Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2026 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Corporate Manslaughter and the Limits of Criminal Liability: A Comparative Study of the United Kingdom and India

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Received 12 June 2026; *Accepted* 13 July 2026; *Published* 16 July 2026

Corporate manslaughter falls on the borderline between two conflicting logics of the criminal law - a body of law designed to deal with individual moral actors and a corporate personage whose actions depend on multi-level decision-making. This paper looks at the approach taken by the United Kingdom and India to solve this conflict and achieve consistency between the logic of criminal liability and organisational fault. While the United Kingdom abandoned the common law identification doctrine, which made prosecution of large corporations virtually impossible, adopting a 'senior management' test, India continues to apply the general provisions on homicide contained in its criminal code, supported by regulation and civil liability, failing to introduce a corporate manslaughter offence at all, which becomes particularly evident in the case of the Bhopal Gas Tragedy. By analysing judicial rulings, legislation, and academic sources from both countries, it can be argued that although the 2007 Act is a significant step in the right direction, its limited scope and dependence on individual criminal responsibility concepts make it insufficient as a deterrent; and that in India there is no comparable law to protect victims of industrial disasters. The article concludes with proposals for legislative reform in India informed by, but not duplicating, the UK model, and suggests refinements to the UK framework itself.

Keywords: *corporate manslaughter, Bhopal gas tragedy, criminal law, industrial disasters.*

INTRODUCTION

Where the actions of a corporation lead to death either in the course of an unsafe work environment, an unsafe product, or due to an industrial disaster, the criminal law suffers from a structural dilemma which has no parallel in individual cases. A corporation does not have a mind; it functions through the decisions of its directors, managers and employees in tandem. Corporate manslaughter is an effort on the part of the criminal law to locate the element of criminal responsibility in such a situation, and a comparison between the experiences of the UK and India shows how difficult the job is as well as what happens when one fails to undertake such a challenge.

The present article will be divided into five sections. Section 2 looks at the common law identification doctrine as applied in the UK and its practical failure, illustrated through the failure of the prosecution in the aftermath of the Herald of Free Enterprise incident. Part 3 looks into the Corporate Manslaughter and Corporate Homicide Act 2007, and the senior management test which followed. Part 4 then looks at the Indian context in which there is no distinct offence of corporate manslaughter, with all prosecutions having to be conducted, in an odd way, under the general law of homicide and negligence in the penal code. The example of Bhopal is used in the latter part. Part 5 then provides the comparative assessment of sentencing, attribution, and deterrence. Finally, Part 6 sets out the reform proposals.

THE COMMON LAW POSITION IN THE UNITED KINGDOM: THE IDENTIFICATION DOCTRINE

Before 2007, the criminal liability of companies for manslaughter in England and Wales relied wholly on the identification doctrine as enunciated in the case of Tesco Supermarkets Ltd v Nattrass, whereby a company was criminally responsible if there was a person who could be said to represent the 'directing mind and will' of the company and who had the mens rea necessary to commit the crime.

The doctrine's central weakness was structural rather than incidental: the larger and more diffuse the corporation, the harder it became to identify any single individual whose state of mind could be attributed to the company as a whole.[1] This was demonstrated starkly by R v

[1] Celia Wells, *CORPORATIONS AND CRIMINAL RESPONSIBILITY* (2nd edn, OUP 2001)

P&O European Ferries (Dover) Ltd, arising from the capsize of the Herald of Free Enterprise in 1987, in which 193 people died after the vessel left Zeebrugge harbour with its bow doors open.[2] Although the trial judge ruled that a manslaughter prosecution against the company could proceed in principle, the prosecution collapsed because no individual director possessed sufficient personal knowledge or recklessness to satisfy the identification test, and the doctrine could not aggregate the negligence of multiple managers into a single corporate fault.[3]

Subsequent prosecutions following the Southall and Hatfield rail disasters met a similar fate, reinforcing the perception that the identification doctrine effectively immunised large, hierarchically complex organisations from manslaughter liability while leaving smaller, owner-managed companies where a single individual's fault was easier to identify disproportionately exposed.[4] The only notable conviction obtained under the old law was in R v Kite and OLL Ltd, commonly known as the Lyme Bay canoeing case, where the managing director's personal recklessness was readily identifiable precisely because the company was small. The doctrine thus produced a perverse inversion: liability correlated with corporate size in the wrong direction, since it was the largest and arguably most dangerous organisational failures that proved hardest to prosecute.

Academic criticism of the identification doctrine was sustained and substantially unanimous. Gobert argued that the doctrine reflected an outdated, anthropomorphic conception of corporate fault that ignored the reality of how large organisations actually generate risk through systems, policies and cultures rather than through the state of mind of any single officer.[5] The Law Commission reached a similar conclusion in its 1996 report, recommending a new offence of 'corporate killing' based on a finding that the way in which the corporation's activities were managed or organised failed to meet a standard of care reasonably expected,

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[2] *R v P&O European Ferries (Dover) Ltd* [1991] 93 Cr App R 72

[3] Celia Wells, 'Corporate manslaughter: A cultural and legal form' (1995) 6 Criminal Law Forum <https://link.springer.com/article/10.1007/BF01095718> accessed 11 June 2026

[4] James Gobert, 'The Corporate Manslaughter and Corporate Homicide Act 2007 — Thirteen years in the making but was it worth the wait?' (2008) 71(3) The Modern Law Review <https://www.jstor.org/stable/25151209> accessed 11 June 2026

[5] James Gobert, 'Corporate criminality: four models of fault' (1994) 14(3) Legal Studies <https://www.cambridge.org/core/journals/legal-studies/article/abs/corporate-criminality-four-models-of-fault/49499A8A5741F1014317F5EBFF54509A> accessed 11 June 2026

without requiring identification of a controlling mind.[6] It took, however, a further eleven years of governmental delay, partly attributable to disputes over Crown immunity and individual director liability, before legislation was enacted.

THE CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

The Senior Management Test: The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008 and created a new offence of corporate manslaughter, abandoning the identification doctrine in favour of a test based on management failure. Under section 1, an organisation is guilty of the offence if the way in which its activities are managed or organised causes a person's death and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased; critically, a substantial element of that breach must lie in the way activities were managed or organised by senior management. 'Senior management' is defined broadly under section 1(4)(c) as persons who play significant roles in the making of decisions about how the whole or a substantial part of the organisation's activities are to be managed or organised, or in the actual managing or organising of those activities a deliberately wider category than the single 'directing mind' required at common law.

This reformulation permits aggregation in a way the identification doctrine did not: the failures of several managers, none individually sufficient to ground liability, can together constitute the requisite 'substantial element' of a gross breach. The offence is, however, still anchored to a duty of care owed in negligence, defined by reference to the existing common law of negligence as modified by the Act, and the breach must be 'gross' meaning conduct falling far below what could reasonably have been expected in the circumstances.[7] Section 8 directs the jury, in considering whether there was a gross breach, to consider how serious the failure was and how much risk of death it posed, and permits the jury to consider attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged the failure or to have produced tolerance of it.[8]

[6] Law Commission, *Report No 237: Legislating the Criminal Code: Involuntary Manslaughter* (Law Com No 237, 1996)
[7] Corporate Manslaughter and Corporate Homicide Act 2007
[8] Corporate Manslaughter and Corporate Homicide Act 2007, s 8

Sentencing and Sanctions: Because the 2007 Act applies only to organisations, individual directors cannot be convicted of corporate manslaughter under it, although they may separately face prosecution for gross negligence manslaughter or under health and safety legislation.[9] The available sanctions are an unlimited fine, together with remedial orders requiring the organisation to address the cause of the breach and publicity orders requiring public disclosure of the conviction and its circumstances. The Sentencing Council's 2016 guideline indicates that fines should reflect the seriousness of the offence and the size of the organisation, with starting points running into many millions of pounds for large companies, reflecting a deliberate policy of ensuring that fines are not treated as a routine cost of doing business.[10]

In practice, prosecutions under the Act have been relatively few and have disproportionately involved small and medium-sized enterprises rather than the large, complex organisations the legislation was principally designed to reach.[11] The first conviction under the Act, R v Cotswold Geotechnical Holdings Ltd, concerned a company with a single director and eight employees, prompting criticism that the senior management test, although broader than the identification doctrine, still functions most easily against small organisations where management is concentrated in a few hands.[12] Larger-scale prosecutions, such as that following the 2015 Alton Towers Smiler rollercoaster crash (prosecuted under health and safety law rather than the 2007 Act) and the continuing difficulty of bringing manslaughter charges against very large multinational organisations, have led commentators to question whether the Act has genuinely solved the attribution problem or merely relocated it.

Critical Assessment: The 2007 Act is widely regarded as an improvement on the identification doctrine, but the consensus among commentators is that it remains an incomplete solution. Tadros has argued that retaining a negligence-based, duty-of-care framework imports into corporate manslaughter the same individualistic assumptions about foreseeability and reasonable care that proved unworkable when applied through the identification doctrine, merely shifting the locus of inquiry from a single director to a slightly

[9] Corporate Manslaughter and Corporate Homicide Act 2007; Sentencing Council, Corporate Manslaughter — Definitive Guideline 2016
[10] *R v Pyranha Mouldings Ltd* [2014] EWCA Crim 533
[11] Victor Tadros, 'The Limits of Manslaughter' in Sally Cunningham and CMV Clarkson (ed), *Criminal Liability for Non-Aggressive Death* (Taylor & Francis 2020)
[12] *R v Cotswold Geotechnical Holdings Ltd* [2011] EWCA Crim 1337

larger but still bounded category of ‘senior management’. Others have noted that the Act does not create individual criminal liability for directors, a deliberate political compromise during the legislative process that has been criticised as undermining deterrence, since it is individuals, not abstract corporate entities, who make the decisions that produce risk.

THE INDIAN POSITION: AN ABSENT DOCTRINE

The General Criminal Law Framework: India has no statute equivalent to the Corporate Manslaughter and Corporate Homicide Act 2007, and no judicially developed doctrine analogous to either the identification doctrine or the senior management test. Corporate liability for deaths arising from industrial or commercial activity is instead pursued, where at all, through the general homicide provisions of the penal code historically the Indian Penal Code 1860, now restated in materially similar terms in the Bharatiya Nyaya Sanhita 2023.[13] Section 304A of the 1860 Code (now section 106 of the 2023 Sanhita) penalises causing death by a rash or negligent act not amounting to culpable homicide, and has historically been the principal vehicle for prosecuting industrial deaths, including those arising from corporate activity.[14]

The threshold difficulty is doctrinal: sections 304A and its successor were drafted with individual human conduct in mind, and Indian courts have been markedly reluctant to treat a corporation as capable of possessing the rashness or negligence the provision requires, still less to imprison a corporate entity, since imprisonment, the default sentence under section 304A, cannot be imposed on a juristic person. This sentencing impossibility was confronted directly by the Supreme Court of India in Standard Chartered Bank v Directorate of Enforcement, where the Court held, by majority, that a company could be prosecuted and convicted for offences carrying a mandatory term of imprisonment together with a fine, since the court could simply impose the fine alone where imprisonment was not possible for a corporate accused rejecting the earlier position that such offences were simply inapplicable to corporations.[15] While Standard Chartered removed one technical obstacle to prosecuting corporations at all, it did not address the prior and more fundamental question of whether, and how, a corporation's diffuse internal decision-making can satisfy the mens rea or

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[13] Bharatiya Nyaya Sanhita 2023

[14] Indian Penal Code 1860, s 304A; *K M Nanavati v State of Maharashtra* AIR 1962 SC 605

[15] *Standard Chartered Bank & Ors v Directorate of Enforcement & Ors* AIR 2006 SC 1301

negligence standard that sections 304A/106 require in the first place — the very problem the identification doctrine, and later the senior management test, were designed to solve in England.

The Bhopal Gas Tragedy: The inadequacy of India's general criminal law framework for mass corporate harm is best illustrated by the Bhopal Gas Tragedy of 2–3 December 1984, in which a leak of methyl isocyanate gas from a pesticide plant operated by Union Carbide India Limited, a subsidiary of Union Carbide Corporation, killed several thousand people immediately and caused long-term injury and death to hundreds of thousands more.[16] The Indian government, acting as parens patriae under the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985, pursued both civil claims for compensation and criminal proceedings, the latter initially charging Union Carbide and its officers, including chairman Warren Anderson, with culpable homicide not amounting to murder under section 304 Part II of the Indian Penal Code.[17]

The Supreme Court's 1989 settlement order, approving a civil settlement of USD 470 million between the Union of India and Union Carbide Corporation, also purported to quash the criminal proceedings, a decision the Court itself was compelled to partially reverse in 1991 following public outcry, restoring the criminal prosecution while leaving the civil settlement intact.[18] When the criminal case eventually concluded in 2010 twenty-six years after the disaster, and after Warren Anderson and Union Carbide Corporation itself had been declared absconders for failing to appear before Indian courts the Chief Judicial Magistrate at Bhopal convicted seven Indian former employees of Union Carbide India Limited, not under section 304 but under the lesser offence of death by negligence under section 304A, since the trial court had earlier been directed by the Supreme Court to reduce the charges from culpable homicide to negligence.[19] Each convicted individual received the maximum sentence available under section 304A: two years' imprisonment and a modest fine, sentences widely regarded in both Indian and international commentary as grossly disproportionate

[16] *Union Carbide Corporation Etc Etc v Union of India Etc Etc* AIR 1992 SC 248; Upendra Baxi, *Inconvenient Forum and Convenient Catastrophe: The Bhopal Case* (Indian Law Institute 1986) 1–9

[17] Bhopal Gas Leak Disaster (Processing of Claims) Act 1985; *Union Carbide Corporation Etc Etc v Union of India Etc Etc* AIR 1992 SC 248

[18] *Union Carbide Corporation Etc Etc v Union of India Etc Etc* AIR 1992 SC 248

[19] *State of Madhya Pradesh thru CBI v Warren Anderson & Ors Criminal* Case No 8460/1996; *Keshub Mahindra v State of Madhya Pradesh* (1996) 6 SCC 129

to the scale of the harm, and no finding of corporate criminal liability was ever made against Union Carbide Corporation or Union Carbide India Limited as such.

Ramanathan has argued that the Bhopal litigation exposed not merely prosecutorial failures but the absence of any legal category capable of capturing organisational fault: the 1986 reduction of charges from culpable homicide to mere negligence reflected, in her analysis, a judicial and prosecutorial inability to conceptualise corporate decision-making as anything other than the sum of individual employees' isolated acts, none of which, taken alone, satisfied the higher mens rea threshold. Pande similarly concludes that Bhopal demonstrated the structural unsuitability of the 1860 Code's homicide provisions for organisational harm, and that the case ought to have prompted legislative reform analogous to the Law Commission's 1996 recommendations in England, a call that, four decades after the disaster, remains unanswered.

Subsequent Industrial Disasters and Regulatory Responses: The legal vacuum exposed by Bhopal has not been substantially closed by subsequent legislation. The Companies Act 2013 introduced provisions on corporate fraud and officer liability for specified offences, and the Factories Act 1948 and various state-level industrial safety legislation impose regulatory duties on occupiers of factories, but none of these instruments creates an offence of corporate manslaughter or homicide, and liability for workplace and industrial deaths continues to be pursued, where it is pursued at all, through section 304A/106 prosecutions of individual managers or occupiers rather than the corporate entity itself.[20] Subsequent industrial incidents, including the 2020 Vishakhapatnam LG Polymers styrene gas leak, which killed at least eleven people, were investigated and prosecuted along substantially the same lines as Bhopal individual negligence charges under section 304A, with no statutory mechanism for organisational liability proportionate to the scale of harm.

COMPARATIVE ANALYSIS

Attribution of Fault: The central comparative contrast lies in how each jurisdiction attributes fault to the corporate entity. The UK's senior management test, whatever its limitations, represents a deliberate legislative attempt to create an attribution mechanism suited to organisational decision-making, permitting aggregation across multiple senior managers

[20] Companies Act 2013; Factories Act 1948

rather than requiring a single controlling mind. India has no equivalent mechanism at all: sections 304A and 106 require proof of rashness or negligence in terms drafted for individual conduct, and Indian courts have not developed any organisational equivalent to the senior management test, leaving prosecutors to either charge individual employees (as in Bhopal) or, more rarely, attempt to apply ordinary vicarious liability principles to impute a single employee's negligence to the company an approach that, as in pre-2007 England, systematically favours prosecution of smaller, less hierarchically complex enterprises.[21]

Sentencing and Sanctions: The two jurisdictions also diverge sharply on sanctions. The UK's 2007 Act, applying exclusively to organisations, sidesteps the imprisonment problem entirely by providing for unlimited fines, remedial orders and publicity orders calibrated to organisational rather than individual culpability.[22] India's continued reliance on section 304A/106, by contrast, produces the sentencing absurdity exposed in Bhopal: a maximum two-year sentence designed for, say, a single rash driver causing a fatal accident, applied if applied at all to individual employees of an organisation responsible for thousands of deaths, while the corporate entity itself faces no equivalent sanction.[23] Standard Chartered Bank resolved the narrower technical question of whether corporations could be prosecuted for offences carrying mandatory imprisonment, but did nothing to create a sentencing regime proportionate to mass industrial harm.[24]

Deterrence and Enforcement: Neither jurisdiction can confidently claim that its framework achieves robust deterrence. In the United Kingdom, the relative rarity of prosecutions against large organisations, and the concentration of convictions among small companies, has led commentators to question whether the 2007 Act has meaningfully altered the risk calculus of major corporations, as opposed to imposing a real and substantial threat only on smaller enterprises with concentrated management structures. In India, the absence of any corporate manslaughter offence means that deterrence, to the extent it exists at all in this domain, operates principally through civil liability and regulatory fines under instruments such as the Factories Act, neither of which carries the stigmatic or punitive force of a criminal conviction, and through the threat of individual prosecution of employees a threat that, as

[21] *Tesco Supermarkets Ltd v Nattrass* [1972] A C 153
[22] Corporate Manslaughter and Corporate Homicide Act 2007
[23] Indian Penal Code 1860, s 304A
[24] *Standard Chartered Bank & Ors v Directorate of Enforcement & Ors* AIR 2006 SC 1301

Bhopal demonstrated, can be deflected by corporate restructuring, jurisdictional objections and protracted litigation.

TOWARDS REFORM

Proposals for India: The clearest reform implication of this comparison is that India requires a dedicated statutory offence of corporate manslaughter, modelled on but not identical to the UK's 2007 Act. Such a statute should define the offence by reference to a gross failure in the way an organisation's activities are managed or organised, permitting aggregation of fault across multiple managers in a manner the existing section 304A/106 framework cannot accommodate, and should provide for sanctions, substantial fines linked to turnover, remedial orders and mandatory public disclosure suited to a corporate rather than individual defendant. Given the scale of harm demonstrated by Bhopal and subsequent incidents, any Indian statute should also explicitly address multinational corporate structures and parent-subsidiary liability, an issue the Bhopal litigation exposed but never resolved, since Union Carbide Corporation, the US parent, was never compelled to submit to Indian criminal jurisdiction.[25]

Refinements to the UK Model: The UK experience nonetheless cautions against treating the 2007 Act as a template to be adopted uncritically. The persistent concentration of prosecutions among small organisations suggests that any Indian equivalent should consider lowering the threshold for aggregating managerial fault below the level of 'senior management' in very large organisations, where decision-making affecting safety may occur substantially below board or senior-executive level. Consideration might also be given, as several UK commentators have urged, to reintroducing a mechanism for individual director liability alongside organisational liability, ensuring that criminal sanction attaches not only to the corporate entity but, where appropriate, to the individuals whose decisions produced the relevant risk addressing the deterrence gap identified by Gobert in the UK context, and avoiding the diffusion of individual accountability that characterised the Bhopal prosecutions in the opposite direction.

[25] *Union Carbide Corporation Etc Etc v Union of India Etc Etc* (1991) 4 SCC 584

CONCLUSION

The comparative study undertaken in this article demonstrates that the doctrinal problem at the heart of corporate manslaughter how to attribute criminal fault to an entity that acts only through dispersed human agency admits no straightforward solution, but that some solutions are markedly better than none. The United Kingdom's Corporate Manslaughter and Corporate Homicide Act 2007, for all its limitations in practice, represents a considered legislative response to a doctrine, the identification principle, that had been demonstrated empirically to fail. India has had its own demonstration, on a far larger and more tragic scale, in the form of the Bhopal Gas Tragedy, yet four decades on, no comparable legislative response has followed. This article has argued that the case for a dedicated Indian corporate manslaughter statute is, on the comparative evidence, compelling not as a wholesale transplant of the UK model, but as a doctrinally adapted response that learns from both the United Kingdom's success in moving beyond the identification doctrine and its continuing difficulty in reaching the largest and most complex organisations. Until such reform occurs, the criminal law in India will remain structurally incapable of describing, in terms proportionate to the harm caused, what happened at Bhopal or what might yet happen again.