

ANALYZING THE REQUIREMENT OF STRICT LIABILITY IN CRIMINAL LAW

Written by *Harnirmal Singh*

2nd Year LL.B student, Jindal Global Law School, Sonipat, India

ABSTRACT

“*Actus non facit reum nisi mens sit rea*” - an act is not an offence unless done with a guilty mind. This is the core principle of criminal law. However, given how dynamic society and crime can be, one blanket rule cannot cover all offenses. Certain acts are inherently so wrong or of such character that there is a strong presumption that whoever did them must have intended the outcome. To address such acts, the doctrine of strict liability was formulated. Strict liability offences are acts that do not require proof of the element of *mens rea*. “A strict-liability doctrine is a rule of criminal responsibility that authorizes the conviction of a morally innocent person for violation of an offense, even though the crime, by definition, requires proof of a *mens rea*ⁱ.” Is it worth having such an exception in criminal law and whether the aforementioned legal maxim is violated by the doctrine of strict liability? This essay tries to address these questions.

BACKGROUND

Before delving into the question of whether the doctrine of strict liability is essential, let us look at the context in which it was formulated and has been applied. The emergence of strict liability occurred in 19th centuryⁱⁱ. The reason behind this emergence was the need to improve working standards of factories which arose as a result of industrialization in the landmark case of *Rylands v. Fletcher*ⁱⁱⁱ. When laws were applied under this, the main objective was prevention of harm and analysis of damage/deterrence value caused by an offence.

Taking example of case of *Pharmaceutical Society of Great Britain v. Storkwain*^{iv}, in this case the defendants were accused of selling certain prescription drugs without a proper prescription by an appropriate practitioner. The defendants claimed to not know that the prescription they received was forged and hence, sold the medication but were convicted. Strict liability is used unfairly when it comes to individual cases and the court held that misuse of drugs is a great evil offence and pharmacist should take reasonable care to verify prescriptions while selling^v.

The concept of criminal vicarious liability can be seen in the case of *R v Dixon*^{vi}. Here, a baker was held liable for alum in his breads even though he had no knowledge of such substance being present in his dough therefore lacking *mens rea*. This gave rise to the notion that the occurrence of the act was more important than the knowledge of such an occurrence. “This led to the development of the idea that the motive was not punishing moral wrong doings but protecting public and social interests at large. Hence, *mens rea* was removed to avoid wrong done to the public”.^{vii}

In the case, *Sweet v Parsley*^{viii} a landlady was held liable for other people using cannabis on her property even without her knowledge. She was convicted without *mens rea* and hence without fault. House of Lords quashed this conviction on the grounds that knowledge was essential to the offense. Lord Reid stated - “parliament did not intend to make criminals of persons who were in no way blameworthy in what they did.” This again raises a question regarding the importance of *mens rea* and whether it is right to casually impute it in serious cases.

The intervention by the government to protect social interests was a crucial factor in the origin of strict liability. However, it was not the sole factor. Interpretation of statutes by the judges was also a key factor in the development of strict liability. The judges had started to read the statutes more strictly than before since, with time, statutes defined crimes in much more detail than before. Judges were expected to read the statutes more accurately and more strictly. Such trend reached its climax in the case of *R vs Woodrow* [1846]. Here the defendant had possession of adulterated tobacco which was punishable under the Tobacco Act 1842 in England. The defense taken by the defendant was that he had no knowledge of such adulteration, lack of *mens rea*. The court based their reasoning on the strict construction of the statute and held that it lacked the word “knowingly” or “intentionally”, therefore there was no need of *mens rea* presumably. This was the case where the doctrine had been applied in its entirety. The doctrine grew slowly at first and then spread rapidly during the end of the nineteenth century.

ANALYZING THE REQUIREMENT OF STRICT LIABILITY IN CRIMINAL LAW

India is a common law country where laws are codified to the point of not being flexible enough for judges to go beyond what is written, crimes are defined in the IPC with such precision that they include terms indicating requirement of *mens rea*. A lot of times, *mens rea* has been presumed in cases or read into statutes. Judges have assumed that IPC was constructed in a manner that includes the requirement of *mens rea* even in sections that are silent about it. Then there are general exceptions to address acts that cannot be criminal due to certain elements that distinguish them from crimes.

The justification behind the acts, which do not require the establishment of *mens rea* are either inherently so problematic that they strongly indicate the presence of a guilty mind or are utterly harmful for society and state at large and hence, need to be punished. Some offenses that can be called strict liability offenses are, possession of illegal firearms, possession of drugs, waging war against the government, sedition, counterfeiting currency etc. For instance, under the

Narcotic Drugs and Psychotropic Substances Act, 1985, just the mere possession of psychotropic substances and drugs is enough to hold an offender liable for punishment.

In the case of *State of Maharashtra v M.H. George*^{ix}, the accused was carrying 34 kilos of gold in the lining of his jacket while aboard a plane from Zurich. The flight had a stopover in India and according to a section under the Foreign Exchange Regulation Act read with RBI notification of November 8, 1962, anyone carrying jewelry aboard in a plane had to declare it. The accused, Mayer Hans George, a German smuggler, failed to declare the gold and was charged for the same. The main contention was whether he could be held liable as he had no knowledge of the notification and hence did not have the intention or mens rea to commit the crime he was accused of.

One of the arguments in his favor suggested that mens rea was required in such a situation to hold a party guilty of an offence. The accused in the aforementioned case had no knowledge of the new notification and hence claimed to not be guilty of the offence. But later, M.H. George was convicted under ss. 8(1) and 23(1A) of the Foreign Exchange Regulation Act (1947) on the grounds “*ignorantia juris non excusat*” - ignorance of law is not an excuse to escape punishment. The court held that the act’s purpose would entirely be frustrated if it is not read simply as it is, and additional conditions are read into it. The act was to prevent smuggling and to establish *mens rea* it was enough for a person to “bring” gold into India. The condition specified under the act required an act of entering India with gold and it was satisfied in the case of M.H. George. No other ingredient was necessary for the contravention of law as per the language of the act.

The case for strict liability is justified on several grounds by many scholars and people around the world. It is observed that strict liability is only applied in the offenses that in some way affect the public at large, and therefore to prevent such harm it is necessary to apply strict liability.^x It is contended that expulsion of the need of determination of *mens rea* leads to prosecutor convenience due to resultant cost-effectiveness and reduced time of judicial proceedings due to absence of the requirement of proving mens rea saving courts a lot of time considering the large number of cases that fall under this category. Usually, in such cases the offenders are negligent, and prosecution does not proceed against those who have at least not been negligent. Thus, cases against those who are filed who have in some way defaulted on a

duty of care prescribed or had some level of control over the situation. Strict liability in some cases acts as punishment for negligence. It should be noted that the objective of criminal law is not to prosecute its offenders but to prevent such harm from happening in the first place. Its goal is to eliminate or discourage such conduct rather than punish those who have already engaged in such an activity.

It is often seen that despite what the statutes say, the interpretation and the actual way they are applied has evolved over time. Such an application may differ from what was intended by the drafters or may serve exactly how they wanted it to. The courts have interpreted various statutes as that of strict liability, especially where social concerns are involved. While some may justify this view as being beneficial to the society, but these cases would prove that their application has been inconsistent which eventually leads to uncertainty.

In the case of *Lim Chin Aik v R*^{xi}, the defendant had remained in the country even when a deportation order was filed against him. The court held that this was not the case of strict liability because he was not required to “make continuous enquiry to see whether an order had been made against him”. Now going by this principle, one can easily argue that a person selling meat should not be expected to check the quality of the meat every day. He would not be held liable because he would not be “expected” to make inspections every day. Yet in the case of *Smedleys v Breed*^{xii}, the defendants were held liable because a small caterpillar was found in one of the 3 million cans of food even when they had taken all reasonable steps to ensure and maintain the health standards. The judge defended the doctrine of strict liability that any liberal interpretation of this statute would harm public benefit but then ironically goes into saying that the defendant wouldn’t have been able to detect the caterpillar even if he checked every can individually. The defendant was charged with a criminal liable act. This makes it extremely clear that the foundation of strict liability is extremely unsteady.

Supporters of the doctrine also argue that it has a deterrent effect. It somehow makes negligent people not negligent because it inherently builds a fear amongst such people to make them careful of their acts so as to avoid getting prosecuted. Strict liability is imposed on people with a presumption of *mens rea*. So how does a doctrine that can punish innocent people act as a deterrent? Because deterrence is required to prevent crimes committed with a guilty mind and there is no need for it when someone does not have the *mens rea* to begin with. Therefore, the

purpose of the doctrine gets defeated if it has no target audience. Looking at the NCRB data, it is clear that the number of rape cases have not reduced after the 2013 amendments made by the J.S. Verma committee to rape laws. Even capital punishments have not worked wonders in changing the situation. Hence, using strict liability to punish offenses does not have the potential to bring any substantial change. Keeping a doctrine that does not help anyone seems like an excuse to punish people.

Strict liability offenses have neither been properly codified in India, nor is the doctrine developed enough to be applied effectively. Many enacted legislations do not talk about how important *mens rea* is or where it is not required at all. This silence makes room for judicial interpretation and judges can make laws accordingly. This can further lead to confusion, inconsistency and contradictory rulings by various courts in India. Given this context, the fact that a person can be convicted without proof of *mens rea* is worrisome. Serious offenses like sedition come under the doctrine and that increases the potential for misuse and harsh application creating grave injustice.

Defenders of the doctrine of strict liability also say that such doctrine should, if not for heinous offenses, be limited to petty crimes like parking offenses etc. We believe that this argument is at the best an apologetic one. For one, this acts as an excuse to defend the doctrine that is clearly not beneficial in any sense. Perhaps even against the jurisprudence of criminal law. Second, the reason that criminal liability has two requirements is that a lot is at stake once someone is charged with criminal offense. Once someone is charged with a criminal offense, that person is already subjected to criminal processes and all the abashment and embarrassment it involves. In a society, it is already seen as a shameful act. This leaves a person with a criminal record and such a person is put through the judgmental eyes for life. It is worse for such accused people because they won't even get a chance to argue their culpability. Therefore, this argument miserably fails to establish a case for the doctrine of strict liability.

CONCLUSION

The use of strict liability in criminal jurisprudence is both unfair and unwarranted. It is unfair because strict liability involves the conviction of those who might not be culpable at all. In

determining so far, one cannot be held liable for committing an offence in a situation he had absolutely no control over. Now, the conviction of those who are not culpable is unwarranted because this results in resentment of the law amongst a law-abiding society. It is alleged that fear, inebriated by strict liability, leads eventually to compliance with the law in society. But as we have seen above it is clearly not true. It is argued that strict liability includes offences that cause high levels of social volatility but punishment under these crimes is ignorant of the facts of basic human error or mistakes. The substantive law is created to punish the guilty and violators of the act, not innocent people who had an unlucky day.

Ignorance of law towards unruly situations to convict the guilty is aristocratic not equality of law. The doctrine of strict liability is illogical and contrary to criminal jurisprudence. It turns the entire law on its head. Criminal law requires some elements of dynamism for the sole reason that a lot is at stake in such trials. This is the reason that criminal trials have set the standard of proof at no reasonable doubt. The doctrine of strict liability goes entirely against the core of this jurisprudence. Moreover, it is a well-established principle in law that let 100 offenders go scot free, an innocent should not be punished^{xiii}. Imposition of strict liability attacks this very principle in its heart. Going back to the question put forward in the introduction, is it worth having such an exception in criminal law? From what we've seen so far, no it's not.

ENDNOTES

-
- ⁱ Epstein, Richard A. “A Theory of Strict Liability.” *The Journal of Legal Studies* 2, no. 1 (1973): <http://www.jstor.org/stable/724030>.
- ⁱⁱ Epstein, Richard A. “A Theory of Strict Liability.” *The Journal of Legal Studies* 2, no. 1 (1973): <http://www.jstor.org/stable/724030>.
- ⁱⁱⁱ Rylands v Fletcher (1868) LR 3 HL 330
- ^{iv} [1986] UKHL J0619-1
- ^v Manchester, Colin. “The Origins of Strict Criminal Liability.” *Anglo-American Law Review* 6, no. 4 (October 1977). <https://doi.org/10.1177/147377957700600404>
- ^{vi} R. v. Dixon, [1998] 1 S.C.R. 244
- ^{vii} Manchester, Colin. “The Origins of Strict Criminal Liability.” *Anglo-American Law Review* 6, no. 4 (October 1977). <https://doi.org/10.1177/147377957700600404>
- ^{viii} Sweet v Parsley [1970] AC 132
- ^{ix} 1965 AIR 722, 1965 SCR (1) 123
- ^x Sistare, Christine T. “On the Use of Strict Liability in the Criminal Law.” *Canadian Journal of Philosophy* 17, no. 2 (1987): 395–407. <http://www.jstor.org/stable/40231536>.
- ^{xi} [1963] AC 160
- ^{xii} Smedleys Ltd v Breed [1974] AC 839
- ^{xiii} Theory: See Blackstone’s ratio.

