



South Asian Network for Development and
Environmental Economics

IN THIS ISSUE

- **From the Editors** 1
- **Research News** 2
 - New SANDEE Grants
 - Research Completed
- **Publications and presentations** 4
- **Focus** 6
 - Tribals and Forests: A discussion of
Ground breaking legislation in India
- **Discussion**
 - Tribals with tigers, or tribals vs. tigers? 8
 - Recognition of Forest Rights: An
opportunity to correct legal anomalies 9
 - Four hectares of Forests: Correcting
history or destroying collective future? 9
 - Survival with dignity: made possible 10
- **Eco-news** 11
- **SANDEE Activities** 12
- **Other News** 13
 - Articles of possible interest

Dear Friends and colleagues:

SANDEE saw many changes in 2006. We adjusted to SANDEE life without our long time colleague Manik Duggar, strengthened our governance structure and welcomed Dr. Y.K. Alagh as a management committee member, and Priya made a big move to settle in Bangkok for a few years. Many changes, some hiccups but all positive in our evolution as a network.

We have also made some significant programmatic choices. Over the last few years, we have had a strong focus on resource institutions, poverty and valuation of environmental-health costs. We will continue to address these issues but we have taken on another challenge – global climate change and its implications for South Asia. Last December we organized a workshop on the economics and science of climate change and were privileged to have faculty such as Profs. Ramanathan from San Diego, Will Steffen from Australian National University and Partha Dasgupta. We hope to be able to support some exciting research in this area as we move forward.

We are pleased to bring you a different type of newsletter with a policy focus on a very topical issue in India. Read on to find out more and learn about how proud we are of the many achievements of members of the SANDEE family.

- Rucha, Priya and others at the SANDEE secretariat.

SANDEE....

The South Asian Network for Development and Environmental Economics is a regional network that seeks to bring together analysts from the different countries of South Asia to address environment-development problems. SANDEE's mission is to strengthen the capacity of individuals and institutions in South Asia to undertake research on the inter-linkages among economic development, poverty, and environmental change and to disseminate practical information that can be applied to development policies.

willing to risk the political fall-out from opposing the provisions of such a 'progressive' piece of legislation.

What lies ahead, however, is the much more important process by which rules and guidelines for the Act are formulated and framed. The bureaucratic establishment that has managed India's forest estate has suffered a defeat, but is unlikely to see this as the end of the battle. Whether the Act will be able to fundamentally alter the relationships between the forest administration, forest-dependent rural people and the lands on which they depend remains to be seen. As Kafka famously remarked "Every revolution evaporates and leaves behind only the slime of a new bureaucracy". Perhaps this time, however, things will be different?

DISCUSSION

Tribals with tigers, or tribals vs. tigers?

- Ashish Kothari*
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The Forest Rights Act is finally with us. Will it lead us in the direction of more justice and livelihood security for forest-dwellers along with better conservation of forests? Frankly, it is impossible to say. The impacts of the Act as it is, are likely to be very mixed. Depending on the ground situation, it could be misused to destroy forest, or constructively used to protect it.

Of concern are the following provisions:

1. The cut-off date of December 2005 is already leading to political moves in some states, to incite fresh encroachments into forests, with the promise that these will be shown as over a year old and therefore eligible for regularization.
2. The exemption of a range of developmental facilities for forest-dwelling communities, and could lead to fragmentation of forest areas.

3. Rights-holders have not been committed to specific conservation responsibilities (as was the case with the original version of the Bill).

4. Non-tribal forest-dwellers will be eligible only if they are residing for at least 3 generations.

5. There is a lack of clarity on how the Wild Life Act will continue to operate in protected areas.

On the flip side, however, there are a number of positive provisions:

1. Communities who have been conserving forests now have the right to protect them against destructive forces.

2. Forest and protected area management could move towards greater participation of local people.

3. Forcible displacement of communities would not be allowed.

4. Communities have the right to protect their traditional knowledge.

5. Critical wildlife habitats, once declared, cannot be diverted for any other purpose.

It is imperative and urgent that the following be done:

1. Ask for amendments to the cut-off date, taking it back to a period when at least it would be easier to detect more recent encroachments; and for the Forest Conservation Act to apply (perhaps through a decentralized mechanism so that no delay takes place) to development facilities that need diversion of forest land.

2. Rules are formulated to build in a much clearer conservation framework, such as responsibilities of *gram sabha* towards conservation; the process of declaring "critical wildlife habitats"; and processes of taking consent from.

3. The capacity of communities to pro-actively use the Act's provisions for both staking traditional claims and for ensuring conservation of forests they live within or adjacent to, needs to be enhanced where it is weak.

For all the above and other steps, the first step in implementation of the Act should be the setting up of a high-level commission,

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consisting of forest and revenue officials, conservation and social action groups.

Finally, if this is not done successfully, I fear that the only winner will be the industrialist and mine-owner that is waiting on the sidelines to quietly slip into forests to make a quick profit and run.

Recognition of Forest Rights: An opportunity to correct legal anomalies

- Sanjay Upadhyay*
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The letter and spirit of any law needs to be distinguished from perceptions about law. This was amply evident by the numerous debates appearing in the public domain by both the advocates of the tiger and the tribals indulged. The difference between 'recognition of a right over land' and 'allocating land', recognition of a finite land area as opposed to transfer of land, irrelevance of this law in the north-eastern context are just few of the examples polarized. While the above seem to be a debate on technical jargon, it is important to place this law in its right historical context. Forest settlements (for that matter revenue settlement) and reservation processes on forest land have been admitted to be not only faulty but also insensitive to forest dwelling communities. This fact was recognized in the 19th century by a British forest officer, Brandis, who admitted that ".the first attempts to manage forests were to secure a permanent supply of timber and this resulted in an attempt to establish, in total disregard of private rights, a Government monopoly of timber". The aim of this legislation is simple. To secure tenurial rights to the most vulnerable population of India where they had traditionally stayed and where they currently occupy their ancestral land and recognize a minimum land area for subsistence agriculture. The other fundamental concern was the problem relating to lack of legal

evidence to prove their claim for residence. The idea was not only to expand the nature of evidence but shift the burden of proof to the state which is far more equipped to help them establish their claims on the land from which they derive sustenance.

But what happened after that? The conservationists' enthusiasm and passion choked the voice of legal reasoning and a political entity (Joint Parliament Committee) not necessarily legally equipped, took up on itself to redraft the legislation seemingly more to cater to passion and political aspirations rather than the reason of law. The cut off date for this legislation, which is supposedly aimed at undoing historical injustice is now 2005! The extent of land from 2.5 ha (which has legal basis in Forest Village Rules of several states) changed to 'as is where is basis' by the JPC which is now corrected to an unexplained "four ha"! It is not surprising that a petition filed in the Supreme Court is reserved for hearing on this matter much before the draft was finalized. However, the reality despite the above is that the Forest Rights Act is a historical legislation that is now in the statute books. The biggest challenge, therefore is, operationalizing the frame to meet the objectives in a manner that the rights are recognized with responsibilities as an instrument of justice to the poor and not fall prey to the vested interests on either side.

Four Hectares of Forests: correcting history or destroying collective future?

- Praveen Bhargav*
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Burgeoning human population, lack of political will to enforce land reforms and the abysmal failure of the bureaucracy to equitably settle the rights of people inside Wildlife Reserves over the last two decades have ultimately triggered the passage of the

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