

DOCTRINE OF CAUSATION: INCONGRUITY IN ITS APPLICATION UNDER THE INDIAN PENAL CODE, 1860 AND NEED FOR CONSOLIDATION

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ABSTRACT

This paper seeks to explore the concept of doctrine of causation. An attempt has been made to discuss the brief historical account of how causation evolved to be an essential ingredient of criminal legal jurisprudence. The approaches of causation primarily adopted by the English courts have also been explained, especially the three stages viz. factual causation, imputable causation and novus actus interveniens, as proposed by Eric Colvin. The paper further explores how un-codified common law principles compared with the codified Indian Penal Code, 1860, while deciding the cases related to homicide, murder, rash and negligent acts. The paper also seeks to analyse the incongruity in the Indian Penal Code, 1860 while dealing with doctrine of causation.

Keywords: *Attempt, Causal Connection, Causation, Culpability, Injury, Offence, Public Wrong.*

I. Introduction

Causation is one of the most basic conditions for attributing causal responsibility and finally penal culpability of an accused in his conduct leading to crime or a public wrong. In certain cases, especially offences resulting in bodily injury, the resultant effect may also be influenced by factors other than the action of the accused. Hence, it becomes important to apply the law of causation to discern whether the actual result of the event is attributable to the accused or is the chain vitiated by any intervening causes.¹ According to *Black's Law Dictionary*, the word causation means, "the causing or producing of an effect."² Analytically, causation is an implicit

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¹ Eric Colvin, "Causation in Criminal Law" 1 *Bond Law Review* 253 (1989).

² Bryan A. Garner (ed.), *Black's Law Dictionary* 534 (Thomson Reuters, 9th edn., 2010).

element of a crime's *actus reus*.³ It provides a causal connection between the conduct and the result, a means to link conduct with the resulting injury or effect. Whereas for those offences that merely require conduct, the voluntariness requirement is crucial for many crimes which specify consequences, the requirement of causation assumes central place.⁴ Just as it seems wrong to impose criminal liability in the absence of voluntary conduct by the accused, so it seems wrong to convict the person who did not cause the consequence or state of affairs specified in the offence.⁵

There are many other factors that contribute to bringing about the final consequences, thereby satisfying the threshold of causal connection. To attribute causal responsibility to each of these factors is not judicious especially after the recognition of *mens rea* as a necessary ingredient for criminal liability. The doctrine of causation aims at attributing causal responsibility to the particular act of the accused from the plurality of factors which have contributed to the *actus reus*. Weighing the factors, many a times, assumes a quantitative character and outcomes differ on marginal differences. Thus, it is noteworthy that the causation adds an extremely important element to *actus reus*.

II. Emergence of Doctrine of Causation

In the early stages of development of criminal law, when doctrine of strict liability prevailed, causation provided a simple test of determining guilt. The doctrine of causation, at that time was limited to the extent of establishing a factual relation between the act of the accused and the final consequences. It means that if a culpable act could be assigned to a particular individual, punishment was given to him irrespective of other factors like *mens rea*, concurrence etc. Thus, criminal liability was assigned on the basis of mechanical application of 'but for' test. During the early stages of reception of *mens rea* in the criminal law, the only way of avoiding decisions of a cruelty offensive to contemporary moral feelings seemed to be by drawing an unscientific line between proximate causes and remote causes.⁶ However, this attempt lead to a lot of confusion

³ Joshua Dressler, *Understanding Criminal Law* 155 (Matthew Bender, 1987).

⁴ Andrew Ashworth, *Principles of Criminal Law* 101 (Oxford University Press, Oxford, 6th edn., 2009).

⁵ *Ibid.*

⁶ Sir William Oldnall Russell and James William Cecil Turner, 1 *Russell on Crime* 28 (Stevens, 1964).

as different theories suggesting different criteria to enable judges to determine whether a causal relationship exists between criminal conduct and its result started to surface.

Causation in law cannot presuppose causation in purely scientific sense. If causal relationship is viewed in a very broad sense, most criminal law problems can be interpreted as involving such relationship. In the present scenario, the question of causation as it is generally used in criminal law, involves both a problem of causation *sine qua non* (i.e., 'but for' test) and a problem of imputability (legal causation).⁷ The ascertainment of legal causation is of more significance now than the factual causation, though the latter is the first step in determining final liability.

III. Different Approaches of Causation

Paul K. Ryu⁸ explores the traditional theories of causation and classifies them into those assuming a meta-juristic approach, meaning that the criteria of their choice are derived from areas outside the law, and those which assume a legal evaluation approach. The other theory of causation which has been accepted and recognized widely was discussed by Eric Colvin⁹ who stated that for the purpose of analysis of causation, on which final liability rests, wherein three stages are involved:

- Search for causal connection between the person's conduct and the proscribed result. This is the stage of establishing causal connection i.e., factual causation.
- Assessment of the strength of causal contribution in order to determine whether it is sufficient to justify attributing causal responsibility. This is the stage of ascertaining causal responsibility i.e., imputable causation.
- The comparison with contribution of other factors in order to determine whether there are any stronger claims to causal responsibility. This is the stage of ascertaining *novus actus interveniens*.

The three stages proposed by Eric Colvin¹⁰ have been discussed in detail, as following:

1. Factual Causation

⁷ Glanville Williams, *Text Book on Criminal Law* 379 (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2nd edn., 2003).

⁸ Paul K. Ryu, "Causation in Criminal Law" 106 (6), *University of Pennsylvania Law Review* 773-805 (1958).

⁹ *Supra* note 1 at 254.

¹⁰ *Ibid.*

This step of purely factual determination asks whether there is any connection between a person's conduct and the result alleged to constitute an offence i.e., if the accused's actions were a *causa sine qua non* of the event. The question of causal connection can usually be given a straightforward answer. If the result would not have occurred without the conduct of the accused i.e., 'but for' test, then a causal connection is said to be present. Conversely, if the result would have occurred whatever the accused did or did not, then there is no causal connection. This step of determining causal connection is a matter of fact rather than of law.

In *R v. White*¹¹, the accused put some poison in his mother's milk with the intention of killing her. The mother took a few sips and went to sleep and never woke up. Medical reports revealed that she died from a heart attack and not the poison. The accused was not held liable for murder as the act of poisoning milk was not the cause of death and thus was held liable for attempt.

In *R v. Le Brun*¹², a man punched his wife and she fell down unconscious. While attempting to lift and drag his wife, she slipped from his grasp leading to a fracture to her skull and subsequent death. The man was convicted for manslaughter. Despite the absence of the *mens rea* to kill his wife, the court held the original unlawful act was a *causa sine qua non* for the resultant death of his wife and since the actions of the husband were self-serving, the chain of causation remains unbroken.

The above mentioned cases may be seen as some instances of the application of 'but for' test, but law sometimes recognizes causal connections without 'but for' test being satisfied and it ignores some connection which would be established under that test. These instances¹³ are as follows:

A. When the Conduct Merely Hastened Death

Death which would have later occurred anyway, then the accused whose conduct hastens death is liable for murder.¹⁴ Thus, a person who inflicts an injury from which death results causes the death even though the injury merely accelerates or hastens a death from a disease or disorder

¹¹ (1910) 2 KB 124.

¹² (1991) 4 All ER 673.

¹³ *Supra* note 1 at 254.

¹⁴ *Ibid.*

arising from another cause. If that another cause was attributed by the act of an independent actor, this independent actor will be liable only for attempt to murder.

B. Cases of Multiple Sufficient Causation

Where two actors each do things which would cause the result, so that the contribution of neither of them was individually necessary for the outcome, and the effects of their contributions cannot be separated i.e., a case of ‘multiple sufficient causation’ is another case of bypassing ‘but for’ test.¹⁵ Here both the actors are held up for the same offence.¹⁶

C. Cases where Law Ignores the Causal Connection

There are instances where even after ‘but for’ test being satisfied, law ignores this causal connection. These instances¹⁷ are as follows:

- **Year and Day Rule** - Under common law and most other codes, a death if not caused by impugned conduct within a year and a day of the act, the act would not be considered ‘*sine qua non*’ of the result.¹⁸
- Causing death by influence on mind only also forms an exception to the application of ‘but for’ test.¹⁹
- **The Doctrine of Innocent Agency** - Here the actual perpetrator may be an innocent agent without whose conduct, it would not have been possible for the accused to accomplish the result.²⁰ But law does not recognize his connection with final consequences. For instance, a postman delivering a parcel to victim, not knowing that it contains explosive is not held responsible for victim’s death.²¹

¹⁵ *Id.* at 255.

¹⁶ *People v. Lewis* (1899) 124 Cal. 551.

¹⁷ *Supra* note 1 at 256.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Id.* at 257.

²¹ *Ibid.*

- **Coincidence or Ordinary Hazard Principle** - Certain conduct is held not causally connected with result, though result would not have occurred without it.²² For instance, in case of a victim who was stabbed by the accused, died instantaneously on meeting a road accident while being plied to hospital. Here the act of accused was not the actual cause death, reason being that occurrence of death in traffic accident is an ordinary hazard of life.²³

The inadequacy of ‘but for’ test has also been recognized in the Indian Criminal law. General exceptions under Chapter IV of the Indian Penal Code, 1860²⁴ provides cases where in spite of ‘but for’ test being satisfied, no causal responsibility is attributed as it is either excusable or justifiable. There are five partial defences given under Section 300 of the Indian Penal Code, 1860, which extenuates a murder into culpable homicide.

2. Imputable Causation

A causal connection between conduct and a result is not by itself sufficient to make that conduct the legally recognized cause of the result. Only where the connection is sufficiently strong to justify the attribution of causal responsibility, it can be said as an imputable causation.²⁵ Imputable causation is also referred to as legal causation. The notion of causation is used loosely in ordinary speech but the legal concept of causation is highly complex and the courts have developed many tests in order to assess whether conduct of accused cause the requisite result or consequence. Two general tests have been evolved to determine legal causation:

- **Test 1 - Substantial Cause Test**

It is a retrospective test which involves looking backwards from a result in order to determine whether in light of all that happened, a particular causal factor has played a substantial role in bringing about the result. However, judicial language is not clear as to what would qualify as a substantial cause. There are cases in which the courts have attempted to explain the dividing line between ‘but for’ test and substantial cause test and indicated a condition which falls between the

²² *Ibid.*

²³ *Ibid.*

²⁴ The Indian Penal Code, 1860 (Act 45 of 1860), ss. 76 to 106.

²⁵ Peter Gillies, *Criminal Law* 381 (The Law Book Company Ltd., New York, 1985).

two. In *R v. Cato*²⁶, the accused injected heroin compound at victim's request. The court stated that if injection of heroin caused the death of victim and the cause outside 'de minimis' range i.e., the cause must be the cause of substance, although it said that the term substantial cause would put the requirements too high. Clearly, the court was reluctant to accept 'but for' test, fearing that the link between conduct of accused and death of victim would be too tenuous. It has also been referred to as 'significant cause' by some judges as in *Cato's case* in *R v. Kennedy (No. 2)*.²⁷

In *R v. Smith*²⁸, the appellant had stabbed the victim who was dropped twice while being taken to the hospital. The treatment given subsequently was inappropriate and might well have affected his recovery. Lord Parker rejected the contention that his death did not result from the stab wound which he said was the "operating cause and substantial cause of death". In his words;

"It seems to the court that if at the time of death the original wound is still an operating and a substantial cause, then the death can properly be said to be the result of the wound, albeit that some other cause of death is also operating. Only if it can be said that the original wounding is merely the setting in which another cause operates can it be said that the death does not result from the wound. Putting it another way, only if the second cause is so overwhelming as to make the original wound merely part of the history can it be said that the death does not flow from the wound."

However, Dennis Klimchuk notes that, "in cases in which the action attributable to the accused is more than merely the setting in which another cause operates and that it is not overwhelmed with another causative factor which makes the first merely part of the history of the eventual injury, it is better captured in terms of substantial causation, and in others in terms of operational causation."²⁹ He gives an example of *R v. Hallett*³⁰, where the accused assaulted a man, and left him unconscious on a beach with his feet in the water and over the next few hours, either because the tide came in or because the man drifted out into the water, he drowned. The Supreme Court of Australia held that the proper question to ask to settle the causal connection was

²⁶ (1976) 62 Cr App R 415.

²⁷ Lord Bingham paraphrased *Cato* in *R v. Kennedy (No. 2)*, (2008) UKHL 1 AC 269 at 274.

²⁸ (1959) 2 QB 35.

²⁹ Dennis Klimchuk, "Causation, Thin Skull and Equality" 11 *Can J. L. and Jurisprudence* 118 (1998).

³⁰ (1969) SASR 141.

whether the act of accused was “*so connected with the event that it may be regarded as having a sufficiently substantial causal effect which subsisted up to the happening of the event*”.

However, in *R v. Blaue*³¹, the court found that the accused had killed the victim because his actions were the operating cause of her death. The courts used these words to suit the particular circumstances and it is not necessary that the act should be substantial and operating cause as required by *Smith*. Eric Colvin says that, “this reference in *Smith* does not require initial injury to necessarily be the operating cause of death in the medical sense.”³² For instance, in *Hallett*, death was caused from drowning and not from the physical effects of his injuries. He further says that, operating cause appears to mean that the strength of a causal connection must be sustained through the time of the result.”³³ This would however follow from the essential nature of the substantial cause test. Thus, for him a reference to ‘operating cause’ merely serves a function of clarification.

There are cases where causal factors which were once considered substantial diminish over a period of time. In *R v. Jordan*³⁴, the accused tried for murder on a charge of causing death by stabbing. However, the medical evidence showed that continued administration of terramycin despite knowing the fact that the victim was intolerant of it and intravenous injection was the cause of death. In this case the causal contribution of the wound had become insignificant.

Thus, in this test, the question of whether an accused caused some event is answered independently of what the accused knew or expected, or should have known or expected.

- **Test 2 - Reasonable Foreseeability Test:**

For the reasonable foreseeability test, the question is whether the event in question was a reasonably foreseeable consequence of actions of accused. In contrast to the substantial or operating cause test, the reasonable foreseeability test is thus, as Eric Colvin points out, prospective.³⁵ As a consequence, and in further contrast with the substantial or operating cause test, the reasonable foreseeability test answers in terms of what the accused knew or expected, or should have known or expected.

³¹ (1975) 3 All ER 446.

³² *Supra* note 1 at 260.

³³ *Ibid.*

³⁴ (1956) 40 Cr App R 152.

³⁵ *Supra* note 1 at 259.

In *R v. Roberts*³⁶, where a girl had been assaulted in a moving car had injured herself when she jumped out, the conviction of accused who assaulted her for causing actual bodily harm was upheld. The Court of Appeal laid down this test of causation in following words:

“Was it the natural result of what the alleged assailant said and did, in the sense that it was something that could reasonably have been foreseen as a consequence of what he was saying or doing? As it was put in the old cases, it has got to be shown to be his act, and if of course the victim does something so ‘daft’, in the words of the appellant in this case, or so unexpected, not that this particular assailant did not actually foresee it but that no reasonable man could be expected to foresee it, then it is only in a very remote and unreal sense a consequence of the assault, it is really occasioned by a voluntary act on the part of the victim which could not reasonably be foreseen and which breaks the chain of causation between the assault and the harm or injury.”

In *Royall v. Queen*³⁷, the court considered that legal causation and foreseeability are closely connected, but the majority stated that juries should not be directed in terms of foreseeability because of risk of confusion between an objective standard as a subjective state of mind. The minority in this case however favoured reasonable foreseeability test.

It should be noted that these two tests are not supplementary; rather they tackle situations according to the demands of the case. Hence they cannot be compared or be said to be preferable over the other. However, there may be situations where application of both helps us reach the same conclusions.

3. Novus Actus Interveniens

The Latin term, *novus actus interveniens* refers to an intervening act, which breaks the chain of causation. The act could be a natural act, an act of the third party or an act of the victim. However, not every intervening act qualifies as *novus actus interveniens*. The intervening act must be such that it is not foreseeable or intended but in some cases, when the intervening act is a free deliberate and informed act of another agent, the original causation breaks despite the

³⁶ (1971) 56 Cr App R 95.

³⁷ (1991) 172 CLR 378.

consequence being an intended consequence. For example, X hits Y with a wooden stick and leaves him unconscious in the forest. Now, if a wild animal kills Y, X will be liable for it being a foreseeable consequence. However, if another person Z comes along and kills Y, the chain of causation will break and X will no longer be liable for Y's death even if it was foreseeable that Z might kill Y. *Novus actus interveniens* therefore breaks the chain of causation rendering the accused free from liability of the consequence.

In order to understand the jurisprudence of *novus actus interveniens*, it is relevant that the 'autonomy principle' is first reviewed. Philosophers justify the position that causation is recognised in physical world, where it has the appearance of operating with mechanical inflexibility. But interpersonal relations involving determinations of the human will, we see things differently.³⁸ Prof. Kadish said, "While man is total subject under the laws of the natural world, his total sovereign over his own actions."³⁹ Therefore, whereas we speak of the causes of natural events, we generally prefer to speak of the reasons of human action. For instance, "I may suggest reasons to you for doing something, I may urge you to do it, tell you it will pay you to do it, but they don't cause you to do it in the sense in which one causes a catalogue water to boil by putting it on the stove."⁴⁰ The volitional act is regarded as setting a new chain of causation, irrespective of what has happened before.⁴¹ The autonomy doctrine, expresses itself through its corollary, the doctrine of *novus actus interveniens*. It teaches that individual will is the autonomous and self regulating prime cause of his behaviour.⁴²

Furthermore, the principle of 'individual autonomy' presumes that, where an individual who is neither mentally disordered nor an infant has made a sufficient causal contribution to an occurrence, it is inappropriate to trace causation any further. However, voluntary actions perform as a barrier in any causal inquiry in the criminal law by and large the voluntary conduct of the accused shall be regarded as a cause of an act or an omission if it was the last human conduct

³⁸ Granville Williams, "Finis for Novus Actus" 48 (3) *The Cambridge Law Journal* 391-416 (Nov. 1989).

³⁹ *Ibid.*

⁴⁰ *Supra* note 38 at 392.

⁴¹ *Ibid.*

⁴² *Ibid.*

before the result.⁴³ Concurrent causes are however possible as where two people inflict injury or damage at the same time, so long as each of their acts passes the minimum threshold by way of contribution.⁴⁴ But, the finding that a particular connection is strong enough to establish causal responsibility does not necessarily resolve the question of legal causation. While assessing the strength of different causal contributions, it may emerge that more than one actor has passed the threshold for causal responsibility. In this kind of situation, either all actors passing the threshold can be held to have caused the result or the law can choose between them. Here, criminal law does not entertain the idea of multiple independent causation of law of torts. The doctrine of *novus actus interveniens* helps in choosing between actors who could each be held causally responsible. Under this doctrine, the attribution of causal responsibility to a later actor is held to relieve the earlier actor of causal responsibility. The causal chain from the earlier actor is broken by the intervention of a new actor. However, this does not mean that the earlier actor obtains complete immunity from criminal liability.

The traditional causal theory focuses on the last act and does not review the entire situation. There are certain situations where a subsequent act has been occurred, but it does not break the chain of causation. They include:

A. Non-Voluntary Conduct of Third Parties

The general principle is that the voluntary intervening act of a third party supersedes the causal connection between act of accused and the prohibited result. The courts have developed exceptions in cases where the interventions are involuntary or non-voluntary. In *R v. Michael*⁴⁵, the mother wanting her child to be dead asked the foster mother to administer her medicine, which in fact was poison. The foster mother not feeling the necessity for medicine kept it aside. The foster mother's own 5 years old child nearby while playing took the bottle and fed it to the child, who later died. Michael was held for murder since there had been necessary *mens rea*. It was observed that the action of child did not break the chain of causation as the child who administered the poison is an innocent agent whose action was supposed to be foreseeable by the

⁴³ *Supra* note 4 at 105.

⁴⁴ Attorney General's Reference No. 4 of 1980 (1981) 73 Cr App R 40.

⁴⁵ (1840) 9 C & P 356.

accused. In *DPP v. Newbury*⁴⁶, it was laid down clearly that a person accused of constructive manslaughter would be responsible for the consequences of his actions, irrespective of foresight, provided he acted in an unlawful and dangerous manner.

In *Environment Agency v. Empress Car Co. (Abertillery) Ltd.*⁴⁷, the company had fixed an outlet from its diesel tank which would drain towards the river. An unknown person opens the tap and the river was polluted. The company denied that it caused the polluting matter to enter controlled waters, contrary to the Water Resources Act 1991 and normal principles one would expect the deliberate act of a third party to negative its causal responsibility. But the House of Lords discarded the general principle that a voluntary intervening act breaks the causal chain in favour of the distinction of fact and degree between ordinary and extraordinary interventions. The conviction in this case is a clear policy decision, aimed at imposing stringent duties on companies to take steps to prevent pollution, and convicting them for missions to fulfill those duties.

B. The Conduct of Doctors

In cases where medical attention is given to a victim, there is really any doubt that it may properly be described as voluntary. Doctors work under pressure, occasionally having to make rapid decisions. Doctors act under a duty to treat patients, but they surely do so voluntarily. It may be seen that courts have drawn a distinction between cases where injury inflicted by accused remains a substantial and operating cause of death despite the subsequent medical treatment, wherein accused remains causally responsible even a medical treatment is negligent.

However, In *Jordan* as discussed above provides an exception where medical treatment broke the chain of causation. Another aspect of medical treatment which needs consideration is the area of withdrawal of life-support machines. In such cases it has been generally held that where treatment involved placing a victim on a life-support system, the decision to disconnect the system could not break the chain of causation between the infliction of the original injury and the victim's death. In both cases on this aspect i.e., *R v. Malcherek and Steel*⁴⁸, there was no evidence in either case that the original injury had ceased to be a substantial cause of death. It

⁴⁶ (1977) AC 500.

⁴⁷ (1999) 2 AC 22.

⁴⁸ (1981) 2 All ER 422.

may be noted that the doctrine of *novus actus interveniens* is resorted to only in the most extraordinary circumstances. The medical treatment, however negligent it may be, has been generally held not to break the chain of causation.

In *Smith and R v. Evans & Gardiner (No. 2)*⁴⁹ cases, the medical treatment was not held to be the *novus actus interveniens*, this position was reaffirmed in *R v. Cheshire*⁵⁰, where victim was shot in the leg and stomach. He was admitted to an intensive care unit where he developed respiratory problems and a tracheotomy pipe placed in his windpipe for four weeks to assist breathing. During trial the medical evidence was given by surgeon that the victim's wounds no longer threatened his life at the time of death and that the death was caused by negligent failure of the medical staff to diagnose and treat his respiratory condition.

C. The Conduct or Condition of Victims

The general principle is that the law approaches causation by considering effect of an autonomous individuals conduct upon a stage already set is usually taken to extend to cases where the victim has some special conditions which make him or her especially vulnerable. This is also sometimes referred to as thin skull principle, or the principle that accused persons must take their victims as they find them. If accused commits a minor assault on victim, and victim who is a haemophiliac dies from that assault, the principle applies to render accused causally responsible for the death.⁵¹ Now, this doctrine of causation may have little impact on its own because *mens rea* is an important ingredient for determining the final culpability of an actor and in such a situation, this element was lacking because accused was unaware of victim's special condition. However, where an offence imposes constructive liability (such as manslaughter in English and American law), the thin skull principle reinforces the constructive element by ensuring that there is no causal barrier for conviction of an offence involving more serious harm than was intended.

The objection to such doctrine is that such physical conditions are abnormal and much of the standard analysis of causation turns on distinctions between normal and abnormal conditions. In

⁴⁹ (1976) VR 523.

⁵⁰ (1991) 1 WLR 844.

⁵¹ *State v. Frazier* (1936) 98 SW 2d 707.

Roberts, the Court of Appeal upheld conviction of accused for assault occasioning actual bodily harm, on the basis that victim's reasonably foreseeable reaction does not negative causation.

IV. Causation And The Indian Penal Code, 1860

A. Some Key Provisions Under The Indian Penal Code, 1860

Doctrine of causation is based on simple premise that a man can only be held liable for consequence of his own actions. The word consequence is of great significance and interpreted liberally, it extends not only to direct acts of a person but also to acts done through innocent agents like cases of duress or use of infants or acts of non-voluntary third parties. The doctrine of causation is best illustrated by Illustration (b) under Section 299 of the Indian Penal Code, 1860 (hereinafter the IPC).⁵² Also, the doctrine of innocent agency is incorporated in the IPC through Illustration (b) of Section 299. It may be noted that sometimes cause may not be direct but still there arises liability. Under the IPC, cases of accelerating the death of a person labouring under some disorder, disease or bodily infirmity are deemed to be culpable homicide by virtue of Explanation 1 of Section 299 of the IPC. In definition of culpable homicide in Section 299 of the IPC words 'causes' or 'causing death' are used. In Section 300 of the IPC instances of causing death by specifically causing bodily injury⁵³ and death caused by any method⁵⁴ are dealt separately. The *mens rea* required in each of such instances is specifically mentioned.

A close examination of the four clauses of Section 300 of the IPC shows that it leans more in favour of application of 'reasonable foreseeability test' to attribute causal responsibility. The foremost requirement to prove intention or knowledge sees that if the accused had foreseeability about the consequences. Section 300 (Fourthly), where death is caused by knowledge that the act is 'imminently dangerous' and 'in all probability' cause death, and 'risk is taken without any reasonable excuse' is also problematic in sense that the provision drafted is extremely wide and like Section 300 (Secondly), it partly employs objective test for determining criminal liability.

Apart from these provisions relating to homicide not amounting to murder and murder, there are some other noteworthy provisions. The conduct required by accused to commit a particular

⁵² "A knows Z to be behind a bush. B does not know it. A, intending to cause or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence, but A has committed the offence of culpable homicide."

⁵³ The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 300(Secondly and Thirdly).

⁵⁴ The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 300(Firstly and Fourthly).

offence is specifically mentioned in many of the provisions. For instance 'participation' is a crucial factor in Section 34 of the IPC, whereas in Section 149 of the IPC, there is no need of active participation and membership of unlawful assembly is a sufficient precondition. Further, according to Section 33 of the IPC, 'act' includes a 'series of acts' as well. The IPC has expressly made causation by illegal omissions to be dealt with in same manner as an act is dealt with.⁵⁵ Further instances where causing a certain effect by act or by an illegal omission is made an offence, it is to be noted that causing that effect partly by an act and partly by an omission is same offence.⁵⁶

B. Incongruity In Specific Provisions of the Indian Penal Code, 1860 (viz. Section 299, 300 and 304A)

Analyzing various provisions under Indian Penal Code, 1860 (hereinafter the IPC), it may be noted that almost every section defining an offence has simultaneously provided a description of the causation in same section. This has given rise to a situation of multiplicity of causation differing from section to sections. The causality changes with every other offence under the IPC and resultantly, too much of leverage is available to the courts to construct causality depending on the circumstances.

Indian Criminal law does not recognize a general doctrine of causation which suits the peculiar and local circumstances and is cultural setting of the Indian society. Although causation is based on facts of the cases, but that does not lead to the inference that some broad and general principles of causation cannot inform or guide cases and circumstances based on their own specific facts. Different descriptions of causation under the IPC many times contradict each other which go to benefit the accused at the cost of victim and society at large. Some of these effects may be noted from the following cases:

In *Queen Empress v. Khandu*,⁵⁷ accused was punished only with sentence for grievous hurt whereas even going by common law principles he was liable for being punished for manslaughter. In this case, it was found that accused struck deceased three blows on head with a

⁵⁵ The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 32.

⁵⁶ The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 36.

⁵⁷ (1890) ILR 15 Bom 194.

stick with intention of killing him. The accused, believing him to be dead, set fire to hurt in which he was lying with a view to remove all evidence of crime. The medical evidence showed that blows were not likely to cause death and did not cause death and that death was really caused by injuries from burning. Mr. Justice Parsons took view that whole transaction, the blow and the burning, must be treated as one and therefore the original intention to cause death applied to act of burning which did cause death. But this view was not accepted by majority of judgments. Due to inadequacy of clearly defined causation principles under Section 299 and even in section 300 of the IPC, the strict requirements of intention of the accused at every stage of the act i.e., contemporaneity of *actus reus* and *mens rea*, the accused could not be convicted for homicide not amounting to murder. The court held that under the common law principles, act of accused amounted to manslaughter but under the IPC, *mens rea* and causation has been clearly laid down and therefore judges have to go by strict interpretation giving benefit of doubt to the accused. The dissenting judge clearly noted that under such circumstances, the intention of the accused may be deemed to be continuing and subsisting till final act of death was caused. This happened partly because the judicial precedents have not ventured to evolve new principles of causation and apply causation while deciding cases as demonstrated by many foreign authorities. There is a line of cases in which similar circumstances arose and the mechanical application of the principles of causation impeded the course of justice. Rigid technicalities and unbending and inflexible interpretation has caused more harm than good to the cause of promoting fairness and justice. *Palani Goundan v. Emperor*⁵⁸ may provide another similar circumstance. The accused husband convicted of murder was on appeal let off with merely a punishment for grievous hurt. The accused struck his wife a violent blow on the head with the ploughshare which rendered her unconscious and hanged her very soon afterwards under the impression that she was already dead intending to create false evidence as to the cause of the death and to conceal his own crime. In *The Emperor v. Dalu Sardar*⁵⁹, the accused assaulted his wife by kicking her below the navel. She fell down and became unconscious. In order to create an appearance that the woman had committed suicide, he took up the unconscious body and thinking it to be a dead body, hung it by

⁵⁸ (1919) ILR 547.

⁵⁹ (1914) 18 CWN 1279.

a rope. The post-mortem examination showed that death was due to hanging. Hence, the commonality in all these cases discussed above is mechanical application of causation as provided under the IPC and consequent incoherence and even miscarriage of justice.

Unlike in UK and USA, the provision for causation has been integrated into different sections of the IPC. According to Explanation 2 of section 299, IPC “where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.” This provision is equivalent to the common law rule that negligence on the part of doctors (as long as it does not qualify as gross negligence) or lack of medical infrastructure does not break the chain of causation. Much like this section, many sections in the IPC ingrain a semblance of the common law doctrine of causation. However, as a consequence of not having a separate doctrine of causation has led to some contradictions in different approaches to causation in the similar circumstances.

The causation required for conviction under Section 304A is different from what is required under Section 302 of the IPC. Similarly, the causation for rash and negligent act are covered under same section while the two are entirely different acts. Causation under Section 304A for rash and negligent act has a slightly different approach than general theory of causation. For conviction under Section 304A, in addition to act being *causa sine qua non*, it also has to be *causa causans*.

In *Sushil Ansal v State through CBI*⁶⁰, wherein the negligent handling of a DVB (Delhi Vidyut Board) transformer lead to a fire in a cinema hall which in turn lead to the death of 59 people while injuring scores of others, the Supreme Court following the ratio laid down in *Emperor v. Omkar Rampratap*⁶¹, held that despite the gross negligence in maintenance of the DVB transformers, it was not the *causa causans* and does not attract conviction under Section 304A. In this case, the owner of cinema hall had allowed only one exit as opposed of the statutorily requirement that all the exits be open. Therefore, while the Supreme Court awarded the conviction under Section 304A to the owners of the cinema hall for gross negligence, the court

⁶⁰ 2002 CriLJ 1369.

⁶¹ (1902) 4 Bom LR 679.

refused to convict the DVB employee responsible for the shabby state of affairs under the same. Therefore, the law says that for conviction under Section 304A, the act must not only be the *causa sine qua non* but also the *causa causans*.

It is insightful to draw and note a comparison between some cases such as *Thabo Meli v. R*⁶², *R v. Church*⁶³ and *Le Brun*. In *Thabo Meli*, the accused persons had taken the victim to a hut and got him drunk so that he becomes intoxicated. They then hit the victim around the head intending to kill him. In fact the accused persons only succeeded in knocking him unconscious but believing the victim to be dead, they threw the body over a cliff. The victim survived but died of exposure sometime later. The accused persons were convicted of murder and when appealed to the Privy Council on the ground that there had been no consequence of *mens rea* and *actus reus* of murder. The privy Council held that correct view of what the accused persons had done was to treat the chain of events as a continuing *actus reus*. It was further held that *actus* and *mens* were present throughout, no need to separate them, there was a causal link. Where the *actus reus* consists of a series of linked acts, it is enough that the *mens rea* existed at some time during that series, even if not necessarily at the time of the particular act which caused the death. Similar reasoning was applied in *Church* and *Le Brun*, wherein the crime of manslaughter was held in both the cases. In *church*, the accused assaulted the victim who mocks them for its impotency when he was seeking sex. After attacking her, he panicked and wrongly thinking that he had killed her, threw her unconscious body into a river, where she drowned. The appeal of the accused was dismissed and conviction for manslaughter was upheld.

In contrast, the principles of causation that were applied in *Khandu, Palani Goundan etc.* appear to be inconsistent not only with the statutory provisions under the Indian Penal Code, 1860, but also fall short of reasonable expectations of a criminal justice system.

From the above discussion, the distinction in the approach taken by some foreign jurisdictions as contrasted with India demonstrates a lot needs to be done in terms of having some comprehensive reforms in the substantive law incorporating clear concept of causation. There exists an urgent need to resolve the ambiguous nature of the principles and statutory provisions

⁶² (1954) 1 WLR 228.

⁶³ (1966) 1 QB 59.

of causation being applied in India. While determining causation, due weightage must be given to the existing circumstance, the *mens rea* of the accused and the mental state of the victim. The development of strict guidelines is a necessity to ensure a uniform application of the doctrine of causation. The IPC is to be regularly revised whenever gaps and ambiguities are found. Unfortunately, this did not occur, with the result that the courts had to undertake this task, sometimes with unsatisfactory outcomes.

V. Conclusion

Causation is an intricate and challenging area of criminal law which requires elaborate and comprehensive treatment at an analytical and conceptual level. Even in those jurisdictions which have attempted codification of criminal law, whenever the issue of determining causation arises, judges without going into the conceptual and theoretical framework of causation tend to rely on the common law. This has led to different thinkers appreciating the concept from different premises and arriving at different conclusions and achieving different levels of acceptance for their theories resulting in some loss of clarity at the conceptual level.

A cursory look at various provisions which define causation under the Indian Penal Code, 1860 may provide an impression that the Code is self-containing and complete. But a closer examination of the Code reveals that it suffers from a large number of incongruities and incoherence in several aspects. As almost all result based offences have been defined and codified under the Code and the same may have been suitable for the relevant period when the codification took place. But serious doubts have been raised by different scholars over the years about the efficacy and utility of the Code in the light of changed circumstances, post-independence public policy and public justice requirements.

There has not been a wider review of the Code and recast the provisions particularly those relating to causation. The judicial approach and attitude to the situation has also been more or less reactive like that of legislature. The result of all this has been misinterpretation and over interpretation of statutory laws and numerous conflicting judicial rulings affecting the whole range of general principles of criminal responsibility. To overcome this problem there is requirement of a major remedial surgery rather than a stop-gap arrangement. The need of the

hour is to suitably amend the existing provisions of criminal law relating to causation and lucidly enunciate the standard principles of causation which can serve as the yardstick for adjudication.