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CORPORATE MANSLAUGHTER IN INDIA: LESSONS FROM THE UNITED KINGDOM FOR ADDRESSING CORPORATE CRIMINAL LIABILITY

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Abstract

The rising participation of businesses in hazardous industries has led to an increased risk of massive deaths caused by organizations. Though the law of India acknowledges corporate criminal responsibility in theory, the lack of a corporate manslaughter provision leads to significant gaps in accountability, most notably exemplified by the Bhopal Gas Tragedy. This paper critically analyses the legal shortcomings in India in bringing corporate bodies to account for death caused by their wrongful actions.

By conducting a comparative analysis of the UK Corporate Manslaughter and Corporate Homicide Act 2007, this paper evaluates the viability of such legislation as a suitable model in shifting the focus of culpability from individuals to the organization. The paper argues that the use of identification doctrine in India remains ineffective in ascertaining criminal responsibility in complex and diffused corporate entities. Using the UK approach as a foundation, this paper suggests the formulation of a bespoke corporate manslaughter law in India that adheres to doctrinal consistency yet conforms to its institutional realities.

Keywords: Corporate Manslaughter, Corporate Criminal Liability, Corporate Homicide Act 2007, Organizational Fault, Bhopal Gas Tragedy, Indian Criminal Law Reform, Comparative Criminal Law.

Introduction

The increasing dominance of corporations in the economic landscape has correspondingly enhanced their ability to cause extensive harm. Industrial accidents, pollution, and work

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related deaths often occur not due to individual malfeasance but rather due to systemic organizational deficiencies that cannot easily be dealt with using traditional concepts of criminal law. The question raised here is whether there exists a proper method of attributing criminal liability to an artificial person whose acts have caused death. Traditional criminal law, founded upon the principle actus non facit reum nisi mens sit rea[2], assumes that there is a natural person who could commit an act coupled with a guilty mind. However, corporations being both non human and devoid of physical capacity[3] make them an odd entity under the classical model. Even while the personality of corporations is well known within the realm of private law, its use for attributing criminal liability[4] faces difficulties. India's exposure to organizational negligence reached its zenith with the infamous Bhopal Gas Disaster of 1984 an incident that brought to light the inability of the legal system to impose any form of criminal liability against a company causing mass death. While there has been judicial acknowledgement of the concept of corporate criminal liability[5], the lack of statutory backing makes prosecution extremely difficult and fails to provide sufficient remedy to the victims. Contrastingly, the United Kingdom has enacted the Corporate Manslaughter and Corporate Homicide Act 2007, creating a new legislative model focusing on organizational fault and liability over individual accountability a much needed change in keeping up with the modern corporate milieu. The purpose of this paper is to argue that India's legal system lacks an institutional structure conducive to the prosecution of corporate manslaughter[6]. Using the UK as a point of comparison, the argument will suggest a path forward through necessary statutory reforms.

2. Jurisprudential Foundations of Corporate Criminal Liability

Corporate criminal liability has been informed by a persistent effort to harmonies the principles of criminal law with the reality of modern day corporations[7]. Since corporations do not have the physiological or psychological features requisite for criminal liability[8], various juristic theories have been put forth to explain how liability may be established.

[2] Glanville Williams, *Criminal Law: The General Part* 30 (2d ed. 1961).
[3] H.L.A. Hart, *Punishment and Responsibility* 181–82 (2d ed. 2008).
[4] Salomon v. Salomon & Co. Ltd., [1897] A.C. 22 (H.L.).
[5] Standard Chartered Bank v Directorate of Enforcement
[6] Corporate Manslaughter and Corporate Homicide Act 2007
[7] *Celia Wells, Corporations and Criminal Responsibility* 1–3 (2d ed. 2001).
[8] V.S. Khanna, Corporate Criminal Liability: What Purpose Does It Serve?, 109 Harv. L. Rev. 1477, 1480–82 (1996).

2.1 **Identification Doctrine**:-The identification doctrine states that the deeds and mens rea of some particular persons can be equated with the deeds and mens rea of the corporation. The seminal case that propounds the identification doctrine is the landmark English judgment of Tesco Supermarkets Ltd v Nattrass [1972] AC 153[9]. In that case, the House of Lords opined that only those who were the "directing mind and will" of the corporation, i.e, its directors or senior officers, could commit criminal acts for which the corporation would be liable. Although the doctrine appears coherent, it possesses one significant flaw it does not work well for large, decentralized corporations. Decision making powers in such organizations cannot be vested in a single person because there are too many layers of management. Thus, it is unlikely that a systemic negligence act can be traced back to a specific individual, making the identification doctrine unsuitable as a means of holding the corporation accountable.

2.2 **Aggregation Theory**:-The aggregation theory attempts to overcome this weakness by aggregating the knowledge, fault, or actions of several individuals in the corporation to establish the overall culpability of the corporation. Unlike the identification doctrine, this theory does not require that the actions be committed by a particular "directing mind." Though theoretically plausible, the aggregation theory has received little judicial backing. It has never been applied in India and is still poorly defined to be used as a basis for charging the corporation with criminal liability[10].

2.3 **Organizational Fault Theory**:- Compared to the other two theories, organizational fault theory is more well developed. It holds that criminal liability should be imputed to the corporation based on its systemic deficiencies bad policy formulation, poor risk management, ineffective supervision, and negligent organizational culture[11]. The organizational fault theory recognizes that the actions of large scale corporate organizations often stem from institutional flaws. Organizational fault theory forms the basis of the United Kingdom's Corporate Manslaughter and Corporate Homicide Act 2007[12], which explicitly requires that liability arise due to the way the organization's activities are "managed or organized."

3. Corporate Criminal Liability in India – A Critical Evaluation

[9] Tesco Supermarkets Ltd v Nattrass
[10] Jennifer Arlen, Corporate Criminal Liability: Theory and Evidence, in *Research Handbook on the Economics of Criminal Law* 144, 150–52 (2012)
[11] Brent Fisse & John Braithwaite, *Corporations, Crime and Accountability* 39–45 (1993).
[12] Corporate Manslaughter and Corporate Homicide Act 2007

Despite recognizing corporate criminal liability in various judgments, the Indian legal framework suffers from certain structural flaws that make prosecution of corporations for large scale fatal negligence difficult. Lack of any statutory regime dealing with the issue combined with strict doctrine and enforcement problems lead to a system which is merely reactive in nature and is ineffective as deterrence.

3.1 **Statutory Provisions**:-There is no statutory regime in India that deals with the offence of corporate manslaughter. The provisions under Indian Penal Code, 1860 which impose liability on corporations include Section 304A which deals with negligent homicide and Sections 299 to 304 dealing with culpable homicide[13]. However, the above provisions are based on the premise of natural persons committing criminal offences and are therefore ineffective when applied to corporations.

3.2 **Judgments**:-Since there is a lacuna in the statutory provisions regarding criminal liability of corporations, the judicial system in India plays an important role in filling those gaps. In the case of Standard Chartered Bank v Directorate of Enforcement (2005) 4 SCC 530[14], it was held by the Supreme Court that despite the fact that the prescribed punishment under the statutory provisions was mandatory jail term for a person, a corporation could also be prosecuted and imposed a fine as the prescribed punishment. In Iridium India Telecom Ltd v Motorola Inc (2011) 1 SCC 74[15], the court reiterated the position that a corporation could have a required mens rea on account of the mens rea of its agents. Thus, corporate criminal liability can be attributed to a corporation using the principle of identification. Although both the above judgments are important for the development of corporate criminal liability in India, both these judgments suffer from the fact that they do not deal with the structural problems that exist while prosecuting corporations for large scale fatal negligence[16].

3.3 **Structure Problems of Corporate Criminal Liability in India**:-There are four structural problems that plague the corporate criminal liability system in India and are outlined below:

- Mens Rea Problem:-Under the Indian legal system, criminal liability of a person can be proved only by proving mens rea. When applied to large corporations, there is

[13] Indian Penal Code, No. 45 of 1860, §§ 299–304A (India).
[14] Standard Chartered Bank v Directorate of Enforcement.
[15] Iridium India Telecom Ltd v Motorola Inc.
[16] Assistant Comm'r v. Velliappa Textiles Ltd., (2003) 11 S.C.C. 405 (India).

often lack of proof as to mens rea of any one person as the corporation is usually run on a hierarchical basis. Firstly, this limitation is exacerbated by the use of the identification doctrine in the determination of corporate culpability an application of law that requires a directing mind and intent, a concept which is specifically intended to obscure such in corporate hierarchies.

- Punishment gap:-Imprisonment the principle punitive remedy under criminal laws cannot be meted out against a corporate entity. Although fines have been substituted in the absence of imprisonment, they are neither proportionate to the gravity of the act nor to the wealth of the corporate offender.
- Non enforcement:-Resulting from weak investigatory capacity, poor interagency cooperation, and the lack of expertise in prosecuting corporate crimes.
- Rigidity in doctrinal development:-India still persists with the identification doctrine despite the absence of any changes within both the legislature and the judiciary.

Combined, these deficiencies mean that the law will only react to corporate wrongs once they have been done, while failing to deter the very conditions that cause it. The Bhopal Gas Tragedy is the most egregious example of this deficiency and, many years since, nothing has changed legally despite its lessons.

4. The Corporate Manslaughter and Corporate Homicide Act 2007 of the United Kingdom

A Legislative Analysis The most significant piece of legislation in the common law world concerning corporate fatal liability is the Corporate Manslaughter and Corporate Homicide Act 2007. The Act was prompted by the inability of prosecutors to prove that corporations have been guilty under the gross negligence manslaughter approach due to inherent difficulties. In particular, the Act shifts away the focus on the individuality aspect of corporate criminal activity to organization level fault.

4.1 **Structure and Important Elements**:-The key element of the Act, namely, Section 1(1), provides that an organisation commits corporate manslaughter if the manner in which it organises its activities or organises such activities leads to death and constitutes a gross breach of a relevant duty of care owed to the deceased. Importantly, the gross breach has to be attributable to the way the corporation is organized and managed by senior management. Accordingly, three elements are necessary for the establishment of the corporation's guilt:

first, a duty of care owed to the victim must be found; second, death must be shown to result from the way activities are organized third, the breach of duty must be gross and substantial. As the above discussion demonstrates, the Corporate Manslaughter and Corporate Homicide Act 2007[17] has succeeded in retaining doctrinal rigor but has also allowed for adaptation of the theory of corporate fatal liability to the needs of contemporary organisations.

4.2 **Importance of the UK Approach from the Perspective of Doctrine**:-The UK approach to the problem of corporate liability is best demonstrated by the introduction of a new concept of corporate manslaughter. Specifically, the UK Corporate Manslaughter and Corporate Homicide Act 2007 abandons the identification doctrine and thus introduces a fundamentally new approach to corporate manslaughter based on organization wide failure rather than the mental state of a certain officer or employee. Such a change is important for the following reasons. First, it makes possible successful prosecution of corporations responsible for industrial disasters. Secondly, it helps avoid the situation when a corporation tries to protect senior officials from involvement in decision making in order to avoid personal liability[18]. Moreover, the relevance of senior management without the requirement of the individual's fault creates a reasonable approach towards both organisational and personal accountability.

4.3 **Penalties and Their Role in Deterrence**:-A unique penalty system provided by the Act is intended to ensure punishment, deterrence, and rehabilitation at once. An unlimited fine may be imposed on the accused company, based on the idea that it should be proportional to its size and the severity of the wrongdoing[19]. The guidance issued by the Sentencing Council confirms this, calling for due attention to be paid to the turnover and the degree of culpability when calculating fines. Alongside fines, courts may make remedial orders under Section 9, which order an organisation to take certain actions in order to correct the management deficiencies causing the offence. Such a mechanism, especially noteworthy, makes the court decision not only a punishment but also an instrument of organisational change. Moreover, under Section 10, the courts can make a publicity order to ensure that an organisation publishes the information about its criminal conviction, the nature of the crime, and the corresponding penalty. In terms of deterrence, such measures affect corporation's

[17] Corporate Manslaughter and Corporate Homicide Act 2007
[18] James Gobert, The Corporate Manslaughter and Corporate Homicide Act 2007, 71 Mod. L. Rev. 413, 415–18 (2008).
[19] U.K. Sentencing Council, *Corporate Manslaughter Sentencing Guidelines* (2016).

reputations,which means a lot when considering those whose survival depends on maintaining their reputation.

In total, penalties introduced by the Bill reflect legislative policy, which states that corporate liability needs not only to be punishing but also reshaping the future business practices[20]. It is this policy, which seems to be absent in the current Indian legal regulation, that is discussed in the following section.

5. Comparative Analysis: India and the United Kingdom

It becomes evident that not only do the Indian and UK laws on organizational manslaughter differ in terms of their legislative structure, but there are fundamental differences in their philosophical approach and design of the regulatory mechanism aimed at punishing organisational actors. Whereas in the UK, legislators opted for targeted statutory intervention to rectify the perceived deficiencies in common law, in India, reliance has been made on a fragmented statutory scheme which, moreover, is based on doctrinaire assumptions about corporate liability and accountability[21].

5.1 **Basis of Liability**:- The core difference between the Indian and UK laws on organisational manslaughter lies in the underlying theoretical premise on which the notion of guilt is constructed. Under the Indian law, the prosecution needs to show that an individual person whose actions are considered to constitute the organisational crime committed an offence and had the necessary mens rea. Under this approach, which is based on the identification principle, it may be very difficult to demonstrate criminal responsibility of a large and decentralized organisation. Under the UK Act, corporate responsibility is based on organizational fault, or, more precisely, the manner of management and conduct of its activities, which can be described as a departure from the standards of due diligence. This approach differs dramatically as it makes an organisation the object of criminal law rather than an instrument used by individuals to commit crimes, thus imposing responsibility on the organization per se and making the burden of proof more relevant.

5.2 **Statutory Framework**:- Indian regulations on organisational manslaughter are scattered over general provisions of the Indian Penal Code of 1860 and sector specific statutes including the Factories Act, 1948 and the Environment Protection Act of 1986. While those

[20] R v. Cotswold Geotechnical Holdings Ltd. [2011] 1 Cr. App. R. (S.) 26.
[21] OECD, *Corporate Liability for Corruption: A Stocktaking Report* 25–30 (2016).

provisions can serve as grounds to prosecute organisational manslaughter, the problem is that they have not been devised for such purposes and necessitate judicial activism. Unlike India, the UK Act constitutes a codified statute that clearly sets out the criteria of organisational manslaughter and the associated duty of care, describes the role of management in the company, and outlines the penalty. This codified practice gives the prosecutors, corporations, and even courts certainty in the law and eliminates the interpretive ambiguity that defines the position of India.

5.3 **Enforcement and Institutional Capacity**:- Efficient corporate criminal liability must be supported by good legal theory, as well as the institutional framework in which it can be carried out. The UK system is backed by the Health and Safety Executive, the Crown Prosecution Service, and industry focused regulatory agencies that have technical how and investigative abilities to undertake complicated corporate prosecutions. Sentencing guidelines also uphold consistency as well as proportionality. The enforcement situation in India is a contrasting one. The regulatory agencies are often under staffed, the prosecutor experience in the corporate crime is poor and the agency coordination is poor. The practical ability to implement the legal provisions, even where it is provided by law, is limited when it comes to dealing with large corporations. This institutional deficiency is reflected in the Bhopal litigation, which stretches decades without any corporate accountability that is meaningful.

5.4 **Deterrence**:- The criminal liability regime can have a deterrent effect on the basis of the credibility of the threat it presents. The UK system, which provides unlimited fines based on the corporate turnover, correctional orders, and obligatory publicity, has a multi-faceted effect that prevents the violations both financially, in its operation, and reputational aspects. The dependence on fixed or nominally capped fines and the practical challenge of getting convictions on the identification doctrine in India contributes greatly to the underage deterrent value of the current system. Companies with high exposure to risk are less structurally motivated to invest in systemic risk reduction in the event that the chance and impact of criminal conviction is insignificant.

6. The Accountability Gap in India: Systemic Failure and Its Consequences

The structural deficiencies identified in the preceding sections coalesce into what may be described as a fundamental accountability gap a condition in which corporations responsible for mass fatalities escape proportionate criminal sanction, not due to evidentiary insufficiency

alone, but because the legal framework itself is institutionally incapable of imposing it. This gap is not merely a theoretical concern; it has manifested repeatedly in India's experience with industrial disaster, most devastatingly in the Bhopal Gas Tragedy.

6.**1 The Bhopal Gas Tragedy**: A Case Study in Legal Failure:- In the early hours of 3 December 1984[22], a catastrophic leak of methyl isocyanate gas from the Union Carbide India Limited plant in Bhopal, Madhya Pradesh, resulted in the deaths of an estimated 15,000 to 20,000 people and caused lasting injury to over half a million others. The disaster was not the product of a single individual's negligence but of systemic organisational failures inadequate safety protocols, deferred maintenance, insufficient emergency preparedness, and a management culture that subordinated worker and community safety to cost reduction. The legal response was, by any measure, disproportionate to the scale of the harm. Criminal proceedings under Section 304A of the Indian Penal Code resulted, after more than two decades of litigation, in convictions carrying sentences of two years imprisonment the maximum permissible under the provision imposed on individuals rather than the corporation itself[23]. Union Carbide Corporation, the American parent company, evaded Indian criminal jurisdiction entirely. The civil settlement of 1989, negotiated between the Government of India and Union Carbide for ₹715 crore, was widely condemned as grossly inadequate and was arrived at without meaningful participation by the victims. Bhopal thus illustrates, with devastating clarity, the cumulative failure of India's corporate liability framework the identification doctrine's inability to attribute systemic fault, the inadequacy of IPC provisions designed for individual offenders, the punishment gap that precludes imprisonment of corporate entities[24], and the institutional weakness that allows protracted litigation to substitute for accountability.

6.2 **A Pattern of Impunity**:- Bhopal is not an isolated case but a paradigmatic example of a broader pattern. Industrial accidents in sectors including mining, construction, and chemical manufacturing continue to claim lives with regularity, yet criminal prosecutions of

[22] Bhopal Gas Tragedy
[23] Upendra Baxi & Amita Dhanda, *Valiant Victims and Lethal Litigation* 45–78 (1990).

[24] Marc Galanter, Bhopals, Past and Present, 10 Windsor Y.B. Access Just. 151 (1990).

corporations remain rare, convictions rarer still, and penalties were imposed rarely bear any proportionate relationship to the scale of harm caused or the financial capacity of the offender. This pattern of impunity generates consequences that extend beyond individual cases of injustice. It distorts corporate incentives, effectively signaling that systemic safety failures carry negligible legal risk. It undermines public confidence in the capacity of the legal system to hold powerful institutions accountable. And it denies victims and their families the recognition implicit in a criminal conviction that the deaths caused were not mere accidents but the foreseeable consequences of culpable organizational conduct.

6.3 **The Structural Dimension of the Gap**:-The accountability gap is not reducible to prosecutorial failure or judicial timidity, though both contribute to it. Its roots are structural. A legal system that attributes corporate criminal liability through the identification doctrine will systematically fail to prosecute cases where harm arises from diffuse organizational dysfunction. A penalty regime that cannot impose imprisonment on corporations and offers only limited fines will systematically under deter. A regulatory architecture that lacks the resources and expertise to investigate complex corporate conduct will systematically under enforce. These structural features are mutually reinforcing. Together, they produce a legal environment in which corporations operating in high risk industries face limited credible threat of criminal sanction, regardless of the gravity of the harm their organizational failures cause. Closing this gap requires intervention at the structural level through dedicated legislation that redefines the basis of liability, recalibrates the penalty regime, and establishes the institutional mechanisms necessary for effective enforcement. The following section advances a proposal to that end.

7. United Kingdom experience Lessons towards an Informed Reform Agenda

The experience of the United Kingdom with the Corporate Manslaughter and Corporate Homicide Act 2007 teaches more than a legislative model it teaches a set of lessons based on principles that the Indian reform agenda would well learn. The first and most basic lesson is that it is important to acknowledge the distinct nature of corporate manslaughter as a single offence, conceptually and legally distinct to the general negligence regimes, which apply to natural persons. The choice of the UK to pass a special statute instead of applying an amendment to the law on homicide was not accidental - it marked the beginning of the recognition that the death caused by corporations is a qualitatively new group of injuries,

which needs a specific legal answer. In the case of India, this is a lesson to be learnt. The ongoing application of Section 304A of the Indian Penal Code[25] to the organisational killing of people confuses organisational culpability with individual carelessness, and sends the signal of normative significance of the legal system to mass death through systemic corporate negligence. The most important jurisprudential contribution would be redefining the nature of corporate liability as based on organisational failure as opposed to individual liability as defined by the UK Act. The Act seeks to reconcile legal responsibility with the institutional fact of how big companies are actually run and how damage to them actually takes place by stipulating that the gross breach of duty must be substantially attributable to the failure of senior management. The identification doctrine of India, as it is evident in this paper, cannot do this alignment. The UK experience shows that regulatory intervention should clearly supplant the identification doctrine as the framework used to establish corporate manslaughter with an evaluation that consider the quality of their management systems, risk procedures, and safety culture. This change is not a break with criminal law principle but its practical use negligence, as we all know, is judged against an objective scale of reasonable conduct, and there is no theoretical reason why the same scale cannot be used to judge organisational conduct. Even a fine, especially a fixed or nominally capped one, cannot serve to deter a large corporation where regulatory penalties are an acceptable cost of doing business, and where cost benefit analysis has been properly applied. Reform in India should thus not just seek penalties in financial terms but should also include the remedial measures that will force an organisational change, and publicity requirements that will have a reputational impact. The latter are especially important in the context in which corporate reputation has become a crucial factor in market evaluation, investor trust, and consumer behavior areas of accountability that are completely missed by the statute. The liaison between the Health and Safety Executive, the Crown Prosecution Service and sector-specific regulators are such that the investigation, the prosecution and enforcement are carried out by those bodies with the technical expertise and resources that complex corporate cases require. The reform agenda of India should thus not only be in terms of legislation but also institutional design. This involves enhancing the investigation ability of labour and environmental regulators, building prosecutorial skills in corporate crime in the public prosecution service and setting up specific guidelines on the inter agency coordination of the

[25] Law Commission of India, *41st Report on the Indian Penal Code* (1969).

cases of industrial fatality. The problem of legislation which lacks institutional capacity is, as the current model in India shows, more visionary than operational. The rates of conviction under the 2007 Act[26] have been low with prosecutions being mostly among smaller organisations and not regarding the large multinational corporations that the Act was largely aimed at. Critics have pointed out that even with the lower senior management standard, compared with the directing mind standard, still poses evidential challenges in complex corporate organization. Moreover, the Act lacks a provision on individual liability in conjunction with the corporate liability, which, according to some commentators, undermines its overall deterrent impact. These constraints are educative to the reform process in India. The UK domestic corporate manslaughter statute cannot be simply copied and applied in the Indian context but it should seek to address its identified shortcomings such as whether it can be better by including a concurrent individual liability, a reduced evidentiary test to attribute liability to senior management or a more robust regulatory investigation regime can achieve a better result in the Indian institutional context. The experience of the UK therefore teaches us not a blueprint but a structure to be followed in the informed, context specific design of legislative tools the parameters of which are detailed in the following reform proposal.

8. Legal Reform Recommendations in India.

The above discussion confirms that the gap in accountability in corporate manslaughter in India is structural in nature and cannot be addressed by judicial interpretation of the law[27]. We need an all inclusive legislative and institutional reform programme, the main components of which are suggested below.

8.1 **A Special Statute on Corporate Manslaughter should be enacted**:- The first principle suggestion is the introduction of a separate Corporate Manslaughter[28] Act specific to the Indian law. Such a law must specify the crime and it must be made clear that a corporation is guilty of corporate manslaughter when the way its business is conducted or managed results in death and is a significant breach of a duty of care and the breach is significantly due to inadequacies at the top level of management. The statute must also specify the type of organisations that must be liable, list the corresponding duties of care and explicitly overrule the identification doctrine as the law on corporate criminal liability in fatal negligence.

[26] N.R. Madhava Menon, Corporate Criminal Liability, 7 NALSAR L. Rev. 1, 10–12 (2013).
[27] Law Commission of India, *41st Report on the Indian Penal Code* (1969).
[28] Corporate Manslaughter and Corporate Homicide Act 2007

Importantly, the law must have a prospective character, that is, it must be aimed not just at the punitive measures of the failures of the past but at the incentivisation of the systemic safety gains that will exclude the failures of the future. The Organisational Fault Model is to be adopted the law should base the liability on organisational negligence and not personal responsibility[29]. This necessitates a legislative test that guides courts to consider the quality of the management systems, risk assessment procedures, safety culture[30] and supervisory practices of the corporation as opposed to trying to find one person whose mental state can be ascribed to the organization.

This change implies the simultaneous translocation of the identification doctrine[31] to the end of corporate manslaughter, and that must be reflected in the text of the statute to make sure that the courts do not revert to the common law stance. Statutory guidance on factors that may be taken into account by a court when determining whether a management failure is so serious that it amounts to a gross breach should be provided alongside the organisational fault model, based on but modified, on the Sentencing Council guidance[32] that has been found so useful in the UK context.

8.3 **A Multi Dimensional Penalty Regime**:- The efficient penalty system should be working on the financial, operational and reputational levels concurrently. The following structure is suggested. The monetary fines must be in the form of unlimited fines, which are adjusted based on the annual turnover of the organisation[33], as well as the extent of the responsibility determined. Courts should be guided by statutory sentencing guidelines to make sure that fines are imposed in such a way that they are truly punitive and cannot be recouped as a normal cost of doing business a flaw which has in the past compromised the deterrent impact of corporate sanctions in India[34]. Courts should be empowered by remedial orders to take corrective actions towards the management shortcomings that led to the commission of the offence by compelling the convicted organisations to adopt the corrective actions. These directives change the sentencing process into a prospective tool of organisational change, which goes directly to the systemic circumstances that brought about the harm. The convicted

[29] Brent Fisse & John Braithwaite, *Corporations, Crime and Accountability* 39–45 (1993).
[30] V.S. Khanna, Corporate Criminal Liability: What Purpose Does It Serve?, 109 Harv. L. Rev. 1477, 1495–1500 (1996).
[31] Tesco Supermarkets Ltd v Nattrass
[32] U.K. Sentencing Council, *Corporate Manslaughter Sentencing Guidelines* (2016).
[33] Corporate Manslaughter and Corporate Homicide Act 2007
[34] Jennifer Arlen, Corporate Criminal Liability: Theory and Evidence, in *Research Handbook on the Economics of Criminal Law* 144, 150–52 (2012).

corporations should be obligated by publicity orders to publicist the fact, nature and penalty of their conviction by specified means. In a time of increased stakeholder scrutiny, such reputational implications have a deterrent impact of a very powerful effect on such corporations, whose business life relies on the goodwill of the population, investor trust or regulatory goodwill.

8.4 **Institutional and Regulatory Reform**:- Laws cannot work without the institutional framework that makes them work. Reform should thus also be applied to the regulatory and prosecutorial structure, in which corporate manslaughter cases are investigated and prosecuted[35]. Existing regulatory agencies such as the Directorate General Factory Advice Service and Labour Institutes, the Central Pollution Control Board, and industry specific safety regulators should be empowered by increasing their resources, investigative capabilities, and by statutory requirements to ensure that corporate criminal liability is pursued in the event of fatal negligence. In the case of multi regulatory area cases, which are typical of large industrial accidents, a special inter agency coordination mechanism must be created. In the prosecution service, there should be the development of specific units with experience in corporate crime, forensic accounting, and industrial safety. The technical nature of cases of corporate manslaughter, which regularly feature large amounts of paperwork and highly technical legal argumentation, require prosecutorial resources that are currently beyond the means of generalist criminal prosecution frameworks to deliver.

8.5 **Judicial Capacity Building**:- Manslaughter of corporations cannot be properly adjudicated by a judiciary that is not empowered to review intricate organisational evidence, to compare management systems with objective standards of reasonable corporate conduct, and apply a new liability framework devoid of the doctrinal support ultimately given by case law[36]. In collaboration with judicial academies, law schools and regulating bodies, structured judicial and prosecutor training programmes in corporate criminal law, industrial safety regulation, and organisational behavior should be established. Specialised commercial and corporate crime benches, which are already a hall mark of the developing judicial infrastructure in India, need to be expanded to incorporate corporate manslaughter jurisdiction, providing the necessary consistency, expertise and efficiency in dealing with corporate manslaughter cases.

[35] OECD, *Corporate Liability for Corruption: A Stocktaking Report* 25–30 (2016).
[36] N.R. Madhava Menon, Corporate Criminal Liability, 7 NALSAR L. Rev. 1, 10–12 (2013).

9. Conclusion

Corporate criminal liability is on a crossroad of Indian legal system. The current system divided, dogmatic, institutionally under invested in has proved, most disastrously in the case of the Bhopal Gas Tragedy and many other industrial disasters, structurally unable to hold corporations whose organisational ineffectiveness results in mass fatalities to proportionate account. It is not an incidental weakness but the basic ineffectiveness of the very purpose of criminal law to ensure that those who cause severe harm are brought to bear the responsibility of their actions in a way that is proportionate to the severity of their actions.

In this paper, it has been contended by doctrinal analysis and comparison of the Corporate Manslaughter and Corporate Homicide Act of 2007 in the United Kingdom that the way forward can be identified and realized. The UK model shows that it is both legally consistent and practically viable to base the corporate criminal liability on the organisational fault, to create a penalty regime functioning on the financial, operational, and reputational levels, and to create the institutional framework that would help to make the liability credible and effective. The reform of India, though, cannot be imitation. The weaknesses of the UK Act such as its insufficient conviction rate of being used against big time companies and the evidential hurdles that still exist despite the senior management benchmark are reasons that one should not transplant without question. An Indian domestic corporate manslaughter law should be tailored to meet the institutional reality of India: the resource limitations of the regulatory authority, capacity limits of the prosecution service, the complexity of multi jurisdiction industrial activities, and the necessity that reform should be in the interest of victims and communities, and not just doctrinally attractive. Such an establishment of legislation would be more than a formal legal change. It would be a normative declaration by the Indian state and by its Parliament that the lives of workers, communities and citizens are not collateral damage in the quest of business profit and organisations the systemic failures of which result in death will be subject to the full force of criminal law. Nothing short is sufficient in a constitutional order that is devoted to the right to life under Article 21.