

## A NOTE ON FOREST RIGHTS ACT FOR POLITICAL PARTIES & LOK SABHA CANDIDATES

The Forest Rights Act which was passed by the Parliament of India in 2006, came into force on January 1, 2008. Under this act Scheduled Tribes and Other Traditional Forest Dwellers (communities dependent) on forest land of any description (including Undemarcated Protected Forests, Demarcated Protected Forests, Reserved Forests, shamlaat, charagah, wasteland, sanctuaries, national parks etc) for their 'bonafide livelihood' have been vested with individual, community and development rights that can be claimed through the provisions given with the act.

### 10 years of non-implementation of FRA in a state with 70% forest land

- The Himachal Pradesh government implemented the Act only in scheduled (tribal) areas in 2008 and only in 2012-13 in the entire state.
- The Non-committal attitude of the State Government was revealed by the letters written by the then Chief Minister to the then Union Environment Minister of State, stating that the rights of the forest dwellers have been 'settled' long back.
- This has been the stand of the State government up until now, evident in the objections raised by the official members of the District Level Committee of Kinnaur in a case where it rejected 47 claims of Lippa Gram Sabha in December 2018, saying that: "The forest rights have already been settled vide the revenue settlement process conducted in 1984 and the forest settlement of 1921. Hence individual claims are not recommended as per the provisions of the Act."
- It was only in January 2016 when the State Government in an affidavit submitted to Supreme Court admitted that the FRA implementation in Himachal Pradesh shall start now from scratch.
- Since then around 17503 FRCs have been formed. Only 7 community claims in Bharmour; 53 individual claims in Dalhousie (Chamba) and 76 individual claims in Lahaul and Spiti region have been issued titles under the Act.
- 1900 cases have been sanctioned by the government under section 3(2) of the FRA 2006 for 13 development activities mentioned under this section.
- However, implementation of section 3 (1 ) on recognitions of Individual and Community Forest rights remains weak. Despite close to 70% of its geographical area under the category of 'forest land' state is amongst the worst implementors of the act in the country.

Year	No. of Revenue Villages (FRCs)	IFR Claims		CFR Claims	
		Received	Titles issued	Received	Titles issued
Oct 2018	17503	2071	129	170	7

## The need of FRA in Himachal Pradesh

The need for FRA implementation has been voiced from many quarters of the State – Kinnaur, Lahaul, Spiti, Chamba and Kangra. It has not turned into a popular demand across the state due to various reasons. Lack of awareness about the act may be one of the reasons but the more prominent cause is the government's silence on the question of occupations on forest lands also called 'najayaz kabza' which needs to be settled.

### How the three types of rights under FRA that apply in the State

#### a. Individual Forest Rights (IFRs):

Section 3(1) of FRA allow recognition of rights over forest land for agriculture and habitation for 'bonafide livelihood' needs (not just for subsistence purposes but also for earning an income).

- Thousands of landless people who have got land under *nautod* rules were not able to get final titles because of FCA 1980 in both tribal and non tribals.
- Customary records namely 'Wazib-ul-Arz' and 'Naqsha-Haq-Bartan', apart from community rights also recorded individual rights.
- Communities in Himachal also had right to break new 'Shaamlaat' land for agriculture called *nautor*. Due to Common Land Utilization and Vesting Act, 1974 vested all village wasteland to the State Government (initially the revenue department but later taken over for management by Forest Department). Thousands of people who had broken this land (claimed *nautor*) and were legitimate occupants of it, were overnight turned into encroachers on forest land evident in *Jambandi* documents where 'najayaz kabzaa' are visible across the state.
- In Simour many families living on forest land have no ownership in revenue records and do not even have a bonafide Himachali certificate. Some families occupying *shaamlat* land got the title over few biswas of land under the state government policy but many others with old occupations on 'reserved forest' land could not benefit under this policy.
- In Spiti where revenue settlement had happened in the late eighties there are also more than 1400 cases of *najayaz kabza* recorded in revenue records.

#### Failure of state governments 2002 Regularisation Policy: Making of Encroachments & Evictions

- In May 2002 Himachal Government formulated policy to regularize occupations on forest land in response to orders of Union Ministry of Environment & Forests to remove occupants from forest lands.
- More than 1.65 lakh people applied under the State regularization policy
- The policy could not be implemented due to restrictions imposed by Wildlife Protection Act 1972 and the Forest Conservation Act 1980
- Inability of State governments to provide relief to the occupants in the country led to passing of FRA by the Indian Parliament in 2006. Non-implementation of FRA in Himachal has *made vulnerable* those individuals who had filled forms of their occupations on forest land in 2002.
- Shimla High Court, in 2015 (CWP no:1028/2002) used affidavits filed by persons under 2002 regularisation policy of HP government to pass eviction orders. The court failed to consider the following provisions of the FRA in its eviction orders:
  - FRA supersedes previous laws as far as recognition of rights is concerned. Thus, rights have to be recognised irrespective of the Indian Forest Act, conservation laws and the State laws like Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971.
  - FRA recognizes the rights of forest dwellers through unconditional vesting of such rights on them. Without completing process of recognition and confirmation of rights, issuing a notice of encroachments under Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 is violation of section 4(1) of the Act.

- Section 4(5) of the FRA 2006 debar all possibilities of eviction of forest dwelling scheduled tribes or other OTFDs until the settlement of their forest rights has been carried out. The Supreme Court in the Niyamgiri Judgment (CWP No. 180 of 2011, dated April 18, 2013) established that unless the process of recognition and vesting of rights under FRA, 2006 is completed, no forest dweller can be evicted from the land they hold under occupation.

**There is an urgent need to recognise that these forest land occupations, barring a few handful are not of large apple orchardists as has been portrayed. Infact, the evictions that have taken place, in Palampur, Paonta Sahib are of Dalit and marginalised families who had their habitations on forest land.**

### **b. Community Forest Rights (CFRs):**

Section 3(1) of the FRA includes 13 types of community rights from forest land including grazing, fodder, fuelwood, medicinal plants, cultural and spiritual uses etc

- While the Forest Settlement process in Himachal provided communities' access to use forests but since these are 'privileges and concessions' they could be taken away anytime
- Vis-a-Vis community rights the Forest Conservation process allowed the 'diversion' of forests for large development projects by displacing these rights (*bartandari*)
- In National Park and Wild Life Sanctuary areas too, these 'privileges & concessions' were severely restricted because of the Wild Life Protection Act 1972.

The Union Ministry of Tribal Affairs issued a clear clarification in 2015 that the rights recorded under 'Wajib-ul-Arj' and 'Forest Settlement' will also have to be settled and recognised under the provisions of the Forest Rights Act 2006. Himachal has more than 1.5 lakhs pastoral families of Gaddis and Gujjars and medicinal plant collectors who are directly dependent on forest land for livelihood need to be provided these CFRs

### **c. Community Forest Resource Rights – Empowerment to manage and conserve forests**

Section 3(1)(i) of the Forest Rights Act 2006 provides provides Community Forest Resource Rights under which the rights to protect, manage and conserve forest resources are recognized.

This is essential for a participatory approach towards forest conservation involving the communities having stakes on the forests.

### **d. Development rights**

**Includes rights of the Gram Sabha to provide consent to diversion of less than 1 hectare of forest land (involving felling of not more than 75 trees) for 13 types of village development activities.**

- Close to 1900 cases of diversion of land have been cleared under section 3(2) of the act in Himachal Pradesh
- The state government has been implementing section 3(2) of the Act in absence of implementation of 3(1) where as the MoTA has clarified that section 3(1) and (2) need to move parallely.

## Hinderances to FRA implementation in Himachal

- ✓ Bureaucratic misconceptions and bias with regard to application and eligibility of Act
- ✓ Lack of training of line staff: Members of FRCs, SDLCs and DLCs
- ✓ Unsupportive government staff and Lack of access to documentary evidence
- ✓ No funds earmarked for photocopying of documents and claim forms and the implementing agencies involved are showing a completely unsupportive attitude.
- ✓ Lack of awareness programs amongst community and fear of eviction among occupants

## A People's Demand Charter for fair and just implementation of FRA in the State

1. **Immediate Trainings on FRA for all line staff:** Members of FRCs, SDLCs, DLCs and senior officials of the revenue, forest, tribal and panchayati raj departments
2. **Expedite pending claims:** Clear instructions to all the members of District Level Committees (DLC) and Sub-Divisional Level Committees (SDLC) to expedite the issuing of title/decision over the claims pending at SDLCs and DLCs in a time bound manner under FRA 2006 esp in districts like Kangra, Lahaul and Spiti, Kinnaur and Chamba where claims are pending.
3. **Issue clarifications on false objections:** There is also an urgent need to issue clarifications regarding the definitions of “village gram sabha”, “forest dwellers” and “bonafide livelihood needs” under the act to all officials
4. **To file claims of pastoral communities:** The claims of pastoral communities will fall inside and outside the district boundary, and therefore as per the FRA amended rules “*The District Level Committee shall facilitate the filing of claims by, pastoralists, transhumant and nomadic communities as described in clause (d) of sub section (i) of section 3 before the concerned Gram sabhas*” . It means, the DLC should ensure filing of claims under sections 3(1) of the Act. This is essential to benefit Gujjar, Gaddi and other pastoral communities in the state
5. **Withdrawal of templates in dated 19<sup>th</sup> June 2014 by the Principal Secretary (Forests)** –The Principal Secretary (Forests) to the Government of Himachal Pradesh had issued templates for recommendations/consent to all FRCs, SDLCs and DLCs dated 19<sup>th</sup> June 2014 which should be immediately withdrawn (Annexure IV).
6. **Withdraw all NIL claims:** The NIL claims taken from Gram sabhas on these templates in some districts – like Chamba, Mandi, in absence of compliance with FRA under the above said format should be considered null and void and called back.
7. **No More Evictions from forest land:** The government must ensure that no evictions take place from forest land. The State Government should apprise the High Court in the case of evacuation of “encroachments” on forest land on the grounds of section 4(1) and 4 (5) of the Forest Right Act, 2006. The State Level Monitoring Committee (chaired by the Chief Secretary) should follow up on this and also update the HC of the status of FRA implementation in the state.
8. **Widespread Public Awareness:** Government should run a public awareness campaigns, public service announcements through radio and print so that more people become aware of the Act.

Any political party or representative who believes in strengthening democracy at the grassroots; who believes in protecting the traditional occupations/livelihoods of farming and livestock rearing which are under threat; who believes in protecting the rights of the marginalized communities like Scheduled Tribes, Scheduled Castes, the landless & marginal farmers; who believes in ensuring the sustainable use as well as community led management of forests in Himachal will lend their support towards the just and fair implementation of this act.

HIMACHAL VAN ADHIKAR MANCH

## वन अधिकार कानून,2006 पर जन घोषणा पत्र

2006 में भारत के संसद ने वन भूमि पर निर्भर सभी समुदायों के हितों की रक्षा और उनके अधिकारों को कानूनी मान्यता देने के लिए वन अधिकार कानून 2006 (Forest Rights Act,2006) पारित किया। यह कानून किसी भी प्रकार की वन भूमि - अवग्रिकृत वन (unclassified forests), असिमांकित वन (UDF), सांझे वन, संरक्षित वन (DPF), आरक्षित वन (Reserve), अभ्यारण और राष्ट्रीय पार्क (Sanctuary & National Park), शामलात/चरागाह आदि में लागू होता है। इस कानून को लाने की आवश्यकता ही देश में इसलिए पड़ी क्यों की देश भर में वन भूमि पर अपनी आजीविका के लिए निर्भर समुदायों को बेदखल करने के आदेश सुप्रीम कोर्ट के निर्णय पर वन मंत्रालय ने दिए थे। बल्कि हिमाचल सरकार ने 2002 में भूमि नियमितिकरण के लिए नीति भी बनाई परन्तु वन संरक्षण के कई केंद्रीय कानून ही इतने जटिल थे की जिन 1.6 लाख लोगों ने कब्जों पर पट्टों के लिए फारम भरे उनको कुछ नहीं मिल पाया। आखिरकार केंद्रीय सरकार को 2006 में वन अधिकार कानून लाना पड़ा ताकि किसी भी वन भूमि पर आधारित व्यक्ति या समाज जिसके कब्जे 13 दिसंबर 2005 से पहले के हैं उनको इस कानून के तहत पट्टों के लिए दावे भरने का अधिकार मिले और उनकी बेदखली न हो।

देश भर में इस कानून के तहत लाखों लोगों को फायदा मिला है परन्तु हिमाचल में इस कानून को आज तक सरकारों ने ढंग से लागू नहीं किया है। हिमाचल के राजनैतिक प्रतिनिधियों को यह समझना होगा की राजस्व जमाबंदियों में चढ़े नाजायज़ कब्जे वाले अधिकतर छोटे किसान हैं और इनको वन अधिकार कानून के तहत अपने दावे पेश करने से कानूनी मान्यता मिल सकती है। किसी व्यक्ति के दावे को मान्यता देने के लिए इस कानून में ग्राम सभा से ले कर उप जिला, जिला और राज्य सस्तर तक की प्रक्रिया है। इस कानून में किसी भी दावे को बिना पूरी प्रक्रिया के खारिज नहीं किया जा सकता। तभी तो सर्वोच्च न्यायालय ने पिछले महीने दिए गए खुद के बेदखली के आदेश को रोक दिया और सभी राज्यों को दावों की पूरी प्रक्रिया को ले कर स्पस्तीकरण और जानकारी मांगी है। इस कानून की सब से अहम बात यह है की यह ग्राम सभा को दावों पर निर्णय लेने का अधिकार देता है। हिमाचल के जो भी राजनैतिक प्रतिनिधि लोकतंत्र को मज़बूत करना चाहते हैं, जो स्थानीय जनता की परम्परागत आजीविका और व्यवसाय - किसानी और पशुपालन - को खत्म होने से बचाना चाहते हैं, जो अनुसूचित जनजाति, अनुसूचित जाती और वन भूमि पर बसे भूमिहीनों के हित में हैं और जो चाहते हैं की हिमाचल में वनों का संरक्षण एवं सही प्रबंधन हो - वह इस बार वन अधिकार कानून को सही तरीके से लागू करने की अगवाई करें - यह हमारा आव्हान है!!

यह कानून हिमाचल प्रदेश में क्यों आवश्यक है?

क्योंकि हिमाचल जैसे पहाड़ी राज्य का दो तिहाई भौगोलिक क्षेत्र कानूनी रूप से 'वन भूमि' में दर्ज है इसलिए वन अधिकार कानून की आज यहाँ सख्त जरूरत है

राज्य में लाखों परिवार खेती और रिहाइश के लिए कई सालों से वन भूमि पर बिना पट्टे के काबिज हैं. ऐसे परिवारों पर बेदखली का खतरा मंडराता रहता है. ऐसे परिवार इस कानून के तहत हकदार हो सकते हैं और इस ग्राम सभा को व्यक्तिगत वन अधिकार के लिए अपना दावा पेश कर सकते हैं

अपने गुजर बसर के लिए वन भूमि पर लकड़ी, पत्ती, घास, जड़ी बूटी, खड्ड, नाले, रेत बजरी आदि के लिए निर्भर समुदाय हकदार हो सकते हैं और ग्राम सभा को सामूहिक वन अधिकार के लिए अपना दावा पेश कर सकते हैं

ग्राम सभा को वन भूमि के संरक्षण का अधिकार दिया गया है

कानून में ग्राम सभा वन भूमि पर 13 प्रकार की स्थानीय विकास की परियोजनाओं जैसे स्कूल, आंगनवाडी आदि के लिए प्रस्ताव पारित कर अनापत्ति दे सकती है

## हमारी मांगें

- सभी सम्बंधित बिभागों (line departments) के अधिकारियों, पंचायत सचिव, पटवारी, गार्ड तथा वन अधिकार समिति के सदस्यों के लिए वन अधिकार कानून पर तत्काल प्रशिक्षण
- जिला कांगड़ा, लाहौल-स्पीति, किन्नौर और चंबा की डीएलसी और एसडीएलसी में लंबित व्यक्तिगत और सामुदायिक दावों पर निर्णय लेने की प्रक्रिया तेज करना
- जानकारी और प्रशिक्षण के आभाव में काँगड़ा, चम्बा और मंडी की ग्राम सभाओं से गलत तरीके से लिए 'नील क्लेम' प्रमाण पत्रों को निरस्त करना
- पंचायत प्रतिनिधियों पर नाजायज समय सीमा का दबाव डाल कर दावे मांगने की प्रक्रिया पर रोक
- सरकार को यह सुनिश्चित करना चाहिए कि वन भूमि से किसी भी प्रकार की बेदखली पर तुरंत रोक लगाकर वन अधिकार कानून लागू करना
- कानून को आम जनता की जानकारी में लाने के लिए सरकार द्वारा जनजागरण अभियान

पहाड़ में जीवन का आधार - वन अधिकार! वन अधिकार!

हिमाचल वन अधिकार मंच