



Guidelines for selection and management of Biodiversity Heritage Sites



KALPAVRIKSH



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Guiding Heritage Sites – Conservation, Control and Community

(A commentary¹ on guidelines released by the National Biodiversity Authority (NBA) for selection and management of Biodiversity Heritage Sites).

Kanchi Kohli and Ashish Kothari

India's **Biological Diversity (BD) Act** came into existence in 2002 when both houses of parliament ratified it. Amongst other things, it put forth a framework under which access to biological resources and related knowledge could, from then on, be regulated. It also brought with it some broad clauses that mandated central and state governments to take measures towards the conservation and sustainable use of biological diversity (biodiversity, in short). Any access would also need to go hand-in-hand with determining equitable sharing of benefits.

An important conservation measure proposed in **Section 37** of the Act is the one which gives powers to state governments to declare areas of biodiversity importance as **Biodiversity Heritage Sites (BHSs)**. This declaration has to be in consultation with local bodies, which can include panchayats, district councils, urban wards or even the **Biodiversity Management Committee (BMC)** as proposed to be set up under the BD Act.

The apex institution set up under the BD Act, namely the **National Biodiversity Authority (NBA)** has come up with a set of guidelines for the declaration of **BHSs** across the country. Since Section 37 gives final powers for identifying and declaring **BHSs** to state governments, the NBA guidelines are *not binding but can suggest a process* to state level authorities. The guidelines were prepared by a NBA committee comprising of government officials, scientists and one NGO.

The guidelines seek to overcome the limitations of the BD Act and prod the state government(s) (in this case the State Biodiversity Board (SBB)) to rise above the limitations of institutionalized power hierarchies. For instance,

- i. the guidelines allow for proposals for BHSs to emerge from community organisations and BMCs,
- ii. the guidelines allow for possibilities of existing community conservation practices to be recognized as BHS and
- iii. the guidelines also propose that local bodies be consulted at every given step of planning and declaration.

¹ This commentary is based on the version Kalpavriksh received from the NBA in the last quarter of 2009. It may be noted that these guidelines cannot be dictated to the state governments and they are only indicative. It is the state government which has the authority to declare BHS and which can draft its own guidelines (for instance, Karnataka has drafted its own guidelines). For further development on this please check the NBA website (http://nbaindia.org/wb_day.htm).



However, since these guidelines seek their mandate from a parent legislation (i.e. the BD Act) which gives only minimal powers to the village level institutions, they are able to create only a limited space for participation of local communities. It is argued by some that while this may be true (i.e. the limited potential of the guidelines to create space for participation of local communities), it is also important to read these guidelines in conjunction with other legislative advances being made in the country, for instance, **The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (TFRA)**. The TFRA provides rights to tribal and forest dwelling communities (under certain conditions) on forest lands, the implementation of which is underway in different states. However, for this, a comparative study of both the laws (i.e. the BD Act and TFRA) needs to be undertaken. Where there is an already existing community empowerment or a positive intervention by external civil society, there might be reasons to expect some real possibility of invoking community participation. However, in many instances the knowledge and understanding of these centrally declared legislations is, to say the least, limited. It will thus be necessary for government agencies involved in implementation of both these legislations to bring the two together in a mutually complementary manner. To do this in a manner that will ensure justice to both the legislations will require a liberal understanding, and a strong "political will". Similarly, it will also be required that communities are aware that BHS provisions should be read together with other relevant law(s). But while that happens (whenever it happens!), it is important to keep in mind that as of now the fact of the matter is that the declaration of BHSs, even with the current NBA guidelines, is not able to allow for this conservation provision to be led by communities. This is because:

- a) The power to declare a BHS lies with the SBB as stated in the Biological Diversity Act, 2002. This also includes determining the suitability of a study on the BHS (mentioned later in this note). The guidelines try and broaden the scope of the law in its section 5d. Here, it is said that once the gram sabha or local body approves the BHS proposal, the SBB is "to move for issuing a preliminary notification". In spirit this means that the SBB can go ahead with the notification without asking for a separate study. It may be noted that even if a state government upholds the local community's recommendations of a BHS, it will still require a verification of the land-use in question. Also for larger areas where more than one BMC or a set of villages are involved, the state government's role will come into play in the process of declaration, management and monitoring.
- b) Even if the BHS management plans are prepared by one or more BMCs, it is the SBB that will recognise and facilitate its implementation. Thus, power dynamics



and hierarchies are likely to continue to play a role in the determination of the management plans. However it is important to clearly understand that “recognition” does not mean that the SBB has discretionary power. The language (in Section 6d of the guidelines) is quite clear on this, viz; “SBBs will then recognize and facilitate the implementation of the final management plan.” This too in *spirit* demands a broader recognition of community processes by the SBB and other agencies involved. ***It is not clear whether the overarching role of the state governments (to declare the BHS) could include an undefined power to influence the community’s planning process, given the existing power dynamics.***

c) A state level monitoring committee with the Chairman of the SBB as one of its leading members will monitor the implementation of BHSs. The guidelines do not state that this will not be the case where local communities already have strong local monitoring institutions². Does this silence mean that these local structures will be “supervised” once BHSs are declared? Or do we then simply assume that supervision is not to be interpreted as monitoring? It may be noted however that 5 of the members will be from the local communities, and another 4 would be independent experts. ***Such a composition can possibly (& hopefully) counter the domination of the government members in the monitoring and supervisory functions.***

d) The declaration of the BHSs will also ensure that these areas get Rs.20 lakh as seed money from the NBA, governed through the SBBs. This will also be the case where the original motivation(s) of conservation might not have been only financial. Whether attaching a standard monetary incentive regardless of the original motivation(s) will have a positive or negative impact, only time will tell.

What the BHS guidelines suggest commendably is the setting into place, of a process, by which the declaration of a heritage site will involve widespread debate and discussion before the final stamp of the state government is given. This is of course if a state government chooses to follow it. But integral to this process is setting up of a team to carry out a full study of the proposed BHS prior to its declaration. This team is to include a maximum of 12 members, with one member preferably from the local community(ies) selected to head the team. Details of the team’s composition are mentioned in the guidelines. Here it is important to mention the fact that this study team can be set up by the local bodies themselves, or by the SBB, where most members of the team could be from the local communities and NGOs. ***Such***

² This is a weakness which, according to some members from civil society could be overcome by allowing for a community based participatory monitoring process.



provisions are important advances which would hopefully be taken on board by state governments.

The guidelines also seek to address the concern with Section 37 (3) where after the declaration of a BHS, the State Governments shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification. ***The BHS guidelines recommend that the creation of BHS shall not put any restrictions on the prevailing practices (and resource use) of the local communities, other than those voluntarily decided by them.***

Even as these guidelines were being prepared, some state governments like Karnataka and Andhra Pradesh had already started declaring BHSs at local levels. Today the Karnataka SBB has adopted the NBA guidelines to include another element of a “**Technical Support Group**” which will help the local communities with documentation, conservation, and preparation of management plans. The SBB will also have the power to set up monitoring committee that will periodically review the existence of the BHS.

The shape of BHSs in other states is yet to unfold. Indeed, there will undoubtedly be attempts by government departments to subvert the progressive parts of the guidelines, as has been the case with many a progressive legislation or administrative guidelines. We need to understand that no single law or set of guidelines can change the fundamentally problematic nature of political and environmental governance in India today. The main question that all concerned citizens should then ask is whether a given legislation provides, some additional space for local struggles or some tools to buy time that could be fruitfully used to formulate strategies of struggle.



Guidelines for selection and management of Biodiversity Heritage Sites ³

1. Introduction

Under Section 37 of Biological Diversity Act, 2002 (BDA) the State Government in consultation with local bodies may notify in the official gazette, areas of biodiversity importance as Biodiversity Heritage Sites (BHS).

Under sub section (2) of Section 37, the State Government in consultation with the Central Government may frame rules for the management and conservation of BHS.

Under sub section (3) of Section 37, the State Governments shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.

Considering the above provisions of the Act, the National Biodiversity Authority (NBA) hereby issues the following guidelines for selection and management of the BHS.

2. Significance and objectives of Biodiversity Heritage sites

- a. Biodiversity is closely linked to ecological security and therefore, human welfare. To strengthen the biodiversity conservation in traditionally managed areas and to stem the rapid loss of biodiversity in intensively managed areas, such areas need special attention.
- b. Such areas also often represent a positive interface between nature, culture, society, and technologies, such that both conservation and livelihood security are or can be achieved, and positive links between wild and domesticated biodiversity are enhanced.
- c. To have a BHS in or around a community should be a matter of pride and honour to such community and this virtuous act of community shall work as an example to the entire nation apart from ensuring availability of the resources to their own future generation. The areas like existing sacred grooves in general and those existing in Western Ghats in particular can be straight away be declared and notified as BHS.
- d. It is necessary to instil and nurture conservation ethics in all sections of the society. The creation of BHS will ensure bringing home these values in the society and thereby put an end to over-exploitation of natural resources and avoid environmental degradation.
- e. The creation of BHS shall not put any restriction on the prevailing practices and usages of the local communities, other than those voluntarily decided by them. The purpose is

³ As issued by the National Biodiversity Authority (NBA) to state governments in late 2009. Please note that these guidelines are being distributed by Kalpavriksh without any modifications or corrections. The footnotes on page 10 have been provided by Kalpavriksh for reference.



to enhance the quality of life of the local communities through this conservation measure.

3. Definitions

“Biodiversity Heritage Sites” (BHS) are well defined areas that are unique, ecologically fragile ecosystems - terrestrial, coastal and inland waters and, marine having rich biodiversity comprising of any one or more of the following components: richness of wild as well as domesticated species or intra-specific categories, high endemism, presence of rare and threatened species, keystone species, species of evolutionary significance, wild ancestors of domestic/cultivated species or their varieties, past pre-eminence of biological components represented by fossil beds and having significant cultural, ethical or aesthetic values and are important for the maintenance of cultural diversity, with or without a long history of human association with them. All other terms used are as defined in Section 2 of the Biological Diversity Act (2002).

4. The criteria for identification of BHS

The BHS shall be identified in accordance with the definition in (2) above (sic). Accordingly areas having any of the following characteristics shall qualify for inclusion as BHS.

- a. Areas that contain a mosaic of natural, semi-natural, and man made habitats, which together contain a significant diversity of life forms.
- b. Areas that contain significant domesticated biodiversity component and /or representative agro-ecosystems with ongoing agricultural practices that sustain this diversity.
- c. Areas that are significant from a biodiversity point of view as also are important cultural spaces such as sacred groves/trees and sites, or other large community conserved areas.
- d. Areas including very small ones that offer refuge or corridors for threatened and endemic fauna and flora, such as community conserved areas or urban greens and wetlands.
- e. All kinds of legal land uses whether government, community or private land could be considered under the above categories.
- f. As far as possible those sites shall be considered which are not covered under Protected Area network under the Wildlife Protection Act 1972 as amended.
- g. Areas that provide habitats, aquatic or terrestrial, for seasonal migrant species for feeding and breeding.
- h. Areas that are maintained as preservation plots by the research wing of Forest department.
- i. Medicinal Plant Conservation Areas (MPCA) that are established in collaboration with Foundation for Revitalisation of Local Health Traditions (FRLHT), Bengaluru.



5. Identification and Declaration of Biodiversity Heritage Sites

State Biodiversity Boards (SBB) shall invite suggestion (or consider those already coming from communities) for declaration of BHSs, through BMCs and other relevant community institutions including gram sabhas, panchayats, urban wards, forest protection committees, tribal councils. SBB shall undertake widespread dissemination of information related to the proposed BHS among rural communities, NGOs, farmer/fishermen/advansi associations, urban groups, research institutions, government agencies, and other organizations, regarding the provision of BHSs, through locally appropriate means. These could include local language newspapers, radio, holding meetings with the communities, letters to line departments, gram panchayats, local bodies and others. The process shall further be achieved through the following:

- a. NGOs and community institutions (including Panchayat Raj institutions, Biodiversity Management Committees, or institutions set up for environment and development purposes by communities on their own or under other environmental schemes) to carry out their own process, may also initiate proposals for declaring BHSs.
- b. Consolidation of the suggestions, by the SBBs, to come up with a list of areas which can be designated as the Biodiversity Heritage Sites; even while such consolidation is ongoing, suggestions and applications for individual BHSs to be considered as and when they are made.
- c. Public discussions amongst the local bodies, gram sabhas, urban ward committees, and other relevant local institutions, regarding concrete proposals for declaring BHSs, in their area, including the implications such as possible restrictions on resource use; a full attempt to be made to bring on board various sections of society with gender and social representation, in such discussions.
- d. Once approved by the relevant gram sabhas or urban local bodies, SBB to move for issuing a preliminary notification specifying the boundaries of the BHS, which may require some prior surveying and mapping, and specifying also restrictions if any that may be required for management of the BHS, this to be published in the local media inviting suggestions and objections from the interested parties/stakeholders, particularly in case of lands owned by communities and individuals.
- e. Based on the suggestions and objections raised, a team shall be constituted by the BMCs/other relevant local institutions/SBB in consultation with the local bodies for conducting studies to gain a clear



understanding of the BHS. The team would include the following members (not exceeding 12 individuals) with one member preferably from the local community/ies selected to head the team:

- i. Knowledgeable or experienced women & men representing all socio-economic groups of the concerned communities, nominated by the relevant rural/urban local bodies.
 - ii. One or more NGOs/institutes focusing on ecology / conservation (including conservation biologists familiar with the flora and fauna of the particular BHS).
 - iii. One or more NGOs/institutes working on social (gender, livelihood, etc) issues.
 - iv. One or more NGOs/institutes focusing on agriculture.
 - v. Research wing of the agriculture, forest or other relevant department (where appropriate and possible).
 - vi. Representatives of Botany and Zoology departments of nearest College/University.
- f. The above team will conduct a study (over a period of 3 to 6 months) in consultation with the concerned community irrespective of occupation, gender or social strata. Such consultations should inevitably include groups such as

forest dwellers, farmers, coastal and pastoral community(ies) and / or other relevant occupations. The study on the following aspects needs to be carried out with the use of community-based PBRs⁴/PRA⁵, participatory mapping, and other possible tools that are considered appropriate by the concerned communities. All state departments are to ensure that they cooperate in this exercise through the provision of relevant information, maps, and other documents that would enhance the productivity of the exercise. The study shall include:-

- i. History of land/water bodies ownership/rights, including Common Property Resources (CPRs), administrative control, and land and resource use.
- ii. Current status of land ownership, tenurial status of and access/ rights to CPRs, disputed claims over land/ forests, if any, land and resource use pattern (including biodiversity-based livelihoods), legal and administrative control, rights and responsibilities.
- iii. Community composition, character, socio-economic and gender differentiated dependence on the resources, socio- economic and demographic profile.

⁴ Peoples Biodiversity Registers.

⁵ Participatory Rural Appraisal.



- iv. Existing institutions, their characteristics, rules and regulations governing natural resources, and access to decision making by marginalized sections including women.
- v. Ecological profile of the area, critical wildlife and agricultural biodiversity values, and threats and pressures to the biological diversity, if any.
- vi. Use of the area as the corridor or refugia for the wild animals or any other use for the wildlife.
- vii. Cultural (including agricultural) practices followed by the communities affecting the biodiversity (whether positively or negatively).
- viii. Scope of livelihood generation (including from resource use, community-based ecotourism, etc) in the area.
- ix. Impacts of restrictions, if any, on people and on the biodiversity.
- g. Report of the study shall be submitted by the team to the BMCs or other relevant local institutions linked to the local bodies in case BMC does not exist, which before submitting it to the SBB shall disseminate the findings of the team (in local languages), along with the proposal for declaring the BHS, to the concerned communities and to all stakeholders.
- h. SBB shall review the document submitted by BHS survey group or BMCs or other relevant local institutions linked to the local bodies in case BMC does not exist within a period of 3 months, including feedback if any to the relevant community.
- i. Final decision on the proposal shall be made by the SBB in a joint sitting of all stakeholders, at the proposed site.
- j. Draft notification and announcement for declaring the BHS shall be made at the state level in an appropriate manner giving it wide media coverage particularly in the local language.
- k. After 30 days of the draft notification of the BHS, the BMC or other relevant local institutions linked to the local bodies in case BMC does not exist along with the Local bodies may conduct a Public Hearing where all details about the BHS should be placed and the comments received from the public recorded and, attempts made to remove aspersions, if any, that they may have on the consequences of declaring the area as BHS. The local community should be taken into confidence by assuring them that by declaring the BHS their traditional rights and privileges will not be affected.
- l. On declaration of the BHS, the SBB may write to all the concerned Government departments announcing the establishment of the BHS.



m. While the above process is desirable in all situations, it should be noted that in many situations communities may not be in a position to follow them in view of the urgency for declaration as a BHS to ward off a threat, or for other reasons. In some cases proposals may be coming from a community that has already a proven track record of conservation, and urgently requires the BHS status to consolidate its position. In such situations, the requirement for these detailed studies may be waived for the purpose of the notification, but should be applied subsequent to the notification and no relocations and restrictions to access will be declared till then other than what the community is already imposing upon itself.

6. Management of BHS

a. The Biodiversity Management Committee or other appropriate institution as determined by relevant local body in the absence of BMCs, which in addition to their duties defined in the Act, shall also take care of the management of each BHS. Wherever the BHS extends to more than one local bodies, the management of the BHS shall be the responsibility of the Biodiversity Heritage Site Management Committee constituted by the BMC or other relevant local institutions linked to the local bodies in case BMC does not exist, and approved by the SBB.

b. The committee responsible for the management of the BHS shall include representatives of all sections of local communities, and in particular those most dependent on the natural resources as also those who have been traditionally conserving the area.

c. It shall be responsibility of the BMC/BHS Management Committee to prepare and implement a management plan for the BHS which should cover a period of five to ten years.

d. SBBs will then recognize and facilitate the implementation of the final management plan. Such facilitation shall include directions to all relevant government departments to assist the communities in implementation, including through appropriate changes in their plans and schemes, to eliminate biodiversity-damaging practices and to fully enable and empower the communities in conserving biodiversity. Where necessary orientation programmes shall be organized for such departments and NGOs.

e. SBBs and concerned government departments will also facilitate the regeneration or revival of degraded or lost ecosystems and taxa, including the reintroduction of threatened/locally extinct wildlife where feasible, and the repatriation of lost/declining domesticated biodiversity from ex-situ collections.



- f. Wherever there are existing conservation related management practices serving the purpose of the BHS shall be documented and considered as the BHS Management Plan.
- g. Any project/activity to be implemented by government or any other agency, which is likely to have adverse impact on the BHS may be avoided.
- h. Generally no restriction is likely to be placed on the community on the existing utilization of resources from the proposed BHS.
- i. Restriction in form of regulating the use of the resources may be warranted in some cases and such restriction shall be totally voluntary on the part of community.
- j. The management structure and utilization of resources for BHS notified on Government forest areas and other government owned areas will be determined by the concerned departments of the State Government.
- d. Major biodiversity in the area and their status as endemic, threatened, endangered or vulnerable.
- e. Whether a waterfowl refuge during winter, breeding place for water birds or corridor for any wild animals.
- f. The type and quantum of resources being used by the local community and their role/importance in the domestic economy as also the average income from them in situations where they are marketed.
- g. Any shift in the pattern of utilisation during the past 10 years. If so the reason for the same.
- h. Authentic data on the flora, fauna and natural resources in the area.
- i. Details of projects, if any, in the area under any government/ international schemes.
- j. The suggestions, if any, from the local communities for the improved conservation of biodiversity, and the betterment of the livelihood by using natural resources.

7.Components of the management plan of BHS

- a. A map of the BHS with clear administrative boundaries as notified.
- b. The status of ownership.
- c. The current land-use pattern, conservation related practices and beliefs, and the dependence of local communities.
- k. Threats, present and potential if any, to the BHS.
- l. Management prescription separately for conservation and, sustainable use of bio-resources to enhance the livelihood of the local community.
- m. A rough projection of the expected outcomes of setting up the BHS, including ecological and social/ economic (including, where relevant,



- estimate of the income expected of on completion of the project).
- n. Estimated time frame for completion of each component of the plan, and rough indicators to judge success of each component.
 - o. The above process of management planning must not be one that constrains the wide variety of ways in which communities conserve and manage natural resources. It should also not be considered absolutely necessary to formulate a management plan, if the community has other adequate means of sustaining the effort and if thereby, conservation and sustainable management is taking place. In many situations also, communities may not be in a position to immediately or quickly formulate such a plan, which should not be a reason for not accepting their site as a BHS.
 - p. The SBB on receipt of the Management Plan shall constitute an expert committee to evaluate the same, if necessary visit the BHS and hold consultations with the local communities and the local bodies and obtain their approval of the Management Plan. The Management Plan may also be integrated into the district level planning process, to enable optimum facilitation and funding by relevant government agencies.
 - q. On receipt of approved plan, the SBB shall accept the same.
 - r. Management plan shall be periodically reviewed and modified appropriately by the expert committee constituted by the SBB, based on the recommendations of the BMC or other relevant local institutions linked to the local bodies in case BMC does not exist, and accepted by the SBB. Such modifications shall be brought to the notice of all stakeholders before implementing the same.
- 8. Monitoring of BHS**
- a. There shall be a State-level Monitoring Committee constituted by the SBB.
 - b. The State level Monitoring Committee shall comprise twelve members chosen out of knowledgeable individuals in the field of conservation of wild and domesticated biodiversity, and related socio-economic aspects, from the following categories:
 - i Chairman of the SBB,
 - ii Member Secretary of the SBB,
 - iii three representatives of local communities,
 - iv four experts having knowledge and experience in the field of forestry/ wildlife/agro-biodiversity/ aquaculture management or in the area relevant to the particular BHS,
 - v member of the BMC / BHS



- management committee concerned or other relevant local institutions linked to the local bodies in case BMC does not exist,
- vi nominee of the Local body/ Panchayat concerned,
 - vii representative from Revenue Department.
- c. The State-level Monitoring Committee shall monitor the implementation of management plan periodically and submit a report to the SBB indicating clearly the extent (in qualitative and where possible quantitative terms) of achievement under each component of the Management Plan and recommendations for improvement. This committee shall monitor the implementation of management plan periodically.
- d. The tenure of the Monitoring Committee shall be three years.

9. Budget

- a. Once the BHS is notified by the State Government, the NBA shall support the initial establishment of BHS financially by allocating an amount of Rs.20.0 Lakhs per each BHS as seed money through SBB. Simultaneously, the financial requirement of BHS shall be included in the annual budget of the local body(ies). The State Government shall also allocate a seed money of Rs.5.0 Lakhs to each BHS on its notification through SBB. The BMC or other institution which is managing

BHS would be recognized as an authorized body to avail the financial assistance under all government schemes and other funding sources as legally permissible. The existing/new interest accruing saving account of BMC or other institution maintained in a nationalized bank or post office is authorized to receive all such amounts. The accounts maintained by the aforesaid institutions managing BHS shall be audited annually as per the rules and as done in case of Local bodies.

- b. The SBBs shall keep the NBA informed of notification of creation/declaration of BHS in their states. The NBA through its expert committees may get the performance audit of the management of BHS done by BMCs/ other institutions/SBBs.

10. Miscellaneous

- a. The SBBs shall ensure adequate and sensitive public visibility of the BHSs through popular media, workshops, brochures etc., to ensure consideration of their importance and status. The NBA shall allocate fund as required to SBB only for undertaking aforesaid activities.
- b. The NBA shall organize one National level review meeting of all BHSs involving NGOs, BMCs/other institutions managing, SBBs, officials of line departments, academic institutions, experts etc., annually and shall submit the proceedings

of the minutes to the Ministry of Environment and Forests, Government of India.

c. These are only model guidelines framed after consulting various experts to act as precursor for framing rules under the biodiversity act by various State Governments with

suitable modifications but are within the spirit and framework of BD Act 2002.

d. The State Governments may **notify the rules** after consulting the Central Government through National Biodiversity Authority.

Briefing note

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