

Gas-coal disasters and corporate criminal liability



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In recent years, particularly in the west, there has been increasing concern over the threat to public safety caused by the failure of corporations and companies to provide adequate safety standards for the potential victims, specially the members of public. There has been strong criticism of company management in respect of accidents resulting from managerial incompetence. The questions for consideration are, if companies and their senior managers could be exposed to criminal liability for incompetence and failures to act when the safety of the public is put at risk and consequently, if such corporate liability is accepted, how the law should be framed to ensure effective enforcement?

The discussion of aforementioned corporate liability practically relates to the boundary between civil and criminal liability. The civil courts would award compensation when negligence by way of a breach of legal duty of care results in incidents of damage to person and property. The issue of corporate liability arises in situations in which individuals at the moral centre of the society may be identified as being criminal.

This is so because criminal law, from a juridical point of view was never thought to be an appropriate mechanism for dealing with high-flying corporate criminals. The impression one gets is that although corporations and companies are formally subjected to the criminal law, practically they remain outside its ambit. The present approach which seldom attributes criminal liability to companies or their directors/managers, reflects the general influence of political individualism in criminal law theory.

What follows from the above is that only individuals can act and therefore, it is right to concentrate attention on the blameworthy individuals. Naturally, this strengthens the notion of individ-

STRAIGHT LINE

Disasters occurring in Bangladesh are strongly suspected to be attributable to high levels of neglect that should be the ultimate responsibility of the higher management. It is thus only natural that individuals who enjoy many financial rewards and advantages of the boardroom should not be insulated from criminal responsibility when things go wrong. Corporate status must not protect higher management when casualties result from the actions of the company.

ual's responsibility, with intention being the central concept in attributing criminal blame. However, such a view significantly ignores the impact of corporations in the modern world. In reality, the activities of corporations/companies often become a threat to the wider community.

The failings that occurred in Magurachara and Tengratila, it is alleged, had not been comprehensively looked into and the premonition is that adequate enquiries would have revealed an unusual catalogue of incompetence relating to many levels of operation, management and design. It might have been possible to identify irresponsible management decisions which contributed to operational dangers and the same could be linked to the immediate cause

of accident. Then of late Titas gas field leakage posed another blow-out of perhaps greater proportion. However, this time greater efforts were taken to contain it. But again the death of a foreign expert in Barapukuria mine Thursday raises question on efficiency and safety measures in our mining sector.

One shall not be wrong to presume that a full investigation into the disasters could perhaps lead to the conclusion that the underlying or cardinal faults lay higher up in the company. The directing complement may not have appreciated their responsibility for the safe management and as such not applied their mind as to the specifics of safety devices. So all concerned in the management should be regarded as sharing responsibility for the failure.

Following Magurchara and Tengratila accidents there were hostile public and media response to the disasters which are suspected to have been caused by corporate neglect and thus there should be concerted action to call for greater retributive punishment which should stigmatise the company and its management. The relevant query is, had there been an exposure to risk which would justify a substantial term of imprisonment as an appropriate punishment? One needs to know if the company was aware of the risk it was running and that in failing to act it was subjectively reckless. In principle, the company can be criminally persecuted for causing physical harm and destruction of property. However, if the normal rules of criminal liability are fol-

lowed, it would be extremely difficult to establish liability of large companies because the controlling officials are often very distant from where the main activities of the company take place.

In England and Wales the law commission has proposed the introduction of a separate offence of corporate killing. Looking at the definition one finds that---

i) A corporation is guilty of corporate killing if; a) a management failure by the corporation is the cause, or one of the causes of a person's death; and b) that failure constitutes conduct falling far below what can reasonably be expected of the corporation in the circumstance.

ii) Under Clause 4(2)-- a) there is a management failure by the company if the way in which its activities are managed or organised fails to ensure the health and safety of persons employed in or affected by those activities; and b) such a failure may be regarded as a cause of a person's death notwithstanding that the immediate cause is the act or omission of an individual.

The above new offence points to the liability of failure to ensure the health and safety of persons affected by the activities of a company. The essential element is that liability is attributed for the failure of the management rather than to the failings of individuals. The new offence allows a company to be at fault in a criminal sense through the shortcomings in its policies and operations without any need to associate this with a human agent individually or collectively. Additionally, the criminal liability of the company will be judged independently of the employees.

The important lesson for us is that companies should be open to both civil and criminal liability because they create the structural context for the individual's conduct. The corporation which appoints the individual should bear primary liability or at least concurrent liability. The aforementioned

English law (proposed) should help us develop a more effective method of attaching blame to a company or corporation. Too much immunity should not be granted to leaders of industry and the senior management of corporation.

Disasters occurring in Bangladesh are strongly suspected to be attributable to high levels of neglect that should be the ultimate responsibility of the higher management. It is thus only natural that individuals who enjoy many financial rewards and advantages of the boardroom should not be insulated from criminal responsibility when things go wrong. Corporate status must not protect higher management when casualties result from the actions of the company. Our approach should be based on the assumption that irresponsible corporations are criminal and that the directing and managing elements therein stand the risk of facing potential criminal convictions.

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Why is SAARC progressing so slowly?

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WE concluded the 14th SAARC Summit in New Delhi with the vision of a South Asian community that will ensure free flow of goods, services, peoples, technologies, knowledge, capital, culture and ideas in the region. The highlights of the summit include: adding Afghanistan into the group, establishment of SAARC Development Fund (SDF), South Asian University, SAARC Food Bank, SAARC Arbitration Council, and Independent South Asian Commission on Poverty Alleviation (ISACPA) for achieving SAARC Development Goals (SDG). Additionally, we emphasized on intra-regional physical, economic and people-to-people connectivity, realization of SAFTA at the earliest possible time, and ensuring clean water, energy, food and environment to the people. We also had China, Iran, Japan, European Union, Korea and USA as Observers in the meeting.

All these are laudable goals and moves in the right direction. The question is why is SAARC progressing so slowly? When shall we be able to implement the declarations and enjoy the fruits of SAARC? To answer this we need to understand the integration phenomenon from a global perspective and relate that to the economy, history, culture of the countries in the region. Many of these issues are beyond the control of any government or institution. I am highlighting a few of them.

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It seems that President Bush does not appear to have learnt any lesson during the last four years of fallacious war in Iraq. He is of the view that "contagion of violence could spill out across the entire country and region as well, if American forces were to be withdrawn from Iraq". He saw some progress being made to quell the violence. The President Bush vowed on April 23 to strongly reject an artificial timetable for troops' withdrawal while Senate majority leader Harry Reid defiantly said Congress would approve legislation requiring that a withdrawal begin by October 1, with the final troops removed within six months. Last week the majority leader drew harsh criticism from Republicans for saying that the war was lost and President in state of denial about Iraq.

Last four years of arrogance of President Bush and the war and occupation of Iraq have

economic integration shifts production from less efficient domestic producers to more efficient regional producers and the gains from overall market growth helps all in the region. Today, the notion has a broader connotation and is tied to regional peace and security.

Typically, the process of economic integration consists of the following stages, and the transition from one stage to the other is difficult and complexity varies by group and region.

1. Regional Cooperation Groups (no serious tariff reduction)
2. Free trade area (no internal tariff)
3. Customs Union (no internal tariff and common external tariff)
4. Common Market (no internal tariff, common external tariff and free factor mobility)
5. Complete Economic Integration (no internal tariff, common external tariff and free factor mobility, and common monetary and fiscal policy)

European Union leads the integration efforts in the world and is in Stage 5. In 1957 they were in Stage 1; it took 35 years for European Union to establish a common market (Stage 4). Being the first in experimentation they had all the hurdles to cross. NAFTA is in Stage 2. Relatively speaking, NAFTA is a latecomer in integration. They started in 1994 and surpassed many other regional blocs in establishing a free trade area in 2005. Now, USA is working on Central American Free Trade Agreement (CAFTA).

The success of NAFTA also has a different twist; its establishment is like a counterbalance to the European Union. USA needed more market power and political leverage in WTO negotiations and other international forums and NAFTA helped her with that.

Additionally, larger market helped businesses in respective member countries.

All other integration groups in the world are still in Stage 1. These groups in Asia include Association of Southeast Asian Nations (ASEAN), Asia Pacific Economic Cooperation (APEC), Economic Cooperation Organization (ECO), Gulf Cooperation Council (GCC) and South Asian Association for Regional Cooperation (SAARC). The African groups are Common Market for Eastern and Southern Africa (COMESA), Economic Community of West African States (ECOWAS), and Southern African Development Community (SADC). The Latin American groups are Latin American Integration Association (ALADI), Andean Community (CAN), Caribbean Community and Common Market (CARICOM), Central American Common Market (CACM), and Southern Common Market (MERCOSUR).

Some of these groups were formed in the 1960s and 1970s and are still struggling to move to the next stage, establishing a free trade area. In this regard MECOSUR and ASEAN seem to be a bit ahead of others in terms of tariff reductions and other concessions. SAARC is still far behind. Our experimentation in integration is facing similar setbacks that most groups face in Stage 1.

In fact, the first jump from Stage 1 to Stage 2 is the most critical step for any integration group and SAARC is no exception.

Establishment of a free trade area needs a lot of economic adjustments and initial sacrifices. It is difficult for countries to give up their comparative advantage for an unknown would-be-beneficial trade regime. It also requires proper institutional support to design and implement the agreement. Preparing documents relating to integration, harmonization, rules of origin, and dispute settlements can be cumbersome. Additionally, most countries in Stage 1 lack the knowledge or expertise in integration. The learning curve can be very slow. NAFTA had an advantage in expertise and institutional support that helped its quick implementation.

The establishment of a customs union, common market or complete economic integration poses as a different kind of problem. Since SAARC is far from those stages I am avoiding a discussion of it.

EU as the role model

Most regional groups look at the EU as a role model in integration whose success may be attributed to many factors including: (1) common desire for peace and stability in Europe, (2) geographic proximity and common European heritage, (3) economic and trade interdependency and (4) strong political will. I shall evaluate SAARC based on these factors, discuss reasons for slow progress and suggest specific measures in each area.

Suffering of the people during

the progress is likely to be slow. Political settlement must precede a successful economic cooperation. It can go simultaneously though.

Geographic proximity and culture

Geographic proximity and common cultural heritage is the starting point of any regional integration initiative. It is true for EU, NAFTA or other groups. A common strategy to share land, water and other resources definitely makes more sense. Common cultural heritage adds to that. The inclusion of Afghanistan into the group underscores the importance of this factor.

Understandably, water (i.e. Farakka), energy, and infrastructure cooperation must improve. The SAARC Regional Multimodal Transport Study (SRMTS) is a

good step in this regard. We need more serious discussion on common energy and telecommunication issues. The Declarations are not sufficient.

The region still faces attitudinal and cultural problems. There is serious mistrust among the neighbors. We do need to improve people-to-people connectivity. Car rally, establishment of various citizen forums, declaration of a SAARC university, scholarship scheme, youth camps, annual festivals for cultural exchange, regional tourism, visa liberalization, and media cooperation are excellent moves in the right direction. We must continue what we are doing and find innovative ways to increase cultural cooperation. The spill-over effect of cultural cooperation and their media coverage may help the resolution of our political and economic conflicts. It could take a long time to realize that.

Economics of SAARC

The eight SAARC nations have a population of about 1.45 billion, about 22% of the world population, and their GDP amounts to about \$1 trillion. Taken together, it is an impressive market power, but we have not been able to capitalize on it.

Partly, this is coming from the lack of serious trade reciprocity in the region. The volume of trade amongst the SAARC member countries is about 6% of their total trade. Comparatively, this is 56% and 53% for EU and NAFTA

respectively. Mutual interdependency favors integration dynamics. It is 20% for ASEAN and 25% for MERCOSUR. The small share of intra-SAARC trade weakens the argument for integration.

The SAARC member countries compete in global markets with similar products. Our export bases are not significantly different. As individual countries we are fighting for similar preferential treatments in EU and other international forums. Export competition abroad undermines our cooperation at home. This situation is not likely to change in the near future, weakening the basis for regional cooperation in trade.

India's role in trade is a critical issue in the region. Her continuous trade surplus with member nations has been discussed in most trade negotiations. The lack of reciprocity and apathetic attitude of the Indian bureaucracy/government is hurting the fair trade initiative. India's Prime Minister Dr. Manmohan Singh's announcement during the Summit to allow zero duty access before the end of this year to South Asian neighbors is a laudable shift, but we are yet to see the result. India also needs to address informal trade (black market), currency valuation, and slow tariff reduction schemes and other unilateral concessions to establish a viable trade regime.

Being at different stages of development, member countries have different (and sometimes competing) fiscal and monetary policies and trade priorities. I am glad that our leaders have paid special attention to these issues in the 14th Summit Declaration, what we need more is an implementation of the Declarations.

Questionable political will

Political will is a sine qua non for integration. Governments signing an integration treaty bequeath a long term consequence for the

future generations. That is why we expect the Governments to be democratically elected representing the will of the people. European Union accepted Greece, Portugal and Spain in the 1980s only after they have established democracy at home. Norway could not join the European Union in 1995 because its people voted against the joining through a referendum. Canada almost voted against NAFTA (52-48 was the referendum result).

Most regional cooperation groups in the world lack proper political will because of the absence of democracy. Except for India, all governments attending the 14th Summit can be questioned on this. SAARC governments need to establish democracy at home before considering the citizens in other member countries. We cannot sign Declarations while denying economic and civil rights to our own people. Also, without a proper people's representation the implementation suffers.

The purpose of this article is not to dampen the mood of the recently concluded jubilant Summit. Let us continue what we are doing but also keep in mind that the process can be very slow. There are too many uncontrollable variables on the part of the governments to address. We may need a few more Declarations to establish SAFTA or to truly benefit from SAARC.

Despite our slow economic progress we must allow SAARC to work. There is no other forum in the region that can put two nuclear neighbors on a peace table. That is a good non-economic contribution of SAARC, and we need that in the region.

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Iraqi refugees become a headache

It seems that President Bush does not appear to have learnt any lesson during the last four years of fallacious war in Iraq. He is of the view that "contagion of violence could spill out across the entire country and region as well, if American forces were to be withdrawn from Iraq". He saw some progress being made to quell the violence. The President Bush vowed on April 23 to strongly reject an artificial timetable for troops' withdrawal while Senate majority leader Harry Reid defiantly said Congress would approve legislation requiring that a withdrawal begin by October 1, with the final troops removed within six months. Last week the majority leader drew harsh criticism from Republicans for saying that the war was lost and President in state of denial about Iraq.

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wrought the county on the verge of breaking down. There has been unabated violence and killings, of both Shia and Sunni alike, apart from American soldiers. The government of Nouri Al Maliki, a shia and a puppet regime of Bush administration is seen as an architect of killing of Sunni community. The greatest tragedy of war is the worst refugee crisis in the Middle East.

According to the United Nations High Commission for Refugees, some two million out of 26 million Iraqi population have fled their home. Most of them took shelter in Jordan, Syria, Lebanon, and Turkey. Most of them fled with little more than the clothing on their backs. None of them went to the United States, which claimed to have liberated them from the oppression of dictatorial regime of Saddam Hussein. The United States has done nothing to address the great human tragedy that it made in history. According to one estimate, another 1.9 million are dis-

There has been tremendous pressure on the economy of two poor countries, Jordan and Syria, in the Middle East as a result of Iraqi refugees. Western countries, particularly US, may soon come under pressure from UN to share the cost and admit more refugees. Today's despair, anguish, uncertainty in Iraq is squarely lies with Bush administration. There will be no solution in Iraq unless US troops are withdrawn.

placed, driven from their homes and neighbourhoods by US occupation and civil war that followed between Shia and Sunni. This is the largest exodus of Iraqis in the Middle East ever since the expulsion of Palestinians from their homeland by Israelis in 1948.

The influx of Iraqi refugees to Jordan and Syria would certainly cause economic burden on these countries as both Jordan and Syria are economically poor countries. According to Voice of America, the living condition in Jordan is deplorable. Jordanian journalist Rana Sabbah told VOA that "the international community has not done enough to help the Iraqi refugees or Middle

Eastern countries that are struggling to host them". America ironically gave asylum to only 200 Iraqis. Unless the UN High Commission for Refugees has initiated humanitarian effort to save the lives of refugees in Jordan and Syria, the lives of these refugees would be at stake.

As one of the wire services report indicates that some Iraqi women have adopted prostitution in Syria, it is slur on human civilization. This is the direct result of illegal invasion of Iraq by Bush administration.

Meanwhile, the invading country, America, has agreed to resettle around 7000 Iraqi refugees. Bush administration has

also committed \$ 18 million aid to UN High Commission for Refugees for their rehabilitation in Jordan and Syria. This is one third of the total amount requested for Iraqi refugees by UNHCR.

US should be held responsible logically for causing unprecedented massacres in human history in Iraq as an illegal invader violating international law and the United Nations should ask US to compensate for the human tragedy by providing shelter and food for Iraqi refugees. Jordanian journalist also told VOA that many people she had interviewed thought America should be morally and legally responsible for the refugees.

On the other hand, US soldiers continue to die from road side bombs, and sniper fire. More than 3300 US soldiers lost their lives as of March this year. Nearly 24,000 have been wounded. Another 80 civilian contractors were killed. For the first time since World War II, the US has sent large numbers of National Guards and the reserves into combat. More than one hundred thousand Iraqi civilians have died. As Congressional research service puts the figure of cost of Iraq war, it would exceed \$456 billion by September, 2007.

The worst scenario is that many American soldiers returning

home are suffering from post traumatic stress disorder. Jonathan, marine, who won purple heart award in the war in Iraq, committed suicide on return home in the depth of despair and hopelessness at 25. Also the treatment to returnee war veterans in the hospital in America has raised question. One of the Surgeons General of the Army Lt. Gen. Kevin Kiley has to resign as a fall out from the scandal at Walter Reed Army Medical Center in Washington DC.

Iraqis are questioning the purpose of US mission in Iraq. US congress and majority Americans are demanding for definite timetable for withdrawal of US troops. As against this bleak backdrop, Bush administration and supporters of Iraq war are resorting to a last desperate rationale for staying in Iraq: "to prevent the terrible aftermath that will occur if our forces are withdrawn". As of now Bush administration has failed to sell the rhetoric on Iraq.

Last November the mid-term

election of the congress demonstrated the will of the people of America. They expressed their indignation against the administration on its handling of war in Iraq and voted out the Republicans from majority position in the Congress. The verdict was clear and loud: get out of Iraq. Thousands of anti-war people around the United States were on the streets on March 17 to voice their protests against continuous fallacious war.

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