



## A Descriptive Study On Culpable Homicide & Murder



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KEYWORDS	ABSTRACT
Murder, Culpable Homicide, Intention, Motive, Knowledge, Reason to believe.	Murder and Culpable Homicide are similar to each other, but they are not identical to each other. Section 299 deals with Culpable Homicide and Section 300 explain the concept of Murder. There is a very thin difference between Murder and Culpable Homicide. It becomes difficult to differentiate between them because both concepts represent “The killing of death”. The murder defines that the intentionally killing of human being which in itself sufficient to cause death of a person whereas the Culpable Homicide explain that the act is done with the intention of causing death which is likely to cause death of a person. It is common understanding that “Every Murder is Culpable Homicide but all Culpable Homicide are not Murder”. In other words, we can say that murder is a part of culpable homicide i.e. Culpable Homicide is regarded as genus whereas Murder is species.

### Introduction:-

The Culpable homicide and Murder deals under section 299, 300 of Ch. XVI of Indian Penal Code, 1860 related with offences affecting the human body. In the general term, the culpable homicide means unlawful killing which is not classified as murder due to the guilty intention or mens rea being absent. Thus, all culpable homicide is not considered murder. For Instance, if the death is caused by accident or misfortune, or while doing an act in good faith and without any criminal intention for the benefit of the person killed, the man is excused from criminal liability for homicide. The liability of the offence is depend on the term intention. It is a term used in Scottish law and amongst several countries where the English common law system of justice is administered.

All murder is culpable homicide but not vice versa. For the purpose of determining the punishment, the IPC recognised three degree of culpable homicide-

**Culpable homicide of first degree:** gravest form of culpable homicide defined as u/s 300 as murder.

**Culpable homicide of second degree:** punishable u/s 304 part 1.

**Culpable homicide of third degree:** lowest type of culpable homicide which is punishable u/s 304 part 2.

The safest way to approach to the interpretation and application of these provisions seems to be kept in focus the key words used in the various clauses of section 299 & 300.

### Foundation

Hitherto, there was no criminal law in an uncouth society. “A tooth for a tooth”, “An eye for an eye”, “A life for a life” was the predecessor of criminal justice. In the present day killing of human being is one of the grave offense against humanity and such crime is better known as homicide. The present article deals with the difference between the culpable homicide and murder.

### Mens Rea and Actus Reus

All crimes consists two components mens rea and actus reus, if any of the one component is missing then the committed act did not fall under the ambit of crime. Actus reus means the wrongful act committed and Mens Rea is the state of mind behind such acts i.e. presence of guilty mind.

### MAXIM-

“Actus non facit reum nisi means sit rea”

An act does not make anyone guilty unless there is a criminal intent or a guilty mind.

The emphasis upon the ‘mens’ in section 39 clearly suggest that ‘the intention’, ‘knowledge ‘or ‘ reason to believe’ can be understood by examining the mens which were employed by the accused i.e. by examining the conduct of the accused and the surrounding circumstances. Before discussing the culpable homicide and murder, we must know about the various mens rea:

- **Intention:** Intention means “the desire of a person”, to produce a particular consequence. A person who has the intention to produce a consequence will not do the act casually rather he will do the act in such a manner and to such an extent that the consequence be produced with certainty under any circumstances. Intention has to be proved objectively by proving the conduct of the accused. It is not necessary for intention that motive also shall be proved. Even without proving motive, intention can be proved and criminal liability may be arise. But if the motive is also proved then it became easier to prove intention. Motive may be relevant to prove intention as well as the quantum of punishment.
- **Motive:** Motive is the reason behind the commission of an act i.e. the larger purpose behind the doing of an act. Motive is not an ingredient in itself rather it is just a relevant fact u/s-8 of IEA. It is to be examining by asking the question is “why did the accused to do an act”. The proof of motive in itself will not make a person liable and not the proof of intention.
- **Knowledge:** Knowledge is the simple awareness of the accused regarding the likely consequence of his act. It is the lesser degree of mental involvement and generally a person is presumed to occur knowing the ordinary significance of the action.
- **Reason to believe:** It is a lesser degree than knowledge. In this, the accused does not know directly that the victim/subject-matter is in the line of the action but there is some surrounding circumstances which suggest that the subject-matter in the line of his action.

### Meaning of Culpable Homicide:

The “Homicide” word defined from the Latin term in which the “Homi” means “Man” and the “Cide” means “cut”. The word

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“Homicide” means “killing of a man”. The homicide implies the unlawful killing of a person by another person. Whether intended (murder) or not (manslaughter).

#### Types of Homicide:

- Lawful Homicide
- Unlawful Homicide

#### Lawful homicide:

Lawful homicides are “no fault” homicides. They usually involve the death of someone under scenario of necessity and duty which is commanded and authorized by law. They are distinguished from intentional crime, which involves a lesser charge or sentence. Not all homicide is unlawful. All lawful Homicide covers under General Exception of the Indian Penal Code, 1860 i.e. it is excusable and justified. For Example - killing in self-defense, a justifiable killing of a suspect by the police.

#### Unlawful homicide:

The killing of a human being in a manner contrary to the law/ in breach of criminal law and without lawful excuse. The unlawful homicide includes:-

- Murder
- Culpable Homicide not amounting to murder
- Exception of sec Murder
- Transfer of malice u/s 301r/w sec.300 exception 1(ex.-b)
- Death caused by negligently act
- Dowry death u/s 304B,IPC R/W with presumption u/s 113B,IEA
- Abetment and attempt to suicide & murder
- Attempt to culpable homicide

#### Meaning of Murder:

A term “Murder” means “The crime of deliberately killing a person”. Its origin came from the German word “morth” which means “secret killing”. Murder means when one person is killed by another person or group of persons who have a pre-determined intention to end life of the former. An offence will not amount to ‘Murder’ unless it includes an offence which falls under the definition of culpable homicide as per the definition of murder under IPC. All murders are culpable homicide but all culpable homicides are not murder.

#### Interpretation of bare act:

- Clause(1) of sec.299 R/W sub-section(1) of sec.300
- Clause(2)of sec.299 R/W sub-section(2),(3) of sec.300
- Clause(3) of sec.299 R/W sub-section(4) of sec.300

#### Clause (1) of sec.299 R/W sub-section (1) of sec.300:- Intention to kill

**Sec.299 clause (1)** - when any injury is cause, either it is with bodily injury or without bodily injury. There is presumption that you have the intention to cause external injury as well as internal injury. This clause is not limited about injury rather it proved intention to cause death directly. For ex. - someone pushed/dash you in the sea. That show the manifest intention as per sec.299 (1).

**Sec. 300 sub-section (1)** – As interpretation of bare act language, there is no difference between the sec 299(1) & sec300 (1). The d/f is only the language of the sections. Sec. 299(1) starts with “whoever causing.....death “and use “an act” which shows uncertainty that means doing an act by which probability of death is not certain rather sec300 (1) starts with “excepting.....causing death” and use “the act” which shows certainty that means where probability of death is certain by that act.

**NOTE:** Culpable Homicide is genies and Murder is the specie. For proving murder, there has to be culpable homicide. There cannot be a murder without proving first culpable homicide. That’s why as we can said that “All murder are considered culpable homicide but not vice versa”.

For the defense under exception 1 of sec 300, it is first required to see whether case of murder or not. Once it is proved a case of murder, then the examination has to be:

**Exception1:** There was a grave and sudden provocation.

It represent that a reasonable man would lose his power of self-control. Then only it is called grave. But the provocation should be sudden. If the accused was already aware of the fact and then again he heard about the same fact i.e. he will not shock from the fact that means that conduct will not be considered sudden. Both elements i.e. grave & sudden are mandatory for the provocation. If any element is absent, then it doesn't fulfill the requirement of provocation (the reaction of the person is sudden but not grave or it is grave but not sudden), then the offender cannot avail any advantage of this exception. That provocation would arise the question of fact and not the question of law.

The exception is itself subject to three exception:

- The provocation should not be voluntarily by the offender.
- This should be immediate and grave.
- The provocation should not follow any act done under rule of law and in the exercise of the right of private defence.

**Illustration:** A family lives in a village where ritual ornaments of marriage is an essential part of life. ‘The Mangal sutra’ indicating the love and commitment the husband and wife has towards each other. The woman throws the mangal sutra on his face. Then, the man anger and kill her. That causing of woman death was in provocation. Due to provocation, the accused lost his self-control. The provocation was grave and sudden. Thus, the accused got the defence of exception 1 of section 300.

#### K.M. Nanawati v/s State of Maharastra<sup>1</sup>

In that case, the supreme court held that the court was not grant the defence of grave and sudden provocation, because after telling the truth about her affair with Mr. Ahuja by the wife his conduct was normal and went for movie(just arise for evidence i.e. plea of alibi). After that he went to the Ahuja house with the gun and shoots him. That circumstances does not consider provocation because there was some cooling period for relaxation & understanding the situation. The test is that a reasonable person can provoke in such circumstances and could lose his self-control and that sudden loss of mind and control on body will outcome of the injury to the person and sometimes caused death. Thus, this exception saves the person from falling in the definition of sec 300 and brings it within the ambit of culpable homicide not amounting to murder.

**Exception 2: Exceeding power used:** when the offender can take a defence for save his life, property or others body and property and causes the death of the person only if the offence was done in good faith. Then, it is essential that causing harm in the bona fide intention in plea of self-defence which shows to do more harm used then is necessary for the purpose of the defence. Without any doubt, the case will get the advantage of this exception of sec.300.

#### Illustration:

A property dispute between ‘A’&‘B’. ‘C’ who is a brother-in-law of ‘A’ and said that I will mediate the matter between two. They went to the B’s house for solving the dispute. B became frivolous and went into the room for taking out the Gandasa. B started hitting both A&C and they got injured. As long as they continue attacking. Thereafter, A snatching the Gandasa from B and hit B. A can take private defence of his life and it continue as long as the danger continue as per section-102or taking def r/w section 300 exception-2.Here, the section 300 exception-2 applicable and liable for taking defence. But now, the Gandasa is in the hand of A and not the death caused. Evenafter A continues the attack on B and cause the death. Then he will not be liable for defence of right of private defence because you cannot use exceed force then it necessary as per section 99 R/W section 300 exceptions 2.

**Exception3: Exercise of legal power:** It deals with the act of public servant who represents to promote public justice. This exception has been provided to the public servant where a public servant exceeds his powers for the protection of the public justice but the advantage of this

rule is not given if the public servant did the act unlawfully. He must believe in good faith that the act resulted in the death was lawful and necessary for the due discharge of his duties.

**Exception 4: Sudden quarrel:** when the act was committed without premeditation in a sudden fight in a heat of passion upon a sudden quarrel and without any undue advantage. Thus, causing of such death considered a culpable homicide not murder. It is neither material which party gave the provocation or assaulted first.

**Exception 5 (R/W Sec.87): Caused death with consent:** The death was caused with the consent of the deceased who's caused death having age of eighteen years. The consent which given by the deceased must be free and voluntary and under the any fear and misconception of facts.

**Illustration:**

Rohan, aged 17 years was abetted by Sohan to commit suicide. Here, Rohan was incapable to give his consent because he was immature and below the 18 years of age. Sohan is liable for the offence of murder and was not get the advantage of this exception.

**Clause (2) of sec. 299 R/W sub-section (2), (3) of sec. 300:** Intention to cause bodily injury which is likely to cause death.

**Sec. 299(2):** Intention to cause death with damage (particular injury) as Is likely to cause death.

Accused has to prove two things:

**Prove intent to cause that particular injury:** Once that intention is proved then after that no further examination of the mind of the accused is to be done.

Independent injury i.e. likely to cause death: Rather such actually caused or likely to cause death. For that purpose, doctor's opinion matter.

**Note:** Sec. 299(2) applicable only when there is medical examination. Without medical report, will not apply clause 2 of sec 299.

**Illustration:** X knows that Z has a tumor in his brain and he hits him again and again with a bat on his head with the intention of causing death, and subsequently Z dies. X is liable for culpable homicide not amounting to murder.

**Sec 300(2):** it explains three essential for proving murder:-  
Intention to cause death

Bodily injury is objectively likely to cause death (same as c.h., for proving murder, you have to prove more)

**Knowledge:** it is the special knowledge that the accused knew that this injury is likely to cause death.

**Sec 300(3): additional essential for proving murder, sufficient injury:** it requires that the accused had the intention to cause bodily injury and also in the opinion of the doctor that the injury would be sufficient for causing the death in the ordinary course of nature. It is not require that the accused had the knowledge of such sufficiency.

**Illustration:** X knows that Z has a tumor in his brain and in and he hits him again and again with a bat on his head with the intention of causing death, and Z dies subsequently. X is liable for murder.

**State vs. Rayavarapn Punneya<sup>2</sup>**

It was stated that "the destination is fine but real, and if overlooked may result in miscarriage of justice". The words, "bodily injury sufficient in the ordinary course of nature" mean that death will be the "most probable" result of the injury having regard to the ordinary cause of nature. The emphases are on the sufficiency of the injury in the ordinary course of nature to cause death. So, this sufficiency is to be observed objectively and not subjectively.

It is important to note that in the comparison between CL(2) of section 299 and cl(3) of section 300, the difference does not lies in the mens rea. Because the difference lies the degree of actus reus and under cl(3) of section 300, objectively it has to be proved that a particular injury was sufficient. In the ordinary course of nature and not likelihood.

It is also very important to note that in section 300 cl(3), the knowledge should be regarding only the likelihood of causing death,

and not regarding the sufficiency of causing death, because, otherwise, it will amounts to an intention to cause death & will fall under cl(1) of section 300.

**Note:** Intention causing bodily injury + known that it is sufficient death = intentionally death.

Clause (3) of sec.299 R/W sub-section(4) of sec.300:- Knowledge of death

**Sec 299(3):** The accused have apprehension that this act is likely to cause death.

**Sec 300(4):** The accused have awareness that it is inevitable dangerous to cause Death

The accused commits such act without an excuse for incurring the risk of causing death or injury.

**Note:** the word 'excuse' does not refer to the general exception or special exception of sec.300. The general exception will apply upon all the clauses of section 300 by virtue of section 6 & the special exception will upon the entire clause by virtue of words "Except in the cases hereinafter excepted" in section 300. Thus, there was no need to make a separate reference to either of these in the 4th clause. It refers to only justifiable grounds which appear to court in that particular case to be justifiable. The discretion lies with court.

**Emperor vs. Ht. Dhiragla<sup>3</sup>**

**Facts:** A village women of twenty was ill treated by her husband. There was a quarrel between the two and the husband had threatened that he would bear her. All night time the women, taking her six months old baby in her arms, slipped away from the house. After she had gone some distance she heard somebody coming up behind her and when she turned round and saw her husband was pursuing her she got a panic and jumped down a well nearby with the baby in her arms. The result was that the baby died and the women recovered. She was charged with the murdered of the child.

**Held:** An intention to cause the death of the child could not be attributed to the accused, though she must be attributed with the knowledge. However, primitive or frightened she might have been that such an imminently dangerous act as jumping down the well was likely to cause the child's death. But culpable homicide not amounting to murder because considering the state of panic she was in. there was excuse for incurring the risk of causing death within the preview of this clause.

**Sec. 299(explanation1): Mercy Petition:** a person causing bodily injury to another who is labouring under a disorder, disease or bodily infirity, and thereby accelerates the death of that other shall be deemed to have caused his death. It is culpable homicide as the person knew about such disease or disorder; else it will be grievous hurt u/s 320. Here, the accused only has the knowledge and no intention.

**Aruna Ramchandra Shanbung vs. Union of India<sup>4</sup>**

In this case the Supreme Court held that the passive enthusia is granted in certain condition which will be decided by the high court.

**R vs. Govinda<sup>5</sup>**

The lordship had brought forward the differences b/w Sec.299 and sec 300 of IPC. The court had stated that there was absence of intention.in both, Sec. 299 & Sec. 300, the key element is that there should be an intention of causing the death.

**Sec. 299 (explanation2): Particular bodily injury:** A person having bodily injury caused death due to lack of proper remedies and skillful treatment from which death might be prevented.

**Illustration:** A his wife who is rendered unconscious. A doctor B gives her brandy through a pipe but while she is unconscious. Unfortunately, some brandy enters her lungs and she dies. Here the cause of death was the entering of brandy into lung pipe but the primary cause was set by A which necessitates the saving of brandy. Here A was liable for the women death.

**Sec 299(explanation3): Child death:**

The causing of death in the belly of predecessor is murder. But if any part of the child came outside from womb and then after cause death,

then it's called culpable homicide as per sec 299 (exp.3 R/W sec.312-318).

#### **Bachan Singh vs. State of Punjab<sup>6</sup>**

The case gave the landmark judgment that the death penalty became an exception rather than a rule the death penalty must be restricted to and given in "rarest of rare cases". Nation's attention has always been grabbed by the imposition of a death sentence.

#### **Mithu Singh & others vs. State of Punjab<sup>7</sup>**

The Hon'ble Supreme ruled that the mandatory death penalty as per sec 303 of IPC i.e. Death penalty during a life-convicts declared unconstitutional because it violates article 14(right to equality) & article 21(right to life) since an unreasonable distinction was sought to be made between two classes of murders.

#### **Mukesh & Anr vs. State for NCT of Delhi & Ors.<sup>8</sup> (Nirbhaya case)**

Where all the accused were sentenced to death penalty, made this topic epicenter of several heated debates across the country, the major question is that like other countries why can't India sort to abolish the death penalty when there is recourse like life imprisonment present with the judiciary?

#### **Conclusion**

In this article, we discussed about the culpable homicide and murder and its punishment. But it is difficult to analyse the difference between culpable homicide and murder because causing death is

essential element in both of them. According to Indian penal code, there is two types of culpable homicide i.e. culpable homicide amount to murder (sec 300) and culpable homicide not amounting to murder (sec 299).

Punishment for culpable homicide amount to murder (sec 300) is given under section 302 which is either death penalty or life imprisonment and fine as well. Rather punishment for culpable homicide not amounting to murder (sec.299) is given under section 304 which is either 10 year imprisonment or fine or both or can be extended to life imprisonment as per the intention extended. The presence of intention and knowledge shows that the difference between them. The safest approach in interpreting the difference between murder and culpable homicide is to focus on the keywords used in various clauses of these sections.

#### **Endnotes**

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<sup>1</sup> AIR 1962 SC 605.

<sup>2</sup> 1977.

<sup>3</sup> AIR 1940 All 486.

<sup>4</sup> Writ Petition (Criminal) No. 115 of 2009.

<sup>5</sup> (1877) ILR 1 Bom 342;18 July, 1876.

<sup>6</sup> (1980) (2 SCC 684).

<sup>7</sup> AIR 1983 SC 473.

<sup>8</sup> (2017) 6 SCC 1.

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