Without Land or Recourse

(The editorial is based on the article "Without Land or Recourse" which appeared in Indian Express on 21st February 2019. In this article, we will discuss the issues related to the recent order of the Supreme Court.)

There is an ongoing concern that recent Supreme Court order may lead to the eviction of lakhs of persons belonging to the Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs) categories across 21 States. The Supreme Court has recently rejected their claim as forest dwellers under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or FRA. That this order negates the claims of citizens under the special protection of the Constitution, viz. the Scheduled Tribes and other vulnerable communities already pushed by gross governmental neglect precariously to the edge, is another matter altogether.

Background

- The court's orders came in a case filed by wildlife groups questioning the validity of the Forest Rights Act.
- Some wildlife NGOs, like petitioner Bangalore-based Wildlife First, believe the law is against the Constitution and it has led to deforestation.
- The order in question was issued in the case of Wildlife First & Ors v. Ministry of Forest and Environment & Ors.
- The details regarding claims made under the FRA that were placed before the court by the petitioner in 2016 showed that of the 44 lakh claims filed before appropriate authorities in the different States, 20.5 lakh claims (46.5%) were rejected.
- A claim is made either for individual or community rights by the people/communities covered by the FRA. This is a plain reading of the Act, which is unambiguous on this score.
- The States were then asked by the Supreme Court to report on concrete measures taken to evict the Scheduled Tribes and Other Traditional Forest Dwellers from the forest.

Concerns

- In the present order of February 2019, the Supreme Court specifically directs governments in 21 States by name to carry out evictions of rejected claimants without further delay and report on or before July 12. This attracts several questions which are of immediate concern.
- According to the 2014 report of the High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities in India, constituted by the Government of India (Xaxa Committee), 60% of the forest area in the country is in tribal areas — protected by Article 19 (5) and Schedules V and VI of the Constitution.
- Claims are being rejected without assigning reasons, or based on wrong interpretation of the Other Traditional Forest Dwellers (OTFD) definition and the 'dependence' clause, or simply for lack of evidence or 'absence of GPS survey'.
- The land is wrongly considered as 'not forest land', or because only forest offence receipts are considered as adequate evidence.
- The mere rejection of claims by the state, therefore, does not add up to a finding of the crime of "encroachment" — the sheer volume of rejections should instead set alarm bells ringing in the court of procedural improprieties.
- The rejections are not being communicated to the claimants, and their right to appeal is not being explained to them nor its exercise facilitated.
- The immediate result will be the forced eviction of over one million people belonging to the Scheduled Tribes and other forest communities.
- Importantly, the area marked for eviction falls under areas designated under Schedule V and Schedule VI of the Constitution — there is no reference to the implications for governance in the Scheduled Areas and whether the Supreme Court, in fact, has the authority to order evictions of Scheduled Tribes from Scheduled Areas.
- There are already obstacles in the way of including them in the general process of development.
- Lacking the skills to survive in a competitive labor market, savvy to negotiate their way or the strength of numbers to exercise influence on political processes, the people of the PVTG will become exceedingly vulnerable.

Way Forward

- The presence of Article 19 (5) in the Fundamental Rights chapter of the Constitution, which specifically enjoins the state to make laws "for the protection of the interests of any Scheduled Tribe", is vital.
- How has the Supreme Court ordered the eviction in complete disregard of this core and express fundamental right protection to Adivasis (as distinct from legal/statutory protection), which protects them from a range of state and non-state intrusions in Scheduled Areas as well as from the perennial threat of eviction from their homelands.

- It is the obligation of the Supreme Court to protect the Scheduled Tribes and other vulnerable communities from the grave harms of violent dispossession.
- The administrative structures at the cutting edge charged with the responsibilities of ensuring the well-being of the people of the PVTG differ from state to state. States like the undivided Andhra Pradesh had formed special agencies for their welfare. Madhya Pradesh has formed district level agencies for the welfare of the PVTG. In other places, the Tribal Development Commissioner or equivalent is charged with the responsibility of looking after them.
- Instead of order for eviction, there is a need for adequate documentation and debates on this issue so that forest dwellers won't suffer because of the inefficiencies of administration.
