



## STRICT LIABILITY: CONCERNS AND CHALLENGES

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### INTRODUCTION

The following project on **Strict Liability: Concerns and Challenges** is based on analysing the law, its applicability, and legality under both common law and Indian law. Since, the project is assigned under the discipline of Criminal Law, so, it would largely concentrate its arguments, legality and matters that have been dealt under Indian Penal Code 1860. The project will try to find out the affirmation/negation of its two hypotheses which are based on the nature and reasonability of the liability. The project will cover strict liability and its inclusion in Indian Penal Code as punishable offence. The further addition will be regarding the shortcomings or challenges of having strict liability, the discrepancies it has created among the law makers regarding its nature and demeanour of infliction. The work also includes verdicts on cases of the same nature which led to the development of the concept and its further inclusion as modern form of criminal liability which is much different from the traditional liability.

*Strict liability under legal dictionary is defined as legal wrong or largely offences in which the plaintiff need not prove the negligence or fault. It need not require proving the involvement of mental element or intent of the person. He is anyway responsible for his part of involvement in the very act which has been put under the*

*case of strict liability. A person could be held liable for strict liability both under law of Torts and Criminal Law. It is important to mention in here that the concept was in fact developed under Law of Torts which was further included under criminal liability as well when the elements of criminality matched with that of liability.*

### 1.1. BACKGROUND OF THE CONCEPT:

Liabilities come with rights. If persons have been vested with the rights of doing certain acts, they are also held back by certain liabilities. Liabilities should be there to control a person's activities. Criminal liability is based on two elements **Mens Rea** and **Actus Reus**. But strict liability is an exception to this rule as it doesn't require the mens rea to be proved for making a person liable.

FB Sayre has emphasized that the trend is away from punishment as an institution and towards punishment as a means to an end, as a means to social protection. This trend has

had its most striking manifestation in the growth of strict liability or public welfare offences. Long ago, the United States supreme court pin pointed that the doctrine doesn't have general application, but as to some specific acts it has been quoted that these act will be done on the risk of the doer and no defence on the ground of good faith or ignorance would be heard. *The liability was first introduced under Law of Torts, in the case of Ryland v. Fletcher. It was further included as a criminal liability.*



*A crime is an offense against the state, as defined by each state's criminal laws. No act is a crime until it is recognized as such by society and written into the states' and federal criminal codes.* We may think certain acts have always been crimes or are treated as crimes everywhere, but that is not the case<sup>1</sup>. In order to convict a person of a crime, the state must usually prove liability in addition to the fact that an act occurred. In other words, in order to prove theft, the state must prove that the defendant took property belonging to another *and* that the defendant took the property with the intent to deprive the owner of it. But, by simply engaging in certain conduct, a person may be found criminally liable for some crimes regardless of intent. An example is the crime of statutory rape. A person may be convicted of statutory rape even if the victim consented to the sexual contact (and, in some states, even if the defendant did not know the victim was under age). Thus, the prosecution need not prove that the defendant intended to rape the victim in order to convict the defendant; the very fact of the sexual conduct (the act alone) is sufficient to support a conviction<sup>2</sup>.

### **1.2 AIMS AND OBJECTIVES**

- To find out the origin and the background of concept if any.
- To find out a person's legal implication under this liability.
- To know its validity under IPC.
- To know about its shortcomings, if any.

### **1.3 HYPOTHESIS**

- Strict liability doesn't involve mental element
- Strict liability is well justified to be included as criminal liability

1 <https://www.criminaldefenselawyer.com/resources/criminal-liability.html>, retrieved on 21st August, 2019, 12:00AM

2ibid

### **1.4 RESEARCH QUESTIONS**

- What is strict liability?
- What is the difference between strict liability under law of torts and criminal law?
- What are the elements of strict liability?
- Mental intent and negligence hold importance in holding someone responsible under strict liability?
- What are its shortcomings and concerns?

### **1.5 RESEARCH METHODOLOGY**

The researcher will be relying on doctrinal research method to complete the project. These involve primary and secondary sources of literature and insights.

### **1.6 SOURCES OF DATA**

#### ***PRIMARY SOURCES***

- *Case laws*



- *Constitution of India*
- *Indian Penal Code etc.*

### SECONDARY SOURCES

- *Blogs and Journals*
- *Books*
- *Case commentaries*

### 1.7 REVIEW OF THE LITERATURE

- RATANLAL & DHIRAJLAL, *THE CODE OF CRIMINAL PROCEDURE* (22<sup>nd</sup> Ed., 2014, Lexis Nexis).

The following book is a legal work, one of the prominent from the time. Its explained yet simple paragraphs are apt for the readers both for beginners and experienced law scholars. All technical rules of procedure have been illustrated and explained in a clear and insightful manner. The 22<sup>nd</sup> edition has been updated to include much better explanation and relevant case laws and current development. Originality and reliability have always been hallmark of this publication and every possible care has been taken in to maintain its originality.

### 1.8 LIMITATION

The researcher had territorial, monetary and time limitations in completing the project.

Since, the project has been made in the midst of the third semester, the researcher barely got any time to verify the facts. The researcher was purely dependent on already available facts and analysed information for

making this project. She was not able to collect information from a wide area and her area of research was confined to the nearby people and the local acquaints who had knowledge regarding the topic.

### MENS REA AND STRICT LIABILITY

The term *mens rea* comes from the writings of Edward Coke, an English jurist who wrote about common law practices. He advocated that “an act does not make a person guilty unless [their] mind is also guilty”. This means that while a person may have committed a criminal act, they can only be found guilty of criminal activity if the deed was deliberate.

To put it simply, *mens rea* determines whether someone committed a criminal deed purposefully or accidentally. This idea commonly applies to murder cases. The perpetrator’s *mens rea*, or mental state at the time of the killing, is an essential factor in whether they will be declared guilty or innocent. In order to receive a conviction, the lawyer must prove that the accused party had some intention or willingness to end the life of another person. On the other hand, if evidence shows the death to be accidental and unavoidable, the suspect must be declared innocent and set free

**MENS REA** is a legal phrase used to describe the mental state a person must be in while committing a crime for it to be intentional<sup>3</sup>. It can refer to a general intent to break the law or a specific, premeditated plan to commit a particular offense. To convict an accused person of a wrong doing, a criminal prosecutor must show beyond any reasonable doubt that the suspect actively and knowingly participated in a



crime that harmed another person or their property.

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In 1962, the American Law Institute created the Model Penal Code (MPC) to better

define *mens rea*. It stated that in order to be blameworthy for any activity, the suspect must have done the act willingly, with the knowledge of what the final result would be or in a reckless manner with no consideration for the safety of others<sup>6</sup>. Actions that meet these

<sup>3</sup><https://www.crimemuseum.org/crime-library> retrieved on 18th August, 2019, 10:00PM

<sup>4</sup> *ibid*

<sup>5</sup> *Supra* note 8

<https://scholarlycommons.law.northwestern.edu> retrieved on 18<sup>th</sup> August 2019, 11:00PM

qualifications are viewed as intentional crimes, even if the perpetrator claims to be unaware that their activities were illegal.

This concept falls under a U.S. law which states "ignorance of the law or a mistake of law is no defense to criminal prosecution"

## 2.1 OFFENCES AND REQUIREMENT OF MENS REA

Offences are violation of code of conduct or are criminal wrong. Offences are mainly defined under code while some are defined under acts or statutes. Offences are generally divided into several forms but in context of **mens rea**, we would talk about two main branches, those being, **malum in se** and **malum prohibitum**<sup>7</sup>. **Malum in se** is a generalised form of offence which is recognised at a large by public of being a wrong human conduct, it being morally and statutory wrong both. People recognised it as wrong since long period of time. **Malum in prohibitum** is a wrong which is considered a wrong because of established rules and regulations and not because people from long time consider them so.

Generally, it is required by the prosecutor to prove guilty mind when to prove wrong of a person. Then only, he could be made liable. But, in some offences mostly **malum prohibitum**, it is not required to prove *mens rea* because of the prohibitory and regulatory nature of the statute. The reason behind is that if the perpetrators are left just on the ground of absence of *mens rea*, then, it would cause chaos and irregularity in the society because of huge public negligence.

<sup>7</sup> Shashank Shekhar, *mens rea* in statutory law, legal service India.com, Published: 24th Oct, 2017, retrieved on 1st September, 2019, 11:30PM



### 3. STRICT LIABILITY AS CRIMINAL LIABILITY

According to Cambridge Dictionary, criminal liability is the responsibility for any illegal act which causes harm to someone or something. Actus Reus and Mens Rea are the two elements for proving criminal liability. Strict liability is an exception to criminal liability as mens rea is not required. In strict liability mens rea is already presumed. Mens Rea has always been a deciding element in proving criminal liability.

Strict liability was first introduced as a part of mens rea but gradually the concept evolved and became part of public law to control much harsh wrong against the public. In tort law, there are two broad categories of activities for which a plaintiff may be held strictly liable - possession of certain animals and abnormally dangerous activities<sup>8</sup>. Additionally, in the area of torts known as product liabilities, there is a sub-category known as strict products liability which applies when a defective product for which an appropriate defendant holds responsibility causes injury to an appropriate plaintiff. In criminal law, strict liability is generally limited to minor offenses<sup>9</sup>. Criminal law classifies strict liability as one of five possible mens rea (mental states) that a defendant may have in pursuit of the crime. The other four are "acting knowingly," "acting purposely," "acting with recklessness," and "acting with negligence."<sup>10</sup> The *mens rea* of strict liability typically results in more lenient punishments than the other four *mentes reae*. Typically in criminal law, the defendant's awareness of what he is doing would not negate a strict liability *mens rea* (for example, being in possession of drugs will typically result in

criminal liability, regardless of whether the defendant knows that he is in possession of the drugs)

The main substances under Mens Rea are intention, recklessness and negligence. Intention is the closest as it is worst to kill someone intentionally than recklessly or negligently. In court, judges are used to apply ordinary meaning of the word which has created so many confusions. Talking about recklessness will require discussing about an important case of **R v. Wollin**. In this case, the man threw his infant against a wall in order to make the infant quiet but he recklessly killed the infant as he could see what possibility result out of the consequence of his could act anyway. Negligence is acting in a way which a reasonable person would not. To determine it, objective test is conducted.

<sup>8</sup>[https://www.law.cornell.edu/wex/strict\\_liability](https://www.law.cornell.edu/wex/strict_liability), Retrieved on 31st August, 2019, 3:00PM

<sup>9</sup>ibid

<sup>10</sup> Supra note 7

#### 3.1. PRINCIPLE OF STRICT LIABILITY

- Offences in which we do not have to prove mens rea for that offence.
- These are only certain offences which are exception to mens rea.
- So, it's an offence which has occurred but one doesn't need mens rea to prove that it was an offence.
- It resembles no fault liability.



- Elements of mens rea, i.e., intention, recklessness, negligence is absent

**3.2. CHARACTERISTICS OF STRICT LIABILITY**

- Strict liability occurs when a defendant has committed a crime but is not blameworthy. An easy example of this is, if a liquor shop sells alcohol to two young men who are under the minimum age made mandatory for the consumption of alcohol. Although the defendant is under the misconception that the purchaser was

over the minimum age required but still he will be held liable<sup>11</sup>. (*Harrow London BC v. Shah*)

- Section 11 of Indian Penal Code defines a person as any company or association or anybody of persons whether incorporated or not. Intent is defined in law by the ruling in *R v Mohan* (1975) as "the decision to bring about a prohibited consequence." Since, strict liability doesn't require mens rea so the test of intent is not required.

- Strict liability mostly found in statues often have to do with possessing unlawful weapons and drugs, driving offences such as drink driving and speeding and it also have to do with preparation of the food products and other consumable goods. In this case of **Smedleys v. Breed** ( 1974), large scaled manufacturers of peas, convicted under Food and drugs act 1955 of common law for supplying food unfit for consumption of humans<sup>12</sup>. House of Lords put it in the category of strict

liability. Reasonable care need not to be proved here as mens rea was assumed and it was for a public good so strict liability ought to be used

- **UNDER COMMON LAW:** Outraging public decency, public nuisance and criminal

defamatory libel are all part of strict liability under common law. It is for the

<sup>11</sup> <https://www.lawteacher.net/free-law-essays/tort-law/an-act-committed-without-mens-rea.php>, retrieved on 1<sup>st</sup> September, 2019, 3:00PM

<sup>12</sup> *ibid*

parliament to state mens rea for the offences of common law<sup>13</sup>. Therefore, the court has to include mens rea, unless, it is in black and white that the following is strict liability. So, statutory liability have wordings on their statues which help in deciding a lot whether it is strict or not. There are several key words and phrases within the act that will help and aid the judge in concluding whether the offences are under strict liability or not. The interpretation on these words and phrases are deciding factors.

**3.3 CATEGORIZATION OF OFFENCES UNDER STRICT LIABILITY:**

**REGULATORY OFFENCES:** These are no moral crimes but are acts prohibited under law for the public good. These crimes don't stigmatize people's picture in the eyes of the



society and are mostly penalized offences, the maximum penalty of which is surprisingly low. These laws are mostly on hygiene, measurement, food, drinks etc. In the case of **Sweet v. Parsley**, Ms Sweet, a teacher by profession took a piece of land and leased it to tenants who used the land for smoking cannabis, a harmful drug under **dangerous drugs act 1965**. The court held that since it was related to real social stigma which could malign the image of people and that's why it was put under true crimes and not under strict liability. So, Ms Sweet was not held responsible under strict liability. The court has never laid down any specific categorization of such offences.

**ISSUES OF SOCIAL CONCERN:** There are certain acts which are of social concern and are required to be put under strict liability in order to make people extra careful for their conduct which could bring in imminent danger and prove fatal for the people<sup>14</sup>. certain acts of murder and rape are also life threatening and are ferociously dangerous but the only difference between them and the former is that the former doesn't involve added social stigma with them which the later holds. The later is not only punishable with much harsh punishments but also demeans public image of the person charged under such offence. In the case of **Harrow London Borough Council v. Shah**, the selling of lottery ticket to the minor was put under strict liability. Issues of social concerns sometimes overlaps with that of regulatory offences but it is more dangerous and requires more care and protection. That's why more penalty is imposed on such crimes than regulatory offences.

13 <https://www.upcounsel.com/lectl-mens-rea-and-the-criminal-law-criminal-liability>, retrieved on 1<sup>st</sup> September, 2019, 10:45PM

14 [https://catalogue.pearsoned.co.uk/assets/us/Elliott\\_Criminal\\_C02.pdf](https://catalogue.pearsoned.co.uk/assets/us/Elliott_Criminal_C02.pdf), retrieved on 1<sup>st</sup> September, 2019, 11:00AM

**THE WORDING OF THE ACT:** Words like cause, possession and knowingly are used for an act of strict liability. Most of the acts under statues are not expressly determined by wordings to be under strict liability or a normal crime but some of them have been put under strict liability under these wordings.

**THE SMALLNESS OF THE PENALTY:** Strict liability is most often imposed for offences which carry a relatively small maximum penalty, and it appears that the higher the maximum penalty, the less likely it is that the courts will impose strict liability<sup>15</sup>. However, the existence of severe penalties for an offence does not guarantee that strict liability will not be imposed. In **Gammon** Lord Scarman held that where regulations were put in place to protect public safety, it was quite appropriate to impose strict liability, despite potentially severe penalties.

**3.4 CRIMINAL LAW AND REGULATIONS:** There are some commonly accepted moral codes which are regulated by criminal laws. They are backed and their violations are dealt under criminal laws while there are regulatory laws to



establish regulations and conduct of people on roads, in supply and manufacture etc.

### STRICT LIABILITY: IN INDIA

Strict liability in India is mostly a part of law of Torts. However, there are some offences which has been put under strict liability and are punishable under criminal law. Most of the criminal offences have been evidently dealt under Indian Penal Code while others have been dealt under various acts. While most of the provisions and laws of India has been derived from common law and even the concept of strict liability but the concept and applicability of mens rea in a statute is where both of them differ.

The strict liability under common law was decided under Sweet v. Parsley. *Sweet v*

*Parsley*<sup>16</sup> was a case where the defendant landlady of a farmhouse (which was let to students and which she visited infrequently) was charged under a 1965 Act "of having been concerned in the management of premises used for smoking cannabis"<sup>17</sup>

Even though she had neither knowledge of nor privity with the offence, it took place on her property and at first instance she was convicted, being deemed "liable without fault". This conviction was later quashed by the house of lords on the grounds that knowledge of the use of the premises was essential to the offence. Since she had no such knowledge, she did not commit the offence.

The case's **significance** in English criminal law is that it sets out new set guidelines for determining whether an

offence is one of strict liability or whether *mens rea* is a presumed requirement<sup>17</sup>.

Lord Reid laid down the following guidelines for all cases where the offence is criminal as opposed to quasi-criminal:

1. Wherever a section is silent as to *mens rea* there is a presumption that, in order to give effect to the will of Parliament, words importing *mens rea* must be read into the provision.
2. It is a universal principle that if a penal provision is reasonably capable of two interpretations, that interpretation which is most favourable to the accused must be adopted.

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<sup>16</sup>Sweet v. Parsley

3. The fact that other sections of the Act expressly require *mens rea* is not in itself sufficient to justify a decision that a section which is silent as to *mens rea* creates an absolute offence. It is necessary to go outside the Act and examine all relevant circumstances in order to establish that this must have been the intention of Parliament

While deciding mens rea, there are two school of thoughts which developed because of the following judgements<sup>18</sup>:

1. First is embodied in the Judgment of **Wright J.** in the case of **Sherras V/s De**



**Rutzen** <sup>1920</sup> that in every statute mens rea is to be implied unless the contrary is shown.

2. Second is that of Kennedy, L.J. in *Hobbs V/s Winchester corporation* that you ought to construe the statute literally unless there is something to show that mens rea is required. It means the mens rea is implied in certain statutes and not in others and there are no words in the statute itself to show the recognition of mens rea but the

Judges provide for it on their own authority.

Some important cases regarding mens rea usage and strict liability:

**R v. Prince**<sup>21</sup>:

*In this case, Prince Henry was tried for having unlawfully taken away an unmarried girl, below the age of 16 years, out of the lawful possession and against the will of her father, under the belief that she was eighteen. The jury found upon evidence that before the defendant took her away the girl had told him that she was 18. It was held that the prisoner's belief about the age of the girl was no defence. It was argued that the statute did not insist on this knowledge of the accused that the girl was under 16 as necessary for conviction, the doctrine of mens rea, should, nevertheless, be applied and conviction be set aside in the absence of criminal intention. Sixteen judges tried the case and all but one unanimously held the prince guilty.*

**R v. Tolson**<sup>22</sup>:

18Eugene J Chesney, Mens Rea under strict liability, volume2, Journal of criminal law and criminology

<sup>19</sup>[1895] QB 918

Retrieved on 19th August, 2019, 5:00PM

<sup>21</sup>*Regina v. Prince*, L.R. 2 C.C.R. 154 (1875)

<sup>22</sup>*R v Tolson* (1889) 23 QBD 168

*In this case the accused was tried under Section 57 of the Offences against the Person Act, 1861 for having committed the offence of bigamy<sup>23</sup>. In this case Mrs. Tolson was married to Mr. Tolson in 1880 and after one*

*year in 1881 she was deserted by her husband. She made all possible enquiries about him and ultimately came to know that her husband had been destroyed in a ship bound for America. Therefore, supposing herself to be a widow she married another man in 1887. the whole story was known to the second husband and the marriage was not a secrecy. In the meantime Mr Tolson suddenly reappeared and Mrs. Tolson was charged accordingly. In the trial court she was convicted for one day's imprisonment on the ground that a belief in good faith and on reasonable facts about her husband's death is no defence to the charge of bigamy. The accused went to the higher court by way of appeal. The question before the appellate court was whether Mrs. Tolson had guilty intention in committing the offence of bigamy. The appellate court by majority set aside the conviction on the ground that a bona fide*



*belief about the death of the first husband at the time of second marriage is a good defence in an offence of bigamy. The court also laid down that the doctrine of mens rea would be applied in statutory offences also unless it is ruled out by the statute* Coming back to India, it follows the second school of thought, that is, it follows the statues as they are written and most of the statues are clearly well written in such a manner that the judges and litigants easily recognises that whether the following requires mens rea or is properly under strict liability. Definition of any statue in India has clearly pointed out the conduct of the person as well as his state of mind while the commission of any overt act. The words are dishonestly, voluntarily, recklessly, negligently, wantonly, corruptly, malignantly etc. The word Mens rea have nowhere been used in the Indian Penal Code but they have been applied in two different ways:-

(i) While defining offences some words used in the respective section which indicate the actual criminal intent required for the offence. Such words are fraudulently, dishonestly,

voluntarily, intentionally etc. Such words haven't been used in case of offences which can't be committed by an innocent person. Such offences are **Waging War against**

**Government (Section 121), Sedition (Section 124-A) and Counterfeiting of Coins (Section 232) etc.**

(ii) The Code also contains a separate Chapter i.e. Chapter IV on General.

Exceptions (Section 76 to 106) which indicates the circumstances where the absence of Criminal

23 <https://www.lawteacher.net>, retrieved on 1st September, 2019, 11:00PM

intent may be presumed. *This negative method of applying mens rea has been found to be very useful.*

*The doctrine of Mens rea has been applied by Courts in India and now it is firmly settled law that mens rea is an essential ingredient of an offence.*

Besides it, the offences created by the Prevention Of Food Adulteration Act, Drugs act, Weights and Measures Act are in terms of absolute prohibition and the offender is liable for the offence without the proof of any guilty knowledge or intention, as it also decided by the Hon'ble Supreme Court in the case of **Sarjoo Prasad v/s State of U.P<sup>24</sup>**

**Some other important cases related to strict liability are:**

**Nathulal v. State of MP<sup>25</sup>:** The appellant is a dealer in foodgrains at Dhar in Madhya Pradesh<sup>26</sup>. He was prosecuted in the Court of the Additional District Magistrate, Dhar, for having in stock 885 maunds and 21/4 seers of wheat for the purpose of sale without a licence and for having thereby committed an offence under section 7 of the Essential Commodities Act, 1955 (Act X of 1955), hereinafter called the Act. The appellant pleaded that he did not intentionally contravene the



provisions of the said section on the ground that he stored the said grains after applying for a licence and was in the belief that it would be issued to him. The learned Additional District Magistrate, Dhar, found on evidence that the appellant had not the guilty mind and on that finding acquitted him. On appeal a Division Bench of the Madhya Pradesh High Court, Indore Bench, set aside the order of acquittal and convicted him on the basis that in a case arising under the Act "the idea of guilty mind" was different from that in a case like theft and that he contravened the provisions of the Act and the order made thereunder, it sentenced the appellant to rigorous imprisonment for one year and to a fine of Rs. 2,000 and in default of payment of the fine he was to undergo rigorous imprisonment for six months.

**State of Maharashtra v. MH George<sup>27</sup>:**

In the case, the respondent left Zurich on 27<sup>th</sup> for Santa Cruze along with some gold slabs. Till, 24<sup>th</sup> it was legal to bring or take gold through India. The respondent was arrested at the airport. It was held that the person has violated section 8 of foreign exchange regulation act. Since, the statute doesn't mention the term knowingly or intently so, the section would be read and considered in its literal

<sup>27</sup> 1965 AIR 722, 1965 SCR (1) 123

meaning and thus, it's not important whether the mens rea was present at the time of commission or not, the respondent is anyway liable.

**Ranjit Udeshi v. State of Maharashtra:**

In the following case, the court held that they didn't accept the argument of the respondent that prosecution must prove the presence of mens rea for making the respondent guilty for selling obscene objects. The first sub section of section 292 of IPC doesn't make knowledge an ingredient of the offence. The prosecution need not prove something which the law doesn't burden it with.

**All these cases clearly states that the statute for India speaks clearly that for holding someone liable for criminal acts, proving guilty mind is not required and thus, these hold strict liability against the wrongdoer whose guilty act is necessary enough to make him a convict.**

**4.1 CRIMES UNDER IPC WHICH COMES UNDER STRICT LIABILITY Kidnapping:**

Whoever takes or entices any minor under 1[sixteen] years of age if a male, or under 2[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is

<sup>24</sup> Sarjoo Prasad v. State of UP, AIR 1961 SC 631

<sup>25</sup> AIR 1966 SC 43, 1966 CriLJ 71

<sup>26</sup> <https://indiankanoon.org/doc/>, retrieved on 24<sup>th</sup> August, 2019, 9:30PM



said to kidnap such minor or person from lawful guardianship<sup>28</sup>.

**Sedition: 124A. Sedition.**—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine<sup>29</sup>

**Explanation 1.**—The expression “disaffection” includes disloyalty and all feelings of enmity. **Explanation 2.**—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. **Explanation 3.**—Comments expressing disapprobation of the administrative or other action of the Government without exciting

performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine<sup>30</sup>.

**Section 232:** Whoever counterfeits, or knowingly performs any part of the process of counterfeiting 3\*[Indian coin], shall be punished with 5\*[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

**Section 255:** Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue shall be punished with 1\*[imprisonment for life] or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

**Waging war against the government:** Whoever, wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life] [and shall also be liable to fine]. A joins an insurrection against the [Government of India]. A has committed the offence defined in this section.

28 Indian Penal Code, 1860

29 ibid

or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

**Counterfeit of coins and stamps: section 231:** Whoever counterfeits or knowingly

All the above sections have been expressively and impliedly been made to evidently sound that they don't ask for the presence of mens rea in order to make a person liable under these sections. Other statues or sections which require the presence of mens rea for proving the



crime of the person which have been discussed in the mens rea chapter of this project.

30     ibid

### **STRICT LIABILITY: PROS AND CONS**

Strict liability was introduced in common law through Ryland v. Fletcher case and then some of the faults under strict liability also put the person at default under criminal liability. Further, it was taken up in India as well. First, as a liability under torts and secondly, liability under criminal acts ~~without mens rea in IPC and other offences~~ created by the prevention of food adulteration act, drugs act, weigh and measures act. All these offences are those where actus reus is required to be proved. The party's enrolment in the crime is sufficient enough to make them criminally liable and the usual procedure of establishing mens rea doesn't apply in such cases. Most of the jurists and learned people of the field believes that it's unfair to have such laws which punishes an innocent mind and doesn't give him the chance of correcting himself while people of the contrary view argues that correcting is what the law or statue is doing for the wrong doer. He's given a minute punishment in order to make him more cautious of his acts and make him aware that his act is of such grievous nature and affects the society in such a way that acquitting the wrongdoer just on the ground of mens rea would be injustice to the society and aggrieved. So, the researcher could now reach to the inference that having strict liability brings to the society both pros and cons.

Here, some of them have been highlighted:

### **5.1 ADVANTAGES:**

**PROMOTION OF CARE:** It would promote a greater degree of care among people regarding the issues which are of great social or public concern and the person at default could not be spared just because of the absence of mens rea.<sup>31</sup>This would make people negligent regarding grave issues and would hamper the rights of others and expose them to extraordinarily dangerous situation.

**DETERRENT VALUES:** It is suggested that through regulatory acts and rules, through different acts and bodies and not always by police, these matters could be dealt by placing pressure on the offenders. When there is no need to prove mens rea then it would decrease the chances of acquittal of offenders who are in most of the cases where mens rea needs to be proved are acquitted.

31     <https://www.nolo.com/legal-encyclopedia/what-common-strict-liability-crimes.html> , retrieved on 24th August 2019, 10:00AM

**EASIER ENFORCEMENT:** strict liabilities are easy to be enforced and to make people liable. The administration of a place would come to standstill where even small and petty matters require proving guilty intent and defaulters would be acquitted easily and this would make them negligent towards this basic rules.

**DIFFICULTY OF PROVING MENS REA:** Strict liability works in those



circumstances where it is difficult to prove mens rea while the wrong is clearly visible through act. Here, mens rea is perceived through the nature of act and its not required to be proved and the wrongdoer can't escape.

**NO THREAT TO LIBERTY:** In many strict liabilities, the punishment is mostly confined to fines or small imprisonment. So, there is no threat to liberty.

**PROFIT FROM RISK:** Those who are not following rules and regulations are earning certain gains.

### **5.2 DISADVANTAGE:**

#### **INJUSTICE**

Strict liability is criticised as unjust on a variety of different grounds. First, that it is not in the interests of justice that someone who has taken reasonable care, and could not possibly have avoided committing an offence, should be punished by the criminal law. This goes against the principle that the criminal law punishes fault. Secondly, the argument that strict liability should be enforced because mens rea would be too difficult to prove is morally doubtful. The prosecution often find it difficult to prove mens rea on a rape charge, for example, but is that a reason for making rape a crime of strict liability? Although many strict liability offences are clearly far lesser crimes than these, some do impose severe penalties, as Gammon illustrates, and it may not be in the interests of justice if strict liability is imposed in these areas just because mens rea would make things too difficult for the prosecution. It is inconsistent with justice to convict someone who is not guilty, in the normal

sense of the word, just because the penalty imposed will be small. Even where penalties are small, in many cases conviction is a punishment in itself. Sentencing may be tailored to take account of mitigating factors, but that is little comfort to the reputable butcher who unknowingly sells bad meat, when the case is reported in local papers and customers go elsewhere. However slight the punishment, in practice there is some stigma attached to a criminal conviction (even though it may be less than that for a 'true crime') which should not be attached to a person who has taken all reasonable care. In addition, as Smith and

Hogan (2005) point out, in the case of a jury trial, strict liability takes crucial questions of fact away from juries, and allows them to be considered solely by the judge for the purposes of sentencing. In a magistrates' court, it removes those questions from the requirement of proof beyond reasonable doubt, and allows them to be decided according to the less strict principles which guide decisions on sentencing. Strict liability also delegates a good deal of power to the discretion of the enforcement agency. Where strict liability makes it almost certain that a prosecution will lead to a conviction, the decision on whether or not to prosecute becomes critical, and there are few controls over those who make this decision.

#### **INEFFECTIVE:**

Most of the time, the deterrent is not the fear of being convicted but the fear of being caught. Many a times, even if the company or startup has not been convicted then also it brings bad name and deterioration to its business which is probably not the objective of the government. Most of the time, people are least bothered about their involvement in



these sort of crimes and they find it much cheaper to pay fines and carry on with the wrong doing.

### LITTLE ADMINISTRATIVE ADVANTAGE:

In some of the cases mens rea to some extent is required to be proved which makes it difficult for sentencing.

### INCONSISTENCY

Most of the laws and statues clearly don't state whether strict liability applies in that very situation or not. Many s times, as in India, it is clearly mentioned in statues that whether the following statue requires mens rea or not. But in many countries it is left upon the judges to decide whether mens rea is required in the following or not.

### 6. CONCLUSION, CRITICISM AND SUGGESTION

The researcher in all the chapters of the project has drawn a large emphasis on the topic of *mens rea*, cases concerned, judgement of various courts from England and India. The difference between common law and Indian while dealing with strict liability was also pointed out. While Indian law reads the statues as it is, the common law presumes the presence of *mens rea* when it has not been mentioned in the statues. Coming to the hypothesis to the work, the first one stands wholly in affirmation. It has been discussed both in chapter second, third and fourth of the project that to impose *strict liability*, the prosecutor only needs to prove the guilty act and no mens rea is required to be proved. Two schools of thought over the statues

regarding the interpretation of strict liability have been discussed as well. For the second hypothesis, the views are mixed, different and equally strong as well as valid from both the sides.

### CRITICISM

There are sets of both pros and cons holding strict liability. None of the baggage comes without a rubbish and not even the one having a silver lining. Same is with the strict liability. Strict liability assures a swift and proper implementation of rules and regulations. These rules are mostly regulatory laws in order to maintain law and order in the society and prevent chaos. If mens rea is required to be proved even in regulatory laws, then it would loose its importance, there would be chaos, irregularity and lawlessness in the society. Secondly, there is a chance of acquittal of accused when there is a need to prove mens rea and it's a total injustice against the public to acquit a person knowing his guilty act but having a cent of doubt on the actual intentions of the person involved. Thirdly, there are some acts which are of grave public importance and leaving the person only on the ground of absence of mens rea would make them negligent and they would probably not pay heed to these rules and regulations. It will cost a huge to public interest. Thus, imposing strict liability is quiet in favour and in accordance to the public. While, critics of opposite view claim that strict liability leads to injustice and inconvenience to people who are punished without guilty intent or because of their failure to know about the existing laws, it is pointed out by the people in favour of imposing strict liability that the punishment for strict liability is pretty less and it is just



for the sake of making people conscious of the existing laws and avoiding its repetition.

## SUGGESTIONS

### Restriction to public danger offences:

Strict liability for regulatory offences if the liability imposed should be shifted from its objective of being tighter to being a liability in the acts posing real threat of danger to public.

Liability of Negligence: It should be a liability of inefficient, hopeless and careless people and not those who are genuinely blameless, were involved because of complete unawareness of the matter on some reasonable grounds.

Defence of all due care: where strict liability is applied, there should be a defence of due care in order to protect those people who have followed the rules and regulations and haven't failed in recognising them, haven't been careless toward these laws and the damage occurred all out of the control of the person. But, there should be a scope of absolute liability like we have in India under law of Torts where the person know that he is possessing a dangerous and harmful substance, the escape of which would cause harm to the public but still keeps it for his own benefit. There, absolute liability should be applied even when the person takes all due care of the matter

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