

The Biological Diversity Act 2002: Implementation in Jammu and Kashmir

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Abstract

The Biological Diversity Act, 2002 was enacted by Indian Parliament with the triple objective of conservation, sustainable use and equitable benefit sharing arising out of biological resources. The Act extends to whole of India including the State of Jammu and Kashmir. It is a useful legislation to augment the conservation, sustainable use and equitable sharing of benefits arising out of biological resources. However, in the State of Jammu and Kashmir the promises of law are yet to be carried out into effect. The provisions of the Act relating to Biodiversity Management Committees (BMCs), Biodiversity Register, Local Biodiversity Fund, Biodiversity Strategy, training of personnel, restricting access to biological resources, bio-survey and bio-utilization are still waiting for implementation by the State. The Paper is an attempt to sound alarm to the concerned state authorities to deliver the promise of law for effective management and conservation of biodiversity in the state.

Keywords: Biological Diversity, conservation, sustainable use, State Biodiversity Board, Biodiversity Management Committee.

Introduction

Human economic, ethical and social development is associated with the biological resources of the planet earth. Although this underlying fact has been recognised in various human civilizations across the world, there is a growing recognition in the modern world that biological diversity [CBD, Art. 2] is a global asset of tremendous value to present and future generations, especially by the political and scientific communities. This growing recognition has developed simultaneously with, and has been influenced directly and greatly by, the growing threat to species and ecosystems in the post-industrialized world. The species extinction rate has increased substantially and is caused mainly by human activities and rapid land use changes. The serious threat to biodiversity has been recognised by the international community for some time and there is general agreement among UN Member States that biodiversity is of great importance to humankind. The preamble of the Convention on Biological Diversity emphasizes the importance of biodiversity ‘for evolution and for maintaining life sustaining systems of the biosphere’ [CBD, Preamble]. To stop the decline of biodiversity, national, regional and international legislation has been adopted by the vast majority of UN Member States.

The state of Jammu and Kashmir, as an integral part of western Himalayas, is known for its beauty and biological resource [Lawrence, 1895]. Preservation of natural environment and its individual components appears to have been an issue of some concern to some the rulers of the State of Jammu and Kashmir in the past. The State has a constitutional commitment with its people to protect them from social, economic and political injustice, abolish all exploitation and take special care to enrich the material and cultural life of the people [Constitution of Jammu & Kashmir, Ss. 13, 14 and 23]. To protect and regulate multiple components of rich biological diversity of the State a good number of laws have been enacted from time to time. A plethora of state enacted laws regulate multiple components of biological resources, creating a wide range of authorities who operate in their respective jurisdictions to the exclusion of each other. A comprehensive law for

conservation, sustainable use and benefit sharing of biological resources has been legislated by the Parliament of India in the shape of Biological Diversity Act, 2002 which is also applicable to the state of Jammu and Kashmir.

The Biological Diversity Act, 2002

The Biological Diversity Act was passed in 2002 to implement, at the national level, the Convention Biological Diversity (CBD) which was ratified by India in 1994. In pursuance of the CBD, the Act has the triple objectives of conservation, sustainable use and equitable benefit sharing although in its operative parts it deals mainly with issues related to access and benefit sharing. Although India has been a victim of biopiracy for long it took India almost a decade after ratifying CBD to create this law to check biopiracy. The Act extends to the whole of India including the state of Jammu and Kashmir. A comprehensive definition of the term ‘biological diversity’ has been given under the Act. The section defines it as "the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of ecosystems"[B. D. Act, Section 2(b)]. Likewise the term ‘biological resources’ under the Act means "plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added Products) with actual or potential use or value but does not include human genetic material [B. D. Act, Section 2(c)]. ‘Sustainable use’ as defined in the Act, means “the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations” [B. D. Act, Section 2(o)], As per provisions of the Act, a three-tier structure at the National, State and Local level is to be established.

National Biodiversity Authority (NBA)

The Biological Diversity Act provides for establishment of the National Biodiversity Authority by the Central Government to advise the said Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources. The Authority is also invested with power to advise the state governments in the selection of areas of biodiversity importance to be notified as heritage sites and the measures for the management of such heritage sites [B. D. Act, Section 18(3)(a) and (b)]. The Authority as representative of the Central Government is invested with power to take all necessary measures to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India [B. D. Act, Section 18(4)]. Likewise the Act prohibits, without the approval of the National Biodiversity Authority, the transfer of the results of any research relating to any biological resource occurring in, or obtained from India for monetary consideration or otherwise to the aforesaid persons [B. D. Act, Section 4]. However, transfer does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government. The scheme of prior approval does not apply to collaborative research projects involving transfer or exchange of biological resources or information relating thereto between institutions including Government sponsored institutions of India, and such institutions in other countries provided that the collaborative research projects conform to the policy guidelines issued by the Central Government and are approved by the said Government [B. D. Act, Section 4].

State Biodiversity Board (SBB)

Section 22 of the Act provides for the establishment of a State Biodiversity Board in each of the states by the respective state governments by notification in the official Gazette. At the state level the Board is to advise the state Government, subject to any guidelines issued by the Central Government, on matters related to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization biological resources [B. D. Act, S. 23(a)]. The Board is also to regulate by granting of approvals or otherwise, requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians. The Board is to perform such other functions as may be necessary to carry out the provisions of the Act or as may be prescribed by the state Government [B. D. Act, S. 23(b) and (c)]. Citizens of India or bodies corporate, associations or organizations which are registered in India need to give prior intimation to the State Biodiversity Board before obtaining any biological resource for commercial utilization or bio-survey and bio-utilization for commercial utilization [B. D. Act, S. 7]. This norm, however, does not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and vaid and hakims, who have been practicing indigenous medicine. The Board may, on receipt of such intimation and in consultation with the local bodies concerned and after making such enquiries as may be deemed fit, by order, prohibit or restrict any such activity if it is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity. All such orders of the Board are to be made after giving an opportunity of being heard to the person affected and all information received by the Board in the format relating to the intimation is to be kept confidential and cannot be disclosed either intentionally or unintentionally to any person not concerned thereto [B. D. Act, S. 24(2) and (3)]. Like the National Biodiversity Authority the State Biodiversity Authority may, for an efficient discharge of its duties and performance of its functions, constitute communities and in particular agro-biodiversity committee for the conservation of agriculture related species and their wild relatives [B. D. Act, S. 13].

Biodiversity Management Committees (BMCs)

Every local body is to constitute a Biodiversity Management Committee (BMCs) within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivators, domesticated stocks and breeds of animals and micro-organisms and chronicling of knowledge relating to biological diversity [B. D. Act, S. 41]. Under the Act ‘cultivator’ means ‘a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation’. ‘Land race’ means, primitive cultivar that was grown by ancient farmers and their successors’. Similarly ‘folk variety’ means a ‘cultivated variety of plant that was developed, grown and exchanged informally among farmers’. A BMC is to consist of a chairperson and not more than six persons of whom not less than 1/3 shall be women and not less than 18% shall be from Scheduled Castes/ Scheduled Tribes. The local MLA/MLC and Member Parliament can be special invitees to the meetings of committee. The main function of the BMC is to prepare People’s Biodiversity Register in consultation with local people which shall contain comprehensive information on availability of local biological resources, the knowledge associated with such resources, their medicinal value or any other use or any other traditional knowledge associated with them [B. D. Rules, 2004, R. 22]. Besides the People Biodiversity Register the BMC is also to maintain another register which shall contain information about the grant of access to local biological resources and the traditional knowledge, the details of the collection fee imposed the details of the benefits derived and the mode of their sharing [B. D. Rules, 2004, R. 22(11)].

The National Biodiversity Authority and the State Biodiversity Boards are to consult the BMC while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committees [B. D. Rules, 2004, R. 22(7)]. The BMC is to maintain the data about the local vaid and practitioners using the medicinal plants. It may levy charges by way of collection fees from any person for accessing or collecting any biological resource (medicinal plants) for commercial purposes from area falling within its territorial jurisdiction [B. D. Act, S. 41(3)].

Implementation of the Biological Diversity Act in Jammu and Kashmir

In exercise of the rule making power conferred by Section 63 of the Biological Diversity Act the Government of Jammu and Kashmir has made the Jammu and Kashmir Biological Diversity Rules, 2015. Under the Rules the State Biodiversity Board (SBB) constituted under Section 22 of the Act shall be located in the office of the Director, State Forest Research Institute, Srinagar/Jammu [J&K B.D. Rules, 2015, R. 6]. The Board is to advise the Government on any matter concerning conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resources and knowledge. It shall also provide technical assistance and guidance to the departments of the State Government and Biodiversity Management Committees for coordination of the activities. The Board is to regulate by granting of approval(s) or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians. Under the Rules the Board shall organize through mass media a comprehensive awareness programmes amongst all stakeholders regarding conservation of biological diversity, its sustainable use and equitable sharing of benefits. Besides, the Board is required to plan and organise training programmes for personnel engaged or likely to be engaged for conservation programmes; devise methods for ensuring protection of right including intellectual property rights over biological resources and associated knowledge, maintaining confidentiality of such information and the protection of the information in Peoples Biodiversity Registers; collect, compile and publish technical and statistical data, manuals, codes and guides relating to conservation of biological diversity [J&K B.D. Rules, 2015, R. 10 (i) to (viii)] etc.

The SBB is empowered to restrict or prohibit the access to biological resources for the reasons that the access: is for any endangered taxa, or taxa that are likely to become threatened due to such access; is for any endemic and rare species; is likely to result in adverse effect on the livelihoods, culture or indigenous knowledge of the local people; may result in adverse environmental impact which may be difficult to control and mitigate; may cause genetic erosion or affecting the ecosystem function; for resources may be for purposes contrary to National / State interest and other related international agreements entered in to by the country [J&K B.D. Rules, 2015, R. 15]. The Rules also provide for application and operation of State Biodiversity Fund and the SBB is to frame guidelines to ensure that decisions regarding the management and use of the fund are transparent and accountable to the public [J&K B.D. Rules, 2015, R. 16]. In consultation with the local bodies and other key stakeholders, the Board is required to take necessary steps to facilitate setting up and management of Biodiversity Heritage Sites [J&K B.D. Rules, 2015, R. 18(i)].

Every local body is required to constitute a Biodiversity Management Committee (BMC) within its jurisdiction for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivators, domesticated stocks and breeds of animals and micro-organisms and chronicling of knowledge relating to biological diversity. The BMCs shall have six persons nominated by the local body, of which there shall be at least two women members and one from Scheduled Caste / Scheduled Tribe. These six local knowledgeable persons being so nominated should be drawn from amongst the herbalists, agriculturalists, non-timber forest produce collectors / traders, fisher

folk, representatives of user associations / community workers, academicians and any person / representative of organisation, on whom the local body trusts that he/she can significantly contribute to the mandate of the BMC. Every BMC shall have at least six special invitees from amongst Forest, Agriculture, Horticulture, Animal Husbandry, Health, Fisheries and Education department to be nominated by the concerned local body. The Chairperson of the Block Development Council (BDC) / Urban local body concerned shall be Ex-officio Chairman of the BMC. In matters related to wild biological diversity and / or biodiversity found in forest land, it shall be mandatory for the BMC to seek assistance of the concerned Joint Forest Management Committee (JFMC), Village Forest Management Committee (VFMC) and /or Eco-development Committee (EDC). However, this will be applicable to areas other than recorded forests and protected areas notified under the Jammu and Kashmir Wildlife Protection Act, 1978. The local Members of the Legislative Assembly / Legislative Council and Member of Parliament are to be special invitees to the meetings of the BMCs at different levels. Under the Rules the SBB is to establish a Technical Support Group comprising of experts in the field of biodiversity drawn from Government Agencies, Non-Government Organizations, academic and research field, community and individuals to lend support to BMC. The BMCs are required to prepare the People's Biodiversity Registers in consultation with local population, which shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use and any other traditional knowledge associated with them. The People's Biodiversity Registers are to be maintained and validated by the concerned BMCs. The other function of the BMC is to advise on any matter referred to it by the SBB or Authority for granting approval to maintain data about the local vaid, Hakims and practitioners using biological resources. The BMC may decide the terms on which it would permit access to biodiversity resources and associated knowledge to different parties for various purposes within their jurisdiction and levy charges by way of collecting fees from any person for accessing or collecting any biological resources for commercial purpose from the area falling within its jurisdiction. Any incidence of misuse of biological resource shall be reported by the local BMC to the concerned Range Officer (Territorial) or to the Member Secretary of the SBB or any other officer authorised under the Act [J&K B.D. Rules, 2015, R. 19(i) to (xvii)].

Every BMC is required to have its Local Biodiversity Fund to be used for the conservation and promotion of biodiversity in the areas falling within its jurisdiction and for the benefit of the local community in so far such use is consistent with conservation of biodiversity. The SBB shall provide to the BMC any loan or grant received from the State Government, Central Government or from the Authority for achieving the purposes of the Act [J&K B.D. Rules, 2015, R. 20(i) to (iv)]. The BMC must prepare and submit to SBB the annual report for each year giving detailed account of its activities [J&K B.D. Rules, 2015, R. 21]. In case a BMC is aggrieved by the decision or policy of the SBB it may prefer an appeal to State government in the Forest Department [J&K B.D. Rules, 2015, R. 23(i)]. Likewise, for disputes between BMCs regarding their respective jurisdiction or any other matter an appeal may be filed before the Chairperson of SBB. A complaint under Section 61 of the Biological Diversity Act, 2002 for cognizance of any offence under the Act shall be made before the appropriate court of law by officers of the SBB or by Forest officers not below the rank of Range Officers in their respective jurisdiction or any other officer notified by the Government under the Act [J&K B.D. Rules, 2015, R. 24]. The SBB is authorised to frame guidelines, with the prior approval of the Government, as it may deem fit and necessary for carrying out the purposes of the Act within the State [J&K B.D. Rules, 2015, R. 25].

Although the Biological Diversity Act, 2002 is a comprehensive law for conservation, sustainable use and benefit sharing of biological resources, the legal framework under the Act being of recent origin in State of Jammu and Kashmir the promises of law are yet to be carried out into effect. The State Biodiversity Board although constituted in 2013, has not been able to perform its functions satisfactorily under the Act. Likewise, it reveals that provisions of the Act relating to Biodiversity Management Committees (BMCs), Biodiversity Register, Local

Biodiversity Fund, Biodiversity Strategy, training of personnel, restricting access to biological resources, bio-survey and bio-utilization are still waiting for compliance by the State. Further, there seems to be lack of coordination between different implementing agencies resulting in the lack of adequate conservation and protection of medicinal plants in the State. Further, the Act requires its implementation through traditional administrative machinery, already charged with the task of implementing the traditional forest and wildlife laws of the State. As there is a philosophical disconnect between the tradition state laws and the Biological Diversity Act, the success of the law in the state remains a doubtful commodity. A thorough review of the existing state laws relating to multiple components of biological diversity is needed to realize the dream of conservation of natural resources in the State.

Conclusion

The biological resources of Jammu and Kashmir have tremendous potential to ameliorate the social, economic and cultural conditions of the major portion of rural population living in the neighborhood of such resources. A thorough review of the existing state laws relating to flora and fauna and their habitat has to be undertaken to reap the benefits of conservation of resources to the optimum. The conservation objectives demand collaborative decision making and integrated approach as against legally sponsored traditional individual and isolated process of implementation of laws. The Biological Diversity Act, 2002 needs to be implemented with all seriousness in the state of Jammu and Kashmir to achieve conservation, sustainable use and equitable benefit sharing of biological resources in the State. A consistent effort to identify holders of traditional and existing knowledge relating to biological resources is required to be made and people are to be made aware about the benefits of conservation of resources and the need for a consistent hunt to discover their potential use and market. The message of conservation of resources, need for discoveries relating to knowledge, traditional/existing as well as prospective and associated benefits, the scheme of fair and equitable benefit sharing can reach the stakeholders at the grass root level when the state takes effective steps in giving representation to effective persons in the Biodiversity Management Committees.

References

- Convention on Biological Diversity, United Nations, 1992 [<https://www.cbd.int/doc/legal/cbd-en.pdf>; 20. 11. 2017]
- Lawrence, Walter R., 1895. *The Valley of Kashmir* London: Henry Frowde, Oxford University Press Warehouse,. Reprint: Kashmir Kitab Ghar, Jammu, 1996. 528 pp
- The Biological Diversity Act, 2002 [http://www.bamu.ac.in/Portals/0/3_%20The%20biological%20Diversity%20act%2C%202002.pdf; 20. 11.. 2017]
- The Biological Diversity Rules, 2004 [https://www.forests.tn.gov.in/tnforest/app/webroot/img/document/legislations/01_Biological%20Diversity%20Rules%202004.pdf; 20. 11.. 2017]
- The Constitution of Jammu and Kashmir [http://jklegislativeassembly.nic.in/Costitution_of_J&K.pdf; 20. 11. 2017]
- The Jammu and Kashmir Biological Diversity Rules, 2015 [<http://www.jkimpa.nic.in/sro/sro200.pdf>; 20. 11. 2017]