STRICT LIABILITY IN SOCIO-ECONOMIC OFFENCES

DISSERTATION

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BY

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This is to certify that **Mr.Mashi Alam** has conducted this study, **"STRICT LIABILITY IN SOCIO-ECONOMIC OFFENCES"** under my supervision. I have made various suggestions to him during the course of this study. Some of them have been incorporated by him in the present work.

I deem this work fit to be evaluated for the award of **Master of Laws Degree.**

I wish him all success in life.

(JAVAID TALIB)
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INTRODUCTION

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Industrial revolution ushered an era of plenty but simultaneously gave birth to many new problems. In the wake of industrialisation a newer form of criminality was born which has now assumed menacing proportions. Unlike traditional crimes, this newer form of criminality is associated with the upper and middle class people and is committed by them in the course of their occupations. This is adversely affecting the health and material welfare of the community as a whole and is also threatening the entire economic fabric of the State. The criminality in these cases extend from smu ggling to adulteration and from tax evasion to frauds and misappropriation, exhibited in numerous permutations and combinations. The common feature of all this criminality is that the same is born of greed, avarice and rapacity and is committed in the course of trade, industry, commerce, business and profession of the upper and middle cl asses. These crimes have adversely affected the social and economic fabric of the state and the community alike and have made planned development for the future a very difficult job. *Sutherland* has called these crimes `White Collar Crimes' while *Sayre* has described them `Public Welfare Offences'; there are other who call these crimes `Regulatory Offences'and yet others `Crimes of Strict

liability'.[1]

Just as development in science and moral and social theories have ushered changes in the law of crimes, the restructuring of society, whether on account of new political thought or socio-economic imbalances, has also materially affected criminal law. Variations in criminal law are not always the result of a single factor; quite often they may be the product of the cumulative effect of many new developments. The development in science coupled with new notions of morality and new theories of sociology may sometimes join hands to force a change in criminal law. Likewise these two, may combine with the restructuring of society to effect alterations in the law of crimes. The new philosophy of communism and a shift in the laissez faire have in no less measure been responsible for a rethinking in criminal law. We have seen that of late the activity has mul tiplied to a great extent. State is no longer a police state and is rather looked upon as a welfare state and this shift from state to welfare State has contributed in large measure to increase in the activity. It has opened new vistas for State activity.[2]

These changes have had their effect on the penal laws. Laisseez faire eeconomy has been increasingly yielding place to socialist economy and socialistic

pattern of society has come to be accepted, tacitly or expressly, as the cherished good of many countries. State in consequences is no longer a silent spectator to the happenings in and around it. The nefarious activities of many new categories of anti-social elements have also gone unnoticed and altogether unchecked by the state. More often than not, the state has risen to the occasion and in order to check their nefarious activiti es of the new anti-social element geared its administration of justice. During the course of the last one hundred years the concepts and contents of criminal law have undergone considerable change; while on the one hand new offences have come to forefront, new notions of criminal responsibility also have come to be re cognised almost all the world over. This was not a sudden development or reaction; rather it was the culmination of the changes in the structure of the human society undergone and effected over a period extending over centuries which it would be proper to consider here.

In the middle ages the society had a feudal structure in which the king and the feudal lords and chiefs were the centre of gravity and were considered to be the foundation of justice and their word was law. The administration of justice was more often to suit their convenience and their notions of justice were by

and large personal. Towards the end of middle ages many changes started appearing almost all the world over and particularly in Europe and England. An age of reason began and over a period culminated into a new era commonly known as Renaissance. Renaisance not only ushered in an age of reason but further also infused a sense of a scientific thinking amongst the people. The people started questioning every phenomenon of life and society. A spirit of inquiry led to the growth of science and the desire to 'know the unknown' resulted in new inventions and discoveries, which extended man's knowledge about the world. Nation states began to appear in Europe, with distinct territories and bouundaries which formed well defined units. Though a spirit of healthy competition between nation states grew and a strong feeling of nationalism developed, in course of time this nationalism led to jealousies rivalries and conflicts over trade and colonies; nonetheless trade increased and business methods and procedures began to change. This stimulated production of manufactured goods. There was increase in demand of goods, essential as well as luxuries, which the traditional methods of production were inadequate to meet.[3]

Almost side by side and as a corollary a new movement challenging the authority of the established church in England and Europe also raised its head and

this distributed the hold of Papacy upon the peop le to a considerablle extent and also led to an open challenge to the theory of Divine Rights of kings and consequently laid the foundations of new political thought. This came to be known as the Reformation. It also affected the faith of People in supreme power.

During the 18th century there began another series of changes which revolutionised the technique and organisation of production. These developments resulted in the rise of a new type of economy -- the industrial economy. The 'domestic system' under which the artisans and craftsmen worked in their homes gave way to factory system. Many new mechanical inventions and chemical discoveries were effected which had far—reaching consequences, particularly in the industrial and commercial fields in all the European countries including England. This was the beginning of an era which cul minated in what is now termed as the Industrial Revolution large scale factory system came into vogue which brought as its accompaniment a shift from the village to the cities, primarily because factories were located in big towns and cities inview of the facilities of transportation and marketing the large scale productions of the factories. This disturbed the entire social fabric and not only a new urban society came into being, new social groups in this urban society also

sprang up. There arose an altogether new social structure which gave birth to a challenge to the accepted moral and social beliefs. This Industrial Revolution saw the decline of home handicrafts, led to the growth of urbanisation, resulted in the expropriation of many farmers, rise of factory towns in the new industrial centres and a phenomenal increase in the production of commodities. It transformed the feudal order of society into a capitalistic form of economic and social order. It had revolutionised the entire concept of trade, commerce and industry and there started a scramble for colonies and consequently a spirit of competition grew amongst free nation. The entire perspective of things underwent change and old values no longer held the ground as fast as they did in the past. There was social disorganisation. The rise of colonial empires also contributed in its own way to this disorganisation of the social fabric.[4]

The Renaissance, Reformation and Industrial Revolution had culminated in a new society in which reason rather than faith, competition rather than cooperation and science rathter than religion came to be accepted as the foundation stones. The noose of religion became a ritual and a formality. People became irreligious and lure for money became an obsession. The fear of the ultimate was eroded to a great measure, if

not altogether. The one emotion that seemed to have unmistakably sobering effect on groups and individuals was this fear of ultimate the fear of what might happen to oneself, to one's near and dear, the fear of world beyond and the fear of the consequences generally. The psychology which kept and maintained the stress on purity, resistance to temptation and the pursuit of goodness was increasingly abandoned in favour of money and material things. As if Renaissance, Reformation and Industrial Revolution were by themselves not enough, the American Revolution and the French Revolution came on their heels and raised a superstructure on the foundation laid down by their predecessors. There was a spate of revolutions all through out Europe and the entire social, economical and political structure of the free world underwent a veritable change. The whole world had shrunk due to technological and scientific advances and the advanced and speedly means of communications. People of different nations and different countries started coming into more frequent contact. These further precipitated the situation created by Industrial Revolution and Theory of Natural Rights. These added fuel to the fire. The new notion of 'doctrine of individual rights', propounded by Adam Smith in his Wealth of Nations (1776), had come to be accepted as basis of entire social, economical and political fabric.

It was eulogized as the 'doctrine of natural rights'. The individual came to be recognised to posses certain inalienable and inviolable rights of life, liberty, property and trade. Any encroachment of these rights was considered not only morally wrong and economically unsound but also legally inviolable and thus sacrosanct and laissez faire became the basis of entire government and trade.

The states enacted some laws but with a view to collect taxes and augment their revenues rather than with a view to control or regulate and thus in the name of liberty of the individual and free trade and commerce all ethical, moral and healthy principles and standards continued to be violated with impunity and the state remained a passive onlooker. The state continued to function merely as a police state and the nations of social welfare or common good were yet a far cry.[5]

STATEMENT OF PROBLEM :-

In the contemporary world the meaning and importance of strict liability attained new heights and dimensions. Today consumerism is an important manifestation of *modus-vivendi* where right to health and right to good environment got new impetus. Even Indian Judiciary shade a new light in the interpretation of socio-economic offences.

Sometimes socio-economic offences are more pernicious and detrimental to the society at large due to their nature. Socio-economic offences affect directly to the people. These offences also known as 'White Collor Crimes' or 'Blue Collor Crimes'. Under socio-economic crimes individual responsibility is fixed and persons and co-orporations are held responsible for the acts committed.

In this present world human needs and behaviour are being dictated by the utopian concept of state and universal notion of human rights. It is the motive of a person or entity which is propelled by avarice to impel an individual to commit socio-economic crimes. Socio economic crimes are anti-social, although every crime is against society. When socio-economic crimes are committed, there is an absence of social concerns and responsibilities on the part of wrong-doer.

The present economic liberalization and globalization have also contributed sudden spurt of socio-economic offences in the country. The victim of such offenders, though quite often ostensibly an individual, is almost always the entire community of the state or a section of the public or community. Another essential ingredient of such crimes is that these are committed through fraud and misrepresentation without any force.

The present study has been persuaded under this backdrop. This study examines the nature and meaning of strict liability under the existing socio-legal infrastructure and mechanism.

Chapter I deals with meaning and nature of Socio-economic crimes. Justifications for treating socio-economic crimes differently from conventional crimes have also been discussed. This chapter also traces the historical development of the modern concept of strict liability.

Chapter II examines the concept of "Public Welfare" and need for widening the concept of Public Welfare Offences. It also discussed strict liability with regard to Public Welfare Offences coupled with the classification of socio-economic offences.

Chapter III evaluates strict liability in statutory offences having an eclipse of mens rea. Moreover, various socio-economic legislations have also been given an anal-ytical treatment at length. Numerous models of strict liability have been put forward.

Chapter IV discusses the burden of proof in strict liability offences, the presumption of innocence and shifting of the burden of proof. The same chapter also deals with areas where the element of mens rea is absent. The various pronouncements of the apex court have been analysed and perusued with the help of

judicial process and response.

The conclusion and suggestions and recommendations have been submitted.

Notes and References

1. Mahesh Chandra, Socio-economic Crimes, Tripathi Publications, 1979, pp.3, 24-26, 29.

2. Ibid.

3. Ibid.

4. Ibid.

5. Ibid.

CHAPTER I

CHAPTER I

A. MEANING AND NATURE OF SOCIO-ECONOMIC CRIMES

Though all crimes are anti-social, all anti-social acts are not socio-economic crimes.Similarly all offences which affect the wealth of an individual victim do not constitute socio-economic crimes. Socio-economic crimes are those crimes which either affect the health and metarial welfare of the community as a whole or the countries economy, as against that of an individual victim, and by and large are committed not merely by low class people but invariably by the middle class and the elite of the community, most often during the course of their occupation e.g. trade, profession, commerce or business. Invariably, the motive of the criminal in such crimes is avarice or rapaciousness rather than hate or lust as in traditional crimes, and the background is non-emotional.[1]

The victim of such offenders, though quite often ostensibly an individual, is almost always the entire community of the state or a section of the public or community. Another essential ingredient of such crimes is that these are perpetrated through fraud rather than force and the act is deliberate and willfull. These are considered as a class by themselves, seperate from the traditional crimes, because their control involves the

protection and preservation of the general health and economic system of the entire society or nation against exploitation and waste and also the augumentation of the wealth of the country, by preservation and protection of the health and the wealth of the individuals.Socio-economic crimes differ from traditional crimes also because they do not, to a common mind, involve or carry with them any stigma, while traditional crimes, unlike the socio-economic crimes have a symbolic meaning for the public and carry stigma involving a disgrace, a deprivity and an immorality and are thougth of as decidely the behaviour of the lower class of people. Socio-economic crimes involve a newer form of criminality, derived from the traditional criminality[2].

Ordinarily a mind at fault is necessary to constitute a crime.But there are some crimes which do not require any kind of legal fault on the part of the accused. Crimes requiring fault on the part of some one, but the accused, in the crimes of vicarious liability and those not requiring fault on the part of anyone are known as crimes of strict liability. These are the crimes in which the necessity for mens rea or negligence is wholly or partly excluded[3].

The meaning of strict liability is derived by opposing it to liability for fault. In problems relevent to criminal law. Strict liability means liability to punitive sanctions despite the lack of mens rea[4].

There doesn't seem to be a crime of strict liability at common law. There doesn't also seem any statute that creates it in so many words. This question arises on the construction of a statute that penalises the conduct without express reference or with only a partial or limited reference to the mental state of the wrongdoer. The general principle of criminal jurisprudence is that although the statute is silent on the point, a requirement of mens rea is to be applied[5].

According to Kenny, some less complex and less guilty state of mind than the usual mens rea is sometimes by statutory enactment but hardly by the common law,made sufficient for the mental element in criminal guilt.[6]

The common law maxim *actus non facit reum nisi mens sit rea*, which so far had a strong impact in criminal jurisprudence seem to have been loosing the grip, with the advent of the doctrine of strict liability. The doctrine despences with requirement of *mens rea* entirely in determining the criminal

resposibility of the accused. It is a product of literal interpretation of the statutes which give rise to what is called "Absolute prohibition" or "Absolute liability" or "Strict liability". In such cases an act is punishable if it falls within the words of statute, without any enquiry being made into the mental state of the wrongdoer.

Such statutory offences are increasing both in number and importance. Yet they are rare. The legislature is averse to create these offences except where -

(i) The penality incurred is not great but,

(ii) The damage caused to the public by the offence is in comparision with the penality,

(iii) Where at the same time, the offence is such that there would usually be pecularity and difficulty in obtaining adequate evidence of the ordinary mens rea,if that degree of guilt were to be required. In all the civilized countries, there are laws which make an act criminal whether there is an intention to break the law or not. Their transgression are not criminal in the strict sense of the term but are civil in their nature and for special reasons are termed as offences. Thus, in

some of exceptional cases, less than the usual mens rea are sufficient.

B. Justification for Treating Socio-Economic offences differently from conventional crimes:

These cases do not fit neatly in the accepted categories of crimes. They represent harm of greater magnitude than the traditional crimes and of a nature different from them. Unlike the traditional crimes, they are not in the shape of positive aggressions or invasions. The may not result indirect or immediate injury; nevertheless, they create a danger which, or the probability of which, the law must seek minimise. Whatever the intent of the violator, the injury is the same. Hence, if legislation applicable to such offences, as a matter of policy, departs from legislation applicable to ordinary crimes in respect of the traditional requirements as to *mens rea* and the other substantive matters as well as on points procedure, the departure would, we think, be justifiable.[7]

(C) MENS REA AND SOCIO-ECONOMIC CRIMES:

Under the traditionl criminal jurisprudence the criminal liability was incorporated in the well known common law maxim- a *[illegible]*, meaning that an act does not make one guilty unless there be guilty intention. Thus for imposing penal

liability two conditions must be satisfied, e.g. a wrongful act and a guilty mind. Both the conditions must be simultaneously satisfied. Thus mere doing of a wrong and prohibited act is not enough in itself to fix criminal liability,unless it is coupled with guilty mind. In case of traditionl offences,generally speaking, liability is not absolute and is rather related to the intention of the wrongdoer.

However, with respect to socio-economic offences, the tendency of the legislature is to curtail the requirement of mens rea for criminal liability. The harm done by these offences are greater than that of traditionl crimes.They are graver than that of traditionl crimes. They affect the morality,health and welfare of the people as a whole and have a tendency to undermine the economic fabric. Therefore, the policy of the legislature in such cases is not to be lenient in the matter of their prevention,control and punishment and the wrongdoer is not allowed to escape unpunished. The policy can be implemented only if the penal liability in such cases is treated as strict e.g. without refrence to mens rea.However, the element of guilty mind is ever present in socio-economic offences but it is very difficult to prove it legally.While in

such offences, actus reus may be easily proved.Therefore,it is essential and necessary to formally exclude the requirement of *mens rea* from the socio-economic offences.In such cases the burden of the prosecution is only to prove the actus reas and the burden of proving innocence lies on the accused.

With refrence to socio-economic offences, the attitude of supreme court in relation to mens rea was that it is an essential ingredient of an offence. *Nathu Lal* V. *State of M.P*;1966 S.C.43.*State of Maharashtra* V. *M.H. George*,A.I.R 1965 S.C.722 and *Mangaldas* V. *State of Maharashtra*,A.I.R. 1966 S.C.128

Doubtless, a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the criminal law rather than against it, unless the statute expressly or by necessary implication excluded *mens rea*. The mere fact that the object of a statute is to promote welfare activities or to eradicate a great social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredient of an offence. *Mens rea* by necessary implication may be excluded by the statute only where it is absolutely clear that the implementation of the

object of the statute would otherwise be defeated.Thus,the courts proceed with initial presumption in favour of the need for mens rea but are prepared to dispense with mens rea if it is ascertained clearly or by necessary implication to be gathered from the language used by the legislature, object and purposes of the enactment.

In order to control this criminality the punishment of imprisonment would be appropriate.This would have a deterrent effect on the offenders. Therefore,the legislature must provide sufficient and minimum imprisonment as punishment in statutes dealing with socio-economic offences.This minimum mandatory imprisonment would meet the ends of justice.

In India the concept of socio-economic offences had already entered in criminal legal thought. Its present form is amorphous a graduate process of crystalisation has already started. The courts are not indifferent towards the problem thus in support and remembrance *N.B.V.G.K. Navalka* (1958) 2M.LJ 308 the Supreme Court, accordance recognition to legislative consideration creating economic offences. Under the Foreign Rregulation Act 1947. But the observation of the court are quite relevent to offences under other socio-

economic Statute which aim at the general upkeeps of nationl economic and financial intrest. Justice Mathew stated that the court has to ascribe a purpose to the statutory classification and coordinate the specific purpose under the law with the general purpose of the act as well as other relevant acts,including the public policies an approach would demand the consideration of public knowledge about the evil sought to be remedied, prior law.

In India, several statutes have been passed by the union and state legislatures through which public welfare regulations are made effective.

It will, therefore, be convenient to classify them under the following categories:-

(a) Sale

(b) Possession

(c) Traffic

(d) Road

(e) Prevention of Food and Adultration Act-1954.

(f) The Drugs Act-1940.

(g) The Suppression of Immoral Traffic (in women/girls) Act-1955 and offences relating to marriage (sections-493,498 of the Indian Penal Code.)

(h) Indian Arms Act and Indian Explosives Act.

Hence there are a large class of penal acts which are really not criminal but which are prohibitory by the levy of penality in the interest of the public. In such cases, the defendant must bring himself within the statutory defence.

(D) RISE OF STRICT LIABILITY

It is against this background that the rise of the moodern doctrine of strict liability must be viewed, where the accused can be convicted on the mere proof of actus reus only. The mental element is not to be considered in punishing a man.[8]

(a) Strict liability at Common Law

In common law crimes, a person can not be held criminally liable unless his can not be held criminally liable unless his conduct is accompanied by some blame-worthy state of mind.

There are very few common law offences of strict liability public nuisance, libel, blasphemy and contempt of court.

A brief discussion of these offences will not be out of place.

1. Public Nuisance

A person may be vicariously liable, on a criminal

charge, for a nuisance committed by those under his control although he did not know his existence.[9] A public nuisance has been defined as an act not waranted by law, or the omission to discharge a legal duty, which obstructs or causes inconvenience or damage to the public in the existence of rights to all her Majesty's Subjects,[10] a section of the public must be so affected. Typical examples are the obstruction of the high way or the emision of noice or smells from a factory in such a way as to cause inconvenience to the neighbourhood.

2. Defamatory Libel

This offence of means publication of defamatory matter in a permanent form concerning the individual or class of individuals, subject to the defences of justification (i.e., the truth of the publication), which is the public interest, and of absolute and qualified privile ge.[11] An absolutely privileged publication includes a fair, accurate and contemporaneous report of judicial proceedings published in a news paper and parliamentary papers, while a publication has qualified privilege if, for instance, it is a report of parliamentary proceedings or a professional communication between solicitor and client.

In the law of torts, a person may, subject to a statutory defence,[12] liable in defamation although he did not know that which he published applied to the plaintiff, as where, someone says that a couple are engaged, when unknown to him, the man is in fact married to a third person who complain that her reputation has been impgned.[13] If, on such facts, a criminal prosecution would be successful, the case would undoubtedly be one of strict liability, but there is no decision directly covering this point.

3. Blasphemy

This offence is committed if a person publishes in a permanent form any matter attacking the christian doctrine or the Bible, or the doctrine of the church of England, or God, Christ or other sacred persons, provided that the material is calculated to outrage. Christians religious feelings.[14] The accused must have intended to publish the material which was in fact blasphemous. But in Lemon,[15] the House of Lords held, by a majority, that an intention to out rage and insult christian believers is not required, so that despite the denial of the majority, the offence is one of strict liability to this extent.[16]

4. Criminal contempt of court

In some areas of the law of contempts particularly as it affects the press, liability does not for the most part depend upon the proof of know of intent.[17]

Some writers also included obscentity in this list. Thus these five, are considered as exceptions to the general requirement of *mens rea* at common law; but how far this is true has never been altogether clear. Blasphemy and obsenity are of the strict liability in respect of the judgement of what is blasphemous or obscene, but the judgement is very close to being a value .... judgement rather than a question of fact.[18] It is arguable that criminal libel requires *mens rea*, except in respect of the judgement of what is defamatory, and except also that an employer is attributively liable for a publication by his employee.[19] Libel has been turned by statute into a crime of negligene in some cases. Contempt of court was perhaps a crime of strict liability in certain respects of common law.[20]

This English rule is affirmed with modifications in the contempt of court Act 1981, SS17.[21] Public nuisance can apparently be committed by negligence, and is a crime of strict liability to the extent it carries

attributive liability, which it does in at least some cases;[22] but it has lost much of its importance because indictments are uncommon.[23]

(E) HISTORICAL DEVELOPMENT OF DOCTRINE OF STRICT LIABILITY :

In the ancient times the man was presumed to extend all the concequences of his act. No regard was paid to the circumstances attending the occurence or the mental innocence of the accused, this may be said to be the doctrine of strict liability in its traditional forms. The doctrine applied with equal force to public law and private law both. As the days relied on legal intelligentia began to doubt the inherient efficiency and the universality of the dictum. Very soon it became evident that the doctrine of strict liability couldn t be applied in all the circumstances equally. This period of development of criminal legal though concided with the emergence of significance of the mental element in crime. The superiority, or the monopoly of the physical element was suffered to die a natural death. The mental element comes after with the physical one. It is at this stage of development that the criminal thinking comes to recognize both physical as well as mental element *Actus non facit reum nisi mens sit rea.*

Historically speaking mens rea has occupied prominent place in common law and criminal jurisprudence.

However, the aforementioned maxim had to face big question mark with the emergence of the positive state in twenteenth century in contrast with police state of the preceeding century. Along with this transformation state began to feel its responsibility for many acts of its instrumentalities effecting the individuals to his disadvantages.With the above mention transformation of individualistic state is clearly connected with another transformation, namely, the transformation from a ruralistic to an industrialised or urbanised society. The rape of earth overgrazing, waste of water, impurity, insanitation, adultration in food and drugs and a multitude of over matter may be cited[24].

While dealing with these offences it was felt that strict adherence to the traditional maxim of *actus non facit reum nisi mens sit rea* was doing inconcievable injury to the social and economic health of the nation. By and large seprate statute began to come up for tackling the new (economic) crimes. Presently the position is that the whole new area of criminal law has come out as a result of such legislation with reference to such statutes and offences there under and it came to

be realized that diluting of the mens rea was the only remedy. In other words, resort to strict liability doctrine, once again, became the need of the day.

"This development," according to Sayer "is not the unnatural result of two pronounced movements which mark the twenteenth century criminal administration e.g.

(i) The shift of emphasis from the protection of the individual interest which marked the ninteenth century criminal administration to the protection of public and social interest.

(ii) And the growing utilization of the criminal law machinary to enforce not only the true crimes of the classic law, but a new type of twenteenth century regulatory measures involving no moral deliquency[25].

(F) STRICT LIABILITY AND CRIMES:

To others, the new category of offences are offences of strict liability, but again it is hardly a complete description of this new category of offences because these also include offences where the necessity of mens rea is only partially excluded. To call these as regulatory offences is similarly not appropriate because these offences involve certain offences in which there is absolute prohibition and not mere regulations.

Glanville Williams[26] , has reffered to crimes requiring mens rea, crimes that can be committed by negligence and crimes that do not require any kind of legal fault. It is third category of crimes which he has called crimes of strict liability or absolute prohibition and according to him the necessity of mens rea or negligence is wholly or partly excluded therein, but legal history has recognized such third category crimesfrom the earliest times in cases of constructive murder, manslaughter and it was not until the later part of the nineteenth century that strict responsibility came to be revived on a large scale through the literal construction of acts of parliament and other legislations[27].

Even Williams has recognized in the context of "Public Welfare Offences" or "Regulatory Offences" that to use these expressions is easier than to say exactly what they mean. All crimes are, in a sense, public welfare offences. The chief crimes that appear to have come with in the narrow meaning of this phrase in England are, the sale, etc of certain articles of inferior quality or at excessive prices, and certain acts incidental there to, keeping unlicenced mental homes, possessing fictitious stamps, failing to provide

safe conditions of work, and certain offences connected with road traffic. There is no gurantee that this list is exhaustive, for the courts may add to it at any time[28]. This view is, if at all, only reinforced from what Hall, the noted American jurist has observed. According to Hall, "The meaning of strict liability is derived by opposing it to liability for fault. In problems relevent to criminal law, strict liability means liability to punitive sanctions, despite lack of [illegible][29]."

Thus strict liability is an element of criminal law rather than of only a special category of offences and the mere fact that it is more prominent and pronounced in the context of socio-economic offences would not enable us to label these offences only as the strict liability offences.According to Hall himself the decisions set the foundations of strict liability which, starting as a minor aberration that was tolerated because it involved only right sanctions has since become a mighty structure whose effects, though hardly known, must certainly be very great.... strict liability has expanded so considerably in recent years and in such various forms, that it is impossible to generalise regarding[30] it. In the context of public welfare offences Hall has observed that 'quite apart from the

diverse major crime that have been brought with in this sphere.´It is difficult to recognise common features in the so called public welfare offences.

First,many of the enactments apply not to the general public but only to certain traders, particularly to suppliers of food or drugs and vendors of alcoholic beverages. Others, having more general applications as to potential offenders, are restricted to very few activities.... the operation of automobiles, safety of highways, hunting, fishing and various health measures. Next, many of these regulations and the conditions of confirming to them presuppose continuous activity, such as carrying on a business. This implies that general standards regarding such conduct are important rather than isolated acts. Third, the public welfare enactments to an intricate economy, including an impersonal market. Although analogous to control dates at least from the gilds, violation under condition of trade prevailing in primary groups are more readily recognized as immoral. Then, fourth, the modern regulations are not strongly supported by mores era. There observence doesn´t arose the resentment directed at the perpetrators of traditional crimes[31].

We may consider the matter in which ever context we might like, it would not be proper to call the offences of this newer forms of criminality either as strict liability offences or Public Welfare Offences or Regulatory offences or even White Collor Offences. Such a discription would be inchoate, incomplete and faulty; rather, considering that these offences are born mainly of the trade, profession or business and always involve an element of money and also considering that in course of time these have engulfed the entire elite of the society would not admit of any other no men culture to correspond properly to these offences. Even otherwise the term of socio-economic crimes is an all embracing term and has widest possible connotation so as to include in it all economic offences, be they committed by traders, manufacturers or businessmen or by men in professions or men in public service and other position of authority, or other persons belonging to the middle class or elite class of the socity[32].

Similarly it is wide enough to include all offences, whether calculated to prevent or obstract economic development of the country and endanger its economic health, or misuse of their position by public servants in making of contacts and disposal of public

property, or issue of licences and permits and similar other matters, or delivery by individuals and industrial and commercial undertaking of goods not in accordence with agreed specifications in fulfilment of contracts entered into with public authorities,or profiteering, black marketing and hoarding, or adultration of food stuffs and drugs, or theft and misappropriation of public property and funds, or trafficking in licences and permits, or smuggling and violation of foreign exchange regulation, under - invoicing and over-invoicing, or violation of standards, weights and measures, or malpractices incorporate companies of share pushing, administration and frauds, or professional misconducts, or bribery and corruption of public servents and other persons in authority[33].

All these aberrations are born of greed, avarice and repaciousness and are a peculiar feature of persons of responsibility and high social status in an acquisitive and affluent society, and they all affect not only the health and material welfare of the individuals, but also the economic structure and social fabric of a nation. Like wise, they are all committed in the course of one's trade, business or profession and deliberately and wilfully without any emotional background or mens rea. The term socio-economic crimes covers a wider

spectrum and would include all public welfare offences. Regulatory offences and White Collor Crimes[34].

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CHAPTER II

CHAPTER II

(A) CONCEPT OF PUBLIC WELFARE

The contemporary state is a transition from police state to welfare state. The concept of public welfare systems from the doctrine of Welfare state where state is responsible for the good of the people. In every set-up of governnance it is the good of the people which sets an agenda of betterment and empowerment of the people at large by the governing dispensation.

The socio-economic offences, affecting as they do the hea lth and wealth of the entire community, require to be put down with a heavy hand at a time when the country has embarked upon a gigantic process of social and economic planning. With its vastnes in size, its magnitude of problems and its long history of poverty and subjugation, our welfare state needs weapons of attack on poverty, ill nourishment, and exploitation that are sharp and effective in contrast with the weapons intended to repress other evils. The legislative armoury for fighting socio-economic crimes, therefore, should be furnished with weapons which may not be needed for fighting ordinary crimes. The damage offences to a developing society could be treated on a level different from ordinary crimes. In a sense, anti-social activities

in the nature of deliberate and persitent violations of economic laws could be described as extra-hazardous activities and it is in this light that we approach the problem.[1]

Since the casualty is the nation's welfare, it is these offences which really deserve the name of 'Public Welfare' Offences.[2]

Long ago, Sayre' cited and classified a large number of cases of 'Publlic Welfare Offences' and concluded that they fall roughly into Subdivisions of (!) illegal sale of intoxicating liquor, (2) sales of impure or adulterated food and drugs (3) Sale of misbranded articlles, (4) violations of antinarcotic Acts, (5) Criminal nuisances, (6) Violations of Traffic Regulations, (7) Violations of motor-vehicles laws, and (8) violations of general police regulations, passed for the safety health or well-being of the community.[3]

(B) NEED FOR WIDEENING THE COONCEPT OF PUBLIC WELFARE OFFENCES

The time has come when the concept of'Public Welfare Offences' should be given a new dimension and extended to cover activities that affect national health or wealth on a big scale. Demand of the economic prosperity of the nation have brought into being risks

of a volume and variety unheard of, and if those concerned with the transactions and activities in this field were not to observe new standards of care and conduct, vital damage will be caused to the public welfare. In the field of health. For example, the wide distribution of goods has become an instrument of wide distribution of harm. When those who disperse food, drink and drugs, do not comply with the prescribed standard of quality. Integrity disclosure and care, public welfare receives a vital blow. In the economic field, again, freshly discovered source of harm require the imposition of a higher type of precautions, without which there would be vital damage to the fabric of the country and even to its very survival.[4]

(C) PUBLIC WELFARE OFFENCES AND STRICT LIABILITY:

In modern times the principle of strict resposibility is more noticeable in 'Public Welfare Offences'. Public welfare offences are statutory offences of minor character involving minor punishment. They are offences connected with sale of adultrated food or drugs or offences of possession or offences connected with road traffic or offences against customer's Rules and Foreign Regulations.

There is a presumption that doctrine of mens rea applies to all crimes including statutory crimes. But this presumption is liable to be displaced either by the words of the statute. Creating the offence or by the subject-another with which deals and both must be considered *(Sherras v/s De.Rutzen (1895)*[5].

In England under the title 'Public Welfare Offences'. Williams, G[6].; has included the offences relating to sale etc. of certain articles of inferior quality or at excessive prices and certain acts incidental there to, keeping unlicenced mental houses, possessing fictious stamps, failing to provide safe conditions of work and certain offences connected with road traffic. However, he has conceded that this list is not exhaustive.

More than hundred years ago an English court held a retail dealer guilty of having adultrated tobocco in his possession despite the fact that he had purchase it in the regular course of thatand neither know nor had any reason to suspect that if was adultrated. The statute on which the procecution was brought recited the common practice of using substitutes. It said nothing about knowledge or intent to adultrate the product or even negligence in discovering the adultration.

Hence it is significant that in reversing the dismissal of the procecution by the Magistrate in *Reg v. Woodrow, Pollock.C.J.* said, "So you are wilfully disobeying the Act of Parliament, if you do not take due pains to examine the article which you deal[7]." It being noted that this "might require a nice chemical analysis[8]" he replied that it must get someone to make that nice chemical analysis is conducted.

The defendant was bound to take care ..... In reality a prudent man who conduct this business will take care to guard against the injury of complainent[9]. Deron Parion added, it is very true that in particular instances an innocent person may suffer from his want of care is not examining the tobocco but the public convinence would be much greater, if in every case the officers were obliged to prove knowledge. They would be very seldom at least to do so. The lagislature have clearly made it in plain wrongs[10].

A few years later, a Massachusetts Court upheld a conviction for selling adultrated milk although, again the defendent was not at fault. The court emphasised the language of the statute the fact that the penality was a fine : the impracticability of requiring proof of knowledge, the importance of protecting the community

against the common adultration of food : and the reasonableness of imposing the risk upon the dealer and thus holding him "absolutely liable[11]." (*Common Wealth V. Farren 91 Mass 1864*) These decisions set the foundations of strict liability which starting as a minor aberration that was liberated because it involved only slight sanctions has become mighty structure whose effects must be great. There is nothing that need shock of any kind in the payment of a small pecunary penality by a person who has done reluctantly something detrimental to the public interest (Wills) in *Reg v. Tolson*[12]. The supporting arguments have continued precisely to be those enunicated in the above early cases.

The history of this body of case law reveals considerable reluctance on the judges part to concede the irrelevence of mens rea and to engage in dubious dogmatics distinguishing " Civil Penalities" from punitive sanctions and "Public Wrong" from crimes. Thus a century after Woodrow, Wrighty J inquashing a conviction for preffering liquor to a Constable on duty observed. It is claim that if mens rea is not necessary, no care on the part of the constable could save him from conviction (*Sherras V. D.Rutzen 1895*[13]).But with rare exceptions which definitely established that mens rea is

not essential in public welfare offences, indeed that exceptions has a very high degree of care is irrelevent. The fact of the *Sherass v/s Rutzen* are as follows : "On July 16,1895 the police constable in question, being on duty entered the appellant's house and was served with liquor by the appillant's daughter in his persence. Prior to entering the house police constable had removed his armlet and it was admitted that if a police constable is not wearing his armlet, that is an indication that he is off duty. He was a frequent visitor to the appellent's house.Neither the appellent nor his daughter made any inquiry of the police constable as to whether he was or was not on duty but they took it for granted that he was off duty in consequence of his armlet being off,and served him with liquor under the belief.The appellant was prosecuted under section 16(2) of the licenceing Act, 1872 for having unlawfully supplied liquor to a police constable on duty without the authority of a superior officer of such constable."

Thus a seller of a cattle feed was convicted of violating a statute forbidding misrepresentation of the percentage of oil in the product, despite the fact that he had employed a reputable chemist to make the analysis

and had even understood the chemist findings. The limitations that might have been inferred from the remarks of Pollock. C.J. in Woodrow words ignored Alverstone.C.J. only remarked : This is a hard case.....*(Laird V. Doboll 1906)*[14].

So too it has been held that butcher who innocently and without negligence sold meat of a dead animal violated the statute and that the provision for imprisonment as are one of the sanctions didn't alter the irrelevance of mens rea[15]. It was suggested that if it required an expert to discover latent imperfections one who engaes in the meat business must incure that expense[16] although seen above, liability might be imposed nonethless[17].

In the United States, there has been a great accumulation of authority, following the early Massachusetts case noted earlier, including and beyond an important Supreme Court decision holding a corporate officer guilty of shipping adultrated food in the inter state commerce, although he had no knowledge of the facts : Was not guilty of any fault whatever, and so far as appeared, operated his business in a skillfull and carefull manner[18]. *(United States V. Datter Walch 320 U.S 377)*

Strict liability has expanded so considerably in

recent years in such various forms that it is impossible to have a generalization regarding it. Quite apart from the diverse major crimes that have been brought with in this sphere, it is difficult to recognize the common features in the so called public welfare offences. These includes e.g. the sale of narcotics, the sale of adultrated food, the possession of transportation of gambling devices, the transportation of intoxicating liquors, the sale of liquors to habitual drunkards, traffic offences, rotations of buildings regulations and a great additional miscellany that can hardly be placed in any classification. The penality is generally small but that is also true for violation of statutes and regulations which are not subjected to strict liability.

Despite this divergence, it is possible to hazard certain mere significant generalizations regarding public welfare offences.

First[19] ; Many of the enactments apply not to the general public but only to certain traders, particularly to suppliers of food or drugs and vendors of alcoholic beverages. Others having more general applications as to potential offenders are restricted to very few activities the operation of automobiles, safety of highways, hunting, fishing, and various health measures.

Next may be of those regulations and conditions of confirming to them presuppose a continuous activity such as carrying on a business. This implies that general standards regarding such conduct are important rather than isolated acts. Third, the public welfare enactments are relatively low. They represent relatively recent adoptations to an intricate economy including an impersonal market. Although analogous control dates at least from the guilds, violation under conditions of trade prevailing in primary groups are more readily recognized as immoral. Then fourth, the modern regulations are not strongly supported by the.... verses. Their occurence don't arose the resentment directed at the prepration of traditional crimes. Accordingly, although Ross Alequnt denunciation of food adultrators may have much merit[20] it arises at little convictions because sustaining mores are lacking. The above common attributes of large segments of the minor offences which are subjected to strict liability indicates that this law was constructed to meet, now, important social problems, they also help us to understand now strict liability came to be accepted, but they do not prove any justification of penal liability at the recent time[21].

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CHAPTER III

CHAPTER III

A. STRICT LIABILITY IN STATUTORY OFFENCES: ECLIPSE OF *MENS REA*

In England, the common law doctrine of *mens rea* was not taken into consideration in many statutory offences. Several justifications have been advanced for this departure from the classical principle.[1]

Generally speaking, these statutes do not require mental element for the conviction of the ac cused. This statement was made by Dr. Stally brass in his article *"Eclipse of Mens rea"* in 1936.[2] It indicates that the general doctrine of *mens rea* suffered a temporary eclipse, because in many statutory offences it was not required.

The starting of Strict Liability is said[3] to be the English case of Woodraw[4] where a licensed tobacco dealer was convicted of having adulterated tobacco in his possession even though it was proved that the tobacco had been adulterated in the course of manufacture and that the dealer who bought it in good faith neither knew nor had any reason to suspect the adulteration.

Comtemporaneously but independently the same judicial attitude towards statutory offences of

regulatory nature developed in U.S.A. also. Sayre says that the - American development starts with Barnes V. State[5] in which it was held that the offences of selling liquor to a common drunkard was committed even if the seller did not know that the buyer was a common drunkard.

The Strict liability at this stage was generally found in what may be called "moral crimes". Such as bigamy, adultry and statutory rape, etc. Thus, a man may be convicted for bigamy although he reasonably but mistakenly believes his first wife to be dead, the defendant can be convicted of adultry although he might reasonably believe that he is having sexual relations with an unmarried woman.

In the latter half of the 19th century the policy of legislature in England moved towards a more minute regulation of social life by the creation of many non-indicatable offences carrying a relatively light punishment and defined in the statutes with greater emphasis than had formerly been the practice. The result was that the courts were more inclined to have regard solely to the wards of the statute without importing the common law requirement of [illegible].[8] This development it absolutely clear in RV Prince I in which the accused reasonably believing her to be over the age of 16 years

had taken a girl who was infact below that age out of the possession and against the will of her father. His conviction was upheld.

In 1899 a man was held liable for selling adulterated milk although the adulteration had been affected, by a dishonest strange against whose acts he had no means of profe ting himself.[10]

In a little over a century this new doctrine that *mens rea* forms no part of the definition of a regulatory offence, has gone from strength to strength. At the present day it embraces a vast area of law of immediate concern to almost every member of the community capable of incurring criminal responsibility.

The draftsmen of American law Institutes Model Penal Code, merely by way of giving "some indication of the range"[11] of Strict liability in the modern times, cite cases from the U.S.A., England, Canada and Australia to illustrate forty-two district types of offences within its scope. A depth study of Wisconsin in 1956[12] revealed that of 1,113 statutes creating criminal offences which were inforce in 1953, no less than 660 used language in the definitions of the offences which omitted all reference to a mental element, and which therefore, under the canons of construction which have

come to govern these matters, left it open to the courts to impose Strict liability if they saw fit. The Wisconsin study also shows that the greatest extent of language omitting all references to a mental element in the definitions of offences was found in areas of administrative regulations of society in which modern legislature enacts a lot of laws. Such a concentration is found at the tension points of modern society, Business regulations, health and safety and conservation of resources for planned features.

Sayre pointed out that since liability arose in the context of certain social conditions it was therefore justified by those conditions. The decisions permitting convictions of light police offences without proof of a guilty mind came at the time when the demands of an increasingly complex social order required additional regulations of an administrative character unrelated to the questions of personal guilt. At the same time there was amove away from individualism to collectivism.

Prof. Sayre rightly remarked that "the interesting fact that the same development took place in both England and the United States at about the same time strongly indicates that the movement has not been merely an historical accident but the result of the changing

social conditions and beliefs of the day".

Dean Roscoe Pound was of the view that Strict liability for regulatory offence is based on "the social interest in the general security".[13] He also stated, "The good sense of courts has introduced a doctrine of acting at one's peril with respect to statutory crimes which expresses the needs of society".[14]

B. INCORPORATION OF STRICT LIABILITY UNDER SOCIO-ECONOMIC OFFENCES

The principle of strict liability has been embodied in various kind of socio-economic offences. The very nature of crime has given rise to this principle. One reason which can be conveniently ascribed to this fact is that the socio-economic offences are new form of criminality in which upper and middle class people are involved and is committed by them in the course of their occupation, *Sutherland* has named these crimes as "White Collor Crimes". These offences are often been described as Public Welfare Offences, Regulatory Offences and Crime Of Strict Liability. Under such crime the welfare of public and social fabric society generally remains at stake. This form of criminality has spreaded all over the world in different degrees. The incidence and magnitude of such offences is much greater in developed

countries than in developing countries. Even the under developed countries are not free from this rea.

Traditional crimes have been a parrellel phenomena since the dawn of human civilisation. Scientific and technological advancement has accelerated the pace of this new form of criminality commonly known as socio-economic offences.In other words one can say that socio-economic criminality is the product of industrial revolution. Nevertheless renaissance and reformation also have contributed to the emergence of these crimes. The fear of God was lessened in favour of money and material things. The strive for a better standard of life, gradually given rise to new pattern of criminality. The ethics and moral values were thrown away in pursuit of money and all kinds of frauds, misrepresentation came to be committed by the people in the course of their trade, commerce, business and profession. The theory of natural right and policy of laisez faire restrained the state from interfering in the material pursuits of the individual. Consequently this new[15] criminality multiplied many times and indulged the whole world.

'Socio-economic offences' can be conveniently be defined as those crimes which either affect the

health and material welfare of the community as a whole or the country's economy. These are committed not by low class people but invariably the middle class and the elite of the community, most often during the course of their occupation e.g. trade, profession, commerce, or business. It seems desirable here to have browsing through the characteristic features of this type of crime. These are enumerated hereunder:

(i) The socio-economic offences are considered grave wrong than traditional offences because they affect not only the health and material welfare of the individual but also the economic structure and social fabric of a nation.

(ii) Unlike traditional offences, socio-economic offences are committed by middle class and upper class people of the society in the course of their trade, business or profession.

(iii) In traditional offences,the motive behind the commission of such offences are hate or lust etc., while in socio-economic offences the motive is greed for money.

(iv) Socio-economic offences are committed by way of fraud, misrepresentation etc., rather than force and the act is deliberate and wilfull.Thus socio-

economic offences are not committed by emotions.

(v) Traditional offences are out come of guilty or criminal mind while socio-economic offences are the product of corrupt mind.Thus corruption is the root cause of this new criminality.

(vi) In reference to a common man, socio-economic offences do not carry with them any stigma.On the other hand the traditional offences are considered carrying stigma involving disgrace and immorality.

The characteristic features alongwith the compare and contrast with that of traditional crime leads us to comprehend various categories of offences. The authors have expressed near unanimity regarding these broad heads under which the socio-economic offences can be studied from the view point of strict liability. Thus it follows:

(i) Evasion and avoidance of lawfully imposed tax.

(ii) Adultration of food stuffs, drugs and cosmetics.

(iii) Racketeering, profiteering,black marketing and hoarding.

(iv) Bootlegging and violations of anti-narcotic legislations.

(v) Smuggling, under-invoicing,over-invoicing and violations of other foreign exchange regulations.

(vi) Violations of standards, weights and measures.

(vii) Violations of rationing and guest control orders.

(viii) Trafficking in licenses, permits and quotas.

(ix) Embezzlement, misappropriation and frauds and other malpractices including sharepushing, monopolistic controls in the administration of corporate and other bodies.

(x) Bribery, corruption,favouratism and nepotism in public services and by persons in high authority.

(xi) Violations of specifications in public Property and theft, misappropriation and frauds relating public property.

(xii) Professionl misconduct and;

(xiii) Other miscellancous offences calculated to prevent or obstruct the economic development of the country and endanger its economic health.

C. SOCIO-ECONOMIC LEGISLATIONS IN INDIA

The origin and development of socio-economic offences in India dates back to 1947. At the time of independence the country was gripped with many problems. As a natural sequal to this the planned development started in order to fulfill the requirement of the people as given in the preamble of our Constitution. The post independent India soon realised the need to revamp

criminal law and criminal justice system. Indian Penal Code of late learnt not to be of much use due to rise of socio-economic crimes. It necessitated for masive codification and legislative endeavours. Some of the prominent legislations are described hereunder: (1) The

(1) Drugs Control Act 1940.

(2) The Prevention of Corruption Act 1947.

(3) The Dangerous Drugs Act 1954

(4) The Essential Commodities Act 1955.

(5) The Arms Act 1969.

(6) The Foreign Exchange Regulation Act 1973.

(7) The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974.

(8) The Preventive Detention Act 1980.

An analysis of the socio-economic legislations along with the case-law has been undertaken. Some of important laws on the subject has been delineated in the pages to follow:

1. The Drugs Act 1940

In *Indian Process of Chemical Laboratory V. Drug Inspector, Madras,*[16] the accused were held liable under section 18(a)(i) if the Drugs Act for having supplied tincture Digitalis of a sub standard quality,meant for patients suffering heart attacks. Rama Swami J.who

delivered the judgement in appeal observed.

> As the object of the statute in creating strict liability is an imprative one under the said section, intention to do the prohibited act which is made penal by the statute is not required.

In [17] an other case where the charges against a person dealing in drugs were that he had (Olive oil) which on testing and analysing was found to certain arches oil. The person had sold the misbranded drug with botles of olive oil representing them to certain olive oil of medicinal quality. He was held guilty under section 27 of the Drugs Act for heaving contravened statutory prohibitions.

2. THE PREVENTION OF FOOD ADULTRATION ACT 1954

The social purpose of the prevention of Food Adultration Act is the elimination or dilution of the requirement of *MENS REA*, which is otherwise the cornor stone of criminal jurisprudence. For imposing strict liability for the act done is a device used for quite sometime - in the area of legislation aimed at fighting the wrong jeoparding public welfare.

The justification for prefering strict liability

to [illegible] in cases of food adultration is well understood in terms of support being lent to the society infighting that menace which has been threating the health of the nation. THe legality for such an attitude rests on the fact that the antisocial and anti-national conduct fraudulently selling stuff seems to breed mistrust among the citizens and to that extent it tends to weaken democracy governed by the rule of law.[18] It appears that the courts are much inclined to enforce the provisions of the Food Adultration Act effectively. In State V. Kamdhuzver[19] the accused was prosecuted and convicted by the Magistrate for selling adultrated milk to the food Inspector, Surat.

Similarly, where, the accused, a wholesale merchant had stored adulterated and misbranded bags of paper and had been labelled to show the standard of quality of paper. All the bags bore the name of the city Calcutta and from these facts, it could be presumed, that the accused who had admittedly been an exportor had packed paper, for purpose of exporting it to Calcutta, in the course of sale. The accused did not produce any evidence to rebut the presumption, and even when questioned at the trial, he did not say that the paper was kept for garbling and not for sale. It was held that the said paper was meant for sale. For it is

essentially, the sale of adultrated food that the act seeks to prevent and for the purpose of making effective provision to the end, it not merely prohibits the acts of sale but also manufacture, storage and distribution; leading to Sale.

In *Food Inspector Kashi Kode V. V.F. kumar.*[20] It was held that the purchases even it be for a purpose of analysis, does not cease to be a sale and that the accused did sale adultrated tea to the food Inspector, who paid for the samples, purchased by him.

The Supreme Court has further expanded law, relating to adulterated Food. In *M.V. Joshi V. V.M.V. Sampi*,[21] where the quality or purity of Butter fell below the standard prescribed by the rule amounted to adulteration within the meaning of Section 2 of the Act. If the prescribed standard is not attained, the statute treats such butter by fiction as an adultrated food, though in fact it is not adultrated.

In yet another case, *Sachindan V. Distt Board, Midnapur*,[22] the accused was convicted merely for taking delivery consignment of adulterated mustard oil, at the railway station for the purpose of selling it, even though he never had opportunity of exaning them. It was held that the moment the person took delivery of the

goods, it was understood to have been stored for sale. Yet entirely different type of circumstances also lead to conviction in offences relating to sale.

It was held in [illegible] that the substance adultrated need not be poisonous or injurious as the object of the Act is to the that the substance sold is not mixed with any after thing, prohibited by law. Hence the plea that the adultration was not prejudicial to health but only added to appear more attractive to the buyer could not be substained.

Generally, it is taken to mean that the article when, on analysis; is found below the prescribed specifications, the quality or purity of the article would naturally come below the prescribed standard within the meaning of S.2(1) of Food Adultration Act 1954.

In case of *Palghat Muncipality V. S.R. Mill S.C* . the court has incorporated the newer approach in dealing with socio-economic offences in as much as it has reterated the need to understand the object of the Act through the external aid like bill etc. And to adopt such meaning of the law as would be beneficial to the intention of the legislation in furthance of its object rather than to depend upon technicalities which may frustrate the legislative attempt to the advantages of

socio-economic offender. Justice Pillai, has emphatically pointed out the need for establishing a co-relationship between the duties of the businessman and the rights of the consumer, who is always the victim in case of socio-economic clamities.

He has observed thus:-

> There are several rights, such as rights to safety, right to be heard right to know, and right to fair agreement evolved in consumerism.[23]

Further according to him:

> The most important rights in consumerism is the right to safety and in our country it was recognised in the Prevention of Food Adultration Act.[24]

Then the problem as to how to balance the newer right with the older concept which govern the liability in criminal cases. A blind adherence to the strict liability doctrine may lead to unjust results. Therefore, the courts have adopted a policy of bifurcating the issue of liability into the spheres two spheres.

(i) Where culpability can be fastened on the basis of strict liability even though the absence of

[illegible] is completely established, and

(ii) Even though the strict liability may be fastned, the penal liability to negatived. Thus in *R.C. Pannami* **V.** *State of Maharashtra*[25] the appellants had purchased food article from a licence manufacturer which was found to adulterated and held guilty accordingly. As a defence he pleaded that he was merely distributing the eatables which was originally purchased by the licence manufacturer so as enable him to escape liability. But appellant failed in his contention. The Supreme Court did not relax the standard of strict liability.[26]

The court observed:

> If a vendor would be permitted to have a defence by stating that the vendor, purchased the goods from a licensed manufacturer, distributors dealers, adultrated or misbranded articles would be marketed by manufacturers, distributors dealers, as well as purchased from them with impurity. And Vendor should not be deemed to have committed an offence pertaining to the sale of any adultrated or misbranded article of food proves that he purchased the article from any manufacturer with a writen warranty in the

prescribed from these provisions are designed for the health of the nation.

Therefore, a warranty is enjoined. No laxity should be permitted. Judicial attitude has viewed crimes of food adultration in the light of prevention of health of the nation. In *Jagdish Prasad* V. *State of Bihar*,[26a] the Supreme Court, has regarded the health of nation as touch stone of social control. The court has laid down the guideline for understanding the nature of the wrong which affects the public at large on vital matters.

According to the court:

> It must be a thing essential for the certain of the community when crystalised it is supplied when sublimated it is serviced. It depends in most cases on teh angle from which you view and lens you use food is supplied so as shipping and wagons kerosene and gasoline and yet they are services.

Judicial attitude is no longer soft towards such antisocial acts as food adultration. Thus in *Bankat Lal V. State of Rajasthan*.[26b] The district Magistrate had used the extreme weapon of detaining the trader under the Maintenance of Internal Security Act 1971, to prevent him from continuing food adultration activities.

Rejecting the petitions, the court remarked that the preventive action as distinguished from the punitive one for such acts lay on the ground that an activity of the kind of adultration, was justified, because it was prejudicial to the interest of essential to the life of the community the extreme action of detention is not co-warranted against person who engage themselves in such activities.

P.K. Tejani V. M.R. Danco[27] which is a trend setter decision of Supreme Court. It was a case under section 7 of the Act dealing with the prohibition of manufacture, sale etc. of certain articles of food. The supreme court quite vividly stated that section 7 casts an absolute [28] obligation regardless of bad faith and [illegible]. If somebody has sold any article of food in contravention to any of the provisions in the sub-section, he must be guilty.[29] The appellant[30] did not challange the fact of adultration, rather he said that the article in question was not meant for human consumption, but was meant for Pooja and therefore, he should not be liable for selling adultrated article of food. It appears that the lawyers in the country are lying to dilute the rigour of absolute liability by exploiting the religious sentiments of the community. The prosecution failed to prove that the article in

question was meant for human consumption. Naturally then the court had to give the benefit of doubt. The observation of Justice Beg are remarkable:

> It is true that [illegible] in the ordinary or usual sense of the term is not required for proving the offence defined by section 7 of the Prevention of Food Adultration Act, 1954. It is enough if an article of adultrated food is either manufactured for sale, or stored or sold or distributed in contravention of any provision of the Act or of any rule made there under. Nevertheless, the prosecution has to prove, beyond reasonable doubt, that what was stored or sold was food ..... in use of article sold was not contrary or irrelevant.. It is more correct to say that it is presumed from the nature of article itself or the circumstances and manner of offencing it for sale, where circumstances raise a genuine doubt on the question whether what kept by a seller was "food" at all, this must be resolved by evidence in the case. After all if what is stored or sold in a shop was neither "Food nor meant to be to used could a person be prosecuted on the ground that he sold

it is an adultrated condition. Hence where section 7 prohibits manufacturer sale or storage or distribution of certain, types of food it necessarily denotes articles intended for human consumption as food. It becomes the duty of the prosecution to prove that the article which is the subject matter of an offence is ordinary used for human consumption as food whenever reasonable doubts arise on this question. It is self evident that certain articles, such as milk or bread or butter, or food grains or meant for human consumption as food. These are matter of common knowledge. Other articles may be presumed to be meant for human consumption from rep resentation made about them or from circumstances in which they are offered for sale".

The `Pooja' argument appeared again in case of *State of Kerala V. Rajappan Nair*.[31] This time it met a very serious condemnation by the hands of Kerala High Court. The "Pooja article was turmeric powder ( ) so commonly used in Hindu ceremonies. The High Court said:

The Prevention of Food Adultration Act prohibits the sale in an adultrated condition of an article which is food under the Act. An

article is food if it satisfies the definition of food under the Act. A standard has been fixed for an article and its sale is prohibited under the rules framed under the Act. If it 'food' under the Act it is immaterial it is not used as such, in particular areas of its use as food confined to particular class of persons. An article which is food does not lose its character as food by the fact that it is also used or sold other purposes. If an article is a food it is not a defence in a trial under the Act that there was an agreement between the vendor and the customer that it would not be used as food. Putting a label on the container that the article is sold for other purposes and not as food is no guarantee that an article which is food will not be used as such by purchaser and it will not escape the Vendor from liability under the Act for sale of adultrated food.

Thus where the accused sold from his provision shop turmeric powder in packet with a la bel that it is meant for 'Pooja' and the same was found adultrated, the accused could not escape from

liability under the Act on ground that he did not deal it as food.

In *State of Orissa V. K. Rajeshwar Rao 1991 S.C.*[32]

The Supreme Court held that Prevention of Food Adultration Act, 1954 is a welfare legislation to prevent health hazards by consuming adultrated food. The *MENS REA* is not an essential ingredient. It is a social evil and the Act prohibits commission of the offence under the Act. The essential ingredient is sale to the purchaser by the vendor . It is not material to establish the capacity of person *VIS* the owner of the shop to prove his authority to sell the adultrated food exposed for sale in the shop. It is enough for the prosecution to establish that the person who sold the adultrated articles of food had sold it to the purchaser (including the food inspector) and that the food inspector purchased the same in strict compliance with the provision of the Act.

A perusal of the above cases show a string tendency of the court regarding the strict liability principle. Food adulteration as a part of socio-economic offence has assumed grave proportion. The social interest underlying in the health and well

being of the nation deserves strongest protection. The deterimental effect of adulteration to human health necessitates that *mens rea* as a principle of traditional criminal law be done away with. Imposition of strict liability seems to be only alternative to check the menace of adulteration. The judicial exuberence in the field is worth praise.

3. THE OPIUM ACT 1878:

Under the scheme of Act, the mere possession of opium invites condemnation. Under section 9 of the Act, a person is strictly be held liable if he possess opium. Similarly person associated with transportation[34] will also be strictly liable. Opium being dangerous to human health the law prohibits the consumption and sale of it.

4. THE ESSENTIAL SUPPLIES (TEMPORARY POWERS) ACT, 1946

Similarly, cases under section 7 of the essential Supplies (Temporary power) Act, 1946 also embodies the principle of strict liability which reads:

> The central government so far as it appears to it to be necessary or expedient for maintenance or increasing supplies of any essential commodity or for securing the equitable

distribution and availability at fair prices may be notified by order for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

In *Manu Aiyer*[35] where a person was accused under S.3(1) of the Essential Supplies (Temporary power) Act, for contravention of clause 14 of the Indian Cloth Dealers Control Order, it was held that the doctrine of *mens rea*, which is the second essential ingredient of crime is wholly out of place in construing offences falling under the Act. Modern statute creates a large number of offences which are absolute, in the sense, that as regards the act as if, as sufficient *prima facie* proof, and presence are held to peripheral factors in construing such crimes.

Similarly where the accused is found to have made a false declaration of the stock of rice and paddy, flase to his knowledge too, no question of the want of *mens rea* arises, as the notification was issued with a view to maintain supplies and services essential to the life of the community and on the same basis the export of food grains without the permit is made a punishable offences where there is notification of the chief commissioner of the effect. In this case the driver and

cleaner of a particular lorry, was had no knowledge that it contained bags of prohibited rice and paddy. Lack of knowledge proved of no avail and court held him guilty of the offence[36] Likewise in [illegible],[37] the accused a licencee who sells rice issues receipts but fails to note their address or receipt is consider under section 7 of the act.

5. INDIAN EXPLOSIVES ACT, 1884

Under the Indian Explosive Act 1884 the intention of rule 81 is that the person holding the licences shall himself whether he is present or not on the licence premises, be responsible for whatever operations are carried on in connection with manufacture, possession or sale of explosive. He must see that the prohibition which is imposed by Rule 81 is not tempered within any way and when there is a contravention of the said rule the convention is rightly held under section 5(3) of the Act.[38]

The state of mind of a person or his knowledge or his intention is immaterial for the purpose of constituting an offence under section 5 and 6 of the Act. Therefore, stoking of prohibited explosive is punishable without any proof of [illegible].

6. THE ESSENTIAL COMMODITIES ACT, 1955

The convictions under S.7(1) of the Essential Commodities Act, 1955, for contravening clause 13(i) of the Calcutta Wheat (Movement) Control Order, 1955 and section 7 or the Essential Supplies (Temporary Power) Act 1948 for[40] contravening U.P. oil seeds and oil seeds products control order are held, the basis of liability being strict in nature.

7. THE DEFENCE OF INDIA ACT, 1939

In Srinivas Mal Bhairoliya V. Employer the appelants were convicted under the Defence of India Rule 1939 relating to control of prices. In this particular case, the second appellant was employed by the first who had entrusted him with the duty of allowing the appropriate quality itself to each retail dealer and nothing on the buyer licences the quality had received When the servant failed to comply with the statutory provision the master is liable as no question of [illegible] arises.

8. THE SHOP AND COMMERCIAL ESTABLISHMENT ACT 1947

Another set of decisions relates to the Shops and Commercial Establishment Act 1947. Section 10 of the Act makes obligatory on employer to keep his shop used on a weekly day. He cannot made the mandate of the law by

asking the members of his family to keep his shop open on holding and if a person does it, he is accordingly guilty. Section 10 applies to every person having charge of doing the business of the shop and every such person is under a legal obligation to comply with the provision of the Act, even though, he may not have an employee in the shop.[41]

In D.D. Verma V. State.[42] The appellant was convicted for breach of the rules of the C.P. Shops and Commercial Establishment Act 1947. The provision for the contravention of which he was convicted. Under the law the employer is required. Under the law the employer is required to maintain a register of employees and to exibit notice specifiying the daily hours of works and the days of the week. But the employer was found to continue the work even on holidays and allowed person employed to work. Thus he was strictly held liable.

9. The Indian Motor Vehicles Act 1956:

The provision in the Indian Motor Vehicle Act, 1956 also fasten the liability in an absolute manner. The offences created under the statute are governed by the principles of strict section 72 of the Act.

The state government may prescribe conditions for the issue of permits to heavy transport vehicles by the State or Regional Transport Authorities and may prohibit

or restrict the use of such vehicles in any area or route within the state. Section 124 reads:

> Whoever, drives or motor vehicle or causes or allows a motor vehicle to be driven in contraventions of any permit issued, contravention of any prohibition or restriction imposed under section 74 shall be punishable.

10. The Foreign Exchange Regulation Act, 1973

The Foreign Exchange Regulation Act (FERA) of 1973 is another piece of legislation which prescribes for strict liability principle for curbing economic offences. The preambular assertion goes on to say that Act consolidates and amends the law regulating certain payments, dealings in foreign exchange and seculities, transactions indirectly affecting foreign exchange and import and export of currency and bullions, for the conservation of foreign exchange resources and to protect the economic interest of the country. Section 49 and 50 of the Act incorporates strict liability in dealing with economic crimes. The sections are as under:

> Where under any provision of this Act any permission or licence has been given or granted to any person subject to any conditions and -

(i) such person fails to comply with all or any of such conditions; or

(ii) any other person abets such person in not complying with all or any of such conditions,

then, for the purposes of this Act,-

(a) in a case referred to in clause (i), such person shall be deemed to have contravened such provision; and

(b) in a case referred to in clause (ii), such other person shall be deemed to have abetted the contravention of such provision.

Section 50 reads as:

If any person contravenes any of the provisions of this Act other than section 13, clause (a) of sub-section (1) of section 18 and clause (a) of sub-section (1) of section 19] or of any rule, direction or order made thereunder, he shall be liable to such penalty not exceeding five times the amount or value involved in any such contravention or five thousand rupees, whichever is more, as may be adjudged by the Director of enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in

this behalf by order of the Central Government (in either case hereinafter referred to as the adjudicating officer).

Under this section, power of adjudication may be exercised by the Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcedment specially empowered in this behalf by order of the Central Government. Penalty under this section can be imposed upto five times the amount or value involved in the contravention or Rs.5000/- whichever is more. What the section prescribes is the maximum. When the section speaks of the maximum penalty, it is obvious that the authority has the discretion to impose any fine less than that also. The discretion which is conferred on the authority by the section has to be exercised in a judicial manner and the exercise of such discretion is a question of law. That being so appeal against it lies under section 54 of the Act. *Mens rea* is not an essential ingredient of offence under this section.[43]

The cardinal principle of criminal liability expressed in maxim *actus non facit reum nisi mens sit rea*, under the socio-economic offence occupy a peripheral space. Since the guilty intention does not

constitute a necessary ingredient of crime, the accused can be convicted on the proof of commission of Act. The rise of socio-economic offences in menacing proportion compelled the legislature to undergo massive drafting of laws. From the discussion, it is quite discernable that the law tries to safeguard public welfare by regulatory m echanism. It is under the background of public welfare and well being these laws were received well in society. The basis of these laws take unlike traditional crime do not lie in fault, vicarious, criminal liability principle (actus reus non facit reum [illegible]), rather in strict liability principle. The trend of change in favour of strict liability is a welcome step to regulate social welfare.

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CHAPTER IV

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(A) BURDEN OF PROOF IN STRICT LIABILITY OFFENCES:

It has been observed so far that strict liability cannot be justified because it may lead to the conviction of innocent persons. Legislature has taken this criticism seriously and hence tried to save innocent persons by the device of what may be called the "shifting of burden of proof". Thus, the accused can exculpate himself from the criminal liability by proving that he was not at fault.[1]

It seems reasonable, therefore, to have a rule for strict liability offences that if prosecution establishes a prima facie case, by proving the facts constituting actus reus of the offences charged, accused should be convicted unless he affirmatively established that the situation proved occurred without fau lt on his part.[2]. To establish absence of fault it should be necessary for accused to prove that he was not negligent in relation to the legal duty proved by prosecution. At first right this seems to put upon the accused the difficult task of proving a negative, but closer analysis of what the law would actually require it is easy to show that nothing of the kind is contemplated.

In majority of cases the basis of the charge against the accused will be either improper action on his part, such as selling something outside permitted hours, or an improper omision, such as failure to remove his automobile from metered parking spot after the permitted period of parking has expired. All that is required of accused is that he shows in either care that his behaviour, whether of omission or commision of both, was reasonable in the circumstances.[3] If the accused relies on reasonableness of his behaviour, there are three possibilities. He may argue on the basis either of the facts proved by the prosecution; or facts proved by the accused; or a combination of the two. In so far as the accused is not arguing from the facts proved by prosecution, he must prove the fact, material to his argument himself. Here again there is no reason for a departure from the usual rule, which is that wherever a burden of proof rest upon defendant to criminal proceedings, he is not required to establish any proposition more rigorously than upon the balance of probability.[4] Therefore, the accused should establish any facts on which he relies as showing that he acted reasonably upon the balance of probability.

(i) PRESUMPTION OF INNOCENCE:

Burden of proof is yet another important element of criminal law which deserves attention in the context of strict liability offences . Burden of proof in criminal cases means the duty to prove the guilt of the accused. Under the English Criminal Law, and Indian law is no different, burden of proving the guilt of the accused is always upon the prosecution, and until so proved, the accused is presumed to be innocent.[5]

This rule has always been considered to be sacrosnct and any effort to temper with it or undermine it has met with staunch opposition and abhored.[6] It has been reiterated every now and then it was not for the accused to prove his innocence, since his innocence is presumed and the prosecution must be obliged to prove his guilt and to prove it beyond all reasonable doubt further that prosecution could not succeed merely on the balance of probabilities. The benefit of even little doubt accrued to the accused and even in the matter of construing statutes, themaxim *odium crimen fiscale lege* (Construing penal statutes in favour of citizen) was more acceptable with the result that it came to be recognised that no man could be put to the peril on ambiguity. The prosecution cannot derive

any benefit from the weakness of the defence theory and suspicion, however, grave, cannot take plae of proof These rules and principles were adopted to ensure the protection of the liberty and life of individual.

Woolmington has observed in this behalf that "no rule ofcriminal law is more important than that which requires the prosecution to prove the defendant's guilt beyond reasonable doubt. In the first place this means that it is for the prosecution to prove the defendant's guilt and not for the latter to establish his innocence; he is presumed innocent until the contrary is proved. In criminal cases, the crown can not succeed on a mere balance of probabilities. IF there is a reasonable doubt whether the accused is guilty, hemust be acquitted".

According to Lord Sankay,[8] the principle that the accused must be presumed to be innocent unless proved to be guilty is the golden thread which runs through the fabric of English criminal law.

(b) SHIFTING OF BURDEN OF PROOF

But as painted out by Williams unhappily parliament regards the principle with indifference one might almost say with contempt.[9]

The statute book contains many offences in which the burden of proving his innocence is case on the accused. In addition, the courts have enuciated principles that have the effect of shifting the burden particularly in strict liability cases. The sad thing is that there has expediency for the departures from the cherished principle; it has been done through carelessnes and lack of subtlety.[10] What lies at the bottom of the various rules shifting the burden of proof is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand, and itis therefore, for the accured to give evidence on them if he wishes to escape. this idea is perfectly defensible and needs to be expressed in legal rules, but it is not the same as the burden of proof.[11] There is a clear difference between shifting the burden of proof, or risk of non-persuation of the jury, and shifting the evidential of burden of introducing evidence in proof of one's case.[12] It is not a grave departure from traditional principles to shift the evidential burden, though such a shifting does take away from the accused the right to make a submission. It may

in effect force him to go into the witness-box. Where the law shifts the evidential burden of the accused the prosecution need not give any evidence, or need give only slight evidence, on that issue, to be met with a submission of "no case". This means that the accused must, for his own safety, make some answer. All that the shifting of evidential burden does at the final stage of the case is to allow the court to take into account the silence of the accused or the absence of satisfactory explanations appearing from his evidence.[13] Hence if the accused gives some evidence consistent with his innocence which may reasonably be true, even though the court is not satisfied that it is true, the accused is entitled to be acquitted, for the burden of proof proper remains on the prosecution.

(B) STRICT LIABILITY AND JUDICIAL PROCESS:-

The [illegible] phrases [illegible]

The question whether the common law requirement of [illegible] must be imported into every crime defined in the statute even where it is not expressly mentioned.

In **R V. Prince[14] (1875) and R V. Toloson[15] (1889)** are the two land-marks decisions on the subject. The

conception of *mens rea* was introduced into the statutory offence by the Judges by means of constrution without any parliamentary sanction. There are two school of thought:

> One embodied in the judgement of Wright- J. In **Sheeras V. De Rutzen 1895**[16] that in every statute *mens rea* is to be implied unless the contrary is shown: and The second is that of Kannedy, L. J. In **Hobbs V. Winchestor corporation (1910)**[17] that you ought to construe the statute literally unless there is something to show that *mens rea* is required. Another view runs that *mens rea* is implied in certain statutes although there are no words in the statutes itself to show a recoginition of *mens rea* and judges should construe for it on their own authority.

For a better illustration of the subject it would be useful to discuss some of the cases in details.

The first of such cases is *R* **V.** *Prince* **(1885).** Henry Prince the prisoner was charged under section 55 of the offenses. Against the Person Act, 1861 for having taken one Annie Philip, an unmarried girl being under the age of 16 years, out the possesion

and against the will of her father. In England it is an offence to take or cause to be taken an unmarried girl, being under the age of 16 years out of the possession and against the will of her father or mother or any person having lawful gurdainship of her. It was proved that the priosner did take the girl out of the possession and agaisnt the will of her father and also that she was under 16 years.All the facts necessary to support the conviction existed except that the girl, though proved by her father to be 14 years old looked very much older than that and jury found upon reasonble evidence that before the defendant took her away she has told him that she was of 18 years and that the defandent bonafide, believed that statement and that such was reasonable.

It was contented that although section 55 of the statute under which offence was created did not insist on the knowledge on the part of prisoner that the girl was under 16 as necessary to constitute the offence, the common law doctrine of [illegible] should neverthless be applied and that there could be no conviction in the absence of criminal intent.

It was held that the prisoner believed that the girl was 18 year old is no defence. The following judgement by Black Burn J. deserver to be quoted.

In this case we must take as found by Jurry that the prisoner took unmarried girl out of the possesion and against the will of her father and that the girl was infact under the age of 16, but that the prisoner bonafide and on reasonable grounds , belived that she was above 16 viz., 18 years old.The question arises as to what constitute a taken out of the possesion of her father, not as to what circumtances might justify such taken as not been unlawful, nor as to how far an honest though mistaken belief that such circumtances as would justify the taking existed, might from an excuse, for as the case reserved we must take it as proved that the girl was in the possesion of her father and that he took her, knowingly that he tresspassed on the father's rights and had no colour of excuse for so doing.

The question, therefore, is reduced to this : what ever the words in section 55, that " who so ever shall take any unmarried girl, being under the

age of 16 out of the possesion of her father , are to be read as if he were been under the age of 16 and knowingly she was under that age". No such words are contained in the statute; nor is there. The word" malaciously" knownigly in other word used that can be said to involve a smiliar meaning.

The argument in favour of the prisoner must, therefore, entirly proceed on the ground that in general, a guilty mind is an essential ingredient in crime and that where a statute creates a crime, the intention of legsilature should be presumed to inclulde knowingly in the definition of the crime and the statute should be read as if that word were inserted unless the contrary intention apperars. We need not inquire at present whether the cannon of construction goes quite so far as above statute. For we are of the opinion that the intention of the legislature sufficiently appear to have been to punish the abduction unless girl , infact was of such an age as to ask her consent an excuse, irrespective whether he knew her to be too young to given an effectual consent and to fix that age at 16.

But what the statute contemplates and what I say is wrong, that he has taken of a female of such

tender years that she is properly called a girl and can be said to be in another's possesion in that others care or charge. No argument is necessary to prove that is enough to state the case. The legislature has enacted that if any one do this wrong act, he does it at own risk of her turning out under 16. This opinion gives full scope to the doctrine of *mens rea*. If the taker belived he had the fathers consent though wrongly, he would have no *mens rea*. So if he did not know she was in possesion nor in the care or charge of any one in these cases he would not known he was doing the act forbidden by the statute an act which, if he know she was in possesion and in care or charge of any one, was a crime. He would not know that he is doing an act wrong in it self, whatever, was his intention if done without lawful cause.

In this case distinction was drawn between acts that were in themselves innocent but made punishable by statute (Nulum Prohibitum) and acts that were intrinsically wrong or immoral. In the former as belief; a reasonable belief in the exercise of facts which if true, would take the care out of mischief of the statute, would be a good

defence, but in the later case such a belief was immaterial unless of course the law made it otherwise. The man who acted under such erreneous belief took the risk and shuold suffer the consequences.

The same principle has applied in other cases also. A man was held liable for assaulting a police officer in the excecution of his duty, though he did know he was a police officer why ? becasue the act was wrong in itself.

It seems to be impossible, where a person takes a girl out of her father's possesion, not knowing whether she is or is not under 16, to say that he is not guilty , and equally impossible when he believed that erroneously, that she is old enough for him to do a wrong act with safety. I think conviction should be affirmed.

Queen V. Tolson (188Ø) is another important case on the subject : In this case the prisoner was married to Mr.Tolson on Sep.11.188Ø.Mr.Tolson deserted her on Dec.13,1881. The prisoner and her father made inquiries above Tolson and learnt from his elder brother and from general report that he had been lost in a vessel bound for America, which went down with all hands on board.On Jan.1Ø, 1887,

the prisoner supposing herself to be a widow, went through the ceremoney of marrige with another man. The circumstances were all known to the second husband and the marriage ceremoney was in no way concealed. In Dec., 1887, Tolson returned from America. Thereafter, the prisoner was charged for offence of bigamy under section 57 of the Offence Against The Persons Act, 1861, for having gone through ceremony of marriage with in seven years after he had been deserted by her husband. The jury found that at the time of second marriage she is in good faith on reasonable grounds believed her husband to be dead.

Section 57 provides :

"Whoever, being married, shall marry any other person during the life of the former husband or wife shall be guilty of felony.

"Proviso to the same section lays down:

"Nothing in this act shall extend to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years past, and shall not have been known by such person to be living within that time."

It was held that a bonafi debelief on reasonable grounds in the death of the husband at the time of the second marrige afforded a good defence of the indictment, and that the conviction was wrong.

In this case the following principles were laid down :

(i) Although prima facie and has as a general rule there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject matter and may be so framed as to make an act criminal whether there have been any intension to break the law or otherwise to do wrong or not. There is a large body of municipal law in the present day which so conceieved.

(ii) Prima facy statute was satisfied when the case was brought within its terms, and it then lay upon the defendent to prove that the violation of the law which had taken place, had been committed accidently or innocently so far as he was concerned. Suppose a man had taken up by mistake one or two baskets alike and of similar weight, one of which contained innocent articles belonging to himself and the other marked government stores, and was caught with the

wrong basket in his hand. He would by his own act have brought himself within the very words of the statute who would think of convincting him.

(iii) A common law an honest and reasonable belief in the existance of circumstances, which, if true would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. This doctrine is embodied in the maxim [illegible] Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy ; perversion of that faculty, as in lunacy. These exceptions apply equally in case of statutory offences unless they are excluded expressly or by necessary implication.

(iv) It is a general rule that an alleged offender is deemed to have acted under that state of acts which he in good faith and on reasonable ground believed to exist, when it did the act alleged to be an offence.

In this case the accused acted in good faith upon reasonable and probable cause of belief without rashness or negligence, therefore she is not to be considered as guilty as she was found to be mistaken.

In case of an offence of bigamy the accused can make a defence by proving a continuous absence for seven years. And that even such an absence

will not be a defence if the prosecution can prove knowledge on the part of the accused, within seven years of the first marriage, that the first wife or husband, as the case may be, was still alive.

In *R. V. Prince* the prisoner knew that in taking the girl away from her father he was, altogether apart from the question of her age, doing an improper and immoral act, while in the present case there was nothing wrong in the marriage of the prisoner, who resonably supposed herself to be a widow.

Post 1947 phase: Response of Indian Courts

Yet another case is *State of Maharashtra V. M.H.George*[18] (A.I.R. 1965 S.C.722) In this case the Supreme Court considered the application of the principle of MENS REA in statutory offences. The accused M.H. George was a passsanger from Zurich to Manila in a Swiss plane. When the plane landed at the airport in Bombay on 28th Nov. 1962. It was found on search that the respondent carried 34 kilos of gold bars on his person and that he had not declared it in the "manifest" for transit. By reason of a central government notification of the year 1948, the bringing of gold into India was prohibited except with the permission of Reserve Bank. But by a notification of the Reserve

Bank, gold, in transit from place outside India to places similarly situated, which was not removed from the aircraft except for the purpose of transhipment was exempted from the operation of the notification of the central government. The Reserve Bank of India on Nov. 8 1962 by another notification modified its earlier exemption and it was necessary that, the gold must be declared in the "Manifest" of the aircraft. The respondent was prosecuted for bringing gold into India in contravention of section 8 (1) of the Foreign Exchange Regulation Act, 1947 read with the notification issued thereunder and was convicted under section 23 of the Act.

The Presidency Magistrate found him guilty but the Bombay High Court held that he was not guilty on the ground that [illegible] being a necessary ingredient of the offence, the respondent who brought gold into India for transit to Manila didn't know that during the crucial period such a condition had been imposed which brought the case with in the terms of the statute. On appeal by the state the Supreme Court allowed the appeal and found the guilty for contravention of the provisions of section 8 (1) read with notification issued thereunder

The following principles were laid down by the Supreme Court in this case :

(i) The act is designed to safeguarding and conserving foreign exchange which is essential to economic life of a developing country. The provisions have, therefore, to be stringent and so framed as to prevent unregulated transaction which might upset the scheme underlining the controls; and in a larger context, the penal provisions are aimed at eliminating smuggling which is a concomittant of controls over the free movements of goods or currencies.

(ii) The very object and purpose of the Act and its effectiveness as an instrument and for the prevention of smuggling would be entirly frustrated if a condition were to be read into section 8 (1) or section 23 (1A) of the Act qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision.

(iii) The very concept of 'bringing' or 'sending' would exclude and involuntary bringing of voluntary sending.But if the bringing into India was a

conscious act and was done with the intention of bringing it into India the mere "Bringing" constituents the offence and there is no other ingredient i.e. necessary in order to constitute a contravention of section 8 (1) than that conscious physical act of bringing. If then under section 8 (1) the conscious physical act of "Bringing" constitutes the offence, section 23 (IA) does not import any further condition for the imposition of liability than what is provided for in section 8 (1).

(iv) Unless the statute either clearly or by necessary implication rules out [illegible] as a constituent part of a crime a defendent should not be found guilty of an offence against the criminal law unless he has got a guilty mind. Absolule liability is not to be lightly presumed but has to be clearly established.

(v) Section 8 and the notification do not contain an absolute prohibition against bringing or sending into India any gold. They do not expressly exclude [illegible]. So far as the question of exclusion of [illegible] by implication is concerned, the law does not become nugatory if element of [illegible] was read into it for their would still be persons who would be bringing into India gold with the knowledge that

they would be breaking the law. In such circumstances no question of exclusion of [illegible] by necessary implication can arise.

(vi) [illegible] in the sense of actual knowledge that act done is contrary to law is not an essential ingredient of the offence under section 8 (1) read with section 23 (1A) of the Foreign Exchange Regulation Act, 1947. Thus mere voluntary act of bringing gold into India without permission of the Reserve Bank constitutes the offence.

Nathu Lal V. State of M.P[19]. (AIR. 1996 SC. 43) is another important case on the point. In this case the appe llant had in stock 885 maunds and 2.1/4 seers of wheat for the purpose of sale without licence. He contended that he had stored the foodgrains after applying for the licence and was in the belief that it would be issued to him. He had also deposited the requisite licence fee. He was purchasing foodgrains from time to time and sending returns to the Licensing Authority showing the grains purchased by him. He was prosecuted for committing an offence under section 7 of the Essential Commodities Act, 1955 for contravening an order made under section 3 of the same Act. It was held that :

"Mens rea is an essential ingredient of a criminal offence. Doubtless a statutes may exclude the element of Mens rea. But it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded Mens rea. The mere fact that the object of the statute expressly or by necessary implication excluded mens rea, or the mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil by itself not decisive of the question whether the element of guilty mind is excluded from the ingredient of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of Mens rea that would be implied in a statute creating an offence depends on the object of Act of the provision thereof."

In the instant case the storage of foodgrains was under a bonafide belief that he could legally do so. He

did not, therefore, intentionally contravence the provisions of S.7 of the Act or those of the order made under S.3 of the Act. Therefore, he was not liable.

IN STATE OF ORRISA V. V.K.RAJESHWAR RAO (1991 S.C)[20]

The Supreme Court held that prevention of Food Adultration Act, 1954 is a welfare legislation to prevent health hazards by consuming adultrated food. The mens rea is not an essential ingrediant, it is a social evil and the act prohibits commission of the crime under the act. The essential ingredient is sale to the purchaser by the vendor. It is not material to establish the capacity of person whether the owner of the shop to prove his authorty to sale the adultrated food exposed for sale in the shop. It is enough for the prosecution to establish that the person who sold the adultrated article of food had sold it to the purchaser (including the food inspector) and that the food inspector purchased the same in strict compliance with in the provisions of the act. It is not necessary for the sanctioning authority to consider that person sold is the owner, servent agent or partner or relative of the owner or was duly authorized in this belief.

(A) WHEN WORDS DENOTING *MENS REA* HAVE BEEN EXPRESSLY INCORPORATED IN STATUTES:

In Indian Penal Code many words have been used to denote *mens rea* such as voluntary, reason to believe, dishonestly fraudently. But the words which are used in socio-economic statutes and have an element of *mens rea* have not been defined in the Indian Penal Code.

These words are corruptly Malignantly and Maticiously - Wantonly, and Rashly and Negligently. Although these words have also been used in Indian Penal Code but they have not been defined in the Code. When words denoting *mens rea* have been expresly incorporated in Statute, *mens rea* is to be taken into account.

(b) WHEN MENS REA IS EXPRESSLY EXCLUDED FROM THE STATUTE

In such cases *mens rea* is not taken into consideration, and the accused is strictly held liable. For example in case of *Pest and Intoxicating Act*, whether the accused had a guilty mind or not, he is liable for the act done by him.

(c) WHERE STATUTE IS SILENT AS TO THE REQUIREMENT OF MENS REA:

Sometimes a statute is silent on mens rea i.e., nothing is said about the guilty intention of mind. For example offences mentioned under section 93 to 98A of

the Indian Penal Code describe this type of model. In such cases the liability is absolute and without any reference to [illegible]. The reason for this; as pointed out by [illegible], is that the general principle of criminal jurisprudence is that although the statute is silent on the point a requirement of mens rea is to be implied. In such case, the courts have got direction for applying [illegible].

(d) WHERE MENS REA IS OF MILD TYPE:

In such cases merely knowledge is enough to consitute an offence.

(e) VICARIOUS LIABILITY:

Like strict responsibility vicarious liability may also be created by statute. Vicarious liability may, however, be inferred from the language of the statute. In [illegible],[21]

The defendant, an occupior and licence of a refreshment house employed a manager for running the refreshment house. He used to visit it only once or twice a week. He had given express instruction to the manager that no prostitutes were to be allowed to congregate in the premises of the house. The manager, inspite of this instruction to the contrary; allowed some women, whom he know to be prostitutes, to

congregate on the premices.

The defendant even though had no personal knowledge of it, was held liable for knowledge suffering prostitutes to meet and remain in the refreshment house.

In re V. Love: Love was the director of a company he has indicated for printing a book containing some obscene liable when the book was printed, he was ill and know nothing about its contents. It was held that while the company was liable for the acts done in his absence; the director for the company could not be held liable for such acts in his absence especially whom he had no knowledge of it.

Suppose under a statute it is an offence to serve alcohal knowledge to a minor in a bar. A private limited company owns a bar, the management of which is left exclusively to a paid manager B: Alchohal is freely served to all including minors by the servants of bar, B shutting his eyes to the practice, Accordingly alcohal was served to c, a minor by a servant of the company having reason to believe that he was minor, neither B nor any director of the company. Know of this fact. In this case the company as well as B would be liable for serving alcohal to the minor against the statute because as a matter of practice alcohal was used to be served to minors within his knowledge and he never instructed the

servants, to refrain from this practice. Secondly, the manager would be liable for the acts of his servants for his failure to employ such persons only who would not within the permissible limit of the statute.

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CONCLUSION AND SUGGESTIONS

CONCLUSIONS AND SUGGESTIONS

Arguments are quite divided on the issue of sustainability and continuity of strict liability principle under criminal law. The cardinal principle of criminal liability is ingrained in the maxim ***actus non facit reum nisi mens sit rea*** still remains supreme. However, keeping in view the underlying aim of welfare and public welfare a slight relaxation in mens rea in the case can. According to one author "it is well shown that imposition of strict liability can contribute a real way to the prevention of harm. there is justifiable". The substantive purpose behind enforcement of strict liability is the prevention of socio-economic crimes. The very nature of crime and its deleterious effects on society, it is unequivocally lays emphasis on the importance of strict liability principle. The argument that alleged injustice of criminal conviction without can partly sustainable in view wider social principle sought to achieve. Judges on the other hand are helpless. They say that our function is not to over the will of sovereign legislatures if a statute does not provide for *mens rea*.

Thus we see that a large number of modern sta

have in prescribing punishment excluded the requiremrent of mens rea. .

The following are the some of the reasons suggested for the recognition of the principle of strict liability :-

(1) Almost all such offences are of minor nature and involve only pecunary penality and exclusion of enquiring into mens rea is not unjust where the only out-come of the prosecution is a small pecunary penality[1].

(2) It is difficult to procure adequate proof of *mens rea* in such offences. To permit such a defence would be to allow every violator to avoide liability merely by pleading lack of knowledge[2].

(3) Public welfare legislations serve a social purpose by making an act punishable which though not instrinsically wrongful but which is punished in the public interest. That is these offences are merely *mala prohibita*

(4) Having regard to the number of transgression that have to be brought before the courts and to the fact that in most cases. The defendant is probably culpable, while the proof of this mental culpability is difficult, it would be waste of time for the

court to have to enquire into the question.[3]

(5) Another argument in support of strict liability is the claim that it serves as a proof to stimulate increased care and efficency even by those who are already careful and efficient.

As to the first argument it is not easy to see why the rightness of the penality should justify an abondonment of the requirement of culpability and in any event the penality is not the punishment that the defedant receives, he also has to suffer the humilation of trial and of conviction, which are present in some degree even with these offences and which for respectable defendents are sharper penalties than anything extracted from their pocket[4]. Further in modern times fine is not the only penality in such offences. In addition to fine, imprisonment is also prescribed as punishment in many cases.

Against strict liability it is said that practice of imposing small fines without enquiring into mens rea does not deter unscrupulous persons who are the real culprits. An attitude of greater discrimination between culpable offenders and others, imposing severe penality on the formerinstead of minorcases on all sundry, would result not in a better observence of the law[5].

Another objection against the principle of strict liability is that it is an abuse of moral sentiments of community. To make a practice of branding people as criminal[6] who are without immoral fault tends to weaken respect for the law and the social condomnation of those who break it[7]. When it becomes respectable to be convicted the vitality of the criminal law has been sapped[8].

Prof.Hall in his essay on criminal science post that :-

> "It is becoming popularly recognised that strict liability has no place whatever in criminal law instead of libralization to punish the people despite the fact that there is no reason for blaming them at all. I have never any evidence which supports such liability in penal law, specially that it raises standards and protects the public.

According to Hall, the soul reason of doctrine of strict liability no longer exist[9]. Therefore two alternatives have been suggested.

(1) That public welfare offences be seprated from the traditional crimes and enforced through administrative agencies and ;[10]

(2) "That negligence be accepted as the sufficient degree of mens rea in statutory offences[11] and the once be transferred to accused to prove that acted with due care"[12].

One of the suggestions made, therefore is that the public welfare and similar regulations be removed from the Penal law. "That auspicious beginning would render more persuasive, as an initial reform, the allocation of these rules to a seprate code of civil offences requiring negligence and tried by administrative tribunals or civil courts. If at the same time, inspection, education and counsel were provided by regulatory boards, and the work of the criminal courts were restricted to violations involving mens rea, we might be well on the way to the solution of this problem[13].

It may also be submitted that Strict liability offences should be punishable merely by fine. A fine is no more than any other loss of pecuniary property.[14] Moreover, the society regards prison as a disgrace and puts it on totally different footing from payment of a fine. Most of the people expect sooner or later to be fined for something parking, speeding, and so on. If Parliament creates an offence but provides that it is

punishable only by a fine, it gives a clear indication that it regards the offence as of a different order from "ordinary" or "true" crime.[15]

In these circumstances It is still possible to send a man to prison if he refuses to pay a fine or in some other way.

Another suggestion is that in Strict liability offences fine may be accompanied by loss of licence, deportation, forfeiture or removal from office depending upon the nature of offence.[16]

To attach stigma of criminality the public approbation of crime is to be done.

It is also submitted that the intention to create Strict liability ought to be evidenced not only by the words of the statute, but also inferred from its social purpose.

Finally absence of any guilty intention or knowledge on the part of the accused should be considered a factor in mitigation of punishment.[17]

It may now be said by way of final remark that the operation of offences of strict liability the context of criminal law which generally requires subjective fault akin to moral responsibility is bound to promote the kind of inconsistencies pointed out in this study.[18] Therefore the public welfare offences

attracting strict liability principle be seperated from the traditional crime and enforced through administrative agencies.

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