



Policy Papers

Biodiversity Management Committees (BMCs)

The Biological Diversity Act, 2002 promulgated by India to achieve the objectives of CBD mandates constitution of BMCs at all local body levels for the purpose of conservation of biodiversity. However, even after 14 years of the Act being in force, BMCs are left to be formed at more than 80% of the local bodies; those formed remain largely on paper given lack of basic funding from the top and inability of BMCs to generate their own finances. With exception to a few active ones; BMCs have largely failed to perform their roles and responsibilities. This brief looks at the Status of BMCs in India.

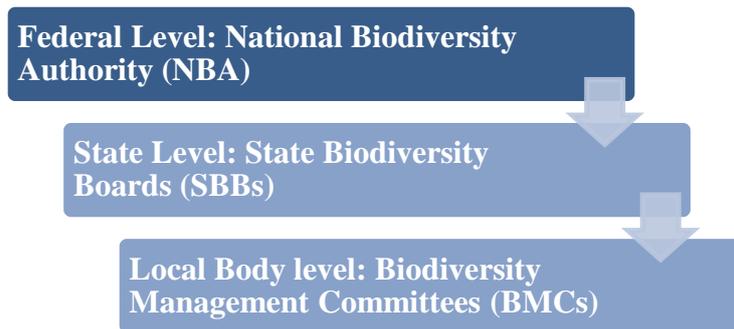
The Convention on Biological Diversity (CBD), adopted at the Rio “Earth Summit, 1992 by reaffirming the sovereign rights of the countries over their biological resources, replaced the earlier notion that biodiversity was a common heritage (resource) of the mankind. Signed by 198 countries¹, the internationally binding agreement is based on three fold objectives: the *conservation of biological diversity*, the *sustainable use of its components* and the *fair and equitable sharing of the benefits arising out of the utilization of genetic resources*². To achieve the objectives of the convention, the Government of India (a party to the CBD) enacted the Biological Diversity Act, 2002 (BD

¹ List of Parties to Convention on Biological Diversity: <https://www.cbd.int/information/parties.shtml>

² Article 1: Objectives: Convention on Biological Diversity: <https://www.cbd.int/doc/legal/cbd-en.pdf>

Act, 2002) which came into effect on 05.02.2003 and notified the Biological Diversity Rules, 2004 (BD Rules, 2004) which came into force on 15.04.2004. For its implementation, the BD Act, 2002 institutes a 3 tier structure (as shown in the chart below) to ensure conservation of biological diversity, sustainable use of its components and equitable sharing of benefits from the use of biological resources and knowledge associated and matters connected thereto³.

Figure 1: Institutional Structure under BD Act, 2002



Given the above, this policy brief looks at the institutions at the lowest level which are primarily responsible for carrying out of the objectives of the Act: conservation of biological diversity, sustainable use of its components and equitable sharing of benefits arising out of the use of the resources and knowledge associated with them.

The brief first looks at the legal provisions with respect to the BMCs, the status of their implementation, issues emerging therein followed by a look at few BMCs which have taken an active stand given the objectives of the statute.

LEGAL PROVISIONS WITH RESPECT TO BMCs

The legal provisions governing the BMCs are explained below:

1. Constitution of a BMC

³ See Preamble to Biological Diversity Act, 2002

As per the BD Act, 2002 it is mandatory for every local self-governing institution in both rural areas (wherein it takes the form of Panchayats at the village level, intermediate level and district level⁴) and urban areas (wherein it takes the form of Nagar Panchayats, Municipal Council and Municipal Corporation⁵) to constitute a BMC within their area of jurisdiction. As per the provisions of the statute, a BMC is constituted for the purpose of promotion of conservation, sustainable use and documentation of biological diversity which includes preservation of habitats, conservation of landraces, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicle knowledge relating to biological diversity⁶.

BMC consists of a Chairperson and 6 persons nominated by the local body in its general body meeting (chaired by the Chairperson of the local body) of which one third should be women and not less than 18% should belong to Scheduled Castes/Scheduled Tribes⁷. The members should be selected from participatory forest/natural management committees, fisher folk, vairs, hakims, traditional health care (human and livestock) practitioners etc.⁸. The 6 nominated members then elect a Chairperson amongst themselves in the same meeting such that the Chairperson of the local body has the casting vote in case of tie⁹. The tenure of the BMC is 5 years/co-terminus with the tenure of the local body however; the existing BMC will continue to operate, until a new committee is constituted¹⁰. The jurisdiction of a BMC, i.e. its legal authority is restricted to the territorial boundary of its local body.

2. Mandate of a BMC: PBR Preparation

⁴ Clause 1 of Article 243 B of the Indian Constitution

⁵ Clause 1 of the Article 243 Q of the Indian Constitution Section

⁶ Section 41 (3) of the BD Act, 2002

⁷ Sub-Rule 2 of Rule 22 of the Biological Diversity Rules, 2004

⁸ Section 1.2: Integration of Biodiversity Management Committees to other village committees related to natural resource management: Guidelines on Operationalization of Biodiversity Management Committees issued by National Biodiversity Authority 2013: http://nbaindia.org/uploaded/pdf/Guidelines_BMC_1.pdf

⁹ Sub-Rule 3 of Rule 22 of the Biological Diversity Rules, 2004

¹⁰ Section 1.2: Tenure of the BMC: Guidelines on Operationalization of Biodiversity Management Committees issued by National Biodiversity Authority 2013

The primary responsibility of the BMCs is to prepare a 'People Biodiversity Registers' in consultation with local people which contains comprehensive information on availability and knowledge of local biological resources (those falling within the areas of territorial jurisdiction of the BMC, which is same as that of the local body), their medicinal or other use or any traditional knowledge associated with them¹¹. According to **Madhav Gadgil** (known for initiating the PBR programme in India before the promulgation of the statute), ***PBR is a way to record people's knowledge and perceptions of the status, uses, history, ongoing changes and forces driving these changes in the biological diversity resources of their own localities***¹². The process of PBR preparation is participatory in nature, requiring extensive and intensive consultation with the large number of the people who need to share their common as well as specialized knowledge¹³. Given the technical nature of the PBR exercise, a Technical Support Group (TSG) is to be formed in every district consisting of experts from various disciplines and line departments, universities, research institutes, colleges and schools and non-governmental organizations. The main responsibility of the TSG is to assist the BMC in listing the local names of flora and fauna and current practices of communities regarding conservation and to validate/cross check the information before its documentation in the PBR¹⁴.

The PBR thus prepared then serves as a legal document which confirms the sovereign rights of that BMC over the resources documented in the PBR. It serves as a legal basis which proves that the traditional knowledge associated with a particular biological resource is the 'prior art' of that particular village and therefore, cannot be patented¹⁵. Further, the documentation of people's knowledge about conditions and trends about changes taking place in their surroundings and the drivers of these changes reveals issues of natural resource management to be reflected in the management plan for the

¹¹ Sub-Rule 6 of Rule 22 of the BD Rules, 2004

¹²

Gadgil, M., 2000. People's Biodiversity Registers: Lessons Learnt. *Environment, Development and Sustainability*, Volume 2, pp. 323-332.

¹³ Section 4: Peoples Biodiversity Register in Guidelines on Preparation on People's Biodiversity Registers: Published by National Biodiversity Authority: 2013: <http://nbaindia.org/uploaded/pdf/PBR%20Format%202013.pdf>

¹⁴ Sub-Rule 9 of Rule 22 of the BD Rules, 2004 read with Section 3 of the NBA Guidelines on the Preparation of Peoples Biodiversity Registers (PBRs)

¹⁵ The term prior art in the context of patents is any evidence that proves the invention proposed for a patent is already known and therefore the proposed invention is not valid for a patent.

area, thereby acting as a basis for knowledge based system of resource management. For example, in the case of a an area rich in medicinal plants, documentation of resources and its current pattern, BMC will be in a position to determine the resource potential, prospects of cultivation, its sustainable use and trading¹⁶. Further, preparation of a PBR may play an instrumental role by providing an information base for BD Act's proper implementation with the aim of conservation and sustainable utilization. Specifically, the Act proposes to have *heritage sites*¹⁷ to be selected for the purpose of conservation and management for which there is a need to have an information base. The *threatened species notification*¹⁸ also requires information for the purpose of preservation and rehabilitation as mentioned in the Act¹⁹.

However, the most important use of a PBR is its potential to enable the communities to present the true ecological value of their area (unlike EIA studies which underestimate the same) when they are proposed for diversion for development projects such as mining, hydel power, roads etc.

3. Powers/ Roles and Financing of a BMC

In addition to the preparation of a PBR, the roles and responsibilities of a BMC takes various forms such as eco-restoration of the local biodiversity, management of sacred groves and sacred water bodies, heritage sites including heritage trees, conservation of traditional varieties/breeds of economically important plants and animals; sustainable utilization of biological resources within its area of territorial jurisdiction, regulation of access to the biological resources and/ or associated traditional knowledge, for

¹⁶ Section 3.3: Medicinal Plants Survey: Natural Survey and Documentation in NBA Guidelines on the Preparation of Peoples Biodiversity Registers (PBRs)

¹⁷ See Section 37 of the BD Act, 2002 which gives State Government the power to notify areas of biodiversity importance as Biodiversity Heritage Sites (BHS)

¹⁸ See Section 38 of the BD Act, 2002 as per which the Central Government in consultation with the State Government may notify any species which is in the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve these species

¹⁹ Gokhale, Y. et al., 2005. *People's Biodiversity Register: Documenting biodiversity for natural resource management*. New Delhi , Ministry of Environment and Forests, Government of India.

commercial and research purposes and stopping illegal access of bio resources from areas falling within its territorial jurisdiction²⁰.

The BD Act, 2002 grants BMCs independent powers to levy charges by way of collection fees from persons accessing or collecting biological resources for commercial purposes from areas falling within their territorial jurisdiction²¹. Collection of fees by the BMC may enable it to build their own finances which can be utilised by them for carrying out the objectives of the statute.

The statute authorizes the BMCs to operate Local Biodiversity Fund (LBF) consisting of consisting of grant and loans made²². The Act further mandates that these funds are to be strictly used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community as long it is consistent with conservation²³. Lastly, the LBF account of the BMC is to be audited and these audits and the same are to be presented to the concerned local body²⁴.

STATUS OF BMCs IN INDIA²⁵

²⁰ Section 1.7: Roles and Functions of BMCs: Guidelines for Operationalization of Biodiversity Management Committees: Published by National Biodiversity Authority: January 2013

²¹ Sub-Section 3 of Section 41 of the BD Act, 2002

²² Sub-Section 1 of Section 43 of the BD Act, 2002

²³ Sub-Section 2 of Section 44 of the BD Act, 2002

²⁴ Section 46 of the BD Act, 2002

²⁵ Data used in this Section draws from the analysis of the replies received from State Biodiversity Boards (SBBs) in the matter of Chandra Bhal Singh Vs. Union of India and Ors. filed in the National Green Tribunal, Principal Bench (Original Application O.A. No. 347 of 2016);

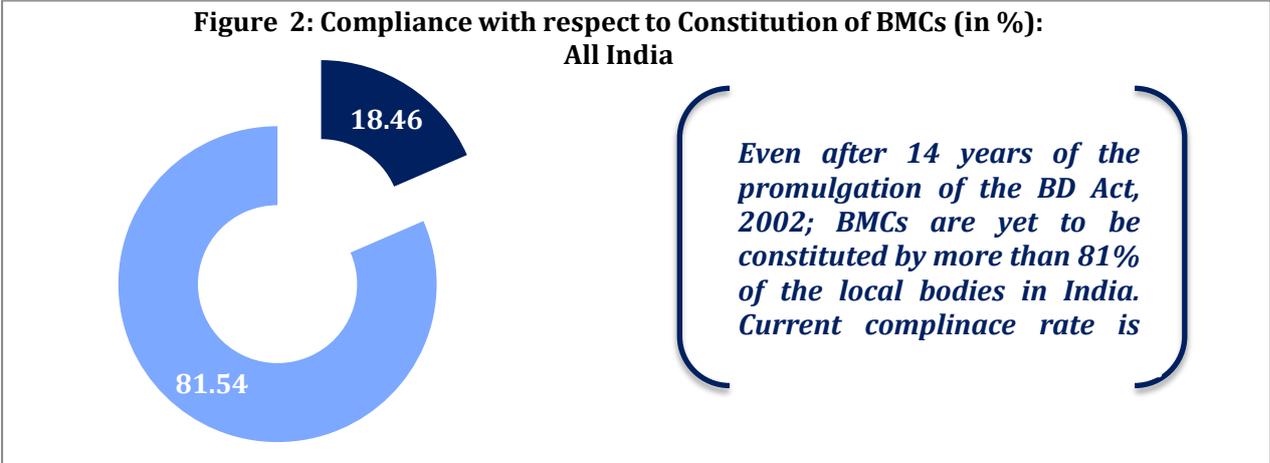
The petition was filed to highlight the "*gross non-implementation of the provisions of the Biological Diversity Act, 2002 and Biological Diversity Rules, 2004*".

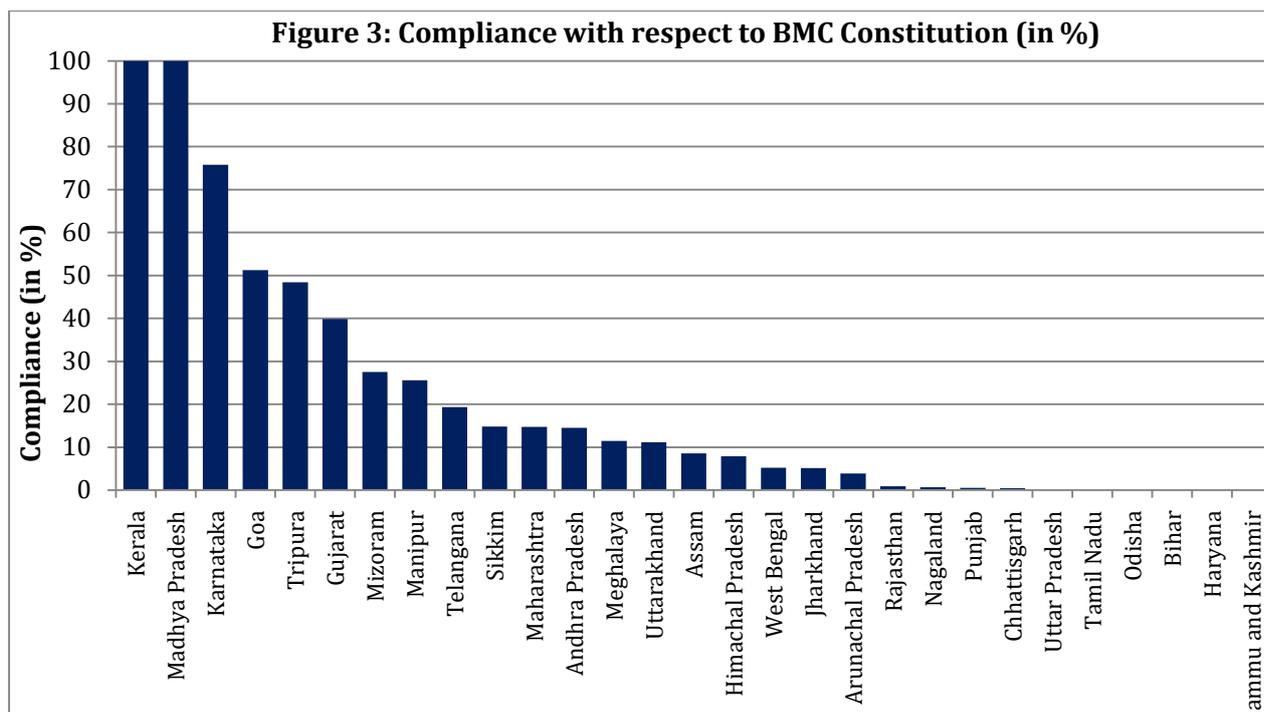
The Petition made the Ministry of Environment and Forests and Climate Change, Government of India (MOEF&CC), National Biodiversity Authority (NBA) and respective State Biodiversity Boards (SBBs). In order to highlight the status of implementation of the Act in the petition information was obtained from the respective SBBs under Right to Information Act (RTI) with respect to compliance of certain important provisions which are of mandatory nature under the Act and Rules specifically, number of Biodiversity Management Committees (BMCs) constituted, number of People's Biodiversity Registers (PBRs) prepared by BMCs, amount of fees collected by BMCs and grants and loans made to the Local Biodiversity Fund (LBF) of the BMC. Given the *shocking and surprising facts about the non-compliance of the provisions of the Biological Diversity Act, 2002 and Rules*, from the replies received from the 15 SBBs the applicant had prayed the Tribunal to direct the authorities to take steps to ensure that the provisions of the Act are implemented.

Given the legal provisions with respect to BMCs, this section looks at the status of their implementation; specifically at status of their constitution, the extent of the BMC, status of their financing; extent to which they have exercised their independent powers and finally status of PBR preparation.

1. Status of BMC constitution:

Given the provisions of the BD Act, 2002 which mandate the constitution of a BMC at every local body level, Figure 2 indicates the status in India with respect to constitution of BMCs by highlighting the percentage of local bodies in the country that have constituted a BMC within its area of jurisdiction and those who are yet to constitute one as mandated by the law. Following the all India status, Figure 3 indicates the state wise extent of compliance with respect to BMC constitution by indicating the percentage of local bodies that have constituted a BMC in the state.





Source: Compilation of Replies received in Chandra Bhal Singh Vs. Union of India & Ors (NGT, OA. 347/2016)

While implications of Figure 2 are clear, it is clear from Figure 3 that in the states of Bihar, Haryana and Jammu and Kashmir not even a single local body has constituted a BMC. While the Bihar SBB communicated the matter to the Panchayati Raj with respect to constitution of BMCs and preparation of PBRs only in 2016 seven years after the constitution of the Board; in Haryana the reconstitution of SBB is still pending after the transfer of subject matter of biodiversity from the Environment to the Forest Department. Further, the formation of BMCs on different regions is yet to begin in Jammu and Kashmir following Board’s late constitution in 2013²⁶. Following, these, Chhattisgarh, Nagaland, Odisha, Punjab, Rajasthan and Tamil Nadu show less than 1% compliance. On the other hand in the states of Kerala and Madhya Pradesh, BMCs are constituted at all the local bodies.

2. Practical experiences while constituting BMCs

²⁶ Reply Affidavits filed by the Bihar, Haryana and Jammu and Kashmir State Biodiversity Board in in Chandra Bhal Singh Vs. Union of India and Ors. Original Application (O.A.) No. 347 of 2016; NGT

The BD Rules, 2004, clearly mandate that a BMC is constituted following a general body meeting of the local body wherein the purpose behind the BMC constitution, its roles/responsibilities and powers are explained. Following this, members and the Chairperson are selected by vote and thereafter oriented, but this method has not been followed in every state. For example in the state of Madhya Pradesh which shows 100% compliance with respect to BMC constitution, BMC were set up following an order issued by the Additional Chief Secretary in 2006 to the Principal Secretaries of Panchayati Raj and Rural Development Department as well as Urban Administration and Development Department resulting in further instructions to all District Collectors about the mandatory requirement of setting up of a BMC as per the BD Act, 2002²⁷. However, it is important to note that these BMCs remain essentially on paper and are yet to become operational at the ground level²⁸. Further, in the state of Uttarakhand, BMCs have primarily formed by the State Forest Department. Specifically, letters were issued by the Uttarakhand SBB to the Divisional Forest Officers (DFOs) for constituting a BMC following which instructions were sent to the Range Forest Officer (RFO) and thereafter the Forest Guard regarding the same; thereby resulting in a 7 member committee formed in more than 900 local bodies between 2010 and 2017²⁹. Given these BMCs constituted on paper by the Forest Department, it is only recently that BMCs have been reconstituted with the help of TSG's who have been given the task of preparing PBRs³⁰.

The 'irregularities' are not just restricted to setting up the BMC but are also visible while selecting members. The BD Rules, 2004 specify that members of the BMC are selected in a general body meeting presided by the Chairperson of the local body such that the six members so nominated thereafter select the chairperson amongst themselves in the same meeting. However, there have been instances in case of constituting a BMC at the

²⁷ Dr. RG Soni, Ex Member Secretary, Madhya Pradesh State Biodiversity Board, interview by LIFE. *Constitution of BMCs in Madhya Pradesh*

²⁸ Dr. RG Soni, Ex Member Secretary, Madhya Pradesh State Biodiversity Board, interview by LIFE. *Constitution of BMCs in Madhya Pradesh*

Rajesh Thembre, Swatantra Yuva Shakti Sanghatan (SYSS), Seoni, MP, interview by LIFE. *Constitution of BMCs in Seoni, Madhya Pradesh*

Zakhir Hussain, Sujagruti Samaj Sevi Sanstha, interview by LIFE. *Constitution of BMCs in Morena, Madhya Pradesh*

(Both are TSGs for Madhya Pradesh)

²⁹ Statistics with respect to BMCs in Uttarakhand have been taken from: http://www.sbb.uk.gov.in/files/Documents/bmc_list.pdf

³⁰ Joginder Bhisht, Lok Chetna Manch, interview by LIFE. *Constitution of BMCs in Almohra, Uttarakhand*
Yogesh Pathak, Theatre for Education in Mass Society, interview by LIFE. *Constitution of BMCs in Pithoragarh, Uttarakhand*

gram panchayat level wherein the Gram Pradhan (chairperson of the gram panchayat, who is to call the general body meeting) has assumed the role of the chairperson of the BMC as well. Specifically, in the State of Himachal Pradesh, of the 253 BMCs so far constituted, in close to in close to 60-70% of the BMCs constituted at the Gram Panchayat level, the Panchayat Pradhan is the BMC chairperson as well; such that their awareness with respect to local biodiversity (for example the extent of agricultural biological diversity such as varieties of paddy/kidney beans that originates from there area) is absent³¹. The fact that Gram Pradhans resist formation of a BMC at their gram panchayat unless they are taken as the Chairperson of the BMC as well is also a practical challenge in Uttarakhand when it comes to constituting one³².

Further, with respect to the position of the Secretary of the BMC, he/she enjoys the signatory power as does the Chairperson of the BMC with respect to cheques issued out of the LBF and is further responsible for maintaining and managing the accounts of the BMC. However, in the state of Uttarakhand, Jharkhand, Uttar Pradesh and Himachal Pradesh, it has been assumed by Deputy Rangers/Forester/Forest Guards; such that the Divisional Forest Officer (DFO)³³ has been designated as the Nodal Officer to the BMCs to oversee the various matters of the BMC, and is duly informed when the funds are allocated to the BMC by the SBBs.

While the above model where members from the Government Line Departments such as Forest/Panchayati Raj have assumed the role of Member Secretary to the BMC and Nodal Officers is provided for in the guidelines issued by NBA³⁴, there are clarifications required with respect to the guidelines themselves. For example, the same guidelines mention that in order to ensure transparency, monitoring and follow up, each BMC has

³¹ Kunal Satyarthi, Member Secretary, Himachal Pradesh State Biodiversity Board, interview by LIFE. *Status of BMCs in Himachal Pradesh*

³² Dhananjay Prasad, Deputy Director, Uttarakhand State Biodiversity Board, interview by LIFE. *Status of BMCs in Uttarakhand*

³³ Uttarakhand, Jharkhand, Uttar Pradesh: Reply Affidavit submitted in *Chandra Bhal Singh vs. Union of India & Ors.* Original Application (O.A.) No. 347 of 2016; NGT

Himachal Pradesh: Government of Himachal Pradesh, Department of Forests Circular No. FFE-A (B) 19-2/2017 dated 25.07.2017

³⁴ Section 2.6: Signing of cheques and support for member of the permanent establishment: NBA Guidelines on Operationalization of Biodiversity Management Committees (BMCs): http://nbaindia.org/uploaded/pdf/Guidelines_BMC_1.pdf

to maintain bank accounts separately for its two categories of receipts. First, consisting of grants and loans from the State Government, NBA and SBB and second, consisting of fees/royalties imposed on those collecting/accessing biological resources from the area falling within its territorial jurisdiction for commercial purposes. However, given the two account approach recommended by NBA, the need to designate an 'official personnel' as the Secretary of the BMC to manage and maintain the second account of the BMC as well which contains the funds earned by the BMC through levy of fees/charges/royalties is questionable. Given that these funds have been earned by the BMC because of their independent powers under the Statute, their maintenance and management should be left independent with the BMC as well. Any official involvement in this aspect is not warranted.

Further, there are practical issues as well regarding this issue. Apart from the questionable need of involving personnel such as Forest Guard/Range Officer/Panchayat Secretary who are already burdened with other official responsibilities, there have been other difficulties faced by BMC because of their involvement. For example, in the state of Uttarakhand, BMCs cannot utilise their money in their LBF without the written orders from the DFO (which are then transferred to the Range Office)³⁵. Even though there have been proposals from BMCs such as a proposal for a Pear Processing Plant (from the Champa Gram Panchayat BMC, Hawalbagh Block, Amora district); proposal for a Botanical Garden for cultivation of medicinal plants such as Cinnamon Leaves, *Berberis aristata* (Khilmoda), *Zanthoxylum armatum* (Timur), *Barleria prionlitis* (Vajradanti) and *Syzygium aromaticum* (Cloves) so that a contract farming arrangement is made between farmers and companies using these plants (Nakina Gram Panchayat BMC, Pithoragarh district); and a proposal for cultivation of Walnut Trees and ornamental plants such as Rose (from Kothera Gram Panchayat BMC,

³⁵ Dhananjay Prasad, Deputy Director, Uttarakhand State Biodiversity Board, interview by LIFE. *Mode of Fund Allocation to BMCs in Uttarakhand*

Yogesh Pathak, Theatre for Education in Mass Society, TSG for Pithoragarh; interview by LIFE. *Constitution of BMCs in Pithoragarh, Uttarakhand*

Joginder Bhisht, Lok Chetna Manch, TSG for Almohra; interview by LIFE. *Mode of Fund Allocation to BMCs in Almohra, Uttarakhand*

Gangolihat Block, Pithoragarh district)³⁶. One common theme that emerges from these villages and few others (Simalkot, Kunotla and Jajut, Gangolihat block, Pithoragarh) is that no activity has taken place in these villages with respect to BMCs post their PBR preparation in 2015 (which costs Rs. 1,15,000) and the rest 80,000 is lying unutilised in the BMC back account³⁷.

3. Status of Finances received by BMCs

As per NBA, a Start-up fund of is to be released to every BMC, to be used for the following purposes: formation of a BMC, training to BMCs, conduct of BMC meetings, purchase of office equipment including stationery and for opening of bank accounts. These amounts are Rs. 60,000 for village level BMC, Rs. 80,000 for block level BMC and Rs. 1, 00, 000 for district level BMCs³⁸. Therefore, adequacy/inadequacy of funding to BMCs is judged given the above norm set by NBA.

Table 1: Extent of BMC Financing; given the NBA Norm

S.No	States	Total BMCs constituted	Number of BMC that have received funding	Funding received by BMCs (in Rs)	Average Funding to BMCs/Remarks
1.	Andhra Pradesh	1890	105	31,00,000	Only close to 6% of BMCs have received funding; average of Rs. 29,523.81
2.	Telangana	1784	212	44,60,000	Only close to 12% of BMCs have received funding; average of Rs. 21,037.73
3.	Maharashtra	4173	167	33,30,000	Only 4% of BMCs have received funding; average of Rs. 19,940.12
4.	Gujarat	5646	536	80,40,000	Only close to 10% of BMCs have received funding; average of Rs. 15,000
5.	Sikkim	27	8	80,000	Only close to 3% of BMCs have received funding; average of Rs 10,000

³⁶ Field Visit to BMC Champa, Champa Gram Panchayat, Hawalbagh Block, Almora district; BMC Majheda (Majheda Gram Panchayat, Munakot Tehsil, Pithoragarh district; BMC; Naikina Village, Pithoragarh, BMC Simalkot, Simalkot Gram Panchayat, Gangolihat block, Pithoragarh.

³⁷ Information with respect to financial details for the Villages in Gangolihat Block was shared by the Range Office and for other villages (BMC Champa, BMC Majheda and BMC Naikina: BMC Chairperson itself)

³⁸ Section 1.6: Methodology of the Start-up Fund release: Guidelines on Operationalization of Biodiversity Management Committees (BMCs)

6.	Meghalaya	41	N.A.	16,20,000	BMCs have received funding at an average of Rs. 39512.19
7.	Tripura	303	N.A.	86,33,000	BMCs have received funding at an average of Rs .28491.74
8.	Manipur	52	N.A.	4,20,000	BMCs have received funding at an average of Rs. 8076.92
9.	Uttarakhand	827	N.A.	43,05,000	BMCs have received funding at an average of Rs. 5205.56
10.	Kerala	1034	N.A.	33.54,221	BMCs have received funding at an average of Rs. 3243.93
11.	Karnataka	4631	N.A.	4,00,000	BMCs have received funding at an average of Rs. 86.37

For States 6-11, Given the missing data on the number of BMCs that have actually received funding; average funding is calculated given the total funding received by BMCs and total number of BMC constituted.

12.	Himachal Pradesh	253	107	N.A.	Only 43% of BMCs have received funding
13.	West Bengal	199	35	33,90,938	Only 17.58% of BMCs have received funding in WB

14.	Chhattisgarh	45	45	27,00,000	60,000
15.	Goa	105	N.A.	72,20,000	As per Goa SBB, only 67 of 105 BMCs are functional
16.	Madhya Pradesh	23743	93	60 BMCs: Rs. 33,25,000 (for IBD Day) 33 BMCs: Rs. 59,26,400 (for BMC level conservation programs)	

17.	Arunachal Pradesh	74			BMC have received funding but details not made transparent
18.	Jharkhand	249			BMC have received funding but details not made transparent
19.	Punjab	439			BMC have received funding but details not made transparent

20.	Mizoram	221	No Funds have been released to BMCs in these States
21.	Nagaland	10	No Funds have been released to BMCs in these States
22.	Odisha	439	No Funds have been released to BMCs in these States
23.	Tamil Nadu	16	No Funds have been released to BMCs in these States

Note: For the purpose of the analysis, Assam, Rajasthan and Uttar Pradesh have been dropped as no data was available in the above respect. Lastly, no BMC has been constituted in the states of Bihar, Haryana and Jammu and Kashmir

Source: Compilation of Replies received in Chandra Bhal Singh Vs. Union of India & Ors (NGT, OA. 347/2016)

While it is difficult to draw inference for States (17-19) where in details with respect to funds released to BMCs have been made transparent, the implications from States (1-5) are clear. The coverage of BMCs that have received funding is highly inadequate, and further the extent of funding received is nowhere close to the norm set by NBA. Similar implications can be drawn for States (6-11) as well where the total amount of funds received are no match to the number of BMCs constituted in the first place, thereby indicating inadequate funding. Further, in the states of Himachal Pradesh and West Bengal, the extent of BMC financing remains low.

Further, with respect to Chhattisgarh, it is relevant to note that while grants worth Rs. 64.20 lakhs were given by NBA for the constitution of 107 BMCs, only 45 BMCs have been constituted in the state so far, thereby indicating the questionable utilisation of funds of the rest Rs 37.20 lakhs. Further, additional grants worth Rs. 51.26 were also provided for the preparation of 45 PBRs, however, no PBR has been prepared till data by the BMCs constituted³⁹. With respect to Goa, a total of Rs. 72, 20, 000 have been allocated to the BMCs so far with no details given on the number of BMCs that have received these funds. However, as per the Goa SBB, only 67 of 105 BMCs are functional which might indicate that either only 63% of the BMCs (67 out of 105) have received funding or though all 105 BMCs have received funds (at an average of Rs. 68761), 67 of

³⁹ Funding details of Chhattisgarh have been taken from Reply Affidavit filed by the Chhattisgarh State Biodiversity Board in *Chandra Bhal Singh Vs. Union of India and Ors. Original Application (O.A.) No. 347 of 2016; National Green Tribunal, Principle Bench, New Delhi*

them are still not functional, thereby indicating questionable utilisation of funds by BMCs in this case.

The case of Madhya Pradesh needs explanation. Firstly, given that there are 23,743 BMCs in the state, total funding to only 93 BMCs is inadequate. Secondly, in the State of Madhya Pradesh, the data of funding has been provided from only 2014 onwards, thereby keeping it open to question if BMCs between 2006 (when they were constituted following orders from the State Government) and 2014 had received any funding or not. Further, when compliance with respect to preparation of People Biodiversity Registers (PBRs) is only 4%, the justification for spending on less priority areas such as 'International Biodiversity Day' is questionable. Lastly, from the details above, each the 33 BMCs were paid Rs. 1, 79,587 on an average for taking up conservation programs; but in absence of any details, the efficacy of these programmes is questionable.

Another important question for all the BMCs that have received funding is that if any audits have been made of the accounts of the BMCs, as required under the law⁴⁰.

4. Status of Collection of Fees by BMCs

The BMCs constituted under the BD Act, 2002 have been empowered to regulate the access to biological resources and/ or associated traditional knowledge, for commercial and research purposes and have been given independent powers to collect fees by levying charges on those accessing/collecting any biological resources for commercial purposes from areas falling within its territorial jurisdiction⁴¹.

Given the provisions of the Act, the chart below indicates the states where BMCs have exercised their independent powers under the statute and levied collection fees.

⁴⁰ See Section 46 of the BD Act, 2002

⁴¹ Section 41 (3) of the BD Act, 2002

Table 2: Distribution of States, by Fees collected by BMCs

States where BMCs have levied fees	States where no fees has been levied by BMCs	States with data not made transparent w.r.t collection of fees
Tripura	Andhra Pradesh	Rajasthan
Uttarakhand	Arunachal Pradesh	Uttar Pradesh
	Assam	Madhya Pradesh
	Chhattisgarh	Maharashtra
	Goa	Punjab
	Gujarat	Telangana
	Himachal Pradesh	Jharkhand
	Kerala	Karnataka
	Manipur	
	Meghalaya	
	Nagaland	
	Odisha	
	Sikkim	
	Tamil Nadu	
	West Bengal	

Note: Bihar, Harvana and Jammu and Kashmir are not shown as no BMCs have been constituted here

Source: Compilation of Replies received in Chandra Bhal Singh Vs. Union of India & Ors (NGT, OA. 347/2016)

From the above chart it is clear that except for Tripura and Uttarakhand, none of the BMCs in the States have collected any fees; thereby implying that BMCs at large have failed to exercise their independent powers of levying fees. The Dudhai BMC in the state of Uttarakhand had in one of its meetings decided to impose a collection fee equivalent to 1% of the total market value of the biological resources being procured by the user and thereby was in the receipt of Rs. 1235/- as collection fee for the first time from the extraction of lemongrass. The BMC had later earned 50/-more via collection fee, all which is presently deposited in the LBF of the BMC and to be used for the conservation

of biodiversity, the details of the spending of the same have not been specified⁴². Further, 9 BMCs in the State of Tripura had collected Rs. 7.97 lakhs via fees levied from those accessing/collecting biological resources from areas falling within its territorial jurisdiction. However, there have been no details made available by the Board on the structure followed while levying fees or the utilisation of the amount collected so far via imposition of fees.

Collection of fees ensures financial self-reliance of the BMC which can enable them to build finances to take up conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body, and for the development of the community as long it is in sync with conservation⁴³. The NBA in its guidelines had further specified that levy of fees is an area for the skill/capacity building and skill development of the BMC members⁴⁴, however given that BMCs at large have failed to exercise their independent power, it does raise a question on the effectiveness of the skill/capacity building of the BMCs taken up by the NBA/SBBs. Further, while NBA had issued Guidelines on the Operationalization aspect of the BMCs, it may have recommended a broad set of guidelines that may be used by the BMCs for deciding their fees structure.

5. Status of Preparation of PBRs

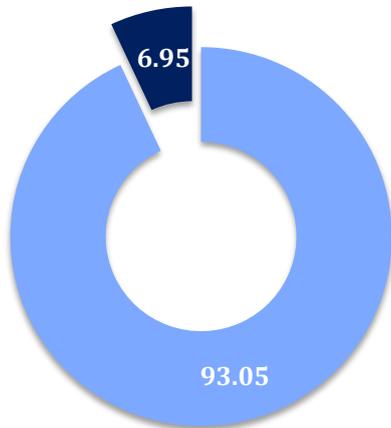
Given that PBR preparation is a mandatory requirement and the primary responsibility for every BMC, Figure 4 below indicates the all India status with respect to preparation of a PBR by highlighting the percentage of BMCs that have prepared a PBR and BMCs that are yet to prepare a PBR. This is followed by the state-wise extent of compliance with respect to PBR preparation by highlighting the percentage of BMCs in the state that have prepared a PBR. Figure 5 doesn't take into account the states of Bihar, Jammu and Kashmir and Haryana as no BMCs have been constituted in these states.

⁴² Para (f) of Terms and Conditions in the Application Form submitted by the Uttarakhand State Biodiversity Board on the behalf of Dudhai Biodiversity Management Committee (BMC) for the GOI-UNDP India Biodiversity Award 2016

⁴³ See Section 44(2) of the BD Act on where the BMC finances are to be spent

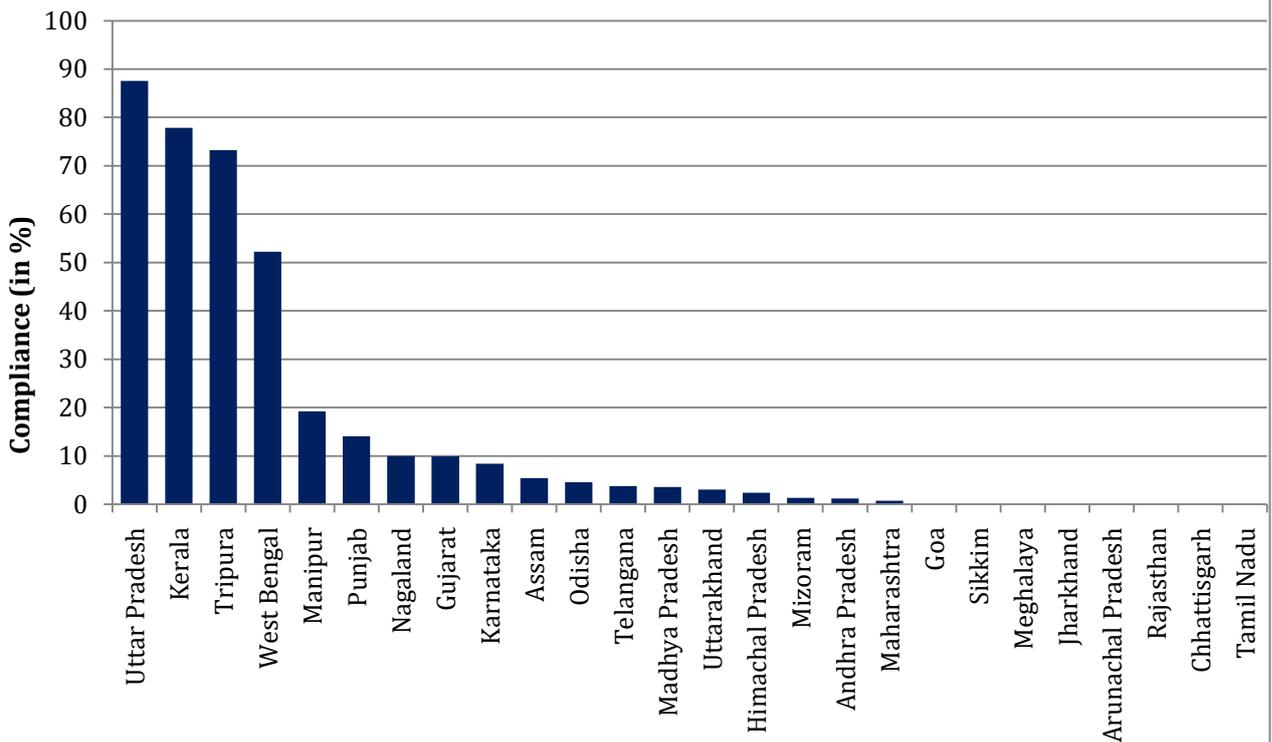
⁴⁴ Part (c) of Section 1.11: Capacity Building on BD Act and BMCs: Guidelines for Operationalization of Biodiversity Management Committees: Published by National Biodiversity Authority: January 2013:

Figure 4: Compliance with respect to Preparation of PBRs (in %): All India



Even after 14 years of the promulgation of the BD Act, 2002 more than 93% of the BMCs are yet to prepare PBRs. Current compliance rate is 6.95%

Figure 5: Compliance with respect to PBR Preparation by BMCs (in %)



Source: Compilation of Replies received in Chandra Bhal Singh Vs. Union of India & Ors (NGT, OA. 347/2016)

While no PBRs have been completed in the states of Arunachal Pradesh, Chhattisgarh, Goa, Jharkhand, Meghalaya, Rajasthan, Sikkim and Tamil Nadu, less than 5% of BMCs in the states of Andhra Pradesh, Himachal Pradesh, Madhya Pradesh, Maharashtra, Mizoram, Odisha, Telangana and Uttarakhand have performed their mandatory

responsibility of comprehensively document the biological resources and knowledge associated with it in the areas falling within their territorial jurisdiction. Further, while both Kerala and Madhya Pradesh have BMCs constituted at all the local bodies, PBRs haven't kept pace in Madhya Pradesh. Though BMC constitution was complete by 2006, PBR preparation had begun only in 2014⁴⁵. Therefore, while BMC constitution is 100%, only 4% of the 23,743 BMCs⁴⁶ have been able to perform their mandatory function of comprehensive documentation of bio-resources and associated traditional knowledge falling in the areas within its territorial jurisdiction. Another irregularity emerges from Uttar Pradesh which shows more than 87% compliance with respect to PBR preparation. Uttar Pradesh has prepared 86 PBRs in different agro-climatic zones of the State which shows that PBRs of all the Gram sabhas are complete (as the flora and fauna diversity of each climatic zone is similar to a great extent) and only the rest of the Gram Sabhas have to formally accept the PBR after constitution of BMCs, which is currently in process⁴⁷. This indicates that while PBR preparation is complete in the state, BMCs are still to be constituted. This is a complete reversal of provisions of the BD Rules, 2004 which clearly state that every local body is legally mandated to constitute a BMC such that the primary legal responsibility of the BMC is to prepare a PBR. Moreover, it needs to be checked that whether *the great extent of similarity in the flora and fauna diversity of each climatic zone*⁴⁸ indicates absolute similarity between any two climatic zones, thereby ensuring comprehensive documentation of biodiversity as mandated by the law.

⁴⁵ The fact that PBR preparation had begun only in 2014 has been taken from Reply affidavit submitted by Madhya Pradesh State Biodiversity Board in *Chandra Bhal Singh Vs. Union of India and Ors. Original Application (O.A.) No. 347 of 2016; National Green Tribunal, Principle Bench, New Delhi*

⁴⁶ Number of BMCs in Madhya Pradesh: Reply affidavit submitted by Madhya Pradesh State Biodiversity Board in *Chandra Bhal Singh Vs. Union of India and Ors. Original Application (O.A.) No. 347 of 2016; National Green Tribunal, Principle Bench, New Delhi*

⁴⁷ Reply Affidavit filed by the Uttar Pradesh State Biodiversity Board in *Chandra Bhal Singh Vs. Union of India and Ors. Application (O.A.) No. 347 of 2016; National Green Tribunal, Principle Bench, New Delhi*

⁴⁸ *Original* Reply Affidavit filed by the Uttar Pradesh State Biodiversity Board in *Chandra Bhal Singh Vs. Union of India and Ors. Original Application (O.A.) No. 347 of 2016; National Green Tribunal, Principle Bench, New Delhi*

EXAMPLES OF A FEW 'ACTIVE' BMCs

From the above analysis it is clear that even though BMCs are left to be constituted at the level of more than 80% of the local bodies, those constituted have largely been on paper and are yet to become operational. This is primarily due to the lack of basic financial support as mandated under the law and a failure with regard to exercising independent powers of collecting fees which may help BMCs to build their own finances. Most of them are yet to perform their mandatory function of preparing a PBR; there are a few cases where BMCs have taken up conservation of biodiversity, ensuring their sustainable use, and have demanded a share in the benefits earned when biological resources falling in the areas within their territorial jurisdiction are taken for commercial purposes.

In the above context it is relevant to note the case of BMC Dudhai (Gram Panchayat Dudhai, Sahaspur Block, Dehradun district) in the state of Uttarakhand, which has been successful towards controlling illegal sand mining in the bed of River Swarna flowing within the boundary of Dudhai village which resulted adversely affected agricultural fields of the locals. However, post creation of the BMC, through the unanimous community support and continuous turn by turn night patrolling and strict vigilance by the residents, sand mining has stopped in the Dudhai village resulting in a better fish catch as well. Further, given the economic value to the village from resin extracted from Chirpine (*Pinus roxburghii*)⁴⁹, the BMC has been actively involved with the forest department. It has shown increased preparedness by creating forest lines to prevent fire from spreading further and by sensitizing and raising awareness villagers⁵⁰. In the context of conservation of ecosystems, it is equally relevant to note the case of BMC Keoti Gram (Keoti Gram Panchayat, Rewa district Madhya Pradesh) which had filed a petition in the Central Zone of National Green Tribunal raising the issue of illegal mining and illegal construction carried out in their area in the name of 'tourism' and the environmental damage caused to the Keoti Village Forests due to construction of

⁴⁹ Resin extracted from the Pine trees is auctioned through the Forest Department resulting in a fixed royalty which is deposited in the Van Panchayat account and spent for carrying plantations and village development works based on the priorities as decide by villagers on communal basis.

⁵⁰ Case of Dudhai BMC, Application form of India Biodiversity Awards, 2016 as submitted by Uttarakhand SBB on the behalf of the BMC.

Biodiversity Parks by the State Government. The BMC had prayed for immediate stoppage of any construction activity and demolition of construction already carried out in the Keoti area comprising of dense forest and waterfall and for declaration of Keoti Gram as a Biodiversity Heritage Site (BHS) under the BD Act, 2002. The Tribunal during the course of its hearing had found that there were no criteria in place for identification of a site and its notification as a BHS and thereby had ordered that no kind of developmental activity (including mining) would be allowed in the Keoti Village. Upholding its earlier orders, the Tribunal made it clear that no mining of any sort, construction or alteration of habitat in any manner will be allowed in the area⁵¹.

With respect to BMCs conserving their ecosystems, it is important to highlight the case of Kerala where a few BMCs have played a primarily role in conservation. Most notable is the example of conservation of Sasthamkotta Lake (a Ramsar Site and the largest freshwater body in Kerala) by a Joint BMC which was formed out of 3 village panchayats in Sasthamkotta Block: Sasthamkotta, West Kallada and Mynagapally owing to lake's geographical location in these villages. The Block level BMC has been acting as an environmental watch group in the locality and had raised its voice against excessive withdrawal of water by the Kerala Water Authority (KWA). The BMC president in May 2015 had written to the managing director of KWA highlighting the need to impose curbs on the unscientific exploitation of water which was resulting in the drying up of the lake. This was affecting the groundwater level in neighbouring areas. The letter directed the KWA to reduce its water intake by 40% within a month and to pay the joint BMC a certain percentage of the value of extracted water to fund local biodiversity conservation. The joint BMC had threatened legal action in case the KWA failed to respond and take necessary action.⁵² In a similar case, the Kinanoor Karinthalam Gram Panchayat BMC in Kerala's Kasargod district rejected the proposal for establishment of a Soda Water Manufacturing industry in order to ensure drinking water facility in their

⁵¹ *Biodiversity Management Committee, Keoti* . 06/2014 (National Green Tribunal, Central Zone, Bhopal, 04 May 2016): [http://nbaindia.org/uploaded/pdf/CourtOrders/Court_06-2014\(CZ\)OA-Jug-04-05-2016.pdf](http://nbaindia.org/uploaded/pdf/CourtOrders/Court_06-2014(CZ)OA-Jug-04-05-2016.pdf)

⁵² For the Case Study of Sasthamkotta Lake Conservation see Mithrambika, N. et al., 2016 . Decentralized Governance for Sustainable Development. In: K. Laladhas, P. Nilayangode, Oommen & V. Oommen, eds. *Biodiversity for Sustainable Development: Environmental Challenges and Solutions 3rd Edition* . Switzerland: Springer International Publishing Switzerland, pp. 165-176.

area⁵³. As another example, owing to the hazardous impact on the local flora and fauna, the Kadanad Gram Panchayat BMC of Kerala's Kottayam district had directed the village panchayat council to reject granite quarrying and a crusher unit proposed in their area. Private companies which had acquired vast tracts of hilly terrain for the proposed project were given permission to operate by the Panchayat Council. This was questioned by the BMC which wrote to Kerala SBB, citing concerns and asking for an environmental impact assessment for the area. However, these oppositions notwithstanding, after BMC elections, the president changed and the project was put back on track⁵⁴. Given the above case studies from Kerala, it is relevant to note the order issued by Principal Secretary, Environment department which authorized the BMCs to function as 'Environmental Watch Groups'. The BMCs vide the order were directed to constantly monitor and alert the authorities about the violations in the Environmental law and any activity that could result in ecological degradation, create a public health hazard, or pose a threat to human life, especially unauthorised sand mining and illegal operation of quarries and development projects⁵⁵. Further, given the above Order, State Environmental Impact Assessment Authority (SEIAA) in 2015 in response to questions raised by environmental activist on the absence of a machinery for post environmental clearance monitoring had entrusted 3 panchayat level BMCs with the mandate to report non-compliance with clearance conditions⁵⁶; however, whether BMCs in general report non-compliance to environmental clearance conditions needs to be checked.

Lastly, it is relevant to note the case from Arunachal Pradesh where 32 Village level BMCs constituted under the GOI-UNDP's Project titled *Biodiversity Conservation through Community based Natural Resource Management*, 2012 had aimed to protect their

⁵³Laladhas, Dr. K.P. Member Secretary. *Kerala State Biodiversity Board Annual Report 2012-2013*. Annual Report, Thiruvananthapuram : Kerala State Biodiversity Board , 2013.

⁵⁴ Sudhi, K.S. "Panchayat says no to Quarrying." *The Hindu Kerala*, 25 July 2016.: <https://www.thehindu.com/todays-paper/tp-national/tp-kerala/panchayat-says-no-to-quarrying/article2794954.ece>

⁵⁵ Mithrambika, N. et al., 2016 . Decentralized Governance for Sustainable Development. In: K. Laladhas, P. Nilayangode, Oommen & V. Oommen, eds. *Biodiversity for Sustainable Development: Environmental Challenges and Solutions 3rd Edition* . Switzerland: Springer International Publishing Switzerland, pp. 165-176

⁵⁶ Minutes of the 40th Meeting of Kerala SEIAA dated 03.08.2015: http://www.seiaakerala.org/meetings/Minutes-SEIAA_124.pdf

Nandakumar, T. "Mechanism to check compliance of norms by quarries." *The Hindu Kerala* , 7 September 2015.: <https://www.thehindu.com/news/national/kerala/mechanism-to-check-compliance-of-norms-by-quarries/article7624094.ece>

community forests (also known as Community Conserved Areas given that these were managed, maintained and revered by the local tribal village communities) and established rules which not only prohibited activities like illegal hunting and marketing of wildlife in local markets, unauthorized extraction/ collection of NWFPs, Medicinal Aromatic Plants, wood, collection of river bed sand and use of electrocution and bleaching powder/chemicals for fishing but also empowered the BMC to levy charges for collection of fine fees of Rs 5,000 to Rs 10,000 (INR) for any person caught violating, accessing or collecting any biological resources for commercial purposes from Community Conserved Area falling within its territorial jurisdiction⁵⁷. However, it needs to be checked, if these BMCs and their established rules are still operational, or whether they were active only for the project duration.

Besides the above mentioned case studies, there have also been cases where BMC have demanded a share in the benefits arising out of commercial use of biological resources falling within their jurisdiction. In this regard the case of BMC Dudhai is noteworthy. It issued notice to the Uttarakhand Forest Development Corporation (UFDC) for sharing the benefits obtained from sale of timber of trees felled from the Reserved Forest (RF) as part of silvicultural operations carried by them. The contention made by the BMC was that though ownership of RF lies with the forest department, BMC has jurisdiction over the RF that falls within the territory of its local body i.e. the Dudhai gram panchayat. Therefore as per BD Act, 2002 the BMC can levy charges from those accessing/collecting biological resources (here, dead dry trees removed from the forests as a part of silvicultural operations) for commercial purposes (here, sale of timber by UFDC through auction, allotment of industries and retail sales⁵⁸). The exact formula for levying the fees is still being worked by the BMC and the Uttarakhand SBB⁵⁹. In another instance, BMC Mahanadi Panchayat along with the Andhra Pradesh SBB had demanded royalty payments of 1-2% of sales revenue earned from the sale of BT. Cotton seeds which were

⁵⁷Stephen Ravindran, Irene. "Application of Traditional Knowledge and Customary Use of Biodiversity into Community Based Resource Management and Governance of Community Conserved Area, Arunachal Pradesh, India." *SAARC Forestry Journal*, 2013: 78-94.

⁵⁸ Corporation, Uttarakhand Forest Development. *Marketing of Timber* . 2009. <http://www.uafdc.in/marketing.html>

⁵⁹ Dhananjay Prasad, Deputy Director, Uttarakhand State Biodiversity Board, interview by LIFE. *Case Study of BMC Dudhai*

manufactured by Monsanto and its Indian subsidiary, Mahyco. The manufacture of BT Cotton seeds entailed making the local cotton varieties insect tolerant via injection of CRY 1 AC, a protein found in bacterial *Bacillus thuringiensis* (Bt.), a biological resource, as per BD Act, 2002 which was obtained by the manufacturer from the soil in the area falling within the territorial jurisdiction of Mahanadi village. On the company's refusal to pay royalty but contribute in non-monetary terms such as physical and social infrastructure, the BMC along with the Board issued a legal demand notice for the same and threatened legal action in case of failure of the company to pay the royalty. The BMC Mahanadi had decided to collect an accession fee of Rs. 300 lakhs from the multinational seed company⁶⁰, however, the present status of the case is unknown. In another event, the Eklahara BMC (Eklahara Gram Panchayat, Chindwara district, Madhya Pradesh) had sought NGT (Central Bench) intervention to declare coal as a biological resource to be able to insist on benefit sharing from companies (specifically, Western Coalfields Limited) extracting coal from various mines situated within the territorial jurisdiction of the BMC. Seeking to expand the definition of biological resources as defined under the BD Act, 2002 to include coal, the Madhya Pradesh SBB had issued notices to PSUs such as SECL, WECL that neither prior intimation had been given to the SBB for use of biological resource in the form of coal, nor payment had been made towards ensuring benefit sharing. At the same time, BMC Eklahara in discussion with the SBB had filed a case the primary contention being that owing to its plant origin, coal qualified as a biological resource and thereby BMC had the authority to levy charges on companies extracting coal from there area of jurisdiction. While the MP SBB supported the BMC, the MOEF&CC and NBA disagreed on grounds that CBD and BD Act, 2002 define biological resources in in terms of living resources having genetic material and not in terms of dead or fossilised materials. Concluding that though coal is indisputably of plant origin, it does not in a fossilized form retain any genetic structure similar to that of plants and therefore, the Tribunal held that coal doesn't qualify as a biological resource and

⁶⁰ Mahanadi case study:

Hampaiah, Dr. H, Chairrman, Andhra Pradesh State Biodiversity Board. *Biodiversity News of Andhra Pradesh*. Special Issue , Saifibad, Hyderabad : Andhra Pradesh State Biodiversity Board, 2009.

Authority, National Biodiversity. *Annual Report 2009-2010*. Annual Report , Chennai: National Biodiversity Authority , 2009 .

Sukumar, CR, and Lison Joseph. "Monsanto battles biopiracy claims." *Livemint* , 30 October 2008. <https://www.livemint.com/Home-Page/TidET8fQHlGQCfwaSIIcl/Monsanto-battles-biopiracy-claims.html>

therefore coal companies were not liable to pay any fees for accessing/ collecting coal from the area falling within the territorial jurisdiction of the BMC⁶¹.

CONCLUSION

Barring the inadequacies with respect to the constitution of the BMCs at the local body level, it is clear that BMCs constituted so far have largely remained on paper due to their non-functionality at the local level and a lack of basic funding. While the procedure to be followed for BMC constitution is provided for in the BD Rules, 2004, it is important for NBA and SBBs to ensure capacity and skill building of the BMCs constituted so that not only they are able to generate their own funds, but are also able to ensure their own functionality and perform roles and responsibilities to accomplish the larger purpose for which they are constituted for in the first place.

The Policy Papers are published by Legal Initiative for Forest and Environment (LIFE)

Financial Assistance from American Jewish World Service (AJWS)

Author: Mridhu Tandon

Reviewer: Ritwick Dutta

N-71 LGF Greater Kailash, 110048

www.ercindia.org

⁶¹ *Biodiversity Management Committee, Chindwara* . 28/2013; 17/2014 (National Green Tribunal, Central Zone, Bhopal , 6 October 2015).

[http://nbaindia.org/uploaded/pdf/CourtOrders/Court_28-2013\(CZ\)OA-Jug-06-10-2015.pdf](http://nbaindia.org/uploaded/pdf/CourtOrders/Court_28-2013(CZ)OA-Jug-06-10-2015.pdf)