

India: central government's weak legal defense of forest act means 1m families could be evicted, say activists

Friday 22 February 2019, by [RAJSHEKHAR M.](#), [YAMUNAN Sruthisagar](#) (Date first published: 21 February 2019).

The Ministry of Tribal Affairs has been accused of failing to brief its team adequately in a case about the constitutionality of the Forest Rights Act.

On February 13, the Supreme Court ordered state governments to evict over 10 lakh (one million) forest-dwelling families whose claims over forestland have been rejected, a direction that will hurt some of India's most vulnerable people.

The order came in a case on the constitutional validity of the Forest Rights Act, which was passed in 2006 aiming to "recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded".

The harsh direction was possible, allege Adivasi activists and lawyers, because the lawyers of the Union Ministry of Tribal Affairs mounted a weak defence of the Act. The case has dragged on for over 10 years under multiple benches, with the Supreme Court yet to answer questions on constitutional validity of the law.

Three grounds

There were at least three grounds on which the ministry could have challenged petitioners' demand that forest claims be rejected and residents evicted, lawyers say.

First, the petitioners ignored that the fact that Forest Rights Act says that no one should be evicted while the process of recording their rights is underway.

Second, the order short-circuited the process laid down in the Act for those whose appeals have been rejected. Under the legislation, the government has to inform applicants why their claims have been rejected so that they can appeal the decision. Subsequently, evictions have to be carried out under the process defined by India's forest laws.

"You have to serve them a notice," said a Supreme Court lawyer who works on the Forest Rights Act. "And then, they can appeal. You cannot just evict a million tribals."

Third, the process of recognising rights has been poorly implemented. Of the 41 lakh claims filed so far, 18 lakh have been approved, 3 lakh are still being processed and the remaining 20 lakh have been rejected.

Rejection does not always mean that the applicant's case lacks merit. For most forest dwelling communities, the process of applying for an abstract notion like rights is daunting, activists pointed

out. At the same time, states are wary of vesting forest rights since this could, among other things, complicate their ability to divert forest land for industrial activities. States have devised several strategies to reject applications, activists say.

States like Jharkhand and Himachal Pradesh have refused to accept applications by Other Traditional Forest Dwellers – which is how the Act describes people of non-tribal origin who live in or depend on forests, said TISS professor Geetanjay Sahu who has just finished a pan-India study on the implementation of the Act.

Gujarat told applicants to submit, along with other evidence, satellite images of the land to which they were staking claim, said the Supreme Court lawyer. “These people do not have two coins to rub together and you want them to get satellite images?” she said on the condition of anonymity.

For this reason, activists say, rejected claims need to be re-evaluated, as Maharashtra is doing.

But on all three fronts, the ministry’s lawyers stayed quiet.

Long drawn-out case

Even when it was being drafted, the Forest Rights Act was criticised by the Union Environment Ministry and wildlife groups like Bombay Natural History Society, Wildlife Trust of India and Wildlife First. They said the Act would encouraged further encroachment on India’s already battered forestlands.

While the environment ministry backed down after the bill became law on December 31, 2007, the Bombay Natural History Society and Wildlife First filed separate PILs before the Supreme Court challenging the Act’s constitutional validity. They said that land distribution falls under the legislative competence of state governments, so parliament could not distribute land through the Forest Rights Act.

On March 28, 2008, the Supreme Court accepted these petitions and served notices to the Centre and state governments. Under the Congress-led United Progressive Alliance, Fali Nariman was the senior advocate on the case. After the Bharatiya Janata Party-headed National Democratic Alliance came to power, Additional Solicitor General PS Narsimha represented the Union of India.

The cases has been handled by several judges on different benches. In 2014, the petitioners moved an interlocutory application asking the court to direct the Comptroller and Auditor General of India to report on the extent of land occupied by ineligible claimants. The petitioners claimed that 67,900 hectares of forest land had been lost after the enactment of the Act. They alleged forests were first cleared and then rights have been claimed over such land.

The case picked up pace sometime in 2016, when a bench headed by J Chelameswar began hearing the petitions. On January 29 that year, the Supreme Court said that it was obvious that vesting of rights under the Act is based “on an assertion that a claimant is in possession of a certain parcel of land” in the forests. Therefore, it said that if the claims were rejected, the claimant was to be evicted or other action proposed by the law should follow. It asked the states to file data on the number of claims rejected and what action they had taken.

When the idea was proposed that those whose claims had been rejected should be evicted, Additional Solicitor General Narasimha shot it down, said the Supreme Court lawyer. “He asked what the court was adjudicating on,” the lawyer recalled. “Was it hearing a case on the constitutional validity of the Forest Rights Act or deciding whether a tribal with half a bigha of land somewhere should stay there or not?” In other words, could the court order states to evict forest

dwellers by invoking a law whose validity had been challenged?

The case dragged on again, with states taking their time to file affidavits. Arguments on the main petition began only in September 2016 and extended into 2017. On March 31, 2017, the bench said that arguments of parties on parliamentary competence to enact the Act was complete but other points had to be argued. Records on the Supreme Court website show that the next significant order came in March 2018, when a new bench headed by Justice Madan B Lokur said that the data filed by the states had become outdated since two years had passed since they were put together. It asked for fresh data on rejected claims and action taken.

New bench

By December 2018, there was another change in the bench with Justice Arun Mishra leading it in place of Justice Lokur. It is this bench that delivered the February 13 order asking the states to evict lakhs of forest dwellers whose claims have been rejected.

By October last year, Narsimha had stepped down. After that, instead of creating a new legal team, the ministry left the matter to empanelled lawyers without giving them proper instructions, said the Supreme Court lawyer. "They would attend, mark their attendance, but not say anything," the lawyer said. "They were not prepared."

Earlier this year, a host of tribal organisations had grown anxious about the security of the Act. In a joint letter in February, they told Jual Oram, who heads the tribal affair ministry, that in the previous three hearings in the Supreme Court on petitions seeking to have the Act struck down, the Centre's counsel did not say anything to defend the law.

As the legal defence weakened, the nature of the hearings changed. Gradually, a case against the constitutional validity of the Forest Rights Act became seeking the eviction of forest dwellers. "This is a huge setback in terms of interpretation of the act," said the Supreme Court lawyer.

Scroll.in phoned the office of Jaideep Singh Kochcher, an economic advisor at the Tribal ministry who is also in charge of the Forest Rights Act, and left a message asking him to comment on the steps now being contemplated by the ministry. He was also asked asked to respond to these charges that the ministry had not adequately defended the Act - or the forest dwellers. This article will be updated if he responds.

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