

APPLICATION OF EGG-SHELL RULE IN CRIMINAL LAW

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ABSTRACT

The object of this paper is to provide a framework which gives an acceptable explanation, justification, statutory provisions and pattern of cases to untangle the Principle of Causation and Egg-Shell Skull Rule. The Egg-Shell rule is neatly summarized by the statement 'you take your victim as you find them'. The rule lays down that where the defendant causes injury to victim who is suffering from some frailty or pre-existing physical condition and results in serious harm then the defendant remains liable for the consequence. The Egg-Shell Rule can be recognized in S.299 and illustration of S.300 of Indian Penal Code. The Egg-Shell Rule acts as an exception to the reasonability test which is commonly used to determine causal responsibility.

When the causation is in dispute the burden of proof lies on the prosecution that defendant was factual cause as well as the legal cause of the result. The commonly used test to prove factual causation is the 'but for' test which simply establishes that but for the defendant's actions, the result would not have occurred. In order to prove Legal Causation which is also referred to as 'chain of causation' the prosecution must prove that there was no novusactusinterveniens ('new intervening act') which broke the chain of causation. Once the chain of causation is established the consequence could be attributed to the defendant and he can be held guilty of the offence if other elements i.e. actusreus and mensrea of the offence could also be proved. The causal connection between conduct and connection is not by itself sufficient to make an accused liable for the consequence. Only when the connection is strong enough to justify the attribution of causal responsibility can the conduct be held responsible for the consequence.

PRINCIPLE OF CAUSATION UNDER CRIMINAL LAW

The principle of causation under Criminal Law poses very difficult issues in criminal law. In various cases there exists a degree of remoteness between the act or omission of the accused and the consequence that is alleged to constitute an offence.² Sometimes the intervening actions are more directly connected to the final result than the conduct of the accused. The law of causation determines the situations under which the outcome can nevertheless be attributed to the accused. Such attribution of causation involves weighing contribution of the accused against other factors that are responsible for the result. The initial step in determining causation involves study of casual connection and casual responsibility.

In order to establish causation the court determines whether there exists any nexus (Principle of but-for cause) between the conduct of accused and the alleged result. If the answer to this question is in affirmative then the next question would be to decide whether the connection is adequately strong enough (Principle of Imputable Causation) to justify attribution of causal responsibility to the accused.

BUT-FOR CAUSE PRINCIPLE

A causal connection will exist if the result would not have occurred without the conduct of the accused. On the other hand if the result would have occurred regardless of the conduct of the accused then there is no causal connection. This is called 'But for' test in which causal connection is considered as a matter of fact rather than matter of law.³The situation shall be such that occurrence of the result would not have happened without the antecedent factor and only then the factor satisfies but-for causation principle. In some cases a consequence may occur because of two independent but-for causes contributed by two different defendants. For example a person 'A' has been shot by 'B' and bullet entered into his lungs which could lead to victim's death in an hour. At the same time, second bullet fired by 'C' entered the heart of victim which resulted in victim's death instantaneously. The court will decide that 'C' is responsible for murder whereas 'B' is guilty for attempt to Murder. In such cases where there are two causes, court has to distinguish 'imputable' cause from the other cause.

2 Eric Colvin, *Causation in Criminal Law*, 1, Bond L.R. 253, 254 (1989)

3 *ibid*

PRINCIPLE OF IMPUTABLE CAUSATION

When causation is the point of contention then the act of victim should not only be but-for cause but should also be 'imputable' 'direct' or 'legal' cause. It means that the action of accused, being abut-for cause should also be closely related with the final outcome in order to make him liable. Imputable causation is a principle in which accused is not criminally responsible for occurrences that are too remote or accidental to his conduct.⁴Imputable Causation is stated in terms of "remoteness of consequence". The conduct of the accused need not be the sole cause or even the principal cause of the result, it is sufficient that the act contributed 'significantly'to that result.

'Multiple Sufficient Causation' is a situation where in two acts are performed by two actors so that both the acts were necessary for the desired outcome and the effect of their contribution cannot be separated. The contention is that either both must cause the result or neither does. Suppose 'A' and 'B' stabs 'X' in his abdomen at the same time and he dies as a result of the injuries. If the same wounds would have been inflicted separately by 'A' and 'B' then the wound was not deadly enough to cause death of a person. In such situations where acts of both the offenders collectively lead to an offense then both of them can be booked for causing death and can be convicted for homicide offence.

THRESHOLD OF CASUAL RESPONSIBILITY

The causal connection between conduct and connection is not by itself sufficient to make an accused liable for the consequence. Only when the connection is strong enough to justify the attribution of causal responsibility can the conduct be held responsible for the consequence.

In order to ascertain the casual responsibility two general tests i.e. 'substantive cause' test and 'reasonable foresight' test can be used.

SUBSTANTIVE CAUSE TEST

This test is a retrospective test which involves looking backwards to determine whether a particular cause has played a substantial role to bring the result. In R v Smith⁵a soldier stabbed another soldier and when the victim was carried to the hospital, he was dropped by the medics twice. Apart from this, the victim received inappropriate medical treatment which eventually caused his death. The accused was convicted of murder as the court was of the opinion that medical negligence did not break the chain of causation and the stabbing was still 'substantive

4 GRANVILLE WILLIAMS, TEXT BOOK OF CRIMINAL LAW, 381 (2nd ed., 2009)

5 R v. Smith, [1959] 2 All ER 193

and operating' cause of death. Only when the doctor is undisputedly wrong due to lack of skills or gross negligence can he be made liable for the outcome.

REASONABLE FORESEEABILITY TEST

This test is a prospective test which involves stepping into the shoes of accused and then looking from his perspective towards the result. The principal query in such situations is whether the conduct made the result a reasonably foreseeable consequence in the sense that if it was within the normal range of expected outcomes. A person is not criminally liable 'for an event which occurs by accident' or an event 'which occurs by chance'.⁶ The established test for determining reasonability is that the event occurred by accident or chance should not have been foreseeable. Reasonable Foreseeability tests helps in establishing the chain of causation and turndowns the defence of accident or chance.

Although the test of reasonability in simple terms checks what can be reasonably predicted by the defendant, but in practice it is not a question whether the reasonable defendant, if asked beforehand what he foresees, would immediately respond in terms of what happens later.⁷ What might happen later may be one out of an infinite number of possibilities and it is still regarded as foreseeable for legal purposes if it is the kind of thing which happens without causing much surprise⁸. The question in this test is what happens when looked at with hindsight rather than foresight.⁹

EGG-SHELL RULE

The 'Egg-Shell' or 'Thin-skull' lays down a special principle of causation which establishes an exception to general principles of causal responsibility. The principle specifies that assailant must take their victims as they find them. It is immaterial that the unusual sensitive condition of victim was unforeseeable by the ordinary person. This principle has been named on the famous example where an imaginary person who has extremely thin skull is as fragile as egg-shell but looks completely normal. If someone hits this person's head then this person dies whereas a normal person would only get bruised by the hit the person who hit the eggshell-skulled person is liable for death caused even though it was not his intention to do so, having no knowledge of deceased's condition. This principle was established in the case R v Hayward¹⁰ where the

6 Supra 1, at 253, 261

7 Supra 3, at 389

8 Supra 3, at 389

9 Supra 3, at 389

10 R v Hayward (1908) 21 Cox 692

defendant chased his wife out of the house shouting threats at her. She collapsed and died. He did not physically touch her. She was suffering from a rare thyroid condition which could lead to death where physical exertion was accompanied by fright and panic. Both the defendant and his wife were unaware she had this condition. The defendant was still liable for constructive manslaughter as his unlawful act (assault) caused death. The eggshell skull rule applied and the Judge pointed out that no proof of actual physical violence was necessary, but that death from fright alone, caused by an illegal act, such as threats of violence, would be sufficient. If the jury is satisfied that the death was accelerated by illegal act of accused then it does not take into consideration the fact whether the accused knew about the abnormal state of deceased health or not. He was therefore fully liable despite the fact an ordinary person of reasonable fortitude would not have died in such circumstances. In such cases the action of assailant was the only trigger for happening of such events therefore by applying 'substantial and operative test' the causal responsibility could be inevitably attributed to assailant. In *Smithers v R*¹¹ the assailant kicked the deceased in the stomach area which induced vomiting. Subsequently malfunctioning epiglottis caused aspiration of vomit which ultimately resulted in death. Court held that unforeseeability of the malfunction is immaterial hence convicted the accused for culpable homicide.

In landmark case of *R. v Blaue*¹², the defendant entered the home of a young girl and stabbed her. The wound pierced her lung which necessitated a surgery and blood transfusions to save her life. She refused to undergo blood transfusion as she was a Jehovah's Witness (a kind of religious belief) which eventually led to her death. Medical Evidence showed that her life could be saved if she consented to the treatment. The defence contended that refusal to take medical treatment broke the chain of causation between the stabbing and her death. Lawton LJ in this case ruled that "who uses violence on others must take their victims as they find them." Lord Parker in the course of judgement held that if original wound was the operating and substantial cause at the time of death then the original wound can properly be said to be the result of wound albeit some other cause is also operating. If the subsequent cause is so overwhelming that the original wound looks like a mere part of history can it be said that death does not flow from the wound. In this case bleeding caused due to stabbing is the primary cause of death hence accused is guilty of murder.¹³ So where 'A' is injured by 'B' where 'A' is

11 *Smithers v R*, (1976), 34 CCC (2d) 427

12 *R. v Blaue* [1975], 3 All ER 446

13 *R. v Blaue* [1975] 3 All ER 446

suffering from duodenal ulcer and the ulcer haemorrhaged because a crucial operation could not be performed owing to the wound. Here 'B' could be charged of culpable homicide¹⁴.

Indian Penal Code expressly adopts Egg-Shell Rule under Explanation 1 of S.299 which states that "A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death."¹⁵ Illustration B of S.300 of Indian Penal Code also imported egg-shell rule by laying down that – "A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death."¹⁶

The combined reading of the above stated text of Indian Penal Code makes it clear that difference between of Section 299 and Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree.¹⁷ If the requisite Mens Rea to kill or even cause grievous hurt is almost impossible to establish then court will not make him liable for culpable homicide as it would amount to miscarriage of justice.

In *Rewaram v State of MP*¹⁸, the appellant inflicted injuries on her wife which were sufficient in ordinary course of action to cause death. The appellant in the present case was rushed to hospital. She had to undergo an operation and post operation starvation which was necessary for her recovery. The deceased developed hyperpyrexia i.e. high temperature few hours before her death due to debilitated condition. The doctor was of the opinion that deceased did not die as a result of multiple injuries but because of hyperpyrexia as a result of atmospheric temperature on weakened debilitated individual. The appellant was held liable as hyperpyrexia was the direct result of the multiple injuries and could not be independent with the serious

14 R v McKechnie, (1992) 94 Cr. App. R. 51

15 The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

16 The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

17 Jagriti Devi vs State Of H.P, AIR 2009 SC 2869 (India)

18 *Rewaram v State of MP*, 1978 CriLJ 858 (India)

injuries sustained by her. The court was of the view that intervening or supervening cause of hyperpyrexia was the direct result of multiple injuries and could not be independent with the serious injuries sustained by her. Therefore the appellant was rightly convicted under S.302 of IPC.

In some cases where the assailant does not intend to cause serious bodily injury or grievous hurt and causes such injury which is not capable of endangering life of ordinary persons then the person is not liable for culpable homicide if the consequence of his conduct is death; the person would be liable under S.323 i.e. Voluntary Causing Hurt. In *Re: Marana Goundan*¹⁹ the appellant caused death of the deceased by kicking him on the abdomen. The court held that there was no mark of injury external or internal, and it was difficult to hold that Appellant intended or knew that by kicking on abdomen as he did he was likely to endanger life. The appellant was held liable under S.323 of IPC for causing hurt because it could result in great miscarriage of justice to convict the accuse for Culpable Homicide. In *Ruli Ram and Anr. v. State of Haryana*²⁰ the court stated that the punishment has to be always proportionate to the crime. The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct.²¹

Sometimes the conduct of the victim is so unreasonable which nearly breaks the chain of causation. *R. v Holland*²² is the best example of victim's unreasonableness where a deep cut was inflicted on the victim's finger by the defendant. The victim refused to treat the wound and any kind of medical aid, which resulted in infection. Subsequently gangrene set in and victim refused to get his arm amputated which resulted in death of the victim. Here the defendant is liable even though victim's action contributed to his own death. Therefore in such cases where actual injury is not even severe enough it is unjust to make the defendant liable especially when harm was purposely aggravated. The eggshell skull rule has therefore excluded cases where remote possibilities exist and largely takes into account foreseeable cases, with exceptions such as where religious sensitivities exist.²³

19 *Re: Marana Goundan*, AIR 1941 Mad 560 (India)
20 *Ruli Ram and Anr. v. State of Haryana* , AIR2002SC3360 (India)
21 *Ibid.*
22 *R. v Holland*, 1841) 2 Mood. & R. 351
23 *Supra* 11.

SENSITIVITY V HYPERSENSITIVITY

Egg-Shell rule is based on the concept that a person who acted unlawfully shall be responsible for all the natural consequences emerging from it. But blanket application of this rule may result in prejudiced judgement in favour of plaintiff. There are two situations when blanket application of this doctrine can be problematic. Firstly, the cases can emerge where act of accused is not the substantial or the operative cause of the harm. Secondly, in some cases the chain of causation is broken because of victim's intervening acts, but accused would be still liable because egg shell rule ignores causation in most cases. Therefore the egg-shell rule has been reconsidered and limited to a great extent by keeping in mind the principle of reasonable foreseeability. In *Union of India v Maharashtra State Electricity Board*²⁴, goods were being carried by the railway and reached the consignee in a damaged condition. The goods were damaged during the transit due to an electric fault as the goods were conductor of electricity. The court held that Electricity Board could not be held liable for exceptionally sensitive nature of the goods. The Board used reasonable foresight and care in handling the goods therefore exceptional situations arising from absolutely remote possibilities would not hold the board liable.

The egg-shell doctrine deals with two facets which are sensitivity and hypersensitivity. The first situations is covered by the notion that victim must be taken as it is and sensitivity of victim cannot be used as a defence. Whereas in second situation the victim is so sensitive that the conduct of the accused cannot be connected to the eventual consequence because the hypersensitivity could not be foreseen reasonably or as a probable consequence of the act.²⁵ The defendant is not liable for hypersensitivity of victim because prosecution has to establish beyond reasonable doubt that harmful consequences of the act could be reasonably foreseen by the accused.

PERSON DYING OF SHOCK OR FRIGHT

When a person is attacked it is highly unlikely that he will die of fright or shock, but if he does, the death might be attributed to the assailant on account of the principle that "those who use violence must take their victims as they find them". But this principle is not pushed so far where victim dies of fright when he himself is not in danger.²⁶ So where 'X' assaults 'Y' and another

24 *Union of India v Maharashtra State Electricity Board*, 2013(1) Bom CR811(India)
25 K.D GAUR, TEXTBOOK ON THE INDIAN PENAL CODE 78 (2009).
26 *Supra* 3, at 395

person 'Z' who is a mere spectator dies of shock witnessing what happen to 'Y'; then 'X' cannot be held liable.

EGG-SHELL RULE NOT APPLICABLE IN CASE OF SLIGHTEST HARM.

The Egg-Shell Rule is not applicable when the defendant is causing any harm which is so slight that no person of ordinary sense would complain of it. If the plaintiff is hypersensitive that even a slightest harm could lead to his death then the defendant cannot be made liable for such death. Section 95 of IPC states – “Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm”. This provision makes it clear that a defendant is not liable for any adverse consequence resulting from intention of causing slightest harm.

CONCLUSION

The Egg-Shell rule prevents the accused from taking defence that the victim was sensitive and makes him liable for the consequence. This rule cannot be applied without taking the principle of causation into consideration. The principle of causation involves weighing the contribution of other factors which are responsible for the result and establishing the chain of causation. The Egg-Shell Rule has been adopted in IPC through Explanation 1 of S.299 and Illustration B of S.300. If the prosecution fails to establish mensrea to kill or even cause grievous injury than accused cannot be held guilty for culpable homicide. But the accused can still be held responsible under S.323 (i.e. hurt) even if accused caused death or grievous injury to the sensitive plaintiff without any knowledge or intention. The foundation of every criminal sentence adheres to the principle that punishment has to be always proportionate to the crime.

The court will ignore the egg-shell rule if the chain of causation is broken. In some cases the grossly unreasonable conduct of the accused or a supervening act is capable of absolving accused from his liability. IPC recognized certain distinction between the egg-shell rule and hypersensitivity because of cases where the consequence of defendant's act is so remote that it was not foreseeable in any way. But S.300, illustration 2 implies that if the accused was fully aware of the oversensitivity of deceased then he cannot claim the defence of oversensitivity by doing a harm which kills the deceased. Therefore Egg-shell principle allows the court to nullify the defence of accused who caused severe injury or death.