

Biodiversity Management Committees Lost in Numbers

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The Biological Diversity Act was passed in 2002 and the rules to implement it came out in 2004. The main focus of implementation in the past decade has been to persuade local governments to set up biodiversity management committees, which are to compile people's biodiversity registers. The success of state biodiversity boards is measured in terms of the number of committees set up. In addition, the prospect of financial gains is driving the law's implementation. The need for what a genuine dialogue on what a people-centred, biodiversity-sensitive, location-specific development model would look like has been lost sight of.

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In 2004, India's Ministry of Environment and Forests (MOEF) officially gazetted the implementing rules for the Biological Diversity (BD) Act, 2002. It is under the BD Act that the idea of biodiversity management committees (BMCs) was introduced to the country, and the BD rules elaborated on their functions. BMCs are envisaged as the third rung of decision-making on who will access, use, and/or conserve biological diversity in the local area under their jurisdiction. The law required that every local government body in the country set up seven-member committees as BMCs. Supporters of the law saw immense potential for decentralised governance by local communities who could exercise control over biodiverse ecosystems, both cultivated and wild, and their constituent parts. Critics saw it as over-regulation, and a severe undermining of the real custodians of biodiversity at the least, and a sell out to bio-based trade at its worst (Kohli 2006; Kohli et al 2009).

Saying 'No' to BMCs

In December 2004, soon after the BD rules spelt out that the primary role of BMCs would be preparing people's biodiversity registers (PBRs) with local people, there were popular protests. People objected to the single-minded focus on documentation of their local resources

and knowledge, while neither having any guaranteed control of the content nor any legal protection for the PBRs. Approximately 300 representatives of panchayats and gram sabhas, supported by non-governmental organisations (NGOs) and citizens groups, took part in a rally in Delhi on 8 December 2004 to protest against the BD rules.

In a memorandum submitted to minister of environment, A Raja, they demanded that wider powers and functions to manage both habitats and species be vested with panchayati raj institutions (PRIs) and existing ground-level bodies, including customary institutions. BMCs, they said, cannot be mere data providers for PBRs, and urgent steps had to be taken to ensure that the knowledge and resources being recorded in the PBRs were legally protected (for which there is no provision in the law) (Kohli et al 2009). Other popular campaigns also made suggestions.

In March-April 2007, resolutions from more than 3,000 gram panchayats, local institutions, and community organisations were sent to the prime minister, reiterating their demand for decentralised biodiversity governance and their refusal to form BMCs under the BD Act and rules as it would severely undermine the role of communities. They announced that they would not be cooperating with implementing the new law unless certain prerequisites for people's control, recognition of their rights and responsibilities, and the protection of outputs (such as PBRs) were met (Kohli et al 2009).

Operationalising the Law

Much water has flown under the bridge since then, though the issues highlighted above are important pointers to addressing

the core design and implementation challenges of the BD Act. The National Biodiversity Authority (NBA) has been up and running in Chennai since 2003. All the states have also formed their state biodiversity boards (SBBs), with varying degrees of support from their governments. The NBA and SBBs are seen as the key institutions through which the implementation of the BD Act is to be taken forward. Their foremost task has been setting targets for the number of BMCs to be formed in a stipulated time period, and for the number of PBRs to be compiled.

The success of an SBB, in many instances, is gauged by the number of BMCs formed in the state. Kerala is held up as the first state to have BMCs in all its 978 village panchayats, 60 municipalities, and five corporations. Strengthening BMCs through strong local involvement; engaged documentation exercises resulting in the intergenerational transfer of people's knowledge; and conservation-centred activities have been left for later. Incentives for encouraging innovative "good practices" are prescribed as addendums to the process of BMC formation, rather than necessary attributes of it.

The NBA's website (<http://nbaindia.org>) as of December 2013 listed 32,221 BMCs across all states and union territories in India. Neither NBA nor SBB officials deny the huge challenges they face in trying to operationalise BMCs as per the law. They admit that the numbers on paper do not imply that all BMCs are desirably functional or adequately empowered. In conversations with us, many officials shared the range of challenges they face – practical, political and financial. It starts with having to explain the meaning of the word "biodiversity" to reluctant state governments and local institutions (Kohli and Bhutani 2012; conversations between March 2012 and December 2013). To address some of the challenges, the NBA offered help in the form of "Guidelines for Operationalisation of BMCs" issued as late as in January 2013. Donor agencies like the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) have specifically funded projects for strengthening the capacity of SBBs to implement the BD Act. The

emphasis there is also on creating BMCs so that there is an identifiable group with which access and benefit-sharing (ABS) agreements can be signed.

BMCs as Institutional Extensions?

Once a law is in place, governments are required to implement it. The executive arm of the government has the sole responsibility for the everyday administration of the law. Even if administrators question its design in their minds or are confronted with operational challenges, the letter of the law has to be made workable. In that sense, the institutions that predate BMCs, such as the NBA, SBBs, and donors, do not have an enviable task. It requires them to convince local people and local bodies alike that another local institution (the BMC) is desirable, and that documenting biodiversity could be lucrative. They sometimes even find themselves having to convince people that biodiversity and its knowledge are worth conserving. There has been a greater institutional push for creating workable BMCs in the last four to five years.

However, it is critical to understand how local-level BMCs have become so involved with SBBs, even while some state officials (as those in Madhya Pradesh and Nagaland) have sought to extend the limits of the law to make BMCs viable institutions in themselves? The BD Act only requires local bodies to set up BMCs and carry out their functions of conservation, sustainable use, and documentation of biodiversity. It is the BD rules, which added the functional association with SBBs for preparing PBRs and book-keeping when local biodiversity funds are set up.

Implementing agencies also have to often convince PRIs that BMCs will not compete with them for power. As per the law, once every local body constitutes BMCs, their role includes "preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and micro-organisms and chronicling of knowledge relating to biological diversity". In some states, PRIs or forest produce trader lobbies have not welcomed this. There is a perception that if BMCs become powerful, they may even restrict the activities of PRIs, whether related to biodiversity

or not. There is no specific example where this has happened, but it does point to concerns among implementing agencies that extending the scope of the law to encourage empowerment may mean that it could be used against them.

The norm setting up the BMC as the local institution for biodiversity management has a clear purpose. Despite all that has been said above, the functional focus of the BD Act with respect to BMCs remains the creation of PBRs. In more recent times, BMCs have also become important to state agencies to show that real benefit sharing is taking place. ABS, which has been in focus since the Convention on Biological Diversity's (CBD) Nagoya Protocol in 2010, is to be effected through the BD Act. In India, what this means is that when access to biological resources or people's knowledge takes place for the purposes of research, commercial utilisation, or creation of intellectual property, it has to be done with the permission of the NBA (if by foreigners) or intimation to the SBBs (if by Indians). Post-access, a share of benefits is to be routed back to the provider-BMC. This is the CBD idea of biodiversity justice.

While the Nagoya Protocol (which is yet to be made functional globally) talks about creation of community protocols, with prior informed consent (PIC), and full participation of provider countries, the BD Act only provides for consultation with BMCs before granting approval for access. With only 32,221 notified BMCs, and not all functional, this legal requirement is yet to be realised. However, what many SBBs are trying to do is mediate agreements for ABS contracts that they think are sound with domestic or foreign bio-based traders. For, the legal provision on BMCs in the BD Act empowers them to levy fees from accessors collecting bio-resources for commercial purposes (Section 41(3)).

Today, some BMCs have entered into what are presented as "successful" ABS arrangements, facilitated by the SBBs. For instance, in Madhya Pradesh, Natural Remedies, manufacturers of ayurvedic veterinary products and herbal medicines, approached the SBB. The SBB facilitated an ABS agreement for *kalmegh* (*Andrographis paniculata*) between the Malajkhanda

municipal BMC in Balaghat and the private company. As a result, 10 tonnes of kalmegh had been collected and sold at Rs 25 per kilogram as of March 2012. The company has even granted a bonus of Rs 10,000 to the BMC as a one-time payment (Kohli and Bhutani 2012).

In Andhra Pradesh, Bio-India Biologicals (BIB), Hyderabad, paid Rs 100 per kg for transport of neem leaves to Japan from the Amarchintha village BMC in Mahabubnagar district and the Revalli BMC in Nalgonda. The supply has been made to a Japanese company to produce neem-based water. As reported in 2012, the two villages get a purchase price, and another agreement has been entered into with the NBA for a royalty of 5% on the sale of the leaves (Oppili 2012). We do not know the profit that the Japanese company or BIB has made.

In both the above instances, local trade is being brought under the purview of the BD Act. BMCs have got into contracts with users/trading companies. It is a one-time financial deal, but is renewable in some cases. Ironically, the BD Act despite its limitations prescribes few other (non-monetary) forms of benefit-sharing arrangements that villages or BMCs can enter into. Further, there is no injunction here to either conserve or sustainably use the bio-resource in question. If such terms and conditions do exist in ABS agreements, there is no way the state agency can monitor compliance.

The cases of Eklehra panchayat and another BMC in Chhindwara district of Madhya Pradesh, who have filed a petition in the National Green Tribunal (NGT), Bhopal, against Coal India are instances of BMCs seeking a share in commercial profits in the name of benefit sharing. They have claimed that coal, which is to be treated as a bio-resource, is being extracted from mines under their panchayats. However, no ABS agreement has been signed and it is argued that the villages are incurring huge losses of revenue. The law allows claimants of benefits to approach the NGT. The Eklehra panchayat's interpretation of coal as a bio-resource is in tune with what the Madhya Pradesh SBB has had to say (Kohli and Bhutani 2013). A final decision is yet to be reached on this, but it presents an

instance of financial gains from access to bio-resources driving the on-ground implementation of the law.

Conservation without BMCs

The existence of the BD Act does not mean that no other institution or initiative can undertake biodiversity conservation, be it in urban or rural areas. There continue to be efforts by NGOs and community-based groups to take advantage of what they perceive as positive clauses in the BD Act without getting into the institutional bind of forming a BMC.

Section 37 of the BD Act is related to the declaration of biodiversity heritage sites (BHS) by state governments. In precise terms, it gives powers to state governments to declare areas of biodiversity importance as BHSS. This declaration has to be in consultation with local bodies, which can include panchayats, district councils, urban wards, or even BMCs. BHSS do not require the existence of BMCs to become operational.

In April 2010, 20 villages from the Zaheerabad region of Medak district in Andhra Pradesh proposed protecting 59,759 acres of biodiverse farmland. They sent their proposal to the SBB, which has approved it. It is now reportedly pending with the state department of agriculture for its concurrence. The BHS has been proposed in an area where local farmers (without forming BMCs) cultivate over 100 varieties of crops every year on their marginal land and regularly preserve over 80 seed varieties.

A local NGO working with farmers, the Deccan Development Society, was key to this process. Developing the proposal involved gram sabha and village-level meetings where the BHS concept was deliberated and concurred to after understanding its pros and cons. If this goes through, it will be a one of its kind example of communities exercising clauses of the BD Act for conservation without forming BMCs.

Conclusions

In implementing the BD Act, BMCs have come to be the last in the line of authority after the NBA and SBBs, even though the law does not necessitate this hierarchy. The locus of command needs to be

established locally with BMCs, which the NBA and SBBs are legally required to consult before taking any decisions on local biological resources/knowledge, as prescribed in the BD Act. In some cases, the consultation may become prior informed consent; in others, the consent may be merely on paper. In other instances of well-intended "capacity building", the emphasis may be on "training" to either create better PBRs or look out for potential contracts. This is how numbers are taken as clear markers of the BD Act's success.

Yet, not all people in a certain geographical space share a common vision of either conservation or use of biological heritage. Having to deal with divergent interests is a long-standing problem of the "street-level bureaucracy". So far the process of setting up BMCs has not facilitated a genuine dialogue on what a people-centred, biodiversity-sensitive, location-specific development model would look like. That remains a long-pending issue. In the current design of BMC governance, states are predisposed to organise communities into institutional structures that can be identified and legally contracted with. An uphill task, especially when communities begin to exercise their choice – to form yet another committee or just sign agreements.

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