

ANALYZING CRIMINAL LIABILITY FOR ROAD ACCIDENTS IN BANGLADESH WITH SPECIAL REFERENCE TO THE ROAD TRANSPORT ACT, 2018

Md. Moniruzzaman*
Iftekhhar Sahariar**

ABSTRACT

Criminal liability for road accidents is a sore topic in Bangladesh as most do not understand the rationale behind the culpability of accidents. The Road Transport Act of 2018 was enacted with the hope for safer roads by defining offences relating to road accidents. With the rising number of accidents, many wanted increased punishment for road accidents, however evidence shows that certainty of punishment provides more deterrence than severity of punishment. Offences relating to road accidents have a varying degree of culpability and based on the degree of culpability it attracts different offences and punishments. This article examines the offences relating to road accidents to find out the scheme of criminality for road accidents under the laws of Bangladesh. By understanding the scheme and rationale of culpability of accidents, it will be easier to convict and properly sentence for the offences relating to road accidents.

I. INTRODUCTION

Against the backdrop of mass student protests for safer roads, the government passed the new Road Transport Act, 2018 with the sole purpose of meeting the demand of time by ensuring a safer road transport system. After the passing of the new law, it has come under wide scrutiny, especially the government's decision to impose a maximum punishment of five years' imprisonment for causing death to a person by rash or negligent driving met with a lot of controversies.

Any act which is done by accident can not constitute an offence. However, when the accident is caused by negligence, it gives rise to civil wrong or tort. But for an accident to be culpable, criminal negligence must be present. Criminal negligence is different from civil negligence depending upon the standard of duty of care and the risk factor associated with it.

* **Md. Moniruzzaman**, LL.B (Hons), LLM (University of Rajshahi) is a Lecturer, Department of Law, Primeasia University.

** **Iftekhhar Sahariar**, LL.B (Hons), LLM (University of Rajshahi) is an Assistant Judge at Bangladesh Judicial Service.

Again, the degree of culpability of road accidents differs based on negligence and recklessness. Without properly defining the different elements associated with accidents such as negligence and recklessness, giving appropriate sentences for any particular accident would be difficult. Especially, due to the absence of any proper sentencing guidelines, assigning proper punishment can be a difficult task.

II. ACCIDENT AND CULPABLE ACCIDENT DEFINED:

Sometimes one can blame no one but his misfortunes for his injuries. Some acts are beyond the control of anyone and are purely accidental in nature and these accidents can only be defined as a tragedy with no one to blame for.

The word ‘accident’ refers to any course of events over which no one had any control and could not be avoided despite the best efforts. Under the *Black's Law Dictionary* accident has been defined as an unintended and unforeseen injurious occurrence, which is unusual and could not be reasonably anticipated and is not attributable to mistake, negligence, neglect or misconduct. According to criminal law, accidents do not come within the purview of the definition of offence; rather it is a defense taken by accused persons in criminal cases to avoid criminal liability.

Section 80 of the Penal Code 1860 protects a person from being charged with an act that occurred due to an accident while doing a lawful act. Section 80 is a part of the general exceptions given in our Penal Code contained in Sections 76 to 106 which makes an offence a non-offence¹. Section 80 states that:

“Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.”

In the criminal justice system, an unavoidable accident devoid of any negligent act on the part of the doer is not considered as a culpable act. This is a part of the common law principle; *Actus non facit reum nisi mens sit rea* which means that an act to be illegal, the person should do it with a guilty mind. Lord Kenyon C.J in *Flower vs Pedget*² declared that;

“It is a principle of natural justice, and of our law, that actus facit reum nisi mens sit rea. The intent and the Act must both concur to constitute the crime.”

However, under certain circumstances an act although done unintentionally may become culpable if negligence can be proved. And based on the level of negligence the degree of culpability is determined.

¹ *Shankar Narayan Bhadolkar vs State of Maharashtra*, (2004) AIR (SC) 1966, available at: <<https://indiankanoon.org/doc/847451/>> (Last visited on January 19, 2019).

² *Flower vs Pedget*, (1798) 101 ER 1103.

Under Black's Law dictionary, culpable accident has been defined as an accident which occurred due to negligence and for which the defense of unavoidable accident cannot be taken, which indicates that if due care was taken no accident would have been materialised which proves that there is an element of negligence on the part of the offender.

III. CIRCUMSTANCE WHEN AN ACCIDENT BECOMES CULPABLE

There are two essential elements of a crime, namely *actus rea* and *mens rea*. *Actus rea* is the physical element required to commit an act and *mens rea* is the mental element of a crime which means guilty mind. The general rule is that mere intent to commit a crime is not considered an offence. To become an offence, a positive act or illegal omission is usually required. Again, without the guilty mind, a physical act alone cannot constitute an offence.

In accidents, the physical element of the crime is very clear but often the mental element is absent or disputed. And without the mental element, many scholars have been reluctant to term an accident as an offence unless a criminal intent is shown by the driver.

However, offences can be broadly divided into three categories³ i.e. *mens rea* offences in which *mens rea* consisting of some positive state of mind such as intent, knowledge or recklessness must be proved; *strict liability* offences, in which *mens rea* is not required but it is open for the accused to avoid liability by proving he took all reasonable care; and *absolute liability* offences, where showing one is free as a defence is not available.

Again, the US Model Penal Code (MPC) prescribes the minimum requirement for an act to be culpable. Under section 2.02 of the Code a person cannot be held guilty for an offense “unless he acted purposely, knowingly, recklessly or negligently.” The MPC conceptualized the mental element required for commission of an offence, also known as *mens rea*, into four different categories i.e. purpose, knowledge, recklessness, and negligence.

Under the MPC a person is defined to have acted purposely when the expected harmful result was his conscious object to engage in a conduct. Knowledge is defined as a person's awareness regarding the results of his conducts with practical certainty. Recklessness required that one must consciously disregards a substantial and unjustifiable risk that may cause a harmful result. And Negligence exists when one is not aware of the substantial and unjustifiable risks of his conduct but should have been aware as a reasonable person of the substantial and unjustifiable risks that may become cause of any harmful result.

³ *R vs Sault Ste. Marie*, 2 S.C.R. 1299 3 C.R (3d) 30, 1978.