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## Balancing Act: Strict Liability in Criminal Law and Its Constitutional Implications

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*The present article delves into the realm of strict criminal liability, its unknown facets, applications, and its effect on the public through the lens of constitutional law. It analyses various stands taken by eminent jurists by depicting case laws. This piece results from the authors' empirical research involving well-known databases like research papers, articles and numerous websites. My research question in this article is how strict liability in criminal law is constitutionally valid, what challenges it presents, and how they can be overcome. It also includes an introduction to the topic. In this section, the author examined the inherent principles of criminal law, which conflict with strict liability principles. The author examined the exceptions and integrities for strict liability concerning criminal law. The author also analysed the provisions of the constitution of India, which conflict with the research question. In this section, the author examined, through various case laws, how constitutional provisions are being violated and what the courts have interpreted in case laws. The primary objective of my research is to develop actionable proposals that can effectively address the research question.*

**Keywords:** *criminal liability, analysis, constitutional provisions.*

## INTRODUCTION

In the Indian Criminal System, the most important ingredients to prove a person guilty of an offence are the malafide intentions, known as 'mens rea' and the human conduct, which the law seeks to prevent, known as the 'actus reus'. If one of the two ingredients is missing in an act, then there won't be any criminal liability for such a person. This principle is also explained by the legal maxim *Actus Reus Non-Facit Reum, Nisi Mens Sit Rea*, which means that a criminal act won't be punishable until there is an inherent guilty intention paired with it.

Strict Liability is a principle that holds a person liable for their actions even if no malafide intention was made out at the time of that act. This principle works as an exception for the general principle. For a crime, mens rea and actus reus must be proved, but in this case, the person will be held criminally liable even when a guilty intention does not accompany the act. This principle has been used in our criminal system; for instance, the Indian Penal Code<sup>1</sup>, which defines what crimes are punishable, has some offences wherein the intention is not material for the offence. If the actus is proven, the court will prosecute the accused.

The intention behind this principle is public safety and deterrence. Punishment for such crimes will create fear in the public, decreasing crime rates, hence fulfilling the state's obligation to protect the public. This punishment could also serve as a powerful deterrent to future criminals. Experiencing the consequences firsthand would make them far less likely to commit the crimes again.

Strict Liability differs from traditional fault-based liabilities. Disregarding the intent gives more weightage to the harm caused by the act. This principle applies to minor offences and serious public safety concerns. Some instances where this principle comes into play are environmental violations, product liability claims, and traffic violations. It does not consider the defendant's mental state but the potential harm caused by their actions.

In this article, we will delve into the constitutional analysis of strict liability and the principles required to be followed to abide by the Constitution. We will examine how the constitutional

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<sup>1</sup> Indian Penal Code 1860

right to a free and fair trial and the presumption of innocence interact with the procedures used in strict liability cases. Through this nuanced and well-curated article, the readers will be able to understand the complexities inherent in this present issue and its far-reaching implications on society at large.

## **STRICT LIABILITY IN CRIMINAL LAW**

Strict liability means someone can be held legally responsible for harm caused, even if they weren't negligent. Such offences require only the actus, meaning the harm to be culpable, and the mens rea is not to be examined. It differs from the general principles of criminal law, which state that mens rea and actus reus should exist. The liability is strict because defendants will be convicted even though they were genuinely ignorant of one or more factors that made their acts or omissions criminal. It has evolved, striking a balance between individual rights and public welfare.

There are two key characteristics of strict liability: absence of mens rea and public welfare and regulatory offences. Unlike other offences, these don't require mens rea, and the focus is solely on whether the defendant committed the act. Secondly, this liability is applied to regulatory offences, such as traffic violations and consumer protection regulations. Hence, they are often referred to as 'Public Welfare Offenses'. The objective behind it is that it protects the public at large, as it ensures greater compliance and deterrence.

Let us elaborate on this concept through a well-known case law, *R v Queen*<sup>2</sup>, in which a man eloped with his lover. At the time, he was not aware that the girl was a minor and that he had sexual relations with her. In England, having sexual relations with a minor is an offence. In this case, the court upheld the principle of strict liability, didn't consider the element of mens rea, and held him liable for the offence.<sup>3</sup>

Strict liability prioritises public safety and welfare. This system disregards intent, allowing for efficient enforcement of regulations and public protection. It can expedite legal proceedings and

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<sup>2</sup> *R v Queen* [1866] LR1 QB 702

<sup>3</sup> Roudro Mukhopadhyay, 'Should Criminal Liabilities be Ever Made Strict' (2022) 1(4) National Journal For Legal Research and Innovative Ideas <<https://www.njlrii.com/p/volume-1-issue-4.html>> accessed 28 June 2024

ensure consistent law enforcement. Additionally, harsher punishments will make the authorities more vigilant and careful. For instance, in situations like selling alcohol to minors, the law holds the seller liable regardless of intent, so they must carefully check IDs to avoid penalties. Lastly, if one knows that if he is held liable, regardless of the purpose, it will serve as a deterrent against engaging in prohibited activities. It creates a strong incentive for individuals and businesses to follow regulations closely. Even unintentional mistakes can lead to penalties, highlighting the importance of avoiding such violations. Some examples of strict criminal liability offences are possession of drugs, illegal arms, waging war against the government, counterfeiting currency, etc. For. Instance, under the Motor Vehicles Act 1988<sup>4</sup>, the defendant will be held liable, irrespective of the care taken by both parties.

In the case of the State of Maharashtra v M.H George<sup>5</sup>, the accused was carrying 34 kilos of gold while on a plane from Zurich. The flight had a stopover in India. As per a section of the Foreign Exchange Regulation Act, 1973<sup>6</sup>, which is now replaced by the Foreign Exchange Management Act, 1999<sup>7</sup>, read with RBI notification of Nov. 8, 1962, anyone carrying gold with them must declare it. The defendant failed to declare it and was held criminally liable. One of the arguments in his favour was that he had no knowledge of the notification and, therefore, there was no men's rea. He should not be held liable.

However, the court held him liable for the offence under the impugned act, as they applied the principle of *ignorantia juris non-excusat*, which states that ignorance of the law is not an excuse. They further held that the act's purpose would be frustrated if it was not simply read as it is. The condition that had to be fulfilled was that the gold should enter India, and it was satisfied in the case of *M.H. George*.<sup>8</sup>

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<sup>4</sup> The Motor Vehicles Act 1988

<sup>5</sup> *State of Maharashtra v Mayer Hans George* (1964) SCC OnLine SC 53

<sup>6</sup> Foreign Exchange Regulation Act 1973

<sup>7</sup> Foreign Exchange Management Act 1999

<sup>8</sup> Harnirmal Singh, 'Analyzing The Requirement of Strict Liability In Criminal Law (2022) 3(5) Asian Journal of Multidisciplinary Research And Review <<https://ajmrr.thelawbrigade.com/article/analyzing-the-requirement-of-strict-liability-in-criminal-law>> accessed 28 June 2024

Despite its advantages, there are some criticisms regarding strict liability as well. Firstly, it can lead to unfairness and injustice. Punishing someone who didn't intend to commit a crime is inherently unfair. It would lead to injustice, specifically where the defendant wasn't aware of the illegal nature of their action. Secondly, this principle would give arbitrary powers to the enforcement agencies, leading to prosecutorial discretion. Lastly, its impact would be felt more by those who are unable to understand laws or are unaware of the rules.

In toto, strict liability can be an effective tool for ensuring compliance and speedily delivering justice. However, it can also be a brutal blow to the fairness and justice of the criminal justice system. Balancing both these effects, which would ensure a robust punishment system, is challenging for policymakers and legal practitioners.

## CONSTITUTIONAL FRAMEWORK AND STRICT LIABILITY

The Constitution acts as a parent legislation for every act in our country. All legislation is subject to the principles of the Constitution, and strict liability is no exception. I have earlier talked about the rationale behind strict liability, which is public safety, which also comes under the Protection of life under Article 21<sup>9</sup> of the Indian Constitution. However, it also protects from arbitrary punishment. The absence of mens rea in such crimes might lead to injustice to the people as they may be penalised for genuine mistakes, which breaches the principle of fair trial under Article 21<sup>10</sup>.

### The other constitutional provisions which are relevant are:

**Article 14:**<sup>11</sup> Ensures the right to equality before the law and equal protection of the law. It implies that any law, including strict liability laws, in India will treat all citizens equally and must not be arbitrary.

**Article 20(1):**<sup>12</sup> This article encompasses the right of protection regarding convictions. It says that a person can be convicted only for the violation of law at the time of committing an offence.

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<sup>9</sup> Constitution of India 1950, art 21

<sup>10</sup> *Ibid*

<sup>11</sup> Constitution of India 1950, art 14

<sup>12</sup> Constitution of India 1950, art 20(1)

It ensures that individuals are not subject to retrospective penal laws, which aligns with the principle of fairness in strict liability cases.

**The application of this principle has been reiterated in many cases, some of them being:**

**MC Mehta v Union of India:**<sup>13</sup> Famously known as the Oleum Gas Leak Case, the court held that if a company engages in hazardous activities, it must ensure the safety of the environment and the people around it. They reiterated the principle of strict liability, stating that the company will be liable if any damage is caused, irrespective of its intention. This case is a perfect example of the strict liability principle used in criminal law, wherein the act is punishable. The court held that compensation is to be paid to the gas leak victims, and the Delhi Legal Aid and Advice Board is to keep this in check.

**Delhi Domestic Working Women's Forum v Union of India:**<sup>14</sup> It is a landmark case wherein this principle was, for the first time, used for offences like sexual harassment and rape. The facts for the case are that four women who worked for the forum were travelling when seven army personnel misbehaved with them. They teased them and later harassed and raped them as well. The court held in this case that there is a stricter need for enforcement of laws on sexual harassment and rape. It also held that, in a grievous offence like rape, the intent won't be taken into consideration; the actus will be enough to punish the perpetrator. The court also gave guidelines regarding the compensation which should be given to rape survivors and ordered the National Commission for Women to constitute a policy for the same.

The ongoing tussle between public safety and individual rights, which results from the intersection between constitutional rights and strict liability, has to be balanced to ensure that the laws related to strict liability are applied in all their fairness and justice. Through this balance, the system would aim to uphold the rule of law and protect the fundamental rights of all citizens.

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<sup>13</sup> *M.C. Mehta v Union of India* (1987) SCC OnLine SC 3716

<sup>14</sup> *Delhi Domestic Working Women's Forum v Union of India* (1995) 1SCC 14

## CRITICISM

This section will illuminate the criticisms of strict liability in criminal cases by various eminent jurists and authors. The first criticism is based on the imposition of punishments on persons. Two arguments are made; firstly, the minimum requirement of punishment, under strict liability, is inconsistent with the notion of punishments in criminal law. The second argument stems from the first: it runs counter to the accepted standards of criminal culpability that prevail in our society. Suppose a person has acted with reasonableness and no intention to do the impugned act. In that case, giving him a punishment like deterrence, rehabilitation or incarceration is never justified. The argument can be summed up like this: people are made criminals under strict liability, even when they haven't done anything wrong in the eyes of society.

Although strict liability statutes are considered useful deterrents, this idea is false, according to another critique. When laws target behaviours that are already universally accepted as wrong, they often prove ineffectual. For example, traditional crimes entail actions everyone knows are incorrect, so establishing mens rea, or the guilty mentality, is easy. Strict liability regulations, however, penalise behaviour that may not be inherently bad. Consider a farmer who, without a permit, sells a plant grown on his property. Even though he didn't realise what he was doing was improper, he gets punished if he is later detained under a strict responsibility statute and told that the plant needs a permit. This wouldn't be seen as a crime in the past.

Lastly, Jerome Hall argues against strict liability, saying it might not be a better deterrent than regular criminal laws. Firstly, he says that strictness might not matter. The strictness of the liability may not be a force that would deter violating the law. The reason behind this is the inadequate penalty. The penalty for committing an offence under strict liability is punitive damages. These are lighter punishments, mainly in the form of compensation awarded to the injured party. This penalty might not be a strong deterrent for the public to abide by in the future. Secondly, he says that people might avoid risky activities. He argues that if people fear punishment, even when it is unintentional, they will prevent such activities, which could lead to unintended circumstances for them in the future. The main implication would be that there would be less participation in that venture, which is beneficial for the public. For instance, a law

that makes doctors liable for medical mistakes may discourage them from indulging in risky but life-saving procedures.<sup>15</sup>

## SUGGESTIONS

**Legislation should be clear:** To reduce the possibility of unjust punishment, it should be written in the law explicit and unambiguous cases under which the activity of strict liability should apply. It allows individuals and corporations to understand what is expected from them and the legal ramifications.

**Public Awareness:** A campaign to raise awareness about strict liability offences could prevent accidents resulting from unconscious violations. Public awareness campaigns and informational materials are used to educate the public regarding the high level of need for adherence and the risks involved with the effectiveness of some actions.

**Proportional Penalties:** Penalties for strict liability should be proportional, considering the harm done and the circumstances in which the offence is committed. This way, the penalties are proportional and do not take an unacceptably hardline stance, especially in cases where the alleged offender did not intend to make a mistake.

**Judicial Discretion:** There is no reason courts should not be able to consider mitigating circumstances in strict liability cases. This provides a valid scope for a less coercive, less binary method of enforcement that can incorporate the reasoning behind occasional failures and alleviate unfairness.

**Regulatory Oversight:** Enhanced regulatory oversight will safeguard the consistency and fairness of strict liability enforcement. The regulator would be well-resourced to monitor compliance and have full capacity to intervene and address non-compliance.

## CONCLUSION

To sum up, the Indian criminal justice system relies heavily on the strict liability principle, which enforces regulatory compliance and prioritises public safety. Even with its critics, strict liability

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<sup>15</sup> Jerome Hall, *General Principles of Criminal Law* (2nd edn, Lawbook Exchange 2010)



is still a crucial legal instrument, especially when establishing intent (*mens rea*) is difficult or impossible.

Strict liability encourages a greater sense of accountability and alertness. It holds both individuals and organisations liable for their deeds regardless of their motives. This idea is important in fields where there might be significant harm from violations, like consumer safety, environmental preservation, and regulatory compliance. Strict liability increases the law's deterrence power by imposing liability without requiring proof of *mens rea*, which promotes compliance with rules and curtails destructive behaviour.

The Indian constitution emphasises the value of equality before the law, freedom from arbitrary punishment, and the right to a fair trial, especially in Articles 14, 20(1) and 21. Careful use of strict liability is required to balance the public interest and individual rights, as demonstrated by judicial precedents set in the *MC Mehta* and *Delhi Domestic Working Women's Forum* instances.

Strict liability is criticised, nevertheless, mostly for the possibility of unjust punishment. Opponents contend that it disproportionately affects people who are less conversant with the law and may result in arbitrary enforcement. Jerome Hall, for example, argues that strict liability could not be a more effective deterrence than conventional criminal legislation since it might penalise behaviours that are justified and done without malice, creating perceived inequities. Clear legislative rules, public awareness efforts, proportionate sanctions, judicial discretion, and more regulatory control are necessary to address these challenges. These steps allow strict liability to be applied fairly while having a deterrent effect.

In the Indian ethos, strict liability is only a subtle form of criminal liability. It recognises public purposes instead of private purposes. Still, in dealing with public goods, these subtle problems come into question concerning the rights of individuals and principles of natural justice. As the legal landscape evolves, continuous evaluation and refinement of this principle will be crucial to maintaining a just and equitable system that serves society's and the individual's interests.

Strict responsibility must be applied with justice and fairness, even though it is necessary for maintaining public safety and regulatory compliance. Despite its critics, strict liability must be upheld to prevent destructive behaviour and foster a more orderly and obedient society.