Corporate manslaughter and regulatory reforms in Pakistan

Submitted by :

Namra Iftikhar

425-FSL/LLMCL/F13

Supervised by:

Dr. Samia Maqbool Niazi

Department of Law

Faulty of Shariah and Law

International Islamic University Islamabad

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It is certified that we have read the dissertation submitted by NamraIftikhar "Corporate Manslaughter and Regulatory Reforms in Pakistan" for the degree of LLM (Corporate Law). We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of degree.

1. Supervisor

Dr. Samia Maqbool Niazi

Assistant Professor/Acting Chairperson/Incharge Female Department of Law, IIUI Islamabad, Pakistan.

2. Internal Examiner

3. External Examiner

Shafqat Mahmood Khan

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DECLARATION

I, Namra Iftikhar, hereby declare that this dissertation entitled "Corporate Manslaughter and Regulatory Reforms in Pakistan" is original and my own work. It has never been used before for any examination or degree in any other institution. Moreover, all sources have been used in this dissertation are completely acknowledged with references.

The work was done under supervision of Dr. Samia Maqbool Niazi, Assistant Professor at Department of Sharia and Law, International Islamic University, Islamabad.

Student: Namra Iftikhar

Signature: _____

Date: _____

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Dedicated To My Worthy Parents & Teachers

List of Abbreviation:

Co. – Company

CMCHA- Corporate Manslaughter and Corporate Homicide Act

DPP- Director of Public Prosecution

FIR- First Information Report

HSE- Health and safety Executive

HSE- Health, Safety and Environment

Ibid – only cited in the previous page

JIT- Joint Investigation Team

KESC- Karachi Electric Supply Corporation.

LDA-Lahore Development Authority

OSHA- Occupational Safety and Health Act

PPC- Pakistan Penal Code

PLD-Pakistan Law Digest

P.Cr.LJ- Pakistan Criminal Law Journal

UK-United Kingdom

V- Versus

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Occupational Health and Safety Act 1994 of Malaysia

Pakistan Penal Code 1860

Workmen Compensation Act 1923 of Pakistan

Abstract

In recent times, Corporate Manslaughter has become an increasingly global phenomenon. These global incidences make it imperative to have a legal framework for holding corporations liable for deaths either of employees or members of the public that occur as a result of their activities. The challenge however, is in applying the traditional criminal law elements of *actus rea* and *mens rea* to a corporation, since the criminal law had developed with the natural person in mind.

Dealing effectively with corporations that cause deaths unlawfully is one of the challenges is facing Pakistan. The current legal position of Pakistan does not cater corporate killers adequately or specifically. In this dissertation theoretical background of corporate manslaughter will be discussed in detail. This research work will discuss the different theories which are prevailing in different jurisdictions and to set the idea that which theory is preferable in the current situation of Pakistan. The law of other jurisdiction which includes UK, Canada and Malaysia on the concerned issue will also be analyzed. Then in the final chapter Pakistani laws which can impose the criminal liability on the corporations will be discussed. The industrial disasters and the prosecution of these disasters will also be the part of this research. Pakistani criminal law has been greatly influenced by English law, and English law has well-developed rules to regulate corporate homicide. Moreover, recent developments in corporate criminal liability in the United Kingdom may assist Pakistan to reform its laws in such a way that corporate homicide is not only effectively dealt with, but that corporations are discouraged from acting in a manner that results in the loss of life.

Chapter No. 1:

Introduction to Corporate Manslaughter

1.1 Introduction:

This is an acceptable global phenomenon that a corporation is a legal fiction and a creature of law. However, it is made up of and run by the people acting as an agent of the corporation. The action of these people may be criminal in nature and result in death. The death caused by the act of the corporation is now recognized as "corporate manslaughter" in common law jurisdiction. The prosecution need to punish someone or something for this act of negligent manslaughter.

The main problem behind the non-prosecution of the company is the difference between the natural person and a corporation. The criminal law was devolved to prosecute the wrongdoing of the individual however a company is always treated as the factious entity which is unable to do any physical act and does not have any knowledge or intention. Commonwealth jurisdiction usually treated the corporation as the collection of the individuals and find out the criminal liability within the act of these individuals.

In modern days, corporation has become the powerful social and economic actor. It is involved in every part of our lives[1]. Corporations provide the necessities and comfort of life to the modern society. They collect the capital from the shareholders and law favoring artificial business entity to provide these goods and services to the public. By the expansion in economic power, the companies are continually under pressure from

[1] Cahill, Sandra, and Philip Cahill. *"Scarlet letters: Punishing the corporate citizen."* International Journal of the Sociology of Law 27, no. 2 (1999): 153-165. At p.153

shareholders to maximize the profit at minimum cost. What is good for the corporation and society is just a secondary thing[2]. This compromise involves the company in many life endanger crimes like environmental crime, health and safety crimes etc.

Furthermore, from the study of many highly publicized disasters, in recent years, it can clearly be realized that the companies are managing its affair in such a way that are causing the deaths of the employees and stakeholders

The criminal law of the time does not impose any criminal liability upon the companies as compared to individual who would be punished if he commit the same crime. The recent behavior of the corporations indicate that they are not ready to regulate itself effectively[3]. There must be the strict regulations by the government or other state actors which force them to become a responsible corporate citizen. It is also the demand of the society that that companies which enjoy the benefits of incorporation must take the responsibility of all the outcomes of corporate activities.

In the past few years, like other countries Pakistan has also faced serious alarming disasters because of negligent act of the corporations. Some of these are Baldia town fire incident in Karachi[4], LDA fire incident in Lahore[5] and many more, but unfortunately no successful prosecution has been seen so far. The possible reason behind the non-

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[2] W. Allen Spurgeon and Terrence P. Fagan, "*Criminal liability for life-endangering corporate conduct.*" Journal of Criminal Law and Criminology (1981): 400-433, 400

[3] Frank Pearce and Steve Tombs. "*Hazards, law and class: contextualizing the regulation of corporate crime*". Social & Legal Studies 6, no. 1 (1997): 79-107. At p.82

[4] Baldia town incident was held at Karachi garment factory in 2012 in which 257 people were killed and roundabout 600 were injured available at http://www.piads.com.pk/2015/02/21/baldia-town-karachi-factory-fires-latest-reports/. Last accessed on 10 June 2016.

[5] This incident was placed at Lahore in LDA plaza in which 25 people were killed at work available at tribune.com.pk/../lda-plaza-forensics-experts-confirm-fire-not-an-accide.Last accessed on September 12, 2014.

prosecution of these cases is the flaws in the conventional criminal law or the non-availability of a specific provisions regarding the concerned issue.

In PPC sections 318 and 321 deal with deaths due to the negligent act of the person i.e "*Qatl-i-khata*" and "*Qatl-bis-sabab*" respectively and further section 11 of the PPC also defines "person" that is "the Company or Association, or body of persons, whether incorporated or not". The questions arises here, how these sections can be applied in the corporation since the criminal law had developed with the natural person in mind and how the punishments of "*Qatl-i-khata*" and *"Qatl-bis-sabab"* provided by the same code can be applied on a corporation? Is a special law required? Or corporations can be convicted for manslaughter offence under mainstream criminal law? These issues will be discussed in the preceding sections

Corporate manslaughter phenomena is now well recognized globally. The global incidences and industrial disaster make it necessary to hold the corporation liable for the deaths of their employees and member of public[6]. A lot of work on the legal framework has been done so far on this issue in the west. They made the laws and prescribed the procedures for the conviction of a corporation for the negligent act of the manslaughter, which will be discussed in detail in the following dissertation. However the concept of corporate manslaughter is not developed in Pakistan and no corporation is convicted for the act of manslaughter yet. The possible reason behind it is the non-availability of proper law and conflicting behavior of criminal law of the country.

[6] Akanbi, Khairat Oluwakemi. "*The legal framework for corporate liability for homicide: the experience in nigeria and the united kingdom.*" *IIUM Law Journal* 22, no. 1 (2014):116-136, 116

1.2 Definition of Manslaughter:

Manslaughter can be defined as "the unlawful killing of another human being without malice aforethought"[7] At common law all unlawful deaths which are not murder are manslaughter. It can be divided into two categories i.e. voluntary manslaughter and involuntary manslaughter[8].

1.2.1 Voluntary Manslaughter:

Voluntary manslaughter is to be considered as Killing that occurs in "heat of possession" in which the offender has no prior intent to kill. When a reasonable person caught by such circumstances that makes him emotionally or mentally disturbed, which leads killing is intentional murder. Otherwise it would be charged as first-degree or second-degree murder[9].

1.2.2 Involuntary Manslaughter:

Involuntary manslaughter is to be considered as an unintentional killing that result from recklessness, criminal negligence or from an unlawful act[10].

There are two types of involuntary manslaughter, criminally negligent manslaughter and unlawful act manslaughter. When high degree of negligence or recklessness results death it would be criminally negligent. An omission of a duty or commission of unlawful act constitutes criminally negligent manslaughter. [11]

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[7] Wild, Susan Ellis, *"Webster new world law dictionary"* wiley publishing, inc., 175
[8] https://bookshop.blackwell.co.uk/extracts/9780199202584_ormerod.pdf. last accessed July 15, 2015
[9] Blackwell, Amy Hackney, *"The Essential Law Dictionary"*, Sphinx® Publishing, 2008, 307
[10] Garner A. Bryan, "Black's Law Dictionary, ninth edition, Thomson Reuters, 2009, 1049
[11] http://legal-dictionary.thefreedictionary.com/involuntary+manslaughter. last accessed July 17, 2015

1.3 Difference between Murder and Manslaughter:

Malice intention" is the basic ingredient of murder while manslaughter is unlawful killing of human being without express and implied malice intent or premeditation.

Prior intention to kill anyone or create deadly situation is integral part of murder while in manslaughter prior intention does not exist [12]. It also differs with murder in this way that voluntary manslaughter happens upon a sudden heat while involuntary manslaughter occurs because of commission of an unlawful act while murder requires accessories and time for premeditations[13].

Murder in every degree generally states the deliberately killing of a person. Manslaughter generally, in its way every form means the unintentional killing of a person through recklessness and high degree of negligence or while trying to cause non-lethal physical injury.[14]

1.4 Definition of Corporate Manslaughter/homicide:

The concept of corporate manslaughter originated from the common law concept of corporate criminal liability based on the evolution of different doctrines. Under the common law, this concept is known as gross negligence manslaughter where to hold a company liable for such an offence, the prosecution has to establish that an individual, senior enough to be deemed part of its 'controlling mind', has committed the act of negligence resulting in death of an individual[15].

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[12] http://dictionary.law.com/default.aspx?selected=1209. last accessed July 17, 2015
[13] http://www.lectlaw.com/def2/m013.htm. last accessed July 18, 2015
[14] Richard Rosner, Melvin Wiederlight, M. Bernice Horner Rosner, and Rita Reis Wieczorek."*Adolescents accused of murder and manslaughter: A five-year descriptive study.*" Journal of the American Academy of Psychiatry and the Law Online 7, no. 4 (1979): 342-351, 344
[15] http://www.uniassignment.com/essay-samples/law/the-theory-of-corporate-manslaughter-law-company-business-partnership-essay.php. last accessed July 20, 2015

The case R v Adomako crystallized the concept of 'gross negligence manslaughter' by recognising gross negligence as the *mens rea* for manslaughter[16]. According to the House of Lords, for the conviction in manslaughter charges it is necessary to prove the negligence beyond a reasonable doubt that:

> "(1) The defendant owed a duty of care to the deceased;
> (2) This duty has been breached;
> (3) The breach was a substantial cause of the death and
> (4) The breach was so grossly negligent as to be a crime[17]".

The dictionary meaning of the term "Corporate Manslaughter" is:

> "The death of someone caused by an act of corporate negligence"[18]

Therefore, corporate manslaughter can be defined as an act of homicide done by a corporation whereby it can be held criminally liable for a person's death.

Furthermore, section 1 of the Corporate Manslaughter and Corporate Homicide Act2007 define it as:

1) "An organization to which this section applies is guilty of an offence if the way in which its activities are managed or organized causes a person's death, and amounts to a gross breach of a relevant duty of care owed by the organization to the deceased.
2) The organizations to which this section applies are, a corporation, a department or other body listed in Schedule 1, a police force, a partnership, or a trade union or employers' association, that is an employer.

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[16] James gobert, *"The Corporate Manslaughter and Corporate Homicide Act2007–Thirteen years in the making but was it worth the wait?."* The Modern Law Review 71, no. 3 (2008): 413-433, 417

[17] Dye, J. *"Corporate killing: dead on arrival? Proposals for reform of the law of involuntary manslaughter and the implications for directors' and officers' liability insurers."* insurance research and practice 17, no. 2 (2002): 35-42, 35

[18] http://dictionary.reference.com/browse/corporate+manslaughter. last accessed July 22, 2015

Subsection 5 of the same section further termed this offence as corporate manslaughter

(5) The offence under this section is called—

a) corporate manslaughter, in so far as it is an offence under the law of England and Wales or Northern Ireland;

b) Corporate homicide, in so far as it is an offence under the law of Scotland"[19].

1.5 Historical Background of Corporate Manslaughter:

In 1250, Pope IV clearly expressed that "corporations have no souls". From that time, it was considered in England that corporation cannot commit crime. Edward, Baron Turlow expanded the idea of Pope in his highly quoted statement that corporations have "no soul to be damned and no body to be kicked". Moreover, kings bench in 1612 clearly stated that companies cannot commit crime. Gradually, English courts held that corporations cannot be convicted for any criminal offence. In 1701, Chief Justice Hold introduced the principle of identification and issued a statement i.e.

"A corporation is not indictable, but the particular members of it are".[20]

The concept of corporate criminal liability is accepted by the English court in limited circumstances. In nineteenth century, corporations are held to be liable for many offences like malfeasance, criminal nuisance by the English courts. The corporations still not be liable for "manslaughter offence". The courts adopted the principal of vicarious liability by the end of nineteenth century and start of twentieth century to prosecute the corporation for the act of their employees committed within the scope of employment[21].

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[19] Section 1 of Corporate Manslaughter and Corporate Homicide Act2007 of UK

[20] Laurel J Harbour and Natalya Y. Johnson. *"Can a Corporation Commit Manslaughter-Recent Developments in the United Kingdom and the United States?."* *Def.* Counsel J. 73 (2006): 226-234, 226

[21] Ibid, 227

Initially, English courts rejected the idea that corporation can be liable for the manslaughter offence[22]. There are many theories behind the rejection of this concept. The foremost is the attribution of the requisite *mens rea* that is the main requirement of a criminal offence. It was considered that a corporation cannot possess the *mens rea* because they have no soul so could not form any intent[23], it cannot be liable for manslaughter offence. [24]

British courts developed the doctrine of identification to establish *mens rea* against the corporations. In HL Boulton (Engineering) Co Ltd v TJ Graham and Sons Ltd, Lord Denning associate a corporation to a human body:

> "It has a brain and a nerve center which controls what it does. It also has hands which hold the tools and act in accordance with directions from the center. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such" [25].

The first prosecution of manslaughter offence against any company was Cory Bros in 1927. The prosecution was failed on the basis that company could not have the required *mens rea*. This case was decided before the introduction of the identification doctrine. From that time many disasters have been occurred that took the intention of the public as to the lack of corporate accountability of company director or organization as a whole[26].

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[22] Mark Pieth and Radha Ivory, *"Emergence and convergence: Corporate criminal liability principles in overview."* In *Corporate Criminal Liability*, Springer, Netherlands, 2011: 3-60, 18.
[23] Andrew Weissmann, *"Rethinking criminal corporate liability."* Indiana Law Journal 82, no. 2 (2007), 420.
[24] George Skupski, *"The Senior Management Mens Rea: Another Stab at a Workable Integration of Organizational Culpability into Corporate Criminal Liability."* Case Western Reserve University Law Review 62 (2012), 3.
[25] *HL Boulton* (Engineering) *Co. Ltd v TJ Graham and Sons Ltd* [1957] 1 QB 159, 172.
[26] Andrew David Hopwood, Francis T. Edum-Fotwe, and Francis K. Adams. *"The Impact of the Corporate Manslaughter and Corporate Homicide Act2007 on the Construction Industry in the UK."*, 1-8, 1

In 1965 Glamorgan Assizes case reveal the legitimacy of the prosecution for corporate manslaughter[27]. R V. Northern Strip Mining Construction Co. Ltd is an unreported case in which a worker died while a railway bridge was collapsed. The worker was instructed to burn down the bridge from its center. Prosecution counsel asserted that this was the ridiculous instruction. At the end of the case the company was acquitted on the fact of the case. However the prosecution counsel and judge streatfield have no doubt that this was the corporate manslaughter. Mr Mars-Jones who was from the defendant appreciated the correctness of such an accusation when he said:

> "it is the prosecution's task to show that the defendant company, in the person of Mr. Camm, managing director, was guilty of such a degree of negligence that amounted to a reckless disregard for the life and limb of his workmen[28]."

In 1987, there is another unsuccessful prosecution can be indicated, a ferry the Herald of Free Enterprises with more than 500 people aboard, departed the Belgian part of Zeeburg for England with in bow door open consequently it took on water and 188 people died. [29]. The case of involuntary manslaughter was initiated against the company i.e. P & O European Enterprises and some of its agents by the Directors of Public Prosecution of UK. Justice Turner held that evidence is not sufficient to convict the company for manslaughter and defendants were acquitted because of its agents could not be convicted[30]. Other major incidents that have gone without any punishment include the Piper Alpha oil platform explosion in 1988, Hillsborough in 1989 and the Hatfield rail disaster in 2000. In

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[27] Gary Slapper, *"Corporate manslaughter: an examination of the determinants of prosecutorial policy"* Social and Legal Studies 2, no. 4 (1993): 423-443, 424
[28] Ibid
[29] Vincent Todarello,*"Corporations Don't Kill People-People Do: Exploring the Goals of the United Kingdom's Corporate Homicide Bill."* NYL Sch. L. Rev. 46 (2002): 851-865, 859
[30] Ibid

England legal history OLL Limited was First Corporation to be convicted for manslaughter in 1994[31]. In this case OLL limited arranged a trip to canoe where four teenagers were drowned and then died. In the trial it was asserted that the company and its director did not ensure the safety of the group. The charges of manslaughter was approved against the company managing director Peter Kite and convicted for the period of three year as custodial sentence. The company was also convicted of manslaughter charges and was fined of £60,000. Clarkson gives his opinion on the case the trial judge treated equally the managing director of the company i.e. "One for all and all for one"[32].

In case of R.V Jackson Transport (ossett) Limited 1996 the second successful conviction for corporate manslaughter occurred. The Company was fined £22,000 and its director, Alan Jackson convicted with 12-month custodial sentence and a fine of £1500.[33]. Both the cases are same in the way that both the corporations were small and it is easy to find out the "senior manager" in the small company or the person who have the authority to implement the decision relating to the safety of the corporations. In this case it was found that director

> "did not fulfill his lawful duties in a manner that he failed to take the safety measures at work. He also failed to take the precautionary measures which is necessary to stop the tragedy. it was the last is a long list of deficiencies"[34].

The great western train disaster was happened in London in 1997. The driver failed to respond on the two warning signs and collide with the freight train. In the investigation

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[31] R. v. Kite and OLL Limited, took facts from Paul Rice, *"Companies Making a Killing—New UK Proposals for Corporate Killing"* Environmental Claims Journal 15, no. 4 (2003): 501-507, 502

[32] Chris MV Clarkson, *"Kicking corporate bodies and damning their souls."* The Modern Law Review 59, no. 4 (1996): 557-572, 561

[33] See note 8 (Rice, Paul. *"Companies Making a Killing—New UK Proposals for Corporate Killing." Environmental Claims Journal* 15, no. 4 (2003): 501-507, 503

[34] Ibid

it was found that the driver was not concentrating on the driving rather he was busy in packing his bag before the arrival of a train at Paddington Station. Seven passengers were died in this train disaster.[35] The company was charged with corporate manslaughter and driver with individual manslaughter. The judge threw out the charge against the company, trial was failed. The trail was failed due to the incapability to identify any senior member responsible for the disaster who was also the directing mind of the company. The judge Mr. Justice Baker explained the UK law on corporate manslaughter:

> "The only basis in which the prosecution may, in law, advance a case against Great Western Trains for manslaughter is by identifying the person within the company whose gross negligence was that of Great western Train itself. The only candidate would be the managing director Richard George, who was responsible for all matters of safety. In the absence of Mr. George having produced any tortuous act, he cannot be guilty for manslaughter. Consequently neither can Great Western Trains.... Were the law otherwise, a conviction would mark public abhorrence of a slipshod safety system leading to seven deaths and many injured victim"[36]

However, company was convicted under Health and Safety at Work Act 1974 with a fine of £1.7 million for failure to ensure the health and safety of the employees as well as the general public[37].

1.6 Theoretical Perspective:

The corporations are considered to be the social and legal institution of the country. The people come here and work together to earn profit by providing goods and services to the

[35] http://www.open.edu/openlearn/money-management/corporate-responsibility-industrial-incidents/content-section-3.2 last accessed August 23, 2015.
[36] R v [2000] CA
[37] Supra note 8, 505

general public. Corporations have become the powerful social and economic factor of our time. Though corporation is considered to be an artificial legal person.

If it commits any wrong, then the liability should also be imposing on it. There are four models to attribute the criminal liability to the corporation i.e. Vicarious liability model, identification model, aggregation model and management failure model.

1.6.1 Vicarious Liability:

The doctrine of vicarious liability was established in ninetieth century according to which a company is vicariously liable for the acts or omissions of its employees, whenever an employee would be so liable.it is one of the fundamental principal of attribution in civil law.[38] Vicarious liability principal follow the relationship of agency. In order to hold a corporation vicariously liable for the action of its employee it is necessary that the act of the employee must fulfill the elements of an offence. If it is so, then the act is said to be done by the employer (i.e. corporation)[39].

This doctrine justifies to hold a corporation liable for the crimes committed by its members, directors, and employees in process of extending the interest of corporation. According to this theory criminal liability may be imposed upon the corporation for the criminal acts of its directors and employees, as long as it is showing that, crime was committed in the process of furthering, endeavor to further the interest of the corporation.[40].

This principal is also stated in House of Lords decision in Re Supply of Ready Mixed Concrete i.e.

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[38] Meaghan Wilkinson, "*Corporate Criminal Liability-The Move towards recognizing genuine Corporate Fault.*" *Canterbury L. Rev.* 9 (2003): 142, 5

[39] Aaron Sweet, "*Making a Killing.*"(2006): 1-90, 8

[40] Dorothy Farisani, "*Corporate homicide: what can South Africa learn from recent developments in English law?*" Comparative and International Law Journal of Southern Africa 42, no. 2 (2009): 210-226, 4.

> "an employee who acts for the company within the scope of his employment, even if against the express instructions of his employer, may well bind the company as he is the company for the purpose of the transaction in question"[41].

Allens Arthur Robinson describes the requirements for the attribution of the guilt of an employee to the corporation that are as follow:

- An employee of the corporation commits the crime
- That crime must have been commit within the scope of the employment: and
- Crime is committed with an intention to benefit the corporation[42].

According to Marc Antony Walsh, principal of vicarious liability can be understand through corporate fiction concept like an employer is responsible for the appointment, training and delegation of responsibilities to the employers. Therefore, should not the employer be responsible for the action of the employees? If the corporation gets benefits from those actions. [43]

In respect of its positive attributes, vicarious liability has been the subject of criticism based primarily on the injustice of vicarious liability and its inefficiency in respect of corporate criminal liability.

According to the Wilkinson, It is the general principal of the law that the employer is responsible for the act or omission of its employee. What kind of position is hold by the employee and what kind of act or omission done by the employee does not matter, this general principal simply attribute this act or omission to the company. That's why most of the commonwealth jurisdictions does not accept the principal of vicarious liability in

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[41] Guido ed. Ferrarini, "*European Securities Markets: the investment services directive and beyond*". Kluwer Law International, 1998, 162

[42] Allens Arthur Robinson, "*Corporate Culture'as a Basis for the Criminal Liability of Corporations*" (2008): 1-99, 6.

[43] Marc Antony Walsh, "*corporate liability or lack of responsibility?*", 2014, 24

criminal law. This concept destroys the concept of fault because it attributes the fault of an employee to the company with any proof of malfeasance on behalf of the company[44]

In Islamic law the case of vicarious liability is similar to the cases of *'abd ma dhin'* i.e. when a slave disobeys his authority and commit a crime[45].

The problem in the vicarious liability is that it does not protect the corporation from the criminal liability when most of its employee does not break the law ad company has taken reasonable measure to avoid the offence. Regardless of criticism vicarious liability is the part of many criminal laws. In United Kingdom the position of this model is stable. It applies to the offences fall under the strict liability offence and to the offences of negligence

1.6.2 Identification Principal:

Corporate liability in English law is accepted in principle. The principal of identification doctrine was followed since 1944. According to this doctrine the person is considered as the representative of the company who actually participate in the management and control affairs of the company. Hence the name of the doctrine shows that some employees in the company are identified itself. So the outcome of the identification doctrine is that a company can be liable for any offence including the *mens rea* offence.[46]

In the doctrine of identification, the company is responsible for the acts of its officers. The act and intention of the officers is to be considered as the act and intention of the company. The crimes of the individual within the company is to be considered as the crime of the

[44] Meaghan Wilkinson, *"Corporate Criminal Liability-The Move towards recognizing genuine Corporate Fault."* Canterbury L. Rev. 9 (2003): 142-170, 147

[45] Imran Ahsan Khan Nyazee. *General Principles of Criminal Law:(Islamic and Western)*. Lulu. com, 2010, 109

[46] Ibid

company and it can be said that the company is personally liable rather of vicarious liability. However, it is a great problem to find out that who is to be considered as the controlling mind of the company and whose intention can be considered to be the intention of the company as a whole? This can be f0nd out by the interpretation of the test that who can be recognized as the company[47].

The company is an abstract which cannot from its own intention, it must act through a natural person. It is necessary to establish the mens rea against those who can be identified as representative of the company to impose a criminal liability upon the company.[48] So an alter ego is a person whose mind and will can be attributable to the company and becomes the central issue of holding a company liable. For the successful prosecution against the manslaughter it is necessary to identify an individual whose guilty mind is attribute to the company.

The doctrine of identification is originated from Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd. Viscount Haldane based it's diction on the Merchant Act. The case was against the small ship owing company, in which the sole director of the company was held to be the alter ego of the company. This case was based on the interpretation of a particular statue[49].

In Bolton Engineering v Graham, Lord Denning, basing his judgment on Lennard's v Asiatic, likened a company in many ways to a human body.

> "A company has a brain and nerve center and hands. The agents are nothing more than the hands that do the work whereas directors and managers, who

[47] Ibid, 147
[48] Mark WH. Hsiao, "*Abandonment of the Doctrine of Attribution for Gross Negligent Test on the Corporate Manslaughter and Corporate Homicide Act2007.*" The Company Lawyer 30, no. 4 (2009): 110-112, 110
[49] HL., Parsons, Simon. "*The doctrine of identification, causation and corporate liability for manslaughter.*" *The Journal of Criminal Law* 67, no. 1 (2003): 69-81, 69

> represent the directing mind and will of company, control what it does. The mind of these directors is the state of mind of the company and is treated by the law as such. This decision had been regarded as being too simplistic and it is considered that Viscount Haldane's speech was misinterpreted as a general metaphysical view of a company" [50].

Identification principal further discuss in detail in Tesco Supermarkets v Natrass[51]. A company was charged with the breach of the Trade Description Act when one of its store manager was failed to correctly display a sale item. The company defend the charge by argue that the store manager is different person and cannot be identified as an alter ego of company. Company also put the argument that it use the due diligence to prevent the store manager offence. The House of lord agreed with the argument of the company and found that store manager was not the directing mind and will of the company so did not offend the company[52]. Lord Diplock took the view that

> "the process of deciding who is the directing mind should start with the memorandum and articles of association, which is consistent with the primary rule of attribution. If the rules of attribution were applied properly, seniority would not have been the factor in determining whether a particular person was the alter ego of the company. Had it been applied properly in the Tesco Supermarkets v Nattrass case, the branch manager would have been the alter ego". [53]

The development of the doctrine of identification had not been considered until its endorsement by Lord Hoffmann in Meridian Global Funds Management Asia Ltd v The Securities Commission, Lord Hoffmann delivered the judgment that:

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[50] Nicholas Reville, "*Corporate Manslaughter Reviewed.*" Journal of Financial Regulation and Compliance 1, no. 3 (1993): 245-254, 246

[51] Mark Pieth, and Radha Ivory, eds. "*Corporate criminal liability: emergence, convergence, and risk*" Vol. 9. Springer Science & Business Media, 2011, 23

[52] Ibid

[53] Supra note 3, 148

> "The doctrine of identification is based on a general rule and specific rule of attribution that is established by looking at the memorandum and articles of association and the rules of agency. The specific rule of attribution is determined by looking into the specific legislation under which the company was charged".[54]

In general, the primary rule of attribution and general rule of attribution based on the principal of agency which are used to determine the rights and obligation of the company. The primary rule looks at the memorandum and article of association in order to check the power and decision. The general rule still finds the individual (a natural person) acting on the authority of board to carry out the functions. However certain circumstances require a special rule of attribution to determine that who is the alter ego of the company. Particularly any statutory offence for which a company is charged would state itself that whose act is being attributed to the company. [55]

From all above discussion it can be seen that, it has always been the question of law in all cases that whether a person doing a crime is to be viewed as company or simply as the agent or employee of the company. The result can be different if the identification test is applied in its true sense. The ratio of people who are not responsible to others in manner of discharging their duties are very low. The main focus of the Lord Diplock in Tesco Supermarkets v Natrass case was on the constitution of the company. However, in Practice Company constitution may give a little or no indication as to who exercise power in large corporate structure.

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[54] Ibid
[55] Supra note 4, 111

1.6.3 Aggregation Doctrine:

There is always a question that why criminal activity occurs in a corporate structure. This criminal activity usually is the result of several linked breakdowns within the corporation. The aggregation doctrine allowed to combine these several acts, which help to find out that whether the company has committed crime. The idea of aggregation is not implying to a single employee or on the single act rather it is the combined acts of definite number of employees which makes the corporation criminal liable for an offence. It is helpful in a situation where single act may be considered negligent but when combined together impose a criminal liability upon the corporations. [56].

The most significant problem which is catered by the aggregation doctrine is the 'identification of an individual' (i.e. in the case of identification doctrine) which is not deal with the situation where death or injury was caused by the several negligent acts of certain number of people working within the company. For example, A, B and C are the three employees of the company. Each have breached an ordinary standard of negligence, within the scope of their employment, which when combined has resulted in the breakdown in company safety and led to death or injury of customer or employee. [57].

In large corporation's task specialization means that no one has a complete access to all the information which may be the base of negligence or criminal liability against individual. [58]. It is therefore argue that for the purpose of criminal liability the conduct and state of mind of person's representative of the corporation should be aggregated. This can be done only by the

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[56] Aeron Swift, *"Making a killing: A separate corporate manslaughter offence for New Zealand?."* (2006):1-90, 16

[57] C. M. V. Clarkson, "Corporate culpability." *Web Journal of Current Legal Issues* 2 (1998), http://webjcli.ncl.ac.uk/1998/issue2/clarkson2.html.

[58] Stephen Tully, "*Research Handbook on Corporate Legal Responsiblity.*" Edward Elgar Publishing, (2005):1-452, 153.

matching of actus rea of one individual with the mens rea of another. If the offence requires the particular level of knowledge or negligence than aggregate the knowledge or negligence of group of individual. The doctrine of the aggregation is basically belonging to the American roots. A prominent example of this doctrine is the case of United States v. Bank of New England[59].

The bank was convicted of deliberately violate the provision of currency Transaction Act. The Act requires from the bank to report any cash transaction with a client that exceeds ten thousands dollar. In the concern case the client continuously withdraws the cash more than of amount that is required to be reported from the account of a company. Each time he used the different check each of sum lower than the required total. Each group of checks was presented to a different teller at the different time. It was the duty of the bank to report the transaction flow from the aggregation of check[60]. When the question about this duty of bank was raised the judge in the lower court referred to the subject of collective knowledge and instructed the jury as follows:

> "You have to look at the bank as an institution. As such, its knowledge is the sum of all the knowledge of all its employees. That is, the bank's knowledge is the totality of what all of the employees knew within the scope of their employment. So, if employee A knows of one facet of the currency reporting requirement, B knows another facet of it, and C a third facet of it, the banks know them all. So, if you find that an employee within the scope of his employment knew that the [reports] had to be filed, even if multiple checks are used, the bank is deemed to know it. The bank is also deemed to know it if each of the several employees knew a part of the requirement and the sum of what the separate employees knew amounted to the knowledge that such a requirement existed".[61]

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[59] *US v. Bank of New England, NA*, 821 F.2d 844 (1st Cir. 1987).
[60] Eli Lederman, *"Models for imposing corporate criminal liability: from adaptation and imitation toward aggregation and the search for self-identity."* (2000): 641-708, 663
[61] supra note 60, 855

The bank's appeal, which focused on the validity of collective knowledge, was rejected by the Court of Appeals that stressed:

> Corporations compartmentalize knowledge, subdividing the elements of specific duties and operations into smaller components. The aggregate of those components constitutes the corporation's knowledge of a particular operation. It is irrelevant whether employees administrating one component of an operation know of the specific activities of employees administrating another aspect of the operation.[62].

The commonwealth jurisdiction however not accepted the doctrine of aggregation. They continue rely on the doctrine of identification. An appalling example is Herald of Free Enterprise, Zeebrugge Ferry disaster of 1987 in which almost 200 people were died. The prosecution was initiated against the P&O European Ferries (Dover) Ltd. for reckless manslaughter. The Coroner found that this disaster would be prevented if the director of P&O Ferries takes the proper organizational measure.[63]. However, none from the board member have the sufficient knowledge about the deficiencies nor any of them performed any error or omission that led to disaster so none of them can be criminally liable for the disaster.

The argument of the prosecution is that the facts could be aggregated which is known to each of them. However the Queen and the coroner did not accept this argument. Lord justice Bingham found that the aggregation of the act and state of mind of an individual was inconsistent with the local doctrine of identification. .[64]. Colvin writes[65]:

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[62] Ibid, 856

[63] Nwafor, Anthony O. *"Corporate Criminal Responsibility: A Comparative Analysis." Journal of African Law* 57, no. 01 (2013): 81-107. At p.93

[64] Supra note 52, 27

[65] Eric Colvin, *"Corporate personality and criminal liability."* In Criminal law forum, vol. 6, no. 1,.Springer Netherlands, (1995):1-44, 18

The acquittal of the company was due to the identification doctrine because it demands an individual to impose the corporate liability.

The aggregation doctrine acceptance was also discussing in the appeal case of Attorney-General's reference no.2 of 1999" arose out of south hall train collision of 1997. Rose LJ clearly confirm that there is a need to find out the individual whose gross negligence can be attributed to the company otherwise The Company cannot be liable for the manslaughter under the present form of the common law. The intention required by the common law can be find out in different number of persons instead of one person As a result company was not found guilty of the manslaughter offence. [66]

The corporate liability should be enhancing it should go further than to be focus on the individual. The main problem behind all the models of liability is that they do not properly measure the liability of the corporation in itself. It is to be said that the vicarious and identification models are conceptually more inferior then other models. According to this view corporate blame is actually lies in the deficiencies of a company at organizational level instead of the crimes of the individual or officers of the company. Before the acceptance of any other model of liability it is necessary to set out the realist notion of the corporate legal entity more clearly.

1.6.4 Management Failure Model:

This model is introduced in English law through Corporate Manslaughter and Corporate Homicide Act2007. This model replaced the identification model of common law. It is argued that a strong and effective compliance program helps the corporate management to

[66] Supra note.47, 156

protect the corporation from criminal liability, the proposed new model will have the advantage of maximizing the chances that such criminality will not take root.

The concept of the corporate manslaughter offence is that the gross breach of duty of care must be established against the senior officers of the company[67].

According to the Act an organization will be liable for the new offence only "if the way in which its activities are managed or organized by its senior management is a substantial element"[68] in the gross breach of the relevant duty of care." 'Senior management' is defined as "persons who play significant roles in making decisions or actually managing or organizing the whole or a substantial part of the organization's activities".[69] Minkes and Loenard writes that the term "management failure" cannot be refer specifically to the failure of a company manger, but actually to the faulty ways adopted by the company in management of its affair[70].

Gobert writes that, the principal of "senior management failure" is introduced by the CMCHA 2007. This principal is somehow similar to the identification principal because the definition of the test (senior management failure test) includes those persons who have the significant role in the management of the company. This Act imposes a duty upon the jury to decide the matter relating to the gross breach of duty of care. It is also upon the jury to decide that whether polices, practices and the attitude are the contributing factors behind the failure to comply with the health and safety regulations[71].

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[67] Paul Almond, *"Understanding the seriousness of corporate crime Some lessons for the new'corporate manslaughter'offence."* Criminology and Criminal Justice 9, no. 2 (2009): 145-164. At p.158

[68] Section 1(3) of Corporate Manslaughter and Corporate Homicide Act2007 of UK

[69] Section 1(4)(c) of Corporate Manslaughter and Corporate Homicide Act2007 of UK

[70] John Minkes and Leonard Minkes, *"Corporate and white collar crime."* Sage, (2008):225, 75

[71] James gobert, and Ana-Maria Pascal, *"European Developments in Corporate Criminal Liability."* Taylor & Francis, (2011):371, 25

The main elements of the offence under the CMCHA are the same as before, the only difference between the new and the old law is that management failure must be the substantial element of the breach rather to identify the individual as the "controlling mind" of the company. It is important to know that under the new statute, there is no need to look at an individual at first instance but at the senior management of the organization as a whole[72]. The jury may consider the complete range of factors while assessing the guilt of a company (i.e. 'corporate culture', 'culture of complacency').

This comprehensive test will shift the burden from an individual to an organizational level. Indeed, according to some academics, if this change of the focus from an individual to corporate behavior was made earlier than some of the manslaughter prosecution that failed (i.e. Balfour Beatty and Network Rail in the Hatfield rail crash case) would have resulted in a conviction[73].

Clarkson's writes, the issue of management failure model was highly controversial along with the matter of individual liability during the progress of the legislation. The Home office justified the senior management test on the ground that it is the most effective tool to identify the corporate fault instead of criminalizing the local acts of negligence. The assertion of the senior management test in the Act is answer to the critics who argue that companies are the legal fiction, crimes can only be committed by the individual within the corporation and not by the corporation itself, and the real determined issue is when the act of these individuals should be attributed to the company. The process to identify the "senior

[72] Ibid, 46
[73] Ibid

management" appears restrictive and may open the door for the endless argument in court as to which persons qualify as part of "senior management"[74].

Almond writes that, there are three objective criteria i.e. systems of work, organizational practices, and management policies of the corporation the failure in these system can be determined the death in question and whether this failure impose a criminal liability on the corporation[75].

Clarkson further argue that the real danger in this test is that the companies may delegate the health and safety matters to the non-senior managers so as to protect the company from the criminal liability. In expectation of the Act, there was evidence that some companies delegate the health and safety matter to the most junior employees. Another problem with this approach is that it repeats one of the major problems contained in the previous law in that it could apply inequitably to small and large organizations. It is quite easier to identify the management failure in small organizations. Furthermore, the senior management test just broadening the scope of the identification doctrine in the way that rather of identifying one senior directing mind it is necessary to identify the several senior persons in the corporation.[76]

1.6.5 Strict Liability Model:

A strict liability is one that does not require the factors which needs to constitute a crime. Generally, the requirement of *mens rea* is not ignored in all element of offence, however It can be ignored in one or more offence. Strict liability offences are occasionally referred to as the "absolute prohibition" offences. Absolute prohibition indicates that *mens rea* need

[74] Cunningham, Sally, and C. M. V. Clarkson, eds. *Criminal Liability for Non-Aggressive Death*. Ashgate Publishing, Ltd., 2013. At p.93

[75] Almond, Paul. *Corporate manslaughter and regulatory reform*. Palgrave Macmillan, 2013. At p.27

[76] See note 82, at p.94

1.7 Conclusion

In above chapter the basics of the corporate criminal liability is discussed in detail. The offence of corporate manslaughter is also explained. Moreover, the theoretical perspective of this offence is also the part of discussion. The intricacies of the above theories show why it is so difficult to impose a criminal liability upon the corporation or to convict a corporation in corporate manslaughter. The main difficulty is in the criminal law is that it does not put any liability upon the corporation. On the other hand, the vicarious and identification principal also useless in this regard. The aggregation doctrine is also just an improve form of the identification doctrine which is also attributing the fault on individuals within the company. The management failure model is newly developed idea and with all the problems and ambiguities it seems to be more effective model.

Chapter No. 2:

Comparative Analysis of Corporate Manslaughter Legislation in Canada, UK, and Malaysia.

2.1 Introduction:

Every country has its policies and procedure regarding the issue of corporate manslaughter offence. The countries that do impose the manslaughter charges against the corporations adopt different approaches while imposing it. Every country is following different law/models for prosecuting corporation in manslaughter offence. The different theories are followed by the different jurisdiction to impose manslaughter charges against the corporation has been discussed in details in first chapter.

The jurisdictions like UK and Canada is also developing its law on the concerned issue. In UK, the CMCHA, 2007 define the offence of manslaughter. It also describes the management role in the affair of the company. The Act provide the guidelines to convict a company in the manslaughter charges. The most noteworthy part of the Act is to replace the identification doctrine with the management failure model.

Canada however is following a different approach then of UK. In Canada Bill c-45 does not define the offence directly or use the term corporate manslaughter. Canada is still depending on the identification doctrine. Malaysia as compared to both jurisdiction does not have special law on the corporate manslaughter issue. They are relying on the Occupational Health and Safety Act 1994. Malaysia also follows the identification doctrine while imposing the criminal liability on the corporation.

2.2 Overview of the Laws on Corporate Manslaughter in Different Jurisdictions:

Following is the analysis on the law prevailing in different jurisdictions on the corporate manslaughter.

2.3 Canadian Legislation on Corporate Manslaughter:

2.3.1 Westray Bill or Bill C 45: An Act to amend the Criminal Code

Bill C-45 was introduced by the Canadian government in 2004. The bill was an amendment in the Criminal Code with the intention to impose a legal duty upon all the persons directing work to take reasonable measures to ensure the safety at workplace for the workers as well as public. It also attributes the criminal liability upon the organization if any of its officers have the knowledge about the offence. The law was made after the death of 26 workers in the Westray mine disaster that's why this bill is commonly referred to as the westray mine bill.[78].

2.3.1 Identification Doctrine:

Prior to the westray Bill (C-45) Canada has from many year based its corporate criminal liability on the common law model of identification doctrine.[79] This doctrine is narrower than vicarious liability because it is a legal fiction that focuses on the actions of the "directing mind" of the corporation associated with individual and corporate persons in order to assign the criminal liability to the corporate person. In this doctrine "directing mind" is natural person associated with the corporation who can be identified within the

[78] Steven Bittle, *"Cracking down on corporate crime? The disappearance of corporate criminal liability legislation in Canada."* Policy and Practice in Health and Safety 11.2 (2013): 45-62, 45

[79] Steven Bittle, "*Still dying for a living: corporate criminal liability after the Westray mine disaster*" UBC Press, 2012, 21

corporation and who have the control over all the matters of the corporation. The doctrine requires from the corporation to take the responsibility of all the decision of that "directing mind" over the matter of corporate policy.[80]

In Canada, the identification doctrine is somewhat broader than the English common law. The case that introduce the identification doctrine and broadens its scope in Canada is Canadian Dredge and Dock Co. v. The Queen[81], the supreme court of Canada increase the category of directing mind to include the "board of directors who is the governing executive authority of the corporation, the managing directors, the superintendent, the manager and anyone else to whom the board of director delegate the power to take the decision of the corporation.[82]

The identification doctrine in Canada also experienced the criticism in the same way as it experienced in England. The uncertainty in the law relating to the identification doctrine caused difficulties when the matter is relating to the large and complex structure corporations. According to the Norm Kith the identification theory is reducing the criminal responsibility of the employees who are working as a low level mangers or just a representative of the company[83]. The problem to improve the identification theory in Canada faced the same challenge as it faced in Uk.

[80] Hans De Doelder and Klaus Tiedemann, *"Criminal Liability of Corporations: LA Criminalization Du Comportment Collectif: Xivth International Congress of Comparative Law= Xive Congres Internationalde Droit Compare"* Martinus Nijhoff Publishers, 1996, 182

[81] [1985] 1 S.C.R. 662

[82] Department of justice, Corporate Criminal Liability - Discussion Paper, March 2002, http://www.justice.gc.ca/eng/rp-pr/other-autre/jhr-jdp/dp-dt/iss-ques.html

[83] Norm Keith, *"Sentencing the corporate offender: From deterrence to corporate social responsibility."* Crim. LQ 56 (2010): 294-327, 297

2.3.2. Westray Mine Disaster 1992:

In Canada the criminal liability of the corporation was started after westray mine disaster in which 26 miners lost their lives as result of underground explosion.[84] The blast, apparently caused when sparks from a continuous mining machine ignited methane gas, was so intense that "it blew the top off the mine entrance, more than a mile above the blast center".[85] An investigation of the westray mine disaster was started by Canadian Mounted Police. Several attempts were made to hold the management and two individuals (Gerald Phillips, the manager of the mine and Roger Parry – the underground manager) legally responsible but all attempts were gone into vein.

On 20th April 1993. First charge of corporate manslaughter was established under criminal code. However, on 20th July 1993 judge decided to stay the charges due to the uncertainty but left open the possibility for new charges to be made in future. The trial started in February 1995 and new charges were established against the same defendant but the trial date was secured. The focus of the trial was limited disclosure by the crown instead of issue in dispute. Due to the lack of disclosure, the defendant was able to stay the proceeding.

In December 1995, an appeal was made to the Nova Scotia Court of appeal who overturned the decision of the trial judge to stay the proceeding and ordered a fresh trial of the case. This decision was further appealed in the supreme court of Canada who upheld the decision of the Nova Scotia court of appeal. Despite the decision of the Supreme Court, no new trial was ever commenced and this was announced over a year later on 30th June 1998. This disappointment, not completing the first trial and then no second trial was

[84] Paul Almond, "*Corporate manslaughter and regulatory reform*". Palgrave Macmillan, 2013, 44
[85] Supra note 45, 5

commenced after the decision of Supreme Court was a central factor in the call for political action and changes to the criminal code.[86]

After this delay and discomfort, Justice Peter Richard of the Nova Scotia Supreme Court chaired an inquiry. The united steel workers of America attended the inquiry and demanded to include a specific offence of corporate killing in the criminal code in similar way as it is in UK. After completing the inquiry final report was made which contains 74 recommendations and 73rd recommendation is the real base for the reform. The report didn't recommend a specific offence of corporate killing but recommended at 73 that:

> "The Government of Canada, through the Department of Justice, should institute a study of the accountability of corporate executives and directors for the wrongful or negligent acts of the corporation and should introduce in the Parliament of Canada such amendments to legislation as are necessary to ensure that corporate executives and directors are held properly accountable for workplace safety."[87]

The unsuccessful prosecution in the wetray mine disaster, the Canadian government took some time to respond with new legislation. At the first instance the reform was moved on with two private Bills i.e. Bill C 259 and bill C 284 but both bills were ultimately unsuccessful. The government finally decided to respond and proposed new legislation contained within bill C 45, this bill was sent to the parliament eleven year after the westray mine disaster. After passed by the parliament, the bill received the Royal assent on 7th November 2003 and come into force on 31st March 2004.

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[86] http://www.thecanadianencyclopedia.ca/en/article/westray-disaster/. Last accessed August 25, 2015

[87] Mr. Justice K Peter Richard, *"The Westray story: a predictable path to disaster."* Report of the Westray Mine Public Inquiry 1 (1997), http://novascotia.ca/lae/pubs/westray/recommnd.asp

2.3.3 Analysis of Bill C-45

2.3.3.1 Organization V. Corporation:

Section 1 of bill C 45 amended the section 2 of the criminal code and added the new definition of an organization[88], representative[89] and senior officer[90], the key element of this amendment is the use of term organization instead of corporation. The main reason behind this term is to broad the concept and add the other bodies like trade union and other public bodies into the sphere of criminal prosecution. The other two terms mentioned above (representative and senior officer) are relevant when considering the two formulas under which organization can be held criminally liable.

The first formula is now contained within Section 22.1 of the Criminal Code: -

> "In respect of an offence that requires the prosecution to prove negligence, an organization is a party to the offence if
>
> a) Acting within the scope of their authority
>
> i) One of its representatives is a party to the offence, or
>
> ii) Two or more of its representatives engage in conduct, whether by act or omission, such that, if it had been the conduct of only one representative, that representative would have been a party to the offence; and
>
> b) The senior officer who is responsible for the aspect of the organization's activities that is relevant to the offence departs – or the senior officers, collectively, depart – markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence"

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[88] "Organisition" under section 1 (2) of bill C 45 means
(a) a public body, body corporate, society, company, firm, parthnership, trade union, or municipality, or
(b) an assocciation of person that
(i) is crated for common purposes,
(ii) has an operational structure, and
(iii) hold itself out to the public as an assocation of persons.

[89] The term "representative" udder Bill C 45 defined to include any director, partner, employee, member, agent or contractor of the corporation.

[90] Senior officer under bill c-45 means a representative who plays an important role in the establishment of the organisitions polices or is responsible for managing an important aspect of the organisition's activities and, in the case body corporate, include a director, its chief executive officer and its chief financial officer.

2.3.3.2 Required Negligence:

Section 22.1 also demand the "required negligence" to be proved. The new definition of senior officer and representative are material. Macpherson suggested that that first portion of the definition of "senior Officer" codify the common law directing mind principal and second portion of the definition "clearly extends the attribution of criminal corporate liability to the actions of mid-level managers". The ultimate result of bill c-45 is that it extends the corporate criminal liability[91].

2.3.3.3 Expended Liability:

Second formula is contained within this section which is not based on the "negligence". Section 22.1 is expending the liability towards the senior officer of the organization guilty for crime. Under this section prosecution needs to prove something in addition to the negligence to make the organization criminally liable for the offence. This section also supports the managerial theory that latterly add to the British CMCHA, 2007 according to this section:

> "In respect of an offence that requires the prosecution to prove fault – other than negligence – an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers
> a) acting within the scope of their authority, is a party to the offence;
> b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or
> c) Knowing that a representative of the organization is or about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence".[92]

[91] Darcy L. MacPherson, *"Extending corporate criminal liability: Some thoughts on Bill C-45."* Manitoba Law Journal 30, no. 3 (2004). 253-284, 259
[92] section 22.2 of Bill C-45

In this section first time actus reas and mens rea is introduced to attribute the criminal liability to the corporation i.e. requirement of "mental state" of senior office within the scope of its authority. This section also added the aider abettor or person partner in crime into the ambit of prosecution.

The Act received both the favorable and criticized arguments from the academics. Like Keith favored the Act and argued that: The basic aim of the Bill C-45 is to improve the law of corporate criminal liability. For the very first time this bill (Sections 22.1 and 22.2 of the Code) given a legal framework about the *mens rea* of the corporation. Both section expressively defined that how a corporation can be convicted for the criminal offence the implication of the law is upon the all level of employees as compared to identification doctrine the focus of which is only upon the senior executives of the corporation.[93]

According to Dusome, the Bill C-45 is effective than of common law identification theory in two ways. Firstly, it enhances the scope of directing mind theory and secondly it increases the number of persons who may be convicted. According to him the law go further than to impose criminal liability upon the individual or corporation and covers the partnership, trade union and other association of persons as well.[94]

2.3.3.4 Sentencing Powers under Bill C 45:

Bill C 45 introduced a new sentencing regime for organizations. Section 718.21 of the code outlines the factor to be considered by the court while sentencing an organization which includes moral blameworthiness," "public interest," and "prospects of rehabilitation.

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[93] Norm Keith, *"Evolution of corporate accountability: From moral panic to corporate social responsibility"* Business Law International no.3 (2010): 247-276, 253.
[94] Paul Dusome, *"Criminal liability under Bill C-45: Paradigms, prosecutors, predicaments" Crim. LQ* 53 (2007): 98-148, 147.

According to this section, a court that imposes a sentence on an organization shall also take into consideration the following factors:

> a. "any advantage realized by the organization as a result of the offence;
> b. the degree of planning involved in carrying out the offence and the duration and complexity of the offence;
> c. whether the organization has attempted to conceal its assets, or convert them, in order to show that it is not able to pay a fine or make restitution;
> d. the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees;
> e. the cost to public authorities of the investigation and prosecution of the offence;
> f. any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence;
> g. whether the organization was — or any of its representatives who were involved in the commission of the offence were — convicted of a similar offence or sanctioned by a regulatory body for similar conduct;
> h. any penalty imposed by the organization on a representative for their role in the commission of the offence;
> i. any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and
> j. any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence."

It also introduces fines of up to one hundred thousand dollars for summary conviction offences[95]. Section 732.1 outlines "probation orders for organizations for example, restitution, new policies to prevent further offending, notification of the offence to the public, and any other "reasonable condition"[96] which is necessary according to the opinion of the court".

[95] Section 735 of Criminal Code.

[96] , Steven Bittle and Laureen Snider, *"From manslaughter to preventable accident: Shaping corporate criminal liability."* Law & Policy 28, no. 4 (2006): 470-496, 478

2.4 Prosecutions under Bill C 45:

The first charge under Bill C45 was laid down against Domenico Fantini, a 68-year-old owner of a small construction company on April 19, 2004 The charges of one count of criminal negligence was put against the Fantini after the collapse of a trench at the site of private house and cause the death of worker over there. Criminal charges were dropped against the owner of the company after he pleaded guilty to provincial regulatory offence. He was fined with C$50,000 and paid a C$10,000 victim[97].

The second charge was laid down against Transpave[98] who was the manufacturer of concrete patio blocks in the province of Québec. The charge was made against the company after a machine that stacked concrete stone on to wooden pallets crushed a worker to death. an investigation by the Committee on Health and Safety at Work and the provincial health and safety authority found that a safety device in the machine that stops the machine from operating when someone enters the stacking area was purposely disabled at the time of the incident, the committee also found that the company lacked appropriate training procedure and failed to inspect the machine to ensure that it was properly functioning. The company was pleaded guilty to criminal negligence of causing death in 2007. It was ordered to pay the fine of C$100,000 and a C$10,000 of victim surcharge. The decision faced criticism from the victim family and trade union because the victim mother was expecting the heavy fine and some on to be in prison.[99]

The third successful charge is against Metron Construction Corporation[100]. Fayzullo Fazilov was hired by the construction company for a project at the Toronto. Two swing

[97] Supra note 131.
[98] R V. Transpavé, [2008] JQ No 1857.
[99] Ibid
[100] R v Metron Construction Corporation, 2013 ONCA 541, [2013] OJ No 3900

stages was leased out by the company and no one of them carrying the label about the maximum capacity which is required under section 139(5) of OSHA. The common practice at the industry was that in each swing two workers can stand but ovn the day of tragedy the five workers and their supervisor (Fayzullo Fazilov) brooded on one swing

The swing was fell due to the overweight. Three workers along with their supervisor have died. During the investigation, it was revealed that all the workers were under the influence of Marijuana at the time of the incident. It was also revealed the design of the swing was no proper it did not carry the weight of the six men. The company accepted the blame of the supervisor that he did not allow the six men to be carry on one swing. Metron pleaded guilty for one count of criminal negligence under section 22.1 (b), 217.1 and 219 of code C-45.[101]

Section 22.1 of the code requires "negligence", "an organization is a party of an offence if a senior officer departs from the expected standard of care". Section 217.1 provides that "any person who directs the work of another person is under a legal duty to take reasonable steps to prevent bodily harm to that person". Section 219.1 set out the offence of criminal negligence. According to this section, "Everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons[102]."

Under these section, Metron was held criminally liable for the death of workers[103]. During the hearing court noted that there was only one case where corporation was sentenced for causing death by criminal negligence and that was against Transpavé as

[101] Barry W. Kwasniewski, *"Company fined $750,000 for criminal negligence causing death"* charity law bulletin no. 322 (2013), 2
[102] Section 219.1 of Bill C-45
[103] Ibid

discussed above. Therefore, court relying upon the OHSA jurisprudence while assessed this case. After realizing that, there was no maximum fine provided by the code, the court issued the order of $200,000 fine to Metron Corporation[104].

On appeal, the crown submitted that fine was "manifestly unfit"[105]. The crown provides reason that sentencing judge should not have used the ranges from OHSA offence because criminal negligence offence involves the higher degree of culpability, and thus deserve a higher fine. The court of appeal agreed with the crown arguments that the $200,000 fine was unfit and the sentence must be matched with the seriousness of the offence and level of responsibility of an organization. The court also considered that Metron's offence was more severe than of OHSA offences. In September 4, 2013, the court of appeal finally concluded the case with the increase in the fine from $200,000 to $750,000. Therefore, Metron sentence was increased by the court of appeal.

2.5 United Kingdom Legislation on Corporate Manslaughter:

2.5.1 History of the Corporate Manslaughter Act 2007:

The legislation on the corporate manslaughter in UK has started from the 1996 Law Commission report "Legislating the Criminal Code: Involuntary Manslaughter" (LAW COM No 237)[106]. The report provides many guidelines and recommendations on the concerned issue. The main objective of the recommendation of the commission was to

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[104] Ibid,3

[105] http://www.occupationalhealthandsafetylaw.com/750k-fine-for-extreme-criminal-negligence-more-serious-than-ohsa-offences-says-appeal-court-in-metron-construction-fatality-case. Last accessed August 30, 2015

[106] Law commission of UK issue the report under the head of "*Legislating the Criminal Code INVOLUNTARY MANSLAUGHTER Item 11 of the Sixth Programme of Law Reform: Criminal Law*", http://lawcommission.justice.gov.uk/docs/lc237_Legislating_the_Criminal_Code_Involuntary_Manslaughter.pdf last accessed June 26, 2015

create the offence of corporate manslaughter. If the death of an employee is caused by the activities of the corporation or the failure of the corporation to provide the proper safety at work than the death is treated as the corporate killing. [107] The commission also gave its observation that it should be treated as an offence only if the death is caused due to the

The commission also observed that the reliance of the common law upon the duty of care is the main problem "the terminology of 'negligence' and 'duty of care' is best avoided within the criminal law because of the uncertainty and confusion that surround it".[108]

In May 2000 the government published a proposal to reform the law of corporate manslaughter and to remove the crown immunity by following its commitment in labor manifesto 1997, the government proposal was mainly centered on the recommendation of the law commission. The proposal highlighted many important points and questions upon which the government started the consultation. The main focus of the consultation was that how a corporation can be convicted for manslaughter offence and how the crown immunity can be limited[109].

. Home office issued the draft of the manslaughter bill after 5 years of the publication of the proposal. It was the first time the term corporate manslaughter was defined in any Bill. According to the bill the corporation is said to be commit the offence of corporate manslaughter if the way in which its activities are managed cause the death of an employee and the death is cause due to the breach of duty of care by the senior managers

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[107] Recommendation 11(4).

[108] UK Law Commission. *"Legislating the Criminal Code; Involuntary Manslaughter: Item 11 of the Sixth Programme of Law Reform: Criminal Law (Law Com No 237)."* The Stationery Office, London, HC171 March (1996), 26

[109] Richard Matthews, *"Blackstone's Guide to the Corporate Manslaughter and Corporate Homicide Act2007"* (Oxford University Press,2008) , 10

of the corporation. The fact that whether corporation owed any duty of care towards the employees is to be decided by the jury.

The Joint Committees of the Home Affairs and Work and Pensions Committees of the House of Commons after heard all the oral and written evidence from the witnesses issued the three volume report upon the corporate manslaughter Bill[110]. Many recommendations were given by the joint committee in its report and it also demand from the government to further review the Bill. The joint committee also demand to abolish the duty of care clause from The Bill[111] and to include the secondary individual liability. Committee return the proposal to the Law Commission's to rethink the requirement of 'senior management' test.[112]

The Government finally introduced the Bill into the House of Commons. The jurisdiction of the Bill is extended to the whole of the United Kingdom. However, Government does accept the recommendation of the joint committee and did not exclude the relevant duty of care from the Bill.

The bill received the huge support and passed through the House of common and then from the House of Lords on December 2006. After being passed, many significant amendments were made in the Act without any dispute. Like the definition of the organization is enhanced ant it also covers the partnership, trade union and employers' associations.

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[110]House of Commons Home Affairs and Work and Pensions Committees: "*Draft corporate manslaughter Bill(First Joint Report of Session 2005–06)*"V.1 (December 2005), 5
[111] Ibid, 29
[112] Ibid, 38

Finally, after many promises of the politician and wait the CMCHA come into force. This section will consider the consequence of the new law by analyzing the key sections and give the idea that whether the new law is curbing the issue properly

2.5.2 Analysis of the Corporate Manslaughter and Corporate Homicide Act2007:

2.5.2.1 The Corporate Manslaughter Offence under the Act:

The most noteworthy part of this Act is the introduction of the new offence of corporate manslaughter. The Act provides the procedure to convict the relevant organization[113] for corporate manslaughter offence. The offence is described as "an organization is guilty of an offence if the way in which its activities are managed or organized (a) causes a person's death, and (b) amounts to a gross breach of a relevant duty of care owed by the organization to the deceased".

Senior management must be responsible for the extensive part of the breach. The offence of manslaughter prescribe by the Act is of the similar nature as prescribe by the common law like the corporation owes a specific duty of care towards the victim which is arising out in its daily functioning or activities performed by the corporation. According to this Act the offence of corporate Manslaughter is to be described as:

> "(1) an organization to which this section applies is guilty of an offence if the way in which its activities are managed or organized-
> (a) Causes a person's death, and
> (b) Amounts to a gross breach of a relevant duty of care owed by the organization to the deceased
> (2) The organizations to which this section applies are-
> (a) A corporation;
> (b) A department or other body listed in Schedule 1;
> (c) A police force;
> (d) A partnership, or a trade union or employers' association that is an employer

[113]Acoording to section 1 of CMCHA, an organisition includes "(a) a corporation; (b) a department or other body (c) a police force; and (d) a partnership, or trade union or employers' association that is an employer".

(3) an organization is guilty of an offence under this section only if the way in which its activities are managed or organized by its senior management is a substantial element in the breach referred to in subsection (1)."[114]

The main elements of the offence will be discuss in the further section.

2.5.2.2 Elements of the offence:

In order to establish the offence of corporate manslaughter, the prosecution will need to prove the requisite elements of the offence. The offence requires the failure of senior management, which is defined in sec.1 (4) as the persons who:

> "play significant roles in either the making of decisions about how the whole or a substantial part of its activities are to be managed or organized, or the actual managing or organizing of the whole or a substantial part of those activities."[115]

The meaning of "significant role" is not described, but clearly in the case of a organization/company there is a prerequisite for a level of power deriving directly or indirectly by the delegation of power from the directing mind.[116] The CMCHA extinguish the common law identification principle in the second part of the definition, by removing the requirement that liability must be exclusively determined in the directing mind of the company.[117]

Therefore, a company may be liable for the activity of its senior manager if the death is caused due to that activity of the manager, there is no need to prove that the manger was following the polices of the board of directors

[114] Section 1 of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[115] Section 1(4) of the Corporate Manslaughter and Corporate Homicide Act, 2007.
[116] Stephen Griffin. *"Corporate Manslaughter: a radical reform?"* Journal of Criminal Law 71, no. 2 (2007): 151-166, 158
[117] Stephen Griffin and Jon Moran. *"Accountability for Deaths Attributable to the Gross Negligent Act or Omission of a Police Force: The Impact of the Corporate Manslaughter and Corporate Homicide Act2007."* Journal of Criminal Law 74, no. 4 (2010): 358-381, 370

Though, senior management failure is difficult to establish in case of complex structure corporation. The prosecution must prove all elements of the offence. On the other hand, under the Act If the corporation took the measure specified for the safety of the worker than the corporation will not be liable for the death[118].

Second element of the offence is qualifying organization. There is controversy on the subject that what kind of organization should be include in the Act. The Government has adopted a wide approach and includes, corporations, specific Governmental departments, police forces and unincorporated organizations if they are employers[119]. Particularly the application of the new offence to "unincorporated undertakings" has been criticized. Moreover, this Act also applies to the organizations of a similar character to partnerships formed under foreign law. Thus it creates a substantial risk for foreign enterprises too.

The organization must have owed a relevant duty of care to the victim is the third element of the offence. The meaning of this relevant duty of care is provided within section 2(1): -

1) " A "relevant duty of care", in relation to an organization, means any of the following duties owed by it under the law of negligence-
   a) A duty owed to its employees or to other persons working for the organization or performing services for it;
   b) A duty owed as occupier of premises;
   c) A duty owed in connection with –
      i) The supply by the organization of goods or services (whether for consideration or not),
      ii) The carrying on by the organization of any construction or maintenance operations,
      iii) The carrying on by the organization of any other activity on a commercial basis, or

[118] Lucy Jones and Sarah Field *"Corporate criminal liability for manslaughter: the evolving approach of the prosecuting authorities and courts in England and Wales."* Business Law Review 4 (2011): 80-86, 81
[119] Section 1(2) of Corporate Manslaughter and Corporate Homicide Act2007

iv) The use or keeping by the organization of any plant, vehicle or other thing;

d) a duty owed to a person who, by reason of being a person within subsection (2), is someone for whose safety the organization is responsible."

It is the question of law; it is not the duty of the jury but the duty of the judge to determine that the organization owes a duty of care towards the individual in the concern case[120].Moreover, the exceptions of the duty of care contained in the aforesaid section is also specify in the section 3 to 7.

Again, the application of all these sections will be seen as per the cases appear before the courts. There is a lot of criticism upon the inclusion of the provision relating to the duty of care. Gobert considered it to be useless. According to him it is a known fact that the company is duty bound to protect the innocent rom the incidents so there is no need to enter this "duty of care" specifically into the Act[121]. However regardless of the criticism, parliament included this provision into the Act and in future it can be seen that how it is interpreted and then applied by the judiciary.

The death must amount to a "gross breach" of the relevant duty of care is specified in sec.1 (1) (b) of the Act is another element of the offence. Section 1(4) (b) states as follows: -

> "(b) a breach of duty of care by an organization is a 'gross' breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organization in the circumstances"

[120] This is made clear within section 2(5) of the CMCHA, 2007 of UK that the "judge must make any findings of fact necessary to decide that question".

[121] James Gobert. *"The Corporate Manslaughter and Corporate Homicide Act2007–Thirteen years in the making but was it worth the wait?"* The Modern Law Review 71, no. 3 (2008): 413-433, 416.

The offence of corporate manslaughter is committed when company grossly breach the duty of care and mismanagement of the affairs of the company by its senior managers become the substantial element in the gross breach of the relevant duty of care[122].

The important factors considered by the jury is to be specified in the section 8. These jury must consider that is corporation failed to comply with the safety standards provided by the Health and safety legislation? According to this section the court must consider the "seriousness of the failure" and "the risk of death posed by the failure" [123]. As compared to the powers granting under section 8(2) the jury have the power to deal with health and safety policy along with the corporate culture of the organization under section 8(3) further section 8(4) go further and empower the jury to consider any matter which is relevant to the case.

Causation is fourth element of the offence under the Act. section 1(1)(a) deal with the causation i.e. : -"... the way in which its activities are managed or organized" .This is not easy to prove the causation because the substantial element to prove the offence is that the senior manager activities must be of the nature that which constitute the offence. In the corporate manslaughter offence. Act requires from the prosecution to establish beyond the reasonable doubt that the breach of duty was a significant cause of death. The more satisfactory demands upon an accusation containing health and safety counts permit the prosecution to establish guilt against the company without any evidence, if the injury was caused by the failure to ensure safety. It would then be for the company to establish a due diligence defense.

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[122]Lucy Jones and Sarah Field, *"Five years on: the impact of the Corporate Manslaughter and Corporate Homicide Act2007—plus ça change?"* International Company and Commercial Law Review 24, no. 6 (2013): 239-246, 241

[123] Section 8(2) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.

Although, breach of duty of care is not the sole cause to establish the offence, senior management test is also a substantial element. The prosecution need to establish the failure in the management system in contrast to the strict liability require in health and safety offences which demands from the successful defendant to show that It was not possible through the due diligence to avoid the injury. In this circumstance, the management failure is at an operational rather than systemic level. So the Company will not be held responsible for manslaughter.[124]

Finally, the "senior management test" is contained in section 1 (3) is the fifth element of the offence. According to this section, "the way in which the organization activities were managed or organized by its senior management is a substantial element in the gross breach". The CMCHA provides some clearness as to what it means by use of the term "senior management" in section1 (4) (c):

> "(c) 'senior management', in relation to an organization, means the persons who play significant roles in-
> (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organized, or
> (ii) the actual managing or organizing of the whole or a substantial part of those activities".

The rationale behind the senior management failure test is that liability for conducting a particular activity should lie in the system of work adopted by the organization. Section 1(4) (c) identifies the management responsibilities which relates to the overall activities of the organization, if not, then at least a substantial part of it. The definition describes two types of management responsibility. First one is how the activities are to be managed i.e decision making and second is the actual management of those

[124]Simon Daniels, "*Corporate manslaughter: new horizon or false dawn? Update: The Prosecution of Lion Steel.*" Mountbatten Journal of Legal Studies 14, no. 1/2 (2013): 75-97, 92

activities. This definition covers not only the monitoring managers (who monitor workplace activities) but also includes the operational mangers (who makes policies)[125].

The process of attributing liability under this test has been described as one of "qualified aggregation", in the sense that the infirmity of a number of individual aggregate to establish a management failure. It opposes the directing mind and will concept of identification doctrine in which a single individual of the company can be identifiable for the failure or mismanagement. So, the senior management test provided by CMCHA is broadened than the doctrine of identification[126].

However, some believes that this test does not provide the effective solution of the problem of who is company. According to definition, a senior manager is one who plays a "significant" role in decision-making, managing or organizing a whole or "substantial" part of the corporation's activities. It is difficult to interpret the words "significant" and "substantial" while applying the test[127]. How can it be determine that there has been a senior management failure or not which constituting a gross breach, the Act provides that jury has to consider:

1) the organization non-compliance with the health and safety legislation.
2) the policies and practices of the organization which become the reason of such failure.
3) The extent of the profit made by the organization from any such failure to comply with health and safety requirements[128].

[125] *Ananthi Bharadwaj, "Corporate Manslaughter and Corporate Homicide Act, 2007" National law school of India review* 21, no.1 (2009): 201, 207
[126] Ibid
[127] Ibid at p. 208
[128] Section 8(3) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.

There is a lot of criticism on the "senior management test and many critics gave its suggestion that this test has the same deficiencies that was associated with the previous law of identification/ "directing mind and will" doctrine.

2.5.2.3 Important Aspects of the Act:

The important aspects of the Act are the "mismanagement of the activities of the organization" by their senior managers. This requirement limits the liability of cases where the breach of duty can be found in the faults of senior manager's. Though, the senior management test is not always being the only cause of death however the role of the senior manager is of such nature that it becomes the substantial part of that breach

The main problem is the ambiguity in the management failure test. It is required that it must be the substantial element in the breach. This ambiguity cannot be sort out to just read the statute. Another problem is the Act does no prescribe that who have the authority to decide that the management failure was the main element in the breach. The general rule is that it is for r the judge to decide this issue. [129]

The Act clearly prescribe that it is the responsibility of the judge to decide that the duty of care is the one prescribed by the law [130] and there was the breach of that duty. Is someone is a senior manager or not it is also to be decided by the judge. Accordingly, the judge will decide that the senior manager's activities was the substantial element in the gross breach. Whatever the question is, the statute only provides one solution, it is for the jury to decide that what is substantial and what is not.

[129] Section 8 (1) (b) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[130] Section 2 (5) of Corporate Manslaughter and Corporate Homicide Act 2007 of UK.

2.5.2.4 Punishments:

There are three kinds of punishment provided by this Act i.e. fines, remedial orders and publicity orders. The sentencing powers under this Act specifies that the sentence of the conviction on the charge[131] for corporate manslaughter will be a fine. The rationale behind imposing fine is that every corporation functions with the motives to earn profit and aim to maximize its annual turnovers. The punishment of fines has disadvantages along with some benefits, it may be argued that financial sanctions can never put a dent on large corporations. Another possible disadvantage of it is the spillover effects i.e. the burden of fine may pass over to the consumer in the shape of increase in the price of the products produced by the offending company. So there is a need of variety of sanctions for the effective punishment.

The CMCHA, 2007 provides two additional order to the sentencing judges that can be used for the conviction in corporate manslaughter I.e. remedial orders[132] and publicity orders[133]. The order available under this legislation can require the felonious organization to undertake the steps so as to remedy: -

In order to impose the remedial order, it is necessary for the prosecution to apply and specify the terms and condition of the order [134]. However, the persecution must consult with the regulatory authority like Health and safety executive in this regard in order to seek the input of this authority over the concern issue[135]. The time period for the completion of

[131] Section 1(6) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[132] Section 9 of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[133] Section 10 of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[134] Section.9 (2) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[135] Section 9(3) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.

remedial work must be specify in the order, however the court may extend the period [136]. Time period for the remedial work to be completed must state in the order but it is the authority of the court to extend this period. In case of failure to comply with remedial order the organization will be liable to pay fine under CMCHA[137].

The powers of the judge also extend to the publicity order. However, the publicity order can be issued only in the cases registered after 15th February 2010. Corporation convicted in manslaughter charge is bound to publicize the following on the order of the court

Publicity order in many ways is quite similar to the remedial order. But in publicity order court must not only pursue the view of regulatory authorities but also accept any representation made by the prosecution[138]. Likewise, remedial orders, the court must specify the time period in which the publicity order is to satisfied[139]. The failure to comply with the publicity order will lead to the fine like in the case of remedial order.

The impact of these orders is too detrimental because the shareholders and the companies will never bear the consequences of bad fame of the company or organization. The approach of "name and shame" may be very effective if it is used regularly and impact of it on the offending corporations could prove to be detrimental. However, in case of remedial order, it is questionable how effective remedial orders will be. During the legal proceedings, legal teams of offending corporation always advised that they should remedy the cause of death to ensure that this kind of incidence will never occur again.

[136] Section 9(4) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[137] Section 9(5) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[138] Section 10(2) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[139] Section 10(3) of Corporate Manslaughter and Corporate Homicide Act2007 of UK.

2.5.2.5 Consent of the DPP to Commence Proceedings:

The consent of DPP is required to initiate the criminal proceeding under this Act[140]. It is necessary for the DPP to report the matter to Attorney General, who is a member of the government. This requirement causes a potential political dimension which may become a reason of criticism on the DPP. This requirement is also creating a question mark on individual impartiality. This section removes the crown immunity; it might cause significant turmoil if the crown department consent to prosecute was withdrawn.

2.5.2.6 No Individual Liability under this Act:

This Act doesn't specify the individual liability. Section 17 states that:

> 1) "An individual cannot be guilty of aiding, abetting, counselling or procuring the commission of an offence of corporate manslaughter.
> 2) An individual cannot be guilty of aiding, abetting, counselling or procuring, or being art and part in, the commission of an offence of corporate homicide."

This section faces a lot of criticism because it limits the Act exclusively to the corporation or organization and the offending individual's like directors and chief executive are not covered within this legislation. As a result, the chances of the secondary liability of directors and chief executives are finished. According to some commentators it is a glaring error on the part of the government. As J. Gobert states that " the lobbying efforts by the business community against personal liability bore fruit"[141]

2.6 Successful Prosecutions under the Act:

Between 06 April 2008 (when the Act came into effect) and 01 October 2015, there have been following convictions. The first prosecution under the Act was against Cotswold

[140] Section 16 of Corporate Manslaughter and Corporate Homicide Act2007 of UK.
[141] Supra note 8, 422

Geotechnical Holdings [142] Limited. An accident was occurred in September 2008. A junior geologist which was an employee of the company died while taking the sample of soil. The cps made the charge of health and safety along with corporate manslaughter against the company. Additionally, it also charged one of the directors, peter Eaton with gross negligence manslaughter.

The prosecution needed to prove that the conduct of the Cotswold's Geotechnical Holdings Limited had caused the death of the employee's and conduct was the breach of duty of care owed to the employee under section 1(1) of the Act. The prosecution also needed to prove that senior management activities (the way in which senior management organized or managed its activities) is a substantial breach under section 1(3) of the Act[143].

During the trial of the case, the proceeding was stayed against peter Eaton due to his health issues. In spite of it, the proceeding against the company continued. However, The health and safety charge was terminated when the judge said that both the charges i.e. corporate manslaughter and Health and Safety are two different things. If both the offences are combined in the same charge it might confused the jury.

Prosecution find out that the depth of the trenches was the major cause of death of the geologist. The jury give the unanimous decision in February 2011. The jury found that the depth of the trenches was wholly dangerous because it should be no deeper that 1.2 meters according to industrial standards. The judge, Mr Justice Field, said the Gross breach of duty of care is a grave offence on the part of the company[144].

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[142] 1 R v Cotswold Geotechnical Holdings Limited and others, [2011] All ER (D) 100 (May) available at http://www.cps.gov.uk/news/latest_news/107_110 last accessed, September 25, 2015

[143] http://www.infrastructure-intelligence.com/article/jan-2015/no6-r-v-cotswold-geotechnical-holdings-limited last accessed December 12, 2015.

[144] http://www.telegraph.co.uk/finance/yourbusiness/8331262/Cotswold-Geotechnical-fined-385000-in-first-corporate-manslaughter-conviction.html. Last accessed December 13, 2015

The company was guilty of Corporate Manslaughter and sentenced to pay a fine of £385,000. After seeing the financial condition of the company that was described as "parlous". The company was granting permission by the judge to pay the fine without cost over a period of ten years. The company filed an appeal against the decision but it was dismissed by the appellate court. Judge held that even though the fine become the reason for the liquidation of the company but this this was "unfortunate but unavoidable and inevitable". After the dismissal of Appeal Company went into liquidation.[145]

The second case under the CMCHA2007 was against the Lion Steel Limited[146]. On 29 May 2008, a general maintenance man i.e. Mr. Berry, went onto a roof to inspect a leak. He fell 30 feet through a skylight and died. According to the prosecution, Mr. Berry had not received adequate training to work on the roof, there was no risk assessment or safe system of work for undertaking roof work at the Hyde site and there was inadequate supervision. It was alleged that there was failure to provide safety at the workplace[147].

The Company had also been warned about the tenuous state of the roof by an HSE inspector in 2006. The company admitted the offence part way through the trial, in July 2012, and was fined £480,000 plus £84,000 costs. It was allowed to pay the fine in four instalments with two years to pay the costs.

Lion Steel is a medium-sized company with employees larger than the two previous firms convicted under the Act, but not as such large organization to which the Act was

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[145] Steve Tombs, *"Still killing with impunity: corporate criminal law reform in the UK."* Policy and Practice in Health and Safety 11, no. 2 (2013): 63-80, 66.

[146] R v Lion Steel Limited, see also Clyde & Co and Barlow Lyde & Gilbert, *"Corporate Manslaughter – Are Directors The Bait?"*, Health, safety & environment (July 2012),http://www.ier.org.uk/sites/ier.7 workers burnt to death in factory fire, 86 injured_filesorg.uk/files/CC001561_Are_Directors_the_bait_20.17.12.pdf

[147] http://www.dwf.co.uk/news-events/dwf-press/2012/08/starvp-lion-steel-lessons-from-the-third-corporate-manslaughter-prosecution/. Last accessed October 13, 2015

intended to deal. The prosecution is significant for another reason. Despite being found guilty of the charge of corporate manslaughter. Lion Steel was not in fact on trial under that charge. The company was charged for the corporate manslaughter and three of its director with the gross negligence manslaughter and offences relating to the duties of care owed by directors and senior managers. Under Section 37 of the Health and Safety at Work Act, Lion Steel had appealed to the court to try the corporate manslaughter charge separately from, and subsequent to, the charges against the individual directors.

The judge agreed to this point that the union of both cases would 'confuse the jury' and require 'directions to the jury of baffling complexity'. After the trial against the three individuals had started, the cases of gross negligence manslaughter against two of them were dismissed. It was at this point that negotiations were entered into with the prosecution; these ended in agreement that the company would plead guilty to corporate manslaughter with all remaining charges against the individual defendants being withdrawn. The company was fined of £ 480,000 and victim surcharge is £15, fine to be paid in four installments. The company was also ordered to pay cost of 60% of its cost incurred until April 2012.

Lion Steel is the biggest company which have been prosecuted under the new Act, the fact that a guilty plea was (ultimately) entered and that there was, in effect, no trial meant that the key tests of the Act were not considered in court.

Third case was against Huntley Mount Engineering Company. A 16-year-old employee named Cameron Minshull was died during work because his overall caught by the machinery and he dragged into the industrial steel cutting lathe. This accident was

happened on January 8, 2013. The employee was working in Zaffar Hussain at Huntley Mount Engineering limited and earned £3 per hour[148].

The corporate manslaughter charges were put against the company for its gross breach of duty of care in the maintenance of lathe. The company was also charged to not ensure the health and safety of its employee.[149]

The two defendants, Hussain (director) and his son Akbar Hussain (supervisor) were charged with manslaughter by gross negligence. The company also faced the charges under the health and safety at work act.[150]The court heard that there were no safety measures at the engineering company and the youngster left unskilled and unsupervised while the safety guards had been removed from the machinery. While passing the sentence Judge David Stockdale QC give the remarks that:

> "These young men - inadequately trained, inexperienced, unqualified and virtually unsupervised - were effectively left to their own devices in a workshop containing fast running, unguarded machinery. But this was the accident waiting to happen".[151]

During the preceding court also find out that,

> "It was the practice at the company for young apprentices to clean the lathes, used to cut and make steel components, with emery paper while the machinery was still running. This should not have been possible but safety guards had been disabled, a practice that was "dangerous in the extreme". Youngsters were simply warned to roll their sleeves up when cleaning the lathes."[152]

[148] http://www.cps.gov.uk/news/latest_news/huntley_mount_engineering_ltd/ last accessed November 11, 2015.
[149] http://wwew.dailymail.co.uk/news/article-2820742/Factory-boss-son-charged-corporate-manslaughter-16-year-old-apprentice-crushed-death-lathe-just-month-new-job.html, last accessed on September 10, 2015.
[150] Ibid
[151] http://www.bbc.com/news/uk-england-manchester-33444514. Last accessed on September 10, 2015
[152] Ibid

The company director, Hussain and his son Akbar Hussain, a supervisor in the firm accepted the neglect under health and safety.[153] On July 14, 2015 court issue the order of sentence, the company director Hussain was jailed for the 8 month and banned to become the director again for 8 years. Hussain was jailed for four months, suspended for a year, and a fine of £3,000. Each was ordered to pay £150,000 in court cost. The recruitment agency Lime People Training Solutions Ltd was also fined £75,000 for placing Cameron in a dangerous work environment. They were also ordered to pay £25,000 in court costs[154].

2.7 Corporate Manslaughter offence: Malaysian approach

This section will consider the corporate manslaughter issue in Malaysia. This section will firstly discuss the basis of corporate criminal liability i.e. identification doctrine in Malaysia then it will focus on the provisions of Occupational Health and safety Act 1994. Which is the only legislation upon the concerned issue. Lastly it will discuss the case laws on the issue.

2.7.1 Identification Doctrine:

Criminal liability of the corporations is not fully appraised in Malaysia. There are bulk of cases against the corporation for the violation of many laws. Most of the cases are those in which the compliance with the statute is necessary but corporation did not comply with the concerned statute. Like other countries Malaysian courts also used the identification

[153] http://www.expressandstar.com/news/uk-news/2015/07/14/company-owner-jailed-over-apprentices-death/. Last accessed on August 10, 2015

[154] http://www.cps.gov.uk/news/latest_news/huntley_mount_engineering_ltd/. Last accessed on August 10, 2015.

principal in deciding the most of the cases. The flaws in the identification principal had caused the cases not to be deicide in favor of the victim[155].

The identification principal was first discussed in the case Yue Sang Cheong Sdn Bhd v Public Prosecutor. In this case the findings of the Federal Court followed the UK approach and held that, the persons whose knowledge and act attributed to the company would be those who were assigned to exercise the powers of the company. Therefore, for the conviction of the company in criminal charge it is necessary to find out the individual who exercise the power of the company and then must be shown that he has been guilty of the mention crime[156].

2.7.2 Occupational Health and Safety Act 1994:

Occupational Health and Safety Act 1994 is treated the corporation as the potential offender. Corporation as an employer may do such act or perform such work which may cause injury to the general public and the employee of the corporation. The liability of such an incident can be high and corporation might be forced to the enormous sum of money as the penalty under the Act. On the other hand, such incidents that is caused by the negligence of the corporation may ruin the reputation of corporation[157].

Occupational Health and Safety Act 1994 is the basic legislation on the corporate killing. Any corporation who violate any provision of the Act may be charged under the Act. The cases are not on gone on the full trail and therefore no reported in Malaysian law journal

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[155] Hasani Mohd Ali *"Corporate Killing For Malaysia. A Preliminary Consideration"* Jurnal Undang-Undang 13 (2009): 144-157, 148

[156]Chong Yee Leong, "Government investigation" Rehmat Lim @ partner (2015), http://www.rahmatlim.com/Lists/PublishedArticle/Attachments/3/Getting%20the%20Deal%20Through%20-%20Government%20Investigations%202015%20-%20Malaysia_Secured.PDF

[157] Kamal Halili Hassan,*"corporate liability under malaysian occupational safety and health legislation."* International Journal of Business & Society 16, no. 2 (2015), 281

because in most of the cases offenders pleaded guilty. So there no legal material available on the concerned issue. Instead a publication from DOSH/JKKP entitled Jurnal Pendakwaan, Jabatan Keselamatan dan Kesihatan Pekerjaan 2009 & 2010 and again under the same title published in 2011 comprise a record of charges made against corporate bodies[158].

Section 52 of the Act provides for offences committed by body corporate. According to this section:

> "Where a body corporate contravenes any provision of this Act or any regulation made thereunder, every person who at the time of the commission of the offence is a director, manager, secretary or other like officer of the body corporate shall be deemed to have contravened the provision and may be charged jointly in the same proceedings with the body corporate or severally, and every such director, manager, secretary or other like officer of the body corporate shall be deemed to be guilty of the offence".

This section applies only when a corporate body is involved in any crime. Corporation include both private and public body registered under Malaysian law the company in Malaysian law include the company formed under the Malaysian law. Who can be sue and be sued in its own name, it can be chargeable under both civil and the criminal law. Besides all the laws and fact, a body corporate cannot be imprisoned under Malaysian law[159].

Section 56 thus provides that: "where a person convicted in respect of an offence is a body corporate or a trade union, it shall only be liable to the imposition of a fine only".

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[158] Ibid, 283

[159]Department of occupational safety and health ministry of human resources, *"Guidelines on occupational safety and health act 1994 (act 514)"* (2006),80 http://commonrepo.um.edu.my/557/1/GarisPanduan2006BI.pdf

Under section 56, "a natural person – such as a director, manager, secretary or officer – may be charged jointly with the corporations or severally. In the event that the persons mentioned are charged jointly with the body corporate they are employed by, such persons shall be deemed to be guilty of the offence if the body corporate is found guilty".

The Act is said to be criminal negligence because it provides the provisions of the imprisonment as well as the fines for the offenders. Section 15, 16, 17 or 18 provides the punishment of fine not exceeding the fifty thousand ringgit or imprisonment for a term of two years or both[160].

The Act also provides other penalties which include the fine of ten thousand ringgit or imprisonment for a term not to exceed one year or both. If the corporation is still invole in the crime for which it is convicted, then further fine of one thousand ringgits per day is to levied against the corporation[161].

In criminal cases, it is always being the duty of the prosecution to prove the case. Along with other evidentiary requirement, it is also being the duty of the prosecution to prove that all the elements stated in the charge have been satisfied. For instance, under section 15(1) and (2) (a) of the Act it is the duty of the prosecution to prove that the employers have breached the duty to provide safety at work. The burden to prove the occurrence of accident is also upon the prosecution.

2.7.3 Corporate Manslaughter Cases in Malaysia:

The term "corporate manslaughter" is not legally recognized in Malaysia however Cases of industrial death or fatality have been reported. Many cases of industrial death or fatality have been reported in Malaysia however the term "Corporate Manslaughter" is not legally

[160] Section 19 of occupational health and safety Act 1994.
[161] Section 51 of occupational health and safety Act 1994.

recognized. The offenders would be charged for such fatality causing death under OSHA 1994 or Penal Code Prosecution feels that OSHA does not bring a deterrent punishment for such tragic cases offender is most probably charged under Penal Code.

An offender responsible for industrial death may be charged either Sec 302 (for murder) or Sec 304 (culpable homicide not amounting to murder) or Sec 304 A (causing death by negligence) of the Penal Code. Sec 304 deals with the charges for culpable homicide not amounting to murder or sec 304 A death be negligence is likely to be leveled against the offender. An important question here arises can a corporate body can be convicted for the death caused by the industrial accident?[162]

The dealing of the English courts with the concerned issue is already discuss in detail. Company law of the country clear define the term and status of the corporate bode but company law does not have the provision regarding culpable homicide. In Malaysia the several cases of the death of employee and non-employees that is caused in an industrial incident have been reported. Some of these cases include British Sparklers explosion in 1991, Jaya Supermarket collapse in 2009 and Sunway Lagoon cases.

The Bright Sparklers explosion case was brought before a Royal Commission of Inquiry and that held the company responsible for the fata l accident. However, the company or its agents/officers were not prosecuted in court.[163]. In the Jaya Supermarket case, C.W. Yap Sdn Bhd., the contractor company was engaged to raze an office building and a supermarket located at Jalan Semangat, Petaling Jaya. During the demolition work, the building collapsed and killed the company's employees and Corporate Liability under Malaysian Occupational Safety and Health Legislation other persons (non-employees).

[162] Supra note 86, 290
[163] Ibid

The company was prosecuted under section 17 of the OSHA and pleaded guilty. Later, Yap Choo Wai, the director of the company was also prosecuted in the Session Court under the same section, and he also pleaded guilty. [164]

Reference can also be made to non-industrial accident cases such as Yu Sang Cheong Sdn. Bhd. v PP (1973, 2 MLJ 77) and PP v Kedah & Perlis Ferry Services Sdn. Bhd. (1978, 2 MLJ 221) which explain the legal status of corporate body pertaining to mens rea i.e. the guilty mind is integral part of the conviction of a criminal act[165].
In Yu Sang Cheong Sdn. Bhd, the company had been convicted of the offence of knowingly being in possession of certain prohibited goods. In federal court the question of law was raise that whether a company be convicted for the criminal offence where the *mens rea* is required or where the *mens rea* of its officer cannot prove? The Federal court on this question held that a company cannot be convicted in such case.

In Public Prosecutor v Kedah & Perlis Ferry Service Sdn Bhd [166], the company was charged for 'being knowingly in possession' of un-customed goods. The High Court upheld the decision of the Session Court which did not find the company guilty. This is because the company's officers and agent were not aware that the goods were un-customed.[167].
Corporate body did not receive punishment in any case. Moreover, there is not even a chance in a near future that a corporate body could be charge for corporate homicide in Malaysia. The reason behind it is the same of Pakistan that Malaysia does not have legislation on the concerned issue.

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[164] *PP v Yap Choon Wai*, MS3- 78-2010, http://www.thesundaily.my/node/137954
[165] Supra note 86, 291
[166] [1978] 2 MLJ 221
[167] http://www.oocities.org/capitolhill/1161/6v500.html last accessed October 14, 2015.

2.8 Occupational Health and safety guidelines under ILO (International Labor Organization):

The core issue of health and safety is discus in the preamble of the ILO constitution[168]. It has been a central issue for the Organization since its creation in 1919, and continues to be so today. Occupational safety and health is a key element in achieving sustained decent working conditions and strong preventive safety cultures. Close to 80 per cent of all ILO standards and instruments are either wholly or partly concerned with issues related to occupational safety and health. A large number of areas of ILO activity include an OSH or OSH-related component, among them employment, child labour, the informal economy, gender mainstreaming, labour statistics, labour inspection and maritime safety, HIV/AIDS and the world of work, and international migration. This breadth of penetration gives a clear indication of the continued importance of occupational safety and health as a core element of ILO activity and of the Decent Work Agenda in particular[169].

In November 2000 the Governing Body of the ILO decided to apply on an experimental basis an integrated approach to ILO standards-related activities in order to increase their coherence, relevance, impact and currency. OSH was selected as the first area to benefit from this approach, and at its 91st Session (2003) the International Labour Conference (ILC) held a general discussion to this end (ILO, 2003a). The ILC adopted conclusions defining the main elements of a global strategy to bring about measurable improvements in safety and health in the world of work and recommending the

[168] C155 - Occupational Safety and Health Convention, 1981 (No. 155)

[169] International Labour Conference, "ILO standards-related activities in the area of occupational safety and health: An in-depth study for discussion with a view to the elaboration of a plan of action for such activities.", Report VI, 91st Session 2003, 2

development of a new instrument aimed at establishing a promotional framework for occupational safety and health[170].

As a result, the ILC adopted, at its 94th Session in June 2006, a Convention (No. 187) concerning the promotional framework for occupational safety and health and its accompanying Recommendation (No. 197). The main purposes of the Convention are to ensure that a higher priority is given to occupational safety and health in national agendas and to foster political commitments in a tripartite context for the improvement of occupational safety and health. Its content is promotional rather than prescriptive, and it is based on two fundamental concepts: the development and maintenance of a preventive safety and health culture, and the application at the national level of a systems management approach to occupational safety and health[171].

2.9 Conclusion:

It can be evidenced from the above study that both the Canada and the United Kingdom are progressing in the development of the law relating to the corporate manslaughter. It can also be seen that, both jurisdiction put a lot of effort in criminalizing the corporation in the offence of causing death of a person who works under the condition provided by them. The laws of both countries have some similarities along with bit differences. The most significant similarity is long standing usage of the identification doctrine in both the UK and Canada. However as compared to both countries the situation in Malaysia is different. The progress in Malaysia regarding the legislation on this issue is quite slow. They do not

[170] Benjamin o Alli. "Fundamental principles of occupational health and safety." *ILO* 13, no. 2 (2001).
[171] Ibid

find any law on this issue yet except some provisions of occupational Health and safety Act 1994.

Canada used the holistic approach rather to focus upon the specific term like UK which used the term of corporate manslaughter. The main difference between the both laws is the "approach", the approach followed by the UK is limited to the specific offence of corporate manslaughter on the other hand approach followed by the Canada covers the large number criminal offence

The Canadian law do not use a specific term of "corporate killing" or "corporate manslaughter" for this offence. The reason behind to not use the specific term was that it would "be too narrow", can only be used against specific corporate crime of "manslaughter" and would not address the crimes related to the environment and other corporate harm. The most significant flaw of the UK law is tht it only deals with the corporation and not with the individuals and not even on the directing minds of the corporation. This flaw was well covered by the Canadian law.

As discussed above, Canada developed the law of corporate criminal liability in well-mannered way then of UK. When one consider the Canadian law it can be said that in spite of long term reform Canada amended its law with an "identification plus" model as well.

Furthermore, sentencing guidelines provided by the CMCHA is also different from the Bill C45. Bill c 45 take the more broadened approach than of CMCHA, it provides the limitation of fine like one hundred thousand dollars for "summary conviction offences" but CMCHA does not provide it.

The reforms in the Canada was started before the UK. They have more prosecution on the concerned issue than of UK. Successful prosecution of both countries on the concerned issue is also discussed above in detail.

However, the laws of these two countries on the concerned issue contain the flaws but it also enlighten the ways and provide guidance to other jurisdiction to enact their laws on this issue.

Chapter No. 3:

Corporate Manslaughter: Pakistan Perspective

3.1 Corporate Manslaughter: An Analysis of the Pakistani Laws

The term "Corporate Manslaughter" is not recognized by any law in Pakistan. No company ever faced a criminal charge under any criminal law of the country. It does not mean that company here does not commit any crime. There is thousands of occupational disasters occurred from time to time in many organizations in Pakistan. But no criminal prosecution is successful against any corporation in the country.

From the several years' protection against the health and safety hazards became the prime right of many laborers. Workers in Pakistan have been fighting for many years to attain this this right and many of them lost their lives. The department of health, safety and environment department deals with the work related safety issue in every organizational setup. In Pakistan, the main problem in this regard is that people do not have much knowledge about work related safety issue and that's why work related safety issues are not in the agenda of government besides the fact that Pakistan has faced many work related disaster and many people lost their lives in these disasters.

At the organizational level, most of the organizations do not care about the work related deaths and injuries records. Organizations even hide the records of work related injuries or death from the government as well as from the public. These companies do not have health, safety and environment department which can address the issues of workplace safety in their business setup. The consequences of the non-existence of HSE department have to face by the laborers.

Another problem is Pakistan does not have direct law on occupational safety. However, provisions regarding occupational safety is containing in different laws like Factories Act 1934, Workmen Compensation Act 1923, Mines Act 1923, Provincial Employee Social Security Ordinance 1965, Boilers and pressure vessels ordinance 2002.

Whenever deaths caused by the fatal accident in any organization or company, factory or corporation. The charges of murder or manslaughter is imposed against the organization under Pakistan Penal Code and other health and safety laws of the country. But no corporation is still convicted in these charges. Example of the case is Baldia Town factory incident in Karachi and many other incidents in other part of the country. All this will be analyzed in the following chapter.

3.1.1 Companies' Ordinance 1984:

Firstly, it is necessary to analyse that, is it possible to impose the criminal liability against the corporations under any law in Pakistan? For this purpose, start with the Companies Ordinance 1984. This is an Act of Parliament which deals with incorporation of the companies. Of particular importance is Section 32 (2) which provides:

> "From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance[172]".

[172] Section 32 of the companies ordinance, 1984

This means that upon incorporation, the company becomes a body corporate and inter alia, is capable of suing and being sued in its own name. It means that upon incorporation the company becomes a legal person, separate and distinct from the natural persons who comprise of it. It can therefore be inferred that a company can be brought before the court in its own name for both civil and criminal liability.

The company's ordinance penalizes the guilty directors and other responsible person but it does not provide the guidelines to punish the company itself. There are certain provisions in the company ordinance, 1984 which relates to the criminal liability as discussed under:

According to the section 60 of the companies ordinance

> "Where a prospectus includes any untrue statement, every person who signed or authorized the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both[173]."

Further section 194 of the ordinance says:

> "Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, chief executive or officer of the company or any person, whether an officer of the company or not, employed by the company as auditor, from, or indemnifying him against, any liability which by virtue of any law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void[174]"

Section 270 explains the procedure where anyone from the company is liable for any criminal offence:

> "If, from any report made under section 269, it appears to the Commission that any person has, in relation to the company or in relation to any other body corporate, whose affairs have been investigated by virtue of section

[173] Section 60 of the Company Ordinance, 1984
[174] Section 194 of the Company Ordinance, 1984

> 267, been guilty of any offense for which he is criminally liable, the Commission may, after taking such legal advice as it thinks fit, prosecute such person for the offence, and it shall be the duty of all officers and other employees and agents of the company or body corporate, as the case may be, other than the accused in the proceedings, to give the Commission or any person nominated by it in this behalf all assistance in connection with the prosecution which they are reasonably able to give."

Section 418 of the ordinance says:

> "If it appears to the Court or liquidator in the course of winding up by, or subject to the supervision of, the Court that any past or present director, or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the registrar."

According to the section 475 of the company's ordinance:

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), every offence against this Ordinance shall, for the purposes of the said Code, be deemed to be non-cognizable."

It can be noted that, companies commit crimes but escape the liability by taking the shed of being an artificial entity. When a company is taking the benefits of a natural person than why does not it can be convicted or prosecuted like a natural person. This is a question which is taking attention globally. Companies especially seen to be negligent regarding health and safety of its employees. The company's ordinance, 1984 does not provide the guidelines where the death of worker is caused due to poor hazarding working conditions provided by the company.

After the analysis of the relevant provisions of Company's Ordinance it can be said that the ordinance provides the punishments only for the individuals and not for the company itself. The Company Ordinance should be amended so that some punishment

would include in case of breach of health and safety regulation or the law relating to the health and safety matters.

3.1.2 Liability under Pakistan Penal Code 1860:

All the crimes are generally penalized under Pakistan Penal Code, 1860 in Pakistan. It is this code which need to be considered in case of criminal liability of corporation. Corporations are playing important role not only in creating and managing business but also in common lives of many people. That is the reason why many criminal law systems are imposing the criminal liability upon the corporation for the criminal offence.

In Pakistan. Pakistan Penal Code is a statue which deals with the punishments that can be imposed on the convict include, death, life imprisonment, rigorous and simple imprisonment, forfeiture of property and fine. Thus the main problem here is how to apply these laws on the corporation when criminal is specifically focuses on the individual crimes.

According to section 11 of Pakistan Penal Code "the word "person" includes any company or corporation or body of person whether incorporated or not[175]". This means that wherever the word "person" used in this Code or in any other law or in all the public documents enacted before or after the commencement of this Code shall include a company or association or body of person whether incorporated or not.

Due to this provision of the Pakistan Penal Code the companies can be subjected to the criminal liability unless the provisions criminalizing the act or omission clearly express that it is not apply to the companies. But the courts in Pakistan interpret it in other way. The courts do not consider it that corporation can be held liable for the offence where the

[175] Section 11 Of the Pakistan Penal Code (XLV of 1860)

imprisonment is mandatory rather some of its individual would be liable for such offence. Like in a case "Syed Abdul Qadeer V. Mirza Ishtiaq Husain" the court held that:

> "The word "person" as defined or appearing in section 11 does not include corporate body because this section describing the offence where imprisonment is mandatory. Corporate body or company is not chargeable for the offence which is committed by the individual or for the offence punishable with the imprisonment. The officer or individual who have the authority to act on behalf of the company is individually liable for the offence[176]"

However the definition of the person is not extensive person include artificial and judicial person[177].

> "Therefore a corporate body is chargeable for the criminal acts or omission of its directors, or authorized agents or servants, whether the mens rea exist or not. The basic ingredient required is, they have acted or have purported to act under authority of the corporate body or in the pursuance of the aims and objectives of the corporate body. The question is whether the corporate body should or should not be chargeable for the criminal action resulting from the acts of individual. It depends upon the nature of the offence stated in the complaint or charge sheet, the position of the concerned officer in the company, and other facts which can clearly show that corporate body is liable for such offence. Each case will have depends on its facts which must be considered by the judge or magistrate before proceeding against the corporation[178]."

The question here arises how a corporation can be convicted for manslaughter offence. Generally manslaughter is an offence caused by the gross negligence act. So by this mean corporate manslaughter is to be defined as death caused by the corporation through negligent or rash act. Section 318 (*Qatl-i-khata*) of Pakistan Penal Code deals with

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[176] Syed Abdul Qadeer V. Mirza Ishtiaq Husain, 1971 P.CR.L.J 537
[177] Shaukat Mahmood, "*The Pakistan Penal Code (XLV of 1860)...*" volume 1, Pakistan Law Times Publications, 1967, 9
[178] Mirza Ishtiaq Hussain V. Syed Abdul Qadeer, 1982 P.CR.L.J 463

the cases where the death or harm is caused by negligence act (either by mistake of act or fact) without any intention. *Qatl-i-Khata* is restricted to the death cause by the mistake of act or by mistake of fact which could be defined as murder without any malice intention. Important elements of the offence under section 318 of PPC are rashness and negligence[179]. The term rash act within the meaning of section 318 demands the want of proper care and caution. It means a reckless act[180].

The act which is done by the mistake of act or mistake of fact. Criminal rashness is said to da a dangerous act without any intention but with prior knowledge that it may cause injury. Criminal negligence on the other hand is said to be gross negligence or fail to use the proper care and caution to safe the general public or an individual from an injury[181].

The test which ought to be applied in each case is firstly, the amount of care and circumspection and secondly whether the accused had taken the amount of care or he had conducted himself in a careless manner.[182] The amount and extent of negligence are the important factors to be determine in a criminal case. The *mens rea* is also included in the criminal negligence. For the establishment of the criminal liability of the corporation the fact must be such that the negligence of the accused went beyond a mere matter of comprehension and showed such disregard for the life and safety of others as to amount to a crime.

In other words, a higher degree of negligence than ordinarily required in civil cases is necessary to render a person guilty under section 318 of P.P.C[183]. Therefore if a person

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[179]Muhammad Aslam V. Dr. Imtiaz Ali Mughal, PLD 2010 Kar.134
[180]Muhammad Yousaf Khan V. State, 1989 P.CR.L.J. 1344
[181] Muhammad Mazhar Hassan Nizami, *"The Pakistan Penal Code, XLV of 1860: With Comm. & Shariat Criminal."*, PLD Publishers, (2012), 468
[182] Jamal V. State, 1977 P.CR.L.J. 818
[183] Muhammad Ayub v. state, 1980 P.CR.L.J 429

dies because the accused did not perform the duty recognized by criminal law, the latter would be guilty under this section. In case "Muhammad Ayub v. state".

> "Where a worker died because his "*Khes*" *was* caught in the worm of flour mill which has been left uncovered by the carelessness of the management. The learned counsel for the petitioner submitted that the managing director, others and the Neemat flour mill is not chargeable under the criminal law or where the imprisonment is necessary and covering of the worm of the mill was not a duty according to law. Therefore there was no illegal omission, that is to say, statutory omission on the part of his clients. The learned counsel for the petitioner also submitted that because deceased wearing a long khes in that place so he is liable for the contributory negligence not the mill....it was held that because the deceased wearing a long khes (chaddar) which got entangled in the worm made him liable for the contributory negligence does not free the petitioner from the liability. At best, it might be urged for grant of a lesser sentence[184]".

Pakistan adopted almost every law from the UK jurisdiction. If we evaluate the Corporate Manslaughter and Corporate Homicide Act2007 we can see that the basic ingredients to establish the offence of manslaughter against the corporation is same as discussed in section 318 of Pakistan Penal Code like in section 2 of Corporate Manslaughter and Corporate Homicide Act2007 an organization owed a relevant duty of care to the employee or the person working over there. The breach of that duty create an offence under section 1 and organization would be liable for the indictment or fine in case of death of the worker due to its negligence in performing such duty.

From the above discussion it can be seen that the courts in Pakistan adopt the identification doctrine approach in dealing with corporate criminal liability. The directing mind and will of the company being such persons acting or concerned with the control or management of the affairs or activities of the company are to face criminal liability and

[184] Ibid

liable to be punished accordingly. In a case "Rafiq Hussain Vs. Islamudin And Six Other" Justice Agha Ali Haider supporting the above view in the following words:

> "There are several offences which could be committed only by the individual human being for instance murder, treason, bigamy, perjury and rape. Similarly, a company, or corporation could not be punishable with imprisonment, or, corporal punishment. It can be say that barring these exceptions, a corporate body ought to be indictable for criminal act or omission of its directors, or authorized agent or its servants, whether thy involve mens rea or not, provided they have acted or purported to act under the authority of the corporate body or in pursuance of the aims and objective of the corporate body"[185]

It can however be believed that the true effect of above cited cases is to transfer the criminal liability from the company to the top level management of the company. Once he top level officer of the company is charged and convicted for any criminal offence the company is no longer seen to be liable for the criminal offence. The cited cases does not reflect the criminal liability of the company rather they just focus on the criminal liability of persons who are acting or working in the management of the company.

3.1.3 Factories Act 1934:

The Act which deals with the occupational health and safety issue in Pakistan is Factories Act 1934. Chapter 3 of this Act dealt with the Health and safety maters in Pakistan. This Act implies on the factories where ten or more workers work or where manufacturing procedures are conceded. It provides essential steps that should be take into consideration for the workers safety. It demands for better health services, sufficient resources, uninterrupted aeration, proper illumination, dust control, emission and fume control, fire

[185] Rafiq Hussain Vs. Islamudin and Six Other PLD 1977 Karachi 188

safeguards, occupational hygiene, sanitation and maintenance, safety of building and manufacturing process.

The question here arises what does "factory" include? And is this Act applicable to the body corporate. Is this section applies to the company or not? Section 2(L) define occupier, he is the person having full authority over the affairs of the factory. Moreover in section 70 it's clearly express that the occupier includes the firm or company. According to this section:

> "(1) Where the occupier of a factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:
>
> Provided that the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in Pakistan to be the occupier of the factory for the purposes of this Chapter, and such individual shall, so long as he is so resident, be deemed to be the occupier for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.
>
> (2) Where the occupier of a factory is a company, any one of the directors thereof, or, in the case of a private company, any one of the shareholders thereof, may be prosecuted under this Chapter for any offence for which the occupier of the factory is punishable:
>
> Provided that the company may give notice to the Inspector that it has nominated a director, or in the case of a private company, a shareholder, who is resident in either case in Pakistan to be the occupier of the factory for the purposes of this Chapter, and such director or shareholder shall, so long as he is so resident, be deemed to be the occupier of the factory for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be director or shareholder."[186]

[186] Section 70 of the Factories Act 1934

It clearly express that if a company or a firm breach any provision regarding health and safety of worker it will be prosecuted and punished under this Act. However punishments provided by this Act is really low. The punishment provided by the Act is fine i.e. five hundred rupees in case of any breach of health and safety regulation. The maximum limit of fine is too low that companies does not take it seriously and avoid to spend millions of rupees upon the safety of the worker.

This Act contain many flaws like this Act does not provide any remedy in case of death of a worker under poor working conditions. How a company or firm is prosecuted or punished in case of death of worker occur from the poor working condition.

3.1.4 Workmen Compensation Act 1923:

The workmen compensation Act 1923 was enacted before the partition. It is one of the earliest labor welfare and social security legislation. It was adopted by the Pakistan in order to provide the rights to the worker who sustained injuries or death while performing their work in organizations. It stated that the workmen shall be compensated if he or she sustained injuries while performing his or her duties in the course of employment. The definition of workers compensation is the amount of compensation paid by the employers to the employee if the employees sustain injuries in course of their employment. The compensation covers the medical or other expenses incurred by the employee of a company in course of his employment.

The workmen compensation Act is run by the commissioner on a state level. The Act set the guidelines and procedure of compensation which shall be pay by the employer

to the employee if he sustain any injury in the course of his employment. Workers according to this Act shall include those "who are employed at plantations, mines and mechanically drive vehicles, construction works, factories and other areas" where the workers safety is considered to be in danger. The compensation provided by the Act is saolely depend upon the age, injury and monthly wage of the worker. The Act also set the criteria of minimum and maximum limit of the compensation paid by the employer to the employee if he sustain any injury in course of his employment.

The question here arises what does the definition of employer include?? According to section 2(e) of the Act it includes "(i) anybody of persons, whether incorporated or not (ii) any managing agent of an employer (iii) the legal representatives of a deceased employer, and (iv)any person to whom the services of a workman are temporarily lent or let out, while the workman is working for him. Thus the word employer 'includes not only natural persons, and body of persons, but artificial and legal persons"[187].

An employer is bound to pay the compensation only if the injury is caused during the work and he is not bound to pay the compensation if the injury is not of such nature that result into the permanent or partial disable of the employee for more than 3 days

Section 3 of the act describe the circumstances which conferred the liability upon the employer to compensate the employee. It is an absolute duty of the employer to pay compensation under this Act. According to this section the employer is bound to pay the compensation only if the injury is caused during the work:

The compensation under section 3 is granting only if following conditions are fulfill:

[187] section 2(e) of workmen compensation Act 1923 of Pakistan.

1. The person who injured or died should be fall under definition of "workmen"
2. He must sustain injury during the work or in course of his employment.
3. The workmen claiming damages must prove that the accident was occurred in the course of employment or in the time period of his employment.

The most important factors under this Act is that the workmen must be actually working at the time of injury or the accident. Therefore Act include three factors which must be established in order to get compensation. These factors includes that there must be "an injury" which has caused by "an accident" in the "course of employment". Like in a case of "Colony Thal Textile Limited, Bhkar Versus Muhammad Sharif"

> "The employee was dead by accident with the bus while his way to the Mill. He was 5 miles away from the Mill when accident occurred. It was held that accident was not arising in the course of or while performing employment work so the decease person is not eligible for any compensation under the Act"[188].

The Act provides the compensation for the death, permanent disablement or partial disablement of the worker. For this purpose, section 4 must be read with the IV schedule of the Act. According to this if a worker is dead or permanently disable he shall be awarded with the compensation of 2,00,000 PRs.

This Act just deal with the compensatory matter. There is no provision regarding the criminal prosecution or institution of a criminal case against the factory, company or organization who was the reason of his death. The compensation provide by the Act is also too low.

[188] Colony Thal Textile Limited, Bhkar Vs. Muhammad Sharif, 1978 PLC 5

3.2 Milestone Cases of Corporate Manslaughter in Pakistan:

3.2.1 Baldia Town Fire Incident: A Case of Involuntary Manslaughter against Ali Enterprises:

On September 12, 2012 a textile factory in the commercial hub of Karachi faced the deadliest fire in which 300 people were stuck behind the lock doors of factory. The Baldia incident is said to be the deadliest factory fire in the human history. Firestorms and smokes totally destroyed the factory which created a panic among the poor workers who were working on the undergarments and plastic tools. Most of the people died working on the upper floor due to the smoke and exploding boilers. The death toll was raised due to the absence of safety equipment's such as fire alarms or fire extinguisher it means that nobody inside the factory was able to save himself[189].

On that September evening worker at the factory was lined up to collect their salaries. There was thousands of people at the time when fire revoked. The owner of the factory (Ali Enterprises) Abdul Aziz Bhaila and his sons Shahid and Arshad are alleged to force the worker to safe the goods before the safety of themselves. The owner was in fear that, worker might steal their merchandise or may leave the factory earlier so they shut down all the emergency exit door except one. That is one thing which the owner of Ali Enterprises cannot deny in their testimonies[190].

In Baldia Town Factory accident, the case was registered against the factory owners and management for not providing the safety measures at the factory premises. The FIR

[189] Danyal Khan, "*Quiet burns the fire*", The dawn (Herald), November 12, 2014
[190] Ibid

was registered under section 302 (Qatl-e-amd), 322(Qatl-e-Khata), 337(hurt), 435 (mischief by fire or explosives), 436 (mischief by fire or explosives with the intention to destroy a house) and 34 (common intention) against the factory owner and other culprits.[191]

Murder charges against factory owners and others were dropped in 2013. The court gave the order to release them against the surety bonds of Rs.200,000 each. The owner of the factory alleged that the fire in the factory was the criminal act done by a political party when he refused to pay the extortion money. [192].

Sindh High Court constituted a commission headed by the Rehmat Hussain Jaffery for the distribution of compensation money given by the Prime Minister, the Chief Minister, factory owners, local administration and the German buyer of the factory products i.e. Massrs KIK. Two Joint Investigation Teams have been formed on the. The cause behind the fire and culprits involved in the death of 289 people is not find yet. The reports by the Joint Investigation Team was not accepted by the trial court as a prosecutor did not accept the investigation officer's view and allege it to be the act of favoring the suspect.[193].

In February 2015, the heirs of the victims of Baldia factory fire disaster had instituted a case against the German buyer of the Baldia Factory products I.e. Messrs KIK in the High Court of Dortmund. During the proceedings it was found that Messrs KIK used

[191] http://tribune.com.pk/story/447996/baldia-factory-fire-two-of-three-ali-enterprises-owners-sent-to-jail/ Last accessed November 15, 2015

[192] http://nation.com.pk/national/12-Feb-2013/murder-charges-dropped-against-baldia-garments-factory-owners Last accessed November 15, 2015

[193] Sabir Shah, "Pakistan lags far behind in compensating industrial victims", The News, September 13, 2015

to buy its seventy five percent garments form the Baldia Town Factory. This law suit had sought the compensation of $4,320 for each victim. [194]

Sindh Rangers submitted a report to the High Court which said that it was a planned terror activity that was planned by the people belonging to the major political party.[195].

In March 2015, a new team was formed to investigate the case afresh. The Joint Investigation Team reinvestigate the case and submitted another report on 23rd February 2016. The Joint Investigation team was headed by the Sultan Ali Khawaja (Deputy inspector general of CIA) and included senior officers of FIA, Rangers and other intelligence agencies. The report alleged that it was the terrorist activity which was done due to the refusal to pay the extortion money. The investigation team put these allegations on two people namely Rehman Bohla and Hammad Siddiqi that belong to a mainstream political party.

The investigation team give its opinion that the incident was handled in unprofessional manners just to support the offenders. According to the opinion of the investigation team the FIR was also lodged not only with the mela fide intention but also suffered a huge internal and external influence. It alleged that the terrorist activity was

[194] Ibid

[195] Naeem Sahoutara and Zubair Ashraf, *"Baldia factory fire: Three years, as many reports and the trial goes on"*, The express tribune, September 11, 2015.

simply portrayed as a murder in FIR. The FIR was also not against the actual criminals but against the factory owners and its management[196].

The JIT also recommended that the FIR should be withdrawn by state and suggested that the new FIR should be lodged under relevant sections of PPC along Anti-Terrorism Act against the actual perpetrators of crime. The JIT suggest the several names that shulod be include in FIR which includes, Rehman Bohla Hammad Sidiqqi, Zubair Chariya, Omar Hassan Qadri, Dr Abdul Sattar, Ali Hassan Qadri, Mst Iqbal Adeeb Khanum and four unknown associates of Zubair chariy. The JIT also raises question on the rescue services and recommended that new laws on the safety matters should be made and factory owners and employees should be trained in such a manner that they can cope up with these kind of terrorist activates because this is the only way to minimize the losses of life or property from such kind of terrorist activities in the future. The JIT report criticize the role of Police in this case and recommended the new police reforms to avoid such kind of investigation failure in future[197].

The only information received from the last hearing is that the investigation is still in process[198]. It is argued that in Baldia town incident that was not the fire which killed the people but rather it was the actions of different people who was in charge of their safety. People died there because building was constructed in violation of laws. . Building was not

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[196] Sarfraz Ali, "*Baldia factory fire incident was planned terrorist activity, says JIT report*", Daily Pakistan. March 5, 2016

[197] Ibid

[198] Ibid

even registered with the labor department. Now it is a time to enforce the labor laws even if just section 35 of the Factories Act of 1934 is enforced in its true sense many accidents can be avoided.

3.2.2 Manslaughter Case against Karachi Electric Supply Corporation:

Karachi Electric Supply Corporation held an interview on Nov 28, 2012 and during the interview fire broke out in which a young man named owais baig who came for the interview was died[199].

The father of the deceased file a complaint upon which the High court directed the police to register a FIR under section 322 (punishment for *Qatl-bis-sabab)* and 34 (common intention) of PPC. The FIR was registered against Tabish Gohar, Mukhtar Khan of the fire brigade and Syed Shahzad Hussain of the KESC. The police did not provide their names in the charge sheet and dropped their name under section 169 (release of accused when evidence is not enough) of the criminal procedure code.[200].

The case of manslaughter was proceeding against the accused in the court and during the case the father of the deceased submitted an affidavit stating that he had forgave the accused in the name of Allah[201].

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[199] http://www.dawn.com/news/770418/death-of-young-man-kesc-chief-booked-for-manslaughter last accessed November 20, 2015

[200] http://www.dawn.com/news/608350/pre-arrest-bail-granted-to-kesc-chief, last accessed November 28, 2015

[201] Ishaq Tanoli, "*Family pardons two KE officials in manslaughter case*", The Dawn, August 09, 2014

The additional district and session judge acquitted the accused under section 345 of the criminal procedure code after receiving the affidavit of the legal heirs of the deceased

3.3 conclusion:

Corporation in Pakistan avoid the health and safety matters. They do not consider it necessary to have the health and safety executives. It has evidenced that corporations avoid this just to increase their wealth by not spending on the safety issues. Due to this act of many organizations, Pakistan has faced the numerous industrial disasters in which thousands of people has lost their lives, one of them is baldia town fire incident as discussed above in details.

In this chapter, law relating to the health and safety of the laborers is also discussed which includes Factories Act 1934 and workman compensation Act 1923. Some other laws also deals with the safety of the worker but that laws is on the specific subject like Mines Act 1923 this Act is to amend and consolidate the law relating to the regulation and inspection of mines, Boilers and pressure vessels ordinance 2002 this act deals with the matter to install, use, construction and repair of boilers and pressure vessels; prescribe uniform rules and regulations for boilers and pressure vessels and for matters ancillary thereto or connected therewith. It is here noted that the only law that provide the health and safety guidelines in detail is Factories Act 1934.

There are many flaws in health and safety laws and one of them is the low fines which does not bother the companies in any way, second the laws are decades old and does not fulfill the current needs. It is necessary to amend these laws to provide the better safety

to the workers, some punishment like increase in the fines amount should be include in these laws.

Further in this chapter provision of Pakistan penal code is also discussed. It can be seen that the court in Pakistan is not willing to apply this code on the corporation beside the definition of person which includes the corporate body provided by the code in section 11. The focus of the Pakistani courts are on the identification principal of the common law. It is also stated in many cases that corporation cannot be convicted in the crimes committed only by the individuals or where the imprisonment is mandatory but the particular individual of it can be convicted.

There should be amendment in the code, when section 11 give the incorporation rights then its implication on the other parts of the corporation should be seen, some sections should be including in the code which penalize the corporation in the way that it does the natural personal. Simply the statement of section 11 is not enough the legislation should take steps to include the provision in the code to criminalize the corporation if they involve in life endanger activity of its employee as well as of the stakeholders.

The most important case of involuntary manslaughter against Ali Enterprises is also the part of this chapter. This is the most crucial and controversial case. The last report submitted by the rangers is alleging that it was the action of extortionist. However this report is rejected by the Sindh High court. If it accepts that this was the action of extortionist it does not free the owners of Ali Enterprises from the criminal liability. It is a prove fact that owners of Ali enterprises lock the door of the factory premises when fire was envisage to protect their goods from being stolen. This action of the owners increased the death toll

so they should be liable for the manslaughter of these workers. Here one more question arises if it was the action of extortionist than why Ali enterprises and its owners are still charge under section 322 of the Pakistan penal code. The factory is also not registered under labor laws or the building is constructed in violation of law which become the reason of increase in fatalities. The decision of the German court on the concerned issue is also very important. With all these aspects it is really difficult for the Ali Enterprises to run away from the manslaughter charges. However, case is still pending in Sindh high, court rejected the report of rangers and form a new team to investigate the case a fresh.

Pakistan is still waiting for the successful prosecution of manslaughter against corporations. The case of numerous industrial disasters is registered and charges imposed against the owners of factories/corporations. But at the end companies escaped the criminal liability because of absence of law or compromise of hires of victims.

Chapter No. 4:

Conclusion and Recommendations

Conclusion:

From the above discussion it can be concluded that corporations are the powerful social and economic actors. Their basic objective is to maximize their profits and provide maximum benefits to the shareholders. In the process of maximization of profit corporations usually avoid the health and safety issues.

Corporations are legally bound to follow the health and safety regulation. They cannot simply concentrate to double their wealth. Their basic aim is not only to protect the shareholders. They have to aware the public regarding the issue that their only interest is not the shareholders.

In this dissertation the relationship between corporate responsibility and liability for death or workplace injury is discuss in details. It can be determine that the application of the criminal law upon the corporation is not an easy process. The criminal law is made for the individuals for whom the *mens rea* and the wrong intentions are the natural abilities. Now a days corporations play an important role in our day to day lives. They cannot be simply discharge from the liability under the criminal law.

The corporation is an artificial person its liability can only be find out the individual who have significant position in it. The vicarious liability and identification doctrine deals with the concept of the individual liabilities. Vicarious liability is not suitable in the criminal law because it automatically attributes the fault of the employee to the employer without recognizing the effort of the employer to avoid any kind of wrong doing. It is also

argue that the approach of the identification doctrine is also wrong because it identify the fault in the company officer only and does not put any liability upon the corporation itself.

The aggregation of the fault of various corporate officer is also narrow down the idea of imposing criminal liability to the corporation. The fourth model i.e. management failure model introduce by the CMCHA2007 seems to be more reliable. There are many successful prosecution seen to be so far under the application of this model. It also seems to be more reliable in the way that burden of failure can be transferred to the whole management instead of an individual person.

The management of the corporation is in the hand of many people. They decide the matters with the majority decision of all the officers who have the authority over the corporation. So when a single person is not taking the decision of corporation alone then why he take responsibility when any wrong is happen. So this model seems to be more reliable than of vicarious liability, identification doctrine or aggregation doctrine.

The legislation of different jurisdictions which includes UK, Canada and Malaysia on the corporate manslaughter is also discussed in detail. UK legislation as compared to Canada and Malaysia is more reliable. UK used the specific term of corporate manslaughter than of Canada which do not use the specific term and follow the holistic approach. Canada as compare to UK did not follow the long law reform process they just amended their law in identification plus theory. Malaysia as compare to both jurisdiction is far behind in the legislation upon the concerned issue. Malaysia do not have the direct law on the concerned issue it is still relying on the occupational health and safety Act of 1994. There is also no successful prosecution of manslaughter against any corporation in Malaysia. Prosecutions under CMCHA 2007 and Bill C-45 is also discussed in detail in this dissertation. It is

notable that besides there are many prosecutions under the both Act but the test against the large corporation is still not successful. But with all the flaws both countries is in the way to prosecute the companies in manslaughter offence.

The situation in Pakistan is also not too different from Malaysia. Pakistan do not have the direct law on corporate manslaughter. Pakistan do not even have the direct law on the health and safety issues. The law deal with the health and safety issues is Factories Act 1934 which is discuss in the third chapter. Further, most of the Pakistani statutes examined contain a provision that use of the term "person" shall include a company or association or body of persons. The statues in Pakistan are continue creating the offences which prohibit the "Person" in general from doing certain acts or omission and also prescribe the punishments if a person do such acts or omission. By this, it can be said that the statutory offences and restrictions apply in equal measure to legal entities as they do to natural persons because company being an artificial person is enjoying all the privileges that are given to a natural person under the law.

Pakistan faced so many industrial disaster and the most important of them is Baldia town fire incident. The prosecution of this incident is still pending in the court. The decision of this case is worthwhile because it might become the first successful prosecution in the manslaughter case against any corporation in Pakistan.

Recommendations:

1. Section 11 of Pakistan Penal Code 1860 define the person which include body corporate, association of person whether incorporated or not. But till now we do not evidenced that Pakistani court awarded punishment to the corporation. The reason behind it is the absence of law or specific provision which can assist the court to award punishment to the corporation. Pakistan faced industrial disasters every year. The ratio of these disaster and casualties as a result of these disaster increases every year. The main reason behind these disaster is ignorance of safety measures which is the duty of corporation to provide to their employees. The corporation avoid these safety measures because there is no effective law or punishment which can deter their interests. It is recommended that Pakistan should make law on the concerned issue in the same manner as UK and many countries did. Pakistan may consider introducing an offence dealing specifically with deaths caused by corporations. It may even go further than English law has done, by including serious injuries caused by corporations. One more thing Pakistani legislation can do is to enhance the jurisdiction of section 321 and 322 of Pakistan penal code and include the corporation in the sphere of these sections.
2. Pakistan should make the health and safety executives like Uk. Which can inspect the health and safety issues in corporation. In case of violation these safety measures it can investigate it and if corporation pleaded guilty can impose the highest range of fines.
3. Pakistan laws deals with the health and safety issue is decade old like Factories Act 1934. They are not fulfilling the current need. There is no punishment provided by

these codes. Fine prescribed by these Laws are also minimum to the extent that it cannot deter the interest of corporation in any way. There is a need to amend these laws and fine should be increased to the extent which can force the corporation to take safety measures in their premises.

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