

What the State Doesn't Learn: The Ugly Case of Forest Rights in Rajasthan

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The recent nationwide protest against the judgement delivered by Supreme Court on the implementation of the law related to people of Scheduled Castes and Scheduled Tribes reflects the sentiment of the affected groups and communities that the States lack willingness for the effective implementation of laws and provisions in true letter and spirit. The trend and pattern of the non-implementation or tardy implementation of the welfare laws and other measures for marginalised communities prove that the cases were not just an isolation or exception.

The draft Forest Policy 2018, which is being presented for public input, brings corporates to centre stage, and alienates the affected communities. So far, the Forest Rights Act 2006 has also not achieved its expected result to counter the history of injustice committed against the forest communities and first people.

In this context, a recent direction on 3rd April 2018 passed by the National Human Rights Commission high-lighted concern where it upheld the contention of the civil rights activists that there has been arbitrary denial of the forest rights all across the country, and specific denial of said right to 32,786 scheduled tribes from Rajasthan in the case on hand in the NHRC. The Rajasthan Government in its report had said that the State authorities 'had meticulously complied with the statutory provisions and the guidelines issued by the competent authorities'.

In response 'the complainant in his long-drawn reply with comments made serious allegations against the State authorities of Rajasthan who allegedly denied the claims of the tribals, as per law. As a result, the human rights of a large number of tribal victims covering several Districts of the state of Rajasthan were said to have been violated'. After carefully considering the reply, the apex human rights authority ruled 'that a copy be transmitted to the Chief Secretary for discreet enquiry into the matter and to extend all the statutory benefits to the beneficiaries under the said Act by issuing stringent guidelines to be complied in future. Compliance within six weeks positively', the apex human rights body of this country noted.

The case in NHRC is based on a study conducted by this author in 2015 'Facilitate FRA Implementation in Rajasthan through Interaction with Civil Society and Grassroots Movements'.

The study describes the ecology of Rajasthan and the importance of the forests in this regard. The study goes on to show that only 0.86% of the potential rights under the Forest Rights Act with a total absence of recognition of Community Forest Rights claims. The study goes further to point even in the limited number of individual forest rights claims processed by the Government there has been arbitrary denial of claims.

These findings have resulted in a multipronged approach to capacitate communities for recognition of their rights of which the case was filed by a civil rights campaigner Subash

Mohapatra in the NHRC is a part. In the course of action research, it has been found that a major reason for denial has been simply that the land asked for is in protected areas and sanctuaries. The Government of Rajasthan has been reported asking for clarification from the Government of India as to whether forest rights can be granted in sanctuaries ignoring the clarifications that have already been given. As a result of the repeated protests from the communities and civil society, it was finally acknowledged that Forest Rights can be given in sanctuaries. While it has been acknowledged that community forest rights can be given, claims filed by communities in this regard are still pending.

Considering this, it was considered that focus should be given to claims arbitrarily rejected. The case of denial of forest rights in Rajasthan, which was based on the evidence provided in my 2015 report, is one of such examples of deprivation and denial. For long the government remained silent on this complaint and chosen to remain silent on the direction passed by NHRC, but when confronted with the provisions of the SC/ST (Prevention of Atrocities) Act which determines wilful negligence committed on SC and ST communities a crime with accountability provisions, the State Authorities replied to the human rights authority. Seeing the reply, the complainant engaged with civil society representatives and the local communities to file his 'long drawn reply along with comments' as mentioned above, the NHRC sent the ball back to the Government of Rajasthan. 'Will it comply with the directions given by NHRC or not?' is a mission dollar question.

Definitely, the ugly face is unmasked as the State authority willfully refuse to grant rights to affected communities, and only making the State accountable will ensure justice. But it is not surprising the State does not learn but defies the law, which brings bad governance and endanger democracy. Is there a solution?

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