

Criminal legal principle

Law



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29th October, Criminal Legal Principle “ The legal principles governing liability for omissions are too rigid and only ? impose liability in every particular proscribed circumstances. This state of affairs is ? unsatisfactory and actively discourages community responsibility.” This paper has been divided into three different parts. It has three different questions and all the questions shall be handled separately. The first question is as follows: 1. Briefly outline the legal principles regulating criminal liability for ? omissions with reference to relevant case law. The legal principle regulating criminal liability for omissions consists of special duty, contractual duty and dangerous situations. In English Law the legal principle for omission rests upon these three principles, and the omission on the part of the individual to act upon any one of these attracts a criminal liability. The set of principles regulating criminal are extremely rigid and have not been explained properly in the ambit of English Law. One of the most crucial cases governing this principle is R v. Miller (1982) UKHL 6. This case outlines the legal jurisprudence behind the act of omissions on the part of an individual and how it attracts a legal penalty. In the facts of the case, the defendant accidentally burned his mattress. Instead of trying to resist the fire and shut it out, he shifted to the other room and slept there afterwards. During this time, the burned mattress lit the whole building and there was destruction of property in the building to this act of omission on the part of the defendant. The defendant was eventually convicted of arson. This act arises out of the first principle of omission described as failure to act on special duty, as the case was in the present proceedings. “ Ashworth says that there is no moral difference between (i) a positive act and (ii) an omission when a duty is established. But even if this is so, he has already conceded a difference between the two

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when he says that an omission is culpable only when there is duty to act. The duty requirement sometimes involves considerations that are irrelevant to crimes of commission. Of course, every crime is a breach of legal duty not to commit the crime, but this is part of the meaning of the word 'crime.' The point is that no requirement of a particular duty not to act (over and above the specification of the crime) applies to wrongs of commission." Looking at the current picture, the laws for omission are very rigid and vague in nature. It implies the fact that common law has to step in whenever a situation arises with regard to the explanation of this point of law in cases. Since the principles have not been defined in a separate act, it becomes imperative on the part of the judiciary to include such principles within the ambit of the basic criminal law. As proposed and argued by Ashworth, there is not any difference between an act or an act of omission, since both of these acts arise out of a criminal liability and a guilty mind. The second question of the paper which needs to be answered is whether the principles for the act of omissions are too rigid in nature, and if yes whether do we need change in law to accommodate the amendments. In my opinion and discussions pertaining to the present scheme of things, I don't think that the current state of principles under the omission law is too rigid. It might be argued in hindsight that the principles are extremely vague, but the point to be noticed here is that act of omissions are harder to prove than an act done by itself. What is not implied is not implied but needs to be shown and understood in the light of the criminal jurisprudence. One needs to show and prove that a guilty mind existed during the act of omission, since we tend to believe more in an act done by itself rather than the omission of a particular act doing something dangerous. Looking from an objective point of view, the legal

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principle resounding the act of omissions are bound to convey a strict message, since it is an unconventional form of criminal activity in nature, and therefore it is imperative and pertinent on the part of the State to structure the laws in a strict fashion. The third part of this essay questions the validity and status of common law in dealing with the jurisprudence of omissions under criminal law. In my opinion there is a need to govern the act of omission through common law. This is because at the present moment we cannot afford to draft a specific legislation for an act of omission because theoretically that will only complicate the confusion with respect to act of omission. It is indeed quite precarious at the face of it to label an individual guilty in a failure to act or avoid a criminal act, where in those circumstances it is presumed that the failure in itself was the act of the criminal liability committed by the defendant. Keeping this in mind, it shall be left open for the judges and the common law to interpret each and every action according to its merits and the law, and then decide as to whether such an act is indeed an act of omission or some other kind of negligence. There is a very fine line of balance between the omission to act and a genuine negligence on the part of the individual, in order to keep this balance in check and progress we should not bother to disturb its sanctity by bringing out a legislation which will complicate the matters even more. The common law approach is the best approach we have and therefore in my opinion we should not tinker with the existing approach, which allows for a careful examination of facts and law and only after that do the judges impart their judgments. Work Cited Glanville Williams, ' Criminal Omissions—The Conventional View' (1991) 107 LQR 86