



The Legal 500 Country Comparative Guides

India - Environment

This country-specific Q&A provides an overview to laws and regulations that may occur in 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 include right to clean and healthy environment, which is guaranteed to every citizen of India.

The Constitution of India 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 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) 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. The statute also provides the central government 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 - 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; and
- 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 2006 (the EIA Notification). The EIA Notification regulates any new project or constructions or expansion of existing projects listed in the Schedule to the

Notification.

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 are the Ministry of Environment, Forests and Climate Change (MoEF&CC), Central Pollution Control Board (CPCB), State Pollution Control Board (SPCB) and the Pollution Control Committees (PCC), Central Ground Water Authority (CGWA) and Environmental Pollution (Prevention & Control) Authority (EPCA). The role of these authorities in enforcing environmental requirements is mentioned below:

- MoEF&CC is responsible for 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 environmental clearances for major projects in certain categories where the requirement to seek environmental clearance under the EIA notification is applicable. Certain other projects with lesser perceived environmental impacts are required to seek such 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 responsible for assessing and recommending to the MoEF&CC for fixing 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. SPCB is responsible for the regular monitoring of all industries that require environmental consents to establish and operate. It ensures that all industries operate as per the prescribed environmental standards. SPCBs also has 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 a NOC could be granted to a given industry.

- EPCA is a technical committee constituted by the central government in compliance with the order of the Hon'ble Supreme Court of India. EPCA has been constituted with the objective of protecting and improving the quality of the environment, and preventing and controlling environmental pollution in the National Capital Region (NCR). EPCA has been playing a crucial role by assisting the Hon'ble Supreme Court of India in various environment-related matters especially those pertaining to prevention and control of air pollution in the NCR. Recommendations by EPCA have had a national bearing in many cases as its recommendations for the NCR have been found relevant and therefore extended and implemented in various parts of the country through various orders passed by the Hon'ble Supreme Court of India.

While the authorities mentioned above have been enforcing the environmental requirements, the Supreme Court of India and the National Green Tribunal have played a crucial role in environment protection by regularly passing orders where the aforesaid authorities have been directed to take necessary steps and discharge their duties towards the prevention of pollution and protection of environment. NGT is a specialised quasi-judicial authority constituted to deal with cases involving a 'substantial question relating to environment'. Environmental matters are also heard by the state high courts and the Supreme Court of India in the form of public interest litigation or under their writ jurisdiction. Appeals from the NGT are heard by the Supreme Court of India. With criminal prosecution being initiated more frequently in environmental matters by SPCBs, the courts of criminal jurisdiction are also dealing with environmental cases more 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 environmental clearance (EC) under the EIA notification, if relevant, and depending on the 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, an 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.

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 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.

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?

Indian law 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 benign is on the project proponent.

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.

Any appeal against an EC could be preferred before the NGT under section 16 of the NGT Act 2010 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.

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 therefore provides for both fine and imprisonment in case any damage is caused to soil and groundwater. For example 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, 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.

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.

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, Section 31 of the Water Act and Section 23 of the Air Act all 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?

While the SPCB would initiate action against the current occupier/owner of the premises, the occupier/owner of the land or industrial premises always has the option to proceed against the previous owner who might have caused the contamination, provided the current occupier has adequately safeguarded its interests in the contractual arrangement that the current occupier 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 framed the following rules for the management and handling of various categories of wastes:

- Plastic Waste Management Rules, 2016;
- E-Waste Management Rules, 2016;
- Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016;
- Construction and Demolition Waste Management Rules, 2016;
- Bio-Medical Waste Management Rules, 2016;
- Solid Waste Management Rules, 2016

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) and this essentially means that it is the responsibility of the producer for the environmentally sound management of the product until the end of its life. 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.

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. 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.

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?

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 4.3 if there is a possibility of contamination, the SPCB has to be informed about it so that the adverse impact on environment is minimised.

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.

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.

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

The Bureau of Energy Efficiency (BEE) was set up by the Government of India under the provisions of the Energy Conservation Act 2001 to improve energy efficiency. Apart from other functions, developing testing and certification procedures is one of the key roles played by BEE.

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?

Some of the key efforts to reduce greenhouse gas emissions include promotion of electric mobility, increasing usage of bio-fuels to reduce fossil-fuel consumption and promoting electricity generation through renewable sources. At the UN Climate Action Summit, India along with Sweden launched the leadership group for transition of heavy industries towards zero net carbon emissions by 2050. Some of the key initiatives undertaken by India to combat climate change and to promote the use of renewable energy are mentioned below:

- The India Cooling Action Plan (ICAP) was launched on 8 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.
- India aims to exceed its committed renewable energy capacity of 175 GW by 2022 and it has been mentioned by the Prime Minister of India that the capacity would be further expanded to 450 GW in future. India has also been championing 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. 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.
- The Government of India is laying a lot of emphasis on clean mobility. India will adopt the BS-VI emission norms for its vehicles from 1 April, 2020. To address its air pollution related challenges, India has taken the leap from BS-IV to BS-VI emission standards and, as per the direction of the Supreme Court of India, any vehicle that does not adhere to BS-VI emission norms will not be sold in India from 1 April 2020. Petrol vehicles older than 15 years and diesel vehicles older than 10 years have been banned in Delhi. The Government has already started ordering electric vehicles for its offices, and to dispose of old vehicles, draft guidelines for setting up, authorisation and operation of Authorised Vehicle Scrapping Facility (AVSF) is in the works. 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. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and/or ESG public reporting becoming more common?

ESG issues are a material consideration in India. During the course of the environment, impact assessment, apart from the environmental impact the socio-economic impact of any

project is duly investigated. Public hearing is conducted to also ensure that such issues are highlighted by the local population and the project proponent takes adequate measures to address such concerns, if any. Corporate Social Responsibility is a part of Indian law. Conditions related to Environmental Social Responsibility are usually mentioned in the consents and clearances granted by the authorities to industries, if it is felt that there is a need for the industry to contribute towards such issues. The periodic reporting requirements also include aspects related to ESG to assess as to whether the company is carrying out responsible business. ESG issues cannot be ignored and therefore form a critical aspect in due diligences.

19. 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) 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.

(b) A seller can agree to compensate the buyer against any liability that may arise due to the past action or inaction by the seller before the asset sale / share sale.

20. 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.

21. 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 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.

22. 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 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.

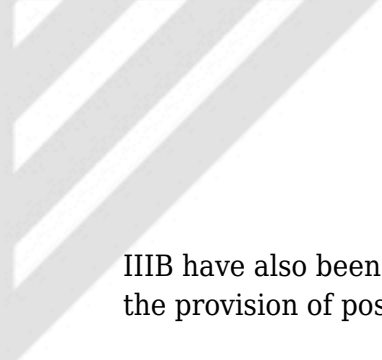
23. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

Under the Right to Information Act, 2005 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.

24. 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 waste management rules the subsequent amendments to it. The ban on single-use plastic by various states across the country in the last few years has been a major development.

The Central Government on 18 January 2019 issued the new Coastal Regulation Zone Notification, 2019, thus replacing the earlier CRZ Notification, 2011. The new regulations have been issued in light of the recommendations of Dr. Shailesh Nayak Committee. 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.

Recycling of Ships Act, 2019 was enacted on 13 December, 2019 to provide for the regulation of ship recycling by setting certain international standards and laying down the statutory mechanism for enforcement of such standards. The Government has also decided to accede to the Hong Kong International Convention for Safe and Environmentally Sound Recycling of Ships, 2009. The Act restricts and prohibits the use or installation of hazardous materials, which applies irrespective of whether a ship is meant for recycling or not. Under the Act ship recycling facilities are required to be authorized and ships shall be recycled only in such authorized ship recycling facilities. The Act lays down a list of offences, provides for their cognizance or non-cognizance and prescribes penalties and punishments and quantum of compensation. It also provides for the creation of a National Authority which shall be responsible for all ship recycling done throughout the country.