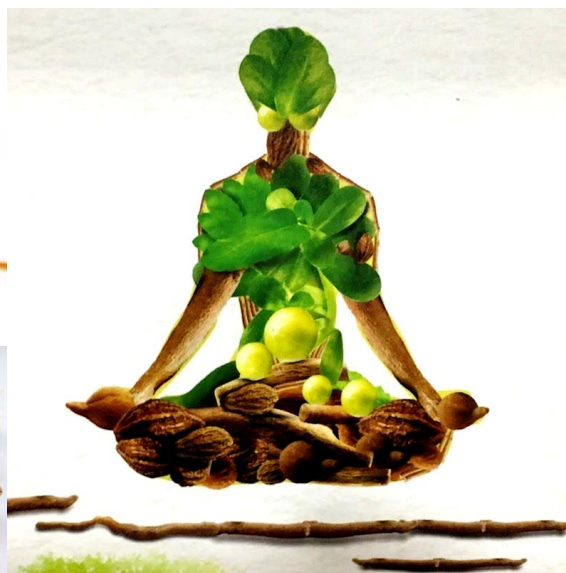




Ministry of Environment ,  
Forests & Climate Change

# The Protection of Traditional Knowledge under India's Biological Diversity Act - 2002



**Dr. B. Meenakumari**  
**Chairperson**  
**National Biodiversity Authority**  
**India**

*3<sup>rd</sup> ABS Dialogue on Key Challenges and Practical Ways Forward for the full Implementation of the Nagoya Protocol and its contribution to the 2030 Sustainable Development Agenda. 24-25 May 2018, Mexico City.*

# INDIA- A Mega Diversity Country



**One of the Oldest & Biggest Repositories of -**

- **Diverse Biological resources (BRs)/Genetic Resources (GRs)**
- **Diverse & Huge Associated Traditional Knowledge (ATK) &**
- **Has Immense potential for production of Medicines and Food (6650 medicinal plants)**
- **Has Immense potential for IPRs, Benefit Sharing (BS) and Improvement in Livelihoods**

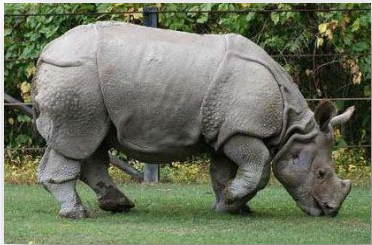


# Richness of India's biodiversity

- ▶ 2.4% of land area, 7-8% of recorded species while supporting 18% of human and cattle population
- ▶ Tremendous biotic pressure, current population density 382 persons/sq.km as against world average of 13
- ▶ Over 45,000 species of plants and 91,000 species of animals recorded so far
- ▶ Diversity of ecosystems such as forests, grasslands, wetlands, mangroves, coral reefs, desert, etc.
- ▶ Acknowledged centre of crop diversity



▶ The confluence of three major realms - the Indo-Malayan, Eurasian and Afro-tropical



- ▶ 23.84% forest and tree cover
- ▶ 102 National Parks
- ▶ 520 Sanctuaries
- ▶ 8 World Heritage sites
- ▶ 18 Biosphere Reserves



- ▶ 26 recognized endemic centres for flowering plants
- ▶ 7.31% of the global fauna



# India's National Biodiversity Targets (NBT associated with **TK 11,7, 9 &10**)

**1** Environmental Awareness



**2** Biodiversity Valuation & Poverty Alleviation



**3** Safeguarding Natural Habitat



**4** Combating Bio-invasions



**5** Sustainable Habitat Management



**6** Protected Areas



**7** Genetic Diversity



**8** Ecosystem Services



**9** Access and Benefit Sharing



**10** Participatory Governance



**11** Traditional Knowledge System



**12** Resource Mobilization



# BIOLOGICAL DIVERSITY ACT, 2002

1. Preliminary (2)

**2. Regulation of Access to Biological Diversity (5)**

3. National Biodiversity Authority (10)

4. Functions and Powers of the NBA (1)

**5. Approval by NBA (3)**

6. State Biodiversity Board (4)

7. Finance Accounts and Audit of NBA (5)

8. Finance Accounts and Audit of SBB (5)

9. Duties of the Central and State Govt (5)

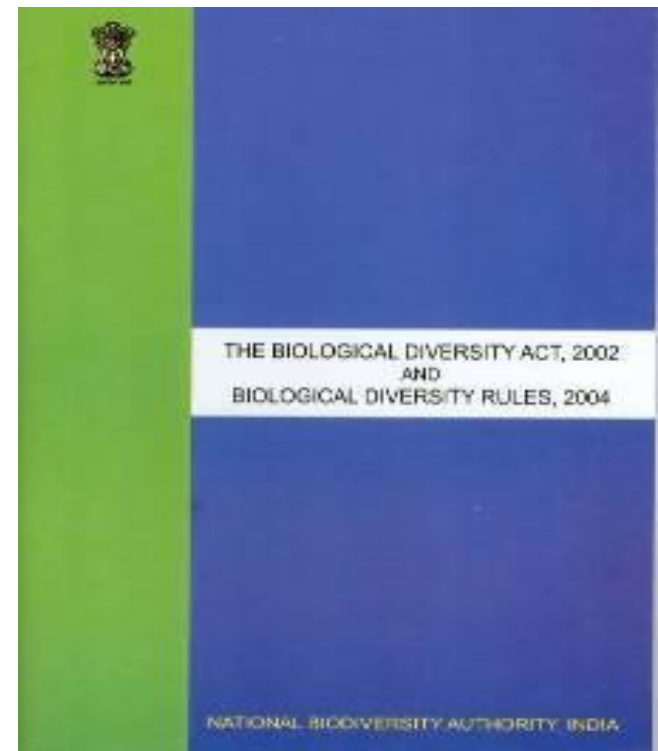
10. Biodiversity Management Committees (1)

11. Local Biodiversity Fund (6)

12. Miscellaneous (18)

**INDIA IS A PARTY TO CBD, SIGNED  
ON 5<sup>th</sup> JUNE 1992,  
RATIFIED ON 18<sup>th</sup> FEBRUARY 1994**

**12 Chapters,  
65 Sections:**





**Conservation**



**Biological  
Diversity Act  
2002  
Rules 2004**

**Access and  
Benefit Sharing**



**Sustainable  
Use**



# INSTITUTIONAL STRUCTURE



Ministry of Environment , Forests  
& Climate Change



**MOEFCC**

**NBA**

**National Body**

**SBB's**

**(29)**

**State Bodies**

**BMC's**

**(>2,40,000 / 62,055)**

**Local Bodies**

# Functions of NBA

## Issue guidelines on ABS

- ▶ Formation of BMC
- ▶ Documentation of PBR
- ▶ Normally traded comm.
- ▶ Threatened species
- ▶ Selection of BHS
- ▶ ITPGRFA

## Advisory to Central/State Government

**COMPLIANCE**  
**REGULATIONS**  
**GUIDELINES**



सत्यमेव जयते

## Grant approval for access

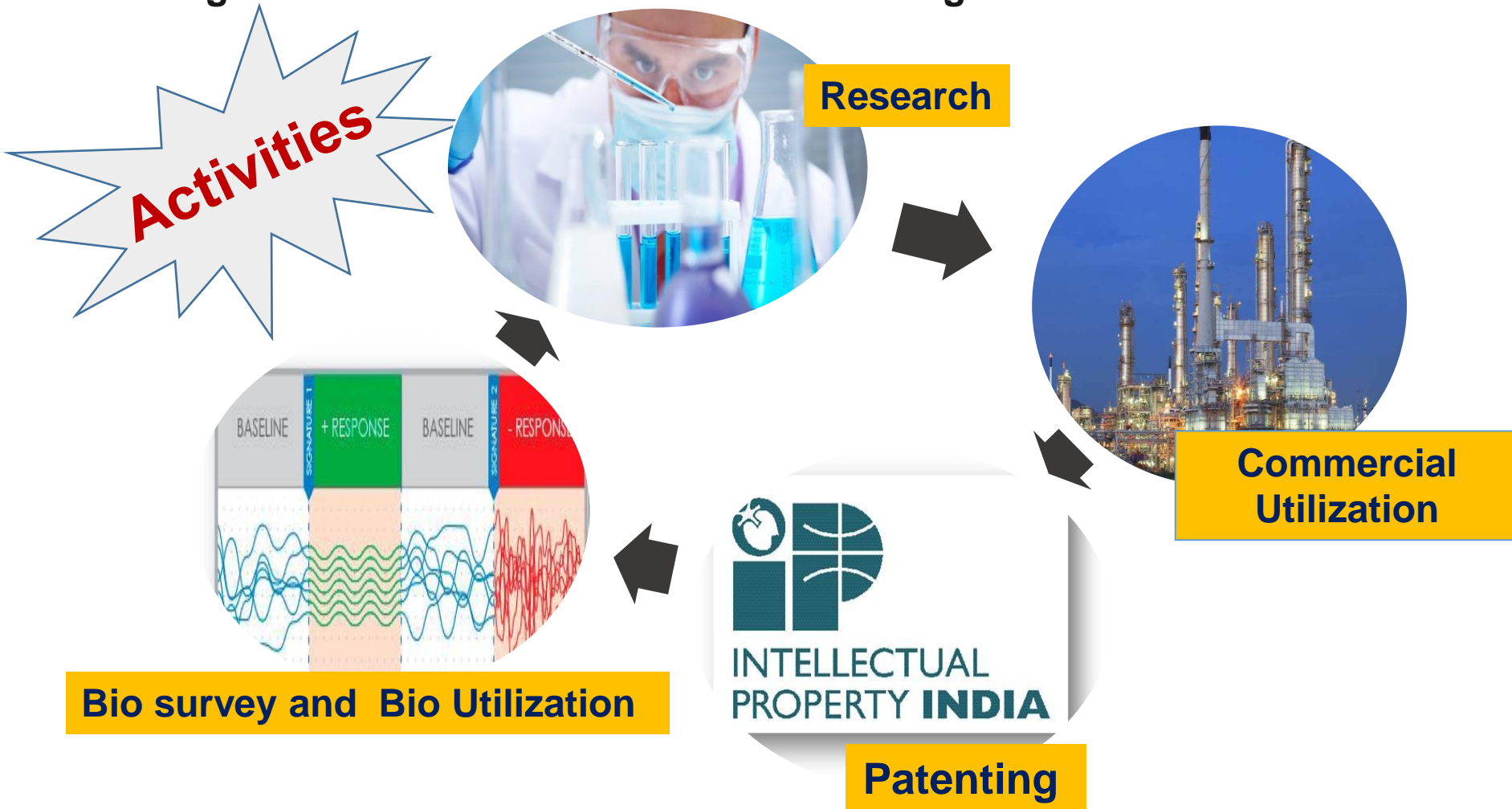


To oppose grant of IPR  
outside India on any  
Bioresource obtained from  
India



# Scope of the Biological Diversity Act 2002

## ➤ Biological resources and associated knowledge



## ➤ Transfer of research results

## ➤ Transfer of already accessed biological resources/associated knowledge

# Process of Applications

**Preliminary scrutiny**

**Referred to provincial Board (SBB) for obtaining consent or otherwise of BMC**

**Application placed before the Expert Committee for examination**

**Recommendation of EC placed before the Authority (Governing Body )**

**Draft MAT sent to the User for execution ( benefit sharing component, submission of yearly reports, do's and don'ts, third party transfer, IP Rights, etc.)**

**Upon MAT, Approval granted to USER**

**Uploaded in the ABS-CH website to Generate IRCC (Consultation with User)**

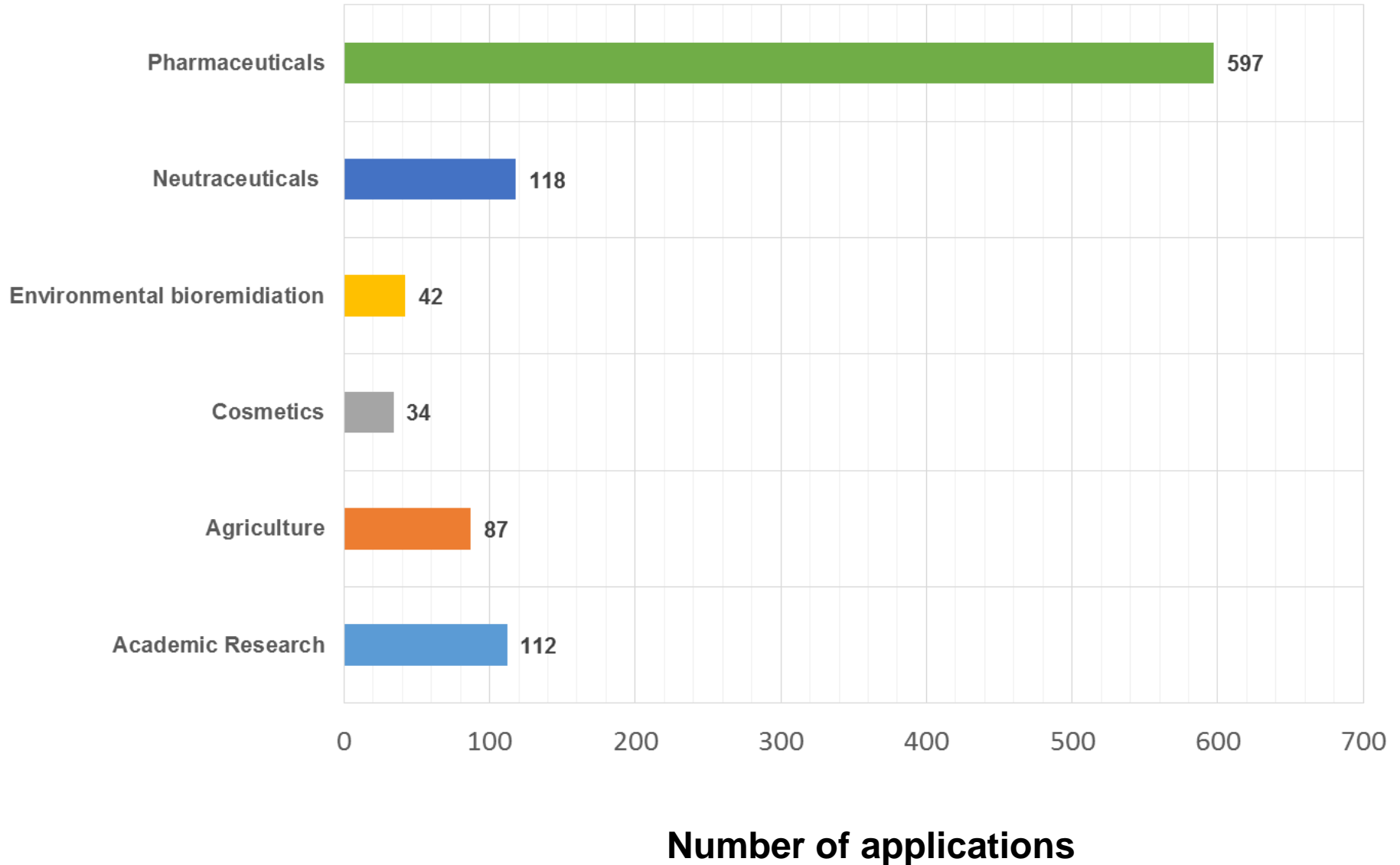
## Status of Applications on ABS ( As on 31.03.2018)

Form	Category	Applications received	Agreements signed / approval granted
Form I	Access to Biological resources and <b>associated Traditional Knowledge.</b>	395	143
Form II	Transferring the results of research to foreign nationals, companies, NRI's for commercial purposes.	51	19
Form III	Seeking Intellectual Property Right	1575	520
Form IV	Third Party transfer of the accessed biological resources and associated traditional knowledge.	82	29
<b>Total</b>		<b>2103</b>	<b>711*</b>
Form-B	Conducting of non-commercial research or research for emergency purposes outside India by Indian researchers/ Government institutions	67	53
<b>Total</b>		<b>2170</b>	<b>764</b>

- Out of **1262** applications cleared by NBA, so far 764 agreements have been executed.



# Sector-wise analysis of first 1200 applications



# e-filing of ABS applications

- NBA has launched an online portal for e-filing of ABS application which can be accessed at [www.nbainia.org](http://www.nbainia.org) .
- This online portal is user-friendly and will provide a step-by-step guidance for choosing and filing correct application form, providing tool tips, pop up messages for easy filing with mandatory columns.

← → ↻

Not secure | absefiling.nic.in/NBA/login/auth

🔍 ☆



**National Biodiversity Authority**  
(An Autonomous and Statutory Body of the Ministry of Environment, Forests and Climate Change, Government of India)



Ministry of Environment,  
Forest and climate change

[New Registration](#)

ABS e-filing

National Biodiversity Authority, established in 2003 to implement the Biological Diversity Act, 2002, is an autonomous and statutory body to perform regulatory and advisory functions for Government of India on issues of conservation of biodiversity, sustainable use of its components and realization of fair and equitable sharing of benefits arising out of use of biological resources.

As part of its mandatory functions, NBA regulates access to India's biological resources and associated knowledge by Indians and non-Indians as well, for various kinds of activities, such as access for research, commercial utilization and obtaining of IPRs for the inventions based on any research or information on a biological resource obtained from India.

Biological Diversity Rules, 2004 lays down various Forms, fees, time lines and procedures to facilitate the applicants in obtaining prior approval of the NBA for various activities under the BD Act. The application may be submitted online using this platform. The applicants are requested to sign up and follow the procedures as per the instructions.

Sign In to your account

Username

Password

Captcha



[Login](#)

[Forgot Password](#) | [Forgot UserName](#)

Latest Update

provides the users an online platform for submission of applications seeking approval of NBA for various activities using Indian biological resources and associated knowledge.

Video



Reference Comer

- Instructions to Applicant
- User Manual
- FAQs
- Know Your Application

# India

## Biological Diversity and the associated traditional knowledge

- TK associated with BRs/GRs in India is invariably an intangible component of such resource. Hence, access to GRs under Article 15 of CBD invariably could include access to TK.
- PIC, MAT, MTA subject to national legislation. In India, it is executed in the form of legal agreement.

Preparation of Biodiversity Register





## **Efforts towards protection offered to TK associated with BRs /GRs at National Level in India**

- **Biological Diversity Act, 2002**
- **Patents Act, 1970 (CGPD™ guidelines – 18/12/12)**
- **PPV & FR Act, 2001**
- **The Geographical Indications of Goods (Registration and Protection) Act, 1999**

**The above Acts have provisions protecting TK associated with GRs/BRs.**

# Protection for TK at National Level

## Biological Diversity Act

**Section 36(5)** of BDA- “the Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the NBA through such measures, which may include registration of such knowledge at the local, state or national levels, and other measures of protection including *Sui generis* system”.

# **Protection for TK at National Level Biological Diversity Act, 2002**

- ▶ **Generally mirrors mandate & scope of CBD**
- ▶ **Focus mostly on access to GRs/BRs & ATK**
- ▶ **Came out as a significant response to Bio-piracy in 1990s and also partly to the development of TRIPs agreement**
- ▶ **All non-Indian entities to seek prior approval of NBA for access to GRs/BRs & TK for research, commercial utilization, bio-survey or bio-utilization**
- ▶ **NBA - Sec.3,4,6 & SBBs - Sec.7 & 24 for TK**



# Protection for TK at National Level

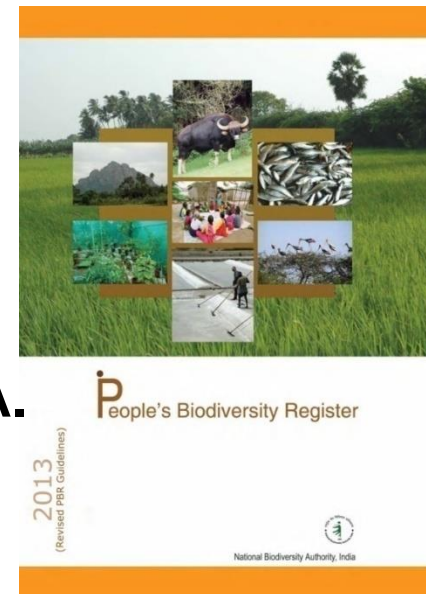
## Biological Diversity Act, 2002

- The BDA of India provides for procedural basis for protection of TK associated with BRs/GRs.
- **BDA Section 2 definitions** - BD & BRs defined but GRs and TK left out.
- The words-*Knowledge/Information/Associated Knowledge/Traditional Knowledge* mentioned about **12 times in the Act** and about **9 times in the BD Rules**.
- Surprisingly **TK not defined & PIC not mentioned** under BDA (only consultation is required under the Act).

# Operationalizing the protection of TK under BDA (Sec.41 of BD Act)

**Peoples Biodiversity Registers (PBRs) – Defensive Protection of TK  
(Section od 41 provides for chronicling of knowledge relating to  
biological diversity.**

- About 5466 PBRs prepared in India.
- Format for PBR has been issued.
- Training workshops held.
- PBR documents BRs/GRs & ATK.
- PBR mainly facilitates PIC and promotes MAT, MTA.
- BMC prepares PBR under support from SBB.
- BMC validates PBR.
- PBR acts as an evidence in court of Law.
- BMC has right to treat certain information confidential.
- PBR helps in checking potential infringement on TK.



## **SOME CHALLENGES FOR ENSURING LEGAL PROTECTION**

- ✿ Inherent mismatch between the IPR system and the nature of TK**
- ✿ Need for harmonization of international instruments, like the TRIPS-CBD reconciliation**
- ✿ IPLC's limited access to decision-making processes and related capacities**
- ✿ Legal and judicial system eroding ability to enforce customary law**
- ✿ 'Concessions' as against 'rights'**
- ✿ Inadequate coordination between different implementing agencies**



# THANK YOU



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