

## STRAIGHT LINE

## ASHULIA TRAGEDY

# Corporate criminal liability



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**P**UBLIC opinion reflected through media reports and comments is of the view that the Ashulia garments factory tragedy that took at least 111

lives, and injured scores others, is another sad episode in our long chapter of industrial establishment disasters.

The High Court has asked the government to explain why it should not be directed to prosecute and punish those responsible for the fire.

The apex court has also decided to form an independent committee to probe last Sunday's fire and intends to ascertain the compensation given to the families of the victims, and also the measures taken for the treatment of the injured staffers.

Going by past experience, nobody knows for sure how all the measures taken and intended to be taken by the executive and the judiciary would provide real relief to these victims. It would indeed be difficult to adequately compensate the surviving victims; whose heart-rending cries and wailings cannot but move even the most stone-hearted.

The reality on ground, however, is disturbing because the fear of authority has almost disappeared. The recurrence of the disasters caused by fire testifies the indifference and callousness of the management about taking safety measures despite repeated and warnings.

That brings us to the increasing concern over the threat to public safety caused by the failure of corporations to provide adequate safety standards for the potential victims.

There has been strong criticism of company management in respect of accidents resulting from managerial incompetence. The questions to consider 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 should the law 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 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 gen-

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eral 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 individual 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 recent past 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. 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 these 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

Under Clause 4(2) of the Law:  
a) There is a management failure by the company if the way in which its activities are managed or organized 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.

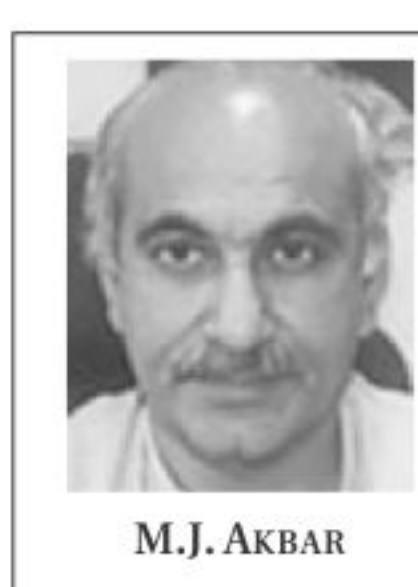
Additionally, the criminal liability of the company will be judged independently of the employees.

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 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 the 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.

The writer is a columnist for *The Daily Star*.

## BYLINE



M.J. AKBAR

**O**NE of the minor games of public life is decoding the difference between what a politician says and what he means. Bal Thackeray, who

founded the cadre-based Shiv Sena in 1966, and nurtured it into the second largest party of the second largest province in India by the time he passed away last week, Maharashtra, never used code.

He said what he meant, particularly when he intended to be virulent. He was indifferent to the consequences of candour, not because he felt he was stronger than his opponents, the Congress Party, but because he believed that on the particular battlefield where he chose to take a stand, Hindu-Muslim conflict, the Congress was weaker than him.

Congress was in power in Mumbai and Delhi in December 1992, when the Babri mosque was turned into rubble in Ayodhya and riots followed in Mumbai, as in dozens of other cities across India. An official enquiry confirmed what everyone knew, that the Shiv Sena had played an instrumental role in violence that left 575 Muslims and 275 Hindus dead in Mumbai. Congress could not find the political will to prosecute.

Thackeray was 21 when India was partitioned in 1947 because the

Muslim League in British India argued, against the evidence of history and culture; that Muslims could not live as equals in a united nation. The British helped the League to become the dominant voice within the spectrum of Muslim communities by giving it the sole place at the high table of negotiations. For the young Thackeray, and others like him, this was proof, if indeed proof was needed, that Indian Muslims could never be patriots.

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Mistrust congealed into barely disguised rage.

Most Hindus did not agree with him, not then and not now. They refused to blame all Indian Muslims for the misconceptions of the Muslim League. But the price of partition was heavy, both in terms of war between India and Pakistan, the first two nations to roll back European colonization, and in bitter internal skirmishes that poisoned relations between communities.

This, however, was not Thackeray's only passion. He sought pride and jobs for his own community, Marathis, against the encroachment of other Hindus as well, whether they were from Gujarat or South India. The Left was anathema to his politics. He began as a professional journalist, drawing

cartoons for an influential Mumbai newspaper before he set up his own political party. Reward came when the Shiv Sena was elected in his state.

But, although Thackeray hit every button of regional emotionalism, he could never claim power as a natural prerogative. The Shiv Sena has lost far more elections than it has won.

In a slow but inexorable process, India began to change after 1992, and the Shiv Sena did not change as much as India did. There have been no major

Hindu-Muslim riots in India after 1992-1993. The Gujarat carnage a decade later was a derivative of 1992. The sheer cost of previous violence opened Indian eyes to a simple fact: conflict and economic growth cannot co-exist. Common sense insisted that a better economy was the saner option.

The economic reforms of the early 1990s, which came around the same time as the huge spike in ethnic battles, engineered something larger than an economic phenomenon. They altered the culture of politics in very significant ways, by redirecting the equation of electoral mathematics from traditional sources of competition, like caste and religion, towards good governance.

This did not -- could not -- happen

suddenly. But all over India, including the north where the virus had deep roots, politicians discovered that the old formula was being replaced by new urges. India is now in the midst of its second and more important liberation struggle. In 1947 it won freedom from the British. Today it is unravelling the chains of its own, home-grown demons.

Does Bal Thackeray's death mark the passage out of the politics of provocation? We can raise the question today, but the answer will only come tomorrow, from his heirs. There are two claimants to his legacy, his son Uddhav and his nephew Raj. We shall soon learn who commands the space vacated by Balasaheb, and how he wins the battle of succession.

A few weeks ago, some Muslims in Mumbai went berserk during a maiden demonstration, leading to arson and death. In the 1980s the response in this volatile city would almost surely have been widespread counterattacks. Raj Thackeray mobilised an impressive rally of his supporters in answer, but controlled it to the confines of rhetoric.

Lives end, but life does not. History evolves; society shifts its momentum from one fulcrum to another. Politicians can survive by clinging on to the status quo; but they thrive only when they move ahead of the curve that alters social behaviour. The future can only belong to those who recognise the future.

The writer is Editor of *The Sunday Guardian*, published from Delhi, and *India on Sunday*, published from London.

## Elevation of Palestine status

*An endorsement of its right to full statehood*

**E**XACTLY 65 Years to the day after the UN resolution divided the state of Palestine and established a state of Israel, the UNGA members in vast majority set the stage for the 'rebirth' of the state of Palestine by elevating its status.

We see the upgrading of the status of Palestine from that of a non-member 'entity' to a non-member 'observer state' of the UN as an overwhelming endorsement of the right of the Palestinians to a state of their own. If it was a showcase of international support for Palestine it was an equally harsh rebuff of the US and Israeli diplomacy, of US' Palestinian and, indeed, its Middle East policy.

We see the Palestinian Authorities victory as being more than symbolic. From now on, all Palestine areas illegally occupied by Israel are in fact territories that belong to a UN member state, albeit an observer state.

However, the moot point is where the two parties -- Israel and Palestine -- go from here. We feel that the development must be seen in the right perspective, more so by the US and Israel that opposed the resolution and it is on them that rests largely the future direction of peace in the region.

While the reactions of the two are only to be expected, it would be well for both US and Israel not to be dismissive about the upgradation of the Palestine status. Israel must abjure its coercive policies towards the Palestinians if it really wants the two-state solution to succeed. As for the US, it must understand that it has failed to be the honest broker in the Middle East, and it is the US's double standards in the region that has largely shaped the psyche of the international community, particularly of the Islamic world, towards it. It is time for the US to be more equitable in its Middle East policy.

By the same token it's time too for the Palestinians to integrate. There must be a meeting of the minds between Gaza and Ramallah and both, the Palestinian Authority and Hamas, must close ranks to work for implementation of the two-state solution if they want to avoid being blamed for turning their backs on peace.

## Desperately needed funds made available

*ADB loan ought to be judiciously utilised*

**T**HE Asian Development Bank (ADB) has earmarked US\$700million for the development of the severely strained power infrastructure of the country. While rental power plant contracts get all the headlines, what has for decades been overlooked is the issue of transmission system upgradation -- without which power shortfalls and outages cannot be mitigated. The ADB commitment is part of a \$1.6 billion programme that is being co-financed by Agence Française de Développement, the European Investment Bank (EIB), and the Islamic Development Bank, as well as a government contribution of \$222 million.

Needless to say, a modernisation scheme specifically targeting improvement of the power supply network is a prerequisite for more sustained and reliable power availability. This, of course, has been a missing piece in the equation so far as industry has been concerned. Low voltages coupled with power outages tends to reduce GDP growth rate by an estimated 0.5% annually. The ADB loan comes at the nick of time. It will help the country to invest in power sector development. The role of electricity simply cannot be underestimated, especially in the face of so much foreign interest in making Bangladesh a favourite investment destination over the next decade or so.

If we are to attain an estimated GDP 8% or more growth rate to attain the status of a middle income country by the year 2021, reliable and sustained power is a must. When potential investors read Bangladesh's ranking in internationally reputed publications such as IFC's Doing Business 2013 where we take the 'gold' in being the least impressive country among 185 economies when it comes to obtaining a power connection for industry, they think twice before investing. One of the major impediments in this journey towards economic emancipation is the inadequate infrastructure especially lack of reliable power supply for industrial development.

We are happy to see that policymakers have finally realised that there is now a real possibility of making Bangladesh the next potential hub for regional apparels' production. However, in order to cash in on this opportunity, infrastructure deficiencies that include power must

## THIS DAY IN HISTORY

December 1

**1965**  
The Border Security Force is formed in India as a special force to guard the borders.

**1971**  
The Indian Army recaptures part of Kashmir occupied forcibly by Pakistan.

**1988**  
Benazir Bhutto is appointed Prime Minister of Pakistan.

**2009**  
The Treaty of Lisbon, which amends the Treaty on European Union and the Treaty establishing the European Community, which together comprise the constitutional basis of European Union, comes into effect.