

Adarsh Varghese
Corporate Criminal Liability in India

§1. An Historical Introduction

Legal scholars historically advanced the position that a corporation could not be punished.¹ In 1250, Pope Innocent IV stated that a corporation could not be excommunicated because it did not have a soul.²³ Later, Edward, first Baron Turlow, expanded upon Innocent's position in his highly quoted statement that a corporation has 'no soul to be damned and no body to be kicked.' The Early English courts also did not recognize corporate criminal liability.⁴ Thus in the early sixteenth and seventeenth centuries it was widely believed that corporations could not be held criminally liable⁵. In the early 1700s, corporate criminal liability faced at least four obstacles.⁶ The first obstacle was attributing acts to a juristic fiction, the corporation. This obstacle was further strengthened by the fact that the eighteenth-century courts and legal thinkers approached corporate liability with an obsessive focus on theories of corporate personality⁷. The second obstacle was that it was not thought possible that corporations could possess the moral blameworthiness necessary to commit crimes of intent.⁸ The third obstacle was the ultra vires doctrine, under which courts would not hold corporations accountable for acts, such as crimes, that were not provided for in their charters⁹. Finally, the fourth obstacle was courts' literal

¹ TODARELLO (2002): 851.

² *ibid*

³ *ibid*

⁴ See Anonymous, 88 Eng. Rep. 1518 (K.B. 1701); *In Re Sutton's Hospital*, 77 Eng. Rep. 937 (K.B. 1612).

⁵ For example, Lord Holt reportedly said in 1701 that 'a corporation is not indictable, but the particular members of it are.' Anonymous Case (No. 935), 88 Eng. Rep. 1518, 1518 (K.B. 1701). Kathleen Brickey notes that some early commentators relied on this statement to support the contention that corporations could not be criminally liable. See BRICKEY (1981): 393

⁶ ELKINS (1976): 87-88.

⁷ WILLIAMS (1961): 855-57

⁸ KHANNA (1996): 1480

⁹ LEIGH (1969): 1-12

understanding of criminal procedure; for example, judges required the accused to be brought physically before the court.¹⁰ Courts in both England and the United States first imposed corporate criminal liability in cases involving nonfeasances of quasi-public corporations, such as municipalities, that resulted in public nuisances¹¹. Brickey describes these early decisions: In decisions imposing liability on such public entities, the courts ordinarily observed that the public convenience in question (usually a bridge or road) had been erected before the present inhabitants had taken on the responsibilities of the town, parish, or county; that it had been maintained by former inhabitants; and that present inhabitants were bound to do the same.¹²

Industries and corporations became widespread forms of business during the late 1800s, and corporate criminal law evolved to accommodate theories of corporate liability. By the early 1800s, courts began holding commercial corporations criminally liable for the sorts of public nuisances that were previously inflicted by quasi-public corporations. The criminal liability of such private corporations 'was a creature not only of judicial decision but of legislative enactments'¹³ like The General Turnpike Act¹⁴, for instance.

§2. Corporate Criminal Liability in India

§2.1. Criminal Liability under the Indian Penal Code, 1860

Sec. 11 of the Indian Penal Code provides the word 'person' includes any company or association or body of persons whether incorporated or not. Thus, it would appear at first blush that the Indian Penal Code makes companies liable with respect to every crime found in the Code. However, certain offences under the code provide for punishment by way of mandatory imprisonment or death, as in the case of culpable

¹⁰ Ibid.

¹¹ See: *The King v. Inhabitants of Clifton*, 101 Eng. Rep. 280, 280-81 (K.B. 1794); *Rex v. Inhabitants of Great Broughton*, 98 Eng. Rep. 418, 418 (K.B. 1771); and *Case of Langforth Bridge*, 79 Eng. Rep. 919, 919 (K.B. 1635))

¹² For example, in the United States in 1834 the City of Albany was indicted for failing to cleanse the basin of the Hudson River, which had become 'foul, filled and choked up with mud, rubbish, and dead carcasses of animals. Id. at 406 (quoting *People v. Corporation of Albany*, 11 Wend. 539, 539 (N.Y. Sup. Ct. 1834)). At that time, 'a common nuisance' involved 'either ... doing a thing which tends to the annoyance of all the king's subjects, or ... neglecting to do a thing which the common good requires.' *Corporation of Albany*, 11 Wend. at 543.

¹³ ELKINS, (1976): 87-88.

¹⁴ Mass. St. 1804, Ch. 125

homicide, the punishment provided is death or life imprisonment¹⁵. Now as it is an impossibility to imprison a company, it is but obvious that the company cannot be convicted for such offences. Thus the word 'person' is used frequently in the Code in a sense in which it is clear from the context that corporate bodies are not included.¹⁶

There is another category of offences which provide for punishment by way of imprisonment or by levying a fine.¹⁷ In such cases, if also supported by the context,¹⁸ since a company can be fined, these provisions would be apply to corporate bodies.

There is some difficulty when we come to offences that provide for mandatory imprisonment along with mandatory fine as punishment. The Law Commission of India in its 41st report recommended as under¹⁹: -

As it is impossible to imprison a corporation practically the only punishment which can be imposed on it for committing an offence is fine. In order to get over this difficulty we recommend that a provision should be made in the Indian Penal Code e.g. as Section 62 in Chapter III relating to punishments, on the following lines:-“In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the Court to sentence such offender to fine only.

Again, the Law Commission of India in its 47th report recommended as under²⁰: -

¹⁵ See: Indian Penal Code, 1860, sec. 302.

¹⁶ See sections 73, 84-87, 100, 105, 114, 137, 139, 141, 149-151, 153, 157, 159, 170, 191, 216, 220-225, 278, 282, 295, 297, 298, 491, 497 and Chapter XVI. See also: RATANLAL & DHIRAJLAL, LAW OF CRIMES 54 (Vol 1, 25th edn, Bharat Law House)

¹⁷ See for instance Offences Relating to Elections (Chapter IXA), Contempt of the Lawful Authority of Public Servants (Chapter X), Offences Relating to Weights and Measure (Chapter XIII), Offences Affecting the Public Health, Safety, Convenience, Decency and Morals (Chapter XIV), Theft (sec. 379), Criminal Breach of Trust (Sec. 406), Cheating (sec. 417), Forgery (sec. 465) etc.

¹⁸ The context should also agree because there are some offences which provide for punishment by way of fine, but such an offence simply cannot be committed by a public servant. See for instance sec. 170 of the Penal Code which makes it an offence to impersonate a public servant and this offence can be punished by fine alone also; Again the offence of adultery under sec. 497 of the Code also can be punished by fine alone, but such an offence simply cannot be committed by the company.

¹⁹ The 41st Report of the Law Commission of India at para 24.7

In many of the Acts relating to economic offences, imprisonment is mandatory. Where the convicted person is a corporation, this provision becomes unworkable, and it is desirable to provide that in such cases, it shall be competent to the court to impose a fine. This difficulty can arise under the Penal Code also, but it is likely to arise more frequently in the case of economic laws. We, therefore, recommend that the following provision should be inserted in the Penal Code as, say, Section 62:-“(1) In every case in which the offence is punishable with imprisonment only or with imprisonment and fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine only.”(2) In every case in which the offence is punishable with imprisonment and any other punishment not being fine, and the offender is a corporation, it shall be competent to the court to sentence such offender to fine.(3) In this section, ‘corporation’ means an incorporated company or other body corporate, and includes a firm and other association of individuals.”

However, the Indian legislature is yet to implement these recommendations of the Law Commission. We may therefore, turn to the judiciary. The High Courts of Allahabad²¹, Bombay²², Calcutta²³, Madras²⁴, Delhi²⁵, Rajasthan²⁶ and Kerala²⁷ have ruled that if a penal section provides for mandatory imprisonment coupled with fine, then the courts do not have a discretion to impose a fine alone, and such sections would not be apply to corporations. A three judge bench of the Supreme Court also in *The Assistant Commissioner v. Velliappa Textiles Ltd Ors*²⁸ by majority held that companies cannot be prosecuted for offences which provide for mandatory imprisonment. However, a recent constitutional bench of the Supreme Court in *Standard Chartered Bank v. Directorate of Enforcement*²⁹ by majority³⁰ overruled *Vellaippa Textiles*. The court in *Standard Chartered* observed that ‘in the case of penal code offences, for example under Section 420 of the

²⁰ The 47th Report of the Law Commission of India at para 83

²¹ *Modi Industries Limited v. B.C. Goel* [1983] 144 ITR 496

²² *State of Maharashtra v. Syndicate Transport* AIR 1964 Bom. 195

²³ *Kusum Products Limited v. S.K. Sinha, ITO, Central Circle-X, Calcutta* [1980] 126 ITR 804

²⁴ *A. D. Jayaveerapandia Nadar & Co v. ITO* [1975] 101 ITR 390

²⁵ *D.C. Goel v. B.L. Verma* [1974] 93 ITR 63

²⁶ *Giridharilal v. Lalchand* AIR 1970 Raj 145

²⁷ *Badsha v. Income Tax Officer* 1987 (1) K.L.T. 112

²⁸ AIR 2004 SC 86; (2003) 11 SCC 405

²⁹ AIR 2005 SC 2622

³⁰ 3:2

Indian Penal Code, for cheating and dishonestly inducing delivery of property, the punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and for the offence under Section 417, that is, simple cheating, the punishment prescribed is imprisonment of either description for a term which may extend to one year or with fine or with both. If the appellant's plea is accepted that for the offence under Section 417 IPC, which is an offence of minor nature, a company could be prosecuted and punished with fine whereas for the offence under Section 420, which is an aggravated form of cheating by which the victim is dishonestly induced to deliver property, the company cannot be prosecuted as there is a mandatory sentence of imprisonment.³¹

The contention of the appellants in *Standard Chartered* was that when an offence is punishable with imprisonment and fine, the court is not left with any discretion to impose any one of them and consequently the company being a juristic person cannot be prosecuted for the offence for which custodial sentence is the mandatory punishment. The court however, held that 'if the custodial sentence is the only punishment prescribed for the offence, this plea is acceptable, but when the custodial sentence and fine are the prescribed mode of punishment, the court can impose the sentence of fine on a company which is found guilty as the sentence of imprisonment is impossible to be carried out.' The court placed reliance³² on the legal maxim that 'law does not compel a man to do that which cannot possibly be performed' (*impotentia excusat legem*) and observed that 'as the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Indian Penal Code, mandatory custodial sentence is prescribed for graver offences. If the appellants' plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. We do not think that the intention of the Legislature is to give complete immunity from prosecution to the corporate bodies for these grave offences.'³³

The court concluded by ruling that 'as the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the

³¹ Ibid at para 31

³² Ibid at para 33

³³ Ibid at para 34

company. Such discretion is to be read into the Section so far as the juristic person is concerned.³⁴

Thus, according to the law declared by the Supreme Court, as of today in India companies can be held liable for offences that provide for mandatory imprisonment as punishment if the penal sections prescribe a fine too. *This means that companies in India today can be held liable for almost every offence under the Indian Penal Code with the possible exception of sec. 303 for which the only punishment prescribed is death provided such offences are committed by a company.*

§2.2. Criminal Liability under the Companies Act

The Companies Act, 1956 also impose criminal liability on companies as well as on the directors and other officers of the company. The majority of the sections impose liability on the company as well as officers/directors of the company. However, certain section impose criminal liability exclusively on officers/directors of the company.

§2.2.1. Criminal Liability of Companies

The following sections in the Companies Act, 1956 impose criminal liability on the company and provide for punishment by way of fine.

- (i) *Section 59* provides that if any prospectus is issued in contravention of section 57 or 58, *the company*, and every person, who is knowingly a party to the issue thereof, *shall be punishable* with fine which may extend to fifty thousand rupees. Sections 57 and 58 provide for the procedure and circumstances under which an expert's opinion can be given in a prospectus.
- (ii) *Sec 108-I(2)(a)* provides that *every body corporate* which makes any transfer of shares without giving any intimation as required by section 108B *shall be punishable* with fine which may extend to fifty thousand rupees. Section 108B places an obligation on bodies corporate holding 10 percent or more of the nominal value of the subscribed equity share capital of any other company to before transferring one or more of such shares, give the Central Government intimation of its proposal to do so including the particulars of share(s) proposed to be transferred.
- (iii) *Sec. 108-I(4)(b)* mandates that if *any company* gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 108B, or which gives effect to any voting right in contravention of any direction made by the Central Government under section 108D, *the*

³⁴ Ibid at para 35

company shall be punishable with fine which may extend to fifty thousand rupees.

- (iv) *Sec. 142* provides that if default is made in filing with the Registrar for registration the particulars (a) of any charge created by the company ;(b) of the payment or satisfaction of a debt in respect of which a charge has been registered under this Part ; or (c) of the issues of debentures of a series ; requiring registration with the Registrar under the provisions of this Part, then, unless the registration has been effected on the application of some other person, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.
- (v) *Sec. 162* seeks to impose criminal liability on companies that fail to comply with the provisions of secs. 159, 160 and 161 of the Companies Act. Section 159 places an obligation on companies having a share capital to prepare and file with the Registrar a return containing particulars specified in Part I of Schedule V within a specified time. Section 160 places a similar obligation on companies not having a share capital. Section 161 provides that such return shall be signed both by a director and a manager/secretary. It also mandates the company to file a certificate with the registrar containing certain particulars specified in the section. Now, sec 162 provides that if a company fails to comply with any of the provisions contained in section 159, 160, or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.
- (vi) *Sec. 168* provides that if default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Central Government under subsection (1) of section 167, *the company, and every officer of the company who is in default*, shall be *punishable with fine* which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues. *Sec. 166* provides for Annual General Meeting and lays down the time frame for conducting it.
- (vii) *Sec. 207* imposes criminal liability on companies for not distributing dividends within thirty days for the date of declaration of such dividend. According to this section where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within

thirty days from the date of the declaration the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues. The section also provides that *every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment* for a term which may extend to three days and shall also be liable to fine of one thousand rupees for every day during which such default continues

- (viii) *Sec. 218* provides for a punishment of fine on the company and every officer of the company who is in default which may extend to five thousand rupees for improper issue, circulation or publication of Balance Sheet or Profit and Loss Account.
- (ix) *Sec. 232* provides that if default is made by a company in complying with any of the provisions contained in section 225 to 231, *the company, and every officer of the company who is in default, shall be punishable with fine* which may extend to five thousand rupees. Sections 225 to 231 pertains appointment, removal of auditors, their rights and duties and the duties of the companies towards the auditors.
- (x) *Sec. 423* provides that if default is made in complying with the requirements of section 421 or 422, *the company, and every officer of the company who is in default, shall be punishable with fine* which may extend to two thousand rupees. Section 421 lays down the obligation of a receiver to file his receipts and payments with the registrar. *Sec. 422* provides that where a receiver of the property of a company has been appointed, every invoice or business letter issued on behalf of the company shall contain a statement to the effect that a receiver has been appointed.
- (xi) *Sec. 598* imposes criminal liability on foreign companies. Part XI of the Companies Act places certain obligation on foreign companies. Now, *sec. 598* provides that if any foreign company fails to comply with any of the foregoing provisions of this Part, *the company, and every officer or agent of the company who is in default, shall be punishable with fine* which may extend to ten thousand rupees, and in the case of a continuing offence, with an additional fine which may extend to one thousand rupees for every day during which the default continues.
- (xii) *Sec. 629 A* provides that if a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, *the company*

and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

§2.2.2. Exclusive Criminal Liability of Officers/Directors

- (i) *Sec. 105* provides that if any *officer of the company*—(a) knowingly conceals the name of any creditor entitled to object to the reduction ;(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor ; or (c) abets or is privy to any such concealment or misrepresentation as aforesaid; *he shall be punishable with imprisonment* for a term which may extend to one year, *or with fine, or with both.*
- (ii) *Sec. 117-C(5)* if default is made in complying with the order of the Company Law Board under sub-section (4) of sec. 117-C (directing the company to redeem the debentures forthwith by the payment of principal and interest due thereon), *every officer of the company* who is in default, shall be *punishable with imprisonment* which may extend to three years and shall also be *liable to a fine* of not less than five hundred rupees for every day during which such default continues.
- (iii) *Sec. 272* imposes criminal liability on directors under certain circumstances. According to this section, ‘if after the expiry of the said period of two months, *any person acts as a director of the company* when he does not hold the qualification shares referred to in section 270, *he shall be punishable with fine* which may extend to five hundred rupees for every day between such expiry and the last day on which he acted as a director’.
- (iv) *Sec. 279* provides that *any person who holds office, or acts, as a director* of more than fifteen companies shall be *punishable with fine* which may extend to fifty thousand rupees in respect of each of those companies after the first twenty.
- (v) *Sec 374* provides that if default is made in complying with the provisions of section 372 or section 373, *every officer of the company* who is in default shall be *punishable with fine* which may extend to fifty thousand rupees. Sections 372 and 373 regulate the purchase of shares of other companies by a company.

- (vi) *Sec. 420-C* provides that *any officer of a company* who, knowingly, contravenes, or authorises or permits the contravention of, the provisions of section 417, 418 or 419, *shall be punishable with imprisonment* for a term which may extend to six months, *or with fine* which may extend to ten thousand rupees. Sections 417, 418 and 419 deal with employees' securities and provident funds.
- (vii) *Sec. 539* places criminal liability on officers and contributories of a company for falsification of books. According to the section 'if with intent to defraud or deceive any person, *any officer or contributory of a company* which is being wound up (a) destroys, mutilates, alters, falsifies or secretes, or is privy to the destruction, mutilation, alteration, falsification or secreting of, any books, papers or securities ; or (b) makes, or is privy to the making of, any false or fraudulent entry in any register book of account or document belonging to the company ; he shall be *punishable with imprisonment* for a term which may extend to seven years, *and shall also be liable to fine*.
- (viii) *Sec 541* imposes criminal liability on officers of a company where proper accounts not kept. According to the section 'where a company is being wound up, if it is shown that proper books of accounts were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, *every officer of the company* who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, *be punishable with imprisonment* for a term which may extend to one year.
- (ix) *Sec 630* provides that if any *officer or employee of a company* (a) wrongfully obtains possession of any property of a company ; or (b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act; he shall, on the complaint of the company or any creditor or contributory thereof, *be punishable with fine* which may extend to ten thousand rupees.

Thus, the Companies Act specifically imposes criminal liability on companies as well as on its officers and directors under a plethora of circumstances. However, one must remember that corporate criminal

liability in India can and does exist independent of the Companies Act. Thus, various other statutes like the Trademarks Act³⁵, the Income Tax Act³⁶, The Negotiable Instruments Act³⁷ etc also provide for corporate criminal liability in India.

§2.3. The Bhopal Gas Tragedy: Failure of Corporate Criminal Liability?

On December 3, 1984, forty tons of deadly methyl isocyanate gas escaped from a Union Carbide plant and spread over the city of Bhopal, India. As many as 2,100 people died soon after the gas leak and approximately 200,000 suffered injuries, making it the worst industrial disaster to date. As of December 1990, the official death toll reached 3,828.³⁸

§2.3.1. Criminal Litigation

In December 1984, police arrested UCC President Warren Anderson and two senior UCIL officials in India and charged them with criminal conspiracy, culpable homicide not amounting to murder, causing a death by negligence, mischief in the killing of livestock, making the atmosphere noxious to health, and negligent conduct in respect to poisonous substances. The police released Anderson on bail a few hours after his arrest³⁹ and the other officials the following week. Anderson left the jurisdiction and never returned. In February 1988, a Bhopal magistrate issued a criminal arrest warrant naming UCC President Warren Anderson, UCC, UCIL, Union Carbide of Hong Kong, and other officials of Carbide in its various forms.⁴⁰ Eventually the Indian government filed four criminal actions against UCC and its officials. However, various summonses and arrest warrants failed to bring Anderson back within India's jurisdiction, and in February 1989 an

³⁵ See: The Trademarks Act, (47 of 1999), sec. 114

³⁶ See: The Income Tax Act, 1961, sec. 179

³⁷ See: The Negotiable Instruments Act (26 of 1881), sec. 141

³⁸ India Supreme Court Backs Carbide's Bhopal Settlement, N.Y. Times, Dec. 23, 1989, at A41, col 3.

³⁹ Bail was approximately \$2000

⁴⁰ *Sanu v. Union of India*, No. 258, at 9-10 (India Dec. 22, 1989) (writ petition). Among the actions alleged to have led to the disaster were: 1. failing to store the methyl isocyanate gas in stainless steel containers; 2. needlessly storing large quantities of gas in large containers for inordinate time periods; 3. insufficient caution in designing and constructing the plant and its systems, and inadequate control of storage systems; 4. lack of necessary facilities for quick and effective disposal of unstable materials.; 5. storing methyl isocyanate gas in a negligent manner; and 6. failing to inform the local government of the hazardousness of the gas and the medical steps to be taken after exposure.

Indian magistrate declared Anderson an 'absconding offender.' To date, none of the criminal actions have been brought to trial.

§2.3.2. The Bhopal Settlement

After several rounds of litigation, a settlement was reached before the Supreme Court of India on 14 Feb 1989. On February 14, Supreme Court Chief Justice Pathak ordered a settlement compensation payment of \$470 million. The settlement eliminated all criminal and civil claims against UCC.⁴¹ Some critics strongly argued that the bargaining away of criminal liability is unauthorized by the Bhopal Act.⁴² Retired Indian Supreme Court Chief Justice Bhagwati remarked, "It defies comprehension how criminal proceedings against Union Carbide Corporation's officers can be quashed without even examining if there is a prima facie case. Can immunity from prosecution be bought by paying compensation?"⁴³ However, the Indian Attorney General explained that the discharge of criminal liability was made within the broad powers of the Supreme Court bench, not in the way of settlement.⁴⁴

§2.3.3. Did the Indian Laws let the Indians down?

The UCC was thus effectively shield itself from criminal liability. Was this due to the lapses in the Indian laws regarding corporate criminal liability? It would be difficult to answer in the affirmative. As we have already seen, the Indian Penal Code does apply to companies and the officers of the company were even charged under the Code. Thus, law as it existed in India was sufficient to impose criminal liability on the UCC. It was due to the withdrawal of the state from prosecution that no criminal liability was imposed on the UCC. It may also be noted that India attempted to serve an arrest warrant on then UCC Chairman Anderson, but was unable to do so because the warrant was not covered by U.S. laws of International Judicial Assistance.⁴⁵ The same thing happened with warrants for the arrest of Union Carbide Eastern officials in Hong Kong

⁴¹ Int'l Env'tl.Rep. (BNA) No. 164-65 (Apr. 13, 1989).

⁴² Bhopal activist Vinod Raina of the Bhopal Group for Information and Action said, "By agreeing to drop the criminal charges, the government has allowed the guilty off and the killer multinational to go scot-free." Tarrant, Union Carbide Seen as Victor in Bhopal Disaster Settlement, Reuter Libr.Rep., Feb. 19, 1989.

⁴³ India: Supreme Court May Not Revise Settlement, Inter Press Service, Mar. 9, 1989.

⁴⁴ The Attorney General said the discharge of criminal liability was authorized under sections 135 and 142 of the Indian constitution as well as under common law, and that the discharge was further permitted under the plenary power of the supreme court to act as a court of equity.

⁴⁵ COVELL (1991): 279

§3. A Last Word

India provides for Corporate Criminal Liability in broad terms. As noted earlier, after the recent ruling of the Supreme Court in *Standard Chartered*, companies in India can be prosecuted for almost every penal offence that exists in any statute in India. The Companies Act also provided for criminal liability of companies as well as its directors under a host of different circumstances.

The uninitiated in the ways and wonders of Corporate Criminal Liability often assume that as in the case of other legislations, Corporate Criminal Liability would also be better imposed in developed countries as compared to developing countries. The state of corporate criminal law enforcement today in Europe's most powerful economy, Germany is unsettled. Germany does not impose corporate criminal liability generally on its corporations even today. It recognizes Corporate Criminal Liability only in the case of administrative offenses. Similarly the 'identification' doctrine in the U.K. restricts the imposition of the Corporate Criminal Liability in the U.K. However, a developing country like India imposes Corporate Criminal Liability on a much broader scale.

A difference in approach towards Corporate Criminal Liability may however be made between democratic and non-democratic countries. Democratic countries like India, United States, U.K. etc have recognized and imposed Corporate Criminal Liability for a long time. However, non-democratic countries like China have been every reluctant in imposing Corporate Criminal Liability. It is only in the recent years that China has recognized Corporate Criminal Liability. This may be because in imposing Corporate Criminal Liability, a government is often working against the interests of powerful conglomerates and lobbyist. Without a strong support from the people of a nation, which can only be found in a democracy, it would be difficult to make such a move towards Corporate Criminal Liability. Also democracy ensures that a government can exist and remain in power even though it works against the interest of powerful corporations. Democracy thus provides a degree of independence for the governments in making laws and legislations imposing Corporate Criminal Liability.

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