



## PRINCIPLE OF STRICT LIABILITY IN CRIMINAL LAW: AN INDIAN PERSPECTIVE

**Pragyan Prasanjita  
Sahoo**

Bata Lane, Haripur Road, Cuttack -753001, Odisha

**ABSTRACT** As we all know, liability is an inherent feature of human society and rights are always followed by liabilities, so without the existence of liability in our society, the coherence of our society will also lose its force, and people would not care and value other's rights even. Now talking about the concept of 'criminal law' in particular, the liability for one's actions is based on two elements, i.e. *actus reus* and *mens rea*. However the principle of strict liability is an exception to this. Taking such principle into account, the author has made an elaborate discussion about it, by citing various instances of it in the Indian Penal Code, 1860 and, other statutory provisions. Finally, towards the conclusion of this research paper, the importance of the principle of strict liability and justification towards the concept that, 'the act alone is punishable' has been highlighted.

**KEYWORDS :** Legal Liability, Statutory law, Strict Liability, Criminal offences, Criminal Law, Mens rea

### INTRODUCTION:

Liability can be defined as the responsibility for a crime and a ground for receiving the penalty fixed by the state for such offense. Anyone who commits a crime against the rules laid down by the society he or she has to pay the price for such action. The harm or the loss incurred by the society is made up by the penalty imposed on the offender by the society.

The liability in criminal law for one's actions is based on two elements. Firstly, '*actus reus*' which is defined as 'such result of human conduct as the law seeks to prevent' and secondly, '*mens rea*' which means some blameworthy mental condition, whether constituted by intention or knowledge or otherwise, the absence of which on any particular occasion, negatives the contention of a crime. The simultaneous product of these two elements leads to criminal liability. Thus, the maxim *Actus non facit reum, nisi mens sit rea* rightly explains the principle of criminal liability as the act itself is not criminal unless accompanied by a requisite guilty mind. The element of guilty mind has to apply in all aspects of the act i.e., the physical act of doing or not doing, the circumstances under which such commission or omission is done and the consequences of such action or omission. So it is concluded that a wrongful doer can only be held liable criminally for his actions or omissions if his action is accompanied with guilty intention.

However, the principle of strict liability in criminal law acts as an exception to this general principle. Although the element of *mens rea* is a *sine qua non* for criminal liability, still it can be waived in certain circumstances. A man can be held responsible criminally even if his action is not accompanied by the guilty intention. Mere *actus reus* is enough to construct his criminal liability.

### PRINCIPLE OF STRICT LIABILITY:

Strict liability crimes are those types of crimes where the defendant is held responsible for the criminal action even if he did not have the requisite guilty intention for the alleged offense. It resembles the *no-fault liability*. The element of *mens rea* is absent, and on the sole basis of his *actus reus*, he is held responsible. This principle was developed in the case of *Rylands v. Fletcher*. This rule was basically drawn in the area of tortious wrongs. But the nature of this principle suits certain criminal offenses whereby the offender goes off the hook because of lack of guilty intention. The *mens rea* is presumed here, and it is not needed to be proved. The *actus reus* is so harmful that it can be concluded as an act prohibited by law.

Section 11 of the Indian Penal Code, 1860 lays down the provision as to who is to be held liable. The word defined in this section is "person", which includes both natural and juristic persons. A person is liable for his wrongful or prohibited actions coupled with guilty intention as per the general principles of the criminal law. But strict liability is an exception to this general rule. A person can be liable for the penalty even when he does not intend to do such offense.

Intention is not a specific element that can be directly attributed to a

particular form or way. It is an abstract element which has to be construed from the circumstance and facts of the case. The offenses in the penal code have been worded as such so that the element of *mens rea* is indirectly induced from the offense itself. For example the use of words like dishonestly, knowingly, intentionally, fraudulently, etc. depict the element of guilty intention as required in the offense. The author shall discuss certain specific provisions of the code which do not have any such words in the legislative provision yet it is listed under the list of crimes in the code.

### INSTANCES OF THE PRINCIPLE OF STRICT LIABILITY:

#### A. THE INDIAN PENAL CODE, 1860-

In order to see the application of the principle of strict liability, the author has to analyze the offenses individually (as mentioned below). *Mens rea* is not essential with the following offenses in the Indian Penal Code, 1860.

#### *Section 121: Waging, or Attempting To Wage War, or Abetting Waging Of War, Against the Government of India*

The action of rising against the state or the authority has always been seen as a symbol of treason of highest order. Any action, whether it is a preparation or abetment or attempt to wage war and if it creates chaos against a government, has to be nipped in the bud despite the factor of whether the offender had the intention to do so or not. The action speaks of this offense. This offense has been included in this code because a person should be self-evaluative of his action before doing it. Sometimes the action does harm to such a large extent that the injury is beyond repair. It is immaterial if the intention was to do so or not. This offense is considered as a very serious offense as it has been provided with the death penalty as the highest punishment for such crime.

#### *Section 124 A: Sedition*

The law of sedition in India has been attributed as a controversial offence largely because of its strict curtail on the constitutional provision of freedom of speech and expression guaranteed as a fundamental right under Article 19 (1) (i) of the Constitution of India. This law is stated in Section 124 A and 153A of the Indian Penal Code, 1860 and in other statutes. This offense is based on the principle that state should have the power to punish the offenders who by their actions jeopardize the equilibrium and safety of the state or lead to disruption of public order. The very existence of state will be in danger if such actions are not curbed in their initial stages. Thus, the doctrine of *mens rea* cannot be applied in such crimes. Mere *actus reus* is sufficient to hold such offender liable for the offense of sedition.

#### *Section 268: Public Nuisance*

This is recognition of the civil principle which states that one can enjoy his or her own property but cannot injure the right of another at the time of enjoyment of his right. This means one should exercise his right vis-a-vis his duty of non-interference in other's right. It does not matter if you intended to create such nuisance or not. You will be held responsible for such nuisance if you have caused common injury, danger or annoyance to the public or people at large with regard to their public rights. Intention here plays no role. You will be strictly liable for

your action only. The guilty intention will be presumed.

### Section 375: Rape

The second exception to this provision lays down the concept of statutory rape in case of a man having sexual intercourse with his wife below the age of 15 years even with her consent will be held responsible for the offense of rape. It is immaterial whether the man intended so or not. The mens rea or guilty intention is presumed here. By virtue of his act of having intercourse with her wife below the age of 15 years, he is liable for the said offense.

Further, in the same provision, the sixth description states that even if a female is consenting completely for the sexual act but is below the age of 18 years, then the consensual sexual act will be molded as an instance of statutory rape. It will rape because the statute declares it to be so. It does not matter if the parties have the guilty intention or not. Even a genuine sexual act on a bonafide relationship can also amount to rape because of the provision.

### B. OTHERS STATUTORY PROVISIONS-

Apart from the above provisions, there are some statutes which impose strict liability principle. Such statutes have been passed in the interest of the public. Example; the Motor Vehicle Act, the Arms Act, the Narcotic Drugs and Psychotropic substances act, 1985, the Public Liability Insurance Act, 1991, etc. The Halsbury Laws of England states that if there is silence about the element of mens rea in any statutory crime, then there is a presumption of essentiality of mens rea. However, such presumption is not a conclusive one. It can be rebutted either by the terms of the provision or statute or by the subject matter with which it deals. The legislative intention behind such presumption is that a man should not be held absolutely responsible for his acts or omissions just because the statute says so. The presumption has to be established. In the case of *State of Maharashtra v. M. H. George*, it was held that "Merely because a statute deals with a grave social evil is not sufficient to infer strict liability, it must also be seen that whether imposition of strict liability would assist in the enforcement of the regulations. Unless this is so, there is no reason in penalizing him and cannot be inferred that the legislature imposed strict liability merely in order to find a luckless victim." Finally, the court decided that when the accused was held loaded with gold bars in his jacket beyond the limit allowed under the provisions of FERA, 1947, the doctrine of mens rea cannot be applied here. The object and purpose of the Act will be defeated if the accused is allowed to take the plea of ignorance of the law and validate his action accordingly. Even the ignorance of the law is not allowed as a valid defense.

According to Sir J. Stephens, the doctrine of mens rea is misleading as the doctrine originated when criminal law practically dealt with offenses which were not defined. In the present scenario, however, every crime is defined precisely. The elements of the crime are clearly marked in such provisions. So it can be easily carved out as to which offenses require clear mentioning and proving of mens rea and which offenses have to be presumed to have mens rea implied in it.

### CONCLUSION:

A man should be held liable for the actions that he intended to do. The liability in criminal law always arises when there are both elements of criminal liability, i.e., actus reus and mens rea. But the inclusion of the principle of strict liability in the provisions of the Indian Penal Code, 1860 also holds the person liable criminally even if that man has not intended a particular act which has been prohibited by law. Just by virtue of that act being committed by him, he is held responsible. However, the principle of strict liability is different from absolute liability. In case of offenses of strict liability, the element of mens rea is presumed, and it need not be proved. The intent of the legislators behind taking up this principle in our penal code was that a perpetrator of offense should not escape from the clutches of the Criminal Law System just because he did not intend to do so because of his mere callousness or lack of awareness. One should always be vigilant about his action. You should not simply exercise your rights without any care being taken by you towards the preservation of other's right in society.

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