

# Forest Rights Act in Kinnaur, Himachal Pradesh

## A Bureaucratic Unmaking

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The emergence of the Forest Rights Act reasserted the vitality of the role people play in conservation and management of natural resources and carving out legal channels for recognition of their forest rights. But, in Himachal Pradesh, the FRA suffers at the hands of a bureaucracy that has buried it under the weight of colonial power structures. The conflicting narratives from Kinnaur are discussed, where instead of being recognised under the FRA, the tribals' identity and forest dependence are being ripped away from them.

Marking the end of the year with a historical struggle, Reckong Peo, the district headquarters of Kinnaur, in the bone-chilling snowy weather on 9 December 2019 echoed with the slogan of “Jeevan ka ek aadhar, Van Adhikar.” A year before this, on 29 December 2018, hundreds of people chanted the slogan as they marched on the road to the district collector's (DC) office demanding the effective and just implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) in their tribal district (*Tribune* 2018; *Times of India* 2018; Himdhara–Environment Research and Action Collective 2019a). Crowned in their traditional green velvet-bordered topis, Kinnaura women and men from the remotest of the villages had gathered for 15–16 times in the last nine to 10 years. But, as the delegation in 2018, demanding the recognition of their traditional forest rights, moved towards the district administration office, they were informed that the DC had left and was not present to address the public. Remarking on the bureaucratic failure to implement the FRA, a villager whose forest rights claim still remains pending with the Subdivisional Level Committee (SDLC) participating in the rally had stated, “The administration is not just and fair, else why would it run away from recognising our forest rights?”<sup>1</sup>

The bureaucracy has emerged as the biggest roadblock in the implementation of the FRA, a law that acknowledges the historical injustice done to forest dwellers, and aims to give legal recognition to the forest rights of all dependent communities and to decentralise decision-making powers amongst the people. More than 10 years have passed since this historic legislation came, but its implementation remains a far-fetched

dream in Himachal Pradesh (HP), where two-thirds of the total land is recorded as forestland (MoTA 2018).<sup>2</sup> The tribal district of Kinnaur<sup>3</sup> has seen the highest rate of claim submission, and yet, no individual or community forest rights title has been awarded till date.<sup>4</sup> In Kinnaur, the communities share an intensively dependent ecological relationship with their mountainous ecosystems and natural resources. Negotiating the everydayness with the rugged fragile landscape and harsh climatic conditions, Kinnauras depend intricately on the cash crop agro-economy of apples, peas, *rajma* (kidney beans), and dry fruits for sustenance. However, now being aggrieved by the apathy of the bureaucratic apparatus, it has emerged as the contesting ground for voices struggling for claims over their natural resources and forest rights.

This article summarises the role that the district bureaucracy has played in ensuring the non-implementation of the FRA in Kinnaur, and critically elaborates the popular narratives and myths that motivate the bureaucratic discussions and decisions around the FRA. It traces the emergence and reason of these narratives and the visible bureaucratic attitude, presenting an analysis on how the political–bureaucratic nexus conditioned in an age-old feudal fashion has succeeded in paralysing a legislation which, for the first time, takes power from the hands of this nexus and returns it to the people. Drawing from the testimonies of people, the article summarises how the rights and identity of Kinnaura continue to be delegitimised and their struggle rendered hopeless in the shadows of a non-committal and apathetic bureaucracy that remains the major roadblock in the implementation of the FRA. This article digs through conversations with various officials, political representatives, forest rights claimants, and members of the Forest Rights Committees (FRCs), coupled with the observations from our visits to the rooms and corridors of bureaucratic offices.<sup>5</sup>

How the agency charged with monitoring the unfolding of legislation on the ground has instead buried the same legislation under the ground and beneath the weight of power structures,

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rendering the rights of people delegitimised, is explained.

### **'Big Encroachers,' Not Tribals**

During a separate work visit to Lahaul in August 2018, in an event on ecotourism and sustainability, a discussion was initiated with a cabinet minister from the region about the non-implementation of the FRA. The minister, post the event, in a formal but non-official conversation on the laggard implementation of the FRA had stated to us in clear words, "FRA is not for this state, we can maybe look into community rights but not IFR. Just look at Kinnaur, people have encroached 30–40 bighas of land, I will not legitimise this dependency under FRA."

The narrative of "big encroachers" was reiterated in the discussions with all higher bureaucratic officials who stated that Kinnauras have huge chunks of land and the FRA will allow them to grab more. A ground research report done by Himdhara–Environment Research and Action Collective along with the Zila Van Adhikaar Samiti Kinnaur (a district-level forum fighting for forest rights), titled "Who Gains from FRA"<sup>6</sup> studied data from 22 FRCs and found that, contrary to the bureaucratic narrative, 96.5% of IFR claims in Kinnaur were for less than 10 bighas, and only a minuscule 0.44% were for more than 20 bighas, revealing that the narrative of big encroachment is neither factual nor well-grounded (Himdhara–Environment Research and Action Collective et al 2018).

The narrative of encroachment is so deeply imbibed by the administration that, when we visited the administrative office of Pooh tehsil, the highest-ranking officer at the office in an informal conversation with us remarked with derision, "We are waiting for this act to go away so that we can proceed with eviction of these encroachers." Adding that FRA is not applicable in Kinnaur, he stated with Herculean confidence, "Yeh Kanoon vo jhingalala vale Adivasi ke liye hai jo Jharkhand, Chhattisgarh, Odisha mei hotay hain" (This law is for those hulalalala type Adivasi that are found in Jharkhand, Chhattisgarh, and Odisha).<sup>7</sup> The blatant refusal to acknowledge the tribal identity of the Kinnaura when

faced with the questions on FRA was restated in another direct conversation with a prominent ex-member of the legislative assembly (MLA) from Kinnaur and a high court lawyer who had offered to give us a lift from Spillo to Pooh. The ex-MLA, in a dogmatic tone had asserted, "FRA must be immediately dissolved, we cannot give rights to forest encroachers." In these small window moments and informal dialogues, it was evidently clear that the identity of forest dweller remains unthought of in the bureaucratic vocabulary. Launching into a tirade against the FRA, the lawyer added, "This act is only for Adivasis who live in primitive conditions: wear leaves, hunt, eat raw food, etc. Kinnauras are not tribals; they grow apples and are educated."<sup>8</sup>

These narratives have very gradually caused non-Adivasi communities—categorised under the law as Other Traditional Forest Dwellers—to be excluded from bureaucratic–political thinking as eligible forest dwellers, which is evidently reflected when one looks at other districts in HP. In the case of tribal areas, what we see is a process of standardisation of what "Adivasi" symbolises based on specific imaginations and parameters, such as "primitive" and "poor." The bureaucratic apparatus, when it fixes and frames the identities in meaning and imagination, thus shifts the burden of proof on the communities while depriving them the scope and space to assert their voice. Those who fall short of meeting these bureaucratic benchmarks are marginalised further.

Responding to the accusation of "big encroachments," a farmer from Rarang village stressed, "Water for irrigation is very limited here, it's impossible to have large encroachments for agriculture." His face is covered in a cotton cloth for protection from the cold, dry Himalayan winds of the rugged and sparsely vegetated geography. Another person from Lippa village emphasised, "This is not flat land, we can't stretch our farms in any random direction; the slopes, landslides, soil, glaciers, landslides, everything reduces the scope." While noticing the jagged remoteness of the landscape, the miles these farmers have to walk to reach their marginal fields, the slow

uphill movement of water-filled trucks from the highway to the fields, one could easily decipher the hardships of an apple farmer and the rigorous labour that goes into sweetening the fruit.

This continuous delegitimation of the forest rights and claims of the Kinnauras is not the result of a personal bureaucratic envy or shallow misinterpretation of law, but can be traced to the feudal ideology that runs deep in the bureaucracy and, combined with a conservative idea of development, manifests itself as an ideological obstacle in the implementation of the FRA.

### **Bureaucratic Remaking of Forests**

By 1868, most of the freely accessible forestlands had become a state subject and were bought under the centralised control of a singular department and monitored via various forest-centred stringent legislations<sup>9</sup> marking the tribals and other forest-dependent families and communities as trespassers and encroachers. Suykens (2009), in his work, details that in this process of the scientific management of forests that continues till date, the role of tribals was made distinctly clear: they were/are dispensable. The territorialisation of forestland required the legitimisation of the restriction on its access and use by the community, the restriction itself hinging upon the delegitimation of the access, the claims, and rights that they people held to the forests. In this regard, Guha (2010) elaborates how economic resentments have been the key motivation behind forest-related environmental movements as the livelihood and daily needs of these communities have always been intricately woven around the forest. These continue till date, and the FRA was struggled for and introduced with the vision to recognise these historical grievances and injustices and, further, do justice to them.

While examining the role of the political administrative apparatus in the non-implementation of the FRA in Kinnaur, it is important to understand how historically the emergence of the forest department led to the drawing of organisational boundaries, dividing roles and autonomy between as well as within various offices. This then led to division of control and

attention, and allocation of land, thus allowing for the formation of preferences, biases, perspectives, and identities, which can be evidently marked out in the easily noticeable gap between the forest bureaucracy and forest-dependent people, the revenue and forest departments, and across the office bearers of both departments.

This is reflected in the words of an FRC head as he commented upon the step of joint inspection of the claims by the forest and revenue officials, “Sometimes an official from one department turns up and not the other. Or whoever comes in, writes frivolous remarks refusing in arrogance to sign or verify and leaves.” But, mostly, it is the forest department that has been non-supportive and discouraging of the FRA, from intervening to dilute the act right at the outset, to the recently proposed amendments in the Indian Forest Act, and from limiting the FRA to being a land diversion law, to proceeding with gruesome evictions. The forest department in Kinnaur, in fact, issued eviction orders against 90 people on 27 March 2018 (Himdhara–Environment Research and Action Collective 2018), blatantly ignoring the fact that the forest rights claims of these people were under process in the FRA and, thus, as per Section 4(5) of this law, they could not be evicted.<sup>10</sup> The case was also heard in the high court, with the court ruling a judgment on 9 July 2018 (*Dev Raj v State of HP and Others* 2018) quashing the eviction orders and directing authorities to have fresh hearings and pass orders. On questions of implementation, during our visits to administrative offices in Kinnaur, many high-ranking officers at the sub-divisional and district levels had bluntly told us, “Pehle Van Vibhag ko samjhalo, phir hum log kardenge” (First get the forest department convinced, we will easily implement FRA after that).<sup>11</sup> Thus, hinting towards the historically seated inner power tussle between the revenue and forest departments, where the regressive and despotic control of the forest bureaucracy on land continues to be the trope behind the non-implementation of the FRA in the state.<sup>12</sup>

The perceptions at different levels of the bureaucracy and the distribution of power

across these levels and departments are crucial to understand the unfolding of this legislation on the ground. Similarly, both the SDLC and District Level Committees (DLC) cannot reject files on technical/provisional grounds or demand particular evidence in support of the claim as per rule 12A(11). Yet, files are being sent back to gram sabhas across Kinnaur, either due to lack of specific evidences or with frivolous objections and flippant remarks, often without a detailed objection letter, even though that stands against the provisions of the act.

The lower-grade officers, being from the villages, empathise and interpret the law through the lens of everyday forest dependence with which their families are interwoven. The higher officials, on the other hand, imbibe the administrative ideology much more regressively in that regard. In a recent decision on the IFR claims of the gram sabha of Lippa, a small village in Kinnaur, the three official members of the DLC had outrightly rejected the 47 claims, a decision to which the non-official members of the same committee, who recommended the claims, had strongly and boldly objected (*United News of India* 2018).<sup>13</sup> The concerned claimants from Lippa had approached the State-level Monitoring Committee (SLMC) demanding the review of this biased rejection and also submitted their grievances to the Ministry of Tribal Affairs (MOTA) on 28 January 2019 (Himdhara–Environment Research and Action Collective 2019b). The SLMC in its meeting on 15 January 2019 had “requested” the DLC to clarify its position.<sup>14</sup> In another meeting later with a few of the claimants, the DC had flagrantly quoted that he is the supreme decision-making authority and not the other committee members, as shared by a claimant of the Lippa gram sabha during a conversation on 17 May 2019. However, the second time the DLC reviewed these 47 IFR claims, the DC alone signed off on the decision to reject them. This decision of the DLC was accepted and reflected in the next meeting minutes of the SLMC.<sup>15</sup>

First, the FRA charts out the powers and roles of the committee, which do not impart any special powers to DC or any official member. Second, it aims and

provides for the creation of a democratic and transparent committee at all levels for the purpose of implementation. However, the vision and letter of the act have unfolded in an entirely different manner. Thus, the bureaus and agents have their own independent interpretations and imprints on the policies, many of which emerge from misunderstandings and unawareness of the act’s provisions. In such a case, we witness that the decisions around the FRA are governed less by the letter of law, but more by the sociocultural, geographical, and political backgrounds and contexts of the offices, office bearers, and the respective locations they occupy within the administrative apparatus (Gulick 1937). In such cases, the judiciary becomes the last door for people to knock on and, though the case of Lippa is still going on in the high court, with temporary relief awarded to the rejected claimants on 22 July 2019, the judicial process over the years has remained cumbersome, expensive, and untrustworthy (*Samtan Pur and Others v Union of India and Others* 2019). The judicial unreliabilities were exposed when on 13 February 2019, the Supreme Court ordered the eviction of forest dwellers whose claims had been rejected,<sup>16</sup> Though, after nationwide protests and demonstrations, the Supreme Court did put a stay on the eviction, the previous order had already opened up the scars of historical injustices (Campaign for Survival and Dignity 2019).

### Lack of Awareness and Trainings

In the absence of any adequate trainings and awareness programmes, such ideological narratives then shape the bureaucratic viewpoint. Many offices still have the old copy of the act and not the amended versions, and do not recognise and acknowledge the various clarifications, crucial rules, and guidelines issued by the MOTA. The proceedings of the SLMC meetings reflect the strong emphasis on the non-official members to conduct the training programmes for the officials of concerned departments as well as other stakeholders. But, without having built capacities under the act, the lower bureaucratic officials had started to

mistake the orders of their higher level colleagues to be provisions of the act. A visit to any sub-divisional magistrate office in Kinnaur introduces one to a room full of FRA files, racked and stacked in one dusty corner, the name of each FRC labelled on a cotton cloth that cages the fate of the forest dwellers of that *muhaal* (revenue village). Upon inquiring with the *kanungo* in-charge of Pooh tehsil about the status of these files, he replied, “IFR toh niyam mei hi nahi hai, aur CFR ki koi zarurat hi nahi hai yahan kyunki Himachal mei settlement ho gaya hai. Kinnaur ko is Act ki zarurat hi nahi hai” (IFR is not a part of the rules, and CFR does not make sense since the settlement processes have been done in Himachal, this Act is not for Kinnaur).<sup>17</sup>

The lack of awareness also extends to this false belief that the settlement process of 1984 has settled the forest rights of individuals. Contrary to this, the settlement only provided for access to the forest in form of “privileges” and “concessions,” which is starkly different from the “legal rights” that the FRA provides. This false belief dominates the bureaucratic circles while the inadequacies and insecurities of settlement and land reforms are glaring on the face with thousands of *jamabandi* (revenue land records) in HP showing occupations on forestland enrolled officially as “*najayaj kabza*” (illegal encroachments). In fact, the FRA recognises the role and responsibility of people and communities in conservation and provides the right to manage, conserve, and protect forest resources, which had never been recognised under any previous forest-centred law.

The sharp and rigid ideological divides around the politics over ownership of “forestland” are not merely confined to the state bureaucracy, but dominate the discussions and decisions at the national level, and also determine the nature of correspondence between the state government and the centre. An attachment to an email from the adviser, NITI Aayog on 18 April 2018 to the joint secretary of MOTA, refers to comments of the HP government<sup>18</sup> in respect of forestland-related forest/environmental clearance for projects. The attachment mentions a circular issued by the Ministry of Environment,

Forest and Climate Change on 5 July 2013, which prescribed the format of the certificate that has to be issued by the DC of the concerned district stating and submitting that no forest rights claims under the FRA are pending. The HP government, responding to this requirement, reiterated in the letter that “the rights and concessions on forestland throughout the state including tribal areas, have long been settled and recorded,” further stating that in order to intensify the pace of development, a request be made to the Government of India to “review these ‘onerous’ and ‘impractical’ requirements which are “becoming a serious impediment to growth.”

The role of bureaucracies, as Egeberg (1999) describes, is generally understood to be a precondition for producing and implementing public policies, thus giving the perception that they are neutral executors working in accordance with provisional standards, and prescribed roles and responsibilities. However, as evidently pointed out in the interactions and discussions from Kinnaur, the bureaucracy, ridden with preconceived homogenised notions about “Adivasis,” exercising a feudal control over land and conditioned into an encroachment imagination, snatches the scope for any “neutral” behaviour to exist in regard to the FRA. What rules decisions then are the informal rules and conversations that affect actual behaviour, many of which emerge from misunderstandings and unawareness of the act’s provisions and concepts. The political-administrative nexus that dwells on this narrative, and then feeds it again into the system, ensures the sustenance of this cycle, which maintains dominant narratives, making the implementation of the act a bumpy ride.

### Conclusions

The long, brutal winter, the remote, rugged, and fragile geography, the struggle for water resources, the small agricultural season, and hardships of survival speak of the unique existence of Kinnaur as a community interlaced with its land and surroundings. Meanwhile, the bureaucratic narratives colonising the socio-geographical and historical differences wound deeper by codifying and universalising the lived reality of tribals into

nationalised identities with standard parameters. Claiming the failure of Kinnauras to perform as per these standardisations and disregarding the everyday existence and forest dependence of the Kinnauras, the people are drowned in the sea of narratives and myths, their rights ripped away from them. Although various channels of demonstration, dialogue, and lobbying are being explored by people, the bureaucracy maintains its absolute state of apathy and dismay towards people’s grievances. In such an atmosphere, the resentment towards the administration grows each hour, and echoes when the FRC members of Nako and Chango villages in Hungrang tehsil, a fragile high altitude trans-Himalayan region from Upper Kinnaur Valley, voiced together during our FRA file study visit in 2018, “We have grown on this land, these forest lands have fed us, our culture, religion, lifestyle all is centred around it. Land is our livelihood, land is our life, land is our identity.”

Under such repressive power structures and apathetic torpor of the bureaucratic apparatus, the people of Kinnaur bear the onus of not just proving their eligibility and claim to forest rights, but also struggle to establish their identity and existence as tribals, as forest-dependent families; an identity that is questioned and disregarded by the political-administrative apparatus. The construction of a standard tribal/forest dweller in Kinnaur thus works well to delegitimise, if not the FRA, then the people for whom it is made. It plunders them of the very right to make a claim. The apple-growing farmer of Kinnaur, fighting for the recognition of their rights, is declared as not tribal/Adivasi enough, not forest dweller enough, and the historical injustice centred on forest rights continues.

### NOTES

- 1 This article does not use the name of any of the respondents on requests of anonymity, privacy and security. But, the article details the social, economic, political and geographical locations of the respondents to provide the context of the responses.
- 2 As per the monthly status report on the FRA published by the Ministry of Tribal Affairs on 30 April 2018, till now, 17,503 FRCs have been formed under the Forest Rights Act in HP, but only 2,500 forest rights claims have been received so far, out of which only 136 claims have been given titles.

- 3 The district of Kinnaur falls in the tribal belt region of HP and all residents share the status of Scheduled Tribe. Under Part 1 of Schedule IV of the Scheduled Castes and Scheduled Tribes List (Modification) Order, 1956, Kanaura/Kinnara were incorporated as a Scheduled Tribe throughout the union territory of HP.
- 4 As per the data presented in legislative assembly on the FRA dated 14 December 2018, a total of 136 FRCs have been formed in the district of Kinnaur and 730 IFR claims and 14 CFR claims have been received, but no titles have been issued so far.
- 5 The authors covered 22 FRCs between August 2018 and September 2018 in the district of Kinnaur, HP. Focused group discussions and unstructured interviews were held with political and administrative representatives, forest rights claimants, and members of the FRCs.
- 6 Released on 5 December 2018 at Shimla, the report presents the findings of a study on IFR claims in Kinnaur and challenges the narrative of big encroachment that has constantly been put forward by the district bureaucracy as the reason for delegitimising the IFR claims of forest dwellers of Kinnaur.
- 7 The bureaucracy has long been drawing on the Adivasi population of these three districts from Central Indian Belt as the optimum ideal standards of tribalness/indigeneness and questioning the tribal identity in hilly states on the basis of this.
- 8 The Adivasi community has historically been framed as a group of savage people possessing characteristics of wild and pre-historic humans, dancing around the fire with arrows and spears, eating raw flesh, speaking in distinct animalistic tones, wearing leaves, etc. This romanticised imagery has been persisting since the beginning of colonisation, with the colonisers having used the same idea to establish themselves as superior and civilised over the people whose land and resources they had invaded.
- 9 Indian Forest Act, 1927; Wildlife Protection Act, 1972; Forest Conservation Act, 1980.
- 10 The FRA provides tenurial security against eviction, and as per Section 4(5) of the FRA, till the process of recognition and vesting of forest rights is not over, no one can be evicted from the forestland under their occupation.
- 11 The hold of the forest bureaucracy over resources has been to such a huge and wide extent that it has constantly exercised dominance in decision-making in HP and has even kept at bay other officials from other departments and the political apparatus. Ramchandra Guha (2010) has documented and traced the role of the forest department elaborately in the case of the adjacent state of Uttarakhand.
- 12 Under the National Forest Policy of 1952, which required the hill states to have two-thirds of their land area to be under forests, the HP government declared all land that was not under any "private ownership" as protected forests, bringing even wastelands under the forest department. This led to contestations between forest and revenue departments, which accelerated post the Forest Conservation Act (FCA) of 1980 that centralised and restricted the process of approval in the case of any forestland diversion for non-forest purposes. In 2002, the state government brought in the Land Regularisation Policy to regularise occupation over forestlands, but failed to implement it due to the central FCA, thereby resulting in lakhs of people being labelled in official documents as encroachers.
- 13 As mentioned in the proceedings of the meeting of the DLC, Kinnaur on 15 December 2018.
- 14 Minutes of the SLMC meeting held on 19 January 2019, [http://himachalservices.nic.in/tribal/pdf/ProceedingSLMCMeeting\\_19Jan2019.pdf](http://himachalservices.nic.in/tribal/pdf/ProceedingSLMCMeeting_19Jan2019.pdf).
- 15 Minutes of SLMC meeting held on 3 June 2019, [http://himachalservices.nic.in/tribal/pdf/ProceedingSLMCMeeting\\_03Jun2019.pdf](http://himachalservices.nic.in/tribal/pdf/ProceedingSLMCMeeting_03Jun2019.pdf).

- 16 <https://www.scoobserver.in/court-case/eviction-of-forest-dwellers>.
- 17 There are no rational bases to these myths that perpetuate, but they travel unquestioned directly from the top and, in the absence of any awareness and agency, shape the understanding on the ground.
- 18 This information was made available to us through a Right to Information application sent to the Ministry of Tribal Affairs on 23 January 2019.

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