STRICT RESPONSIBILITY

A mass of laws have been passed since the enactment of the Indian Penal Code a century ago. Many of these Acts have created new offences not previously provided for by the Indian Penal Code, some other Acts have created specific offences which were in general terms made punishable by the Indian Penal Code, but have been made more particularly punishable in these special Acts. In a few cases the legislature has dispensed with mens rea and has created offences of strict responsibility. This discarding of mens rea in statutory offences is a departure from the common law doctrine of *actus non facit reum nisi mens sit rea.* How far that is desirable, has been a matter of comment by various jurists.

Roscoe Pound in an address to the State Bar Association of North Dakota in 1927; said that " statutory crimes without *mens rea* go counter to the very common law conception of a crime."

Prof. Sayre [1] has observed as follows: " In general the mens rea is as vitally necessary for the crime as understanding is necessary for goodness. To inflict substantial punishment upon one who is morally entirely innocent, who caused injury through reasonable mistake or pure accident would so outrage the feelings of the community as to nullify its non-enforcement."

Public welfare offences, if one may coin the phrase, constitute however, a noteworthy exception. Particularly of late years these have increased so rapidly in number and in importance as to be deserving of special study.

The term ' public welfare offences ' is used to denote the group of police offences and criminal nuisances, punishable irrespective of the actor's state of mind, which have been developed in England and America within the past three quarters of a century."

Prof. Glanville Williams [2] has classified crimes, not requiring legal fault on the part of the accused, into two categories:

(1) Vicarious responsibility; crimes requiring mens rea on the part of someone but not the accused; and

(2) Strict responsibility; Absolute prohibitions—those not requiring fault on the part of any one.

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1. 33 Col. L. Rev. 55.
2. Glanville William's 'Criminal Law' General Part. p. 238.

It is within the competence of the legislatures to make laws creating offences of strict responsibility. But whether they should do so and up to what extent is a matter for consideration.

The following main grounds have been given for recognising offences of strict responsibility:

(1) That for certain offences, it would be difficult to prove mens rea in court.

(2) That it is of paramount importance to take into account the social purpose in making a statute, which should be so interpreted as to give effect to the intention of the legislature.

(3) That in most strict responsibility offences the punishment is a light one and is usually, that of a fine.

(4) That strict responsibility offences are *mala prohibita* and not *mala in se.*

It is essential at this stage to consider the criticism made of the the doctrine of strict responsibility. In fact some writers have gone to the extent of saying that strict responsibility offences are not criminal offences.

Prof. Jerome Hall [3] says:

"Whatever sort of liability strict liability may be, it is not criminal liability."

He further observes [4]:—

"There is already a consensus that strict liability is not penal law; let us call it economic law or administrative regulation."

In Sherras v. *De Rutzen,* [5] it was observed:—

"One is a class of acts which are not criminal in any real sense, but are acts which in the public inserest are prohibited under a penalty. Another class comprehends some, and perhaps all, public nuisances. Lastly there may be cases in which although the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right."

The argument that there are many acts of transgression in which it is not possible to prove mens rea has been rebutted by Dr. Mannheim.

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3. Prof. Jerome Hall's "*General Principles of Criminal Law*" 2nd edition p. 326.
4. *Ibid* p. 344.
5. (1895) I K.B. 918 at 922.

He says [6] :—

"The number of larcenies committed is also very great; nevertheless nobody would suggest that acts of larcenies should be punished when committed without mens rea."

Prof. Sayre [7] has observed :—

"All criminal law is a compromise between two fundamental conflicting interests,—that of the public which demands restraints of all who injure or menace the social well being and that of the individual who demand maximum liberty and freedom from interference.

The history of criminal law shows constant swinging of the pendulum so as to favour now the one, now the other of these opposing interests. In the case of true crimes, however, although the emphasis may shift, courts can never abandon insistance upon the evil intent as a pre-requisite of criminality, partly because individual interests can never be lost sight of and partly because the real menace to social interests is the intentional, not the innocent doer of harm. But the new emphasis being laid upon the protection of social interests fostered the growth of a specialized type of regulatory offence involving a social injury so direct and widespread and a penalty so light that in such exceptional cases courts could safely override the interests of individual innocent defendants and punish without proof of any guilty intent.

In the second place, the growing complexities of twentieth century have demanded an increasing social regulation ; and for this purpose the existing machinery of the criminal law has been seized upon and utilised."

Ramaswamy J., [8] has observed in a recent judgment of the Madras High Court :

"But there are now a large class of penal acts created under the State as well as Central Acts, which are really not criminal but which are prohibited by the levy of a penalty in the interests of the public. To such a category belong offences against Revenue, Adulteration Acts, Forest Laws etc., penalties directed against public nuisances, and cases in which though the proceedings are criminal in form, they are only summary modes of enforcing civil rights. In such cases, the prosecution need only prove the prohibited act and the defendant must then bring himself within a statutory defence. The position is the same in (a) England, (b) America and (c) India."

6. (1936) 18 Jrnl. Comp. Leg. 90.
7. 33, Col. Law. Rev. 55 at p. 68.
8. (1958) 2 M.L.J. 308 at p. 312.

The two world wars have considerably influenced the development of the doctrine of strict responsibility.

Prof. Edwards [9] has brought out this matter in the following words :—

> "Two World Wars, with their vast output of regulations creating new offences, have served to foster and enlarge this practice, in which it has become increasingly common to by-pass the above cardinal principle. In its place there has arisen a theory of strict liability in which the question of guilty mind is wholly relevant.

This departure from the earlier concept of criminal liability based upon moral standard of wrong doing is not the exclusive prerogative of the Parliament. It has exercised a varying influence upon the judiciary; the present mood being manifestly suspicious of attempts to extend the field of strict liability in crime."

Prof. Edwards further observes :

"The question is whether at the present day sufficient, if indeed any, attention is being given by Parliament to the problem whether, in laying down prescribed standards, of conduct in the field of public health, the sale of foods and drugs, weights and measures, licensing, or nationalised industries, it is necessary that the fundamental maxim of criminal liability should be ignored or, thrown over board........... Sometimes it is clearly necessary, but if this practice is allowed to continue unabated and supplemented by judicial interpretations which are influenced by the same attitude, there is very real danger that criminal law will come to be regarded with contempt. The process of basing criminal liability upon a theory of absolute prohibition may well have the opposite effect to that intended and lead to a weakening respect for the law."

The enactment of strict responsibility offences has been justified, only in cases where it is of a regulatory nature and the punishment prescribed is a fine.

For instance Prof. Sayre[10] has observed :

> "In such cases convictions based upon mere forbidden conduct irrespective of intent may be had if the statute violated is of a purely regulatory nature, and if the injury is of a widespread and public character, particularly in cases where the ascertainment and proof of guilty knowledge would be so difficult that to require it would practically prevent convictions.

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9. J.L.J. Edwards, "*Mens rea in Statutory Offences*" 1955.
10. 33 Col. Law Rev. 55 at pages 62, 78 and 79.

In public welfare offences where the penalty is small, say a fine, the doctrine is sound. But where the penalty is severe—imprisonment or heavy fine, it would be a sound policy to maintain the orthodox requirement of a guilty mind but to shift the burden of proof on the accused to prove the lack of a guilty intent if he can".

Harries C. J.,[11] in a judgement of the Calcutta High Court observed as follows:

"It is to be observed that breaches of this Control Order involved punishment extending to three years' rigorous imprisonment. Therefore, these offences were not, in the words of their Lordships of the Privy Council, minor offences of which a man can be found guilty without having a guilty mind."

Strict responsibility offences may in certain cases be necessary but they should always be treated as exceptions to the general rule of law and therefore where a statute creates such offences, very strict construction has to be given not only to the wording of the section creating such offences but also to the object and purpose of the legislation.

In *Brend* v. *Wood*[12] it was observed:

"It is of utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind."

The above observations were followed by the Indian Courts in A.I.R. 1947 Privy Council 135, A.I.R. 1951 S.C. 204 and A.I.R. 1956 Allahabad 610.

In a recent judgment Ramaswamy, J., has observed as follows:[13]

"The true test is to look at the object of each Act that is under consideration to see how far knowledge is of the essence of the offence created. In arriving at this decision, it has been held material to inquire; (a) whether the object of the statute would be frustrated if proof of such knowledge was necessary; (b) whether there is anything in the wording of the particular section which implies knowledge; (c) whether there is anything

11. A.I.R. 1948 Calcutta 348.
12. (1946) 62 T.L.R. 462.
13. A.I.R. 1953 Mad. 156.

in the wording of the other sections showing that knowledge is an element in the offence."

Chief Justice Chagla [14] has observed :

"It is not suggested that even in the class of cases where the offence is not a minor offence or not quasi-criminal that the legislature cannot introduce the principle of vicarious liability and make the master responsible for the acts of the servant although the master had not mens rea and was morally innocent. But the courts must be reluctant to come to such a conclusion unless the clear words of the statute compell them to do so or they are driven to that conclusion by necessary implication."

The distinction between *mala prohibita* and *mala in se* is also not a strong enough argument in support of strict responsibility.

Prof. Jerome Hall [15] says :

"If strict responsibility rests on any rational ground, it must be sought elsewhere than in *mala prohibita*".

Prof. Glanville Williams [16] has also not favoured strict responsibility offences and has observed as follows:

"It is an abuse of the moral sentiments of the community. To make a practice of branding peoples as criminals who are without moral fault tends to weaken respect for the law and the social condemnation of those who break it."

Prof. Sayre [17] has said :

"When it becomes respectable to be convicted, the vitality of criminal law has been sapped."

In order to strictly limit the number of such offences and in order to discourage their increase, it is necessary to mention the following points :

(a) *That strict responsibility offences are a departure from the* principles of criminal law ;

(b) That strict responsibility offences are the creatures of the judges ;

(c) That the court when construing criminal liability, should see whether the guilty mind is a necessary element of the crime or not. For that purpose it will strictly construe the Act by which the offence has been created, its objects and

14. A.I.R. 1948 Bom. 364.
15. Jerome Hall's "*General Principles of Criminal Law*". Second Edition p. 362.
16. Glanville William's "*Criminal Law*" General Part p. 269.
17. Harvard Legal Essays (1934) 409.

purposes, the wording of the section of the Act creating offences and other sections of the Act also, and whether application of the Chapter of General Exceptions (Chapter IV of the Indian Penal Code) is in any way excluded.

Those Acts and omissions which are not inherently criminal (*mala in se*) but the State in order to ensure obedience of certain rules and regulations, has thought it fit to utilise the sanctions of criminal law, by enacting such acts or omissions as offences, are known as regulatory offences.

These offences have also been given other names, for instance the French Penal Code, 1810, as amended in 1959, states as follows: "Art. 1. An offence which the law punishes by regulatory punishment is called a violation". The Model American Penal Code also calls it a violation. Prof. Sayre[18] has called them public welfare offences. Dean Ganuse Witz[19] has named them civil offences. Blackstone[20] calls them a breach of prohibitory laws. Kirchheirmer[21] calls them administrative misdemeanours. In *Hammod* v. *King*[22] they have been called violations of police regulations.

A large number of such regulatory offences have been created, within the last one hundred years, by the new enactments of various countries.

It is very necessary to impose rigorous checks on the growth of regulatory offences. The criminal courts in India are already overburdened with work, therefore it is high time that nothing may be done which would add to the work of the courts, but on the other hand steps should be taken to reduce the work.

The French Penal Code as amended in 1959, has given a lead in this direction. In this connection, Mueller says:[23]

> "It is to be noted that the French Government Decree of December 23, 1959, added a new part to the Penal Code, Part II, dealing entirely with regulatory offences as heretofore they could be found outside the French Penal Code, and as indeed they are outside the Penal Code of most countries."

18. 33 Col. Rev. 55.
19. 12 Wis. Law Rev. 365 (1937).
20. 1 Bl. Comm. 58.
21. 55 Harvard L. Rev. 615 at 636 (1942).
22. 137 I.O. Wa. 548.
23. The French Penal Code (American Series of Foreign Penal Codes) Preface XVI.

Marc Ancel [24] in the introduction to the American Series of Foreign Penal Codes—French Penal Code—has stated as follows :

"The Constitution of October 4, 1958, defines the respective spheres of law making by legislation and administrative regulation, listing of matters within the competency of Parliament. Article 34 of this Constitution provides, in particular, that violations (*i.e.*, petty offences punishable, as a rule, by jailing for not more than one month) no longer are the concern of the legislature but may be provided for by administrative regulations. The Penal Code, therefore, now consists of a legislative part, followed by a regulatory part."

Article 8. Infamous punishments are :
(1) banishment (2) loss of civil rights ".

Article 9. " Punishments for misdemeanour are :
(1) Jailing or imprisonment for a limited time in a house of correction (2) loss of certain civil, personal and family rights for a limited time, (3) fine."

Article 464. " Punishments for violations are :
1. Jailing.
2. Fine and
3. Confiscation of certain seized objects.

Article 465. Jail sentences for violations shall not be for less than one day nor more than two months.

One day of jailing consists of 24 hours.

One month of jailing consists of thirty days.

Article 466. Fines for violations may be imposed for an amount not less than 300 or more than two hundred thousands francs.

Article 473. When the punishment for a violation exceeds jailing for ten days and fine of 40,000 francs, a suspension may be granted."

It will thus be noticed that the punishments for violations are the mildest form of punishments under the French Penal Code.

On the subject of the quantum of punishment the commentary on Art. 1.05 [25] of the American Model Penal Code says as follows :

" If a sentence of imprisonment is authorised (as an immediate sanction upon conviction rather than merely to coerce the payment of a penalty), it is inadmissible semantic manipulation to

24. French Penal Code loc cit. p. 5.
25. Tentative Draft No. No. 2 p. 8.

declare that the offence is not a crime. Imprisonment it is submitted, ought not to be available as a punitive sanction, unless the conduct that gives rise to it warrants the type of social condemnation that ought to be implicit in the concept 'crime'.

There is, however, need for public sanction calculated to secure enforcement in situations where it would be impolitic or unjust to condemn the conduct involved as criminal. In our view, the proper way to satisfy that need is to use a category of non-criminal offence, for which the sentence authorised upon conviction does not exceed a fine or fine and forfeiture or other civil penalty, such, for example, as the cancellation or suspension of a license. This plan, it is believed, will serve the legitimate needs of enforcement without diluting the concept of crime or authorising the abusive use of sanctions of imprisonment. It should, moreover, prove of great assistance in dealing with the problem of strict liability, a phenomenon of such pervasive scope in modern regulatory legislation. Abrogation of such liability may be impolitic but authorisation of a sentence of imprisonment when the defendant, by hypothesis, has acted without fault seems wholly indefensible. Reducing strict liability offences to the grade of violations may, therefore, be the right solution.

It is also essential that the punishment provided for regulatory offences should not be heavy, so that at least from the point of view of the quantum of punishment a clear distinction can be made between *mala in se* and *mala prohibitia.* Ordinarily, fine should be the only punishment provided for regulatory offences.