult for implementing decentralised forest governance.

# IV

# CONCLUSION

Local self-governance is viewed as the epitome of decentralization, which is central to realizing development as envisioned by the capability approach. Here people exercise the freedom to participate and decide on a path of development that one has reason to value, using a participatory model of democracy. In India this is manifested by the 73rd and 74th amendment and creation of the three tier PRI. In this study we have tried to explore and understand how these institutional arrangements function among the minority communities, particularly the tribal communities in Kerala and Tamil Nadu. For Tribal communities, indigenous self-governing institutions are given recognition by way of PESA, 1996 and under the FRA. Through the study we were able to draw some key learning and insights that is expected to inform policy and policy makers, as well as the government bureaucracy.

Key observations:

In Non-Pesa states, decisions continue to be influenced by the dominant communities, where panchayats contain mixed populations of SC, ST and others. It is in this context the FRA came into effect and through our study we have tried to identify how its implementation has been affected. Some factors include historical injustices, institutional and procedural inefficiencies, power asymmetries, and social inequalities – all of these influencing capabilities and developmental outcomes as well. There is also a lack of recognizing FRA as a law that also supports developmental outcomes. Because of this the motivation among implementing agencies and key line departments are weak and this has influence on FRA outcomes. This also limits the possibility of engaging with the Panchayats in accessing resources from the government meant for these kinds of relevant interventions.

Our study also highlighted the role of independent agencies (e.g. local NGOs) in acting as the key facilitating agency, bridging the gaps that exist between the LSG bodies and the key government departments, that requires seamless convergence and cooperation between the different institutions. What is also clear is the power asymmetry and the flow of accountability that are starkly different for the different institutions, that has implications in the expected outcomes. This is most evident in the context of the implementation of FRA, where multiple government departments and institutions are expected to converge and facilitate its implementation. Despite policy and legal arrangements that supports decentralized governance they cannot be taken out of their historical context, particularly the Forest Department, which is top-down and hierarchical. It continues to claim ownership of forest land, local, decentralized, democratic process and institutional mechanisms are seen as irrelevant. This argument also therefore questions the legitimacy of PRIs and the tribal Grama Sabhas as perceived by the Forest Department and therefore influences its effective functioning, particularly in the context of FRA and post FRA. Simultaneously, the power asymmetry that exists between the key line departments, with the Forest Department perceived as “higher authority” influences the convergence that is envisioned in legislations such as the FRA.

Last but not the least, as these are bureaucratic institutions, officials are trained to follow orders. Under such circumstances, the expectation that they will facilitate and support the implementation of FRA, imbibing the spirit of the Act, that is community driven, with downward accountability, is a rather impractical.

# V.

# RECOMMENDATIONS

* Adopting the rights-based approach to implementation using the capability approach:

As (Kashwan 2013) reiterates, adopting the argument of conservation to support the implementation of FRA, places the rights of indigenous persons enshrined under it at the back stage. This only reinforces the status quo of order as conservation ideology has only continued from colonial past. It is essential to empower and extend indigenous institutions and communities and not base the same on specific conservation models and outcomes. Sub-altern theory of equating indigenous rights to an ultimate goal of conservation does not recognise or give benefit to the varied cultural and traditional practices of all indigenous communities (K. Sivaramakrishnan 1995). Removing it from a conservation approach will also ensure that implementing authorities will no more use lack of capacity as an argument to deny rights. Sivaramakrishnan 1995, argues that subaltern theories tend to romanticize tribes as solely being conservationist in nature, which takes away from the purview of mainstream society certain practices that they value as integral to the community as it does not fit the conservationist approach.

For this the capability approach must be resorted to defend the Forest Rights Act, 2006 as a development right of indigenous persons. FRA confirms to the ideology of development enshrined under the capability approach which is not only an inclusive approach, but also gives importance to individual/community goals. It takes into consideration self-determination and collective autonomy as a means to achieve development for indigenous persons. Keeping this as a base, FRA must be viewed by the Implementing authority as a development legislation, allocate funds for capacity building and awareness initiatives and provide training for officials on the same. It should be regarded as a basic human development right for indigenous communities. A specific fund for the realisation of rights will ensure development initiatives come from bottom up. Further, this will disregard the Forest Department narrative of Pure and Impure tribes and provide control of forest resource and management to the indigenous population.

* Empowering Gram Panchayats

Since implementation of the Act is at the state level, State Governments must take initiatives to build capacity of Gram Panchayats to aid the implementation of FRA. State governments can do this by considering FRA as a development right and development service to be included in sub-plans allotted for tribal development. This can be through initiatives from the side of panchayat to build capacity of Gram Sabhas and village leaders. Increased presence of the Panchayats is also required as in the case of most Gram Sabha’s female participation in decision making is minimal and the authority to ensure this exists lies with the Gram Panchayat.

Examples in Kerala have shown how capacity building for panchayat officials have in turn aided in bringing forth community participation. One of the Panchayat ward members was reinterviewed in Kerala, and since the earlier interviews she has taken efforts to organise a large awareness campaign on FRA and aided in convening two “oor kuttams” in Appankappu. She has also made efforts to understand the socio-historic background of the tribal community living there and is trying to make an effort to aid in recording such practices. Another example is how, with support from local NGOs like Keystone Foundation, Pulimunda, a tribal village in Nilambur Kerala, has used its ward member, to deny measurement of forest land, as it was not being done by the department according to their terms.

* Moving from deconcentration to decentralisation in Tamil Nadu

In the case of Tamil Nadu, advocacy needs to be adopted for increased devolution of powers to local self-governments. Increased devolution of funds to Gram Panchayats, a code of conduct for elections, removal of welfare funding caps for Gram Panchayats and social audit mechanisms can be implemented. Moreover, self-funding capacities for Gram Panchayats must be increased. There are NGOs and ground organisations working to empower Gram Sabhas by bringing in informed public participation and accountability.

In Tamil Nadu, a reconstitution of Panchayat Villages needs to be done as tribal hamlets are indiscriminately divided, and most panchayat offices remain inaccessible to these hamlets. Advocacy measures have to be adopted to advocate for increase in decentralised powers, remuneration and amendments to legislations to accommodate division of powers.

* Capacity Building

The primary goal of all panchayats, NGOs and the state should be to build capacity of community members at the Gram Sabha or village assembly level. Building capacity will ensure that members are aware of the powers of their institution and will aid them in the claim making process. Empowerment of all members of the village is necessary so that there is no excessive dependence or reliance on village leaders to take the implementation forward. This can be by way of engaging youths through youth committees, encouraging cultural and social practices that they have reason to value and believe to increase unity amongst members. Enabling determination of development institutions that is required, for instance schools, hospitals within tribal settlements is important.

* Policy changes
* Convergence of JFM bodies and GS

Removal of JFM bodies or clear articulation of the role and functioning of JFM institutions, and recognising the Gram Sabha as the unit of decentralised forest governance is necessary. Language of government documents must increasingly use the Forest Rights Act in both inclusive climate change policies and development literature. Moreover, as a policy suggestion, instead of the abolition of JFM bodies as a whole, we can advocate for the closure of working of JFM bodies over areas where Community Rights have been granted. Here the powers and functions of the GS as the governing authority will be realised. Areas where community rights are not extended, JFM’s can continue to exist and also be repurposed to function in those areas alone. These will be areas where community rights do not extend to.

* Democratisation of processes by adopting procedural changes to implementing bodies

Currently, implementing bodies such as the DLC/SDLC do not provide for an equal representation of the community members and people in power. There is a power imbalance which reduces the voice of community members to a large extent. Moreover, processes are stalled for years owing to the non-participation of certain departments. To make this process fairer and more democratic in nature, certain procedural changes must be made that will make the decision-making process inclusive.

Firstly, setting of a minimum quorum for participation is required. A minimum quorum should be provided where atleast 1/3rd of the committee is required to commence meetings and pass resolutions. This 1/3rd should require compulsorily a member from any of the three departments and a member from community. The quorum cannot exclude members from the community and their presence must be made mandatory. If such a quorum is set, meetings will not be rescheduled owing to the non-participation of certain departments and it will ensure that resolutions are not stalled owing to such non-participation. This also makes the process more democratic as compulsory participation of community members is sought irrespective of the power imbalance between the community members and authorities.

Secondly, a mechanism of voting on resolutions needs to be adopted. Apart from setting of a minimum quorum, a voting mechanism for passing of resolutions needs to be adopted. Compulsory votes of community members present should be taken and resolutions where community members choose not to vote, may not be passed. This will ensure that community members get a near equal say on the resolutions. Along with the minimum quorum requirement if this is set, then the non-presence of a particular department will not impact the passage of resolutions.

* Specific orders to include Forest dwelling communities in decision making bodies:

In the case of Tamil Nadu, to ensure that where members from the Panchayat who are a part of the SDLC/DLC are not from forest dwelling communities or STs, an executive order was passed surpassing this rule to provide for participation of forest dwelling communities in such bodies. This has led to higher representation of Forest Dwelling tribal communities within the three members who are to be representatives of the community. Such provisions do not exist in the state of Kerala. In Kerala, often SDLC/DLC members who are supposed to be representatives of the community are neither forest dwelling nor STs as panchayats members at the Block and District level do not have such representation. Here, panchayat members who form a part of this committee are less representative of the members of the community. Hence, passage of a similar order such as in TN can aid in increased representation of indigenous communities in such bodies.

* Capacity building at the departmental level

At the district level, there is a need to raise the issue of awareness at the department level by creating FRA implementation modules for reference by members of the department concerned, with the implementation of the Act. Also, special officers assigned from the respective line departments, to be part of the SDLC and DLC committees until the process of completion of claims under FRA, must be urgently approved. This will allow for effective implementation, where the special officers appointed can receive the necessary training for the implementation of FRA and some level of consistency and continuity in the implementation process can be ensured. The fact that in the current bureaucratic arrangements, we have observed multiple instances where frequent transfer of officials who are also members of the SDLC and DLC occurs there is a disruption in the continuity of implementation process, causing long delays.

Procedural clarity through appropriate Government Orders, that include a receipt of acknowledgement to the tribal Grama Sabha, following the submission of the claims application, will enable in streamlining the process and avoid confusions, redundancy and delays.

* Village level/ Indigenous self-governance bodies:

Mobilising forest villages at a larger level, such as area wise, in districts, to form a stronger association to drive self-governance efforts, is recommended. Some efforts in this regard, through creation of CFR-federations and submission of CFR claims and management in the post CFR context, at the cluster and federation level are showing positive results. Building a strong association amongst the youth in the village who are dependent on livelihood opportunitie, is also recommended as a strategy to strengthen indigenous self-governance.

* Conversion of forest villages to Revenue administered villages at the earliest:

Such conversion is to be enabled by the Collector, and the state is to start the conversion irrespective of whether the rights process has ensued. It is to be given as a right and through a notice issued by the Collector. Currently in the State of Tamil Nadu and Kerala no such process of conversion has taken place and hence many villages continue to be unrecorded settlements even post the grant of Forest Rights as per the Act. Such conversion enables easier transfer of benefits and will come under the administrative jurisdiction of the revenue department. The Forest department will then no longer be able to pose permission hurdles on entry into villages and this will speed up the realisation of development rights of the villages and part take in the decentralized governance arrangements as envisaged in the Panchayati Raj Act.

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# APPENDIX - I

## Structure of FGD

**Types of Questions to be asked:**

1. Open ended questions: Questions are open-ended, with the aim of stimulating an informal discussion with participants to understand their perceptions, beliefs, fears, questions and information needs with regards to the problem statement.
2. No leading questions

**Total number of participants:**

Not more than 12/ but FRC members are 15. So 8 – equal number of men and women.

**Selection criteria for participants:**

* An equal combination of older as well as newer members to the committee. For example, four members who are fairly recent members into the FRC, four members who have had an experience of belonging to the FRC for a certain period of time.
* If the FRC is a recent formation, then the above selection criteria need not apply.
* Another criterion that can be used is to include members within the FRC who have an economic dependence on CFR and members who view CFR as a cultural significance.

**Members required to conduct:**

Facilitator

Note Taker: Observer who takes notes, records the conversation.

**Seating:**

Preferred seating is a circular arrangement.

**Introduction/ engagement question:**

* Verbal introduction by the facilitator:

Contents/script:

Greetings to everyone present here. We are extremely grateful for taking this time out to sit with us for this discussion. Nidhi and I are members of Keystone Foundation, working towards the realisation of rights of indigenous people.

How has the FRA process been so far – to familiarise the group with the problem statement.

We are all seated here to listen and discuss about the problems we face in our claim for Community Forest Rights. CFR as you all know is a type of right given under the FRA and something that is yet to be granted for hundreds of indigenous people in the Nilgiris region. Hence, the aim of today’s discussion

* Is to gauge your understanding of CFR,
* The hurdles we face in claiming CFR and
* The impact of non-grant of CFR on forest communities.

What we are here to perform is a Focused Group Discussion. In this type of discussion we will ask you certain questions for which each and every member in this group can answer freely. Please feel free to answer as honestly as possible, as no person’s identity will be disclosed in recording responses. This discussion is to help us understand the hurdles to claiming CFR and the hurdles posed by the administration. The information gathered by us in this discussion will solely be used for the purposes of research alone. This discussion will not be relayed to any other person other than those present in this meeting. Although the focus group will be tape recorded, your responses will remain anonymous and no names will be mentioned in the report. Consider this as your safe space where hurdles posed by the administration can also be voiced out freely. Keystone having worked for the welfare of the indigenous communities for over 20 years will ensure that what is spoken here will not jeopardise the speakers in anyway. With this trust let us begin this discussion with all of your acknowledgement.

Consent clause: This discussion is to collect data on the hurdles being faced by indigenous people in claiming their right to community forest rights. In the consent form also include- If you have any questions or concerns regarding this study, please contact Jyotsna Krishnakumar, Director, Keystone Foundation. Her contact number is 8078910206.

Do you consent to participate in this discussion? The information learned in the focus groups will be used to study the difficulties in claiming Community Forest Rights and help well facilitate the process by resolving such hurdles. The result of this discussion and study will/may not result in successful receipt of the claim. The findings of the study may be presented to those who are interested and in case of any discomfort experienced by the participants during the discussion you are allowed to stop and leave the FGD at any point during the discussion.

In points to summarise what is important:

* WE WANT YOU TO DO THE TALKING.

We would like everyone to participate. I may call on you if I haven't heard from you in a while.

* THERE ARE NO RIGHT OR WRONG ANSWERS

Every person's experiences and opinions are important. Speak up whether you agree or disagree.We want to hear a wide range of opinions.

* WHAT IS SAID IN THIS ROOM STAYS HERE
* We want folks to feel comfortable sharing when sensitive issues come up.
* WE WILL BE TAPE RECORDING THE GROUP - This is to allow us to pay attention to what everyone is says during the discussion and understand what is being said better. In case we miss out on vital information this recording will be used by us to uncover the same.
* We want to capture everything you have to say. We don't identify anyone by name in our report. You will remain anonymous.

**Objective for FGD with FRC members: To elicit the following:**

* Understanding the functioning of Gram Sabha at the village level, assessing frequency of sittings, resolutions made.
* Level of awareness and understanding of rights under FRA, participation in FRC, differences in the level of awareness amongst members.
* Issues taken up and discussed in GS, role of village leader in local governance.
* Reasons for weak or strong participation in GS, effect of resolutions against parallel institution.
* Why CFR – the importance – is it solely economic or cultural? Assessing mode of livelihood.
* Current struggles they face in receiving CFRs – Department wise struggles – Forest, Revenue and Tribal– specific authorities such as tahsildar.
* Perception of the role of NGO’s and expectations of level of involvement in the claim process – parallel expectations from the state.
* Grievance redressal: whom to approach in case of a grievance and how effective such an approach as been.

**Questions for FGD with FRC members:**

1. Have we all filed for a CFR? If, yes have we received the same? – opening questions which is fact based and quick to open the discussion.
2. How often does the FRC meet? And under what circumstances?
3. What are the possible activities that can be carried out under CFR/ What are the types of rights that can be claimed under CFR?
4. So far, what are the efforts that have been carried out by the FRC in filing for CFR claims? Details such as area of forest cover, no. of years of reliance on forest resources? Efforts taken in fighting for CFR?
5. What is their perception of hurdles that they may face in this process? (What they think might be the hurdles and why do they think the same?)
6. What are the actual hurdles that they have faced so far in their claim to CFR?
7. What are the departmental hurdles they face in each stage of the claim process? From the stage of mapping, submission of maps, passing of resolution by the GS, passage by SDLC. (Question to understand at which stage do claims not pass)
8. What do they think is the role of SDLC, department officials and what should they expect from the SDLC?
9. What is the role of the village leader in once a CFR claim is submitted by the FRC after verification to the Gram Sabha? Is the village leader often on board and if not, does this cause a hindrance in the claim process? If not why? Does it affect the claim process? Are there certain private actors who have a tendency to influence the leader’s opinion?
10. Who are the private actors who currently use forest produce?
11. In case of following through with the process. Whom do they think the burden is on? Where to submit a grievance? Has a grievance been submitted earlier? If, yes then what has become of it.
12. For women: Perhaps you can indirectly ask – how often are the FRC meetings held in their village? When are they normally held (time/day)? When was the last meeting held? What are the kinds of issues or suggestions they share as FRC members during the FRC meetings? (Take turns with each member on this last question)
13. Leader’s awareness and environmental concerns if any?
14. Means to pursue a petition – how expensive is the process, is that a hinderance to mobilisation efforts. Whose responsibility is it seen as? The FRC or village leader.
15. Complications in the law, does the law give clarity on who should be approached in case of a grievance.
16. What are the possible risks of pursuing a petition? Is that a hinderance from pursuing a self governance goal? Resource mobilisation and its success and failures do they hinder self governance?
17. Prior to seven days a notice has to be given, inviting them. Forest and revenue department officers have to be invited to sign the resolution at the GS level. Does this happen?

For kerala:

1. There is access to forest so now why isn’t it given on paper to them? Are they aware of the hurdles posed to forest access in other villages?
2. Where do they sell the produce that they get? Are there private actors involved, If yes what is the influence they wield on village leaders.
3. What are the hurdles that the floods have posed for this village in claiming for your rights under FRA? How has covid affected your participation in self governance efforts?
4. VSS or FRC which institution do you think will protect your rights better?

# APPENDIX- II

## Questionnaire for Panchayat officials

1. Name, age, years of working in the panchayat, section(SC/ST/GC)?
2. What do you think is the Forest Rights Act and what do you think are the type of rights guaranteed under it?
3. How often does the Panchayat conduct Gram Sabhas in each of the villages or hamlets? What are the kinds of issues discussed in the Gram Sabhas? In such Gram Sabhas, how often is the implementation of FRA spoken about?
4. Are you aware of the existence of a committee known as the FRC? If yes, what do you think are the roles and responsibilities of such a committee?
5. What is your role as the Panchayat secretary to facilitate FRC’s and oor kuttams?/ Can you describe your role as a member to be present in the oor kuttams? How many times have you taken part or observed the oor kuttam in the respective village?
6. Has the Panchayat until now, strived to map the hamlets that are a not a part of the revenue or forest village record, and ensure that this list is passed by convening the Oor Kuttams of the respective hamlets?
7. Have you been a part of the process to select members to FRC in each village? How does this process of selection take place? Are the members selected to be a part of the FRC participative in this selection process.
8. Do you think that these bodies such as the FRC or Oor Kuttams are legitimate and what value do their resolutions hold for the Panchayat?
9. In a Tribal Village’s fight for FRA, how does the Panchayat Secretary visualize supporting such a claim, and in pursuing a claim. What measures have been taken from your side to help implement the Act
10. In this process what are the hurdles that you face in enforcing implementation with other departments?
11. What are development rights? Does the FRA guarantee development rights? In this case do you feel development schemes are different from those under FRA and does the former seek to sever ties of the tribal population from forests?
12. Can you name a few schemes that you have implemented in this panchayat – specific names of schemes?
13. Post claim do you envision a scope for collaboration and/or convergence of panchayat and the various line departments along with the FRC/FMC members?
14. Where do you feel the members of the FRC in each village lack or are incapacitated to pursue a claim under the FRA?
15. Are you a part of the SDLC? If yes, how often do SDLC meetings happen (frequency)? What is the usual notice period of such meetings and how would you rank your attendance in such meetings? During these SDLC meetings are FRA related issues taken up, if yes what are these issues?
16. Finally, what are the hurdles that you see as you face in these SDLC meetings? What kind of hurdles are these?

For ward members and President specifically:

1. What is your interaction with the Panchayat Secretary, how often do members and secretaries meet to discuss issues? Have you as a member raised issues concerning your respective village at the secretary and president level? – For Ward members
2. Do you prepare a separate budget, whom do you have to depend on funds for and do you have a separate development plan prepared? How many times do you have to approach the block panchayat if you are in need of funds? Tribal sub-plan.
3. How many meetings have been presided over by you, gram sabhas in a year?
4. Do you have adequate powers and resources to look after the needs of your people?
5. What sort of issues do you receive from Gram Sabhas held at the tribal hamlet level? How much do you think you can help in these areas?

# APPENDIX – III

## SDLC & DLC Questionnaire – Department

1. As the member of SDLC, how much do you think you are aware of Forest Rights Act, 2006?
2. How often, or the frequency with which SDLC meetings occur, in the last one year how many times has it taken place?
3. What are the issues generally discussed in these meetings, would you describe in your own words, the participation of the community in these meetings, issues raised by them if any?
4. Who do you think has the final authority to authorise claims? Is the participation of all 6 members needed, or is it sufficient for three members from the department alone to authorize or approve claims?
5. Usually, what are the reasons that you SDLC has cited for rejection of claims?
6. Has any training been imparted to the communities or Gram Sabhas on their roles and responsibilities/ have the Gram Sabhas been provided with maps/electoral rolls etc?
7. Can development happen from within their natural habitat or should they be integrated into mainstream society?
8. Post CFR, how do you believe that line departments will help in implementing development rights and forest management and conservation?
9. What view of development department feels is beneficial for the forest dwelling STs? Should development be within their natural habitat or should they be integrated into mainstream society? In case of the latter does the FRA act as a barrier?

Forest department:

1. Whom do you view as the sole guardians of the forest? The department or the indigenous people? Or can the Gram Sabhas be trusted with forest governance through the grant of CFR?
2. If it is the department, what are the ways in which the department manages resources differently? Can you cite reasons for believing that the people will destroy forests.
3. Do you believe that the community forest rights would lead to depletion of forest resources?
4. Can you tell me about the process of granting Forest rights followed in the year 2010 and whether it was done in consultation with the community?
5. Have any awareness programmes been organised for the community to ease the claim process.

Tribal department:

1. Can you describe your experience as a member of the SDLC, about the proceedings, and its meetings?
2. Does the Tribal department feel that implementation of FRA is integral for the development of forest dwelling STs?
3. Where do they feel is the block when it comes to communication with line departments on implementation of FRA? How supportive do they feel is the forest department?
4. Does the ITDP have any role or responsibility to create/generate awareness on FRA and to facilitate FRA claim by raising awareness?

Revenue department:

1. What role does FRA play in the development of Forest dwelling STs? As chairperson, what are your roles and responsibilities in the SDLC?
2. What are the advantages for the STs in conversion of these hamlets into revenue administered villages?
3. Tell us your experience as an SDLC member on the proceedings and participation of the communities in such proceedings?
4. What is the role of the revenue department in implementation of FRA and which line department does it feel bears the major responsibility to ensure its implementation?
5. Are you aware of Forest Rights Act?
6. Map

# APPENDIX-IV

## SDLC & DLC community members questionnaire

1. Name, age, community, period of membership with the SDLC
2. Are you aware of FRA and its components?
3. Yes b. No
4. What is the SDLC and what are its functions?
5. If you have knowledge of who all sit on the committee, will you tell me who are its other members?
6. Are SDLC meetings recorded in any way? If yes where is this information stored? Are meetings public or private in nature?
7. In the period that you’ve been a member of the SDLC, how many times has the SDLC met?
8. What is the period of notice that you get before occurrence of a meeting?
9. 10-15 days b. 5-10 days c. less than 5 d. on the day e. no notice
10. Has the delay in sending notice made it difficult for you to attend these meetings?
11. Will you give me an account of the way or manner in which proceedings take place? What are the topics of discussion?
12. How much time is spent discussing FRA?
13. Who do you feel has more power or say in rejection and approval of the claim? Community members or members from the department? Who in your opinion has the decision making power in the committee?
14. Have you taken up queries from the community to the body? If yes, what is the response that you’ve receive from the department?
15. How important do you think is FRA for community development? What do you perceive is the opinion of department officials towards implementation of FRA and forest governance?
16. Has CFR been discussed so far? If yes. What according to you and the committee is meant by CFR?
17. Finally, what do you believe is a better way of managing forests, through VFC’s of Gram Sabhas? In your opinion what do you feel is the opinion of members of the department in the committee?

# APPENDIX-V

## Household survey

Name: Age: Gender:

Occupation: No. of occupants:

Educational qualification:

1. **Lack of awareness of FRA acting as a hindrance to self-governance’. - 8**
2. My and my peoples’ lower awareness of the law is the reason why my FRC or Oor kuttam is unable to function effectively regarding this matter.

**Strongly disagree; 2) Disagree; 3) Neutral; 4) Agree; 5) Strongly agree**

**II. Institutional functioning of implementing authorities: -**

1. I am not aware of whether SDLC/DLC meetings take place at all, its members and the contents of its proceedings. - 9

**Strongly disagree; 2) Disagree; 3) Neutral; 4) Agree; 5) Strongly agree**

1. The Forest Department is the main objector in these bodies and acts as a hurdle for realisation of our rights. - 10

**Strongly disagree; 2) Disagree; 3) Neutral; 4) Agree; 5) Strongly agree**

**III. Post grant processes, responsibilities and possibilities for collaboration**

1. Indigenous communities have a significant role in forest conservation and management. - 11

**Strongly disagree; 2) Disagree; 3) Neutral; 4) Agree; 5) Strongly agree**

1. Post grant of rights I will work with the forest department to conserve and manage forests - 12

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. I am entitled to NTFP collection and management to ensure sustainable outcomes under FRA. 13

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**IV. Existence and role of parallel institutions:**

1. Existence of VFC’s has only aided state exploitation of tribals and has not led to economic improvement in living conditions. - 14

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. VFC’s are state enforced mechanisms and with the presence of the department the tribal members in such bodies will never get an equal voice. - 15

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. Existence of VFC’s have hampered the functioning of Gram Sabhas and has led to the weakening of this institution. - 16

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**V. Extent of dependence on forests and impact on self-governance to claim rights.**

1. The Forest land is still significant to me and has major social and cultural significance. - 17

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. Collection of NTFPs is integral for my economic sustenance and forms a large part of my income source - 18

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**VI. Access to forests and influence on gaining awareness on rights and governance efforts to claim these rights, Tamil Nadu v. Kerala:**

1. Tamil Nadu: Inability to access forests currently is a reason for me to gain awareness and fight for my rights under CFR - 19

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

Kerala: I do not find the need to get my rights on paper or gain awareness on CFR as I currently enjoy unhindered access to the forests.

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**VII. Role of and dependence on 3rd party organisations to strengthen existing governance mechanisms:**

1. Meetings take place only if an external entity such as an NGO is present to gather the people, otherwise my lack of awareness restricts me to talk about it without their presence. -20

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. I require an NGO to bear the cost of pursuing a claim or visiting administrative offices for pursuing a claim. 21

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**VIII. Effectiveness of self-governing institutions – Oor Kuttams**

1. In my village, oor kuttams take place as frequently as it used to. - 22

**1. Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. I am disinterested in taking part in ‘oor kuttams’ and hence, I do not actively participate in them - 23

**1. Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. I can take up any issue concerning me to the ‘oor kuttam’ that I want to be resolved and the ‘oor kuttam’ has been resilient in resolving them. - 24

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**IX. ‘Trust’ and impact on self-governing institutions**

1. The size of the village makes it difficult or easy for ‘oor kuttams’ to take place and to get everyone on board to advocate a cause. - 25

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. Lack of cohesion or trust has reduced the effectiveness and frequency of ‘oor kuttams’ and efforts to organise and claim CFR. - 26

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**X. Roles and responsibilities of self-governing institutions**

1. There are several factions in the village which thwarts our efforts to use ‘oor kuttams’ as an effective decision- making body. - 27

**XI. Perceptions and hinderances posed by state/implementing mechanism – impact on claim processes:**

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. Strengthening my ‘oor kuttam’ means that ‘oor kuttams’ can take important decisions without any fear of outside intervention. - 28

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XII. Aid and support for pursuing claim processes from political and administrative institutions: (Panchayati raj, elected representatives and admin. Bodies)**

1. I fear the Forest Department as they have created hurdles to claim our rights under FRA by creating such fear. -29

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XIII. Help/aid of closest local democratic institution as an integral part of the claim process:**

1. I have not received any support from ITDP such as awareness programmes to gain awareness and claim rights. - 30

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. The Gram Panchayat has not been effective in helping us claim FRA as they feel it is not their responsibility to aid implementation. - 31

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. Since my panchayat is a non-tribal panchayat, tribal issues get least amount of attention. - 32

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XIV. Long drawn battles and ensuing frustration as hurdles to pursue self-governance:**

1. It is a huge economic burden for me to pursue a claim submitted by the village, to follow up hence there is no point to gather and talk as a village on the issue. – The economic burden is the reason I am don’t join these meetings. - 33

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XV. Lack of proactive leadership and impact on self-governance:**

1. My ‘oor muppan’ has a huge role/ burden to take this process forward. - 34

**1. Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

1. Currently the ‘oor muppan’ in my village has not taken up this responsibility to advocate for this cause nor conducted sufficient ‘oor kuttams’ - 35

**1. Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XVI. Procedural complexities and impact on marginalised populace:**

1. Being an Adivasi, administrative procedures currently in place to claim rights are difficult to follow as I do not have the required knowledge. - 36

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XVII. Scope for alliance and impact on strength of self-governing institutions**

1. At the moment what we need is to form an alliance amongst tribal hamlets, and together pursue the claim and this will help me claim my rights. - 37

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XVIII. Continuing injustice and repression posed by law**

1. I have myself been subjected to or heard of instances where fellow tribal members trying to claim rights or benefits for Forest Dwelling STs have been subjected to legal threats/ face departmental surveillance and this creates fear in me to support the cause. - 38

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XXII. Privatisation of forest areas and impact on indigenous population.**

1. The authorities fear that if CFR and IFRs are granted to the STs, then land will be given to outsiders or will lead to further destruction of forests by STs. Do you agree? - 39

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**

**XXIII. Youth participation:**

1. The youth ages 18-25 yrs do not participate in oor kuttams and their awareness of issues is comparatively less. - 40

**Strongly disagree; 2. Disagree; 3. Neutral; 4. Agree; 5. Strongly agree**