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SUDDEN AND GRAVE PROVOCATION IS A PARTIAL DEFENSE UNDER IPC

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ABSTRACT

Renounce principle of criminal law is that only court can punish the accused no any other. Law cannot take over by any person. Lynching and honor killing are forbidden by law. Sudden and grave provocation as partial defense available to the accused person to reduce or convert into lesser offence. This defense is applicable only offence of murder, simple hurt grievous hurt, criminal force and assault which are punishable under section 302, 323, 325, 352 and 355 of Indian Penal Code respectively. Partial defense of sudden and grave provocation recognized principle of the comparative responsibility. No hard and fast formula can be formulated to test the reasonableness of act done by accused on account of deprivation of self control arises by sudden and grave provocation. There is very thin difference between exceeds right of private defense and act done in effect of deprivation of self control arises by sudden and grave provocation.

INTRODUCTION

General defenses for accused are defined in various penal statutes, if accused person able to prove general defense as provided in penal statutes such person could not be convicted.

Indian Penal Code also describes the General defenses as (General Exceptions) enumerated in chapter 4 of IPC.

According to provisions of section 105 of Indian evidence act burden of proving that case of accused comes within exceptions lies upon such person (accused).

Offence committed due to in the effect of sudden and grave provocation the gravity of offence reduce and maybe offence punishable in different of crime for e.g. if a person causes voluntary grievous hurt on provocation then such person shall be punished under section 335 IPC instead

of offence punishable under section 325 and 326 of IPC likely assault or criminal force on grave provocation then such criminal act shall be punishable under section 358 of IPC instead of 352 likely murder or culpable homicide not amounting to murder is caused sudden and grave provocation accused may be punish under section 304 part I &II IPC instead thus offence is committed under the effect of deprivation of the self control by the provocation of the victim offence of the person does not vanish but offence convert in lesser offence therefore; sudden and grave not full defense that is why it could find place in chapter 4 of IPC.

For the defense of sudden and grave provocation is also need to be proved that sudden and grave provocation is not sought or voluntarily provoked by the offender as excuse for committing crime. Thus sudden and grave provocation is not covered under general exceptions or full defense it is only a partial defense to the extent to convert his act the act of offender converted into lesser offence.

To understand the actual scope defense of sudden & grave provocation, exception 1 to 300 IPC to be reproduce as under:

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 who gave provocation or causes the death of any person by mistake or accident.

The above exception is subject to the following provisos¹: -

First - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.²

Secondly - That the provocation is not given by anything done obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant³.

Thirdly - That the provocation is not given by anything done in the lawful exercise of the right of private defense⁴.

¹By Mayank Shekhar | February 25, 2018 /<https://www.legalbites.in/law-notes-ipc-exceptions-to-offence-of-murder/>.

²By Ankush Verma | Jan 19 2014/<https://www.scribd.com/document/200714845/Origins-of-Provocation-Defence>.

³<https://books.google.com/books?id=fAY8z7NiY3kC>.

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

Thus, requirements for taking the benefit of partial defense of sudden & grave provocation can be summarized as:-

1. Provocation must be sudden and grave which loss self control.

The word grave and sudden are both relative term and must at least to a great extent be decided by comparing the nature of the provocation with that of the retaliatory. this can be infer by the act in which manner it has been done and time is also essence to determine the degree of sudden and grave provocation it may be relevant to see whether accused deliberately choose the weapon or mode of it is use on the bases of this facts it can be infer when the accused committed crime the pride of power of self control it is highly impossible that person after having lose control would used optimum force in pre-portion of provocation same time the determination of sudden and grave provocation may be subjective and may be objective.

2. It should not be self soughtby accused himself.

For this relevant to cite case **1953 Criminal law journal Gujarat Page 1109 in re Kanan**⁵

"Accused asked the deceased, a Hindu, as to whether he had an unnatural intimacy with a cow. The deceased got enraged and retorted "YES", I have done, and I will do so even with your mother. "Upon this, the accused shot the deceased dead. It was held that exception 1 was not attracted as to impute to a Hindu an unnatural relation with a cow, which the Hindus worship as mother, is a serious affront provoking him to retort

⁴By lawn.com | March 15,2017 <https://www.lawnn.com/murder-section-300-indian-penal-code/>.

⁵Criminal law Journal 1953 Gujarat Page 1109.

which the deceased did. Therefore, the provocation, if at all, was self-sought and no benefit could be given to him."

3. Time for regain self control.

A person may receive grave and sudden provocation and there by lose his self control after losing his power of self control he done nothing but remain silent after lapse of substantive time he commits offence of murder then defense of sudden and grave provocation will not available this defense only continue till he regain power of self control as soon as accused regain self control he ceased to claim defense of sudden and grave provocation thus, this defense of sudden and grave provocation is confine and continue whilst deprive of power of self control an inquire as to what time would be sufficient for a reasonable man to regain self control is a question of fact and depends upon the circumstance of the each case. thus it is impossible to lay down a hard and fast rule as to when a person should be said to have had time to cool down and thus to be deprived of benefits of the exception. Much depends on the individual characteristic of the accused and elements cannot be ignored to determination of the matters.

4. Victim's knowledge about the abnormality of the accused

Knowledge on the part of victim about abnormal mental abnormality of accused is totally immaterial for determining issue of sudden and grave provocation. On the other hand conduct of victim whether he had done prior may be treated as relevant fact for the same.

❖ Relation between General exceptions as defined in Chapter-IV of the IPC. & defense of sudden and grave provocation.

If an accused person able to prove that his/her case covered by Chapter-IV of The IPC., than accused cannot be punished, on the other hand if accused is able to prove his/her case covered by

exception of sudden and grave provocation, than accused shall be punished in lesser offence as shown in table below.

Offence punishable in IPC except on provocation or not covered in exception	Offence committed in effect of sudden & grave provocation
302	304 part I or II
323 & 324	334
325 & 326	335
352 & 355	358

Thus, the defense of sudden and grave provocation only reduces the severity of crime, but not exonerate.

General exceptions are applicable or available for all the offences as defined in the Indian Penal Code, but defense of sudden and grave provocation is applicable for certain offences as shown above in the table.

According to illustrations as enumerated in Section 105 of "The Indian Evidence Act an accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self control, the burden of proof is on A"⁶.

Section 325 of the IPC⁷. Provides that whatever, except in the case provided for by section 335 voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with causing grievous hurt U/s 325. The burden of proving the circumstances bringing the case U/s 335 lies on A.

⁶ SRD LAW NOTES , <https://www.srdlawnotes.com/2016/11/what-is-mean-by-burden-of-proof-explain.html>.

⁷ IPC, Bare act.

Illustration: -A of this Section is applicable to general exceptions of The IPC. Thus, for the purpose of burden of proof both are sailing in same boat.

According to exception-II of section 300 of The IPC,if accused exceeds the right of private defense, than act of accused shall be liable U/s 304 of The IPC. Instead of 302. Thus, this defense is also similarwith act done under the effect of sudden and grave provocation.

Defense of sudden & grave provocation and right of private defense both are not applicable against public servant. Thus, both the defenses are similar in this respect.

Fact who provoke is immaterial in exception IV of Section 300 of The IPC., but it is very material in exception-I of Section 300 of The IPC.

There is very thin difference which act of the victim may be treated as an offence determination for self defense and which act may be treated cause sudden and grave provocation for the accused to commit offence. Many acts may be counted for both the purpose. For example the father of accused is being beaten by A, than by on account of this act of A, accused suffers with sudden & grave provocation, consequently A murdered by accused. Accused can claim right of private defense and he also claim that his act done in effect of sudden & grave provocation. If Court found that accused exceeds his right of private defense, than accused may be punished U/s 304 part-I or part-II, but if Court finds that accused has exercise his right of private defense, than accused may be acquitted for the charge of murder. In such situations it is very difficult that what defense will be available for the accused person.

HOW COURTS DEALT WITHDEFENSE OF SUDDEN AND GRAVE PROVOCATION.

1.AIR 1962 (SC) Page-605, K.M. Nanavati vs. State of Maharashtra⁸ -

Hon'ble Supreme Court held as:-

i."The test of grave & sudden provocation is whether a reasonable man, belonging to the same class of society as the accused placed in a situation in which the accused was placed would be so provoked as to lose itself control.

⁸AIR 1962 (SC) Page-605.

ii. In India, words and gestures may also, under certain circumstances, cause grave & sudden provocation to an accused so as to bring his act, within the first exception to Section 300 of the IPC.

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

iv. The fatal blow should be clearly traced to 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"⁹.

2. Criminal Law Reporter, 2019 (SC) Page-.185. Nawaz vs. State¹⁰-

Hon'ble Supreme Court extended benefit of exception 1 to Section 300 of The IPC. On the ground that deceased called his wife and daughter prostitute, the word prostitute for the wife and daughter was sufficient to provoke committing crime.

3. B.D. Khunte vs. Union of India and Others¹¹ Criminal Law Journal (SC) PAGE NO. 243 In this case, accused had been beaten by his superior officer, after 7 hours accused killed him. Thus, accused had sufficient time to cool down his anger. In such situation partial defense of sudden & grave provocation has not been extended to accused.

4. IN 1942, AC-1, MANCINI vs. DIRECTOR OF PUBLIC PROSECUTIONS¹².

In this case Supreme Court "held that not all provocations will not commute the crime of murder to that of manslaughter. The Provocation shall be such as to temporarily deprive the offender of his power of self control and it is the result of which he commits the unlawful act which causes death".

5. 1914, 3KB, 1116, REX vs. LESBINI.¹³

⁹ By - Sweta Gajbhiya, Jul 04, 2019, <https://www.scribd.com/document/415608594/IPC-Sample-1-1-1>.

¹⁰ crlj, 2019 SC page -185.

¹¹ Criminal law journal SC page no. 243.

¹² in 1942 Ac-1.

¹³ 1914, 3 KB, 1116.

"Test shall be applied on a reasonable man, so that person usually excitable or pugnacious is not entitled to rely on provocation which would not have led an ordinary person to act as he did."

6. ARUNRAJ vs. UNION OF INDIA¹⁴, 2010 (6) SCC PAGE-457.

"Hon'ble Supreme Court held that the provocation must be such as will upset not merely a hasty, hot tempered and hyper sensitive person but also a person of calm nature and ordinary sense".

7. Akhtar vs. State of U.P¹⁵ -

Hon'ble Allahabad High Court referred **Rex Vs Duffy, 1949 (1) All ER 232, Rex Vs Lesbini 1914, 3KB, 1116, Mancini Vs Director of Public Procecutions 1942, AC-1, 1946(2) All ER 124** and after considering the established facts in the case held that The Courts do and must investigate whether the offender acted reasonably or normally or properly as an average person in the position and circumstances of the offender may be expected to do until the point of time at which the offender is actually deprived of his power of self control. But once his power of self control has been lost, it would be futile to expect him to retain such a degree of control over himself as to exercise a choice over the weapon used by him for an attack or to show that his "mode of resentment" bore "a reasonable relationship to provocation" which operated upon him. Indeed, if the offender were shown to display reasonableness or deliberateness or to exercise control himself even after he had received a provocation which was grave and sudden and before the act which caused the death, he could not be held to be really deprived of power of self control and such a person could not get the benefit of exception 1 to Section 300 of The IPC. A reasonable relationship between the amount of force used or the manner in which it is used and the actual requirement of situation necessitating the use of it for the defense of the person or property have to be shown for the whole period during which the right of private defense is claimed, because reasonableness of conduct provides a complete justification in which a case and where proved, secure clear acquittal. But in case where a grave and sudden provocation can be pleaded only in mitigation of an offence, because of the unreasonableness which can overpower given an otherwise reasonable or normal individual when subjected to an extraordinary strain upon him caused by the victim's own wrong doing, the offender get's the benefit of plea only so

¹⁴ 2010(6) SCC page 457.

¹⁵ 1946(2) All ER 124.

long as his unreasonable state of mind can be found to exist. It is not reasonable expect the offender to exhibit a reasonableness of conduct which may destroy the very basis upon which plea of loss of self control can be founded. Therefore, we don't think that the mere fact that the actual weapon with which death was caused was a concealed knife would be sufficient to overthrow the plea of grave and sudden provocation. Although, if an offender spends time in hunting for or procuring the needed weapon a "cooling time or deliberateness of mind and conduct will be established which will be enough to negative the plea." The mode in which an offender has exhibited his anger after loss of self control may be taken into account in awarding sentence, but to require that mode to be reasonable even after the offender has been proved to have lost control over him would not, in our opinion, be itself reasonable. At any rate the language of exception 1 to Section 300 of the IPC does not required imposition of a test of reasonableness of conduct upon an accused person even after loss of self control and before an opportunity for "reason to regain dominion over the mind" to borrow the phrase of lord.

8. Goddard, CJ IN Rex vs. Duffy¹⁶, 1949(1) ALL ER.

In so far as provisos to exception 1 to Section 300 of the IPC imply standards of reasonable conduct, it may be observed that they also relate to what may or may not be considered sufficient provocation or in other words these provisos are concerned with conditions of situations which may exist prior to loss of self control. In the situations given in the provisos the provocations would fall outside the preview of what could reasonably or legally constitutes sufficient provocations. Ultimately Hon'ble Allahabad High Court extended the benefit of exception 1 to Section 300 of the IPC to accused and convicted accused person U/s 304 part-II of the IPC.

9. Sukhlal Sarkar vs. UOI and Others¹⁷ 2012 Criminal Law Journal SC Page 3032

In this case deceased was unarmed and trying to walk up the accused constable for patrolling duty accused fired at him causing his death supreme court held that even assuming that the deceased has slapped and pushed the accused such action on his (deceased) could be characterized as grave and provocation so as to provoke accused to fire at and kill deceased on the spot.

¹⁶ All ER 1949(1).

¹⁷ criminal law journal 2012 SC page 3032.

10. 2008 Criminal Law Journal Sc Page 442 Muthu vs. State of Tamil Nadu¹⁸

In this case "deceased through waste and rubbish into the shop of the accused scuffle ensued during which the accused picked up a knife from table and inflicted injury on the chest of the deceased resulting in his death. Supreme Court held that throwing waste and rubbish inside a house and shop certainly grave and sudden provocation. The incident accrued in a sudden fight in heat of passion there for exception 1&4 to section 300 of IPC are applicable".

11. 1995 Criminal Law Journal Sc Page 3975 Devku Bhikha VS. State of Gujarat¹⁹

"In this case the accused was member of lower caste deceased many time insult the accused deceased was head master in the school accused requested to deceased for Job which was available in the school deceased ask the accused to make available his wife to him for immoral purpose accused committed death of deceased the supreme court extended the benefit of exception 1 to section 300 of IPC".

12. 2007 Criminal Law Journal SC Page No.47 NAMALA SUBBARAO vs. STATE OF ANDRA PRADESH²⁰.

"In his case wife of accused started to live with her paramour after livening her husband. The accused killed her because she had refused to come back and live in her matrimonial home. This incident had happened in the house of other person by a weapon picked up on the way from a carpenter by the accused husband. The Supreme Court held that the accused person had a reasonable time to react and it was not a case of grave and sudden provocation".

13. GURIYA BUCHA vs. STATE OF GUJARAT AIR 1962 Gujarat page 39²¹

"Gujarat High court after considering the number of injury sustained by deceased negate the defense version deceased BIKHA LAL had not actually committed any unnatural offence according to statement of accused would suggest that accused lost his temper after the stick blow and not before accused did not say that he lost his temper when deceased removed his Langoti and sat over him. A stick blow is not grave provocation. This is, therefore, not a case of the loss

¹⁸criminal law journal 2008 SC page 442

¹⁹ criminal law journal 1995 SC page 3975.

²⁰Criminal law journal 2007 SC page 47.

²¹ <https://www.legitquest.com/case/guriya-bucha-v-state-of-gujarat/BD234>.

of the power of self control by grave and sudden provocation. the injuries were not commensurate with the degree of loss of self control that can be expected in an average person having regard to the nature of provocation, even if we hold which we do not that an attempt to commit sodomy amounts to grave and sudden provocation and even if we hold that there was such an attempt. for these reasons, the accused is not entitled to benefit of exception 1 to section 300,IPC and it must be inferred that the accused had caused injuries with the intention to cause bodily injuries to the deceased sufficient in the ordinary course of nature to cause death. The offence therefore amounts to murder, and the learned Additional session's judge has rightly convicted the accused under section 302 IPC, and awarded him the lesser sentence of imprisonment for life, having taken into consideration his young age namely 17 years".

CONCLUSION:-

On the basis of above discussion we can conclude that defense of sudden and grave provocation is similar with exercise exceeded right of private defense. According to section 99 to 105 regulate the right of private defense but no such limit is prescribed for defense of sudden and grave provocation. Thus, in the beginning exercise of right of self private defense may be lawful but afterward it may convert in excessive; on the other hand purported act done in the effect of deprivation of the self control due to sudden and grave provocation must be reasonable in beginning. The language used in section 323 to 325, 352&355 and similarly under section 334,335 &358 of IPC, is some extent not consonance as used in section 105 of Indian Evidence Act. Therefore, principles of burden of proof for the defense of sudden and grave provocation required to re-consider/re-look.