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## Green Banking - Scope of Law

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*Climate change is no longer just seen as an environmental disaster but is predicted to affect many economic sectors. Furthermore, the banking industry is exposed to physical and transitory dangers as a result of climate-related concerns. Although the strategy used thus far varies widely among developed and developing countries, central banks, supervisors, and policymakers began implementing sustainable and green banking measures to reduce the negative effects. The greatest way to accomplish environmental sustainability is to let economies operate within an adequate system of cost-effective rules and economic tools. The financial sector, including the banking industry, represents one of the primary economic agents impacting total industry activity and economic expansion. Green banking combines technological advancements, operational improvements, and shifting customer behaviour in the banking industry. It entails encouraging environmentally beneficial behaviours. In this article, the Reserve Bank of India's measures to promote green financing are discussed along with the significance of green banking. The major legal difficulties that arise in green banking are then addressed, along with its rules and regulations.*

**Keywords:** *banking industry, green banking, environmental sustainability, reserve bank, legal difficulties, regulations.*

### INTRODUCTION

The loss of greenery is something we very much grieve in the current globalisation scenario as we move through the twenty-first century. Since everyone in contemporary society is growing more and more concerned and anxious about the environment, business organisations and businesses have begun changing the way they operate to add as much greenery as they can. Green banking combines technological advancements, operational improvements, and shifting customer behaviour in the banking industry. It entails encouraging environmentally beneficial behaviours. This can take many different forms, such as switching to internet banking from branch banking, paying bills electronically instead of by mail, opening money market and CD accounts with small local banks rather than with giant multi-branch institutions, etc. In addition to giving clients possibilities, going green helps to solve several environmental issues, such as global warming, forestry, poor air quality, and habitat destruction.

## GREEN BANKING IN INDIA

The industrial sector is the most significant contributor to India's economy over the past 1.5 decades, which has been on a faster growth trajectory. But regulating the environmental effect of their operations, that is, lowering client emissions and pollutants, is a challenge for Indian industry. Although the administration has been attempting to address the issue by drafting environmental laws and encouraging businesses to adopt ecologic innovations and 11 practices, they are unlikely to be adequate given the weak policing records, low awareness campaigns, and incapability to gain a competitive edge by manufacturing eco-friendly products. In terms of the emission of greenhouse gases, India seems to be the sixth-largest and second-fastest-growing nation in the world.

Three of the ten highly polluted cities around the globe are Delhi, Mumbai, and Chennai. By enhancing the general environment, the value and conversation of life, the level of effectiveness in using materials and energy, and the right product, banking operations, and financial institution investments could perhaps take better care of the sustainable development of these polluting industries. The banking industry, which is a significant source of finance for the industries, plays a crucial role in this situation. The command-and-control rules and liability legislation are the two basic categories into which environmental protections in India could be divided.

Ex ante regulations, control, and command generally result to deter initiatives that harm the environment. The Department of the Environment and Forest, among other relevant authorities, developed industry-specific pollution criteria, examined projects, and granted or denied approvals as necessary to carry out this regulation. Ex-post in nature, responsibility rules are carried out by enforcing agencies by the imposition of fines, the closure of defaulting companies, etc. However, there are no laws or regulations in India that really can make banks accountable for reviewing capital investments before funding them or for the ecological damage done by their clients. The polluting industries must either shut down or make the necessary investments to meet the norm when India has developed a legal framework for sustainable environmental laws. Through this process, these businesses will become less competitive in the global market, which will hurt the financial industry and also the Indian economy.

## GREEN BANKING AND RESERVE BANK OF INDIA

Reserve Bank of India in its document titled[1] "Policy Environment" from November 8, 2010, refers to green banking and green IT measures for Indian banks. Banks in India are adopting the notion of corporate Social Responsibility (CSR) and seem to be worried about the environment, much like any other commercial organisation. The promotion of green banking by banks is made possible by the computerization of banks and services like internet banking. Bankers and clients have significantly reduced paperwork at all levels. For the ease of their consumers, several banks have indeed adopted cutting-edge ideas. Along with lowering environmental damage, these measures are assisting banks in lowering operational costs and delays, which boosts client happiness as well. The various measures performed by Indian banks are shown here, along with a few straightforward recommendations for using the green financial sector. Using solar electricity, IndusInd Bank has ATMs Green banking policies and green housing loans are provided by SBI. Energy-saving techniques from Union Bank of India Business ecological sustainability programmed at ICICI Bank Community development programmes.

[1] Saurabh Ghosh, 'Green Finance in India: Progress and Challenges' (2021) RBI Bulletin <https://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/04AR_2101202185D9B6905ADD465CB7DD280B88266F77.PDF> accessed 25 November 2022

## LEGAL ASPECTS

The range of legal matters that have an impact on the operations of green banks, including adherence to environmental legislation, consumer protection, securities laws, taxing, morals, and corporate governance, is known as the field of law in green banking. Environmental impact assessments (EIAs) and other environmental permissions that green banks would need to get from different agencies to conduct their operations are among the themes addressed under the legal framework for green banking.

When choosing between green banking initiatives, banks should consider both corporate governance and social responsibility. Regarding the effects of their green initiatives on the environment and society, banks must consult their customers and stakeholders. When implementing banking service projects, they should safeguard the rights and preferences of indigenous people, communities, as well as other vulnerable groups. They should also make sure that their green banking initiatives adhere to the social and environmental guidelines established by the relevant regulatory bodies. The nature and size of the services associated with a transaction, such as lenders, financiers, borrowers, and authorities, determine the reach of the law in green banking.

**The following are some typical legal challenges that emerge in green banking: -**

**A) Liability:** What defences do banks have against the liabilities and hazards that could arise from green financing?

By adhering to specific rules and standards, such as: - Reviewing the information on the project as well as its investors to guarantee adherence with relevant laws and regulations, such as environmental impact assessment, financial institutions can protect themself from prospective risks and impacts associated with green financing. They can recognise the dangers connected to environmental or societal problems like natural catastrophes or animal abuse and take appropriate precautions against those hazards. For instance, if a bank extends credit lines or loans to a business that operates in a region vulnerable to natural disasters like floods, earthquakes, extreme weather events, or forest fires, the business may be required to put up extra security or counterparty risk to cover any losses brought on by these occurrences. By doing this, the bank can reduce the risk of the borrower defaulting or failing to perform. By leaving aside funds or assets for green initiatives that might not make enough money or revenue to cover their costs, green banks can further shield themselves from any risks and liabilities related to green banking. By doing this, the bank can guarantee that unanticipated events won't result in losses of funds or capital. Additionally, they can protect themselves from changes in the cost of green commodities or assets like [2]renewable energy certificates (RECs) or carbon credits. By holding a counterbalanced position in a resource or investment, they can establish a hedge. For instance, a bank can build a hedge by selling shares of a company that generates non-green energy, including coal, oil, or nuclear power, if it owns shares of a firm that produces green power, including solar panels, wind generators, or hydropower. By doing this, the bank can lessen the risk of price changes in green energy.

**B) Regulation:** How do green banks abide by the several regulatory standards and directives that are relevant to them?

Depending[3] on their sector, location, size, and purpose, banks must adhere to a variety of regulatory standards and norms. Among the most typical ones are: - Anti-money laundering (AML) regulations: They call on banks to keep an eye on, report, and cooperate with law enforcement agencies on suspicious transactions and activities. Laws governing bank secrecy: These forbid banks from giving client information to outside parties without that person's permission. Customer protection regulations: These mandates that banks provide:

Green banks must also adhere to a variety of legal regulations and standards that are relevant to them based on their sector, location, size, and objective. Additionally, they are subject to several legal restrictions and regulations. The RBI has published press releases and

[2] 'Renewable Energy Certificate' (*United States environmental protection agency*) <https://www.epa.gov/green-power-markets/renewable-energy-certificates-recs#:~:text=RECs%20and%20Offsets%3F-,What%20is%20a%20REC%3F,attributes%20of%20renewable%20electricity%20generation.> accessed 25 November 2022

[3] Hyoungkun Park & Jong Dae Kim, 'Transition towards green banking: role of financial regulators and financial institutions' (2020) 5 Asian Journal of Sustainability and Social Responsibility <https://doi.org/10.1186/s41180-020-00034-3> accessed 25 November 2022

recommendations for green banking since 2005, among other significant ones. These include procedures for identifying green initiatives, evaluating environmental effects, meeting disclosure and reporting requirements, evaluating and appraising credit, and recognising green credits. The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, include requirements for the registration and recognition of green bonds. The National Green Tribunal's (NGT) order regarding the funding of renewable energy projects is being implemented by recommendations released by the Ministry of Finance.

**C) Contractual Agreements**

How can green banks make sure that the contracts they have with clients and counterparties are consistent?

They must make sure that the agreements they make with clients and other parties comply with legal and regulatory obligations, as well as their objectives and guiding principles. Using uniform terms and requirements for all transactions, including loan terms, fees, collateral requirements, etc., is one method they might do. Having an open and unambiguous process in place for reviewing applications, approving them, and ensuring and enforcing compliance. keeping up great communication and client service. They frequently engage in intricate contract negotiations with various parties, including lenders, consumers, suppliers, and investors. They may employ a variety of tools and approaches, such as Model clauses that specify the terms and circumstances of the operations, such as interest rates, fees, payback schedules, or performance criteria, to make sure that their contracts are uniform. Formal agreements, such as joint ventures, memorandums of understanding, or letters of intent, set down the parties' intents and commitments. A green bank may also utilise internal rules and procedures to guarantee that its deals are constant, such as: Establishing clear and transparent standards for assessing and approving funding requests; Training and advising its staff on how to assess and bargain; and negotiating contracts.

**LAWS AND REGULATIONS**

Several laws and regulations, including the Bank Secrecy Act, the Community Reinvestment Act, and the [4]Volcker Rule, govern green banking. A federal law known as the Volcker Rule usually forbids banks from making investments using their funds and places restrictions on their interactions with hedge money and private equity groups. Although the Volcker Rule does not relate directly to green banking, it may have an impact on some aspects of it, including the transparency and quality of investments, banks' exposure to risk, and competition between banks. By avoiding direct involvement in risky and speculative activities, employing outside money managers or platforms, or setting up separate subsidiaries or companies for their green banking operations, some green banks may attempt to avoid or reduce the overall risks of the Volcker Rule.

Creating internal controls and compliance procedures to make sure their green banking operations do not contravene the Volcker Rule or other laws. India does not adhere to the Volcker Rule because there are no explicit laws or regulations governing private equity funds there. The Foreign Exchange Management Act (FEMA)which governs the repatriation and transactions of foreign exchange, may, nevertheless, nonetheless apply to some private equity funds.

Green bonds aim to assist issuers in financing environmentally sound and sustainable projects that support a net-zero emissions economy and protect the environment. They are supported by several initiatives and programmes, including the Global Reporting Initiative, the Sustainable Development Goals, and the Paris Agreement 2015. The goal of the Green Bond Principles (GBP) is to assist issuers in funding environmentally sound and long-term initiatives that promote a net-zero emission economy and safeguard the environment. To prevent the increase in global temperatures to far below two degrees Celsius and continue efforts to keep beneath 1.5 degrees Celsius, 195 countries signed the Paris Agreement in 2015. For the first time, all nations have

[4] 'Volcker Rule' (*CFI*, 7 November 2022) <https://corporatefinanceinstitute.com/resources/economics/volcker-rule/#:~:text=The%20Volcker%20Rule%20refers%20to,funds%20or%20private%20equity%20funds.> accessed 25 November 2022

committed to reducing emissions of greenhouse gases and giving developing nations financial aid to assist them to deal with the repercussions of climate change. Several sections in the Paris Agreement support green banking, including:

- Targeted financial assistance for poor nations, particularly those that are most susceptible to the consequences of climate change, to increase their resilience or capacity to fund green initiatives.
- Requirements and guidelines for adaptation and mitigation plans and strategies, as well as for reporting and verifying greenhouse gas emissions.
- An understanding of how green finance may help advance sustainable development and strengthen ecosystems' and communities' resistance to climate change.

**NEED FOR GREEN BANKING LEGISLATION**

**Green Banking raises Several Legal challenges such as:**

- How can banks assess a project's social and environmental impact before lending to or investing in it?
- How do green banking's legal and regulatory structures compare to those of other forms of banking?
- How does green banking affect the legal obligations and rights of lending institutions, shareholders, consumers, and regulatory agencies?
- How would banks strike a balance between their business ambitions and their environmental and social goals?

Green banking legislation[5] might offer a framework and rules for the practice in India. A law that will oversee and control green banking in India and could create a national green bank or other regulatory entity. A green banking code that will specify the requirements and guiding

[5] Dipika 'Green Banking in India: A Study of various Strategies Adopted by Banks for Sustainable Development' (2015) 3(10) International Journal of Engineering Research & Technology <https://www.ijert.org/green-banking-in-india-a-study-of-various-strategies-adopt-by-banks-for-sustainable-development> accessed 25 November 2022

ideas for green Indian banking. In Indian contracts, there are no particular provisions about green banking. When supplying clients with financial services, banks may need to adhere to the broad guidelines of good faith, fair treatment, openness, and accountability.

SNC-Lavalin Group Inc. v R., 2020 The Canadian government started a voluntary programme called "green banking" in 2018 to nudge businesses toward disclosing and lowering their greenhouse gas emissions. One of the first businesses to sign up for this effort was SNC-Lavalin Group Inc., which began disclosing its emissions in 2019. However, the business encountered several obstacles to meet the reporting obligations, including technical issues, delays, and fines. Due to these problems, there was a public argument regarding the program's legitimacy between the firm and the federal government. Many legal disputes include environmental organisations contesting the bank's policies or practices, while other disputes involve the bank's efforts to adhere to rules or client demands. A bank should not refuse to offer loans to a client who wished to invest in renewable energy since doing so would go against the business's public policy, the Supreme Court of Canada ruled in 2020.

In R v Barclays Bank Plc and others [2020], popularly known as the Barclays Coal Case, the UK High Court determined that Barclays Bank was not responsible for climate change-related damages since it had no direct exposure to the emissions or consequences of the projects. The US Supreme Court found that the Clean Air Act gave the Environmental Protection Authority the right to control greenhouse gas emissions from all new automobiles, even if they were produced abroad. To stop environmental degradation and lessen the consequences of climate change, the Indian Supreme Court held that the Central Electricity Regulatory Commission (CERC) has the authority to impose a decrease in the capacity of coal-based power generation in specific parts of India.[6] In India, the Supreme Court declared that, when pollution levels exceeded acceptable levels, the Ministry of Environment, Forest and Climate Change had the authority to penalise the states for breaking the air quality norms.

[6] Mohmad Aarif & Prof. Md. Faizanuddin, 'Green Banking: Benefits, Challenges and Opportunities in Indian Context' (2021) 3(1) (IJARSCT) <https://ijarsct.co.in/Paper826.pdf> accessed 26 November 2022

The National Bank for Agriculture and Rural Development (NABARD) was mandated by the Indian Supreme Court to provide loans to farmers who wanted to power their irrigation pumps using solar energy in 2019. The court ruled that by refusing to grant loans to farmers without first confirming their eligibility and creditworthiness, NABARD had infringed their rights. Guidelines for governing India's green banking industry were also released by the Supreme Court of India. The rules demand that banks create green banking strategies, match their business practices to those of green finance, and support green lending methods. By the standards, banks must also report on their performance in green banking and take steps to lessen their negative environmental impact. The recommendations were released as a result of a petition.

The Central Electricity Regulatory Commission (CERC) was also instructed by the Supreme Court of India to establish standards for green power purchase agreements (PPAs) for solar and wind projects. The court ruled that PPAs must be based on clear and equitable tariffs that cover the cost of distribution and transmission as well as consumer protections against price volatility and uncertainty.

Although there aren't many case laws about green banking, some general principles can be drawn from those that do: [7]Banks should refrain from funding initiatives that could harm the environment or infringe the rights of others. Banks should be transparent about the effects of their lending policies on the environment as well as the risks and rewards of their investments. The use of environmentally friendly policies and practices by consumers and stakeholders should be encouraged and supported by banks. Banks should promote the use of green banking products and services, such as green loans, green mortgages, green bonds, green certificates, and green ratings, by their clients and business associates. Banks should also track the effectiveness and results of their green banking initiatives, and they should update their stakeholders regularly. Although it has not yet decided on green banking, the Supreme Court

[7] J. Michael Showalter et al., 'Key Supreme Court Cases to Watch in Administrative and Environmental Law' (2022) 7(276) Natlaw Review <https://www.natlawreview.com/article/key-supreme-court-cases-to-watch-administrative-and-environmental-law> accessed 25 November 2022

of India has voiced its concerns about the effects of climate change on the environment and public health. Additionally, it has endorsed the adoption of eco-friendly technologies and renewable energy sources. For environmental protection and to encourage green development, the court has granted many orders to the government. These consist of

1) National Green Tribunal (NGT): The Indian government formed this court to consider cases involving environmental preservation and protection. Green banks might have to abide by the NGT's directives.

2) The Carbon Emission Trading Scheme (CETS) is a market-based framework that enables businesses to purchase and sell emission permits that correspond to their carbon dioxide emissions. Green banks might be required to take part in this plan. Bonds issued by green banks to raise money for environmental projects are known as "green bonds." They may be governed by the National Stock Exchange of India Limited or the Securities and Exchange Board of India (SEBI)

3) Corporate social responsibility (CSR) is a set of values and procedures that encourage firms to take part in socially beneficial endeavours.

4) Mitigation and adaptation to climate change: This is the process of lessening the negative impacts of climate change, including rising sea levels, harsh weather, and biodiversity loss, which green banks may need to assist.

**CONCLUSION**

- Enhancing the financial sector's performance in terms of the environment and society is the goal of the emerging discipline of study and practice known as "green banking."
- Enhancing overall disclosure and visibility of green banking products and services so that investors and customers can make educated decisions is only one of the many tactics and tools involved.
- Creating benchmarks and indices for green banking that can be used to assess the efficiency and sustainability of these institutions on a variety of fronts.

- Putting into practice green banking rules and guidelines can help to establish standardised and coordinated processes amongst green banks and clients.
- Encouraging the study of and awareness of green banking can increase public understanding and acceptance of green banking activities.