



SUDDEN FIGHT AS AN EXCEPTION TO THE CHARGE OF MURDER IN THE INDIAN PENAL CODE

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ABSTRACT

Sudden fight is one of four partial defences to murder in the Indian Penal Code. It was an addition which lacks the qualifying provisos and illustrations that constrain applications of the defences of provocation and excessive force in private defence. A survey of decisions of Indian Supreme Court suggests that sudden fight has the potential to subvert the principled limits that constrain the other partial defences. Sudden fight has no equivalent in other Commonwealth jurisdictions. It can be argued that it is an anachronism that should be eliminated from the law of murder in India. This research paper argues in favour of its retention.

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INTRODUCTION

In jurisdictions which adopted the Indian Penal Code, the partial defence of sudden fight reduces murder to the lesser offence of culpable homicide.¹ Sudden is the direct descendant of mutual combat, a common law defence which reduced murder to manslaughter when death resulted from an injury inflicted in anger during a sudden, unpremeditated fight on equal terms with no unfair advantage taken. Mutual combat has not survived in common law or in the statute law of other Commonwealth jurisdictions.² There is an important practical dimension to this enquiry the sudden fight defence in IPC jurisprudence. Sudden fight is frequently pleaded in response to charges of murder and there is an extensive body of

¹ Indian Penal Code 1860 (Central Act 45 of 1860) [IPC], s. 299. The offences of murder, IPC s. 300, and culpable homicide, s. 299, are different, in several significant respects, from the common law offences of murder and manslaughter. The fault elements of IPC murder are more inclusive than common law murder and the fault elements for culpable homicide are more restricted than those in common law manslaughter. For an extended discussion, see Stanley Yeo, *Fault in Homicide* (Annandale, New South Wales: Federation Press, 1997) [Yeo, *Fault in Homicide*]. The distinctions between the respective fault requirements for the homicide offences in the IPC are complex and have been a source of continuing confusion. See *Siri Kishan & Ors v. State of Haryana*, [2009] INSC 830 (27 April 2009) for a restatement of the fault elements by the Indian Supreme Court.

² The decline of mutual combat and chance medley is traced in James William Cecil Turner, *Russell on Crime*, Vol. 1, 12th ed. (London: Sweet and Maxwell, 1964) at 455-457. Chance medley, a corruption of "chaud melee", appears to have been related only in name to mutual combat: see William Oldnall Russell, *A Treatise on Crimes and Indictable Misdemeanours*, Vol. 1, 2ded. (London: Joseph Butterworth, 1826) [Russell on Crime, 1826] at 543, 643-649. Chance medley was excusable homicide in self defence, where death occurred in course of an affray in the course of which the defendant killed from necessity. It merged with self-defence in all jurisdictions. For an alternative account, see Bernard Brown, "The Demise of Chance Medley and the Recognition of Provocation as a Defence to Murder in English Law" (1963) 7 *American Journal of Legal History* 310.



recent Indian supreme court case law on its application.³ The partial defences of provocation, excessive defence, sudden fight and consent are unified by an underlying essence of principle of Comparative Responsibility (known as comparative fault in some jurisdictions), which is originally a doctrine of tort law that compares the fault of each party in a lawsuit for a single injury. Comparative responsibility may apply to intentional torts as well as negligence.

LEARNING OUT COME

This module will enable the learners to:

Understand the concept of Sudden Fight.

Understand difference between Grave & Sudden Provocation and Sudden Fight.

Understand the importance of retention of Sudden Fight in Exceptions to Section 300, Indian penal code, 1860 which has been introduced at the instance of a Select Committee appointed in 1851, as a Mutual Combat, which revised Macaulay's Draft Code over a period of five years and finally presented a revised version to the Indian Legislative Council in December 1856. This revised version was passed by the Council in 1857, received the assent of the Governor General in 1860 and came into effect in 1862. No record of the deliberations of the Select Committee is known to have survived. The account that follows of the reasons for including the partial defence of sudden fight is accordingly conjectural. The original common law defence of mutual combat and the Code defence of sudden fight appear to have been identical in scope.

RESEARCH METHODOLOGY

The method used in this research paper is doctrinal method. The present study demands a analytical and descriptive type of research. The data I collected for this research is secondary data from various sources. The sources I took are books, websites, references, articles, journals.

RESEARCH PROBLEM

Sudden fight is an enigma that encompasses many unanswered questions. The first and most obvious is why a partial defence i.e. Sudden Fight, that has been absorbed by provocation elsewhere should be retained as an independent ground for extenuation in IPC jurisdictions.

REVIEW OF LITERATURE

Sudden fight, consent and the principle of comparative responsibility in the Indian penal code, Author(s): Ian Leader-Elliott, Source: Singapore Journal of Legal Studies, (December 2010), pp. 282-303, Published

³ Yeo, Criminal Defences, *ibid.*, at 295, remarks the increased incidence of reliance on sudden fight in murder trials in Malaysia and Singapore dating from the last decade of the 20th century. Appellate decisions from those jurisdictions are few in number; Professor Yeo relies, for the most part, on Indian caselaw in his discussion of sudden fight.



by: National University of Singapore (Faculty of Law), Stable URL:
<https://www.jstor.org/stable/24870499>:

This essay argues in favour of Sudden Fight retention. The partial defences of provocation, excessive defence, sudden fight and consent are unified by an underlying principle of comparative responsibility that extenuates murder when the offender was seriously wronged by the victim or acted consent of the victim to die or engage in an activity that was likely to result in death. A set of provisos and illustrations is proposed that will constrain applications of the partial defence of sudden in conformity with the principle of comparative responsibility.

Stanley yeo, criminal defences in malaysia and singapore (selangor: lexisnexis, malayan law journal, 2005) [YEO, CRIMINAL DEFENCES]:

In his monograph on criminal defences in the IPC, Professor Stanley Yeo canvassed the suggestion that the partial defence of sudden fight should be abolished.

Sir hari singh gour, penal law of india, vol. 3, 10th ed. (allahabad: law publishers, 1983) [GOUR] AT P. 2366:

The well-established distinction between ‘loss of the power of self-control’ in provocation and the ‘heat of passion’ which is all that is required in sudden fight. Sudden fight is founded upon the same principle, as provocation, for in both there is the absence of pre-meditation but while in the one case there is the total deprivation of self-control, in this there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. A higher level of lost self-control is required for provocation than for sudden fight.

SUDDEN FIGHT

The fourth Exception to Section 300 covers acts done without premeditation in a sudden fight. In a way, this also deals with a case of provocation provided in the first Exception. This exception applies to instances, which are covered by the first exception. However, under Exception 1, the provocation should not only be sudden and grave, but it should also cause total deprivation of self control. Only under such circumstances, can the offender seek shelter under Exception 1. However, under exception 4 offenders loses his power of reasoning due to heat of passion aroused suddenly. Further, under the first exception, the offender should not have sought or voluntarily provoked the provocation. However, under this exception, the term ‘sudden fight’ implies mutual provocation and aggravation. It implies the absence of previous deliberation or determination to fight. In such situations, it may not be possible to trace from which party the initial provocation emanated.⁴ The only requisites of this exception are that⁵:

⁴ Sridhar Bhuyan v. State of Orissa (2004) 6 JT 299.

⁵ Parkash Chand v. State of Himachal Pradesh (2004) 11 SCC 381.



The murder should have been committed without premeditation;

It should have been committed in a sudden fight;

It should have been committed in the heat of passion;

It should have been committed upon a sudden quarrel, and

It should have been committed without the offender having taken undue advantage or acted in a cruel or unusual manner.

All these conditions are required to be proved for bringing the case within the ambit of Exception 4 to Section 300.6 There has to have a fight. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down. Where there is no fight at all, the Exception is not attracted. The word ‘fight’, which is not defined under Indian Penal Code, conveys something more than a verbal quarrel. It implies mutual attack in which both the parties participated. It implies exchange of blows. An actual attack by one and retreated by another does not constitute fight. One sided attack cannot be a fight. Nevertheless, attack by one and preparation to attack by another constitutes a fight. A fight is a combat between two or more persons whether with or without weapons. It is no possible to enunciate any general rule as to what shall be deemed to be a sudden fight or quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. However, the Exception will come into play when a culpable homicide is committed in an unpremeditated sudden fight. The words ‘sudden fight’ or ‘upon sudden quarrel’ indicate something in the nature of a ‘free fight’. Free fight is said to take place when both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders. There can be no question of a free fight in the face of the clear finding of the court that one of the parties was the aggressor. Mere sudden quarrel and the absence of premeditation do not warrant the Exception. It is also required to show that the accused has not taken undue advantage or acted in cruel or unusual manner. The expression ‘undue advantage’ as used in the provision means ‘unfair advantage’.

COMPARISON OF EXCEPTION 1 (GRAVE & PROVOCATION) WITH EXCEPTION 4 (SUDDEN FIGHT):

In both cases there is absence of premeditation. But in one there is total deprivation of self-control, in Exception 4 there is such heat of passion as clouds sober reason and urges the man to do something which he would not otherwise do. A sudden fight implies mutual provocation and blows on each side. The homicide in such a case is not traceable to unilateral provocation. In such cases, the whole blame cannot be attributed to one side. It may be that a fight was initiated by one side but without

⁶ Sikander v. State (Delhi Administration) AIR 1999 SC 1406.



aggravating provocation from the other side it might not have taken the serious turn. A situation of mutual provocation and aggravation develops making it difficult to apportion the blame between the two sides.

CONCLUSION

Sudden fight is frequently pleaded in response to charges of murder and there is an extensive body of recent Indian Supreme Court case law on its applications. These appellate decisions suggest that the doctrinal restraints that limit the partial defences of provocation and excess force in private defence of person or property have been subverted by judicial willingness to allow defendants to rely on sudden fight as an alternative. There appears to have been an unprincipled drift in the applications of sudden fight, but then also there is no need to abolish the concept of exemption from murder charges on the basis of Sudden Fight because it occupies the space between "consent, whether express or implied" in the general defence, Section 88, I.P.C. and the unqualified requirement of 'consent' in the partial defence of IPC, s. 300, Exception 5.

The rationale of sudden fight in the IPC can now be elucidated. Unlike provocation and excessive defence, the exculpatory effect of the partial defence of sudden fight does not depend on proof that the victim wronged the offender. They are equals in wrongdoing. It is their mutual engagement in combat, each of them acting in response to the other and fighting as equals, that extenuates the survivor's use of deadly force.

In the Indian Supreme Court's words, the origin of the dispute does not matter, "the subsequent conduct of both parties puts them in respect of guilt on an equal footing". Sudden fight "implies mutual provocation and blows on each side". A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn that it did. The requirement of a sudden fight with 'blows on each side' is repeated in most of the Indian precedents. As we shall see, however, established doctrine does not reflect the reality of recent applications of the defence. A significant proportion of cases do not involve an exchange of blows. Nor is there an unequivocal statutory foundation for that requirement. All that is required is a 'sudden fight in the heat of passion on a sudden quarrel'.⁷ The concept of Sudden fight should be retained because people who kill in the course of a sudden fight are less morally culpable than, say, those who coolly plan and carry out a murder.

References :

1. Sridhar Bhuyan v. State of Orissa (2004) 6 JT 299.
2. Parkash Chand v. State of Himachal Pradesh (2004) 11 SCC 381.
3. Sikander v. State (Delhi Administration) AIR 1999 SC 1406.

⁷ Baban Bandu Patil v. State of Maharashtra, [2009] SC 7.



4. Baban Bandu Patil v. State of Maharashtra, [2009] SC 7.