POINT OF VIEW

A Forest of Misconceptions

By Sharachchandra Lele

The February 13 Supreme Court order to evict a million or more forest-dwellers has shocked grassroots communities, rights activists and environmentalists. The court has been hearing petitions that challenge the "constitutional validity" of the Forest Rights Act (FRA) of 2006, and "questions pertaining to the preservation of forests in the context of [the FRA]". Its order is based on a seemingly simple logic: if a claim over forest land has been rejected, then the claimant cannot be a right-holder and, therefore, must be evicted as an 'encroacher'. Unfortunately, this approach is based on a topsy-turvy framing of the problem.

The FRA recognises the rights of forest dwelling communities (Adivasis and others) to reside in and use traditional cultivated lands, to manage forests collectively, and to have a say when forests are proposed to be diverted for development projects or declared as conservation priority areas. Those who qualify as 'forest-dwellers' can submit individual/ collective claims, along with necessary evidence showing they were using the lands before a cutoff date. The petitioners argue the FRA will lead to indiscriminate distribution of forested land, and hence harms our fundamental right to a healthy environment.

Given this, the court should have first ruled on a basic question: is the FRA valid or not? For if it is not, then not just the 1.89 million rejected claims but also the 1.64 million accepted ones become invalid—and then all 'claimants' must be evicted. To focus on what happens after claims under FRA have been processed surely means the FRA itself is valid? Why didn't the court rule so?

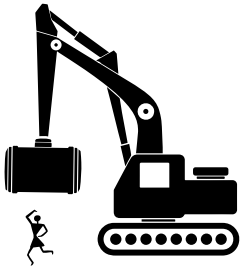
Second, if the FRA is valid, then its implementation must be examined in its entirety. Ensuring that bogus claimants do not grab actual forest land is only one part of the story. Making sure that genuine forest-dwellers get tenure and management rights should surely be the major focus. Committee after committee has found the FRA's implementation tardy and poor—unfair rejections, granting of only part of legitimately claimed areas, improper titling and, worst of all (from a forest conservation point of view), no progress on community forest claims. Surely, the constitutional and statutory rights of the claimants matter too, especially as the Adivasi is given special protection under the Constitution.

Underlying this misplaced focus is a fundamental misconception. The petitioners, and apparently now the court, start from the premise that land legally notified as forest land by the British and post-Independence government is basically forested land, and belongs to the state. Legitimate cultivation lies outside these lands; anything else is an 'encroachment', which the FRA tries to 'regularise' by drawing a line in time.

The FRA, however, starts from a different set of premises. One, that in many parts of the country, forest boundaries were incorrectly (and illegally) drawn by the colonial and post-colonial governments, ignoring pre-existing settlements and cultivation. Second, in almost all parts of the country, customary community rights to use and manage forests were illegitimately usurped by the colonial state. Hence, the state (in the form of the forest department) is the biggest encroacher on citizens' rights! And there is enormous evidence to support this perspective.

If one accepts this spirit of the FRA, one can then seriously engage with the question of whether the implementation matches the spirit. That politicians have sought to convert the FRA into a land grant programme is true, but all evidence suggests this has happened only in pockets. That misguided foresters have prevented FRA implementation tooth and nail, especially the granting of community rights, is vastly truer—even 11 years after coming into force, the extent of community forest rights granted is minuscule. What conservationists and judges do not seem to realise is that rapidly expanding community forest rights will both contain the misclaiming of individual rights and give communities the possibility of vetoing environmentally devastating mining and other projects (as happened in the Vedanta bauxite mining proposal in Niyamgiri). Instead of focusing on evictions, the court and all concerned need to focus on rigorous implementation of the state's obligation to protect the rights of its most marginalised citizens. ■

Sharachchandra Lele is Distinguished Fellow in Environmental Policy and Governance, Centre for Environment & Development, ATREE. Opinions expressed are personal



Before ordering that forest dwellers must be evicted, why didn't the court rule on the basic question—is the Forest Rights Act valid or not?

Illustration by TANMOY CHAKRABORTY