Supreme Court's Order on Eviction of Forest Dwellers - Forest Rights Act

What is the issue?

- The Supreme Court has ordered the state governments to evict over 10 lakh forest dwelling families whose claims have been rejected under the Forest Rights Act.
- The order is likely to hurt some of India's most vulnerable communities, and thus needs a relook.

What does the Forest Rights Act provide for?

- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act or FRA was passed by the Parliament in 2006 and came into effect in 2008.
- It was intended to correct the “historical injustice” done to forest dwellers from the colonial times.
- [The traditional rights of such communities were derecognised by the British Raj in the 1850s.]
- The Act recognises and vests the forest rights and occupation in forest land in the forest dwelling Scheduled Tribes.
- It also covers other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded.
- The Act recognises -

i. individual rights to forest land and livelihood
ii. community rights to forest 'land' exercised by their gram sabha
iii. community forest 'resource' rights, giving gram sabhas the power to protect and manage their forest

- Conservation plans and developmental projects in these areas would have to be approved by gram sabhas.

What are the concerns in implementation?

- The implementation of the safeguards offered in the Act has not been that satisfactory.
- **Rejection** - There are deep procedural flaws in processing of the claims to forest land, and there is a high rejection rate.

- As of April 2016, only 40% of the claims received across the country had been settled.
- Of the 44 lakh claims filed before authorities in the different States, 20.5 lakh claims (46.5%) were rejected.
- In Chhattisgarh, Adivasi communities account for a third of the population.
- But over half of individual rights and a third of community rights claims were denied.
- **Arbitrary** - Claims are being rejected without assigning reasons, or based on wrong interpretation of the provisions, or simply for lack of evidence or 'absence of GPS survey'.
- The rejections are not being communicated to the claimants, and their right to appeal is not being explained to them or facilitated for.
- The mere rejection of claims by the state therefore does not mean that their possession of land is a crime of "encroachment".

What was the 2016 petition?

- The petitions challenging the Forest Right Act were filed by Wildlife First, a non-governmental organisation, and retired forest officials.
- It relates to the challenge on constitutional validity of the FRA and the issue of preservation of forests in the context of it.
- Deforestation is, in fact, largely driven by 'indiscriminate clearances' for large, potentially destructive projects.
- The petition thus blamed the law for deforestation and encroachment on forest lands.
- As, the rights over the land by the forest dwellers are being denied under the provisions of the Act which was actually meant to protect them.

What was the Supreme Court's response?

- A claim is based on an assertion that a claimant has been in possession of a certain parcel of land located in the forest areas.
- If the claim is found to be unreasonable by the competent authority, the claimant would not be entitled for the grant of any Patta or any other right under the Act.
- Also, such a claimant is either required to be evicted from that parcel of land or some other action is to be taken in accordance with law.
- The claimant cannot contest the decision of the authority.
- With respect to actions to be taken on "unauthorised possessions of forest land", the States were asked by the Court to report on concrete measures.

What is the present order?

- In the present order, the Supreme Court has specifically directed governments in 21 States by name to carry out evictions.
- The families had filed claims to forest land under the Forest Rights Act, 2006 and on rejection of their claims the court has directed that the eviction be carried out on or before July 24, 2019.
- The court cautioned the States that if the evictions are not carried out within the stipulated time, the matter would be viewed seriously.
- It ordered the States' Chief Secretaries to also file affidavits, explaining why the rejected claimants on previous court orders were not evicted.
- The court ordered the Forest Survey of India (FSI) to make a satellite survey and place on record the "encroachment positions."
- It directed the FSI to also place on record the position after the eviction as far as possible.

Why is the court's order disputable?

- The immediate result would be the forced eviction of over one million people (STs and other forest communities).
- **Governance** - It is not clarified if the Supreme Court has the authority to order evictions of Scheduled Tribes from Scheduled Areas.
- There is no reference to the implications for governance in the Scheduled Areas.
- This is because the constitutional mechanisms protect the boundaries to Adivasi homelands and restrain interference in self-governance.
- **Constitutional protection** - Around 60% of the forest area in the country is in tribal areas.
- These are protected by Article 19(5) and Schedules V and VI of the Constitution; the area marked for eviction falls under these.
- It specifically mentions that the State had to make laws for the protection of the interests of any Scheduled Tribe.
- So the Court's order is a disregard for this core fundamental right protection to Adivasis.
- In fact, it is the responsibility of the Supreme Court to uphold the constitutional claims and equal citizenship.

Source: The Hindu, Scroll

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