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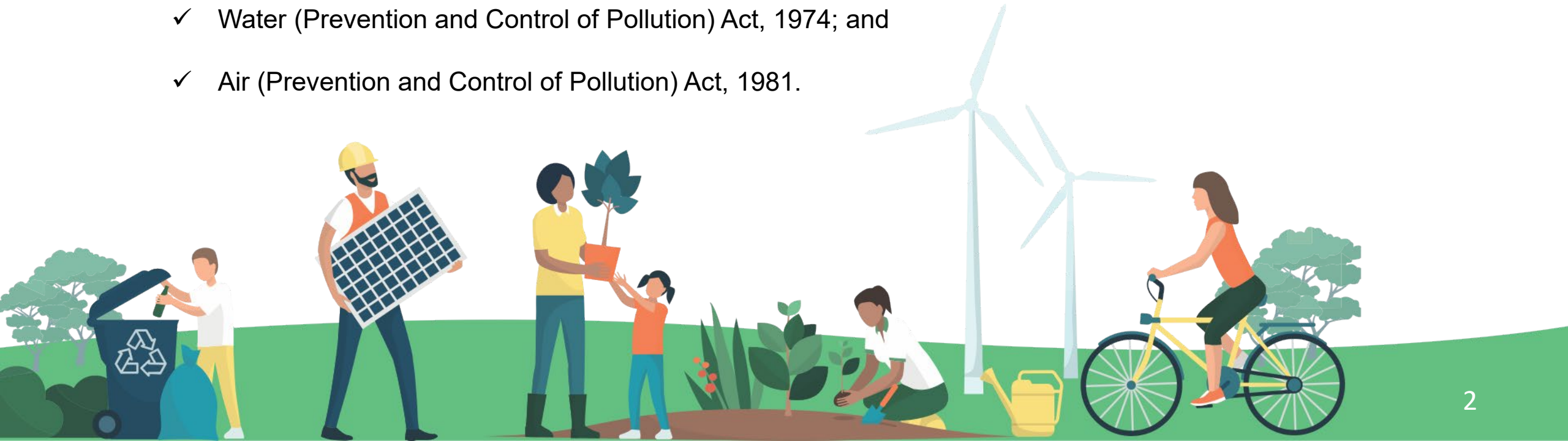
Climate Change Initiatives in India



Climate Change in India

➤ General Framework

- India has not adopted an umbrella climate change legislation but continues to balance its industrial growth and responsibility to protect the environment through various legislations, and several schemes, policies and action plans.
- The key legislations are
 - ✓ Environment Protection Act, 1986;
 - ✓ Water (Prevention and Control of Pollution) Act, 1974; and
 - ✓ Air (Prevention and Control of Pollution) Act, 1981.



➤ Emissions Control and Trading

- Introduction of the Emissions Trading Scheme (ETS) for Particulate Matter in 2011 to combat air pollution.
 - ✓ Through the scheme, companies are allocated an emission permit and cannot exceed such cap. However, companies are allowed to trade emission permits.
 - ✓ Gujarat is the first Indian state to implement the ETS in the Surat industrial belt in 2019, followed by Punjab that signed a pact in 2021 to launch an ETS.



➤ Energy Regulation

- Designated consumers are accountable under the Energy Conservation Act, 2001:
 - ✓ to adhere to consumption norms and standards;
 - ✓ to get an energy audit conducted; and
 - ✓ to comply with energy conservation building codes.
- The Perform, Achieve and Trade (PAT) Scheme 2012 has been introduced:
 - ✓ to ensure energy conservation and efficiency; and
 - ✓ to achieve a total target of 26 MTOE (Million Tonnes of Oil Equivalent) energy savings and 70 million tonnes reduction of carbon dioxide by March 2023.



➤ Environmental Laws and Proposals

- Categorization of industrial plants into red, orange, green and white categories on the basis of emissions.
- Each industrial plant is required to comply with the emission caps fixed by the state government.
- Draft Plastic Waste Management (Amendment) Rules, 2021, aim to prohibit the manufacture, import, stocking, distribution, sale and use of certain single-use plastic commodities in a phased manner.
- Draft Environment Impact Assessment Notification, 2020, which exempts certain projects from conducting impact assessments and public consultations has not yet been notified due to public opposition.



➤ Circular Economy

- Schemes like ETS, PAT, the National Solar Mission and rules like the E-waste (Management) Rules, 2016, Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and Plastic Waste Management Rules, 2016, aim to achieve a circular economy instead of a take-make-waste linear model.



➤ Regulations on public transport

- Commencement of Phase-II of FAME-India (Faster Adoption and Manufacturing of Hybrid and Electric Vehicles) Scheme in 2019
 - ✓ Aims to induct electric and hybrid vehicles in the economy, particularly in public transport.
 - ✓ The Indian government has sanctioned over 2000 charging stations in January 2020 and increased subsidies for electric vehicles.
- Introduction of Vehicle Scrapping Policy in 2021
 - ✓ Vehicles are to be scrapped based on fitness (commercial vehicles) and non-renewal of registration (private vehicles).



Renewable Energy

- India does not have a national legislation on renewable energy. The focus on renewable energy is through the Electricity Act, 2003, the National Electric Policy, 2005 and the National Tariff Policy, 2016.
- The target is to achieve 175 GW of renewable energy by 2022. The Indian government has launched initiatives like the National Solar Mission, green energy corridors and renewable purchase obligations under the Electricity Act, 2003.
- Waiver of inter-state transmission charges on electricity generated from power plants using solar and wind energy (applicable to plants commissioned before June 30, 2025).



Renewable Energy

➤ Other key measures

- 100% FDI in renewable energy-based power generation projects under the automatic route.
- Priority sector lending and subsidies to promote renewable energy projects and off grid applications.
- Must-run status to renewable energy projects during lockdown due to the Covid-19 pandemic.



Reduced Direct and Indirect Taxes

- Indian government provides several tax and fiscal incentives under the Electricity Act, 2003 for electricity generated through renewable energy, i.e., waiver of inter-state transmission charges.
- Industries with a focus on specific renewable energy sources are granted exemptions by state governments in relation to:
 - electricity duty;
 - stamp duty; and
 - land registration charges.



Corporate Liability

- India impose criminal liability on companies and their managements for breach of environmental laws and regulations under the following laws:
 - Section 16, Environment Protection Act, 1986;
 - Section 47, Water (Prevention and Control of Pollution) Act, 1974;
 - Section 40, Air (Prevention and Control of Pollution) Act, 1981; and
 - Section 16, Public Liability Insurance Act, 1991.



Corporate Liability

- Under the Public Liability Insurance Act, 1991, victims are entitled to immediate relief in case of an accident while handling hazardous substances, irrespective of wrongful neglect or default by any person.
- Section 166(2) of the Companies Act, 2013, imposes on every director:
 - a fiduciary duty to act in the best interests of community and environment.



Class Action Model in Climate Change Litigation

- India has not as yet enacted a special law in relation to class action suits for climate change.
- India's Supreme Court has interpreted the right to life under Article 21 of the Constitution as also including a right to a healthy environment.
- The right to a healthy environment can be enforced through public interest litigations in the Supreme Court or High Courts under Articles 32 or 226 of the Constitution of India, respectively.
- Special forums have been established under the National Green Tribunal Act, 2010, to ensure fast track disposal of environmental law cases.



New Developments in CSR and ESG Standards

➤ Section 135 of Companies Act, 2013

- Every company with net worth of INR5 billion, turnover of INR10 billion or net profit of INR50 million, during preceding financial year, is required to spend a minimum of 2% of the average net profits in the 3 preceding financial years on corporate social responsibility (CSR) initiatives.
- CSR can include activities like environmental sustainability, ecological balance, conservation of natural resources, and maintaining quality of soil, air and water.



New Developments in CSR and ESG Standards

- Companies (Corporate Social Responsibility) Amendment Rules, 2021
 - As per Rule 7(2), any surplus arising out of CSR activities must be:
 - ✓ ploughed back into the same project;
 - ✓ transferred to an unspent CSR funds bank account and spent in pursuance of company's CSR policy within 6 months; or
 - ✓ transferred to a government notified fund



New Developments in CSR and ESG Standards

- Section 134(3)(m) of the Companies Act, 2013 read with Rule 8 of the Companies (Accounts) Rules, 2014
 - Annual report of a company must include details in relation to:
 - ✓ steps taken by the company for conservation of energy;
 - ✓ steps taken by the company to utilise alternate sources of energy; and
 - ✓ capital investment on energy conservation equipment by the company.



New Developments in CSR and ESG Standards

- National Guidelines on Responsible Business Conduct
 - Introduced in March 2019 by the Indian government.
 - It makes companies responsible for environmental and social factors in addition to business.
 - One of the guiding principles is to make efforts to protect and restore the environment.
- The SEBI has made it mandatory for the top 1000 listed companies by market capitalization to file business responsibility reports, which describe environmental, social and governance initiatives taken by companies.



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