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Damocles' sword hangs over adivasis, forest dwellers



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When the government violates the people's rights, insurrection is for the people... – Marquis de Lafayette

On February 13, the Supreme Court passed an order for the eviction of nearly 12 lakh people, whose claims under the The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, popularly known as Forest Rights Act (FRA) of 2006, were rejected. Although the SC has subsequently stayed the eviction order temporarily, its initial ruling is unjust

and has implications for the ruling BJP ahead of the Lok Sabha elections.

Let us see how the court erred in passing the order, which not only negates the spirit of the Act but also violates some of the fundamental principles of democratic governance and natural justice.

The order has come in response to the Public Interest Litigation (PIL) filed by the Wildlife First & Ors in 2008 challenging the constitutional validity of the Act. The other plea was the lack of clarity in the Act, in particular to who constitutes the 'Other'. The petitioners argued that due to the lack of conceptual clarity of the other in the Act, there has been rampant encroachments of the forest. The petitioners also claimed that the Act is responsible for the fragmentation of forests. In a nutshell, there are three main aspects (i) constitutional validity (ii) definition of the 'Other' and (iii) deforestation. Set in this backdrop, it is necessary to understand whether the court has addressed these issues or not.

But before that, it must be understood that the nodal agency for the implementation of the FRA is the Ministry of Tribal Affairs but not the Ministry of Environment, Forest and Climate Change (MoEFCC). In this case, the petitioners made the MoEFCC as main respondent; this is the factual error. It is surprising to note that neither the court nor the petitioners and not even the Union Ministry of the Environment has brought out this concern to enable the smooth conduct of the due process of the law.

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The callous attitude of successive governments, with strong lobbying of forest bureaucracy and the lack of sensitivity of ministries towards the rights of adivasis and forest dwellers are critical factors. Besides, why did the case take so long — more than a decade — when the main argument is its constitutional validity?

The Supreme Court's order has not mentioned anything about constitutional validity, definition of the other and deforestation aspects in its order. Without going into nuances of the issues raised by the petitioners, the court straightaway ordered the eviction of all those whose forest rights claims were rejected. The judiciary has not explored the alternatives before passing this order. It has adopted the reductionist approach and made all those whose claims were rejected as 'encroachers', though the order does not mention this explicitly. It emphasised that "in case the eviction is not carried out, as aforesaid, the matter would be viewed seriously by this court".

When one looks at the Act, the court ordering the eviction is beyond its legal purview especially in the forest areas. The court also ordered "let Forest Survey of India (FSI) make a satellite survey and place on record the encroachment positions and also state the positions after the eviction as far as possible". The critical question is, why has the court not dealt with the issues that were raised

WHAT'S BREWING

in the petition? An answer evades, as the matter has to be resolved by the state governments in consonance with the Union ministry.

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This does not mean to exclude the severity of the issues raised by the petitioners, particularly the encroachment of the forest areas by the outsiders. Since the states failed to check land alienation in forest areas in spite of legislations such as The Forest (Conservation) Act of 1980, The Biodiversity Act, 2002, and the Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996. The first two acts were responsible for preserving the forests in the country as whole while the PESA is specifically designed to the empowering Gram Sabhas in Schedule Areas, both Fifth and Sixth.

The way forward

The Supreme Court's eviction order makes forceful what the United Nations (UN) Committee on Economic, Social and Cultural Rights describes as, "the permanent or temporary removal against the will of individuals, families or communities from their homes or land, which they occupy, without the provision of, and access to, appropriate forms of legal or other protection".

Historically and in contemporary times, the Supreme Court of India has been seen as the harbinger of the protection of human rights. This order erodes the institutional credibility of the judiciary and widens the gap between the court and citizens, especially adivasis and forest-dwelling communities, whose traditional forest rights are at risk now. The court must review its order to preserve and protect the integrity of the judiciary.

Two options are feasible at this juncture. One, ask the states to review the rejected applications to ensure an opportunity for affected persons, which is well within the purview of natural principles of justice, and which the SC has already done. Two, if the court is satisfied with the FSI satellite survey, then there must be proper rehabilitation and resettlement policy measures to accommodate the displaced persons.

While doing so, it must ensure that it does not take over the state's or legislature's responsibility in passing such orders which violates the doctrine of the separation of powers and co-operative federalism. Without these measures, asking the states to implement this order will invite civic insurrections all over the country.

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