

## GRAVE AND SUDDEN PROVOCATION AS A MITIGATING FACTOR TO CRIMINAL LIABILITY UNDER INDIAN PENAL CODE

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### **ABSTRACT**

In this work, we will try to examine the meaning of the term grave and sudden provocation and how it can be pleaded as a mitigating factor to criminal liability. The conditions of grave and sudden provocation by which the culpability be reduced under Indian Penal Code and to study up to what extent the provocation worked as a mitigating factor under different provisions of IPC. The grave and sudden provocation is not a complete defence.

The law of provocation mitigates the criminal liability but it depends upon the facts and circumstances of each case. What amounts to provocation is a question of fact and in catena of cases both Indian and common law Judiciary has very clearly set up certain standards and parameters to know whether there is provocation or not.

It is the cardinal principle of criminal jurisprudence that the culpability of the person is to be according to his mensrea.

In precise, what role played by judiciary by stating the circumstances under which an act be covered under the partial defence of grave and sudden provocation, its importance and with definitive conclusion and suggestions.

## **INTRODUCTION**

“Provocation is some act or series of acts done by the dead man to the accused which would cause in any reasonable person and actually causes in the accused a sudden and temporary loss of self-control rendering the accused so subject to passion as to make him or her for the moment not master of his mind”.<sup>1</sup>

Right from the beginning of universe the human life has been treated as most sacred. The same concept was prevalent in ancient times. It is a gift of God. So neither it can be given nor taken by any person. It was with this end in view that the special responsibility was cast on the king in the ancient times to ensure the life of his subjects and to prevent the heinous crime like murder.

The human mind is a complex mechanism and the medical science is yet to provide an answer that why two persons react differently in the same or similar circumstances when the body anatomy is the same? Biological aspect is that two different persons placed in the same or similar circumstances would react differently to a particular incident as the problem has source psychic overtones. In the last few decades, the development in medical and behavioural studies has led to better understanding of the various factors that influence human behaviour.

How the provocation operate as a mitigating factor to criminal liability under different provisions of the Indian Penal Code.? For this purpose it is necessary to understand the concept scope and importance of grave and sudden provocation. It is well established principle of law that every act or conduct which is excused in the name of grave and sudden provocation is not consider as mitigating factor to criminal liability. The substantive provisions of the Indian Penal Code defines the particular circumstances when the plea of the grave and sudden provocation is exist but not in all other cases

The criminal law is based on the idea that every culprit is punished according to his guilt. So for as the every act which is against or contrary to laws must punishable under law. This is the general perception under the criminal law that no one can be unpunished if they are doing any acts which is against the state laws. Firstly there must be an act. Acts are classified as an intentional and unintentional. It means that intentional acts are consider more serious as

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<sup>1</sup> R v. Duffy, (1949) 1 All ER 932.

compare to unintentional acts. The intentional acts is determined as most gravest form of the crime. It is based on the higher degree of culpability of the intention. No defence or general exception is applicable if the acts are committed with intention but in the other hand if the acts is not intentional and circumstances justified the case is covers under exceptions of the criminal law. The substantive law of the land defines various offences which lay down certain criteria with prescribed punishment. The criminal law states that any act which is contrary to penal provisions than it can be treated as an offence. In simple words the offence means any wrongful act or series of acts or bundle of events which is illegal and punishable according to the nature of the act. Under section 40 of the Indian Penal Code defined offence.

Further the some defenses or general or special exceptions are also provided under law which reduces the criminal liability as completely or partially. This is an titled as a general defenses or mitigating factor to criminal liability. It means that the criminal responsibility is not as consider as criminal when some factors are provided by the way of the exceptions to criminal liability. All the acts fall under the category which is excluded the offences from their criminal liability because some policy of statute explains the circumstances which is justified the offence as deals with general defenses.

***Provocation defined:***

The concept of provocation which is integral part of the offence of manslaughter in English criminal law has been incorporated to Indian criminal law. In this regard both the legal systems are common.<sup>2</sup>

In Osborne's Concise Law Dictionary,<sup>3</sup> 'Provocation' is defined to mean words or conducts which are sufficient to prevent the exercise of reason and which temporarily deprived a reasonable person himself control.

Literally provocation means an action or event that makes someone angry that is intentional causing of annoyance or anger to another person that makes him to react violently.

Kenny an acclaimed authority on the English Criminal Law, "The cases in which it has been held that provocation may reduce a homicide from murder to manslaughter have throughout

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<sup>2</sup> Poovammal v. State, Criminal Appeal (MD) No. 30 of 2011 SC

<sup>3</sup> Mick Woodley (ed.), Osborne's Concise Law Dictionary, Sweet and Maxwell (12th Edition, 2013).

the ages been those in which the killing was intentional, but made by prisoner when so flamed by passion that he was for the moment not the master of his mind. This kind of homicide has been traditionally termed voluntary manslaughter".<sup>4</sup>

***Distinction between Provocation and General Defenses:***

Provocation is not a general defence. It is a partial defence which means that the criminal liability arises of the act which is lesser and the offender is not completely free. It is a mitigating factor to criminal liability. It also remembers that the offender is not absolved from the criminal liability on the basis of mitigating factor but if the offender is pleaded the circumstance exist in his case the court can consider the case according to the evidence which is recorded in that case. If the facts and circumstances of the case is clear indication that the case is bringing in the category which is deals with the mitigation factor in that case the court can consider the facts and decide according to the recorded evidence. So, the provocation reduces the criminal liability under the various offences. We are aware of fact that it is a part of the offence of murder and it is not an independent offence under the law of crimes. It is to understand with reference to mitigating factor which is the other name as of this partial defense to criminal liability from the stated facts and circumstances of each case. Provocation is only mitigating the criminal liability to that extent upto to the degree of intention or depends upon the nature and gravity of the offence. When the plea of the provocation is claimed by the accused person in that case the question of application of general or exceptions are raised. It must be proved that the act is accident or other circumstances under the law of crimes provides the exceptions to general rules of criminal liability. We can say that when the case is proved only after that these general exceptions the offences otherwise the act is considering as intentional or pre-arrange planed. This is the basic distinction between the general exceptions and under special exceptions of the substantive law. The provocation is which it means to say that those circumstances when the offender lost his self-control reason behind is here victim creates the circumstances in that case offender deprive the self-control and commits the act is unlawful and punishable under the criminal law. It amounts to a single act or serious of acts which is provoked by the victim. The wide interpretation by judiciary related to the provocation depends upon the case to case. The substantive laws on provocation lays down the essential ingredients

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<sup>4</sup> Kenny's Outlines of Criminal law, 19th edition, p 171-172 at paragraph 117

but if we consider the provision of Indian Penal Code section 300 exception 1 lays down that requirements must be fulfilled before the provision is applicable. Here question is arising that what words or events are amounts to provocation. This discretion is left to the court what amounts to provocation. Reason behind is that no strait jacket formula can be evolved.

***Historical Perspective of Provocation under the Indian Criminal Law:***

Grave and sudden provocation as a mitigation. The authors of the code have summarized the object and purpose of the exception in the code and justification for a lenient punishment in case of murder committed on grave and sudden provocation in the following words:

“We agree with the great mass of mankind and with the majority of jurists ancient and modern in thinking that homicide committed in the sudden heat of passion on great provocation ought to be punished but that in general it ought not be punished to so severely as murder. It ought to be punished in order to teach men to entertain a particular respect for human life it ought to be punished order to give men motive for accustoming themselves to govern their passions and in some few cases to act with utmost rigour. In general, however we would not visit homicide committed in violent passion which had been suddenly provoke deal with the highest penalties of the law. We think that to treat a person guilty of such homicide as should treat a murderer would be a highly inexpedient course which would shock the universal feeling of mankind and would engage the public sympathy on the side of the delinquent against the law.”<sup>5</sup>

In India Section 299 of Indian penal code defines the offence of culpable homicide. Section 300 explains when culpable homicide amounts to murder. In the penal code, culpable homicide is used as a generic term and exhaustively divided into two parts namely culpable homicide amounting to murder 300 Clauses 1 to 4 and culpable homicide not amounting to murder under Section 299 and exceptions to Section 300. What distinguishes these two offences is mental attitudes in the presence of any of which consists of four mental attitudes in the presence of any of which the lesser offence culpable homicide becomes greater murder. Mental attitudes are stated in Section 300<sup>6</sup> as distinguishing murder from culpable homicide. Unless the offence can be said to involve at least one such mental attitude it can't be murder.<sup>7</sup>

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<sup>5</sup> Peter Smith (1972) Crim. LR 524.

<sup>6</sup> Ratan Lal & Dhiraj Lal, The Law of Crimes, p 739 (1971).

<sup>7</sup> Rajwant Singh v. State of Kerala, AIR 1966 SC 1874.



**Exceptions of the Section 300 of Indian Penal Code:**

- Provocation;
- Exceeding right of private defence;
- Public servant exceeding his powers;
- Sudden fight;
- Consent.

**Section 304:** Punishment for culpable homicide not amounting to murder. Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death or with imprisonment of either description for a term which may extend to ten years or with fine or with both if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury.

***Grave and Sudden Provocation as a mitigating factor to criminal liability under IPC:*****Essential ingredients of exception 1 to section 300 under IPC-**

**Section 300 Exception 1:** When culpable homicide is not murder, Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person of who gave the provocation or causes the death of any other person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

Firstly, that the provocation is not sought or voluntarily provoked by the offender as an excuse for the killing or doing harm to any person.

Secondly, that the provocation is not given anything done in the obedience to the law or by the public servant in the lawful exercise the powers of such public servant.

Thirdly, that the provocation is not giving by anything done in the lawful exercise of the right of the private defence.

Sir Stephen in the Digest of Criminal law has expressed the view that in deciding the question whether there was or was not provocation regard must be had to the nature of the act by which the offender caused death the time interval which elapsed between the provocation. The act which caused death to the offender's conduct during the interval and to all the surrounding circumstances tending to show the state of his mind. As to the question how long the law will allow for the blood continuing heated to warrant an inference that the act of killing was done whilst the accused was deprived of the power of self-control.<sup>8</sup>

### **Explanation & Illustrations**

Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

### **Illustrations**

A, under the influence of passion excited by Z intentionally kills Y, Z's child. This is murder in as much the provocation was not given by the child and the death of the child was not caused by the accident or misfortune in doing an act caused by the provocation.

Y gives grave and sudden provocation to A. A on this provocation fires a pistol at Y. Neither intending nor knowing himself to be likely to kill Z who is near him but out of sight. A kills Z. Here A has not committed murder but merely culpable homicide.

A is lawfully arrested by Z a bailiff A is excited to sudden and violent passion by the arrest and kills Z. This is murder in as much as the provocation was given by a thing done by a public servant in the exercise of his power.

A appears as a witness before Z. A Magistrate Z says that he does not believe a word of A's deposition and that A had perjured himself A is moved to sudden passion by these words and kills Z. This is murder.

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<sup>8</sup> Sir Stephen, A Digest of The Criminal Law, p 251.Vol. 1.

A attempts to pull Z's nose Z in the exercise of the right of private defence lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in the consequence and kills (Z). This is murder as much as provocation was given by a thing done in the exercise of the right of private defence.

Z strikes B. B is by this provocation excited to violent rage. A a bystander intending to take advantage of B's rage and cause him to kill Z puts a knife into B's hand for that purpose .B kills Z with knife. Here B may committed only culpable homicide but A is guilty of murder.

Six important illustration are attached to the first exception wherein (b) and (f) are culpable homicide while a, c, d, and e are instances of murder.

In *K.M.Nanavati v. State of Maharashtra*,<sup>9</sup> his Lordships made the following observation

The test of grave and sudden provocation is whether a reasonable man belonging to the same class of society as the accused placed in the situation in which the accused was placed would be so provoked as to lose his self-control.

In Indian words and gestures may also under certain circumstances cause grave and sudden provocation to an accused so as to bring his act within the first exception to Section 300 of Indian Penal Code.

The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

The fatal blow should be clearly treated to be influence of passion arising from that provocation and not after the passion had cooled down by lapse of time or otherwise giving room and scope for premeditation and calculation. The Supreme Court stand has been reiterated in a number of cases decided by the various High Courts.<sup>10</sup>

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<sup>9</sup> *Ibid*

<sup>10</sup> *Madhaven v. State of Kerla*, 1966 Ker LT 112; *Amarjeet Singh*, AIR 1970 SC Punjab 279; *Chand Singh v State*, 1971 Cri LJ 1 1501; *Ilmaram*, (1967) Cri LJ 1697; *In re Vadaychi*, 1972 Cri LJ 1448; *Ciaik Ward*, AIR 1974 SC 387; *Hansa Singh*, 1977 Cri LJ 1448 ; (1978) PLR 408; *Curubasavaiah*, 1979 Cri LJ 603.



The provisions relating to grave and sudden provocation as under:

**Section 153:** Wantonly giving provocation with intent to cause riot – if rioting be committed – if not committed

Whoever malignantly or wantonly by doing anything which is illegal gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting be committed shall if the offence of rioting be committed in consequence of such provocation be punished with imprisonment of either description for a term which may be extended to one year or with fine or with both and if the offence of rioting be not committed with imprisonment of either description for a term which may be extended to six months or with fine or with both.

To invoke Section 153 of Indian penal code the provocation given must be such as would be likely to cause the offence of rioting. It depends on the temper and feeling of the person subjected to provocation and knowledge of this by the accused. The illegality of the act must be ascertained according to the general law governing the rights of person and property.<sup>11</sup>

**Section 334:** Voluntarily causing hurt on provocation

Whoever voluntarily causes hurt on grave and sudden provocation if he neither intended nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for term which may extend to one month or with fine which may extend to five hundred rupees or with both.

Grave and sudden provocation mitigates voluntarily causing of hurt if he (offender) does not intend or himself knows that he is not likely to cause such hurt or grievous hurt to any other persons. The provocation received must be both sudden and grave. It must be received from the person assaulted and below should be directed against his provocation.

**Section 335:** Voluntarily causing grievous hurt on provocation.

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<sup>11</sup>Ratanlal and Dhirajlal, *Law of Crimes A Commentary on the Indian Penal Code*, 2 Volumes, (27<sup>th</sup> Edition, 2013).

Whoever voluntarily causes grievous hurt on grave and sudden provocation if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to four years or with fine which may be extend to two thousand rupees or with both.

**Explanation:** The last two sections are subject to the same provisos as Exception 1 to Section 300.

This Section was amended by inserting the word voluntarily by the amending Act of 1882. This Section deals with grievous hurt under the same circumstances as in Section 334. There is no difference between the two sections except for the gravity of the offence. The nature of the weapon used will be immaterial as circumstances allowed to be take anything available as the accused may be maddened by provocation. When the accused deliberated and chose the weapon, he would not be entitled to the benefit of this Section. To enable a person to plead the exception provocation must be grave and sudden resulting in the deprivation of his power of self-control which must continue while the hurt or grievous is caused. This Section was amended by inserting the word voluntarily by the amending Act of 1882. This Section deals with grievous hurt under the same circumstances as in Section 334. There is no difference between the two sections except for the gravity of the offence. The nature of the weapon used will be immaterial as circumstances allowed to be take anything available as the accused may be maddened by provocation. When the accused deliberated and chose the weapon he would not be entitled to the benefit of this Section. To enable a person to plead the exception provocation must be grave and sudden resulting in the deprivation of his power of self-control which must continue while the hurt or grievous is caused.

**Section 352:** Punishment for assault or criminal force otherwise than on grave and sudden provocation. Whoever assaults or uses criminal force to any person otherwise than on the grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

### **Explanation**

Grave and sudden provocation will not mitigate the punishment for an offence under this Section. If the provocation is sought or voluntarily provoked by the offender as an excuse for the offence or if the provocation is given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant or If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

**Section 355:** Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

**Section 358:** Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees with or both.

### **Explanation**

The last Section is subject to the same explanation as Section 352.

## **CONCLUSION & SUGGESTIONS**

In the light of the discussion in this work, the following conclusion can be drawn:

- (i) The defence of provocation in murder cases is a concession only to the ordinary human frailty under common law but under IPC provocation is not applicable to hyper sensitive unusually excitable or unusually phlegmatic person.

(ii) The mitigating factor provocation may arise where a person does intend to cause harm or inflict grievous bodily harm but his intention to do so is the result of sudden passion involving loss of self-control by reason of provocation. It is so because in some cases an intention to kill may be formed in seconds before the fatal blow may be given. It can thus be said that defence of provocation applies to an unintentional killing in cases and varies from the facts of each case. Though it cannot be the case in all fact situations.

(iii) Provocation in all cases is an extending circumstance and not a complete defence. It reduces a crime of murder to manslaughter which in the language of Indian penal code is known as culpable homicide as thereby changes the colour and complexion of the crime.

(iv) Although it is a partial defence yet the success or failure of this partial defence to a charge of murder makes a world of difference to the accused person. If it succeeds the offence becomes one of culpable homicide not amounting to murder and the court delivers the sentence of imprisonment which in practice generally in cases of murder under grave and sudden provocation varies from 10 years to life imprisonment which has already been undergone by the accused.

(v) That the courts in India have been more realistic in applying the test of reasonable man in the context of grave and sudden provocation. It was held in *Mahmood Case*, that it would be futile to lay down a universal standard for measuring the gravity of provocation. Our Supreme Court in *K.M. Nanavati* case examined the reasonable man test and rightly departing from the conservative approach of British Courts observed that no abstract standard or reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the cultural, social and emotional background that in our vast country there are social groups ranging from the lowest to highest state of civilization. It is neither possible nor desirable to lay down by standard with precision and it is for the Court to decide in each case having regard to the relevant circumstances. In this case socio psychic, legal approach was adopted which was trend setter in the subsequent decision given by the courts. While applying the defence of grave and sudden provocation in murder and other cases as a mitigating factor our courts have taken in to consideration the following factors: (a) Mental background of the accused created by the acts of the victim which was correctly; (b) Word and gesture which may be equally provocation have accepted as falling within the ambit and scope of grave and sudden

provocation which is a correct approach. Under the Indian Penal Code provocation as a mitigating factor in murder and other cases must be grave and sudden. It is immaterial whether it resulted from acts, words or gestures.

(vi) Indian Courts have not maintained the distinction between the provocation by acts or words rightly; (c) Some of the courts have taken the stand that after the loss of self-control in the fit of grave and sudden provocation the conduct of the accused in the continuation of loss of self-control is immaterial for this mitigating factor in murder cases. Allahabad and Kerala High courts respectively where the above approach was adopted is healthy trend and the same approach should be adopted by all the courts in India.

(vii) The loss of self-control by grave and sudden provocation is question of fact. This is a court proposition of law. No hard and fast rule can be laid down as regard the impact of intervening period (cooling time) between the time of provocation and the commission of act. Long periods have been accepted and rejected by the courts depending upon the gravity of the provocation and surrounding circumstances which provoked the accused.

In K.M. Nanavati, mitigating factor of provocation was rejected due to long intervening (cooling) period and even long intervening period between the act of provocation and the commission of the act of murder was not considered as a disqualification for the defence of provocation. Thus, the cooling time cannot be judged by applying an objective standard but is to be judged by applying the norms of subjectivity which is a correct approach.

### **Suggestions:**

(i) Under the existing Indian Penal Code Section 299 defines culpable homicide. Section 300 begins by setting out the circumstances when culpable homicide turns into murder which is punishable under Section 302 and exception in the same Section states when the offence is not murder but culpable homicide not amounting to murder punishable under Section 304 but culpable homicide not amounting to murder and murder itself have not been defined.

(ii) This phraseology used relating to murder, culpable homicide, culpable homicide not amounting to murder has generated controversies about the distinction between culpable homicide and murder. It is therefore suggested that the provisions of the Indian Penal Code



relating to murder culpable homicide and culpable homicide not amounting to murder should be clearly defined in order to give charity to the law relating to the above-mentioned crimes.

(a) The approach of the Indian Court relating to the offence of murder and defences thereof should be in conformity with the socio economic cultural conditions prevailing in India. The practice of following blindly the decisions of British courts should be discarded.

(b) For the defence of grave and sudden provocation the conduct of the accused which hitherto has been judged by applying the test of reasonable men evolved by British Courts should not be the sole guiding principle before the judge in our country. The reason is that the defence of grave and sudden provocation is only a mitigating factor. It only lesser the punishment taking into consideration the mental stage of the accused at the martial time of the commission of act or murder cases, the age, sex, family background mental development, cultural heritage, social standing and physical characteristics of the accused should be given due consideration. Thus the defence should be available to every accused who acted under grave and sudden provocation without rigidly applying the yard stick of reasonable man.

(iii) The defence of grave and sudden provocation has been tested by the courts in the context of time interval between the act of provocation and act of commission of offence.

This time interval (cooling time) has been considered as of material importance in cooling down the temper by the greater the possibility of regaining the self-control by the accused but it is suggested that this is not a sound approach to be applied mechanically in all cases of grave and sudden provocation. The cooling time should be judged in the context of the degree of gravity of the provocation mental development of the accused and surrounding circumstances.