

The Ethical Corporation
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Lecture - 27
Corporate Obligations to Natural Environment through the Laws

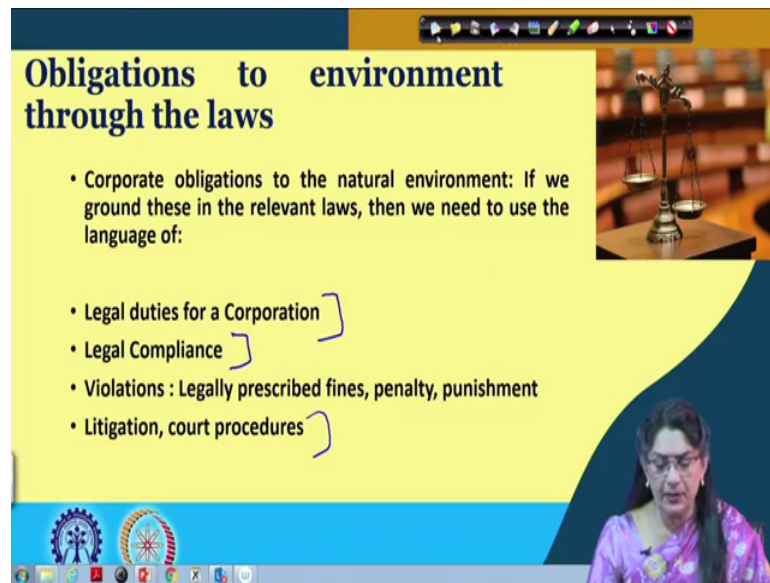
Hello, how are you? We are back with more material for 6th week, where we are talking about the environmental obligations and what can ethical corporation do.

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So, this is going to be our topic for today, we are going to look at particularly at the issue from the point of view of law the relevant environmental laws in India and then we will talk about what is the regulatory support that exists. We are trying to understand how to phrase the corporate obligations towards natural environment through the laws.

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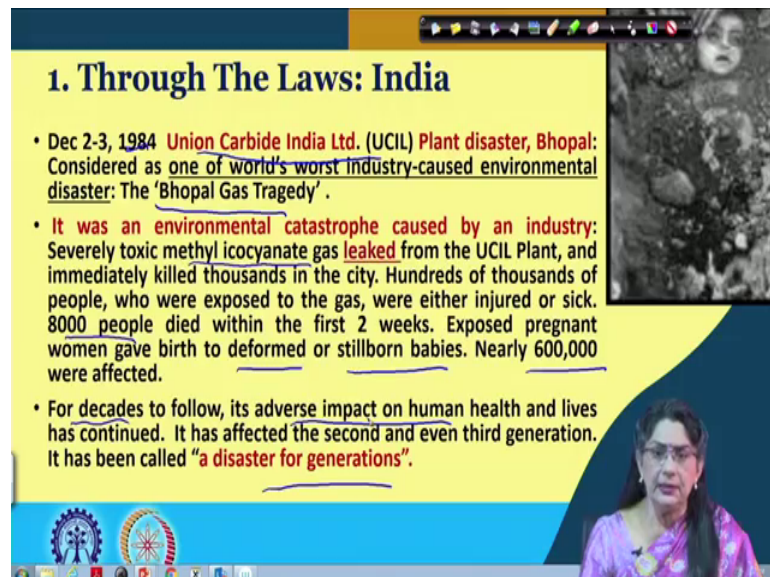
Obligations to environment through the laws

- Corporate obligations to the natural environment: If we ground these in the relevant laws, then we need to use the language of:
- Legal duties for a Corporation
- Legal Compliance
- Violations : Legally prescribed fines, penalty, punishment
- Litigation, court procedures

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So, given that our language is also going to be a little bit different today. We will talk about the legal duties not ethical duties, but legal duties of the corporation and the compliance, the legal compliance that we expect the corporation to follow and the violations what are the consequences and then the court procedures etcetera.

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1. Through The Laws: India

- Dec 2-3, 1984 **Union Carbide India Ltd. (UCIL) Plant disaster, Bhopal:** Considered as **one of world's worst industry-caused environmental disaster: The 'Bhopal Gas Tragedy'** .
- **It was an environmental catastrophe caused by an industry:** Severely toxic methyl isocyanate gas **leaked** from the UCIL Plant, and immediately killed thousands in the city. Hundreds of thousands of people, who were exposed to the gas, were either injured or sick. **8000 people** died within the first 2 weeks. Exposed pregnant women gave birth to deformed or stillborn babies. **Nearly 600,000** were affected.
- **For decades to follow, its adverse impact on human health and lives has continued. It has affected the second and even third generation. It has been called "a disaster for generations".**

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So, these are going to be our topic today; I will start by mentioning about a landmark incident that all of you probably are aware about. We cannot discuss environmental laws in India without discussing this case which we call the Bhopal Gas Tragedy. Most of you

must have heard about this incident which happened in 1984 in December. And it is known in the world as one of the worst industry caused environmental disasters. What happened is that there was this Union Carbide India Limited plant in Bhopal; outskirts of Bhopal and very toxic methyl isocyanate gas leaked from that UCIL plant and it immediately killed about thousands.

In fact, people say that about 8000 people died in the very first 2 weeks, but in total about nearly 600,000 people were exposed to the gas and they were either injured or sick. The casualty were too many, the sufferings were too many people saw their near and near ones die in front of them and this was all happening at the dead of night and unsuspecting residents were all rather ignorant and poor people who lived close to the factory.

Not only that the reason we look at this tragedy as a very big incident is because its consequences stayed on for decades; for decades. So, it is not just the day when it happened, but for years and years after generations have borne the brunt of; it in terms of deformity, in terms of birth defects, in terms of some sort of diseases. So, they it has an adverse impact it has left its trail on human health and lives of people in that region. So, it is that is why we call it the disaster for generations.

So, this is an incident that shook up India and of course, the world and as a result of that what we got was the law that we today called the EPA, 1986 or the Environment Protection Act.

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EPA 1986, India

- Environment Protection Act (EPA), India, was passed in 1986 **after the Bhopal tragedy**. In reaction. Aim: To protect and to improve natural environment.
- **Ministry of Environment and Forests (MoEF)** was created: Implementation of policies and programs related to natural environment.
- **Observation: Industrial recklessness** → environmental damage (**Limit to growth**). Increased public health risks arising from degraded natural environment, abatement costs cutting into GDP
- **Goal of this environmental law: Reduction of Industrial pollution and environmental damage through legislation, penalty, fine.**

This was in reaction to this incident and its aim was to protect and to improve natural environment. As an aftermath of this Bhopal incident the Ministry of Environment and Forests; MoEF was created whose task was to implement the policies and programs related to the natural environment; before that we did not have that ministry.

The overall observation that dawned on people is that industrial irresponsibility can cause such a humongous environmental damage. Not only that it can also cause irreparable damage to human lives it; it can create public health risks. So, these consequences sort of loomed large on peoples mind after this incident. And therefore, the law was created mainly to reduce, to control, to prevent industrial pollution and the way to deter that they thought was through legislation, through penalty, punishment and of course, fines. So, this is how this was conceived.

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India: Environmental laws before and after EPA 1986

Stockholm declaration, 1972: Attention of India to environmental protection. CHIPKO movement in 1973.

Before 1986:

- ✓ Water (Prevention and control of pollution) Act, 1974.
- The Wildlife (Protection) Act, 1972
- The Water (Prevention and Control of Pollution) Act, 1974
- ✓ The Forest (Conservation) Act, 1980: Social forestry.
- ✓ The Air (Prevention and Control of Pollution) Act, 1981

After 1986: Hazardous waste management Act (1989, 2000, 2002)

- ✓ Biomedical waste management Act (1998)
- Dumping and disposal of fly ash... (2003)
- Noise pollution (2002)
- Ozone depleting substances (2000)
- ✓ Recycled plastics manufacture and usage (2002, 2003)
- ✓ Biological Diversity Act, 2002

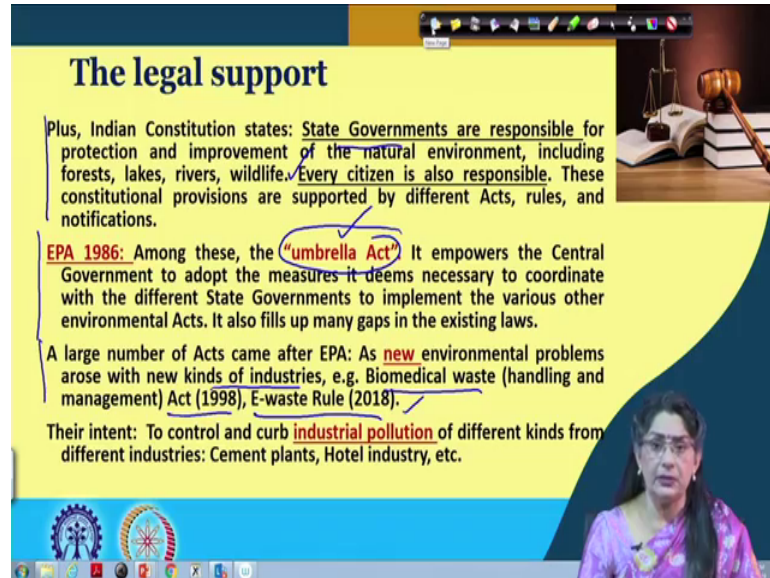
It is not that before EPA, 1986; there were no environmental laws because we need to remember or understand that the very first conference, international conference on the human impact on natural environment or the industrial activities effect on natural environment and causing huge damage in the natural environment was discussed as early as in 1972 in Stockholm Sweden. And it was an open invitation to various state heads, but our; the then Prime Minister of India which was Misses Indira Gandhi attended that conference.

So, India was a participant right from the beginning about on this issue; independently in 1973 in India; an indigenous grassroot environmental movement happened that we know as CHIPKO. Some of you must have heard, this name this happened in the in the foothills of the Himalaya; where there was reckless deforestation going on in the name of development; industrial development. So, before 1986 we see there were so many environment related laws. You know prevention and control of pollution of say water, air you know the even The Forest Conservation Act it is a very important Act, where the concept of social forestry was tried is still before 1986.

After 1986 also, there were flurry of environment related laws for example, the Hazardous waste management Act; you know it has been amended several times, The Biomedical waste management Act, The Recycled plastics manufacturer and usage Act,

Biological Diversity Act etcetera, so there were many laws that came about even after 1986.

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The legal support

Plus, Indian Constitution states: State Governments are responsible for protection and improvement of the natural environment, including forests, lakes, rivers, wildlife. Every citizen is also responsible. These constitutional provisions are supported by different Acts, rules, and notifications.

EPA 1986: Among these, the "umbrella Act" It empowers the Central Government to adopt the measures it deems necessary to coordinate with the different State Governments to implement the various other environmental Acts. It also fills up many gaps in the existing laws.

A large number of Acts came after EPA: As new environmental problems arose with new kinds of industries, e.g. Biomedical waste (handling and management) Act (1998), E-waste Rule (2018).

Their intent: To control and curb industrial pollution of different kinds from different industries: Cement plants, Hotel industry, etc.

Moreover in Indian constitution, there is this provision there is this assertion that it is the state governments who are going to be responsible for the protection and improvement of the natural environment. Not only that every citizen is also should be responsible for protecting and maintaining the natural environment.

So, though there is institution the constitutional support, though there are so many laws; then why did we need the EPA 1986? The answer is that the EPA 1986 is treated as an umbrella law. Under its umbrella, the other regulatory laws come in and it empowers government to take action; whatever it thinks is necessary to coordinate among different state governments and to implement the environmental laws. The laws which came after the EPA, 1986 were mostly because of the need of the hour as new industries came to be, new laws were environmental laws were required.

For example, when biomedical industry started to flourish the; the attention was drawn for the special need to treat and to disposal of the biomedical waste and handling the biomedical waste how do you manage it; so that is why we have this act of 1998. When electronics industry started to flourish the; the issue about managing the electronic waste safely without harming the environment, without harming the people was felt hence came the rule.

So, the overall point here is that through so many laws and through the umbrella act of EPA 1986; what Government of India and Ministry of Environment and Forests is trying to do is to curb industrial pollution of various different kinds.

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The legal support

- **Environmental Protection Act, 1986:** Particularly empowered to **prohibit or restrict** setting up or operate **an industrial facility on environmental grounds.**
- **Environmental Protection Rules, 1986:** Lays down rules for setting standards of **emission or discharge of environmental pollutants** from various manufacturing and service industrial sectors.
- **Bicchri Case, Udaipur, Rajasthan, 1996:** A case of **utterly irresponsible, highly acidic industrial discharge.** Completely destroyed the ecosystem of an area. Supreme Court laid down the rule: **Polluter Pays Principle (PPP), Absolute and strict liability** for harm to the industry who caused the pollution
- **National Environment Appellate Authority Act, 1997:** To award compensation for damages to persons, property and to natural environment arising from any hazardous substances. Also to hear appeals.

Now, the support for environmental related regulations; you will see in terms of the act the EPA Act and also there are these rules. The Act actually empowers, Act gives the power to the government that whenever there is going to be a project; industrial project, they need to take an approval on environmental grounds this is known as environmental clearance.

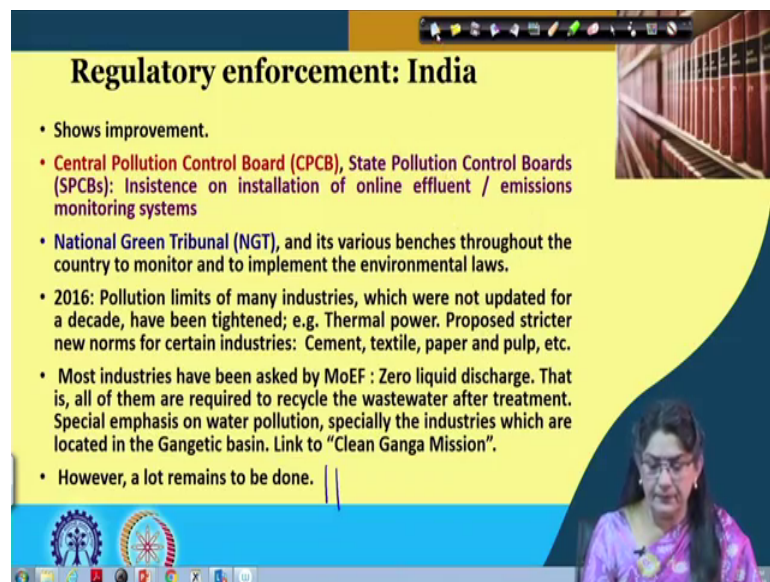
But the rules set certain standards that the industries must follow and comply to; we are talking about emission standards you know or discharge of effluent standards. So from; because from various kind of industries the standards are very different and the rules have to set that. We need to also mention this that in 1996; there was again a landmark case. This was in about what happened in Bichri village in Rajasthan, where due to utterly responsible industrial activity; the entire ecosystem in that village the water, the soil everything was completely decimated destroyed.

And this is when the Supreme Court laid down the Polluter Pays Principle or the PPP which worked on strict liability; absolute and strict liability he who pollutes should pay for cleaning up. Later on, there was a clause added for compensation to the victims also;

in 1997 you can see this happened in 1996. And here in 1997 Government came up with National Environment Appellate Authority Act.

This is a body where which decides about please note compensation for damages to persons. In 96, this was not available in 97 onwards it; it sort of us is a growing realization that there can be victims of environmental disasters and that we need to talk about compensating them fairly. And also for any clean up specially the industry needs to pay the compensation and also hear to hear appeals made against any instruction that goes from environmental violation. So, the business also is going to be given a chance to make appeals and all of that is going to be looked at by the appellate authority.

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Regulatory enforcement: India

- Shows improvement.
- **Central Pollution Control Board (CPCB), State Pollution Control Boards (SPCBs):** Insistence on installation of online effluent / emissions monitoring systems
- **National Green Tribunal (NGT),** and its various benches throughout the country to monitor and to implement the environmental laws.
- 2016: Pollution limits of many industries, which were not updated for a decade, have been tightened; e.g. Thermal power. Proposed stricter new norms for certain industries: Cement, textile, paper and pulp, etc.
- Most industries have been asked by MoEF : Zero liquid discharge. That is, all of them are required to recycle the wastewater after treatment. Special emphasis on water pollution, specially the industries which are located in the Gangetic basin. Link to "Clean Ganga Mission".
- However, a lot remains to be done. |

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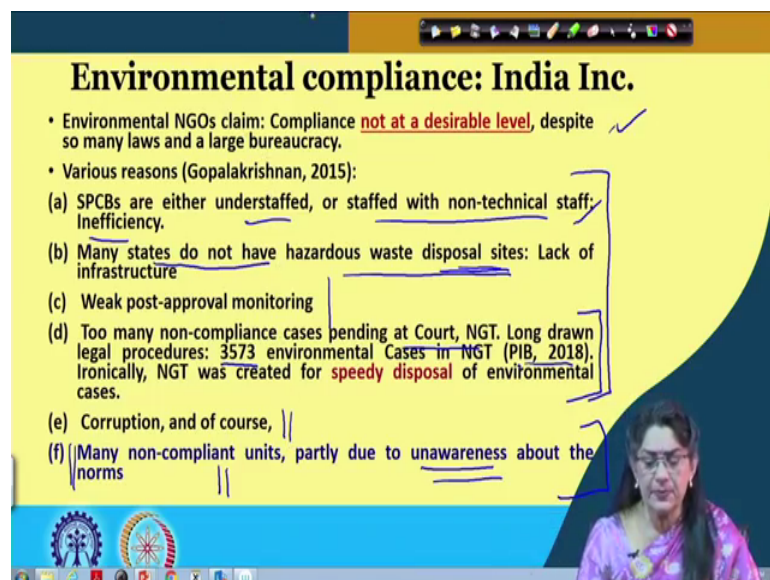
The regulatory enforcement in our country is also laid out nicely in a structured format. In fact, I am sure you read from time to time in newspapers about pollution control boards. There is Central Pollution Control Board, CPCB which is at the center you know we have the federal and the state or the center and the states and then there is state pollution control boards.

So, you may if you belong to West Bengal state; then there is West Bengal State Pollution Control Board. If you belong to Karnataka; then there must be Karnataka State Pollution Control Board. What they do is to look after monitor the compliance by the industries and also they in unison has have been talking about installation of online effluent emission monitoring systems which they can monitor in from a distance.

There is also national green tribunal; this is the judiciary support and its various green benches throughout the country which basically monitors whether the environmental laws are being followed and also to help to implement those laws. In 2016, these regulatory efforts have tried to revise the pollution limits of many industries. How much can you pollute? I mean you have to run a industry and there are certain processes that have to take place and off shoot is often some pollution waste coming out, but it you have to stay within the stipulated limit. So, what is that limit? Now that depends on the industry that you are in.

For example, thermal power, cement, textile you know these are well known segments. So, most industries have been asked by the ministry to come to zero west or zero liquid discharge; specifically the industries which are situated on the banks of major rivers specially we are talking about the Gangetic basin; they have been asked to adopt a zero liquid discharge because the discharge eventually finds it way to the river. The link is clearly to the to the mission Clean Ganga mission of course. So, the regulatory support is there, but having said that we do have laws, we have the regulatory support also, but even having said that the point remains that a lot still remains to be done; now why is that?

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Environmental compliance: India Inc.

- Environmental NGOs claim: Compliance **not at a desirable level**, despite so many laws and a large bureaucracy. ✓
- Various reasons (Gopalakrishnan, 2015):
 - (a) SPCBs are either understaffed, or staffed with non-technical staff. Inefficiency.
 - (b) Many states do not have hazardous waste disposal sites: Lack of infrastructure
 - (c) Weak post-approval monitoring
 - (d) Too many non-compliance cases pending at Court, NGT. Long drawn legal procedures: 3573 environmental Cases in NGT (PIB, 2018). Ironically, NGT was created for **speedy disposal** of environmental cases.
 - (e) Corruption, and of course, ||
 - (f) Many non-compliant units, partly due to **unawareness** about the norms ||

The problem many point at is the lack of proper compliance; compliance is low. The environmental NGOs always complain about it that the compliance is not at the desirable level despite so many laws, despite so many authorities and tribunals and all.

The of course, the problem is on the side of the industries in terms of non compliance, but often the non compliant unit say that we are not even properly aware about the norms. So, somewhere they indicate that there is a lack of communication or awareness campaign is probably necessary; that we do not know whether how much of that is to be taken as, as the direct statement. But the point is that there may be some non compliance on the part of the industries, but there are also people point out some shortcomings on the government side.

For example, they have pointed out that the state boards are often either understaffed or staffed with people who do not really know the technicalities of the issue. So, they are not the best judges of those situations; to understand whether the compliance is complete because environmental related norms are not that easy, you know there are things to understand behind that. And so there is a inefficiency in the system; others have said that you know we can talk about proper pollution control provided you have waste disposal sites; specifically for hazardous waste or effluent.

First thing that is needed is where are we going to dump it? So, we need some disposal sites and many states are deficient in that. So, there is lack of infrastructure they also point out that you know the environmental approval is given to the projects, but once the project starts; there is very little monitoring that goes in post approval.

The judiciary, the benches the courts the national green tribunal; the allegation is that there is still a long line too many cases are waiting to be adjudicated at the court; you know this is a PIB; so Press Information Bureau, 2018; the Government estimate says about 3573 environmental cases are still waiting to be judged on this and there are also allegations of corruption in the system. So, there are number of factors because of which compliance seems to be a problematic part.

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Environmental compliance: India Inc.

- **Poor compliance:** Delayed tactics, and rounds of negotiation: For example, India's cement industry, which accounts for the world's second largest cement manufacturing, met the newer, stricter norms after a long delay and rounds of prolonged appeals to the ministry and talks for relaxing the newer pollution limits. Only after the norms were relaxed (2018)
- However, corporate environmental compliance reporting has increased, sustainability reporting practices have shown improvement.

Compliance

Diagram illustrating the components of Compliance: POLICIES, REQUIREMENTS, REGULATIONS, STANDARDS, TRANSPARENCY, ROLES.

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The industry have been often charged with the allegation that they play delayed tactics; in when you charge an industry that you are not following up compliance is poor they start negotiating, they start delaying the process and after all rounds and rounds of negotiation; then they bitterly or resentfully try to comply, but with some negotiation. So, this we have seen also.

But surprisingly the when we talk about reporting environmental compliance reporting that practice has increased, there is also increasing sustainability reporting practices. So, reports are coming in disclosures are happening yet underneath there is this allegation that environmental compliance is not at a desirable level. So, you start to wonder what is it that they are reporting? And how much of it is; is actually being practiced?

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Environmental compliance: India Inc.

- Poor state of compliance is also indirectly established by investor pull-out: Due to non-adherence to ESG rules related to coal usage linked to carbon emission, Norges Bank, a major global investor, sold off its equity investments in 7 Indian companies; Coal India, CESC, Reliance Power, Gujarat Mineral Development Corporation, NTPC, Tata power, and Reliance Infrastructure (ET 2016).
- Also, pressure on the Government to improve its ranking in ease of doing business: This usually means dilution of regulatory norms, which often implies more harm to the natural environment.
- Corporate Offenders, MSMEs continue to abuse the environment
- To ground the corporate obligations in the laws, though extremely important, may not be a complete and adequate solution.

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The; if you want further evidence for poorer compliance in our country by industry; then we can cite also the phenomenon of investor pull out; the foreign investors specifically from Europe; they are very very sensitive about environmental related non compliance.

Here is one particular case that I can cite immediately; this has happened in 2016; where Norges Bank, a major global investor they took out their money they withdrew their money from 7 Indian companies as you can see; some private, some public. And the charge was that they due to non compliance to environmental safety and governance; rules related to coal usage which the investors clearly thought was not the kind of fuel that they should be using.

So, you can see that where it can lead; it can actually repel some investors. Regarding governments position on this we need to mention one point that governments position is somewhat ambiguous on this issue about environmental compliance. Because there is pressure on the government we have a very populous country billions and billions of people and there is pressure on the government to improve its ranking in the ease of doing business.

You know there are indices that measure how friendly you are towards business, how friendly destination you are in terms of attracting foreign investment. And this usually means dilution of the regulatory norms. So, which often implies that there can be compromised with the environmental norms. So, there are environmental laws as I have

shown you; there is regulatory support, but there is also tremendous pressure on the government to improve the economy and its one of the ways is to attract the investment from outside.

So, underneath all this ambiguity, infrastructure shortcomings and other things and of course, non compliance, attitude of the some of the industries the abuse of the environment keeps growing. So, the legal side as I presented to you is there its quite strong, but it may not be a complete and adequate solution by itself.

Specifically, I need to mention that when we find that the law is not being able to make people do or there is noncompliance despite the laws; typically it is the people and their voices that start to take a prominent role. Because society can put up with doing it so much; after that they will start to protest. So, we are talking about the Vox Populi or the voice of the people.

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Social pressure against corporate irresponsibility: Some recent cases

These days: Society, NGOs create pressure.

- Sterlite Plant in Tuticorin, Tamil Nadu, 2018: Copper smelter, controlled by London-based Vedanta.

Law: In September 2010, Madras High Court ordered the plant to shut down. In 2013, NGT ordered it to shut its operations on complaints about several gas leaks. It reopened. In 2018, Tamil Nadu SPCB rejected the company's license to operate, on environmental non-compliance charges: Dumping copper slag in a river, not furnishing analysis of groundwater borewells near the plant.

Local residents: Against the plant. Allegations: Plant polluting groundwater in the area. Protests became violent in May, 2018: 11 people were killed.

Sterlite: Claims to comply with all environmental norms.

Let me show you that in India also we have seen that how peoples voice have started to show up and make its presence felt against some very big corporations the some of the recent cases I am mentioning.

For example, the Sterlite Plant in Tuticorin Tamil Nadu and this is the year 2018; not too far off. What is it is that they set a copper smelter, this plant is controlled by the London based Vedanta group. In 2010; there were complaints, so the Madras High Court ordered

the plant to be shut down and the National Green Tribunal also ordered that its operation should be stopped because there were complaints from people around about several gas leaks, but somehow it reopened.

And in 2018, the Tamil Nadu State Pollution Control Board rejected the company's license to operate. Why? On environmental non compliance charges; what they said the company was doing that they were dumping copper slag in a river which they are not supposed to. And not furnishing the analysis of ground water bore wells near the plant that may contain some evidence of whether there is groundwater contamination or not.

Now, the local residence and their sentiments were against the plant; the allegations were that the plant is polluting the groundwater in the area, this is copper smelter we are talking about. And the protests continued you know we are talking about 2010, this is happening in 2018. So, year after year though the law has come in and tried to shut it down, somehow the company has continued to do this. And note that the company has been always in the denial they said that we are not violating any of the environmental norms, but look at discharges and there is no way to establish unless the in the plant cooperates with the authority.

So, in this kind of way the turmoil just escalated and in May, 2018; some of you know protests became rather violent, 11 people were killed. We do not know exactly what led to work, but this is not something that we want to happen and this is where you need to respect the people's opinions also let me show you another equally important thing.

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Coca-Cola Plant in Plachimada (2000-2007), Kerala

- In March 2000, Coca Cola, under its Indian subsidiary Hindustan Coca Cola Beverages Private Limited (HCCBPL), started its bottling plant at Plachimada. Local people claimed: Water scarcity started soon afterwards. Kerala State Govt and High Court started proceedings against the plant in 2003. After a long judicial process, despite public protests, the plant resumed operations.
- In 2003, Center for Science and Environment (CSE) in 2003, a NGO, published a report: Evidence of pesticides, to a level exceeding European standards, in a sample of a dozen Coca-Cola and PepsiCo beverages sold in India. The report attracted social and media attention, resulting in consumer boycott, protests: An overall sales drop of 40% in India.

This is Coca Cola plant in Plachimada from 2000 onwards for about 7 years this saga continued. Coca Cola set up its plant in Plachimada and the local people claim that the water scarcity in fact, started almost afterwards.

So, ground water scarcity we are talking about his soft drinks plant; it needs water and where is it getting its water from and we are talking about local people coming up and saying that the water scarcity has started because of the plant. So, in 2003 Kerala State Government and High Court started their proceedings against the plant and an a long judicial process started. There were big public protests, there was this legal court proceedings were going on, but somehow the plant resumed operations.

The clinton, the turning point came in 2003; when an NGO; this is an environmental NGO; Center for Science and Environment or CSE published a report which showed that there was evidence of unacceptable limits of pesticide in the soft drinks made by this Coca Cola.

So, this report attracted the society's attention and media attention as a result there was spontaneous consumer boycott and protests against the plant. Overall there was a sales drop of 40 percent of Coca Cola in India; this was just the beginning.

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Coca Cola Plant in Plachimada (2000-2007), Kerala: Social Pressure

- Government also did its own tests, but did not find any alarming pesticide presence. Coca Cola was only asked to improve. In 2006, CSE published a second report to show that nothing has changed in Coca Cola, the pesticide presence is still at excessive level.
- Coca-Cola was also accused of causing water shortages, water and soil pollution by discharging wastewater into fields and rivers.
- Throughout all this, Coca Cola was in denial. Bad strategy. Result: The company suffered a great loss of revenue, consumer trust and support, reputation.
- Turnaround: In 2008, Coca Cola made the strategic decision to revamp its CSR and water policy: Target to be Water Positive, rainwater harvesting, replenish the groundwater used, etc.

VOX POPULI
the voice of the people

NO ENTRY COCACOLA
Solidarity

Government stepped in and they also did their own tests, but they did not find an alarming presence of pesticide and Coca Cola was only asked to improve its operations. Then in 2006; the same NGO, CSE brought in a second report published it and showed that nothing actually has change in Coca Cola.

The coco the pesticide presence is still at an unacceptable level not only that Coca Cola is also accused of causing depletion. Water shortages and soil pollution because they were discharging the wastewater into the fields and the nearby rivers. This is not a situation which is very nice for any business; it went there particularly because the company was in denial throughout which turned out to be very bad strategy. And as a result the companies suffered financially and also reputationally. And we have we have talked about this that these days the financial risks are there, but the social risks are very very high.

So, as a result Coca Cola learned quite late that it needs to change its ways. So, in 2008; we saw that Coca Cola strategically positioned itself to do investment in water saving procedures. So, it started to revamp its CSR policy with water policy and its target was to be a water positive; rainwater harvesting, worked with the local residence regarding water conservation; things that they could have thought about much earlier.

So, why I brought this in was the point remains this that we started out by saying the let us try to look at the issue from the legal point of view. And I have shown you that laws

themselves are not adequate or the complete solution to the problem; it does not make the businesses compliant overnight.

And there though there is regulatory support, but there are other kind of problems. While this is happening, we also find that society is nowadays is quite aware about the situations and peoples voice take over and often it leads to unpleasant situations like that last two situations that we have mentioned it.

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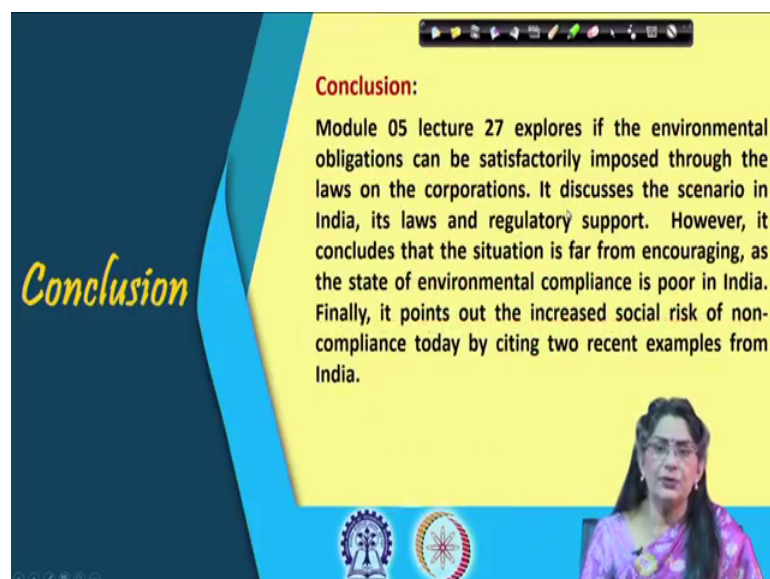
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So, this is what I wanted to talk about today.

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Conclusion:

Module 05 lecture 27 explores if the environmental obligations can be satisfactorily imposed through the laws on the corporations. It discusses the scenario in India, its laws and regulatory support. However, it concludes that the situation is far from encouraging, as the state of environmental compliance is poor in India. Finally, it points out the increased social risk of non-compliance today by citing two recent examples from India.

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Next session we are going to talk about on whether we can place these corporate obligations on some other ground; such as business strategy, but we are going to end the lecture today here.

Thank you very much.