

● TASK OF BIOLOGICAL DIVERSITY CONSERVATION AND ROLE OF INSTITUTIONAL MECHANISM IN INDIA



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Abstract

Strong and effective institutional mechanism is sine qua non to achieve objectives of any legislation and State Parties to the Convention on Biological Diversity, 1992 require such mechanisms to fulfill their obligation to provide for conservation of biological diversity under the Convention. The Biological Diversity Act, 2002 of India provides for strong institutional mechanism in order to implement its obligation under Convention and has established a three tier institutional mechanism. This paper examines the working of institutional mechanism established at national, state and local level in India under the Act. It particularly focuses on the role of local institutions in conserving biological resources and associated knowledge and examines its working. It also argues for justification of establishment of Biodiversity Management Committees in every local body by panchayats and municipalities.

Key words

Biological Diversity, Conservation, Institutional Framework/Mechanism, Local Institutions and Biodiversity Management Committee.

INTRODUCTION

At the international level an idea for conservation of biological diversity was conceived in the Convention on Biological Diversity, 1992 and with the conclusion of this Convention member states were under obligation to provide for conservation and sustainable use of biological diversity. India, being member of the Convention, was also under such obligation. Besides such obligation another fact was that India is one of the world's 12 mega-biodiversity countries and with only 2.5 per cent of the total land area, it accounts for 7-8 per cent of recorded species, so it was realized in the last decade of twentieth century that biological diversity of this country should be protected for present as well as for future generation.¹ This international as well as national task of biodiversity conservation also facilitates sustainable development, which is a must today. This effort of conservation of biological diversity requires strong institutional mechanisms to implement the obligations for conservation and management of biological resources and associated traditional knowledge of the country. In this context the Biological Diversity Act, 2002 was passed by the Indian Government to provide for strong institutional framework in order to implement the objectives of Convention which are conservation, sustainable use, and equitable sharing of benefits arising out of the use of biological resources and related knowledge.

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¹ "Biodiversity Bill: A First Step", *Economic and Political Weekly*, 2002, at 5149

This legislation is an important step in direction to incorporate the Convention on Biological Diversity's policy framework at the national level and was considered long overdue by various academicians and non-governmental organizations (NGOs) working in the field of intellectual property rights (IPRs) and biodiversity conservation.² Since biological resources are largely undocumented and with knowledge systems being collective effort of rural local communities, who have protected and nurtured them the valuable role of local bodies was also recognized. It is in this context present paper is an attempt to examine the international legal framework of conservation of biological diversity. Further, this paper examines the working of institutional mechanism established in India, particularly three tier institutional mechanism of India. The main focus of this paper is on role of local institutions in conservation of biological diversity and working of biodiversity management committees at local level.

INTERNATIONAL TASK OF BIOLOGICAL DIVERSITY CONSERVATION

In the past, 'biological resources'³ were considered as common heritage of mankind. But, in the wake of the advances in biotechnology, both developed and developing countries realized the importance of biological resources and then began exploitation of these resources. To regulate undue exploitation of these resources, the Convention on Biological Diversity was adopted in 1992, aiming to achieve conservation of biological diversity; sustainable use of its components; and fair and equitable sharing of the benefits arising out of the utilization of genetic resources.⁴ The Convention recognizes that conservation of biological diversity is a common concern and is integral part of the socio and economic development of humanity. It covers all ecosystems, species, and genetic resources. It links traditional conservation efforts to the economic goal of using biological resources sustainably. It sets principles for the fair and equitable sharing of benefits arising from the use of genetic resources, especially those intended for commercial use.⁵

The Convention expressly recognizes the sovereign right of states over their biological resources and acknowledges the dependence of indigenous and local communities over their biological resources and the need to share equitably the benefits arising from the use of traditional knowledge. Articles 3 and 15 of the Convention recognize the sovereign rights of nation states over their biological resources and their authority to determine access to genetic resources through national legislation. The Convention also stresses on sustainable use of biological resources. It also covers the rapidly expanding field of biotechnology through its Cartagena Protocol on Bio-safety, addressing technology development and transfer, benefit-sharing and bio-safety issues. Countries that join the convention are obliged to implement its provisions and it reminds decision-makers that biological resources are finite and sets out a philosophy of sustainable use.⁶

² Rajesh Sagar, "Intellectual Property, Benefit-Sharing and Traditional Knowledge: How Effective is the Indian Biological Diversity Act, 2002?", 8 *Journal of World Intellectual Property*, 2005, pp.383-388, at 383

³ The Convention on Biological Diversity, 1992, Article 2 reads as: "biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

⁴ The Convention on Biological Diversity, 1992, Preamble

⁵ Milind Wani and Persis Taraporevala, "CoP-11 on Biodiversity: An Opportunity to Go beyond Business as Usual", XLVII (38) *Economic & Political Weekly*, 2012, at 10

⁶ *Ibid.*



The issues dealt with under the Convention include measures and incentives for the conservation and sustainable use of biological diversity; regulation of access to genetic resources; access to and transfer of technology, including biotechnology; technical and scientific cooperation; impact assessment; education and public awareness; provision of financial resources; and national reporting on efforts to implement treaty commitments.⁷ Above mentioned issues may only be short out with the help of strong and effective institutional mechanism. However, the major obstacle before such mechanism is a shift in focus from the ecological and scientific value of biological diversity to its commercial value. The highest decision making body of the Convention is the Conference of the Parties (CoP) which convenes after every two years and in October 2012, India hosted the 11th Conference of the Parties (CoP-11) in Hyderabad. In October, 2010, the Conference of the Parties (CoP-10) to the Convention adopted the Nagoya Protocol on Access and Benefit Sharing. The Nagoya Protocol is a significant achievement for developing countries in asserting sovereign right over their biological diversity and associated traditional knowledge.⁸

BIODIVERSITY CONSERVATION AND INSTITUTIONAL MECHANISMS IN INDIA

India is rich in biological resources but had no clear legislative framework to regulate access, use and rights over such resources until the Biological Diversity Act, 2002 was enacted. After its enactment such framework is evident to some extent. The Act provides for strong institutional framework in order to implement the objectives of CBD.⁹ The Act reaffirms the sovereign rights of states over their biological resources and makes provision for conservation, sustainable utilization and equitable sharing of benefits arising out of the utilization of biological resources and knowledge.¹⁰ It establishes different institutions responsible for permit, guideline and the supervision for the implementation of the Act. These are the National Biodiversity Authority (NBA) at national level, State Biodiversity Boards (SBBs) at state level, and Biodiversity Management Committees (BMCs) at the local level constituted by *panchayats* and municipalities. The following part discusses these institutions in detail.

National Biodiversity Authority (NBA)

The Central Government was preoccupied with establishing the institutional mechanisms, particularly at the national level from the beginning. After enactment of the Act, in 2003, the National Biodiversity Authority (NBA) was set up by the Ministry of Environment and Forest (MoEF) at Chennai as body corporate.¹¹ The NBA consists of a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the Central Government.¹² Besides chairperson three *ex officio* members to be appointed by the

⁷ Rahul Goel, "Protection and Conservation- TRIPS and CBD: A Way Forward", 3(5) *Journal of Intellectual Property Law & Practice*, 2008, at 334

⁸ Harry Jonas, Kabir Bavikatte and Holly Shrumm, "Community Protocols and Access and Benefit Sharing", 12(3) *Asian Biotechnology and Development Review*, 2010, pp.49-76, at 50

⁹ Shalini Bhutani, Kanchi Kohli, "Ten Years of the Biological Diversity Act", XLVII(39) *Economic & Political Weekly*, 2012, pp.15-18, at 15

¹⁰ The Biological Diversity Act, 2002, Preamble

¹¹ The National Biodiversity Authority has been established *w.e.f.* 01/10/2003, *vide* S.O. 1147(E), dated 1st October 2003.

¹² The Biological Diversity Act, 2002, *supra* note 10, Section 8(4)

Central Government, one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests or the Director General of Forests; seven *ex officio* members to be appointed by the Central Government to represent respectively the Ministries dealing with Agricultural Research and Education, Biotechnology, Ocean Development, Agriculture and Cooperation, Indian Systems of Medicine and Homoeopathy, Science and Technology, Scientific and Industrial Research; and five non-official members to be appointed from amongst specialists and scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources.¹³

The NBA is an autonomous body that performs facilitative, regulatory and advisory function for Government of India on issue of conservation, sustainable use of biological resource and fair equitable sharing of benefits of use. The Act mandates implementation of the act through decentralized system with the NBA focusing on advice the Central 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; advice the State Government in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites. The NBA delivers its mandate through a structure that comprises of the Authority, secretariat, SBBs, BMCs and Expert Committees.¹⁴ It is argued that the NBA is largely an inter-ministerial committee with a number of non-official members to be appointed from the scientific community, industry representatives, conservers, creators and knowledge holders.¹⁵

The Act also provides for the establishment of Committees by the NBA to deal with agro-biodiversity¹⁶.¹⁷ It has an advisory role to Central and State Governments and an important role in opposing the granting of intellectual property rights on Indian biological resources or associated knowledge outside of India. The responsibilities of the NBA are important in the context to regulate the approval of activities dealing with access to biological resources and associated knowledge; transfer of research results; and acquisition of intellectual property rights. The NBA shall regulate those matters by regulations and issuance of guidelines.¹⁸ However, it is argued that the structure of NBA is skewed in favour of government and bureaucracy and civil society has not been given adequate representation in the NBA. Moreover, by packing NBA with government representatives there is danger that NBA may virtually become a puppet in the hands of the government.¹⁹

¹³ *Ibid.*

¹⁴ *Id.*, Section 8(3)

¹⁵ Christoph Antons, "Sui Generis Protection for Plant Varieties and Traditional Knowledge in Biodiversity and Agriculture: The International Framework and National Approaches in the Philippines and India", 6 *The Indian Journal of Law and Technology*, 2010, pp.91-139 at 127

¹⁶ The Biological Diversity Act, 2002, *supra* note 10, Explanation of section 13(1) defines agro-biodiversity, which means biological diversity of agriculture related species and their wild relatives.

¹⁷ *Id.*, Section 13

¹⁸ *Id.*, Section 18

¹⁹ K. Ravi Srinivas, "Biodiversity Bill Nice Words, No Vision", *Economic and Political Weekly*, 2000, at 3917



State Biodiversity Boards (SBB)

The next Authority established under the Act is State Biodiversity Boards at State levels. The Act establishes State Biodiversity Boards for the purposes of this Act as body corporate.²⁰ This board is established by State Governments at state level. The Board shall consists of a Chairperson who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Government; and other 10 members.²¹ Amongst 10 members five *ex officio* members to be appointed by the State Government to represent the concerned Departments of the State Government; and five members to be appointed from amongst experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.²² State Biodiversity Boards are also inter-departmental committees with additional members drawn from experts on biodiversity and sustainability.²³

So far all the states have established the SBBs except the newly constituted state of Telangana. The State Biodiversity Boards advises the State Governments, subject to guidelines issued by the Central Government, on matters relating to conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of utilization of biological resources; regulates commercial utilization by granting approvals or otherwise request for or bio-survey and bio-utilization of any biological resource by Indians; and performs such other functions as necessary to carry out the provisions of this Act or as prescribed by the State Governments.²⁴ There is no provision for the establishment of such mechanism in Union Territories, however, NBA shall exercise the powers and perform the functions of a State Biodiversity Board in Union Territories.²⁵ In relation to any Union territory, the National Biodiversity Authority may delegate all or any of its powers or functions to such person or group of persons as the Central Government specify.²⁶

There is requirement of prior intimation to State Biodiversity Board for obtaining biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilization by the person, who is a citizen of India or a body corporate, association or organization which is registered in India. But, the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and *vaids* and *hakims*, who have been practicing indigenous medicine.²⁷ The prior intimation to the SBBs shall be given in the manner prescribed by the State Government and on receipt of an intimation the State Biodiversity Board may, in consultation with the concerned local bodies and after making enquires as to its conservation may by order prohibit or restrict any such activity if it is of 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. Any information given for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally to any

²⁰ The Biological Diversity Act, 2002 *supra* note 10, Section 22(1)

²¹ *Id.*, Section 22(4)

²² *Ibid.*

²³ Christoph Antons, *supra* note 15, at 128

²⁴ The Biological Diversity Act, 2002, *supra* note 10, Section 23

Id., Section 22(2)

²⁶ *Ibid.*

²⁷ *Id.*, Section 7

person.²⁸ The Act further gives power to the SBBs to establish Committees to deal with agro-biodiversity.²⁹

Biodiversity Management Committee (BMC)

The next Authority established under the Act is Biodiversity Management Committees (BMCs), which are established at the local level.³⁰ The Act makes mandatory for every local body to constitute a Biodiversity Management Committee within its jurisdiction.³¹ The BMCs consists of a Chairperson elected from amongst the members of the committee in a meeting to be chaired by the Chairperson of the local body and not more than six persons nominated by the local body, of whom not less than one third should be women and not less than 18 per cent should belong to the Scheduled Castes/Scheduled Tribes. The local Member of Legislative Assembly/Member of Legislative Council and Member of Parliament would be special invitees to the meetings of the Committee.³²

These committees are constituted to promote conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races³³, folk varieties³⁴ and cultivars³⁵, domesticated stock and breeds of animals and micro-organisms, and chronicling of knowledge relating to biological diversity.³⁶ These bodies will be consulted by the other bodies in their decision making processes *i.e.* NBA and SBBs, although they may levy fees and charges for biological resources collected within their areas. As we know this Act establishes three tier institutional mechanisms in India and at the local level it is BMCs. It is mandatory for local institutions to establish biodiversity management committee in its local jurisdiction. This obligation has been fulfilled to a large extent by all most of all the states and the numbers of Biodiversity Management Committees established in different states are as:

States	NO. of BMCs	States	NO. of BMCs
Andhra Pradesh	439	Manipur	49
Arunachal Pradesh	20	Meghalaya	84
Assam	131	Mizoram	221
Chhattisgarh	27	Nagaland	10
Goa	11	Orissa	---
Gujarat	2124	Punjab	55
Haryana	---	Rajasthan	26
Himachal Pradesh	106	Sikkim	7
Jharkhand	36	Tamil Nadu	13
Karnataka	4,384	Tripura	179
Kerala	1043	Uttar Pradesh	9
Madhya Pradesh	23,743	Uttarkhand	734
Maharashtra	603	West Bengal	81
		Total	34,135

As on August 14, 2014, available at: <http://nbaindia.org/content/20/35/1/bmc.html>

²⁸ *Id.*, Section 24

²⁹ *Id.*, Section 25 reads as: the provisions of sections 9 to 17 shall apply to a State Biodiversity Board. Section 13 provides for establishment of Committees by the NBA to deal with agro-biodiversity. This section is applicable

³⁰ *Id.*, Section 41

³¹ The Biological Diversity Rule, 2004, Rule 22(1)

³² *Id.*, Rule 22



At local level BMCs are responsible for 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 microorganisms and chronicling of knowledge relating to biological diversity. The main function of the BMC is to prepare People's Biodiversity Register in consultation with local people. The National Biodiversity Authority and the State Biodiversity Boards shall provide guidance and technical support to the Biodiversity Management Committees for preparing People's Biodiversity Registers (PBRs). The People's Biodiversity Registers shall be maintained and validated by the Biodiversity Management Committee. The Register shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or any other use or any other traditional knowledge associated with them.

The Committee shall also maintain a register giving information about the details of the access to biological resources and traditional knowledge granted details of the collection fee imposed, and details of the benefits derived and the mode of their sharing. The other functions of the BMC are to advice on any matter referred to it by the State Biodiversity Board or Authority for granting approval, to maintain data about the local *vaids* and practitioners using the biological resources.³⁷ It is mandatory for the NBA and the SBB to take consultation of the Biodiversity Management Committees while taking any decision relating to the use of biological resources and associated knowledge occurring within the territorial jurisdiction of the Biodiversity Management Committee.³⁸ The Biodiversity Management Committees may also levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction.³⁹

Biodiversity Funds

The Act establishes biodiversity funds at national, states and local levels for administration of benefits to claimants and community benefits, conservation purposes and management of heritage site. Some of the funds, however, may also be used for purposes of socio-economic development and to meet expenses incurred. The Act, for above purposes, constitutes a National Biodiversity Fund (NBF) which shall be credited any grants and loans made to the NBA; all charges and royalties received by the NBA under this Act; and all sums received by the NBA from such other sources.⁴⁰ This Fund is applied for channeling benefits to the benefit claimers; conservation and promotion of biological resources and development of areas from where such biological resources or associated knowledge has been accessed; and socio-economic development of areas in consultation with the local bodies concerned.⁴¹

³³ The Biological Diversity Act, 2002, *supra* note 10, Explanation (c) of Section 41(1) defines "land race" which means primitive cultivar that was grown by ancient farmers and their successors.

³⁴ *Id.*, Explanation (b) of Section 41(1) defines "folk variety" which means a cultivated variety of plant that was developed, grown and exchanged informally among farmers.

³⁵ *Id.*, Explanation (a) of Section 41(1) defines "cultivar" which means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation.

³⁶ *Id.*, Section 41(1)

³⁷ The Biological Diversity Rule, 2004, *supra* note 31, Rule 22

³⁸ The Biological Diversity Act, 2002, *supra* note 10, Section 41(2)

³⁹ *Id.*, Section 41(3)

⁴⁰ *Id.*, Section 27(1)

⁴¹ *Id.*, Section 27(2)

The Act constitutes State Biodiversity Funds (SBFs) which shall be credited any grants and loans made to the State Biodiversity Board under section 31; any grants or loans made by the National Biodiversity Authority; and all sums received by the State Biodiversity Board from other sources.⁴² This fund is applied for the management and conservation of heritage sites; compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37; conservation and promotion of biological resources; socio-economic development of areas from where such biological resources or associated knowledge has been accessed; and meeting the expenses incurred for the purposes authorized by this Act.⁴³

The Act constitutes a Local Biodiversity Fund at every area notified by the State Government where any institution of self-government is functioning and there shall be credited any grants and loans made under section 42; any grants or loans made by the National Biodiversity Authority; any grants or loans made by the State Biodiversity Boards; fees received by the Biodiversity Management Committees; and all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government.⁴⁴ In cases where specific individuals or group of individuals are identified, the monetary benefits will be paid directly to the Local Biodiversity Fund to be used by the Biodiversity Management Committee (BMC). The State Government may prescribe for the management and the custody of the Local Biodiversity Fund (LBF) and the purposes for which such fund shall be applied. The Fund shall be 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 in so far such use is consistent with conservation of biodiversity.⁴⁵

WORKING OF INSTITUTIONAL MECHANISMS UNDER BD ACT, 2002

The NBA, SBBs and BDCs are seen as the key institutions to achieve far reaching objectives of Biological Diversity Act of India. One of the important function of the National Biodiversity Authority is to advise the Central 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; and the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites⁴⁶ and measures for the management of such heritage sites.⁴⁷ The Authority may take any measures necessary 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.⁴⁸ As on August 26, 2014, 877 applications have been received by the Authority out of which 481 applications have cleared and 310 applications are under process at various stages and 101 applications have been closed including 15 cleared applications.⁴⁹ The NBA has supported in

⁴² *Id.*, Section 32(1)

⁴³ *Id.*, Section 32(2)

⁴⁴ *Id.*, Section 43

⁴⁵ *Id.*, Section 44

⁴⁶ The State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act.

⁴⁷ The Biological Diversity Act, 2002, *supra* note 10, Section 18(3)

⁴⁸ *Id.*, Section 18(4)

⁴⁹ Available at: <http://nbaindia.org/content/333/25/1/approval.html> [Accessed on September 11, 2014]



creation of SBBs in 26 States and has facilitated in establishment of around 34,135 BMCs, since its establishment.⁵⁰

The NBA has approved thirty six access applications, transfer of fifteen research results applications; three hundred and ninety one intellectual property rights applications, thirty eight third party transfers and forty collaborative research projects under section 5. The agreement between NBA and the applicants has been signed for nineteen access applications, transfer of twelve research results applications, seventy five intellectual property rights applications and twenty five third party transfer applications.⁵¹ The Government of India has also undertaken efforts to establish biodiversity registries and digital libraries to prevent patenting of Indian traditional knowledge abroad. These include the People's Biodiversity Registers, which are an important task for the Biodiversity Management Committees, and the Traditional Knowledge Digital Library (TKDL), which is currently focused on traditional medicine and medicinal plants.⁵² As on August 14, 2014, 1863 Peoples' Biodiversity Registers have been maintained across the country.⁵³

The primary task of NBA and SBBs has been setting targets for the number of BMCs to be formed in a stipulated time period, and for the number of Plant Breeders' Registers (PBRs) to be compiled.⁵⁴ The success story of SBBs may be seen in the context of the number of BMCs formed in the state. The State of Kerala is the first state to have BMCs in all its 978 village *panchayats*, 60 municipalities, and five corporations. However, incentives for encouraging innovative practices are prescribed as addendums to the process of BMC formation, rather than necessary attributes of it.⁵⁵ The idea of establishment of BMCs at local level recognizes the important role of local bodies in conservation of biological diversity and its associated knowledge. BMCs are envisaged as the third stair of decision making on who will access, use, and/or conserve biological diversity in the local area under their jurisdiction. The law required that every local government body in the country shall set up BMC. Supporters of the law saw immense potential for decentralized governance by local communities who could exercise control over bio-diverse ecosystems, both cultivated and wild, and their constituent parts. Critics saw it as over-regulation, and a severe undermining of the real custodians of biodiversity at the least, and a sell out to bio-based trade at its worst.⁵⁶

In implementing the provision of the Act, BMCs come to the last in the line of authority after the NBA and SBBs but, law does not necessitate this hierarchy. The focus of command needs to be established locally with BMCs, which the NBA and SBBs are legally required to consult before taking any decisions on local biological resources and associated knowledge.⁵⁷ In some cases, the consultation may become

⁵⁰ Available at: <http://nbaindia.org/content/20/35/1/bmc.html> [Accessed on September 13, 2014]

⁵¹ Available at: <http://nbaindia.org/text/19/AgreementsignedbytheApplicantwithNBAMAT.html> [Accessed on September 11, 2014]

⁵² P. Pushpangadan and K. Narayanan Nair, "Value Addition and Commercialization of Biodiversity and Associated Traditional Knowledge in the Context of the Intellectual Property Regime", 10 *Journal of Intellectual Property Rights*, 2005, pp.441-453, at 447

⁵³ Available at: <http://nbaindia.org/content/105/30/1/pbr.html> [Accessed on September 13, 2014]

⁵⁴ Kanchi Kohli and Shalini Bhutani, "Biodiversity Management Committees: Lost in Numbers", XLIX(16) *Economic & Political Weekly*, 2014, pp.18-20, at 18

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ The Biological Diversity Act, 2002 *supra* note 10, Section 41(2)

prior informed consent; in others, the consent may be merely on paper.⁵⁸ In other instances of well intended capacity building, the emphasis may be on training to either create better PBRs or look out for potential contracts.⁵⁹ This is how numbers of BMCs are taken as marks of the BD Act's success story. Yet, not all people in a certain geographical space share a common vision of either conservation or use of biological heritage. In the current design of BMCs governance, states are predisposed to organize communities into institutional structures that can be identified and legally contracted with.⁶⁰

It is said that the Act has further been supplemented with the Rules of 2004.⁶¹ Much to the disappointment of local activists and NGOs favouring decentralized decision making and administration, the Rules confirmed the central role of the Authority in decisions about access, knowledge transfer and intellectual property rights.⁶² According to Rule 14, which provides for procedure for access to biological resources and associated traditional knowledge, it is the Authority that enters into an agreement regarding access with an applicant "after consultation with the concerned local bodies" and it is in the Authority's discretion to impose conditions, including the quantum of monetary and other incidental benefits, restrictions or to revoke an approval under certain conditions.⁶³ Benefits will be given directly to the individuals or group of individuals or organization only in cases where biological resources or knowledge are accessed directly from them. In all other cases monetary benefits will be deposited in the Biodiversity Funds which in turn is used for the conservation and development of biological resources and socio-economic development of areas from where resources have been accessed.⁶⁴

The Act had received mixed responses as it contains some progressive provisions towards ensuring community control over biological resources and associated traditional knowledge. But, the enactment of the Biological Diversity Rule, 2004 has reduced the role of BMCs and now these Committees may be considered mere data providers. This received severe response and criticism from different sections of civil society and community representatives as they felt that such Rules would simply place a vast mass of people all over the country, mainly tribals, farming communities, indigenous people at the compassion of a central or state level system of the management.⁶⁵

Social Activists demanded for stronger Biodiversity Management Committees at local level and argued that there is limited role of local body and these bodies remains confined in its limits to the collection of data for the People's Biodiversity Registers and to the giving of advice to the Authority and State Biodiversity Boards during the granting of approvals.⁶⁶ In 2007, *panchayats* and community representatives from the

⁵⁸ Kanchi Kohli and Shalini Bhutani, *supra* note 54, at 19

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ In exercise of the powers conferred by Section 62 of the Biological Diversity Act, 2002 for carrying out the purposes of this Act; and in super session of the National Biodiversity Authority (Salary, Allowances and Conditions of Service of Chairperson and other Members) Rules, 2003, except as respect to things done or omitted to be done before super session, the Central Government has enacted the Biological Diversity Rule, 2004, G.S.R. 261(E)

⁶² Christoph Antons *supra* note 15, at 128

⁶³ The Biological Diversity Rule, 2004, *supra* note 31, Rules 15 and 16

⁶⁴ Aditi Choudhary, "The Biological Diversity Act, 2002: Is it the Right Solution?", *XXVI Delhi Law Review*, 2004, pp.126-142, at 135

⁶⁵ The Biological Diversity Rule, 2004, *supra* note 31, Rules 15 and 16

⁶⁶ *Id.*, Rule 22



states of Tamil Nadu, Andhra Pradesh, Uttar Pradesh, Orissa and Meghalaya submitted over 3,000 resolutions to Prime Minister of India expressing their serious concerns over implementation of bio-diversity legislation, and in particular the Biological Diversity Rules, 2004 by State Governments.⁶⁷ They argued that though the Act itself describes the communities as "conservers and preservers" of biodiversity, the Rules delineating the provisions of the Act limit the power and function of the very same communities to only documentation of their resources and knowledge, with no legal provision to exercise control over what is documented.⁶⁸

The working of the Act is criticized in number of ways.⁶⁹ The fact is that about 40 per cent of the world wide accessions for food crops are in the collections of the Consultative Group for International Agricultural Research (CGIAR) and India is itself highly dependent on access to these resources and to resources from other regions but, the Act is silent over this issue.⁷⁰ It is said that due to lack of extraterritorial authority, the NBA cannot effectively monitor applications outside India and it would neither have the time nor the resources to challenge patents in many foreign jurisdictions.⁷¹ The relationship between the discretionary decisions of the NBA on benefit sharing and the agreements reached between applicants and knowledge holders remains unclear.

The local communities do not have automatic right to the benefits, but depend on the directions about the funds by the authorities. The determination of benefit sharing and the formula for it, needs fine tuning and the possibility of joint IP ownership as stipulated in section 21 of the Act may hardly be acceptable to multinational companies. In spite of attempts to avoid overlaps with the plant varieties legislation, there clearly is such an overlap with regard to agro-biodiversity and related benefit-sharing decision making. Therefore, it is concluded that the Act in practice does not provide effective measures for protection of biological resources and is heavily biased against the interests of tribal and local communities who are the guardians of associated knowledge. The lenient provisions for Indian nationals and especially for Indian industry even seem to encourage commercial exploitation of resources rather than giving impetus to the conservation of biodiversity or to benefit-sharing with the local communities.

CONCLUSION

The issue of biological diversity conservation had become a global issue in 1992; however, this global issue requires national efforts to deal with. Today there are 193 Members State to the Convention and they have provided for conservation of biological diversity in different manners including institutional mechanisms, which suited to their requirements. The forgoing discussion on the institutional mechanism and working of the Indian legal framework suggests that an important deal has been accomplished but, much still remains to be done. The biggest challenge in this context appears to be the slow pace at which the provisions are being applied. The institutional framework conceived in the Indian law include local bodies, but it is important to note here that there are all the probability that in reality the progress

⁶⁷ "The bio-diversity Act is progressive, but not fool-proof", *The Financial Express*, New Delhi, April 29, 2007, available at: <http://www.financialexpress.com/news/story/106130> [accessed on July 14, 2014]

⁶⁸ *Ibid.*

⁶⁹ Rajesh Sagar, *supra* note 2, at 387

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

may get buried in bureaucratic claptrap. The plurality of funds for achieving similar objectives may also lead to confusion at the stage of implementation. The BMCs may be strengthened through involvement of local people; their engagement in documentation exercises resulting in the intergenerational transfer of peoples' knowledge; and conservation activities. The ground reality is that often local bodies are unable to meet basic needs of the people in terms of infrastructure and services. Does one expect a *panchayat* unable to provide clean drinking water or education to give much importance to biodiversity? Creation of bodies and structures *per se* will not bring in any change unless there is an action plan and it is always better to try some structures and mechanisms in some places and then to extend them to many places rather than just creating structures.