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Putting out the Baldia factory fire: how the trial of Karachi's industrial capitalism did not happen

Laurent Gayer

In this chapter the network of connivance between the provincial bureaucracy and local industrialists is traced. It describes the symbiotic relations between the criminal economies of local 'industrial capitalism', Karachi's turbulent urban environment and a state torn between the strength of the law and the 'justice' of the powerful. This intreccio is explored through a detailed documentation of trials following the Baldia textile factory fire. They reveal the routinised coercive exploitation of the workforce and the systematic bypassing of labour laws and safety regulations, non-compliance with which had evidently become widespread in the industrial zones of the economic capital of Pakistan. It also shows how immunity develops and operates, and the role of crime-friendly law in facilitating it.

On 11 September 2012, 259 people were killed and more than 100 injured in a textile factory fire in the Baldia area of Karachi (see [Fig. 11.1](#)). This was the deadliest industrial fire in world history and the worst industrial disaster in the history of Pakistan. The judicial proceedings that began in the following months had a considerable impact on the country and, as the testimonies of survivors and various investigative reports started piling up, Karachi's unbridled capitalism was put in the dock. These investigations revealed practices of coercive exploitation of the workforce and a systematic bypassing of labour laws and safety regulations, which had evidently become widespread in the industrial zones of the economic capital of Pakistan. And because the company in



Figure 11.1 The remains of Ali Enterprises, Baldia Town
(August 2017 – Photograph by Laurent Gayer)

question was working mainly for a German group (KiK) and had received an SA8000 certificate of ‘social accountability’ from the Italian inspection company RINA, the trial threatened to involve international companies and monitoring authorities. The law suddenly seemed to have caught up with global supply chains and their regulatory regime.

Soon enough, however, the judicial machinery went awry. Instead of singling out the illegalities of Karachi’s industrial capitalism, it threatened to put the city at large on trial. Because of the sheer scale of the disaster, as well as how poorly it had been managed, the Baldia factory fire case brought the city’s ‘ordered disorder’ (Gayer 2014) under the microscope. And while doubts persisted about the exact origin of the fire – largely because of the lack of resources of the investigators, as they themselves admitted – what is commonly referred to in Pakistan as the *bari sarkar* (‘deep state’ – namely the army and its intelligence agencies) invited itself to the bar and gave a new political twist to the case. On the basis of the alleged confessions of a suspected hit man, the paramilitary Rangers succeeded in reorienting the trial against the party dominating Karachi’s political life, the Muttahida Qaumi Movement (MQM), which was accused of having set the factory on fire as part of a racket deal. What had started out as a judicial probe to find those responsible for the

tragedy became an instrument of political repression and repositioning of the Rangers on the local scene, one that targetted criminal practices and in particular the economy of *bhatta* (protection), set up by local political parties in the 1980s (see Box 1).

Through a detailed study of these judicial proceedings and their successive bifurcations, this chapter aims to grasp the relations of interdependence between a distinctly unbridled blend of capitalism, a turbulent urban environment and a state torn between the strength of the law

Box 11.1 Karachi's violent entrepreneurs

The first illicit enterprises to have emerged in post-colonial Karachi were related to smuggling, and primarily involved ethnic groups with transnational connections, such as the Baloch and, later on, the Pashtuns. Baloch smugglers operating from the inner-city neighbourhood of Lyari provided the wholesale markets of the Old City with the bulk of illegally imported goods. Following the ban on alcohol and gambling in 1977, Lyari's burgeoning criminal economy received a shot in the arm. However, it was only with the development of the heroin trade during the 1980s that a large-scale criminal economy developed in Karachi.

The main operators of this new criminal economy were Pashtun tribes (Afridis, in particular) controlling transport routes and fleets between Afghanistan and Karachi. The profits of the emerging drug trade were reinvested by criminal entrepreneurs into the unofficial land market, and the city's new slumlords imposed a reign of terror that disrupted patterns of occupation and inter-ethnic relations in the city's unofficial settlements. In 1985–6 a series of riots and massacres centred on this new slum economy contributed to making ethnicity the dominant framework for socio-economic conflicts and political mobilisations in the city at large.

The new political forces that emerged from these ethnic conflicts promptly developed their own criminal enterprises. The Mohajir Qaumi Movement (MQM, later renamed the Muttahida Qaumi Movement), in particular, which became the predominant political force in Karachi during the second half of the 1980s, became notorious for its institutionalisation of *bhatta*, or protection rackets. This market of protection was inspired by the so-called 'goonda tax' levied by petty criminals in the city's bazars. The MQM took these practices to a whole new level, however, by extending them to virtually every economic actor (from industrialists to traders, and from shopkeepers to hawkers) and by systematising the collection of *bhatta* (through regular contributions as well as through more exceptional donations, such as at the time of Eid, when the retainers of the party were expected to contribute in cash or kind – with animal hides, in particular – to the party's finances).

During the years 2011–13, the MQM's gradual loss of authority over the city translated into a deregulation of the market of protection. The gangs of Lyari (which, under the patronage of the Pakistan People's Party grew to be a force to be reckoned with, with considerable firepower), as well as the Pakistani Taliban, were new entrants into these protection rackets. While the extortion activities of the Taliban were limited to the sectors of the economy controlled by Pashtuns (such as the transport sector or the marble industry), the gangs of Lyari competed with the MQM for the role of 'protectors' of the city's traders, builders and industrialists.

Even as they disrupted the activities of entrepreneurial classes, the Lyari-based gangsters of the People's Aman Committee (PAC) or the petty criminals associated with political parties also helped industrialists maintain discipline in their factories. Some were appointed as labour officers and entrusted with the surveillance of the workforce, in order to prevent any attempt at organisation on its part. This practice of recruiting *goondas* for union-busting activities dates back to the early years of Karachi's industrialisation process (which began in the late 1950s). However, after the launching of a new paramilitary operation in the city in 2013 this task was entrusted to the Rangers, who now play a prominent role in the policing of industrial areas.

and the 'justice' of the powerful. From its inception, during the so-called 'decade of development' of 1958–68,¹ Karachi's industrial capitalism was characterised by a propensity for various types of illegalities. Tax fraud, unfair labour practices, violations of health, safety, building and environmental regulations, illicit procurement of water, as well as the use of *goondas* (thugs) to crush attempts at unionisation have all been key to the operations – and the profits – of the manufacturing sector, especially in the textile industry. At the same time, these industries never operated entirely beyond the reach of the law. Industrialists also encouraged the development of legal conventions that both strengthened their domination and regulated it.² Karachi's industrial capitalism can thus be characterised as an *irregular* production system – a type of organisation of the manufacturing economy resorting heavily to various illegalities without completely evading legal norms and the regulatory action of the courts. Rather than by its outwardly criminal nature, this mode of organisation of the economy is thus characterised by its uneven relationship with the law.

Besides their documentary value, the judicial proceedings considered here provide an opportunity to think through the irregular nature of this production system, and more particularly to reflect upon the force of the law in a society where it is constantly undermined by the illegalities of 'delinquent elites' (Lascoumes 2014), extrajudicial forms of coercion,

and the ubiquity of informality. Taking as a starting point the reflection of E.P. Thompson on the law as a double-edged sword (Thompson 1975), before engaging with a series of works discussing the social and political uses of the law (namely, the literature on legal mobilisation theory and cause lawyering³), this case study also aims to assess the extent to which the most vulnerable sections of Pakistan's society can expect justice in such a context. In the face of a society and economy where the display of might is generally deemed to prevail over the assertion of rights, Thompson's work is a useful reminder that the effectiveness of the law as an instrument of domination in the service of the powerful rests on its apparent universality and impartiality – and 'it cannot seem to be so without upholding its own logic and criteria of equality; indeed, on occasion, by actually *being just*' (Thompson 1975, 263).

This contribution is part of a larger, ongoing investigation of Karachi's irregular capitalism, for which I have already spent four months in Karachi (March 2015; July–August 2016; July–August 2017). The data collected during these fieldtrips mainly include legal documents (labour courts awards and judicial proceedings of several civil and criminal cases), as well as interviews with approximately 80 industrialists, workers, labour activists, lawyers and members of law enforcement agencies. Considering the sensitive nature of the topic – which covers various forms of illegalities on the part of industrialists, practices of collusion between public enforcers and private entrepreneurs, as well as resistance tactics under scrutiny from the state and corporate security departments – I guaranteed anonymity to most of my interlocutors. As a result, the names of interviewees quoted in the text have generally been withheld. The only exception to this rule concerns Faisal Siddiqui, the legal counsel of civil society organisations representing the families of the victims of the Baldia factory fire. He agreed to his name appearing here and, given the prominence of the case, it would have been impossible to hide his identity anyway.

Trial by fire: the revelatory effect of the Baldia factory disaster

At the instigation of the provincial authorities of Sindh, the owners and managers of Ali Enterprises were initially charged with murder under section 302 of the Pakistan penal code, while government officials were

charged with criminal negligence. Parallel to this criminal case, which was registered with the additional district and sessions judge of West Karachi, a civil case for compensation was filed by a collective of labour and civil society organisations (including the National Trade Union Federation and the Pakistan Institute of Labour Education and Research). Through a constitutional petition,⁴ these organisations sought directions for judicial enquiry, compensation for the victims' families, and enforcement of labour laws in the industrial sector.⁵ The fact that labour organisations and their legal counsel could not convince a single victim's family to file a case for compensation reflected the intimidation exerted by industrialists over their workers.⁶ This benefitted the owners of Ali Enterprises, as under Pakistani criminal law only victims and their families can assist the prosecution.

On paper, these various cases were independent of one another. However, especially after the accident was re-qualified as an act of terrorism, the civil case became increasingly dependent upon the criminal case, with those judges hearing constitutional petitions asking directions from the trial court while examining criminal evidence on their own. Moreover, both criminal and civil cases relied upon the investigation conducted, on the one hand, by a group of high-level police officials headed by a superintendent of police (SP),⁷ and on the other hand by two teams of investigators acting independently of the local police – a tribunal of enquiry constituted at the request of the Sindh Home Department and a Federal Investigation Agency (FIA) team.⁸ The findings of these investigators were largely convergent. All of them came to the conclusion that a short-circuit was the most probable cause of the fire, especially as the factory was working on overload at the time of the incident, consuming 318 kW electricity, as against the 210 kW for which it had been given permission.⁹ But even as they ruled out any foul play, investigators could not establish the cause of the fire with any degree of certainty; the margin of doubt that remained in their conclusions led to much speculation and contributed to the politicisation of the trial, as we shall see later.

Ali Enterprises was the property of Abdul Aziz Bhaila and his two sons, Rashid Aziz and Shahid Aziz. Like many other industrialists in Karachi, especially in the textile industry, the Bhailas belong to the Memon community, a mercantile ethno-linguistic group tracing its roots to the current Indian province of Gujarat, which played a prominent role in the industrialisation of Karachi during the 1950s and 60s.¹⁰ The Memons of Karachi are a tight-knit community, structured around professional and philanthropic organisations, as well as around centres of worship doubling as educational and welfare centres (known as *jama'at*

khanas). The prominence of Memons among Karachi's industrialists translates into their over-representation within the city's professional bodies. Thus, at the time of the Baldia fire, A.A. Bhaila was a member of both the Karachi Chamber of Commerce and Industries (KCCI) and the Pakistan Readymade Garments Manufacturers and Exporters Association (PRGMEA). In other words, the Bhailas were not black sheep resorting to exceptionally ruthless practices: on the contrary, they were prominent and rather typical members of the local business community. Similarly, their malpractices were not exceptional, and the various legal cases opened against them revealed the banality of these illegalities and the collusion between local industrialists and public officials that made these systematic violations of labour laws and safety regulations tenable in the long run.

As the investigation of these cases began, various public institutions were summoned before the courts. What they revealed was a vast network of connivance between the provincial bureaucracy and local industrialists. The provincial Labour Department commenced by informing the judges that Ali Enterprises was not even registered with its department, and that in any case, any kind of violation of law under the Factories Act (1934) was punishable with a maximum penalty of PKR 500 (5 euros). The Sindh Employees' Social Security Institution (SESSI) and the Employees' Old-Age Benefits Institution (EOBI) followed suit and informed the courts that most employees of Ali Enterprises had not been registered over the years (only 200 workers at Ali Enterprises, of a total of 3,000, were registered with EOBI, and 268 with SESSI). Like most textile and garment companies,¹¹ the Bhailas resorted to the so-called 'third party' system of labour recruitment, through which recruiting agents (known locally as contractors, or *thekedars* in Urdu) provide industries with cheap, casual workers who are not entitled to any form of social protection.

The contracts of these temporary workers are renewed every three months, contravening the existing labour laws, which require employers to provide permanent contracts to those workers they aim to keep on after a three-month probationary period. This system of outsourcing allows employers to lower their production costs significantly by avoiding monthly contributions towards their employees' social security and pensions. Outsourcing also allows employers to avoid any legal responsibility in case of accidents and deters workers from organising, as it is even more difficult for contract workers than for permanent ones to unionise. Meanwhile, using various contractors within the same factory further divides the workforce and discourages workers from uniting on a single

platform. It is also easy for employers to dismiss those workers trying to unionise; they simply refuse to renew their contracts. In fact, such flexibility in recruiting/terminating workers is one of the primary incentives of the third-party system for employers, besides its economic benefits. Significantly, there was no union at Ali Enterprises, although a handful of workers were members of the Sindh Hosiery, Garment and General Workers Union, a general union of textile workers.

Meanwhile, the regulatory body overseeing the patterns of land occupation and factory construction plans in the Sindh Industrial Trading Estate (SITE, the factory district where the Bhailas' factory was located), known as SITE Ltd, claimed that it was not its responsibility to ensure that individual factories complied in practice with health and safety regulations. The director and chief engineer of SITE also acknowledged that any violation of the construction plan of a given factory (such as the construction of an additional floor or the absence of fire escape provisions) could be regularised after the payment of a minimal fee. The officials of the civil defence, who are theoretically responsible for monitoring the safety of the country's factories, claimed that they had not visited that particular factory because it was not registered with the Labour Department. Taking advantage of this situation, the Bhailas had not even installed the most basic emergency facilities. The statements of workers who survived the blaze suggested that emergency exits were often locked from outside and that fire extinguishers were not in working order, even though a fire had already broken out in the warehouse of the same factory a few months earlier.¹² For the owners of Ali Enterprises, regulating the workers – whether to prevent theft or coerce them into working longer hours than they were supposed to – took precedence over their safety. Both the police Investigation Officer (IO) and the FIA emphasised that three of the four gates of the ill-fated building were closed permanently, mainly to prevent pilfering, while the few CCTV cameras installed in the building that were in operating order were oriented towards the surveillance of the workers rather than towards the mitigation of safety hazards.¹³ Sub-Inspector Jehanzaib Khan, the second IO assigned to the (criminal) case, went as far as comparing this intensely coercive factory environment to a jail.¹⁴

The investigation also revealed the dismal state of the inspection regime in Sindh (which is no exception in this regard: while there are more than 100,000 factories in the country, there are only 541 labour inspectors, of whom 17 are female (Mansoor 2016)). EOBI officials claimed that they repeatedly tried to inspect the factory but were denied entry by the management (Kamal 2012). Labour inspections have been

suspended in Sindh since 2003. This decision followed a similar move by the provincial authorities of the Punjab, the country's other major industrial hub, and was encouraged by a prominent textile industrialist operating from SITE, Zubair Motiwala, who at the time served as an economic adviser to the Chief Minister of Sindh.¹⁵ Even when inspections did take place, they were utterly ineffectual. The limited human and financial resources of these services made it highly improbable for a given factory to ever be inspected, and this risk was further neutralised through bribes. As a last resort, workers would be instructed to lie about their wages and working conditions to inspectors – a practice which has become systematic when facing local or foreign auditors, as explained by a supervisor in his 30s who oversaw 20 workers at a garments factory located in the industrial area of Korangi:

When some auditors visit from *bahar* (outside/abroad), they just come and go. They tell the workers, "Come on, tell us the truth, is the food OK here?" The workers always lie. If they told the truth, they would be fired immediately. (...) A few days in advance, the administrative officer hands over a paper to everyone, with instructions about what to say. (...) It says that the workers are entitled to bonuses, that the food is excellent, that they are allowed to take vacations, etc. As a result, everything they tell the auditors is a pack of lies. (Hasan, garments factory supervisor, interviewed in Karachi, July 2016)

All in all, what early investigative reports revealed was a production process relying upon systematic breaches of the law. This is made explicit in the Alavi tribunal report, which does not mince its words to denounce these practices:

We would indeed hold that collectively the entire system of Karachi is responsible for the cause of death as at each and every stage; from the setting up of the factory and drawing up of a drawing plan, for meeting the high standards of safety and precautions, to the architects who do not create fire escapes and who compromise on these safety factors for reasons best known to the approvers of the drawing plan and their nonchalant attitude towards basic details, to the owners of the factory who try to fit in the maximum number of machinery into the minimum space without bothering about the provisions of law which require at least breathing space, to the law itself relating to the factories and the labour working therein

which is totally defective and needs to be updated on a war footing, to the several departments who are existing purely and simply for serving the cause of the factories and the labour who pay lip service to the law on several grounds including non-availability of staff, to the system which does not provide for adequate staff for sustaining and servicing a running industry, to the helplessness of the Civil Defence System who show that total lack of facility as the main cause of failures to provide relief and rescue in times of emergencies, to the inspectors of all departments who for a petty amount compromise on quality, to those who have fatalistic approach and feel that nothing is going to happen, to the entire system and the laws relating thereto which hampers progress and effective working of a factory or a business concern. (...) To the powers of discretion that enshrines each and every act that is promulgated which retards effective implementation of law.¹⁶

Karachi on trial: urban disorder as an amplifying factor of the disaster

The Alavi tribunal report extrapolates that, besides a particularly exploitative system of production, it is the entire political and economic system of Karachi that is to blame for this disaster. The city, here, is much more than a context for the catastrophe. It is party to the crime and, as such, is directly indicted by investigators and prosecutors. As always in Karachi – a megalopolis that still lacks a mass transit system and where the regulation of road circulation is at the heart of the struggles for the city (Gayer 2016) – traffic and its disruptions were held responsible for the scale of the disaster. Thus, according to the FIA report, the dispatch of backup vehicles by the fire brigade was delayed by the dismal state of the road network in SITE: ‘The dilapidated condition of roads in SITE might be a contributing factor. Due to the road condition it takes a long time for vehicles to reach from one point to another.’¹⁷ The Alavi tribunal report also suggests that the ‘pathetic traffic conditions’ in the city contributed to the fire brigade’s relatively late arrival on the scene of the fire. This provides an opportunity for the author of the report to indict political and economic elites, whose convoys regularly disrupt traffic in the city: ‘It would not be out of place to mention here that traffic jams created due to VIP movements on the main arteries of Karachi have repeatedly resulted in precious loss of lives.’ At this point (as in several other parts of the report), Justice Alavi makes himself the spokesperson of the denizens of Karachi, allegedly brutalised

by corrupt and insensitive elites. This posturing was consonant with the particular brand of judicial activism that had emerged in the preceding years around Chief Justice Iftikhar Muhammad Chaudhry (Gayer 2009). This mobilisation had reached its acme the preceding year during the so-called Karachi law and order case, which saw a special bench of the supreme court indict politicians, public servants and even security officers for the dismal state of affairs in the country's largest city. The overall tone of the Alavi tribunal report and its lament for a city betrayed by its elites is revealing of this particular moment in the history of the Pakistani judiciary and its relations with civilian authorities.

The controversy around the role of the fire-fighters during the accident is exemplary of this extension of the trial to the city at large. During the fire itself, 'there was a tremendous altercation between the public and fire engine personnel as there was not enough water in the fire engines'.¹⁸ Critiques of the Fire Brigade Department only increased after the catastrophe. The Bhailas claimed that they had informed the department right after the fire broke out, but that the fire brigade had taken an hour to reach the site; that it had not sent enough fire tenders and that it had taken excessive time to refill once the water was exhausted. The Chief Fire Officer of Karachi, who appeared in front of the Alavi tribunal, defended his services, claiming that his personnel arrived at the site within 10 to 15 minutes after first receiving information about the incident. TV footage suggested that the first fire tenders reached the site less than half an hour after Lyari fire station was first informed of the incident, thus invalidating the claim of the owners.¹⁹ However, it is clear that the fire-fighters were completely unprepared for a catastrophe of this magnitude. At first, only two fire tenders were sent to the scene and they soon ran out of water. In the next few hours, nearly all the fire vehicles available in the city (45)²⁰ were brought on site, with reinforcements including fire tenders from the navy, Karachi Port Trust, Defence Housing Authority (DHA – an elite residential area), the cantonment board, etc. Meanwhile, the Edhi Foundation, Pakistan's most respected philanthropic organisation, which manages the largest fleet of ambulances in Karachi, had difficulties reaching the site. According to a prominent member of the organisation, who was part of the rescue team, Edhi's ambulances were initially denied access to the site by gun-toting MQM activists, who tried to monopolise rescue operations through their own welfare branch, the Khidmat-e-Khalq Foundation (KKF).²¹

The forensic division of the Karachi police also came in for criticism during the investigation. Justice Alavi complained that the division had failed to deliver any useful information and suggested that 'in the absence

of and lack of any competent facility and persons available to carry out complete modern forensic investigation which is available throughout the world perhaps this Division might as well close down as no tangible purpose is being served'.²² Even the Edhi Foundation was accused of adding to the confusion. As usual in Karachi, the bodies of the victims were taken over by the foundation and stored in the Edhi morgue pending their identification – a process delayed and complicated by the condition of some of the corpses. As a report by the police surgeon deplored three months after the incident, Edhi staff were not qualified for such an arduous task, which according to the surgeon considerably disrupted the work of forensic experts. In its conclusion, the report notes that:

- i. Dead bodies identified after DNA test with same Tags/PM numbers are found in Edhi Cold Storage.
- ii. On one stretcher two or more than two dead bodies were lying leading to mixing of papers & body fragments due to large number of dead bodies and the short space of the cold storage.
- iii. As information obtained that some Dead bodies taken away by relatives without legal formalities and buried by them. But after DNA test identification another dead bodies [sic] were received by claimants.
- iv. As staff working at Edhi Cold Storage is not educated that's why mixing of Tags and PM numbers incorrect disposal of bodies had happened.²³

The lack of coordination between these various actors – a characteristic of Karachi's governance often decried by the political class as well as by urban planners – also complicated relief efforts and subsequent investigations. This is made explicit in the Alavi tribunal report, which suggests that 'too many agencies have jumped in to investigate the cause of fire and the loss of lives. To our mind there has been a great tampering of evidence'.²⁴ Finally, the lack of technical expertise within the Fire Brigade Department and the Sindh police forensic division seriously hampered the work of investigators and prevented them from reaching a definitive conclusion about the cause of the fire. According to the FIA report:

It must also be mentioned here that no expert opinion in this regard was available from the fire department or the Sindh Police Forensic division. It appears that there is lack of expertise on fire and arson investigation. (...) Absence of expert opinion in the relevant fields made reaching a definite conclusion extremely difficult.²⁵

This indictment of the city at large in the tragedy had important legal consequences and, especially in the case of the Alavi tribunal, was not devoid of ulterior motives. However critical it may seem of the powers that be, the Alavi tribunal report did not come as a threat to political or economic elites. Within the legal fraternity, Justice Alavi was reputed for his docility, particularly when adjudicating cases involving members of the business community. The elitist background of this retired judge from the Sindh high court may explain this leniency. Alavi, who was born in 1941, belongs to the old elite of Karachi (he hails from the Bohra family that gave Karachi its first Muslim mayor, Hatim Alvi). Over the years, he headed numerous government-appointed commissions, which earned him the reputation of being pro-establishment. Within the legal fraternity, his reputation has also been tainted by his chairmanship of a regulatory body reputed to be one of the most corrupt in Sindh province, the Sindh Land Committee, which oversaw the process of regularisation of illegally-occupied lands. According to Faisal Siddiqui, legal counsel for civil society organisations acting on behalf of the victims, the Alavi tribunal report was consistent with the past record of its chairman. By ‘dividing the anger all over the place’ and introducing contradictory evidence regarding the responsibilities of the owners – in particular by questioning the assumption that most of the exits of the factory had been closed at the behest of the management – he helped them obtain bail and paved the way for their gradual exoneration of all charges.²⁶

Enter the security state: the politicisation of the Baldia factory fire case

Whatever their ulterior motives may have been, the reluctance of investigative agencies to pronounce a clear verdict on the cause of the fire provided an opportunity for the military to divert the judicial process and turn the whole exercise into a political trial. This diversion occurred during the spring of 2015, after the paramilitary Rangers used the confession of an alleged ‘target killer’ of the MQM to requalify the Baldia fire as an act of terrorism. This whole enterprise relied upon the testimony of Muhammad Rizwan Qureshi, alias ‘Pringle’, a 55-year-old Mohajir who was suspected of leading a double life: a sanitary sub-inspector at the Saddar Town branch of the Karachi Municipal Corporation (KMC), Qureshi allegedly confessed to his involvement in dozens of murders and kidnappings dating from the mid-1990s onwards, as the head of an MQM ‘death squad’.²⁷ Qureshi was arrested by the police of Karachi’s South District in 2013 and, in view of

the high profile of the case, was investigated by a Joint Investigation Team (JIT) comprised of representatives from the Karachi police, the Inter Services Intelligence (ISI), the Intelligence Bureau (IB), the Rangers and the FIA. The JIT was conducted on 22 June 2013 under the supervision of the Senior Superintendent of Police (SSP) for District South. However, the JIT report was only presented in court on 6 February 2015. By then, the configuration of Karachi's political scene had drastically changed. In late September 2013, Prime Minister Nawaz Sharif announced a massive crackdown on militant and criminal groups in the city. The paramilitary Rangers were entrusted with operations on the ground, which paved the way for a re-engagement of the army in Karachi's politics.

Like their counterparts in the Punjab, the Sindh Rangers are a paramilitary force placed under the authority of the Federal Home Ministry; however, because they are commanded by top officers of the Pakistan army (their Director General is systematically a serving major general), they tend to evade civilian control and serve the designs of the military. While the mandate of the Rangers was initially focussed on protecting Pakistan's eastern border with India, they were called in to support the police in Karachi at the end of the 1980s. They never left the city and now, with 13,000 officers (against 26,000 police), they currently play a prominent role in law enforcement and regulating the city's political economy. Over the course of time, the Rangers have developed their own economic activities, both licit (shooting clubs, petrol stations, printing presses, canteens, public model schools, cement factories, etc.) and otherwise (in collusion with the so-called 'water mafia', they have taken control of the water hydrants and the tanker service supplying water-starved localities).²⁸ These economic activities have brought the Rangers closer to the city's business community, which relies heavily upon the paramilitaries for its security – while the Rangers have been deployed in every industrial area, they sometimes provide an additional layer of security for a fee, through the private security company that they set up in 2012, the Rangers Security Guards (RSG). Besides patrolling these areas and monitoring video-surveillance installations, the Rangers frequently intimidate labour activists and workers trying to organise themselves. Industrialists openly acknowledge their contribution to the maintenance of corporate order. As a former chair of the KCCI told me during a focus group discussion at the Pakistan Employers Federation in July 2017:

We give less importance to the ministers [than to the Rangers] ...
Because they are deterrents ... So that we go to our industries in
such an atmosphere that, you know, there will not be a labour ...

[he takes it back and only continues after some hesitation] ... a law and order issue. Because a violent mob, or any kind of morons, they can attack the factories. Now they are afraid to do that openly. So they are a deterrent for us, like the nuclear bomb that we have, otherwise Indians and others would come and attack us.²⁹

It is in this context of strengthening ties between the holders of capital and the wielders of coercion that the Sindh Rangers and the army started intensifying their operations in Karachi, with a focus on the so-called 'militant wing' of the MQM. The JIT report was a key part in this political offensive, which aimed to downsize the MQM at large and deprive it of its prominence in Karachi's politics. While previous investigations had ruled out the possibility of foul play, the JIT report laid the blame for the fire squarely at the door of the MQM and its extortionists. During his interrogation by the JIT team, Qureshi allegedly revealed that a 'well-known party high official' from the MQM had tried to extort PKR 200 million, 'through his front man', from the owners of Ali Enterprises. Following their refusal, the sector-in-charge of the MQM in Baldia, Rehman Bhola, with the support of 'unknown accomplices', allegedly 'threw chemical substances which creates fire in factory' (sic).³⁰ On the basis of these 'revelations' (which were merely based on what a suspected criminal had allegedly heard from fellow party workers), the provincial Home Ministry constituted a new JIT under the supervision of the deputy inspector general (DIG) of the central investigation agency (CIA), with representatives from the Karachi police, the ISI, military intelligence (MI), the IB and the FIA. On 29 March, the SITE superintendent of police (SP), Sajid Ameer Sadozai, was tasked by the JIT to reinvestigate the case. During the course of this investigation, this police officer – who acted under tremendous pressure not only from his own hierarchy but also from the army and its intelligence agencies – concluded that 'this kind of fire cannot be caused by an electric short circuit'. The progress report of the JIT presented in the court of the additional district and sessions judge of West Karachi, Maqbool Memon, in 2016, thus concluded that Rehman Bhola and his accomplices had set the factory on fire after the Bhailas refused to hand over PKR 250 million (the inflation of this sum from the 200 million mentioned in the previous JIT report was never explained). Allegedly, the owners of the factory were ready to settle for PKR 10 million, but this arrangement would have been refused by Bhola and the 'party high official' on whose behalf he acted. The report claimed that Bhola and his men set fire 'to the *godown* [warehouse] and several other places' – a claim which contradicted all previous investigations

as no evidence suggested that the fire could have broken out from different points. The report added that the pressure by MQM top officials on the owners of the factory did not stop there, and that these officials continued to 'terrorise' the owners and tried to extort money from them after the fire. Under pressure from the MQM as well as from the courts, the Bhailas would finally have agreed to transfer PKR 50 million to an MQM account in Hyderabad, where the money would have been used to acquire a plot of land.³¹

The evidence put forward was circumstantial at best and mainly relied upon testimonies from an accountant at Ali Enterprises who claimed that the fire had engulfed the whole building within minutes, despite the efforts of the workers and the owners to extinguish it. The value of this testimony was itself questionable, especially as earlier investigations had revealed that the owners had in fact fled the site after the fire broke out. This would remain a controversial claim, especially since the workers who attested it later on retracted their statements, most probably under pressure from the police. Meanwhile, if the experts of the Punjab forensic science agency (PFSA)³² recruited by the JIT concluded without hesitation that the fire was 'a clear case of arson', their report was not made public.³³ The members of the JIT did not really care about the weakness of their case, however. They knew that their version of the story coincided with the dominant interpretation of the events in public opinion. This is not to say that they cynically tried to manipulate the public: most of the members of the JIT were firmly convinced of this interpretation of events, which sometimes pitted them against their more sceptical colleagues. By an ironic quirk of fate, a senior police officer who had taken part in the JIT was subsequently posted to the same department as some of the participants in the FIA investigation team who had suggested in their report that the fire was probably accidental. It did not take long for this police officer to confront his colleagues, asking them if they did not feel any shame for having exonerated mass murderers. 'I was really angry. How can you condone the murder of 260 people? How can you be a police officer and be so shameless?' this officer asked me rhetorically during an interview, with a voice shaking with anger.³⁴

However weak the new 'evidence' brought to the fore by the JIT might have been, it concluded that 'the factory fire was a planned terrorist activity and not an accidental fire'. The response of the media, the judiciary and political authorities was largely sympathetic to this conclusion and did not question its veracity. Similarly, for the general public, it confirmed what everyone already thought: that the MQM was the main culprit. This is precisely what the owners of Ali Enterprises had

suggested all along, and this revised version of the facts worked in their favour. Here, the interests of the owners (and of their supporters among Karachi's business community) clearly converged with those of the state security apparatus. The new political ambitions for Karachi of the Rangers and the army merged with the interests of a group of industrialists on the defensive, and this convergence led the Baldia factory fire case to take a new course. However, in this context convergence did not imply similar interests, as while the Rangers and the army were determined to discredit and cut the MQM down to size, industrialists aimed to ward off the threat of labour reforms.

On the basis of what was presented as new evidence to the judiciary and in the court of public opinion, the members of the JIT requested of the Sindh government that the original first information report (FIR) – on the basis of which the Bhailas had been charged with murder – be cancelled, and that a new FIR be registered against Rehman Bhola and his accomplices under the Anti Terrorism Act (ATA). Despite the protests of the petitioners' legal counsel, a new investigation team was appointed and placed under the direction of the Sindh Inspector General of Police, A.D. Khawaja, an officer reputed to be close to the army. This investigative team started preparing a new charge sheet, which was finally submitted in August 2016. While the owners (who had left the country) as well as some factory employees had initially been charged with murder and criminal negligence, this time they were exonerated of all charges and were made to appear as prosecution witnesses. Two MQM cadres, Rehman Bhola and Hammad Siddiqui, as well as '3/4 other unknown accused persons', were charged under the anti-terrorism law.³⁵ On 27 August 2016, the additional district and sessions judge of West Karachi, who was hearing the criminal case against the Bhailas and others, decided to transfer the case to the administrative judge of the Anti Terrorism Courts (ATCs), after observing that it was a case appropriate for an ATC and not a regular court because the charges were framed under the Anti Terrorism Act, 1997. On 5 September, the administrative judge of the ATCs transferred the case to the ATC-II for a regular hearing. But then something unexpected happened, which – momentarily – disrupted the new course of the trial. Despite pressure from security agencies and civilian political authorities, the sitting judge of the ATC-II refused to accept the charges brought by the police. More specifically, the judge argued against the exemption of the Bhailas from any form of prosecution, by recalling that 'serious allegations are levelled against the owners that they had locked emergency gates which resulted in 259 deaths of workers'.³⁶ Three months later, however, the same judge had to back down after presumed

arsonist Rehman Bhola was arrested by Interpol in Bangkok and extradited to Pakistan, where he allegedly confessed to having set the factory on fire – yet another ‘revelation’ paving the way for the indictment of the MQM and the exoneration of the Bhailas.

As of May 2018, the trial of Bhola and his alleged associates is yet to begin. It may well never happen. According to a close observer of the case, the main reason for this delay would be dissension within the security apparatus. While the Rangers would press for a quick trial to further weaken the MQM, the ISI would delay it, seeking to exonerate Hammad Siddiqui. After being indicted by the police in the third and fourth charge sheets presented in August 2016 and January 2017, and after Bhola allegedly confessed to having set the factory on fire on Siddiqui’s order, everything was set for their prosecution. But in March 2016, Siddiqui, the former head of the MQM’s *tanzeemi* (organisational) committee, was instrumental in the creation of the Pak Sarzameen Party (PSP), a rival group set up by MQM dissidents and allegedly supported by the ISI. The fact that Siddiqui has not been arrested yet, even after the ATC-II issued a non-bailable arrest warrant against him, tends to validate the assumption that the security state itself has become divided over the possible political repercussions of these judicial proceedings.³⁷

The law of the strongest? Capital and coercion in the Baldia factory fire case

The various investigations and litigations that followed the fire generated their own coercive forces, which added to the suffering of the survivors. As the owners of the factory strove to obtain bail, their former workers suddenly started changing their statements in favour of their former employers.³⁸ On 14 September 2012, Muhammad Omer, a former machine operator at Ali Enterprises, had told the police of SITE-B that, while trying to escape from the building under fire, he had found three exit doors locked from outside.³⁹ Two months later, he retracted this statement and claimed that it was made under duress, after he was detained in the SITE police station for four days (from 14 to 18 September):

During this period (...) some other officer [than Zafar Iqbal, the IO] came and directed me that I have to give statement to the effect that doors were locked from outside. I informed them that due to intense heat and smoke I was not able to reach to the door, therefore I cannot say the doors were locked from outside. The police

officials informed me that I will be released only when my statement is recorded before Magistrate as such during this period I remained at the police station SITE-A. (...) I say that on 18.09.2012 I was taken to the court of Magistrate and police informed me that I have to state before the Magistrate along with other details that the exit doors were locked from outside. I was made to believe that unless I give statement as directed by the police I shall not be released. I was under tremendous mental pressure due to the incident and remaining at police station and for that reason gave statement before Magistrate as desired by police.⁴⁰

Other witnesses who had testified that the doors of the factory were locked from outside later on retracted this testimony and claimed that they were coerced into making such statements so as to strengthen the case of the police against the owners. Nazeer Ahmed, a clerk in the Accounts Department of the factory, registered an affidavit in November 2012, where he claimed that:

on 14.09.2012 around 7 a.m. police party headed by Choudhry Zafar Iqbal came at my residence and started shouting at me and my family members, they even extended no courtesy towards women and used abusive language extended threats and demanded Cell phones of every person in the house such demand was also made to the ladies. (...) Thereafter police party took me to (...) police station, there also I was inhumanly treated and was not even allow to answer nature's calls which was very painful and torturous in my age which is 67. (...) I was kept in wrongful confinement for about one week.⁴¹

Several elements in these accounts suggest that these witnesses were pressured to change their earlier statements in favour of the owners. Contrary to earlier investigative reports, which suggested that the owners had fled the scene and abandoned entrapped workers to their fate, all these affidavits were given in favour of the Bhailas and claimed that the latter did everything they could to quell the fire, that fire extinguishers were both present in large numbers and in working order, and that it was essentially the delay in the intervention of the fire brigade and its lack of professionalism that resulted in a disaster. This coincided with changes in the version of the story given by the police. Whereas the original FIR and the preliminary charge sheet accused the owners of murder and criminal negligence, subsequent charge sheets prepared by the Investigation Officer (IO), Sub-Inspector Jehanzaib, withdrew the murder charge (*qatl-i-amd*, which comes under section 302 of the Pakistan penal code) and

replaced it with involuntary homicide (*qatl-bis-sabab*, an offence which comes under section 321 of the penal code and which does not provide for jail sentences). The alteration of the charge sheet made it easier for judges to succumb to the pressures inciting them to grant bail to the Bhailas, even before the Rangers started shifting the blame onto the MQM.

What is unclear in the statements of these former employees of Ali Enterprises is not so much whether they were coerced into giving statements coinciding with the version of the police, but rather at which stage of the investigation they were coerced. It is probable that the owners' representatives and the police themselves – who, under a new IO, insisted on exonerating the Bhailas of the charge of murder – pushed these witnesses to testify in favour of the owners' bail application. Faisal Siddiqui, the legal counsel of petitioners demanding compensation on behalf of the victims' families, claims that the owners used two tactics to deter their former workers from testifying against them: through middlemen, they distributed food to their families while simultaneously threatening them using the infamous 'gang war people' (gangsters) of Lyari.⁴² Gang members would have visited these families and openly threatened them to dissuade them from going to court.⁴³ The support extended to the Bhailas by the 'industrialists' lobby', or what is identified as such by Faisal Siddiqui, also explains why the owners of Ali Enterprises managed to go free despite all investigations pointing unequivocally at their having been involved in the worst industrial accident in Pakistan's history. On 29 December 2012, the KCCI requested that Prime Minister Raja Pervez Ashraf intervene in favour of the 'wrongly accused' owners of Ali Enterprises. These industrialists claimed that the implication of the Bhailas in a murder case was a clear example of 'misuse of state power', which carried the risk of 'scaring away new investment'. Thus, it was now the 'duty' of the state to revoke the FIR and to absolve these entrepreneurs of the charge of murder so that they could soon resume their activities while sending a positive message to the whole business community of Karachi (Chambers of Commerce 2012). To this the Prime Minister replied, during his speech, that 'Authorities should reinvestigate the case and provide justice to the employers of Ali Enterprises if a wrong case has been registered against the factory owners under section 302'. Shortly thereafter, the Finance Minister announced on behalf of the Prime Minister that the murder charge against the owners of Ali Enterprises had been withdrawn – a public announcement that provoked moral outrage across the country, leading the Prime Minister to backtrack and announce that the case was only being reinvestigated (as we saw earlier, this was merely a damage control operation, and the charge of murder would indeed be withdrawn by IO Jehanzaib in the next charge sheet). Commenting upon this PR

fiasco, a group of advocates at the supreme court and the high court later on suggested that the matter should have been handled more cautiously, and informally, by the Prime Minister:

A more careful and balanced approach would have been that Prime Minister should have been taken into confidence and through whisper in the ears asked if Railway accident takes place and large number of passengers are killed, have the Chairman or Chief Executive Officer of those Airlines been charged for murder. It goes without saying, that if the industrialists are charged for murder only because there has been a fire in the factory resulting in death of large number of workers, this does not necessarily mean that the intentions of the employers was to kill or murder his workers. (Ghani, Ghani and Faisal 2014, 86–7)

While the legal professions were divided on the issue, the so-called ‘business community’ of Karachi gave a remarkable display of unity. This solidarity was reinforced by the ethnic ties that bound the Bhailas with the powerful Memon community, as well as by their membership in various professional organisations. As mentioned earlier, A.A. Bhaila was a member of the KCCI and the PRGMEA. Even if he never occupied any position of leadership in these organisations, it was enough to make him a respected member of Karachi’s business community – membership in professional associations and in multi-sectorial trade associations or chambers of commerce is an important marker of status among Karachi’s entrepreneurs. Besides its symbolic value, membership in these organisations ensures privileged access to state regulators, as these organisations – especially the KCCI and the trade associations linked with each of the city’s industrial estates – are the main interlocutors of provincial and federal authorities, both civilian and military, in their dealings with Karachi’s business community.

The show of unity around the Bhailas largely transcended their individual case, however. Local entrepreneurs, especially in the textile and garments sector – which is the most prone to violations of labour laws and safety regulations⁴⁴ – were aware that, beyond the fate of the Bhailas, what was at stake was their own autonomy from the law and from state regulators. By expressing their solidarity with the Bhailas and mobilising all their resources to put pressure on the government and the judiciary, they simultaneously voiced a collective sense of belonging and defended their private interests against potential government interference in their affairs (through a resumption of inspections, for instance). Bailing out the Bhailas was therefore essential for these industrialists,

and the day the court finally succumbed to pressure they celebrated their victory, as advocate Faisal Siddiqui recalls:

On the day they were granted bail in court, the entire ... I mean, what was amazing was that ... 255 people have been burnt alive so you would imagine that the court would be full with victims and their families. But the entire court room ... There were about 50, 60 people in the courtroom, and they were all industrialists and supporters of these people. And they were clapping ... (Faisal Siddiqui, interviewed in Karachi, July 2016)

Later on, when the blame started shifting from the owners of the factory to the MQM, many industrialists rejoiced – so much so that F. Siddiqui suspects that it was these industrialists who ‘pushed this story forward’, so that the owners would become complainants in the FIR.⁴⁵

The legal and political developments sketched out above suggest three things. First, coercion, here, is an integral component of the legal process. Law enforcement agencies resort to coercion in order to reduce the uncertainty of legal proceedings. Second, the power relations mediated by the law unfold on the margins of court procedure. They involve unofficial practices – whether coercive or collusive in nature – that contribute to the informalisation of judicial processes and largely untie the latter from the formal institution of the tribunal. Members of the legal professions themselves participate in this informalisation through various kinds of background deals. Third, while the law, as an apparatus of domination, can be the terrain of an apparent convergence of capital (here, law-breaking industrialists) with coercion (here, law enforcement agencies with a political agenda), this convergence is not a given and is prone to contestations and adjustments. As a result, despite all the elements pointing in this direction, the law cannot be said to be simply a symbolic and strategic weapon in the hands of dominant elites. Whether this instability opens the way for the law to provide some sort of comfort to the most vulnerable sections of society is another issue, to which I turn now.

The ‘anarchy of the law’ and the quest for justice on behalf of the victims

In July and August 2016, I spent some time at MCAS & W Law Associates, a prominent law firm based in Karachi, which was founded by some of the most renowned lawyers of the country, including Munir Malik, a

key leader of the Lawyer's Movement of 2007–8 and a former attorney general of Pakistan.⁴⁶ A staunch critic of military regimes, Malik has been joined by other advocates with a penchant for cause lawyering – that is, for political uses of the law from a perspective of activism (Sarat and Scheingold 2001; Gaiti and Israël 2003). This was the case, in particular, of Faisal Siddiqui, currently one of the most prominent human rights lawyers in the country, who made a name for himself by specialising in pro bono human rights litigation. After we first met at the office of the Pakistan Institute of Labour Education and Research (PILER – Pakistan's most prominent think tank and advocacy group for labour rights, of which he is a board member), I spent several days (and nights) at Siddiqui's firm, going through the files of the so-called Baldia factory fire case. Every now and then we met to discuss the case and more generally the status of the law in the regulation of Pakistan's politics and society. In August 2017, we pursued this discussion in light of the recent developments; by then, Siddiqui was no longer involved in the case and he could reflect on its larger implications with more serenity.

Siddiqui received a BSc in sociology from the London School of Economics (LSE) and has retained a keen interest in the social sciences from his student days, as well as an institutional affiliation with the LSE (he is a former Visiting Fellow at its Centre for the Study of Human Rights). After I discussed my project with him, he made several suggestions that significantly oriented the course of my research, especially by encouraging me to revisit E.P. Thompson's argument on the 'double-edged sword of the law', which he found particularly relevant when assessing the role of the law in contemporary Pakistan. My research on the Baldia factory fire case was therefore coproduced with a legal practitioner, and it reflects his own hopes and occasional disillusionment regarding the potentials of legal activism in Pakistan.

Throughout the summer of 2016, one of the recurrent themes in our discussions was what Siddiqui referred to as 'the anarchy of the law'. According to him, the state of disorder prevailing in Pakistan was, at large, reflected in its legal system. And while this often complicated his work, it also played in his favour. Thus, the way Siddiqui and the petitioners he represented approached the issue of compensation was legally dubious:

Nobody files compensation cases through constitutional jurisdictions. According to [Pakistani] law, every victim has to come to court and prove his claim. There's a very elaborate structure of private law which guarantees that no victim [ever] gets compensation. Nobody can really check whether [petitioners] have received their

pensions, whether government compensation has been dispersed ... Very early on, we realised that we could not mobilise 255 people, filing their individual claims. So we took the gambling route. It was really a gamble: you get a good judge, [then] you get good orders ... It's really the Wild Wild West form of public litigation ... So we have been able to achieve about 18,000 dollars per victim, within a period of two years, whereas a normal civil claim would have lasted between fifteen to twenty years. (Interview with Faisal Siddiqui, Karachi, July 2016)

Later in our discussions, Siddiqui elaborated upon this theme of the 'anarchy of the law'. For him, Pakistan faces a huge disjunction between 'the law in books' and 'the law in practice' – a disjunction which, in his view, 'creates anarchy about interpretation and application of the law'. In the Pakistani context, the law would not be a rational architecture of legal norms bringing about certainty in matters of government and in the dispensation of justice, but a source of unpredictability benefitting the shrewd and the mighty. This vision of the 'anarchy of the law', as opposed to the rule of law, finds an echo in some works on organised crime, particularly on the mafia in Italy, where according to this literature 'the uncontrolled proliferation of laws and regulations' would only be matched by 'the arbitrary way in which they are applied' (Lyttelton 1994). These writings pertain to what J.-L. Briquet refers to as a 'paradigm of degeneration' (Briquet 2007, 20), which laments the political and moral decay of democratic institutions in order to call for their reform and renovation⁴⁷ – a position which raises a number of issues, if only for its normative claims (what is the benchmark of an 'authentic' rule of law?). Within the legal field, Siddiqui's denunciation of the 'anarchy of the law' may also seem to resonate with those indictments of legal formalism that end up perpetuating a positivist reading of legal norms as coherent and univocal (Israël, Sacriste, Vauchez and Willemez 2005, 5). Once we shift our attention from Siddiqui's representation of the legal system to his actual engagement with the law, however, a different image starts to appear: one where, far from being constrained by their juridical culture and normative presumptions, jurists engage creatively with the legal arsenal at their disposal, for personal or political sakes. These tactical uses of the law on the part of lawyers and judges generally imply a strict literalism, such as that displayed by judges resisting authoritarian regimes (Osiel 1995). Siddiqui's legal activism is of a different kind, however, and instead of being constrained by the existing legal framework, aims to exploit its alleged 'disorder':

When you have this disjunction between “the law in books” and “the law in practice”, that creates a space for anarchy and the rich take advantage of it. Not because of their money but because they are organised. So the strategy we adopted was to organise ourselves to get the same advantages. If you [judges] had taken a strict view of the law, some compensation should not have been granted. But since there was legal confusion, we took advantage of it, without resolving that confusion. In a civil court, most of them [victims’ heirs] would have ended abandoning their claims and I don’t think even a generous judge would have granted them more than 5 or 6,000 dollars. (...) So, this anarchy of the law, it’s wrong to say that only the powerful take advantage of it. It is people who are organised that take advantage of it. I’ve gone against very powerful people, and I think the key element has been how organised and ‘strategised’ you are. It’s something we used in this case. It worked very well. (Interview with Faisal Siddiqui, Karachi, July 2016)

As Siddiqui himself highlighted, the main reasons for this success were twofold. First of all, as we already briefly saw earlier, the Baldia factory fire case unfolded at a peculiar historical moment, as far as the politics of Pakistan’s judiciary were concerned. This catastrophe happened in the wake of the so-called Lawyers’ Movement, and Siddiqui – who was himself an active member of this movement – engaged with judges who ‘had realised that they had to change the basis of their legitimacy, from constitutional legitimacy to public legitimacy’. If high court judges took up this case so ‘aggressively’, it was essentially to redeem themselves of their past compromises with military regimes, in order to consolidate their position as an autonomous institution whose power would rest with its public legitimacy.

Besides these unique historical circumstances, Siddiqui emphasised the contribution of one particular judge, who exemplifies in his eyes the role of individual agents in collective struggles, judicial and otherwise. Maqbool Baqar was a widely respected member of the legal fraternity who was confirmed as judge of the Sindh high court in 2003 and then appointed chief justice of the province in 2013. Baqar was among the few judges who had refused to take oath under the Provisional Constitutional Order (PCO) enforced by General Pervez Musharraf in 2007; he maintained his stand against military rule by refusing to be reinstated after Musharraf restored the deposed judiciary in March 2009. Besides his commitment to democracy and the rule of law, his liberal stance was

acknowledged by all, including by the Pakistani Taliban, who attacked his convoy in June 2013 – an attack which he survived but which left eight security personnel dead. According to Siddiqui, Justice Baqar was determined to provide justice to the victims of the Baldia fire and their families and it was he who passed most of the orders in favour of the petitioners.

The conditions in which the protective bail of the Bhailas was revoked, in October 2012, also suggest that economic and political elites are not alone in exploiting legal loopholes or circumventing the law altogether.⁴⁸ Indeed, the decision of the judges to allow petitioners to interfere with the criminal case was legally dubious because NGOs are normally not allowed to interfere with such cases. This is because the expectation is that the initiative should come from the victims' families – who, for obvious reasons in this case, were reluctant to do so. As a result, the owners of Ali Enterprises were arrested and briefly sent to jail. According to Siddiqui, the judge in the trial court at that time was 'a relatively independent person' and there was 'a lot of pressure from the Sindh government to do something, to deflect their own criminal negligence'; these two factors momentarily converged against the owners. However, as we saw earlier, the mobilisation of Karachi's industrialists soon disrupted this configuration, to the benefit of the owners of Ali Enterprises, who were all freed by early 2013. This led the petitioners and their legal counsel to change their approach. As F. Siddiqui told me,

Very early on, I realised that you had to use the same tactic that the owners used with the victims to get the victims to come forward. It had to be both carrot and protection – I wouldn't say "stick" ... What we did is that we tried to make this case high profile, then we got them [victims' families] compensation. Then they realised that they could benefit from these people, from these NGOs, and they got out of their fear, also. They understood that these people could protect them. Then, for the last couple of years, we were able to mobilise these victims. (Interview with Faisal Siddiqui, Karachi, July 2016)

But as Siddiqui himself acknowledges, this tactic came at a cost:

We made a strategic mistake. We got bogged down in money matters. By trying to get this compensation, we really didn't concentrate on other things [e.g. the passing of a new safety law or on the resumption of inspections in factories]. The monetisation of the

entire struggle was a big mistake. It had a very bad effect on the victims, also. It really limited their consciousness to the sole issue of money. Really, we played on the wicket of the enemy. They were willing to give us money if we gave up all other rights – the right to accountability, the right to labour rights enforcement ... That was the deal. I think we fell into that trap. (Interview with Faisal Siddiqui, Karachi, July 2016)

This self-criticism echoes the frustrations of other legal activists fighting similar cases in the region and beyond. In Bangladesh, for instance, the activist group called Activist Anthropologists has filed a public interest litigation (PIL) in the country's high court to demand justice for the victims of the November 2012 Tazreen Fashions factory fire. And as the court and industrialists colluded to promote compensation as the sole response to the tragedy, these activists came to realise that 'public recognition of suffering and the rights of compensation that it entails remains a largely *ad hoc* affair and generates a political program for compensation that keeps particular demands for structural change at bay' (Sumon, Shifa and Gulrukh 2017).

Overall, Siddiqui is not a fetishist of the law. His legal activism – that is, his inclination to 'talk law to power' (Abel 2001) – cannot be isolated from his larger commitment to social reform, a project in which the law certainly has a role to play but where it should not take precedence over political mobilisation:

The legalisation of social struggles is another dangerous road to take. The law should always be seen, at best, as a tactical weapon, and sometimes, in the right circumstances, as a strategic weapon. It should never be the main weapon. The major reason why this case ended up as a complete failure – because that's how I see it – is because we have this obsession with the law. We think we can legalise these ... I wouldn't say these are political struggles ... These are social struggles ... We had an opportunity to a certain extent to mobilise people in the textile sector, and we lost that opportunity ... (...) We thought we would enforce all rights and change the entire structure through the legal system. (Interview with Faisal Siddiqui, Karachi, July 2016)

Siddiqui's account of the Baldia factory fire case and of his own role in this legal battle was often puzzling for me. Part of this confusion had to do with his tactics of 'ethnographic seduction' (Robben 1996), and in

particular with the way he punctuated his account with sociological references that seemed somewhat uncanny in the mouth of an informant, who obviously enjoyed confusing me by appropriating ‘my’ analytical language to reflect upon his own practice. What further confused me – and this unease grew even stronger after I started transcribing our taped conversations months later – were his apparent hesitations about the outcomes of his struggle, and about the role of the law in it. If Siddiqui was a truly unusual legal activist, it was less for his influence and affluence than for his lack of faith in the capacity of the law to order the social world, convey its iniquities and propose solutions for its reform.⁴⁹ Indeed, here was a cause lawyer who presented his legal successes as political defeats, who expressed scepticism about the politics of rights⁵⁰ and who, instead of mobilising for an extension of the domain of the law (and its professionals), claimed that the ‘fetishism of the law’ (Comaroff and Comaroff 2006) had done a disservice to his cause.

Conclusion

The successive changes of course of the Baldia factory fire case kept returning me to the tensile equilibrium that has been the trademark of Karachi’s politics since the mid-1980s at least. All around, disorder reigned supreme: in the systematic violations of labour laws and safety regulations by local industrialists; in the traffic jams that delayed the response of emergency services; in the blatant amateurism of philanthropic organisations and law enforcement agencies in the face of a catastrophe of unprecedented magnitude; in the bungling by political authorities of an ‘accident’ that could not even be qualified as such with certainty; in the about-turns of victims and police officers called on in court; in the shift of the accused to the status of prosecutors; in the jubilant engagement of a legal practitioner with the ‘anarchy of the law’. But disorder was not all there was to this case. Behind the apparent chaos, several forces capitalised on the disorder and to some degree contained it at the same time. The forces of capital, in the shape of the business community, reorganised themselves and succeeded in securing their economic interests by containing the threat of a resurgent state regulator. In the process, the Bhailas were gradually rehabilitated through ‘restorative rituals’ that compensated the stigmatising impact of judicial proceedings, minimised their responsibility and ruled out any intentional wrongdoing – a process of restoration that generally protects delinquent elites

against the forms of degradation reserved for less privileged offenders (Lascoumes 2013).

This restoration process, which beyond the individual case of the Bhailas exonerated Karachi's industrialists at large, operated through a requalification of the incident and a redistribution of responsibilities. However deadly they had proven to be, the illegalities upon which Karachi's manufacturing industries thrived were gradually overshadowed by the wrongdoings of the so-called 'extortion mafia' associated with the MQM and its racketeers-turned-arsonists. In the process, the army, the paramilitary Rangers and the 'agencies' succeeded in sidelining the party that had ruled over Karachi as a personal fiefdom for almost three decades. The MQM was not eradicated but it was reduced to a shadow of its former, terrifying self. Decades of militancy and political strife were replaced by a new agenda of 'security' that promised to be no less coercive and that, at least momentarily, seemed to overlap with the irregular capitalism that brought both wealth and death to the city. And finally, between and betwixt these forces of capital and coercion, mediating their tensile relations, was the law. That blunt, rusty, double-edged sword of the law, which as E.P. Thompson famously – and at the time, at least for orthodox Marxist historians and social scientists, controversially – argued, is never entirely subsumed in the institutions of the ruling class (Thompson 1975, 260). Of course, the status and creative appropriations of the law in contemporary Pakistan have little to do with those of eighteenth-century England. But it is precisely because of its apparent weaknesses and internal disorders that the role of the law in the adjudication of political and economic disputes in contemporary Pakistan is so intriguing. For all its circumventions, abuses and informalisation, it remains a common ground and a common language – Thompson would say a common 'ideology' – for various social forces struggling for power, wealth and dignity. This is particularly true for the issue of labour rights – a cause which has largely disappeared from the public scene since the trade union movement and larger social struggles were brutally crushed by successive democratic and military regimes from the early 1970s onwards. As the perspective of collective mobilisations and the visibility of workers in the media receded, the courts became the last site to publicise labour issues and adjudicate workplace conflicts.

As Thompson underlines, this common ground of the law is essentially a terrain of *conflict*, for it is in the nature of this medium to frustrate the ambitions of the ruling classes who had turned to it 'for their own self-defence' (Thompson 1975, 264). What the Baldia factory fire case

also exemplifies is that the outcome of these battles can never be taken for granted. Even as they serve the strategies of domination of the powerful and generate their own forms of coercion, as well as their own illegalities, legal proceedings always retain a contingent part – the historical and individual ‘circumstances’ evoked by F. Siddiqui – which introduces some indeterminacy in the game and, as such, contributes to its reproduction. This was exemplified in the Baldia factory fire case by a handful of lawyers and judges who, in the name of social justice, did not hesitate to bend the rules. The limited and contested successes of these jurists with a cause were therefore obtained less by applying the law by the book – thus entrapping the dominants into their own rhetoric of self-preservation, as Thompson would suggest – than by twisting the law in order to deliver justice. While legal mobilisation theory, for its part, generally insists on the creative appropriation of legal norms by social movements and the jurists helping them ‘talk law to power’ (McCann 2004), the present case study led us to uncover a less literalist use of the law by a group of activist lawyers and judges, whose complicity was itself the outcome of a political mobilisation of the legal fraternity.

Even as it underlines the resilience of the rule of law as a shared language and terrain of conflict in contemporary Pakistan, this case study speaks volumes about the ability of local economic elites to neutralise it, whether in their day-to-day operations or in more dramatic situations, when their illegalities suddenly come under public scrutiny. While questioning the power of the law, these illegalities and the relative impunity guaranteed to white collar criminals raise the question of the dissolution of state authority in a situation of industrial dis/order based on the selective application of the law. The judicial proceedings analysed here undoubtedly reveal the limited capacity for intervention of state regulators in the day-to-day operations of Karachi’s industries. At the same time, the very existence of these judicial proceedings, as well as the various turns of the investigation, attest to the persistent role of state actors in delimiting the horizon of possibilities for these economic actors. Even if the state in question is a deeply fragmented one, torn between divergent logics of action, its capacities of influence and regulation – which largely operate through informal networks, upon which court orders themselves are dependent – are far from being negligible. As such, this case study is also an invitation to move beyond the dichotomy between strong and weak states while observing the penetration of polycentric societies by state forces, in particular by security establishments feeding upon various forms of disturbances to impose their own conception of public order.

Notes

1. This period of industrialisation corresponds to the rule of Pakistan's first military ruler, Ayub Khan, which saw the emergence of a developmentalist state that set the basis for the country's manufacturing sector; see Amjad 2007; Naseemullah 2017.
2. Legal technicalities and the use of English during court proceedings liken labour courts to quicksand where workers' or unions' claims tend to sink. For a recent appraisal of Pakistani labour courts, see PILER 2009.
3. See McCann 2004; Sarat and Scheingold 2001.
4. CP No. 3318 of 2012, PILER and Others vs Federation of Pakistan and Others.
5. Another constitutional petition was filed by PILER and others (CP No. 295 of 2013), focussing on the accountability of international inspection firms like RINA; this particular legal initiative is beyond the scope of the present paper.
6. Interview with Faisal Siddiqui, advocate for the petitioners, Karachi, July 2016.
7. Zafar Iqbal was the first Investigation Officer (IO) of this group; he was suspended on 20 September 2012 and replaced by Sub-Inspector Jehanzaib.
8. The FIA was created in 1974, with the objective of providing the federal government with investigative resources extending across the country. It comes under the federal Home Ministry and is headed by a director general who enjoys the powers of an inspector general of police (IGP).
9. Charge Sheet No. 238 - A / 2012, 12 Nov. 2012.
10. With the encouragement of the military regime of Ayub Khan (1958–69), a significant number of Memons shifted from their traditional specialisation in the *kirana* (spices/food grains) trade to the textile industry, the only industry to offer return rates as high as those merchants were accustomed to. On the Memons of Karachi and their contribution to the city's industrialisation, see Papanek 1973.
11. This casualisation of labour, which became widespread from the late 1980s onwards, is not limited to the textile/garment industry; according to EOBI officials, only 6 million Pakistani workers (of an estimated employed labour force of 54 million) were registered with them at the time of the Baldia factory fire (see Kamal 2012).
12. Statement U/s. 161 Cr. P.C., 14 September 2012, PS SITE-B (statement made by Muhammad Umer, machine operator at Ali Enterprises).
13. Charge Sheet No. 238 - A / 2012, 12 Nov. 2012; FIA Report, pp. 8–9.
14. Charge Sheet No. 238 - A / 2012, 12 Nov. 2012; FIA Report, pp. 8–9.
15. Interview with a prominent economic journalist at the daily *Dawn*, Karachi, July 2016.
16. Tribunal's Report For Ascertaining the Circumstances and Cause Leading to the Fire and Subsequent Deaths and Injuries in the Incident That Took Place on 11.09.2012 in the Factory of M/S Ali Enterprises Located at Plot No. F-67 SITE Karachi, pp. 30–31.
17. Federal Investigation Agency, Sindh Zone Karachi, *Enquiry Report. Fire Incident At Ali Enterprises S.I.T.E. Karachi On 11th September 2012*, 3 October 2012, p. 10.
18. *Ibid.*, p. 22.
19. Federal Investigation Agency, Sindh Zone Karachi, *Enquiry Report. Fire Incident At Ali Enterprises S.I.T.E. Karachi On 11th September 2012*, 3 October 2012, p. 10.
20. Karachi's fire brigade has only 22 fire engines in working order; most of them are 30 years old; interview with Faisal Edhi, head of Edhi Foundation, Karachi, July 2017.
21. Interview with a prominent member of Edhi Foundation, Karachi, July 2017.
22. Tribunal's Report For Ascertaining the Circumstances and Cause Leading to the Fire and Subsequent Deaths and Injuries in the Incident That Took Place on 11.09.2012 in the Factory of M/S Ali Enterprises Located at Plot No. F-67 SITE Karachi, p. 16.
23. Office of the Police Surgeon Karachi, N°PSK/4305/6, 8 December 2012, p. 3.
24. Tribunal's Report For Ascertaining the Circumstances and Cause Leading to the Fire and Subsequent Deaths and Injuries in the Incident That Took Place on 11.09.2012 in the Factory of M/S Ali Enterprises Located at Plot No. F-67 SITE Karachi, p. 17.
25. Federal Investigation Agency, Sindh Zone Karachi, *Enquiry Report. Fire Incident At Ali Enterprises S.I.T.E. Karachi On 11th September 2012*, 3 October 2012, p. 20.
26. Interview with Faisal Siddiqui, Karachi, August 2017.

27. In the high court of Sindh at Karachi, C.P. No D-3318/2012, Report of Pakistan Rangers (Sindh), 20 January 2015.
28. On the political history and economic activities of this force, see Gayer 2010.
29. Interview with a former chair of the KCCI and SITE Association of Industry, Karachi, July 2017.
30. In the high court of Sindh at Karachi, C.P. No D-3318/2012, Report of Pakistan Rangers (Sindh), 20 January 2015, p. 6.
31. B'adaalat Janaab Joint Additional District & Sessions Judge Sahab vs Karachi West, Progress Report (in Urdu), 2016.
32. The PFSA is a newcomer on the (burgeoning) forensic science scene in Pakistan. It was established in 2007 under the Home Department of the province of Punjab and claims to have solved 280,000 cases in less than 10 years. See Sharif 2017.
33. I was never able to see a copy of this report despite repeated requests to police officers who had access to it.
34. Interview with a senior officer of the Sindh police and former member of the JIT, Karachi, August 2017.
35. Charge Sheet No. 238-C/2012, SITE-B Police Station, Karachi West, 19 August 2016.
36. In the Court of Judge, Anti Terrorism Court No. II, Karachi Division, Order 16.09.2016.
37. Interview with a close observer of the Baldia factory fire case, Karachi, August 2017.
38. The testimonies of most witnesses were not presented in court because successive alterations in the charge sheet delayed the formal opening of the trial. According to the legal counsel of the petitioners acting on behalf of the victims, most of this evidence (to which he did not have access) might have been destroyed by Investigation Officer Jehanzaib.
39. Statement U/s. 161 Cr. P.C., 14 September 2012, PS SITE-B.
40. Criminal Bail Application No. 1208 of 2012 (Arshad Abdul Aziz & Another vs The State) in the high court of Sindh, affidavit of Muhammad Omer, 8 November 2012.
41. Criminal Bail Application No. 1208 of 2012 (Arshad Abdul Aziz & Another vs The State) in the high court of Sindh, affidavit of Nazeer Ahmed, 8 November 2012.
42. Lyari is Karachi's oldest working-class area. This decaying inner city area gave birth to a specific criminal scene in the course of the 1990s, leading to a series of deadly 'gang wars' in the following decade. Until recently, these gangs were rumoured to be patronised by the Pakistan People's Party (PPP); on the connivance of these gangs with the economic and political elites of Karachi, see Gayer 2014, chap. 5.
43. Interview with Faisal Siddiqui, Karachi, July 2016.
44. In Pakistan as elsewhere, the creation of value in the textile industry implies a policy of cost reduction which, in this labour-intensive sector, relies heavily on the compression of wages. This has led textile industrialists to circumvent labour laws in various ways, either by subcontracting parts of their production to unregistered sweatshops or by resorting to 'third parties' to provide them with 'contract workers'. In Karachi, the textile industry also colludes with the so-called 'water mafia' to procure water unofficially, at a reduced cost. The illegalities of the local textile industry also have to do with their mode of insertion into the global economy and with the still-limited constraints exerted by their foreign clients, as far as labour laws and safety regulations are concerned. The situation is markedly different in the pharmaceutical sector, where the creation of value is less dependent upon the exploitation of labour, where there is more emphasis on the development of human resources through the training of workers and where there is much greater impetus to conform to international production norms and health regulations.
45. Interview with Faisal Siddiqui, Karachi, July 2016.
46. On the political and professional trajectory of Munir Malik, see Gayer 2009.
47. In this perspective, 'The Mafia can be seen as the logical extension and the ultimate degeneration of a climate of clientelism, favoritism and the appropriation of public resources for private gains' (Chubb 1996, 289).
48. The Bhailas escaped from the site on the night of 11 September 2012. The police never made any serious attempt to arrest them. They then obtained protective bail from the Lahore high court, which allowed them to travel to Sindh without risking arrest. They later on received protective bail from the Sukkur bench of the Sindh high court so that they could appear in front of local courts prior to the trial. They were subsequently arrested in October 2012 but were granted bail a few months later.

49. On this profession of faith of cause lawyers, see Gaiti and Israël 2003, 30.
50. During an interview in August 2017, Siddiqui emphasised how the language of rights, with its moderating effect on political claims, had done a disservice to social reform in Pakistan. This was another departure from typical legal activists, who have made 'rights consciousness raising' a central aspect of their action; see Scheingold 1974.

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