CHAPTER III

GENERAL PRINCIPLES OF CRIMINAL LIABILITY

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CHAPTER - III

GENERAL PRINCIPLES OF CRIMINAL LIABILITY.

Before taking up the study of any of the Socio-Economic Offences punishable in India let us know the general principles on which criminal liability is imposed, on a person in our country. We shall investigate in this Chapter the leading principles which determine the existence of liability; the measure of liability in the case of various wrongs and the remedies provided therefor. We shall start our study with the rules relating to the various kinds of Liability in English Law, trace their origin and development with reference to the contribution of Common Law and the modification of the Rule by Statute, and then study the position of law in India on the same subject. We shall also note by the way, the position of the rule in Civil Law, on the same type of wrong. All this will give an idea about the Indian Law, whether it has followed the English principle or has made a departure from it, and whether there is the same rule in Civil Law as well as Criminal Law or there is violation. It is necessary to make a reference to the rules of Liability in Civil Law because Criminal Law has borrowed a lot from Civil Law.
I. THE CONCEPT OF LIABILITY.

Liability is a legal concept of being subject to the power of another or to a rule of Law requiring something to be done or not done. Thus, a person who contracts to sell goods is liable to deliver them and the buyer is liable to pay the price. Each is required by law to do something and can be compelled by legal process at the other's instance to do it, the other is empowered to exact the performance or payment. It is sometimes called subjection (David M. Walker, "The Oxford Companion to Law", 1980, p.765).

A person is said to be under a liability when he is or at least may be legally obliged to do or suffer something. Thus one may be said to be liable to perform, to pay, to be sued, to be imprisoned or otherwise to be subject to some legal duty or legal consequence. In general, liability attaches only to persons who are legally responsible, an insane person does not generally incur any liability.

II. KINDS OF LIABILITY:

(A) Civil Liability.

Liability is civil when one is subject to the requirement to pay or perform something by virtue of the rules of Civil Law. This kind of liability may arise from the natural relations of family, from an undertaking or a contract from
the commission of a harm, from trust, from Statute, or a decree of the Court.

(B) **Criminal Liability.**

Criminal Liability is that kind of liability in which one is subject to being fined, imprisoned or otherwise treated by virtue of the rules of Criminal Law. This kind of liability arises from admitted or proved commissions of some kind of conduct declared by the rules of Criminal Law to be the crime incurring punishment.

At Common Law, criminal liability normally also requires that the conduct has been done intentionally or recklessly but not merely negligently or accidentally and sometimes proof of a particular intent is a necessary ingredient of Crime. But, many cases under Statute have been held to import **Strict or Absolute liability irrespective of the actor's state of mind.**

(C) **Absolute Liability or Liability without fault.**

At Common Law liability in damages for personal injuries or loss depended on proof that the harm was done or allowed to happen in circumstances implying fault on the part of the doer, namely, with the intention or negligence, fault by commission or by omission. In some cases, however, such as workmen's compensation, it was provided that liability should be incurred if there was personal injury arising out of and in the course of
employment, without need for proof of fault. Subsequently, it has been urged that in many other cases also, notably road accidents there should be liability without fault to ensure that the injured persons are compensated even if they cannot prove fault. In Criminal Law, while the general rule is that liability to penalty require the commission of crime intentionally or recklessly in many cases, liability is incurred without either of the mental elements or anything which could be called fault.

(i) **The Rule of absolute liability in Law of Torts.**

Absolute liability in the Law of Torts is liability for damages imposed under certain statutory provision and it is incurred by reason of the mere occurrence of an accident of a kind deemed prohibited, without regard to care or precautions taken and without need of proof of negligence or fault.

(ii) **Absolute Liability in Criminal Law.**

In Criminal Law, absolute liability is liability for specified conduct. It results independently of intention or other mental factors.

(D) **Strict Liability.**

The expression formerly used in the English legal system to denote liability without fault was Absolute Liability, but since exceptions have been recognised to the so-called Absolute Liability, the expression now common is Strict Liability. This is liability without fault in cases where the activity is inherently dangerous or where there is proof of negligence.
Liability, the term suggested by Sir Percy Winfield ("The Myth of Absolute Liability", 1976-42 &LJR-37) was 'Strict Liability', and this suggestion has since been judicially adopted (North Western Utilities v. London Guarantees Co., 1936, AC-108) and used in place of Absolute Liability. Of course it is liability of a slightly lower standard than Absolute Liability.


Strict Liability in Law of Torts is liability which is more stringent than the ordinary run of liability for failure to take reasonable care, yet not absolute. It is the standard sometimes set by Statutes. This kind of Liability arises when the harm to be prevented takes place. The principal instances of Strict Liability are liability for animals and liability in cases within the principles of Rylands vs. Fletcher, for harm caused by the escape of danger from one's land, etc.

(ii) Rule of Strict Liability in Criminal Law.

In Criminal Law, Strict or Absolute Liability is liability for having done something or having allowed it to happen independently of intention, recklessness or negligence. It exists by virtue of various Statutory provisions.
(E) **Vicarious Liability:**

In general, a person is liable for his own wrong and not for the wrongs of the other person. But sometimes, for the fault of one another person has to bear liability. This kind of responsibility is known as Vicarious Liability.

(i) **The Rule of Vicarious Liability in the Law of Torts.**

In Civil Law, vicarious liability is recognised in Torts in certain cases. The principle is expressed by the maxim, **Respondeat Superior.** A Principal is liable for wrong done by his Agent, if the latter were at the time acting within the scope of his Authority. A master or employer is liable for the wrong done by his servant or employee, if the latter were at the time acting in the course of his employment.

(ii) **The Rule of Vicarious Liability in Criminal Law.**

In Criminal Law, vicarious Liability is exceptional and probably never arises at Common Law, but may exist under Statute, though even then in some cases, specially limited defences exists, such as that a Master used due diligence to enforce compliance with the Statute and the servant committed the fault without his consent.

(F) **Group Liability.**

When a wrong is committed not by a single individual
but by several persons together the rule of liability followed in such cases is that of Group Liability. It is one of the most complicated problems both of Civil as well as Criminal Law, to apportion responsibility on each of the persons forming the group. The rules developed by the Courts and incorporated in the Statute are briefly described here.

(i) **Group Liability in Law of Torts.**

In Law of Torts, the liability of persons who join together to commit a Tort is known by the expression Joint Liability. The several persons who join in committing a Tort, are called joint tortfeasors. All persons in the eye of law are responsible for the same and are deemed to be joint wrong-doers.

(ii) **Group Liability in Law of Crimes.**

A rule similar to what is there in Law of Torts, is applicable in Law of Crimes also, according to which persons who commit a crime in groups are jointly and severely liable for the wrong committed by them in furtherance of the common intention or to achieve a common object.
III. DETAILED STUDY OF RULES RELATING TO DIFFERENT KINDS OF LIABILITIES.

(A) Civil Liability.

The purpose of the law in this kind of liability is enforcement of the plaintiff's right. The party wronged has a right to demand the redress allowed by law and the wrong-doer has the duty to comply with this demand. Civil liability is sometimes remedial and sometimes penal. The liability of a borrower to repay money borrowed by him is remedial, that of the publisher of a libel to be imprisoned or to pay damages to the person injured by him is penal. The different wrongs covered by this kind of Liability are the wrongs arising out of breach of contract, breach of trust or the violation of civil rights, the Torts. Out of these three the rules relating to the liability for torts are important from our point of view as these rules have been imported into the criminal jurisprudence too, and on account of this they have close relationship with the rules of tortious liability. Some important aspects of the rules relating to tortious liability, which have close resemblance to the rules of Criminal Liability may be described thus:

(a) The Concept of Tort.

Tort is a term used in Common Law systems for a civilly actionable harm or wrong for the breach of law dealing with
liability for such wrongs. Analytically, the Law of Tort is a branch of the Law of Obligations, where the legal obligation to refrain from harm to another, and if harm is done to repair it or compensate for it, is imposed not by agreement, but independently of agreement, by force of the general Law. Historically, there was no general principle of Tortious liability, but the King's Courts gave remedies for various forms of trespass, for direct injuries and later on allowed an action on the case for harm indirectly caused. Other forms of harm later became redressable, for example, libel and slander and distinct forms of action developed to redress particular kinds of harm, so that the Law of Torts today is concerned with a number of recognised kinds of wrong, each with distinct requirement and procedure. The Statute has added new entitlement to claim. Case Law has extended liability, for example, from physical injuries to mental injuries, and from intentional harms to harms done negligently, that is by failure to show the standard of precautions deemed necessary in the circumstances.

Liability in general depends on the Defendant having by act or omission acted in breach of legal duty incumbent on him and infringed the recognised legal right vested in the Plaintiff and thereby caused the Plaintiff the harm of a foreseeable kind.
(b) The Nature of Tortious Liability.

According to Prof. Winfield, tortious liability arises from a duty primarily fixed by law. This duty is towards persons generally and its breach is redressable by an action, for unliquidated damages. It is a matter of dispute whether there is a Law of Tort or Law of Torts. There are two Schools of Thought. One maintain that there is a law of Tort, that is, that all harm is actionable in the absence of a just cause or excuse. If there were merely a law of specific torts, then no new torts could be created by the Courts and the category of tortious liability would be closed. It is urged that under the flexibility of case law, new torts have come into being and in no case has an action been refused simply because it was novel. This is called the General Principle of Liability theory. The other and probably the better view is that there is a Law of Torts, that there are only specific torts and unless the damage suffered can be brought under a known or recognised head of liability, there is no remedy. This view is supported by modern cases, where an attempt has been made unsuccessfully to establish a purported tort of eviction. (All-E.R.1109, 1953).

Hence, we may conclude that there is no general principle of liability in tort. Nevertheless, if Judges have not created new torts, they have applied old cases to new situations. This
has resulted in an extension of the old tort and there is a tendency to expand the area of liability particularly in the field of negligence. If this continues, the Law may reach a stage approximating to a General Principle of Liability for wrongful acts.

(c) **Remedies for Tortious Liability.**

The remedies available to a person who has suffered injury or loss by reason of the tort of another, are: damages, the granting of an injunction and in some cases an order for specific restitution of land or chattles in which the Plaintiff has been dispossessed. The Court may order specific restitution of land or goods where the plaintiff has been deprived of possession and the plaintiff may be given an order for an account of profits received as a result of a wrongful act.

(B) **Criminal Liability:**

(a) **The general conditions of Criminal Liability.**

The general conditions of Criminal Liability are indicated with sufficient accuracy in the Legal Maxim, *Actus non-Pacit Reum Nisi Mens Sit Rea*, (an act does not amount to guilt, unless it is accompanied by a guilty mind) that is to say, there are two conditions to be fulfilled before Criminal Liability can rightly be imposed. The one is Actus Reus, that the doing of some act by the person to be held liable. The other is the
Mens Rea or the guilty mind with which the act is done. It is not enough that a man has done some act which on account of its mischievous result, the law prohibits. Before the law can justly punish the act, an enquiry must be made into the mental attitude of the doer, for although the act may have been wrongful, the mind and will of the doer may have been innocent.

Generally speaking a man is criminally liable only for those wrongful acts which he does either willfully or recklessly. Then and only then is the Actus accompanied by the Mens Rea. But this generalisation is subject to two qualifications. First, the Criminal Law may include provisions penalising mere negligence, eventhough this may result simply from inadvertence. Secondly the law may create offences of Strict Liability where the guilt may exist without intention, recklessness or even negligence.

The theory of Actus Reus has, however, created some difficulty owing to the vagueness which exists with regard to the concept of an act. The theory does not explain the difference between voluntary and involuntary behaviour. Questions, therefore, have arisen whether we can include all material and relevant circumstances and consequences under the head of an act, and whether an involuntary act or omission also can be included under the concept of act.
This aspect of Actus Reus has been sufficiently dealt with in the previous Chapters. The concept of Mens Rea however has been dealt with here again, and this time with special reference to the law relating to Socio-Economic Offences and the decided cases.

(C) **Strict Liability.**

There are some crimes which are punished under Criminal Law, although, no legal fault has been committed by the accused. Such crimes are of two kinds. First, where the wrongful act has been done by someone, but not the accused person, yet he is held liable on the principle of vicarious liability. Secondly, where a person is punished although no fault has been committed by anyone. These cases of crimes are termed as cases of Strict Liability. In crimes of this type, the necessity of Mens Rea or negligence is wholly or partly excluded. They are, in fact, cases of liability without fault. In most of them, even Negligence or Mistake of Fact is not admitted as a defence.

Cases of Strict Liability may be discussed under three heads. First, Strict Liability at Common Law, Secondly, Strict Liability for serious Statutory offences of abduction and bigamy and third, Statutory offences.

(i) **Strict Liability at Common Law.**

Cases of Strict Liability at Common Law are to be found in public nuisance, Private libel and contempt of court.
(a) **Public Nuisance.**

A person is vicariously liable on a criminal charge for the nuisance created by his Agents or Managers under his control, even though he may not know of its existence. A public nuisance is actionable civilly, if an individual suffers special damage and in a civil case it is normally no defence to show that the defendant did not intend to cause inconvenience or that he was unaware that this would be the result of his conduct.

(b) **Private Libel.**

Criminal libels may be directed against a private individual as well as against the public at large on account of their seditious, blasphemous or obscene nature. In a public libel, there must be Mens Rea on the part of the accused. It must be shown to have been published with a seditious intent. But in a private libel, it is not very clear that Mens Rea is necessary. In the Law of Tort, a person may be liable for defamation although he did not know that what he published applied to the plaintiffs. Criminal prosecution of such cases can lie and is undoubtedly one of Strict Liability.

(c) **Contempt of Court.**

Contempt of Court may take a variety of forms, most of which would fall within the purview of the Criminal Law.
11) **Position in India.**

Generally, on the question of Mens Rea, the Supreme Court has taken an attitude which conforms to the view taken by the English Courts. Dealing with Section 7 of the Essential Commodities Act, which makes it an offence to violate any order made under Section 3 of the Essential Commodities Act, 1955, the Court examined the question in Nathulal vs. State of Madhya Pradesh (AIR, 1966-SC-43), whether a factual non-compliance of the order by a Dealer should amount to an offence even if there was no Mens Rea on his part. The Court held that the object of the Act would not be defeated if Mens Rea were read as an ingredient of the offence, and it would be legitimate to hold that a person could commit an offence under Section 7 of the Act, if he intentionally contravened any order made under Section 3 of the Act.

The process of reasoning by which the Supreme Court arrived at the conclusion is as follows:

"Mens Rea is an essential ingredient of a criminal offence. 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 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 is to promote welfare activities or to eradicate a great social evil by itself is 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. The nature of the Mens Rea that would otherwise be defeated. The nature of the Mens Rea that would be implied in a Statute creating an offence depends on the object of the Act and the provision thereof.


In the earlier case of the State of Maharashtra vs. Mayor Hans George (AIR-1955-SC-722), the majority judgement held that Mens Rea is not an essential ingredient of the offence under Section 8(1), read with Section 23 of the Foreign Exchange Regulation Act, 1947. The Court held that the mere bringing of Gold into India constitutes the offence and except that the bringing must be voluntary bringing there is no other ingredient that is necessary in order to constitute a contravention of Section 8(1) read with Section 24(1) of the Foreign Exchange Regulation Act, 1947. The Supreme Court
relied upon several Privy Council decisions including that in the case of Lim Chin Aik vs. The Queen. The Privy Council had held in the case of Srinivasamall vs. Emperor that offences which do not require Mens Rea are usually of a comparatively minor character. Where offences are visited with imprisonment, Mens Rea should ordinarily be held to be an integral part of the offence.

(D) Vicarious Liability.

The general rule is that a man is held liable for his criminal act and not for those of other persons, while in Civil Law, the rule that a man who does an act through another does it himself was so fertile, it was not generally applied in Criminal Law.

(i) Common Law Rule on Vicarious Liability for Crimes.

The Common Law rule on vicarious liability was enunciated in R vs. Huggins (1730-2LD.Raym, 1574), where Barnes and Huggins were charged with the offence of murder of a prisoner in Fleet Street Prison by putting him in a filthy room. Huggins was Warden and Burnes the Deputy Warden. It was Burnes who had put him in the filthy room and Huggins, the Warden, had only seen him and turned away. It was held that Huggins was not guilty. The Judges observed:
"Though he was a Warden, yet it being found that there was a Deputy, he is not, as Warden, guilty of act committed under the authority of the Deputy. He shall answer as superior for his Deputy civilly and not criminally---. He only is criminally punishable, who immediately does an act or permits it to be done, so that if an act is done by an under-officer, unless it is done by an act or direction or with the consent of the principal, the principal is not criminally punishable for it...."

Thus, as a rule at Common Law no person was criminally liable for the act of another, unless he had previously authorised or assented to it.

But, later on, the following three exceptions were developed:-

First, a Master was held punishable for a libel published by his servant. This rule was designed chiefly to catch the Newspaper Proprietors.

Secondly, a Master was and still is vicariously responsible for a public nuisance committed by his servant.

Thirdly, in the case of contempt of Courts, where a Newspaper man is held liable for anything published about cases pending in the Courts.
(ii) **Vicarious Liability under the Statute.**

There have been good many Statutes in England according to which there is vicarious liability. The Licensee of a hotel is held vicariously liable for the Tort of the Manager. So also the Directors of the Company are vicariously liable for crimes committed by their agents.

(iii) **Vicarious Liability under Indian Law.**

Under the Indian Law also several instances are to be found in the Statutory Laws wherein vicarious liability is imposed on the Master for the acts of his servant or on the principals for the acts of their agents.

(a) **Vicarious Liability under the Code of Criminal Procedure.**

Under the Penal Code, vicarious liability is imposed on owners or occupiers of land, when an unlawful assembly or riot takes place on their land. Sections 154 and 155 of the Penal Code imposes a penalty on the owner of the land where a breach of duty is committed by his Agent or Manager. The Owner may be ignorant of the acts of his Agent or Manager, yet he is held guilty. The Code of Criminal Procedure casts upon the owner an occupier of land, a duty of immediately giving the information respecting the commission or of intent to
commit a riot. The non-prevention of unlawful assembly and a riot on their land is made punishable under Section 154 of the Indian Penal Code irrespective of the fact whether they have knowledge of its being committed or not. This is an instance of the extension of the maxim of Respondeat Superior, to Criminal Law.

(b) Vicarious Liability under Socio-Economic Laws in India.

Section 7 of the Prevention of Food Adulteration Act for example, says, no person shall himself or by any person on his behalf manufacture for sale or store, sell or distribute any adulterated food. Section 16 of the Prevention of Food Adulteration Act says, if any person whether by himself or by another person on his behalf imports into India or manufactures for sale or stores, sells or distributes any article of food which is adulterated, he shall, in addition to the penalty to which he will be liable under the provisions of Section 6, be punishable with imprisonment which shall not be less than six months.

The expression "himself or by any other person on his behalf" occurring in the above two Sections, Section 7 and Section 14 of the Prevention of Food Adulteration Act impose
vicarious liability on persons for the offences actually committed by others. Generally speaking only the person actually committing the act is responsible for the act, but this expression illustrates the Maxim, *Qui Facit Per Alium Facit Per Se*, which means that he who acts through another acts himself. The Food Regulations are a exception to the general rules and accordingly under the Act, principals have been made liable for the acts of their agents, Masters for the acts of their servants, partners for the acts of other partners. However, before a person can be held vicariously liable for the act of another, there should be a legal nexus in the two and relationship between the two must be regular than casual.

Where a person sells adulterated food only on behalf his Master, both the persons so selling and the Master on whose behalf the article was sold, are liable.

As a general rule of Criminal Law, the Master is not liable for the unauthorised acts of his servant. But in many cases, the law either imposes upon the owner of the property, the obligation of managing it, so that, it shall not injuriously affect anyone else or the public or requires or forbids the dealing with it in some particular way. In such cases, where the breach of obligation is punishable
criminally, the owner cannot free himself from liability by delegating the Management to someone else on his behalf. The liability of the Master is insisted upon because otherwise every Master will be able to set at naught the entire series of special acts by employing servant ad-hoc and getting illegal acts done and at the same time disown his liability therefor and would take care always to be out of the way. A plain reading of Section 7 and Section 16 of the Prevention of Food Adulteration Act, 1954, makes it clear that every person who sells adulterated food is guilty of an offence punishable under Section 16 and it does not matter that the adulterated food does not belong to him. In such a case where an adulterated article of food is sold through a Servant, the Servant and the Master both are guilty and so is the case with the sale through an agent. \textit{(Sariprasad vs. State of UP)}\footnote{AIR-1961-SC.}

In such a case even the plea that the accused was ignorant of the nature of the substance or its quality is not available to him. The condition of the mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable merely because his servant or an agent commits negligent or malicious or fraudulent act.

(E) \textbf{Group Liability.}

A Crime may be committed by an individual or in collaboration with others. In case an individual commits
the crime, there would be no difficulty in assessing his criminal guilt. He would be punished according to the nature of the offence committed. Difficulty however arises when several persons are engaged in the commission of the offence and different roles are played by each of such individuals. One might be engaged in the actual task of committing the offence, say, murder, while the other might remain standing near the assailant to put the knife in his hand still another might have chalked out the plan and give assistance, but stays away from the scene of occurrence throughout the act. In such cases a distinction is drawn between the acts of such individuals, according to their mode and degree of participation or involvement in the commission of the offence for the purposes of ascertaining the guilt and awarding punishment. Such persons may broadly be classified into principals and abettors.

The Principal is a person who either actually commits a crime or who aids in the commission of a crime while being present at the place of occurrence. Such a person is held liable as the actual offender under the specific Sections or under the provisions governing joint and constructive liability.

On the other hand an abettor is a person who either directly or indirectly aids, assists, counsels, procures,
or engages another to commit the crime. Abettors generally render assistance and aid from behind the scene of crime whereas the Principal remains himself present throughout the commission of the act.

In case where two or more persons are involved in a crime either jointly or in a group and it is not possible to apportion criminal guilt of each of the participants, all the participants are held jointly liable for the offence committed by anyone or by all the members of the group. This is based on the contention that the presence of the accomplices gives encouragement, protection and support to the persons actually engaged in the commission of the wrongful acts. The doctrine of joint liability is justified on the common sense principle that is two or more persons do an act jointly, it is just the same as if each of them had done it individually. Since the purpose is common, the responsibility is joint. The man who actually strikes his hand is no more liable than the man ready to place a knife in the hand of the assistant for the purpose.

The provisions relating to joint liability (also called constructive liability) are found in Sections 34 to 38, 120A, 149, 396, and 460 of the Indian Penal Code.