



Gujarat State Law Commission

JUSTICE M. B. SHAH

Former : Judge, Supreme Court of India,
Chief Justice, High Court of Bombay
President, N.C.D.R.C., New Delhi.

Chairman, Gujarat State Law Commission

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No.GSLC/2019/PS (I/c.) LPAD/098

18th December, 2019

Dear Shri *Aggarwal*,

Government of Gujarat, Legislative and Parliamentary Affairs Department; vide its Resolution No.LAC/2006/44/110/Law Cell, dated 31st December, 2013; had appointed the undersigned as Chairman of the State Law Commission.

Till date, the Commission under the chairmanship of the undersigned has submitted in all **fifteen reports** on various points for consideration and for taking further needful actions.

Today, the Commission submits its **Sixteenth Report**, namely, *"Urgent need to prescribe the responsibilities of the officers appointed by the Government/Semi-Government/Municipal Corporation and if it is established that they have not discharged their duties at proper time which resulted in damage to the public, they should be personally held responsible and should be held liable to pay reasonable damages to the aggrieved person so that in future, they or other officers would take care in discharging their duties"*.

Two sets of the aforesaid report and one C.D. containing soft copy thereof are sent herewith for consideration and for taking needful action.

With warm regards,

Yours sincerely,

M.B. Shah

Justice M. B. Shah (Retd.)
Chairman

Encl. : As above

To,
Shri Manoj Aggarwal (IAS)
Principal Secretary (I/c.)
Legislative and Parliamentary Affairs Department,
Block No.4, Fourth Floor, Sardar Bhavan,
Nava Sachivalaya, Gandhinagar.



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16TH REPORT

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18TH DECEMBER, 2019

**JUSTICE M. B. SHAH
FORMER JUDGE,
SUPREME COURT OF INDIA
AND
CHAIRMAN
GUJARAT STATE LAW COMMISSION**

Urgent need to prescribe the responsibilities of the officers appointed by the Government/ Semi-Government/Municipal Corporation and if it is established that they have not discharged their duties at proper time which resulted in damage to the public, they should be personally held responsible and should be held liable to pay reasonable damages to the aggrieved person so that in future, they or other officers would take care in discharging their duties

1. It is a known fact that day-by-day, incidents of fire at the building units are increasing. Apart from that, incidents of gross structural irregularities are also increasing.

Few of such incidents are reported. On the other hand, most of such incidents are not coming into light, may be because, the concerned authority:--

- (i) permits to continue such irregularities for the reasons best known to it, and
- (ii) does not bother about the outcome of the irregularities so committed, including non-fulfilling the fire safety norms by the builders.

2. On the aforesaid aspects, it would be worthwhile to refer to few news reports which are:—

(i) “I am going to die... there is no escape” that was the final call of a victim who was trapped in a fire in a factory situated at New Delhi.

Is there any way to prevent such final call of a victim, may be due to fire, rape or such accidents or fall of a building or such other natural/unnatural fatal events?

In this regard, it is to be stated that the report namely, “*Another avoidable tragedy: Fire in building with illegal units in heart of Delhi kills 43*” published on 09th December, 2019 in Times of India informs the country that:—

- (a) the building housed over a dozen illegal manufacturing units and warehouses being run from ill-ventilated rooms filled with combustible materials; and
- (b) there was just one narrow entrance to the building spread across an area of 500 square yards, which ensured that fire trucks and officials didn’t have proper access to the site.

The aforesaid news report reads as under:–

“NEW DELHI

In Delhi’s worst fire tragedy in 20 years, at least 43 people were killed at Filmistan’s Anaj Mandi area in central Delhi early Sunday morning, when a blaze caused by a suspected short-circuit turned a five-storey building — where 100–150 workers were asleep — into a gas chamber, choking most of the victims to death.

It was a disaster waiting to happen. The building housed over a dozen illegal manufacturing units and warehouses being run from ill-ventilated rooms filled with combustible materials. There was just one narrow entrance to the building spread across an area of 500 square yards, which ensured that fire trucks and officials didn’t have proper access to the site.

The fire is believed to have started on the second floor around 4.30 am and quickly spread through stacks of paper, cardboard, plastic and other items lying around. The units doubled up as residence for the labourers at night. Before many of them on the third and fourth floors could realize what was happening, they had passed out due to carbon monoxide poisoning.

Fire and Delhi Police officials said a total of 64 people were rescued from the building by firemen and sent to LNJP Hospital, Lady Hardinge and RML hospitals. Out of these, 43 died, 39 of them due to asphyxiation. Most of the workers were sleeping on the ground and first floors, and escaped without injuries.

Delhi Police said the owner of the building, Rehan, along with the manager, Furkaan, were arrested and a case under Section 304 (culpable homicide not amounting to murder) registered. Monika Bhardwaj, deputy commissioner of police (north) said a major part of the building was owned by Rehan while two small portions on different floors were owned by two other people.

“We are verifying the details. A case under section of culpable homicide not amounting to murder has been registered at Sadar Bazaar police station. The case has been transferred to the Crime Branch,” Bharadwaj said. The area of Anaj Mandi – with its congested bylanes and wires hanging low from each lane is notorious for fire incidents. Barely 24 hours before this fire broke out, the area had seen a similar fire in a building 50 metres away. No one was injured in that fire.

Locals said the same building which caught fire on Sunday also had another blaze in March this year, in which no one was injured. “We’ve seen the area change from a mandi to a locality that only houses illegal buildings that operate all through the night. We can hear people and machines working even at 3–4 am,” said Pushpa, a resident.

Delhi chief minister Arvind Kejriwal, who visited the site and ordered a magisterial probe into the incident, announced a financial relief of Rs.10 lakh to the kin of each deceased and Rs.1 lakh to those injured. PM Narendra Modi, meanwhile, announced an ex–gratia of Rs.2 lakh each for the next of kin of those who died, while Rs.50,000 will be provided to those who got injured.

*The fire department, which received a call only around 5.20 am, said the task of rescuing people was not only made difficult due to the narrow lanes, but also because the call was made late and after all efforts to douse the fire had failed. **A total of 15 fire tenders were rushed to the spot, with the number eventually increasing to 30. However, only one fire truck could enter the narrow lane where this building existed, fire officials said.***

*Yasmeen Begum, who lives at the rear of the factory, said, "Around 4.30 am, we heard people screaming '**Koi toh bacha lo, nikal lo, koi toh maddat kar do**'. I saw five–six people calling out for help through the iron–grilled roshan daan (ventilators). I was trying to look for ways to help them and at the same time was worried as the flames could have reached my house too. A thick blanket of smoke engulfed the area and I, along with my children, rushed to the terrace to save ourselves from choking. There are 11 rooms in the building I reside and some of us even threw water but the smoke was too much. Gradually, the screams faded," Yasmeen said.*

Sameer Siddiqui, who would frequent the ground floor of the building for work said he received a call about the fire, but could not do much to help people. "We used the ground floor to store chairs. There was no damage on the ground floor, but there was no access to the building and we heard people were trapped upstairs."

Atul Garg, Delhi's chief fire officer, said the fire starting from the second floor. "It spread fast to the third and the fourth floors as the entire area was packed with combustible items ranging from plastic, toys and cardboard. There were no windows or any source of ventilation, making it difficult for the fire fighters to make their way in through the thick smoke. Only one window on the first floor could be opened," said Garg.

He added that the building did not have a fire clearance certificate and no fire safety equipment was found installed in this premise. "There was an internal staircase connecting the two plots but it was blocked by goods and cartons leaving no room for anyone to escape," said Garg.

BSES officials, who also visited the site, said prima facie it appeared that the fire in the internal wiring system of the building. "Electricity meters on the ground floor are absolutely intact. The moment we got information about the fire, our team rushed to the site and the supply was disconnected immediately," said BSES in a statement.

A majority of the labourers who died on Sunday hailed from Bihar. Several minors, some aged below 14 years, were among those killed. According to the LNJP hospital, at least three of the injured were in a critical condition."

- (ii) In addition, it would be worthwhile to refer to the report namely, "Surat Fire: Complex was an 'Illegally Built' – death trap with no way out for kids, Coaching Centre Owner Held" published in www.news18.com on 24th May, 2019 which informs that, the owner of the coaching centre and the builders of the complex have been booked, after it was found that there were gross structural irregularities and willful negligence of fire safety norms, leading to the death of 20 students. The said news report reads as under:--

"A day after 20 students were killed in a massive fire at a coaching centre running inside a commercial building in Surat, the owner of the coaching centre has been arrested, as it was found that there were gross structural irregularities and willful negligence of fire safety norms, police said.

An FIR has also been registered against the builders of the complex, Takshahila Aracade, Harshal Vekaria and Jignesh, for culpable homicide not amounting to murder.

On Friday evening, a massive fire had broken out in the dome-like structure on the fourth floor of the complex, in which at least 20 teenage students who were attending coaching classes were killed. Disturbing visuals showing some students jumping from the third and fourth floors of the building amid plumes of thick smoke had gone viral on social media.

*Initial investigation has revealed that the building had just a single point of entry and exit and the upper floors, from where the coaching centre operated, was only accessible through a wooden staircase. The staircase was engulfed in fire, leaving no way for the students to escape. **The students started jumping off the building but many remained trapped inside.***

The fire is suspected to have started either from an air conditioner compressor or some electrical equipment in a classroom, but officials have not yet confirmed a reason.

The huge dome erected on the building's terrace, clearly visible on Varachha Road, was reportedly also built illegally, but civic officials had turned a blind eye to it.

It was in 2001 that the Surat Urban Development Authority (SUDA) approved the plan for a residential society at the site. However, a shopping centre was illegally constructed in 2007, the Times of India reported.

In 2012, when building regularization rules were framed, this structure was legalized by paying the impact fees in 2013 and the second floor was legalized. The third floor was built illegally, DC Gandhi, zonal chief of Varachha, was quoted as saying by the newspaper.

The citizens were angry, as local civic body were caught napping even after major fire incidents were reported in recent past in which students were killed in a similar fashion.

On November 26, 2018, three students and a teacher were killed in a fire which had engulfed Aagam Arcade in Vesu area in Surat.

According to an estimate, over 3 lakh students attend nearly 3,000 coaching centres located in the shopping complexes, some of them extremely rickety and dangerous."

As *inter-alia* pointed out in the afore-quoted news report,

- (a)** because of massive fire, 20 teenage students were killed;
- (b)** some students were jumping from the third and fourth floors of the building; and
- (c)** huge dome erected on the building's terrace was built illegally but civic officials had turned a blind eye to it.

3. Questions which require serious consideration are:—

- (i)** Where the relatives of the victims should go and raise with regard to their grievance for the loss/injury caused to near and dear?
- (ii)** Whether is it necessity to continue negligence by not fulfilling fire safety norms and thereby compel the innocent persons to loose their lives at the fault of the violators?
- (iii)** Whether the construction so carried out was legal or otherwise and in case, the same was illegal, then under whose umbrella, the violators were permitted to continue the illegalities?

It is, therefore, suggested that the responsibility must be affixed in such a way that the Head of the Department (HoD) or the officer nominated by the HoD must visit the place of newly constructed building and building already constructed and must verify / check at least once a month as to whether all the requirements have been fulfilled by the builder, including fire safety norms.

At this stage, attention is drawn to the recommendation made in the thirteenth report of this Commission submitted in July, 2019 that, the concerned officers/persons who had visited the place for monitoring the same and/or certified erroneously should not only be departmentally punished but also should be held liable to be punished for criminal negligence for issuing such certificate, too. For this purpose, Sections 191, etc. of IPC can be relied upon and should be prosecuted. This step would certainly reduce the corruption and possibly, amount for the substandard work would not be paid and the contractor would be held responsible for such work.

4. Hence, the question is, whether the officers appointed by the Government / Semi-Government / Municipal Corporation are only required to seat at their offices, sometimes, for giving permission or should they discharge their duties, wherever required by visiting the places which they are required to monitor?
5. Take for illustration; the officers appointed by the Government are required:--
- (i) to control pollution, namely, air, water or sound pollution;
 - (ii) to verify whether the building construction is as per the sanctioned plan or in violation thereof; and
 - (iii) to verify whether the person, who is constructing the building, has obtained sanction plan for constructing the building and the construction is after maintaining space for road as required.

In such cases, responsibilities of the officers should be prescribed. If it is established that they have not discharged their duties, they should be personally held

responsible, because at present, it appears that nobody is responsible for the damage caused to the society on account of failure in discharging the duties by the officers, despite the fact that they are getting full (sufficient) salary to compensate their requirements.

6. Air Pollution due to vehicles:—

At present, there is hue and cry with regard to air pollution. To a large extent, it is the duty of the police/other appointed officers to see that there may be minimum air pollution due to vehicles. A number of vehicles polluting the air are permitted to be used without any restriction and nobody bothers for it.

Further, nobody thinks for controlling air pollution by vehicles and it appears that, upto now, no proper step has been taken for the reasons best known to the concerned authority.

Guidelines prescribed in Rule 115 of the Motor Vehicles Rules, 1989 require to be strictly implemented. The said rule *inter-alia* reads as under:—

“Emission of smoke, vapour, etc. from motor vehicles

... ..

- (2) *On and after 01.10.2004, every motor vehicle operating on,—*
- (i) *Petrol/CNG/LPG shall comply with the idling emission standards for Carbon monoxide (CO) and Hydrocarbon (HC) given in the Table below:—*

Table

Petrol/CNG/LPG driven vehicles

<i>Sl. No.</i>	<i>Vehicle Type</i>	<i>Co%</i>	<i>* HC (n-hexane equivalent) ppm</i>
<i>1</i>	<i>2 and 3-Wheelers (2/4-stroke) (Vehicles manufactured on and before 31.03.2000)</i>	<i>4.5</i>	<i>9000</i>
<i>2</i>	<i>2 and 3-Wheelers (2-stroke) (Vehicles manufactured after 31.03.2000)</i>	<i>3.5</i>	<i>6000</i>
<i>3</i>	<i>2 and 3-Wheelers (4-stroke) (Vehicles manufactured after 31.03.2000)</i>	<i>3.5</i>	<i>4500</i>
<i>¹[4</i>	<i>4 Wheelers manufactured as per Bharat Stage-II norms</i>	<i>3.0</i>	<i>1500</i>
<i>5</i>	<i>4-Wheelers manufactured as per Bharat Stage-II, Bharat Stage-III or subsequent norms</i>	<i>0.5</i>	<i>750]</i>

1. ***Subs. by G.S.R. 207(E), dated 10th April, 2007 for Serial Nos.4 and 5 (w.e.f. 10.04.2007)***

... ..

- (ii) *Smoke density for all diesel-driven vehicles shall be as follows:—*

<i>Method of Test</i>	<i>Maximum Smoke Density Light absorption coefficient (1/m)</i>	<i>Hartidge Units</i>
<i>Free acceleration test for turbo charged engine and naturally aspirated engine</i>	<i>2.45</i>	<i>65</i>

... .."

6/A. High speed of vehicles:—

Speed limit for vehicles is prescribed by the law, yet nobody bothers to enforce the same, despite the fact that there are number of road accidents due to high speed of the vehicles.

7. Water pollution:—

Polluted water is discharged by factory owners and by some persons from their sewerage without any restriction. It is a known fact that source for drinking water, namely, rivers are badly affected due to water pollution.

As per the judgment of the Honourable Supreme Court of India rendered in the case of **Paryavaran Suraksha Samiti & another versus Union of India & others [Writ Petition (Civil) No.375 of 2012]**, “common effluent treatment plants” were required to be set up by the Government.

The State Governments (including the concerned Union Territories), by the above-referred judgment, were directed to prioritize such cities, towns and villages which discharge industrial pollutants and sewer, directly into rivers and water bodies.

At this stage, attention is drawn to the suggestion made in the fourteenth report of this Commission submitted in October, 2019:—

“The facts stated in the newspaper reports are required to be considered and proper steps are required to be taken at the earliest because time has come to rise and bother about water pollution so that we are not compelled to drink totally polluted water.”

8. In addition, it is observed that there is illegal construction of factories at residential areas without obtaining legal permission or NOC (“No Objection Certificate”), which requires to be controlled.

9. Question is, what would be the responsibilities of the officers appointed by the Government or Semi-Government or the Municipal Corporation who have failed in discharging their duties, wherever required by visiting the places which they are required to monitor?

The presumption, that the personnel manning public institutions and not performing their duties are not liable for the damage to the public at large due to their negligence, requires to be changed.

It is high time that, the responsibilities of the officers appointed by the Government or Semi-Government or the Municipal Corporation should be prescribed and if it is established that they have not discharged their duties at proper time which resulted in damage to the public, they should be personally held responsible.

At present, it appears that nobody is responsible for the damage caused to the society on account of failure in discharging the duties by the officers. In such cases, either Corporation or the Government is held liable by the Courts.

It is, therefore, suggested that in such cases, the officers who have neglected their duties should be held liable to pay damages to the aggrieved person so that in future, they or other officers would take care in discharging their duties.

Damages may not be token but it should be reasonable so that its pinch is felt by the officer who neglected to perform his duty.

Date : 18th December, 2019
Place: Ahmedabad



JUSTICE M. B. SHAH
Former Judge,
Supreme Court of India
AND
Chairman,
Gujarat State Law Commission