



Second Meeting of the Asia Regional Initiative on Biocultural Community Protocols

February 18th-20th, 2013 in Bangalore

Exposing The Invisible: Biocultural relationships in environmental law and policy



AND FORD FOUNDATION

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EXECUTIVE SUMMARY

The Second Meeting of the Asian Regional Initiative on Biocultural Community Protocols (ARI-BCP) took place in Bangalore from 18th -20th of February with the objective of bringing existing and new partners from across South Asia to discuss the challenges from the past year and the potential to collaborate on BCPs in the year to come.

The report is divided into the following four parts:

1. *Background and Vision 2013*: This provides an overview of the purpose of the meeting and the vision of two groups within one, namely, participants from India and elsewhere in Asia on their initial vision for the year 2013.
2. *BCPs and Indian Environmental Laws*: This addresses the key questions posed of the relevance of BCPs in the Indian context vis-à-vis the environmental laws that recognize biocultural rights, primarily the Biodiversity Act, 2002 and the Forest Rights Act, 2006.
3. *Law, Environment and Design*: This lays out the work of the Law, Environment and Design Lab in relation to their projects on the implementation of the Forest Rights Act, 2006 and formulation of BCPs with the Gujjars in Sariska, Rajasthan, as well as Camel Maldharis in Kutch, Gujarat.
4. *Outcomes*: This sets out the key outcomes of the meeting in the form of a mind map.

The overarching questions that emerged from the meeting included:

- a. How are BCPs relevant to the Indian context?
- b. What is the link between BCPs and legal empowerment?
- c. How are BCPs different from other tools used by communities?
- d. Are BCPs the only legal tool or can they also be viewed as legal instruments?
- e. What is the value addition of BCPs in asserting community rights over resources?

These questions were addressed through a detailed analysis of BCPs in the Indian context and its relation to the Biodiversity Act, 2002 and the Forest Rights Act, 2006, provided in Part 2 of the Report. The group worked towards identifying concrete outcomes for the year 2013 with the objective of piloting BCPs in India in diverse contexts. The **key intended outcomes** laid out in Part 4 are:

BCPs:

- a. Formation of a working group in India.
- b. To conduct a thorough legal analysis in relation to relevant laws and BCPs.
- c. To pilot BCPs in diverse contexts in India such as areas effected by mining and communities struggling for recognition of forest rights.

Legal Empowerment:

- a. Increasing legal capacity in lower courts and exploring the option of paralegals.
- b. Increasing awareness on relevant laws through innovative tools like a board game and graphic novel that students from the Law, Environment and Design Lab are currently creating on the Forest Rights Act, 2006.

Legal Support for Communities:

- a. Litigation in lower and higher courts when required.
- b. Processing of claims in recognition of forest rights.
- c. Support in identifying biocultural rights available to communities.

LIST OF FIGURES

- Fig. 1** The vision 2013 of the two groups, namely, the India group and the South Asia region group.
- Fig. 2** The relevance of BCPs in the context of the Biodiversity Act, 2002 in three potential areas of use for community empowerment.
- Fig. 3** The connection of BCPs as tools with the provisions of the Forest Rights Act, 2006.
- Fig. 4** A layered circular diagram showing the strategy to be adopted by the Law, Environment and Design Lab.
- Fig. 5** Laying out the activities and areas of intervention by the Law, Environment and Design Lab in the coming years.
- Fig. 6** The issues of the Camel Maldharis and their struggle for rights over resources.
- Fig. 7** A SWOT (strength, weakness, opportunity and threat) analysis of the stakeholders involved in the issues faced by the Camel Maldharis.
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REPORT ON THE SECOND MEETING OF THE ASIAN REGIONAL INITIATIVE ON BIOCULTURAL COMMUNITY PROTOCOLS

1. BACKGROUND

The second meeting of the Asian Regional Initiative on Biocultural Community Protocols was the meeting of the existing Asian partners and new partners from India to discuss the potential for the growth of this initiative and the challenges faced by the existing partners in the year gone by. The meeting saw the coming of many new partners from India discussing the importance and relevance of biocultural community protocols (BCPs), particularly vis-à-vis the environmental legal landscape in India. Kabir Bavikatte of Natural Justice introduced the idea and meaning of BCPs as a community-led instrument that can facilitate recognition of customary rights over resources and their way of life by leveraging the range rights available in domestic and international law. It was highlighted through this process that a BCP can enable a community to strategize collectively against external threats while reflecting on poignant questions of their identity and notions of well-being.

As many new partners were present, they were asked to lay out their expectations for the meeting. Common themes that emerged set the tone for the remainder of the meeting's discussions, namely:

- a. To understand how BCPs are relevant to the Indian context,
- b. To explore the link between BCPs and legal empowerment,
- c. To distinguish between BCPs and other tools used by communities,
- d. Are BCPs the only a legal tool or can they also be viewed as legal instruments,
- e. To examine the value addition of BCPs in asserting community rights over resources, and
- f. To see how organizations gathered can collaborate with Natural Justice and others.

Participants engaged in a visioning exercise to set out a broad agenda for the coming year to meet the expectations laid out above and to strategize together on an initial vision on the possible use of BCPs within their organizations and area of work. They broke into two groups, one focusing particularly on India and one focusing on South Asia. The visions were then presented as follows:

1.1 India group:

Vision 2013

1. To set up a BCP working group and a loose network.
2. To conduct a detailed legal analysis for the possible use of BCPs as a legal tool.
3. To pilot BCPs in different contexts based on geographical, legal and cultural criteria as well as explore its applicability in litigation.
4. To reflect on the positive outcomes of the testing process and the challenges faced through meetings and publications.

1.2 South Asia group:

Vision 2013

1. To examine the potential for collaboration between communities across Asia on BCPs of cross-cutting issues.

2. To deepen the use of BCPs in the context of access and benefit sharing agreements and application of international environmental law.
3. To explore biological resource-centric BCPs where issues concerning one biological or genetic resource spread over the Asian region can be captured in a BCP that is collaborative effort of all communities associated with the resource.
4. To enable exchange of ideas on the use of BCPs by different communities across Asia to allow for cross-fertilisation of ideas and innovative use of these tools.

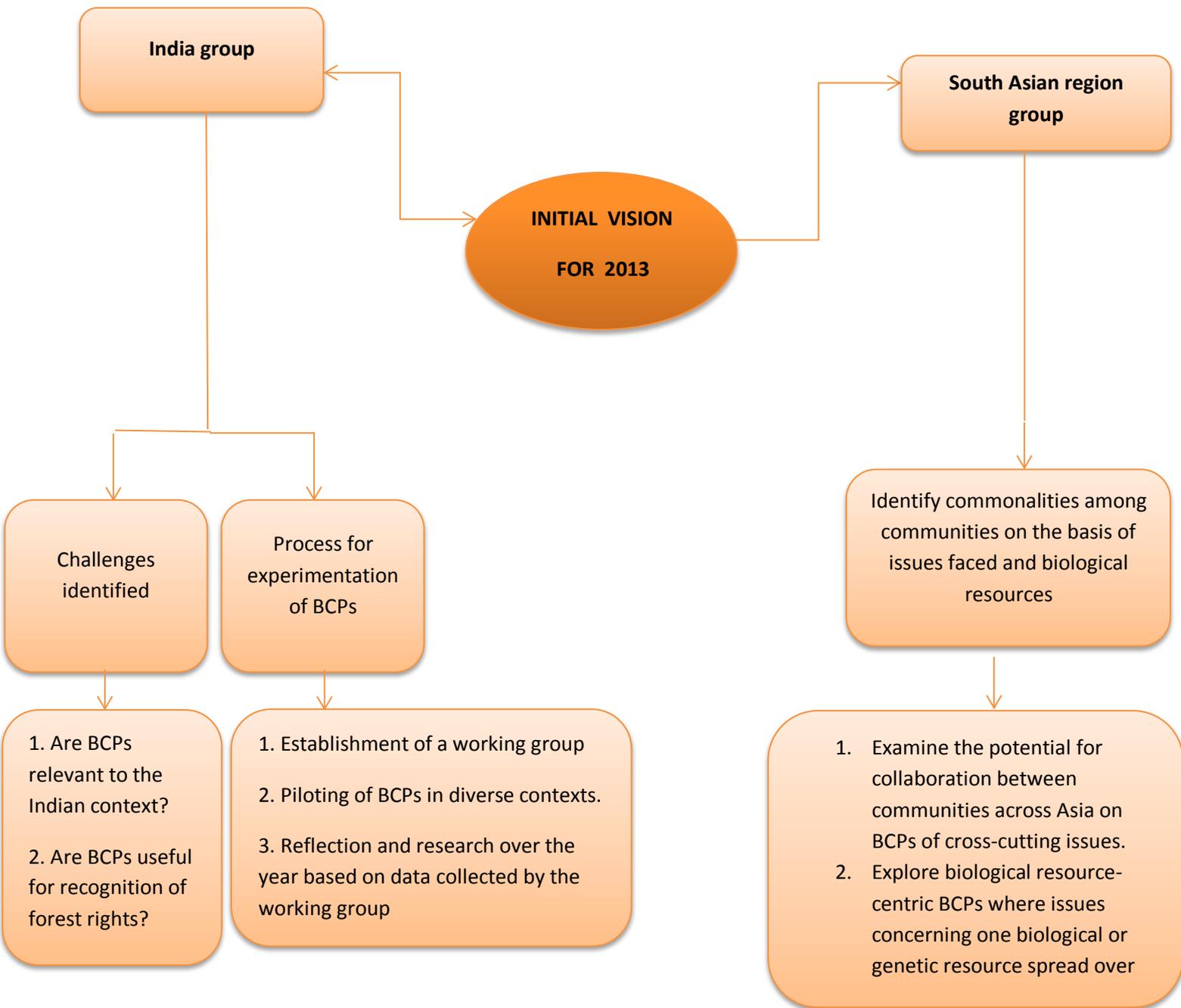


Fig. 1 The vision 2013 of the two groups, namely, the India group and the South Asia region group.

2. BIOCULTURAL COMMUNITY PROTOCOLS AND ENVIRONMENTAL LAWS IN INDIA

2.1 Introduction:

There were two panel discussions on the use of BCPs as tools in the implementation and recognition of rights vested with communities under the Forest Rights Act, 2006 and the Biodiversity Act, 2002. The panel discussions broadly focused on the following aspects:

- a. The process of formulating BCPs and the legal empowerment of communities.
- b. BCPs as tools for gathering evidence for forest rights.
- c. BCPs as tools for engaging in collective decision making processes in access and benefit sharing agreements.

Both panel sessions unpacked the potential for the application of BCPs within the existing legal framework as an enabler for communities in different respects. There were also some notes of caution that emerged during the course of the panel discussions, including:

- a. BCPs are not a panacea for the recognition of rights under these Acts.
- b. If given formal legal recognition, BCPs may lose the flexibility they currently have in terms of form and applicability.
- c. BCPs may not assist the community in tangible legal outcomes, but may enable the community to engage with the legal framework with an understanding of their identity and heritage.
- d. Lastly, BCPs should not become a precursor for the recognition of rights, as not all communities will wish to undergo this process prior to recognition of rights.

2.2 BCPs and the Biodiversity Act, 2002

The panel members were from three partner organizations, namely, Foundation for Revitalisation of Local Health Traditions, Sambandh in Orissa and Lokhit Pashu-Palak Sansthan in Rajasthan. The panel focused on the work with which they had been engaged, ranging from working with traditional healers in establishing herb gardens to establishment of producer companies by communities based on their traditional knowledge. The relevance of BCPs within the Act was found in the following areas:

- a. BCPs can be used in negotiating access and benefit sharing agreements between communities and external parties.
- b. BCPs can enable communities to document their traditional knowledge by merging it with their cultural heritage and identity in a meaningful way, for example, through the establishment of peoples biodiversity registers.
- c. The process of formulating BCPs may allow for communities to establish biodiversity management committees.
- d. BCPs can be used in the context of community based producer companies as a tool for forming their internal structure and method of functioning.
- e. Lastly, BCPs can assist in developing management plans for conserving biodiversity within the area through the BMC by establishing certain guidelines and working plans through a collective decision process.

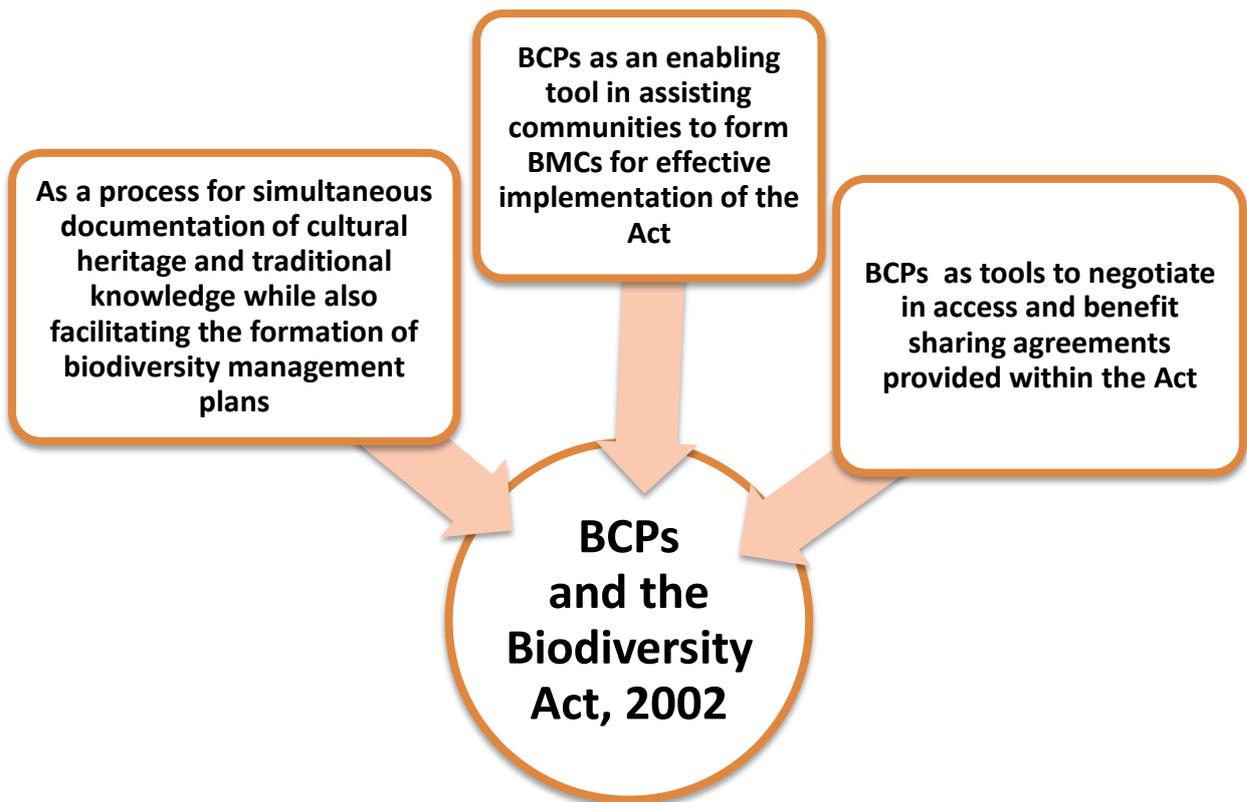


Fig. 2: The relevance of BCPs in the context of the Biodiversity Act, 2002 in three potential areas of use for community empowerment.

2.3 BCPs and the Forest Rights Act, 2006

This panel consisted of three members from two organizations, Vasundhara and Sahjeevan, and was moderated by Sankar Pani from Natural Justice. The panel members have worked on local implementation of the Forest Rights Act, 2006 in Orissa and Gujarat, respectively. The presentations looked at specific cases of the Paudi Bhuyan community claiming community forest rights in Orissa and Camel Maldharis in Kutch. In the case of the Maldharis, whose BCP has already been drafted, there was emphasis on the use of this BCP in the recognition of forest rights. In the case of the Paudi Bhuyan community, specific emphasis was on the potential for BCPs to assist in the process of claiming habitat rights under the Forest Rights Act, 2006. The applicability of BCPs within the provisions of the Forest Rights Act, 2006 were:

- a. BCPs can be effective in gathering evidence for the recognition of forest rights, as an essential aspect of the process of developing a protocol is reflecting into one's cultural history and identity in association with the landscape. This requires gathering of data and archival evidence, which can be used while claims are being processed.
- b. It was also suggested that BCPs themselves be used as legal evidence in the process of claiming forest rights.
- c. BCPs can assist communities to form forest management plans once community forest rights have been recognized for the conservation of specific forest areas.
- d. BCPs can be effectively used by communities to understand the nature and scope of their forest rights through the process of drafting protocols prior to making the claims.

- e. Lastly, BCPs can be effectively used in the recognition of habitat rights, which require communities to highlight their biocultural relationship to a particular landscape.

These suggestions were coupled with a few cautionary notes on the steps to be taken in this direction. Most notably, BCPs should not become a mandatory process necessary to undertake prior to the claiming of forest rights or after forest rights have been recognized; this is a possibility if BCPs are pursued over a long period of time in India.



Fig. 3 : The connection of BCPs as tools with the provisions of the Forest Rights Act, 2006.

2.4 OTHER FORMS OF COMMUNITY-BASED LEGAL SUPPORT

A session on the use of BCPs was followed by a discussion on other forms of legal support that communities require in the recognition of community rights over natural resources. This stemmed from an understanding that BCPs are a part of a broader legal strategy in empowering communities to gain recognition of their biocultural rights. Other forms of community-based legal support mentioned that Natural Justice can help facilitate include:

- a. Strategic litigation at lower and higher courts for enabling progressive jurisprudence that supports communities' rights over resources present within the existing legal framework.
- b. Legal empowerment of communities in relation to the biocultural rights available to them under national and international law.
- c. Legal research on aspects of biocultural rights and challenges associated in their recognition.
- d. Lastly, non-litigation-based legal action through the use of the Right to Information Act, 2005 and other legal avenues provided within the laws relating to biocultural rights.

3. LAW, ENVIRONMENT AND DESIGN

3.1 Introduction

The Law, Environment and Design Lab Directors Arpitha Kodiveri (Natural Justice) and Deepta Sateesh (Srishti School of Art, Design and Technology) made a brief presentation on their work and the proposed plan for the coming years on the main goals of the LED Lab, which are to:

- a. Deconstruct environmental law through the new lens of design methodologies, thinking and tools.
- b. Provide capacity building materials and services to various stakeholders involved, from law schools and local communities to government officials and corporations.

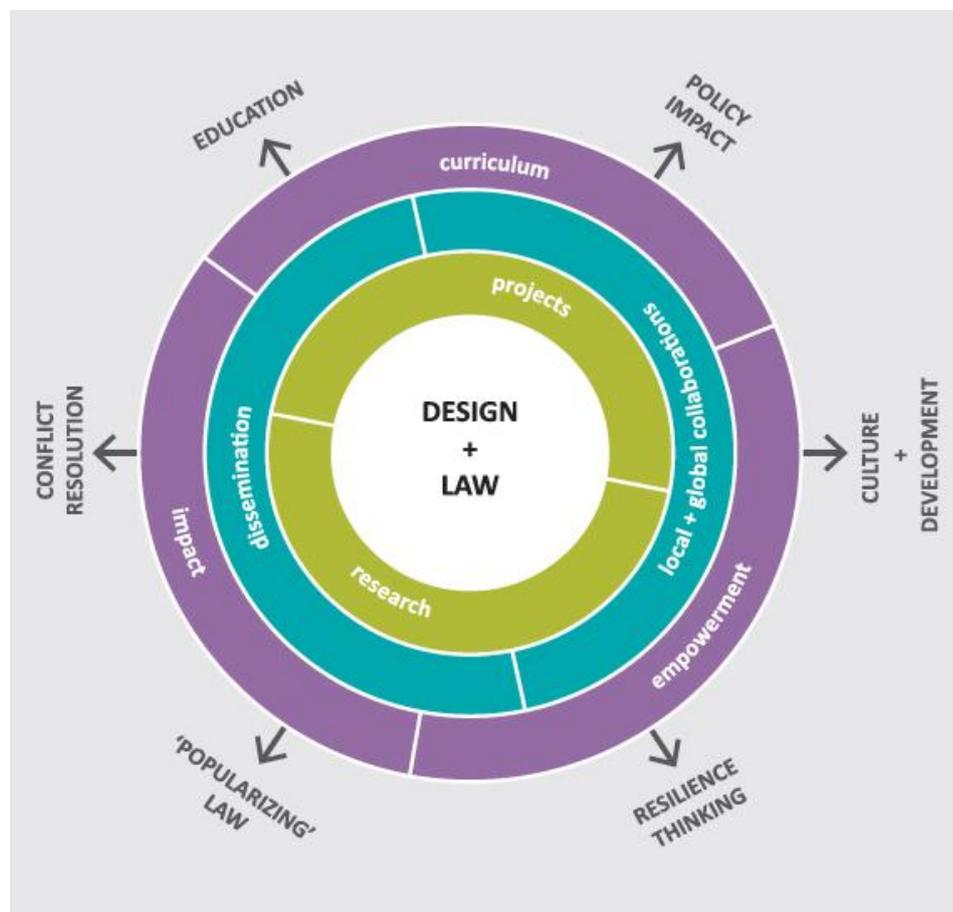


Fig. 4: A layered circular diagram showing the strategy to be adopted by the Law, Environment and Design Lab.

The strategy of the LED Lab was also shared as illustrated in the figure above, with each layer seen as a staged process to the final outcomes indicated in the outward-spreading arrows.

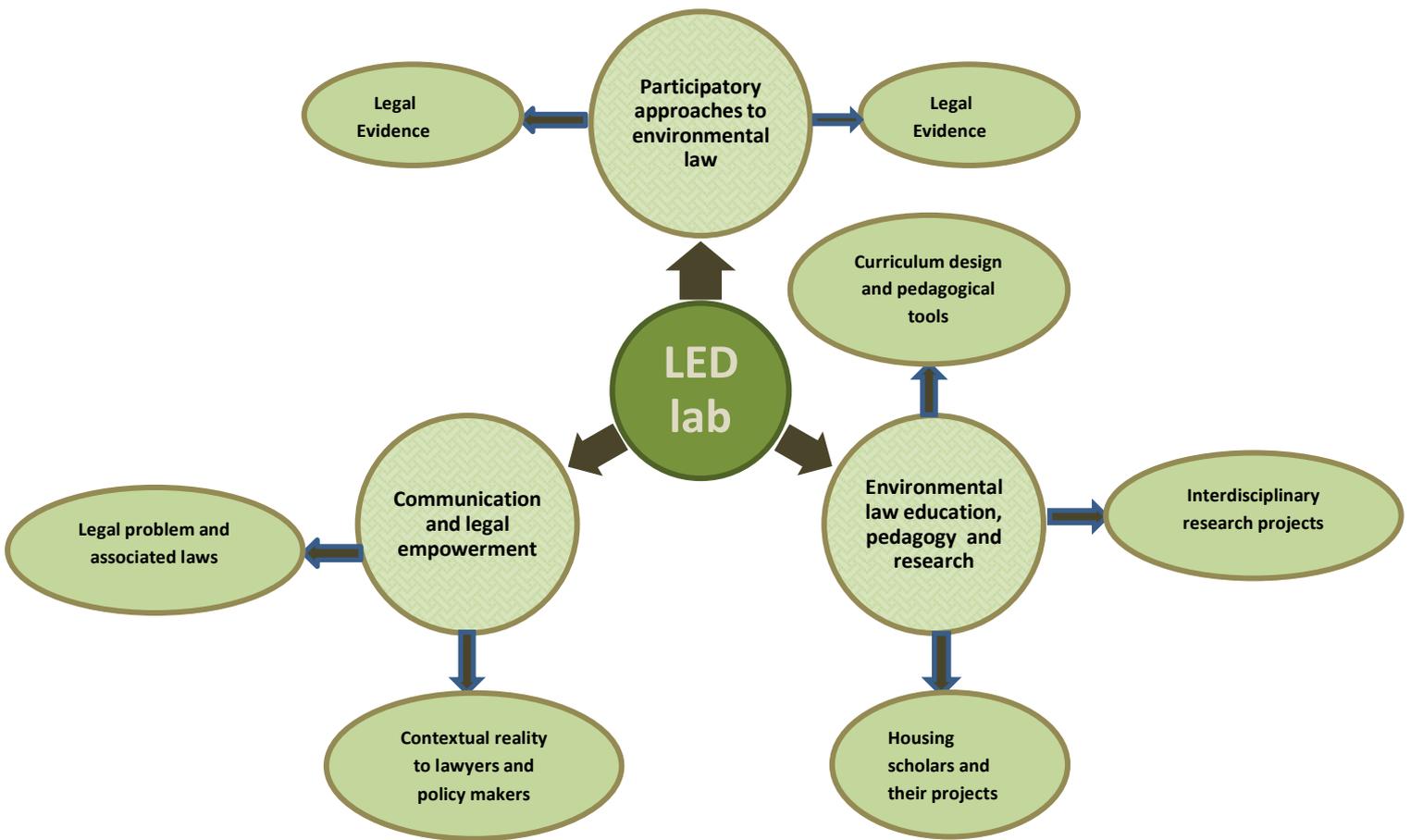


Fig. 5: Laying out the activities and areas of intervention by the Law, Environment and Design Lab in the coming years.

3.2 STUDENT PRESENTATIONS

The students from the LED Lab presented their work on the two projects on the implementation of the Forest Rights Act, 2006 with the Camel Maldharis in Kutch and the Gujjars in Sariska. The students worked with community members in participatory cultural mapping processes accompanied by discussions on the issues relating to the claiming of forest rights under the Forest Rights Act, 2006. Detailed project briefs can be found online at: <http://srishti.ac.in/ledlab/projects-for-spring-2013/>.

The presentations of the students were undertaken with Ashish Kothari from Kalpavriksh as a key observer, who gave some valuable feedback on the intended project outcomes.

3.2.1 KUTCH TEAM

The Kutch design team presented their work through the use of forum theatre and film. The team addressed the challenges faced by the Camel Maldharis through a visual representation of the relevant issues using design tools like mind maps and SWOT analysis, as depicted below in Figures 6 and 7, respectively.

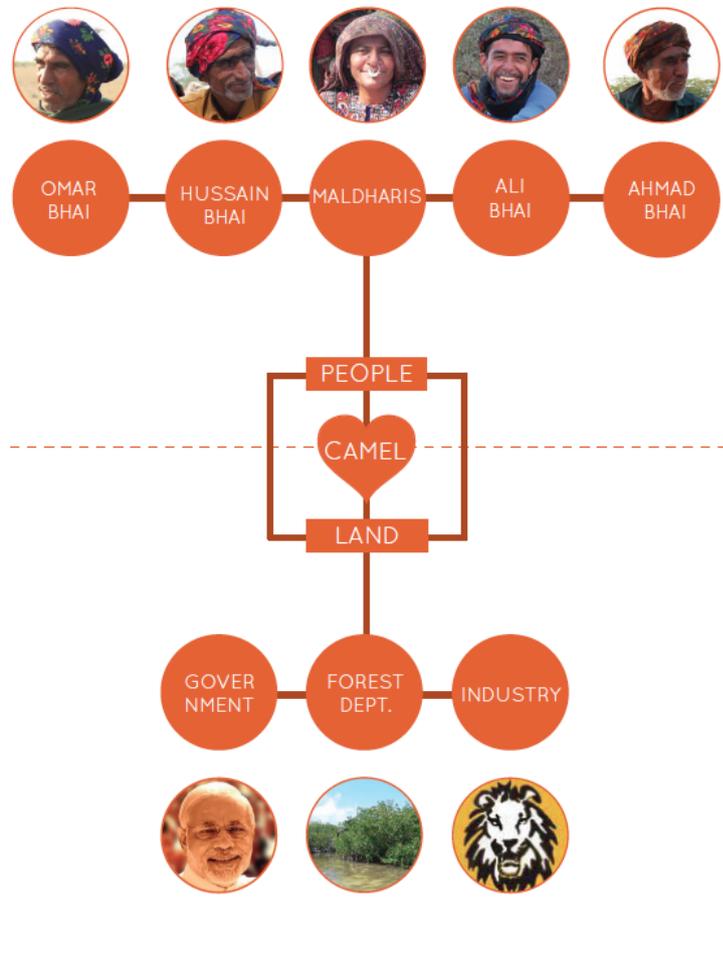


Fig. 6: the issues of the Camel Maldharis and their struggle for rights over resources.

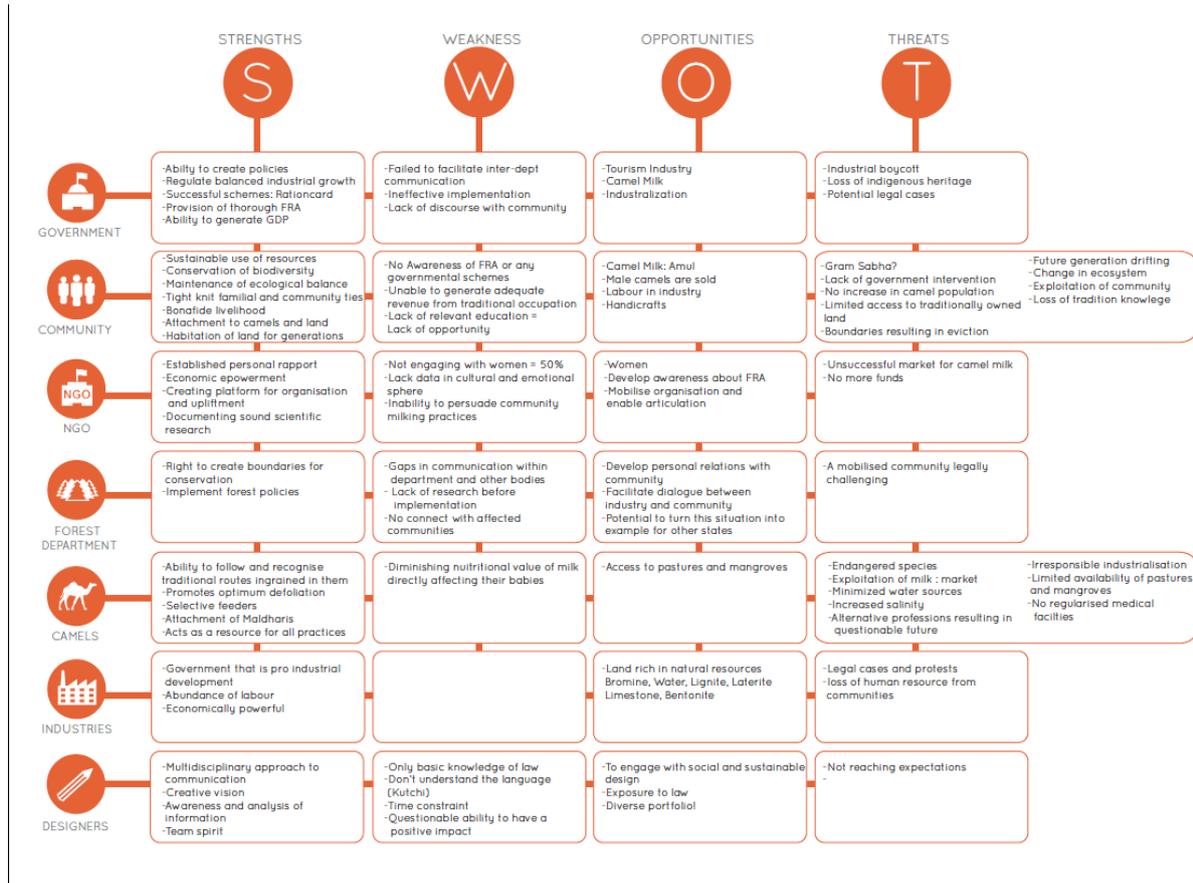


Fig. 7: A SWOT (strength, weakness, opportunity and threat) analysis of the stakeholders involved in the issues faced by the Camel Malldharis.

The Kutch team is now in the process of designing a board game on the Forest Rights Act, 2006 that will act as a tool to facilitate a quicker learning process of the different provisions of the law.



3.2.2. SARISKA TEAM

The Sariska team presented through the use of visual tools to map power within the context of the Sariska tiger reserve in the implementation of the Forest Rights Act, 2006. They innovatively used a mathematical framework of the polygon of power to show where power tilts and the landscape of power through which the Gujjars have to navigate for the recognition of their rights. The team also presented their decided outcomes of a graphic novel on the Forest Rights Act, 2006 to facilitate easy understanding of the Act and digitisation of the cognitive maps drawn by the community in the villages visited in Sariska.



3.3 FEEDBACK

The presentations were well-received and were followed by detailed feedback by the participants and Ashish Kothari (Kalpavriksh). Some of the key points included:

- a. To involve the respective communities in every stage of development of the graphic novel and the board game.
- b. To incorporate the finer nuances of the political and social landscape of both the contexts within these outcomes.

- c. To explore more avenues to involve the youth in both communities in the development of these tools

4. MIND MAP OF THE WAY FORWARD FROM THE SECOND MEETING OF THE ASIAN REGIONAL INITIATIVE ON BCPs.

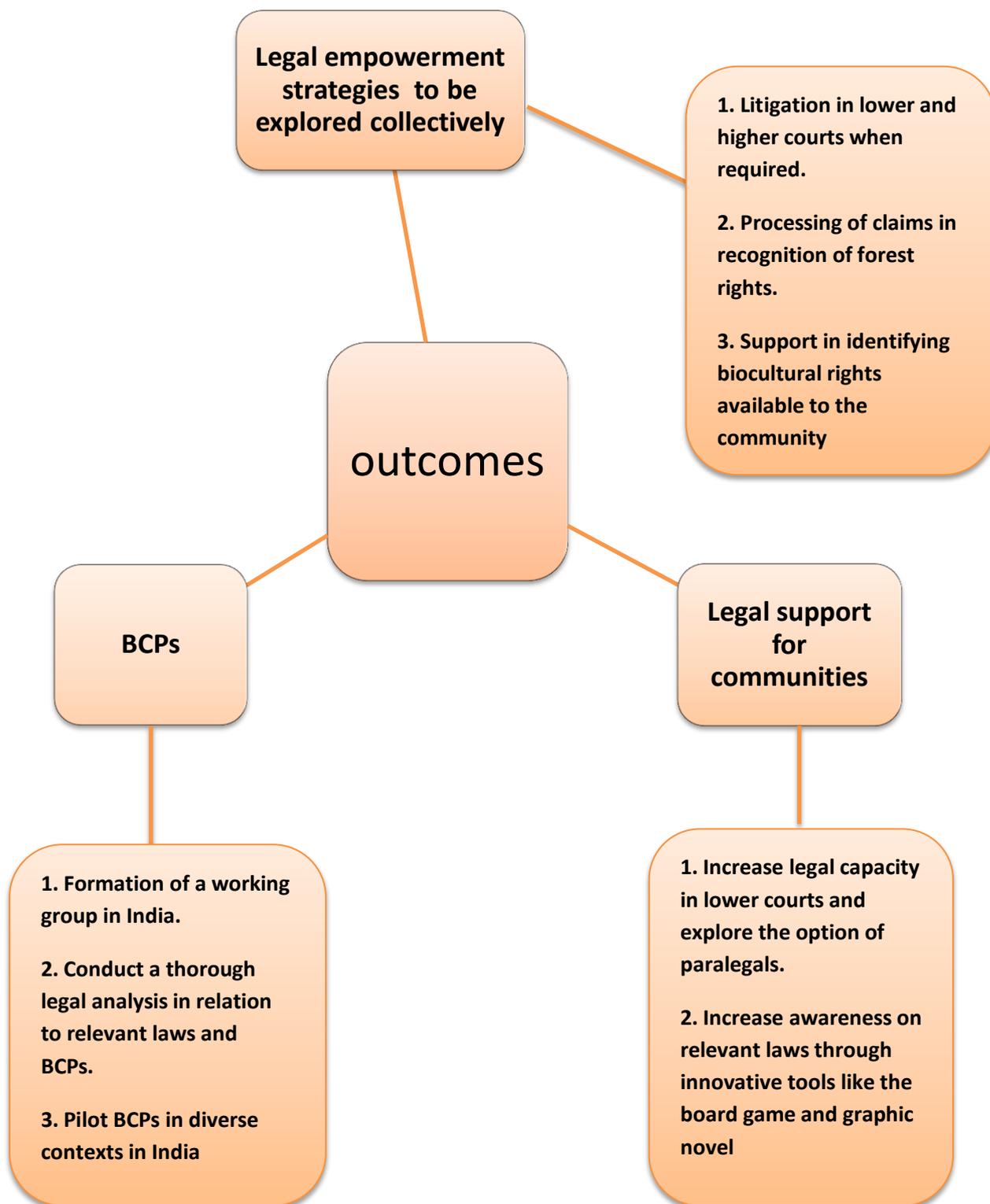


Fig. 8 : The key intended outcomes

ANNEXURE 1: LIST OF PARTICIPANTS

S.No	NAME	ORGANISATION
1	Bhajaman Mahanta	Jivan Vikas
2	Bibhu Kalyan Mohanty	Sambandh
3	Tushar Dash	Vasundhara
4	Ravi Rebbapragaa	Samata
5	Ghasiram Panda	Action Aid
6	Ramya Rajagopalan	ICSF, International Collective in Support of Fishworkers
7	Ramesh Bhatti	Sahajeevan
8	Hanwant Singh	LPPS
9	Wim Hiemstra	ETC COMPAS
10	K. A. J. Kahandawa	Future in our Hands
11	Pratap Singh	CHEA
12	Krishna Prasad Oli	ICIMOD
13	Govindaswamy Hariramamurthi	FRLHT
14	Suneetha Subramanian	UNU IAS
15	Angarai Balasubramanian (Balu)	CIKS
16	Shruti Pandey	Ford Foundation
17	Vasant Saberwal	Ford Foundation
18	Rustam Vania	Srishti School of Art, Design and Technology
19	Sanjay Barnela	Srishti School of Art, Design and Technology
20	Deeptha Sateesh	Srishti School of Art, Design and Technology
21	Geeta Narayanan	Srishti School of Art, Design and Technology
22	Nitin Rai	ATREE