ICLG

The International Comparative Legal Guide to:

Environment & Climate Change Law 2018

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A practical cross-border insight into environment and climate change law

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General Chapter:

Country Question and Answer Chapters:

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

The Constitution, judicial principles established by the Indian courts, and the National Environment Policy, 2006 (**NEP**) provide the basis for Indian environmental policy-making. The directive principles of the Constitution require the government to protect and improve the environment. Article 21 of the Constitution, guaranteeing the fundamental right to life for every human being, has been expanded to include the right to a clean and pollution-free environment.

The doctrine of sustainable development, intra-generational equity, polluters-pay and precautionary principle were made integral to Indian environmental policy through several landmark court decisions. The Supreme Court (**SC**) in *Oleum Gas Leak* case evolved the "absolute liability" principle, which makes an enterprise engaged in hazardous or inherently dangerous activity accountable and absolutely liable for compensation, despite all reasonable care.

Pursuant to the Constitutional mandate, the Central Government (**CG**) adopted the NEP. Its salient features include conservation of critical environmental resources, intra and inter-generational equity, integration of environmental concerns in developmental policy-making, efficient resource utilisation and good governance. It lays out action plans for regulatory and process reforms, strategies for capacity development, and building a robust system of environment impact assessments.

The Ministry of Environment and Forest (**MoEF**) along with the Central Pollution Control Board (**CPCB**) and State Pollution Control Boards (**SPCBs**) of each state administer and enforce environmental laws in India. Further, a special tribunal, the National Green Tribunal (**NGT**) was established in 2010 to speedily dispose of cases relating to environment protection, conservation, and granting relief in environmental matters, which has taken a rather strict approach towards ensuring compliance with environmental law.

1.2 What approach do such agenndcies/bodies take to the enforcement of environmental law?

The MoEF prefers a participatory and inclusive approach for policy and law making, wherein the draft is opened for consultation with industry experts, civil-societies and the public before notification.

Enforcement mechanism followed by CPCB and SPCBs involve several aspects such as prohibition of industrial activities without prior environmental permits, ensuring compliance through periodic reporting and inspection, conducting environment impact assessments for certain industries and projects, and imposing liability for breach and non-compliance.

Additionally, the judiciary plays a significant role in progressively resolving environmental concerns. The SC and State High Courts have taken *suo moto* cognisance in environmental matters. For instance, in 2014, pursuant to a newspaper article, the SC initiated *suo moto* proceedings to address Yamuna river pollution and passed suitable directions to the concerned authorities for regulating effluent discharge (*In Re: News Item Published in Hindustan Times Titles 'And Quiet Flows the Maily Yamuna'*). Further, the SC has substantially simplified the *locus standi* for initiating public interest litigation (PIL), enabling several cases on environmental cause, and, in fact, a lot of Indian environmental jurisprudence is owed to these.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

The Right to Information Act (**RTI**) entitles every citizen to seek information from public authorities, unless information requisitioned is specifically exempt. Generally, the exempt category includes information which is privileged, confidential, *lis pendens*, official secrets, or relates to sovereignty and national security. RTI 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. An interested citizen can file an RTI application on a minimal fee of INR 10, when the public authority is mandated to respond with the information within 30 days.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Requirement of environmental permits is dependent on the entity's business. For instance, an industrial plant can be established in a pollution control area after obtaining a permit from the concerned SPCB under the Air (Prevention and Control of Pollution) Act (**Air Act**). Similarly, any industry or operation resulting in the release of

sewage or trade effluents into a water stream or on land must obtain consent from the concerned SPCB under the Water (Prevention and Control of Pollution Act) (**Water Act**). A particular business can be the subject matter of multiple permits.

A permit may be transferred to an entity engaged in similar activity, provided the statute or its terms allow. To illustrate, the Air Act specifically allows the consent holder to transfer the permit pursuant to a business transfer.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

The applicant is provided a hearing opportunity before a permit is refused. It is also entitled to appeal against permit refusal, or imposition of unreasonable or illegal conditions, within 30 days of such refusal or imposition to the designated appellate authority.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Yes, an environmental impact assessment (**EIA**) is mandatory for 29 categories of developmental activities such as mining, oil and gas exploration, oil pipelines, nuclear power, chloralkali, chemical fertilisers, sugar, and township development, provided the investment involved is INR 500 million or above. Once the project site is identified, the entity must apply for EIA along with a pre-feasibility report. The process of EIA involves four stages, namely screening, scoping, public consultation and appraisal. Thereafter, a report is prepared and environmental clearance is granted.

While there is no legal requirement for environmental audit as such, most environmental rules mandate submission of periodic reports to the concerned authority. For instance, every entity with a permit under Air Act, Water Act and Hazardous Wastes (Management, Handling and Transboundary Movement) Rules (**HWM Rules**) must submit annual environment statement to concerned SPCB by March 31. This inevitably requires entities to conduct an environmental audit.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Violation of permit conditions can result in permit's suspension, cancellation or revocation. Additionally, the entity can be penalised with fine, or imprisonment of the person in control of the entity's affairs, or both.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

There is no generic definition of "waste" and it is commonly understood to mean an environmental pollutant. The Environment Protection Act (**EPA**) empowers MoEF to lay down emission standards for environmental pollutants from various sources. Pursuant to this, waste management rules for five kinds of waste have been notified:

- Hazardous: The HWM Rules define hazardous waste as any waste which by its physical or other characteristics, causes or can cause danger to health or the environment, either in isolation, or in combination with substances. It provides a list of processes and industries that must comply with the rules such as mining, lead based production, petro-chemicals, asbestos and tannery.
- Bio-medical: Bio-medical waste is defined under the Bio-medical Waste (Management and Handling) Rules as waste generated in healthcare processes like human anatomical, animal, micro-biological and bio-technology, discarded medicines, cytotoxic drugs and incineration ash.
- Plastic: The Plastic Waste (Management and Handling) Rules define plastic waste as any plastic product such as carry bags, pouches and sachets, discarded after use or after their intended life is over.
- E-waste: The E-waste (Management) Rules (**E-waste Rules**) define e-waste as electrical and electronic equipment, in whole or part, discarded by the consumer or bulk consumer including rejects from the manufacturing, refurbishment and repair process.
- Construction and demolition: The Construction and Demolition Waste Management Rules (**CDW Rules**) explains this as waste comprising of building materials, debris and rubble resulting from construction, re-modeling, repair and demolition of any civil structure.

All the above-mentioned rules delineate obligations of different parties involved in generation, management and handling of each category of waste. In a nutshell, they (i) lay down standards and procedure for generation, storage, segregation, processing, transportation, import-export, disposal, recycling, and dealing with waste, (ii) mandate prior authorisation from concerned SPCBs, (iii) direct reporting of accidents and unexpected events, and (iv) require filing of returns and maintenance of documents.

However, some of them impose stricter obligations on the occupier, i.e. the person who controls the affairs of the establishment. For instance, under the CDW Rules, an entity generating waste of 20 tonnes or more in one day must submit a waste management plan and get approval from the designated authority.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

The aforementioned rules require the producer to handle safely, segregate and label waste at the point of generation. Subsequently, it must channel waste for disposal or processing, through authorised collection centres, recyclers or re-processors. It is also mandatory to maintain a record for storage, collection, segregation, transfer, or sale of waste. Certain rules prescribe a timeline for storage at the producer's premise. Some others require the producer to provide financial assistance to local authorities for setting up a waste management system.

In essence, the producer must ensure waste is transported from the premises as per prescribed standards and without any adverse effect on human beings and the environment.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/ disappears)?

The actual test for imposing liability for waste management is identifying who exercises control over the concerned stage. This determination is based on facts and circumstance. Since the producer generates the waste, he is absolutely liable for any act or

omission on his premises, or which affects the effective disposal of waste after it is transferred. As long as the producer complies with applicable rules and transfers the waste to an authorised person for disposal or treatment, it is unlikely that he will be subsequently held liable.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Statutory obligation to take-back and recover waste is provided under the following rules:

- As per HWM Rules, if hazardous waste is illegally trafficked, the importer must re-export the waste at its own cost within 90 days from arrival in India.
- Under the E-waste Rules, a producer of certain equipments such as personal computers, facsimile and telephones is subject to "extended producer responsibility" for channelling back certain quantities of e-waste generated. For this, the producer individually or collectively can roll out a plan with CPCB's approval for implementing a take-back mechanism.

Other waste management rules do not provide for specific take-back requirements. Nonetheless, under equity and as a contractual obligation, if the producer fails to comply with his obligations at the time of initial treatment, the authorised transferee can insist on the take-back at the producer's cost and recover damages for loss incurred.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Breach of environmental law entails civil as well as criminal liability.

Contravention of the EPA and the rules thereunder is punishable with imprisonment between five to seven years, or a fine up to INR 100,000, or both. Similarly, non-compliance with Air and Water Acts may lead to imprisonment between three months to six years, or a fine, or both. Notwithstanding this, the SC can impose exemplary damages and remediation costs on an entity engaged in hazardous or dangerous activity. To exemplify, in 2013, the SC required Sterlite Industries to deposit INR 1 billion towards remediation for violation of green norms by its copper smelting plant. Further, the SC has required the closure of polluting industries several times, such as the closure of limestone quarries (*RLEK vs. State of Uttar Pradesh*), leather tanneries (*Vellore Citizen Welfare Forum vs. UOI*) causing ecological imbalance and environmental deterioration. Furthermore, in a recent case (*Vardhaman Kaushik vs. Union of India*), NGT pursuant to the SC's directive to Delhi government, passed an order banning 10-year-old diesel run heavy vehicles, in order to preserve ambient air quality of the national capital. Civil liability may arise when an aggrieved individual claims damages under tort principles, or files a writ petition seeking judicial direction.

Barring situations where "absolute liability" applies (see question 1.1 above), the entity can prove lack of intention, involuntary action, exercise of due diligence, and implementation of mitigation steps for defending liability. Where "absolute liability" triggers, the foregoing defences are not available because the entity's awareness and foreseeability of the adverse consequences is deemed.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Yes, an operator can be made liable for environmental damage, despite compliance with permit limits. However, this rigour is mostly applied to hazardous and dangerous industries, and the EIA covered developmental projects as an extension of "polluters-pay" and "absolute liability" principles.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Yes, directors and officers attract personal liability for company's environmental wrongdoing. As per the EPA, Water and Air Acts, "offences by companies" means an offence by a person (mostly a director designated as occupier) directly in charge of and responsible for conducting a company's business. Further, any other director can be proceeded against, if it is established that the offence was committed with his consent, connivance or negligence. The alleged director or officer must prove absence of any knowledge and exercise of due diligence in the discharge of his duties to absolve liability.

A company may obtain D&O insurance for covering personal liability for a company's environmental wrongdoings.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In a share sale, the acquirer assumes the company's ownership and control, resulting in an indirect acquisition of all assets and liabilities, including environmental permits, obligations and liabilities pertaining thereto. The transaction structure prevents selective picking of environmental liabilities and the acquirer must step into the target's shoes to discharge them. In contrast, an asset purchase enables the buyer to purchase specific assets, where it may assume all liabilities, or require prior discharge of liabilities, or performance of rectification steps.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Since lenders are not responsible for the company's business, they are not liable for its environmental wrongdoing or remediation costs. However, if a lender nominates a director to the company's board, such director can be held liable as discussed in question 4.3 above.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

There is no specific legislation for soil and groundwater contamination. Contamination is viewed as "environmental pollution" and hence, the liability is affixed under the EPA, its waste management rules (see question 3.1 above), and the Water Act.

However, the judiciary has played a crucial role to cover the lack of specialised legislation. It has relied on sustainable development, polluters-pay and absolute liability principle to impose exemplary damages, direct closure and mandated remedial and clean-up measures.

5.2 How is liability allocated where more than one person is responsible for the contamination?

Contamination occurs gradually over the course of time and proving the precise events that lead to it is difficult. At any given point, an entity can designate one director or officer as the "occupier" of the factory, plant or site. Hence, the approach is to impose liability on the current occupier even for historical contamination. This heightens the significance of thorough environment audit and due diligence before acquisition of an asset prone to contamination.

5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator, can the regulator come back and require additional works or can a third party challenge the agreement?

The regulator has the ability to seek additional work, provided it is reasonable and related to the remediation scheme. A third party can challenge the scheme only when it has *locus* or proves an overarching public interest.

The Planning Commission in the 12th Five Year Plan (2012–2017) has highlighted the need for remediation of contaminated sites. Accordingly, MoEF aims to develop institutional and methodological framework for rehabilitation. Until such framework, the regulators can frame individual remediation schemes.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

A prospective occupier cannot escape liability, if it has prior knowledge, or reasonable anticipation of such contamination. Nonetheless, prospective and previous occupiers often agree on remedial steps as pre-closure obligation, representation and warranties, and indemnifications. Enforcing these clauses is time-consuming and may not be sufficient to cover the risk. Thus, a buyer must conduct thorough diligence prior to signing the transfer deed.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

There is no statutory provision that specifically empowers regulators to obtain monetary damages for aesthetic harms. However, the SC has established the "public trust doctrine" (*M.C. Mehta vs. Kamal Nath*) requiring the State to act as a trustee and take all steps including imposition of restitution costs for protection of public assets like rivers, sea and forest. Further, the SC has elaborated polluters-pay principles to prevent deterioration of heritage sites. In the *Taj Trapezium case*, the SC required relocation of 292 polluting industries causing acid-rains and corrosion of the Taj Mahal monument.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

The EPA, Air and Water Acts empower CPCB and SPCBs to take all expedient steps for controlling environmental pollution, including inspection of sites, examining and testing of process and plant, seeking and verifying records, conducting searches, examining witnesses, taking samples for testing and analysis and giving directions and orders. Further, they can initiate proceedings for non-compliance to levy penalty or impose personal criminal liability on the occupier.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

Applicable environmental law makes it obligatory for the occupier to immediately inform concerned authorities and take mitigation steps when there is an accident or any unforeseen event, which results or may result in excessive discharge of pollutants and off-site migration. As part of mitigation steps, the occupier must inform potentially affected third parties.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

The pre-feasibility report submitted for EIA (*see question 2.3 above*) must disclose the risk of contamination due to release of effluents. For this, the project proponent must investigate the land for existing contamination and the future impact. Apart from this, there is no statutory obligation for investigating land contamination.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

The seller must make material disclosures which may affect the buyer's decision. In M&A transactions involving hazardous entities, non-disclosure of existing and contingent environmental liability can be equated with wilful concealment, questioning the contractual validity. Thus, the transferor must populate a detailed disclosure schedule highlighting liability issues. In any case, the transferee must conduct due diligence to identify risks and incorporate contractual protections *inter se* parties.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

While it is possible to use indemnification for limiting actual or potential environmental liability *inter se* contracting parties, its enforcement is tedious. Further, it shall not bind the regulators or courts in affixing liability on the indemnifier for his conduct.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

Potential environmental liabilities which the company is aware of are contingent liabilities and must be disclosed in the audited financials. Non-disclosure may amount to falsification of accounts, or fraud, which is punishable with imprisonment and fine.

Dissolution or liquidation does not absolve the directors, and in certain cases the promoters, from any liability that may befall post-dissolution.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

A company is a separate legal entity, different from its shareholders. Any action of the company is deemed to be done by its directors. Thus, a shareholder cannot be held liable, unless the facts require piercing of the corporate veil. Limited scenarios such as fraud, misleading public disclosures, and account falsification permit piercing, where it must be proved that no real distinction existed between the shareholders *versus* the board.

Yes, a foreign parent can be held liable for its subsidiary's activity. In the *Bhopal Gas Leak case*, lethal gas was released by an Indian subsidiary's factory. Several claims were filed in US courts against the US parent entity. The SC observed that both entities were liable as the US parent controlled and was responsible for the Indian subsidiary's affairs.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

The Whistleblowers Act (which is yet to be implemented through a notification) ensures protection of anyone who blows the whistle against a public official and will not cover situations where the complaint is against a private entity. However, as good governance practice, most companies have a whistleblower policy and establish internal vigil mechanism to prevent victimisation.

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

While the typical US class action suits are not feasible, a group with the same interest can initiate a representative suit, despite each individual having a different cause of action. Further, any public-spirited person can initiate PIL by invoking the writ jurisdiction of the SC and High Courts, irrespective of any direct cause of action.

Yes, plenary and exemplary damages can be awarded in environmental claims.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

There is no exemption from payment of litigation costs for public interest groups pursuing environmental litigation. They can specifically apply for cost recovery from the adversary, but the courts have absolute discretion in granting such an application.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing there?

India has implemented three measures resembling emission trading but incorporating distinct features to balance development and climate change:

- Perform Achieve and Trade: This aims at achieving low-cost, energy-intensity targets by trading in energy saving certificates. It covers 478 facilities in thermal power, fertiliser, cement, iron and steel, chloralkali, aluminium, textiles and pulp and paper sector. Each facility must achieve its own target within a specified timeline or purchase energy certificates from others for compliance.
- Renewable Energy Credit trading system: Herein, the State Electricity Commission requires power companies to purchase certain percentage of their power from renewable sources such as solar, wind, small-scale hydro, bio-mass, bio-fuel and municipal waste. In order to comply or to profit from surplus, power companies may trade their renewable energy credits with others.
- Pilot emissions trading scheme: MoEF and CPCB have mandated three states, Gujarat, Tamil Nadu and Maharashtra to implement this for reducing detrimental air particulates as identified by SPCB, and mandating certain facilities to adhere to emission caps.

However, India's emission trading market is yet to transit into advanced stages.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

The Ozone Depleting Substances (Regulation) Rules aims at regulating the production and consumption of ozone depleting substances through mandatory permit requirement and reporting by producers, importers, exporters, distributors as well as bulk purchasers. Pursuant to India's international commitments under the Vienna Convention and the Montreal Protocol, the MoEF's Ozone Cell has proactively phased out production and consumption of chloroflurocarbons, carbontetrachlorides and halons. It has been implementing accelerated projects with stakeholders to phase out hydrochloroflurocarbons as well.

Additionally, the Air Act prohibits industries in pollution control area to discharge pollutants and toxic emissions beyond fixed standards. Further, as a permit condition under the Air Act, industrial units

are required to maintain ambient air quality standards, register of emissions and report when they are exceeded along with reasons thereof.

9.3 What is the overall policy approach to climate change regulation in your jurisdiction?

The National Action Plan on Climate Change, 2008 provides the policy approach and sets eight national missions for the government to devise strategies, action plans and evaluation measures:

- increase solar energy use by advancing technology;
- improve energy efficiency;
- make habitats sustainable through efficient urban planning;
- ensure integrated water resource management;
- sustain the Himalayan ecosystem;
- create green India for ecological balance and bio-diversity;
- develop resilient agriculture sector; and
- create robust strategic knowledge.

Further, the Intended Nationally Determined Contribution (INDC) is a policy guide that outlines post-2020 climate actions, with an aim to devise programmes and measures that will lead to sustainable lifestyles, climate justice to the poor and vulnerable, cleaner economic development, reduced emission intensity of the country's GDP, enhance cover of carbon sinks, and facilitate adaptation.

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

Indian asbestos litigation is nascent. In 1995, the SC recognising the injurious effects of asbestos (*Consumer Education & Research Centre vs. UOI*), stated that the producer has the legal, moral and social responsibility to provide protective measures for anyone exposed to asbestos' harmful consequences. Employers were made responsible for liquidated damages as compensation to asbestosis-affected workmen. It passed various directions for maintaining a workmen health record and review of permissible exposure standards. In 2010, MoEF published a guidance manual for asbestos-based industries to conduct EIA for cleaner production, monitoring of environmental quality, and waste minimisation.

In 2011, the SC directed the government to review existing safeguards (*Kalyaneshwari vs. UOI*). Subsequently, manufacture and mining of blue and brown asbestos was banned, though India continues to import white asbestos. Human rights commissions and NGOs (such as Ban Asbestos Network of India, Toxic Watch Alliance and Occupational Health India) are pro-actively involved in public awareness and seeking a complete ban. A bill highlighting the carcinogenic effect of white asbestos and imposing an absolute ban is pending in Parliament.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

As stated in question 10.1 above, there is no specific asbestos legislation. Nonetheless, manufacturing, handling and processing of asbestos is a "hazardous process" under the Factories Act, thereby, obligating stricter compliances on occupiers for workmen safety and health. The occupier must conduct EIA and comply with HWM Rules for proper waste disposal.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?

The Public Liability Insurance Act mandates entities dealing with hazardous substances to obtain accident insurance for immediate relief to any injured party. The insurance value must be equivalent to a company's paid-up capital, or for other entities, the cumulative of the market value of all assets, subject to a maximum of INR 500 million.

The Indian environmental risks insurance market involves private companies because state-owned insurers do not offer environmental insurance as part of their portfolio. Private insurers cover a variety of risks such as pollution, storage, transportation, act of god and collaborator's liability risks. The terms vary, and are standard contracts with limited negotiability of the insured, but the key coverage exclusions are claims for asbestos and lead, terrorism, state of war and prior knowledge of the policy holder. It is noteworthy that owing to the exponential increase of pollution in India's major metropolitans, the general populace has become increasingly wary about comprehensive health insurance coverage, and, as of fiscal 2016, health insurance premium rates registered a compounded annual growth rate of 32%.

11.2 What is the environmental insurance claims experience in your jurisdiction?

There is lack of public information on privately materialised environmental insurance claims. However, it is interesting to note that several health insurers (such as *Bajaj Allianz General Insurance, Future Generali India, and ICICI Lombard*) have acknowledged a rise in water and air pollution-related health hazard claims ranging between INR 20,000 to INR 70,000, as of fiscal 2016. While it was expected that adjudication of private claims will increase with NGT's establishment, most of the cases dealt by NGT centre around environmental clearance, pollution and wildlife conservation issues.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in your jurisdiction.

The increasing depletion of ambient air quality in the national capital and other metropolitans in India has been the moot point for regulators and the judiciary has taken drastic steps for containing the pollution. In October 2017, the SC in a pending PIL ordered the suspension of all authorisations granted for sale of fire crackers in the national capital region, with the prime objective of identifying whether burning fire crackers during Diwali (which is the biggest Indian festival!) adversely impacts the air quality. Similarly, in November 2017, the NGT banned all structural construction and emission creating industrial activity in the national capital region to reduce the levels of smog (*Vardhaman Kaushik vs. UOI*).

Lastly, pursuant to India's ratification of the Paris Agreement on October 2, 2016, where India committed to reduce greenhouse gases and keep global temperature at 2°C less than pre-industrial phase, the government has commissioned three research institutions (Energy Research Institute, Observer Research Foundation and

Centre for Study of Science, Technology and Policy) to recommend measures for a long-term low carbon growth trajectory for India. It is expected that the research studies and projects conducted by these organisations will be instrumental for projecting the economic growth and concomitant greenhouse gas effect for the period 2030–2045.

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