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India

ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in India.

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INDIA ENVIRONMENT



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1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

The Constitution of India provides for the fundamental Right to Life under Article 21. This provision has been interpreted by the Supreme Court of India to mean that the Right to live becomes illusory in the absence of humane and healthy environment (*M.P. v. Kedia Leather & Liquor Ltd.* (2003) 7 SCC 389).

The Constitution of India under Part IV A also provides for the Directive Principles of State Policy and the Fundamental Duties of citizens, both of which provide for environment protection and promotion. The Directive Principles of State Policy are not enforceable as an obligation of the State but serve as guiding principles for formulation of policy. Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(g) of the Constitution imposes a fundamental duty on every citizen of India to protect and improve the natural environment.

While the Constitution of India lays the foundation for environment protection, the extensive regulatory framework comprising of various statutes, rules, notifications etc. ensures that the laws are implemented strictly. Some of the prominent laws which industries need to be mindful of are:

- Environment (Protection) Act 1986 (EPA) – it is the umbrella legislation providing for protection of environment. EPA also provides the central government with powers to frame rules on various aspects of environment protection;
- Water (Prevention and Control of Pollution) Act 1974 (Water Act) – it was the first major environmental legislation enacted in India and provides for the prevention and control of water pollution and maintaining or restoring the wholesomeness of water;
- Air (Prevention and Control of Pollution) Act

- 1981 (Air Act) – it provides for the prevention, control and abatement of air pollution;
- Forest (Conservation) Act 1980 (FC Act) – it provides for the conservation of forests;
- Biological Diversity Act 2002 – it provides for the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto;
- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Forest Rights Act) – it recognises the rights of the forest dwelling tribal communities and other traditional forest dwellers to forest resources, on which these communities are dependent for a variety of needs, including livelihood, habitation and other socio-cultural needs;
- Wildlife Protection Act 1972 – it provides for the safeguard and protection of the wildlife, including flora and fauna, in India;
- Public Liability Insurance Act 1991 – it inter-alia provides for public liability insurance in order to provide immediate relief to the persons affected by accident occurring while handling any hazardous substance;
- National Green Tribunal Act 2010 (NGT Act) – it provides for the establishment of the National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and the conservation of forests and other natural resources, including enforcement of any legal right related to the environment, and giving relief and compensation for damage to persons, property and for connected or incidental matters.

While the statutes mentioned above are the prominent ones, there are various other statutes, rules and notifications which regulate various aspects of environmental laws in India. For example, one of the key

notifications that affects industries is the Environmental Impact Assessment Notification dated 14 September 2006 (EIA Notification), issued in exercise of powers under Section 3 of the EPA, and Rule 5 of the Environment (Protection) Rules 1986 (the EIA Notification). The EIA Notification regulates grant of environment clearance to any new project, construction or expansion of existing projects listed in the Schedule to the Notification.

Additionally, there are various rules/regulations in India regarding waste management such as the Hazardous and Other Wastes (Management and transboundary Movement) Rules, 2015 and the Plastic Waste Management Rules, 2016.

There are also separate rules for different states in India. For instance, the Haryana Air (Prevention and Control of Pollution) Rules, 1983 (amended in 2018) and the Maharashtra Water (Prevention and Control of Pollution) Rules, 1983.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The primary environmental regulatory authorities in India include the Ministry of Environment, Forests and Climate Change (MoEF&CC), Central Pollution Control Board (CPCB), State Pollution Control Board (SPCB) and Pollution Control Committees (PCC), Central Ground Water Authority (CGWA) and Commission for Air Quality Management in National Capital Region and Adjoining Areas (CAQM). The role of these authorities in enforcing environmental requirements is mentioned below:

- MoEF&CC is responsible for framing and implementation of policies and programmes relating to conservation of the country's natural resources, including its lakes and rivers, its biodiversity, forests and wildlife, ensuring the welfare of animals, and the prevention and abatement of pollution. The MoEF&CC enforces environmental requirements as it has the power to grant forest and environmental clearances for major projects in certain categories where the requirement to seek forest and environmental clearance under the Forest (Conservation) Act, 1980 and EIA Notification respectively is applicable. Certain other projects with lesser perceived environmental impacts are required to seek environmental clearances from state authorities. The MoEF&CC is also responsible for notifying the environmental standards for various industries, including the emission and effluent standards.
- CPCB is responsible for advising the central government on any matter concerning prevention and control of water and air pollution; executing a nationwide programme for the prevention, control or abatement of water and air pollution; and coordinating the activities of the state boards and resolving disputes between them. CPCB is the statutory authority at the national level which is responsible for making recommendations to the MoEF&CC for fixation of the environmental standards. It is also responsible for issuing technical guidelines for various industries including the colour categorisation of industries into red, orange, green and white depending on the nature of the activity, raw materials used, potential to cause damage to the environment etc.
- SPCBs in the states and PCCs in the union territories are entrusted with the implementation of the provisions of the Water Act and the Air Act and for the overall enforcement of the provisions of the EPA and the Rules framed thereunder. SPCBs and PCCs have been given powers that include issuing closure notices to polluting industries, imposition of fines, implementation of remediation measures for restoration of the environment, etc. SPCBs are responsible for the regular monitoring of all industries that require environmental consents to establish and operate. They ensure that all industries operate as per the prescribed environmental standards. SPCBs also have the power to initiate criminal action against polluting industries.
- CGWA is responsible for the regulation and control of groundwater development and management in the country. CGWA has the power to declare certain areas as notified areas if there is a scarcity of water in such an area. Groundwater abstraction is not allowed in any notified area for any purpose other than for drinking or domestic purposes. All industries including mining and infrastructure whether existing, new or those undergoing expansion, are required to obtain a no objection certificate from the CGWA. CGWA, depending on the availability of groundwater in a given area, decides as to whether an NOC could be granted to a given industry.
- Government of India (GoI) constituted CAQM in 2020 with the objective of better

coordination, research, identification and resolution of problems surrounding the air quality index in the National Capital Region of Delhi and the adjoining areas, where the quality of air remains a major cause of concern. CAQM replaces Environment Pollution (Prevention & Control) Authority for the National Capital Region, a technical committee constituted by the central government in compliance with the order of the Supreme Court in 1998. It operationalises Graded Response Action Plan (GRAP), notified by GoI pursuant to the Supreme Court's order dated 02 December 2016 in *C. Mehta v. Union of India*, and specifically monitors the measures taken by various States to prevent factors causing air pollution such as stubble burning, industrial emissions, road dust, vehicular pollution, construction activities, biomass burning and others.

Additionally, the Supreme Court and the National Green Tribunal (NGT) have played a crucial role in environment protection including by directing the aforesaid authorities to take steps and discharge their duties towards the prevention of pollution and protection of environment. NGT is a specialised statutory tribunal constituted under the NGT Act to deal with cases involving a 'substantial question relating to environment' and can also take *suo motu* cognizance of cases that concern the environment. Environmental matters are also heard by the constitutional courts, i.e., state high courts and the Supreme Court in the form of public interest litigation or under their writ jurisdiction. Appeals from the orders, decisions, or judgements of the NGT are heard by the Supreme Court. With criminal prosecution being initiated more frequently in environmental matters by SPCBs, the courts of criminal jurisdiction at all judicial hierarchies also deal with this specific aspect of environmental cases frequently.

3. What is the framework for the environmental permitting regime in your jurisdiction?

Any project proponent interested in setting up an industry in India has to seek the consent to establish (CTE) from the SPCB or PCC as the case may be. Once the industry has been established, the project proponent has to apply for seeking a consent to operate (CTO) from the same authority.

The requirement for obtaining CTE and CTO is in addition to the requirement for obtaining the forest clearance (FC) under the FC Act and Environmental Clearance (EC)

under the EIA notification, if relevant, and depending on the location, nature, and proposed scale of operations of the industry.

Additionally, depending on the nature of the activities other permits may be applicable. For example, if the industry requires groundwater usage, NOC may be required from CGWA, if the industry generates wastes, authorisations may be required from the SPCB or PCC with respect to waste management.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

In certain cases, like mergers and acquisitions, the existing CTO may be transferred from the predecessor to the successor for the remaining validity period of the CTO, if the nature and scale of the industrial activity to be carried out by the successor is the same as that being carried out by the predecessor prior to such merger or acquisition.

Once the transaction has been concluded, the successor has to provide an intimation in appropriate format and with relevant documents to highlight the nature and proof of such transaction to the concerned authority, which is the SPCB in case of CTO. The idea is to inform the regulatory authority that the predecessor has been replaced by the successor who would continue carrying out the same activity as the predecessor and therefore the name and details of the successor have to be mentioned in the CTO which needs to be amended accordingly.

It may be noted that in cases where there is an expansion or change in the nature of the activity to be carried out by the successor, the CTO has to be applied for afresh as the earlier CTO cannot be transferred.

Similarly, FC and EC may also be transferred by one legal person to another legal person if the nature, scale and all other details relating to the proposed activity remain the same. The transfer is subject to approval from the CPCB, SPCB and/or the MoEF&CC, as the case may be.

Additionally, transfer of such permit may also take place under certain statute such as Coal Mines (Special Provisions) Act, 2015, whereby after vesting of the coal mine with the successful bidder - all the statutory licenses, permits, approvals or consent, which were issued to the previous mine holder stand transferred to the successful bidder.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

The project proponent has the option to appeal against any order of the SPCB to the Appellate Authority under the provisions of both the Water Act and the Air Act within 30 (thirty) days from the date on which such order was communicated to the project proponent. Section 31 of the Air Act and section 28 of the Water Act provide for the instances where an appeal against an SPCB order could be preferred. The right to further appeal against the decisions of SPCB under the Air Act and Water Act is also provided for under the NGT Act.

The right to appeal before NGT is also available against the statutory directions or orders passed under specific provisions of the FC Act, or against refusal of grant of EC or grant of EC under non-permissible/restricted areas. The orders passed by the NGT can also be appealed against before the Supreme Court.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

EIAs are mandatory under Indian law for over 39 categories of developmental activities/projects involving investments of Rs. 50 crores and above.

The EIA Notification makes prior EC compulsory for all new projects. It provides for an extensive EIA process to assess the impact of a proposed project on the environment and the people in an attempt to abate the same. The onus to prove that a project is environmentally conducive is on the project proponent. It may be pointed out that the Government by notification dated 14 March 2017 provided for grant of *ex post facto* EC in certain circumstances. The Supreme Court has recognised that *ex post facto* environmental clearance should not be granted routinely, but in exceptional circumstances only after taking into account all relevant environmental factors. (*D. Swamy v. Karnataka State Pollution Control Board* 2022 SCC OnLine SC 1278).

The EIA Notification prescribes processes such as screening, scoping, public consultation and appraisal of the upcoming project prior to grant of the environment clearance for the project. This ensures that not just every aspect of the project is appropriately assessed by the concerned authorities, but the local people are also consulted so that any issues and challenges foreseeable

by them are appropriately addressed and concerns assuaged.

An appeal against an EC could be preferred before the NGT under section 16 of the NGT Act if the appellant feels that the EIA process has not been followed properly, material facts have not been taken into consideration or there are any other environmental concerns which have been ignored during the EIA process which led to the grant of EC to a project proponent. The refusal of regulatory body to grant an EC can also be appealed before the NGT under Section 16 of the NGT Act by the person aggrieved.

Notably, the MOEF&CC proposed a draft Environment Impact Assessment Notification (Draft EIA Notification) in 2020, which is intended to replace the EIA Notification of 2006. The Draft EIA Notification aims to increase transparency and simplify compliance by including various notifications, modifications, office orders, circulars, and court and tribunal directives issued since the last EIA notification in 2006, which is still in effect.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

Section 2(a) of EPA defines 'environment' to include water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. The EPA provides for an extensive procedure to be followed for testing of the samples in an environmental laboratory, notified by the Central Government. In case of a violation, the EPA provides for both fine and imprisonment in case any damage is caused to soil and groundwater. Section 15 of EPA provides for imposition of fine up to one lakh Indian rupees and imprisonment up to five years which may be extended up to seven years in cases of continuing violation.

Similarly, for the purpose of allocating liability, the Water Act provides for an extensive procedure under Sections 20, 21 and 22, ensuring the reliability and impartiality of the analysis of the water samples in question, which are tested for contamination. The Water Act also provides for fine and imprisonment in cases of contamination of water, including groundwater.

It may be noted that while the quantum of fine and imprisonment has been lesser in the legislations like EPA, Water Act and others, these legislations also

provide the SPCB power to issue closure orders for industries which are in violation of the statutory provisions.

Additionally, the Constitutional Courts have also taken note of damage caused to environment, including contamination of soil and ground water, and thereby imposed liability on the violators (*Indian Council for Enviro Legal Action v. Union of India*, (2011) 8 SCC 161).

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

In cases like mergers and acquisitions where a new occupier or buyer is taking control over the premises of an industry and due to the nature of the industry's operations there is a possibility of environmental pollution including soil and groundwater contamination, as per the 'precautionary principle' under the Indian law, there is a positive obligation to carry out necessary investigation and due diligence. The 'caveat emptor' principle also provides that a thorough investigation is carried out.

There is no obligation to provide any investigative reports to the regulatory authorities unless there is any instance of environmental harm.

Also, in case the authorities are informed that there is any contamination, the authorities usually carry out the investigation on their own through accredited laboratories and organisations. Further, in some cases, the Constitutional Courts may also direct the Authorities to carry out the investigation.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Section 9 of the EPA mandates intimation to authorities in case there has been a discharge of an environment pollutant, or an apprehension of it thereof, in excess of the prescribed standard. Similarly, Section 31 of the Water Act and Section 23 of the Air Act also provide for an obligation to report to the SPCB instances where pollution has occurred and even those where there is an apprehension of such an occurrence.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

The liability of historical pollution is not recognised in India, unless it can be established that it was the erstwhile owner who was completely responsible for such contamination. Hence, while the SPCB would initiate action against the current owner of the premises, the owner of the land or industrial premises could proceed against the erstwhile owner who may have caused the contamination, provided the current occupier has adequately safeguarded its interests in the contractual arrangement that it may have entered into with the previous owner.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

Apart from the EPA which provides for overall protection of environment, the Central Government through the powers provided to it under the EPA has also *inter-alia* framed the following rules for the management and handling of various categories of wastes:

- Plastic Waste Management Rules, 2016 (PWM Rules): It *inter alia* mandates the generators of plastic waste to minimize generation of plastic waste, prevent littering of plastic waste, and ensure segregated storage of waste at source among other measures.
- E-Waste (Management) Rules, 2016: It *inter alia* provides for management of e-waste including electrical equipment, whole or in part discarded as waste by the consumer as well as rejects from manufacturing, refurbishment, and repair processes.
- Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016: It *inter alia* provides for the management of hazardous waste, which by reason of characteristics such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive, causes or is likely to cause danger to health or environment, whether alone or in contact with other wastes.
- Construction and Demolition Waste Management Rules, 2016: It *inter alia* provides for the management of every waste resulting from construction, re-modelling, repair and demolition of any civil structure of

individual or organisation who generates construction or demolition waste such as building materials, debris, rubble, etc.

- Bio-Medical Waste Management Rules, 2016: It *inter alia* provides for the management of bio-medical waste including any waste which is generated during the diagnosis, treatment or immunisation of human beings or animals or research activities pertaining thereto or in the production or testing of biological or in health camps.
- Solid Waste Management Rules, 2016: It *inter alia* provides for the management of solid waste includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non-residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste.
- Batteries (Management and Handling) Rules, 2022: It *inter alia* provides for management of waste battery including used and/or end of life Battery and/or its components or spares or parts or consumables which may or may not be hazardous in nature; Pre-consumer Off-Spec Battery and its components or spares or parts or consumables; battery whose date for appropriate use has expired and Battery which have been discarded by the use.
- Municipal Solid Wastes (Management and Handling) Rules, 2000: It *inter alia* provides for management of solid waste including commercial and residential wastes generated in municipal or notified areas in either solid or semi-solid form excluding industrial hazardous wastes.

These Rules are amended from time to time by the government to incorporate intended developments.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

The Indian waste management law provides for the concept of extended producer responsibility (EPR). It essentially means that it is the responsibility of the producer for the environmentally sound management of the product throughout its life cycle. While the Rules do not specifically provide for or contemplate a scenario

where the entity registered as a recycler of waste does not properly handle or dispose of the waste or goes bankrupt, it may be noted that the recycler is to be also registered with the SPCB along with the producer and in case the fault is that of the recycler, its registration could be cancelled, and action initiated against it. However, if the fault is clearly on the part of the producer, it would be a violation of the EPA under which the Rules have been framed.

The GoI has sought to provide more clarity to the EPR regime, through its guideline document 'Uniform Framework for Extended Producers Responsibility', issued in June 2020. With respect to plastic, recent amendments in PWM Rules further clarifying the extent of liability and processes have been brought out. The recently notified Batteries (Management and Handling) Rules, 2022 also contains provisions regarding extended producer responsibility.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

Under EPR, each producer is to be registered with the SPCB and its obligations have been clearly defined under the Rules mentioned above. Since it is the responsibility of the producer to ensure that waste is managed until the end of its life, the producer cannot escape this obligation. Material breach of obligations by producers is treated as a serious violation of the Rules and is punishable in accordance with the specific provisions therein.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

The owners/ occupiers of premises have the general occupational health and safety regulations applicable to them under the (Indian) Factories Act 1948, wherein asbestos has been notified as an occupational hazard. The Occupational Safety, Health and Working Conditions Code 2020 provides for duties and responsibility of the occupier in relation to hazardous processes, including any activity relating to asbestos at industrial establishments. The occupier of such factory involved in hazardous process is required to maintain an updated medical record of the workers in the factory who are exposed to toxic or any kind of hazardous materials. Moreover, such record shall be accessible to workers. The occupier is also required to appoint persons with

prescribed qualifications and experience for handling and/or supervision of handling of hazardous materials. The occupier is also required to provide all the necessary facilities for protecting the workers, including medical examinations of every worker, before, during and after the job involving exposure to such toxic and harmful materials and such examinations shall be done in an interval of not more than 12 (twelve) months.

Even besides industrial establishments, it is the duty of the owners/occupiers to remove such deleterious materials from their land or building if found and take all possible remediation steps. As mentioned earlier in response to query above, if there is a possibility of contamination, the SPCB is required to be informed about the same so that the adverse impact on environment is minimised.

A Public Interest Litigation (PIL) was allowed by the Supreme Court in 1995, concerning the occupational health hazards to workers employed in asbestos industries. The Court issued various directions to employers and directed them to compensate workers exposed to asbestos. *Consumer Education & Research Centre & Ors. v. Union of India & Ors.* (1995) 3 SCC 42).

A bill also had been introduced as the White Asbestos (Ban on Use and Import) Bill, 2009.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

Specific Product regimes, such as REACH, CLP, TSCA to regulate various aspects relating to chemicals and related products is not consolidated in India.

The Bureau of Indian Standards (BIS) is the national standards body of India. It is responsible for standardization, marking and quality certification of various categories of products including chemicals, fertilizers etc. To help identify the environment-friendly products, BIS had started the Ecomark scheme in 1991.

The current regime for regulation of categories of chemical substances includes sub-legislations under the EPA such as Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (MSIHC Rules) and the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules 1996 (CA Rules), Ozone Depleting Substances (Regulations and Control) Rules 2000, Central Motor Vehicles Rules 1989, Explosives Rules 2008, Petroleum Rules 2002, and Hazardous Waste

Management Rules 2016.

The 5th draft of Chemical (Management and Safety) Rules 2020 (CMSR) was released in August 2020, which are aimed at comprehensively laying down and consolidating the law, including replacing two existing rules – MSIHC Rules and the CA Rules.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

The (Indian) Energy Conservation Act 2001 (ECA) is the primary legislation that deals with efficient use of energy and its conservation. The ECA enjoins both the Government and the Bureau of Energy Efficiency (BEE), a specialised agency set up by the Government, to take steps to facilitate and promote energy efficiency in all sectors of the economy. Apart from other functions, developing, testing, and certification procedures is one of the key roles played by BEE. Energy audits are mandatory as per a 2014 notification released by the Government of India for specific industries/sectors, such as chemical & petrochemical, cement, tyre, sugar, paper, automobile, textile & textile processing, foundry, iron & steel, engineering ceramic, synthetic fibres, hotel & commercial buildings, etc. Most recently in October 2021, energy audit and accounting has also been made mandatory by BEE for power distribution companies.

The BEE has prescribed, amongst others, the standards for labelling of categories of equipment and products on graded energy efficiency and the Energy Conservation Building Codes for commercial and residential buildings, which have been made mandatory in certain states of India. It also plays an active role in capacity building of power distribution companies for carrying out load management programme, energy conservation programme and implementation of Government's action plan in their respective areas.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

At the COP 26 Glasgow Summit in 2021, India announced its targets (a) to reach its non-fossil energy capacity to 500 GW by 2030, (b) to meet 50% of its energy requirements from renewable energy by 2030, (c) to reduce the total projected carbon emissions by one

billion tonnes from now onwards till 2030, (d) by 2030, to reduce the carbon intensity of its economy by less than 45%, and (e) by the year 2070, to achieve the target of net zero carbon emissions.

Thus far, some of the key efforts to reduce greenhouse gas emissions include promotion of electric mobility, exploring hydrogen as source of energy, increasing usage of bio-fuels to reduce fossil-fuel consumption and promoting electricity generation through renewable sources. Some of the key initiatives undertaken by India to combat climate change and to promote the use of renewable energy are mentioned below:

- India aims to exceed its committed renewable energy capacity of 175 GW by 2022 (of which 100 GW was achieved in 2021), and the capacity is aimed to be further expanded to 500 GW by 2030. India has also been successful in the cause of the International solar alliance as a part of its clean energy initiative. India has mandated all new large coal-based generating stations to use supercritical technology, besides setting mandatory targets for old thermal power stations to improve energy efficiency; however, more than 60 per cent of India's energy requirement is still based on thermal energy and the transformation from coal to clean energy must therefore be gradual. India has an array of schemes and mechanisms that put an implicit price on carbon. The Central Electricity Regulatory Commission (CERC) also issued a Renewable Purchase Obligations regulation, specifying the share of renewable energy in the electricity mix. In order to assist in meeting renewable purchase obligations, the CERC has set up the renewable energy certificate mechanism enabling the obliged entities to purchase renewable energy certificates to meet their commitments. Specific pilots for focussed emissions trading regime are ongoing in a few states in India.
- At the UN Climate Action Summit in 2019, India along with Sweden launched the leadership group for transition of heavy industries towards zero net carbon emissions by 2050. Additionally, under the National Mission on Enhanced Energy Efficiency 2010, a market-based solution to enhance the cost-efficacy of the reduction of greenhouse gas emissions for the industries was mandated, by providing for tradeable Energy Saving Certificates (ESCERTS). Consequently, the perform, achieve and trade scheme (PAT

SCHEME) originated under the ECA, whereby large energy extensive industries were provided with certain energy consumption targets, and were allowed to trade their excess ESCERTS to other industries which required them to meet their compliance requirements.

- In September 2016, Ministry of Road Transport & Highways (MORTH) notified hydrogen as a fuel for automotive application for Bharat Stage VI vehicles. In September 2020, MORTH specified the safety and type approval requirements for hydrogen fuel cell vehicles in Automotive Industry Standard (AIS) 157. Further, in September 2020, 18% blend of hydrogen with CNG (HCNG) has been notified as an automotive fuel. The annual budget for 2021-2022 announced the Indian government's proposal to launch a hydrogen energy mission in 2021-2022 for generation of hydrogen from green power sources. A standing committee on hydrogen energy and fuel cells was constituted under the national renewable energy mission that has developed the initial draft of the Hydrogen Energy Mission (HEM), which is currently under consultation. HEM, as and when promulgated, is likely to play a significant role in India's energy transition as it strives to reduce carbon emissions, in mitigating climate change. On 22 March 2022, the Supreme Court in *C.Mehta vs Union of India [Writ Petition No. 13029 of 1985]* directed the registering authorities to consider the applications for registration of BS-VI light and heavy vehicles used for public utility and essential services in accordance with law without insisting on the applicants approaching this Court for suitable orders.
- In addition to above, earlier in August 2021, the draft Electricity (Promoting renewable energy through Green Energy Open Access) Rules, 2021 for public consultation were notified for promoting renewable energy through green energy open access and accelerate the growth of renewable energy in India including green hydrogen and waste-to-energy plants.
- The India Cooling Action Plan (ICAP) was launched on 08 March 2019, to provide sustainable cooling and thermal comfort for all while securing environmental and socio-economic benefits for the society and reducing both direct and indirect emissions. The objective of ICAP is to (i) reduce cooling demand across sectors by 20% to 25% by

2037-38, (ii) reduce refrigerant demand by 25% to 30% by 2037-38, (iii) reduce cooling energy requirements by 25% to 40% by 2037-38, (iv) recognize “cooling and related areas” as a thrust area of research under national science and technology programme, and (v) training and certification of 100,000 servicing sector technicians by 2022-23, synergizing with Skill India mission. Recently in September 2021, the government of India released the action plan for the implementation of the recommendations of ICAP, being the first such plan globally. The action plan provides an integrated long-term vision on cooling encompassing, optimization of cooling demand, integration of energy efficiency, and refrigerant transitioning efforts, and adoption of better and green technology options.

- The Govt is laying a lot of emphasis on clean mobility. Amidst the Covid-19 lockdown, India adopted the BS-VI emission norms for its vehicles from 01 April 2020. The emission norms of all models of two-wheelers in India are ahead of Europe (2021) and Japan (2022), and India is the first country to adopt this level of emission norms. The government has already demonstrated its commitment by supporting electric vehicles for its offices and disposing old vehicles. The Vehicle Scrappage policy, launched on 13 August 2021, is a government-aided programme aimed at replacing old vehicles with modern & new vehicles on Indian roads. The policy is expected to reduce pollution, create job opportunities, and boost demand for new vehicles.
- In the aviation sector, the Director General of Civil Aviation is undertaking initiatives like efficiency in use of aircraft power supply, fuel efficiency, single-engine taxi, and data reporting. Indian Railways besides having launched its first solar-powered train and first solar-powered railway station is undertaking various initiatives including using solar-powered railway coaches. As a part of the World Bank-aided Jal Marg Vikas project, multi-modal terminals and navigational lock have been proposed. Four times more cargo is being proposed to be transported through the Ganga waterways in the next four years. Be it roadways, railways, airways or waterways, there is an unprecedented push by India on non-polluting modes of mobility.

18. Does your jurisdiction have an overarching “net zero” or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

In November 2021, India’s “Net Zero” goal is announced as 2070 with more aggressive near-term targets for reducing carbon emissions. India’s 2030 target for low-emission energy capacity is also raised to 500 Gigawatts from 450 Gigawatts, with the pledge to achieve production of 50% of electricity using renewable energy. India also expects to reduce carbon-dioxide emissions of 1 billion tons from ‘business as usual’ by the end of the decade and committed to increasing its 2030 carbon intensity reduction goal from 35% to 45% (measured as carbon dioxide emissions per unit of gross domestic product).

The measures to achieve this goal are being lined up as policies and laws, besides the existing ones, including on hydrogen, electric vehicles, renewable energy, industry decarbonization, compliance with ESG reporting for listed companies, ban on single use plastic with stringent liabilities and penal consequences for non-compliance.

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms? Who are the regulators in relation to greenwashing allegations?

There is no government issued certificate or mark that authorises or regulates use of the said terms. However, to help identify environment-friendly products, BIS had started the Eco-Mark scheme in 1991. The confederation of Indian industries provides for a Green Pro certification, after a product passes its prescribed qualification test.

Greenwashing is the process of presenting fallacious or misleading information about how a product of an organization is as per the acceptable environmental standards. By greenwashing, the consumers or the public may be deceived into believing that a particular entity’s products are environmentally friendly.

Presently, in India there are no specific regulations under environmental laws to address greenwashing or allegations pertaining to the same. However, entities/ companies/ organizations must make genuine claims during their advertisements and abstain from misleading the consumer. The Advertising Standards Council of India (ASCI), being an independent body is known for

regulating advertisements and ensures that the interest of the consumers remain protected, and the advertisements are in conformity with the Code for Self-Regulation. Therefore, as per the regulation, advertisements ought to be lawful, truthful and fair. However, proper guidelines on green advertising or environmental related claims would accurately address the issue and discourage entities/ companies from presenting misleading claims/ information. As stated above, there are no specific regulations, but in case greenwashing results in environmental degradation, the statutory regulators such as the MoEF&CC, the CPCB and SPCBs, etc. will certainly step in.

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

Antitrust Laws maintain economic competition, encourage commercial liberty and protect Indian markets against anti-competitive practices. They also ensure that monopolies are not formed, and companies do not collude or form a cartel to limit competition by price fixing. The Competition Commission of India (CCI) was constituted under the regime of the Competition Act, 2002, and is empowered to govern fair competition in the market, protect consumer's interests and ensure freedom of trade with a view of the economic development of the country.

Therefore, Antitrust Law revolves around promotion and sustenance of fair competition, which is very different from environmental law. However, it may not be correct to say that Antitrust law and environment law cannot be linked to each other at all. The legislative regime can be enhanced to include environment sensitive norms in conducting fair competition. However, at present, such an arrangement is not present in the Indian statutory scheme.

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

The Supreme Court and the NGT have been actively engaging in taking up causes that impact climate change, including with respect to impact of mining operations on the surrounding areas and forest dwellers, compliance of standards and legal requirements by heavy polluting industries, monitoring of state action for cleaning of polluted rivers, monitoring of state action for air quality control and pollution, liability of the companies for environmental pollution (including in case of accidents), ban with regards to single use plastic and

directions for environmental compensation or penalties to be levied.

Recently, the Supreme Court, while recognising the *suo motu* jurisdiction of NGT, recognised the importance and requirement of observing environmental equity and the priority of conserving the environment in the wake of climate change issues. [*Municipal Corporation of Greater Mumbai v Ankita Sinha & Others*, 2019 SCC OnLine SC 2093] In 2022, the Supreme Court upheld the NGT order granting grace period to the re-rolling industry to obtain EC under the EIA Notification [*Gajubha Jadeja Jesar v. Union of India*, 2022 SCC OnLine SC 993]. Subsequently, in 2022, the Delhi High Court took note of the status report filed by the Central Government stating that the Union Cabinet had approved India's updated Nationally Determined Contribution for achieving India's long-term goal of reaching net-zero carbon emission by 2070. [*Rohit Madan vs. Union of India through Secretary, Ministry of Environment, Forest, and Climate Change & Ors.*, W.P.(C) 6319/2022, 4 August 2022]. As mentioned above, in 2022, the Supreme Court examined the issue of registration of BS - VI diesel light and heavy-duty vehicles used for public utility and essential services. The Supreme Court directed the registering authorities to consider the applications for registration of BS - VI diesel light and heavy-duty vehicles for public utility and essential services in accordance with law without insisting on the applicants approaching this Court for suitable orders [*Writ Petition(s)(Civil) No(s).13029/1985*, 22 March 2022].

The Supreme Court has noted sustainable development and growth has assumed significance from the perspective of climate change as a growing national and international concern. The pivotal policy document in India on climate change is the National Action Plan on Climate Change (NAPCC) formulated by the Union Government in 2008, which recognizes that the country is committed to increasing tree cover from 23% to 33%. Under the Paris Agreement, India has committed itself to Nationally Determined Contributions in 2015, wherein one of the stated objectives is to create an additional carbon sink of 2.5 to 3 billion tonnes of CO₂ equivalent through additional forest and tree cover by 2030. [*for Protection of Democratic Rights v. State of West Bengal*;., (2021) 5 SCC 466]

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in

the relation to climate change in the near future?

India has gradually begun to manoeuvre its legal landscape to work towards its climate change targets. Article 4 of the Paris Agreement of the United Nations Framework Convention on Climate Change (UNFCCC) states, *All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.* In view thereof, India launched its long-term low carbon development strategy at the 27th session of Conference of Parties (COP-27) to the UNFCCC. India is now a part of the select list of less than 60 parties that have submitted their LT LEDS to the UNFCCC.

The LT-LEDS aims to go beyond India's climate targets or the nationally determined contributions (NDC) announced in August, of achieving 50 percent of India's cumulative electric power installed capacity from non-fossil sources by 2030, and reducing emission intensity of GDP by 45 percent below 2005 levels by 2030 and builds on India's Panchamrit (five nectar elements) pledges at the 26th Conference of Parties (COP26) of the UNFCCC in Glasgow, including the target of net-zero emissions by 2070.

In view of India's commitments in the COP-27, in August 2022, the Parliament introduced an amendment to the Energy Conservation Act, 2001 as the Energy Conservation (Amendment) Bill, 2022. The objective of the said amendment is to empower the central government to specify a carbon credit trading scheme. The roadmap is a result of a first of its kind inter-ministerial consultation, and a collaborative effort with experts and think tanks.

Further in 2022, the Ministry of Environment, Forest and Climate Change issued a statement stating that the NAPCC encompasses eight missions in the specific areas of Solar Energy, Enhanced Energy Efficiency, Sustainable Habitat, Water, Sustaining the Himalayan Eco-system, Strategic Knowledge for Climate Change, Green India, and Sustainable Agriculture. These specific areas tackle core climate change issues, outlining steps to simultaneously advance India's development and climate change related-objectives of adaptation and mitigation. NAPCC is *inter alia* guided by the principles – of (i) achieving national growth through ecological sustainability, (ii) deploying appropriate technologies for both adaptation and mitigation of greenhouse gas emissions, and (iii) welcoming international cooperation for research, development, sharing and transfer of

technologies. Given the approach of NAPCC, State Action Plans on Climate Change (SAPCCs) are already in place for the country's 33 States and Union Territories, including the State of Gujarat. States and Union Territories have indicated their sector-specific and cross-sectoral priority actions for combating climate change in their SAPCC.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

Transactions

- The company is held accountable for the payment of the cost of remediation and fine if it is found to have been carrying out its operations in a manner that has caused harm to the environment.
- The shareholders of the company may not be held liable.
- The directors of the company are held liable and even criminal prosecution could be initiated against them by the statutory authorities unless the directors could show that there was no manner in which they could have known about the violations and therefore the lapses were not in their knowledge.
- The liability would that be of the Indian entity and its concerned officials and directors who are in control of the operations.
- The banks may not be held accountable as it appears that no case for their contribution towards such violations could be made out.
- Any other entity could be held liable only if its actions have aided or contributed towards the violations. The causal connection has to be established.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in

your jurisdiction?

In cases of transactions like asset sale/ share sale where environmental liabilities exist or there is a possibility of environmental liability arising in future, the buyer usually carries out a detailed legal and technical due diligence to identify the risks and potential liabilities. It is pertinent to note that the authorities always proceed against the current occupier or operator of a facility/ industry and therefore it is the buyer who would be held accountable. In this light:

A buyer has to ensure that its interests are adequately safeguarded against any pre-acquisition environmental liabilities which invariably would be transferred from the seller to the buyer once the transaction has been finalised. In such cases the indemnification clause covering this aspect would be relevant.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

While the seller has a duty to inform the buyer and disclose all material environmental information, almost all buyers invariably carry out a detailed legal and technical due diligence to ensure that all precautions are taken and potential risks, if any, mitigated.

Thus, the seller in case of both asset and a share sale must generally disclose known environmental matters to a buyer. But, if the seller fails to disclose any known environmental matter, the buyer may have a claim in damages, which cannot be excluded contractually. Therefore, due diligence disclosure is usually thorough on environmental matters. A seller can also be liable to the buyer if it misrepresents or misleads the buyer by its conduct.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

There are very few insurance companies in India that cover environmental risks and provide for pollution legal liability insurance. The policy as per one company covers the insurer against exposures like clean-up costs, transportation related environmental liability, bodily

injury and property damage claims. The exclusions include prior knowledge, terrorism, war, asbestos and lead. Environmental Impairment Liability Insurance is crafted to provide cover for the costs of cleaning up pollution conditions if required by a third party, including a governmental agency. It can also cover bodily injury and property damage of third parties that are caused by the pollution condition.

Environmental liability insurance is not common in India and therefore there are very few companies which provide for such cover. However, it is pertinent to note that Public Liability Insurance Act, 1991 provides that all owners associated with the production and handling of hazardous chemicals contribute towards an environmental relief fund which will be utilised to provide compensation to victims of accidents due to improper handling of hazardous substances.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

While public authorities in India maintain registers of environmental information, it is not openly available and therefore if a request is made to an authority to seek such information, the information could be provided by the authority. The Right to Information Act, 2005 (**RTI Act**) provides citizens the option to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. RTI Act mandates public authorities to maintain records for easy access and publish the names of specific officers who should be contacted for obtaining information. It obligates the public authorities to publish mandatory information such as organisation structure, powers and duties, decision-making process, policy, applicable law, and internal manuals. Therefore, EIA draft reports are required to be publicly available to the persons living in the vicinity of the proposed project site, and FC and EC granted to projects can also be accessed online by public. Application under the RTI Act can be filed by any interested citizen on a minimal fee of INR 10, and the public authority is expected to respond with the information within 30 days.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to

parties that request it?

Under the RTI Act the public bodies have to disclose environmental information to parties that request it unless such information falls in one of the exemption categories where on various grounds like national security, court order, privilege, commercial interest of third party etc. such information cannot be disclosed.

29. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

The most significant development in environmental law in India in the last few years has been the revision of the PWM Rules the subsequent amendments to it. The past three years have seen tightening of the regime in relation to plastic waste management, several actions being taken by the CPCB and SPCBs, and decisions by NGT – all to ensure that the obligations of the producers and brand owners are strictly complied with, and all States have taken stringent actions against non-compliances.

The ban on single-use plastic by various states across the country with a definitive deadline in 2022 has been a major development in 2021. Government of India has sought to provide more clarity to the EPR regime, through its guideline document 'Uniform Framework for Extended Producers Responsibility', issued in June 2020. Further amendments in PWM Rules clarifying the extent of liability and processes have been brought out and a draft notification with regulations on the EPR under PWM Rules has been issued for consultation in 2021. The NGT has been pro-active in the implementation of this ban on single use plastic and has regularly sought for reports and directed for effective implementation of this ban by the respective state governments. Earlier in January 2021, due to the intervention of NGT, CPCB has also framed comprehensive Guidelines for Assessment of Environment Compensation to be levied for Violation of Plastic Waste Management Rules, 2016.

Solid Waste Management (Amendment) Rules 2020 were issued in March 2020, further extending the applicability of these rules to every village with a population of over three thousand (3000) persons and expanded the scope of responsibilities of the local authorities.

Another significant legal development is the issuance of Coastal Regulation Zone (CRZ) Notification, 2019 that

replaced the earlier CRZ Notification, 2011. The 2019 CRZ Notification has reduced the extent of the Coastal Regulation Zone and promotes coastal tourism and development. The 2019 CRZ Notification aims to promote sustainable development based on scientific principles. Some key features are that there is no reduction in development zone, floor space index (FSI) norms have been eased, tourism infrastructure has been permitted in coastal areas, CRZ clearance process has been streamlined, no developments zone is now 20 meters for all islands. Two separate categories of CRZ IIIA and IIIB have also been introduced. The 2019 Notification makes prior clearance mandatory, and the provision of post-facto clearance introduced earlier has been done away with.

The Draft EIA 2020 which seeks to promote the 'ease of doing business' in India has been published for consultation but remains to be finalised and implemented till date. Draft EIA 2020 revises the scope of industrial activities and projects that require public consultations and ECs. Several procedural changes in EIA process are also proposed, such as reduction of notice period for public hearing from thirty (30) days to twenty (20) days. It also provisions for facilitating grant of post-facto environmental approval to certain industries.

In 2022, besides the Draft EIA 2020 and EPR notification, the other significant proposals and updates that remain to be seen are with respect to amendments proposed in the FCA, the proposed policy/rules for promotion of renewable energy in India such as the Draft Electricity Rules (mentioned above), the law and policy related to use of green sources of energy such as Hydrogen, the draft amendments to Islands Coastal Regulation Zone, 2019 Notification to permit drilling for gas exploration in certain zones. In 2022, the MoEF&CC notified the Battery Waste Management Rules, 2022. These rules provide for management of waste battery and expands to battery technologies like lithium-ion batteries, Redox Flow batteries, etc. EPR was added to the rules to address the need for holding manufacturers and producers accountable for the collection, storage, transportation, recycling and disposal of spent batteries.

Further in 2022, amendments have been introduced in the Energy Conservation Act, the objective of the said amendment is to empower the central government to specify a carbon credit trading scheme. Carbon credit implies a tradeable permit to produce a specified amount of carbon dioxide or other greenhouse emissions. The central government or any authorised agency may issue carbon credit certificates to entities registered and compliant with the scheme.

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