

## Law In the Midst of Murder

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### Abstract

*Because of the emphasis placed on human life and dignity, as well as the inherent rights that come with it, the murder clause of any criminal law is the most important provision. The Indian Penal Code, 1860, provides a detailed provision for the same, accounting for various degrees of intention. However, society has changed dramatically since the provision was initially drafted. Certain sections have been designed incorrectly, while others have served no function – as evidenced by the treatment of the section's clauses by various courts of justice throughout the last century. It is past time for critical reforms to be implemented, whether it is eliminating a duplicate clause, accounting for moral culpability, or ensuring that doctrines are more precisely articulated. These changes will make the provision and the Code more current and up to date, allowing them to achieve the goals for which they were created. To improve decision-making accuracy, this article advocates for fuller codification of the clauses, updated illustrations, and the complete elimination of Section 300(2) from the Indian Penal Code.*

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## Introduction:

The notions of culpable homicide that does not amount to murder are dealt with in Sections 299 and 300 of the Indian Penal Code. Both want to injure someone, yet there are some distinctions between Murder and Culpable Homicide. As a result, the issue arises in that both murder and culpable homicide are notions that relate to harming a person, but the difference must be determined based on the final outcome of a specific act.

Section 302 of the Indian Penal Code deals with the punishment for murder, in which the perpetrator is sentenced to death or life imprisonment, as well as a fine. Murder is a punishable crime that is not subject to bail. And, according to Section 304 of the Indian Penal Code, culpable homicide that does not amount to murder is punishable. Culpable homicide carries a sentence of life in prison or ten years in jail, as well as a fine. Culpable homicide is also a cognizable crime that is not punishable by a fine.<sup>1</sup>

Certain distinctions can be made between murder and culpable homicide. There are also some factors that make an act of a person or a suspect a Murder, as well as a Culpable homicide that does not amount to Murder. The common ingredients are "actus reus" and "mens rea," which refer to a situation in which a person would have caused injury to another person by performing a specific conduct. As previously said, the distinction is in the understanding of the outcome of the act he or she performs.

## HOMICIDE

In the Indian Penal Code, there are many offences against the human body, with homicide being the most severe or serious of them all. Culpable Homicide Section 299 and Murder Section 300 are the two main provisions that deal with homicide. The term 'homicide' refers to the killing of one human being by another.<sup>2</sup> If we look at it from a moral standpoint, it is wrong, but from a legal standpoint, there are two types of homicide: lawful and unlawful. The Indian penal code also distinguishes between two types of homicide: lawful or simple homicide and unlawful homicide.

### I. Lawful or Simple Homicide

This is committed when a person dies as a result of an accident or misfortune, without any criminal intent or knowledge, while carrying out a legitimate conduct in a proper lawful manner, using authorised methods, and exercising proper care and caution. The following are the general exceptions to Chapter IV of the Indian Penal Code, which justifies the death or homicide:

- An act done by a person in good faith, who is bound, by any mistake of actuality or fact and not by any mistake of law, believing that he is bound by law to do the homicide is justified.<sup>3</sup>

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<sup>1</sup> Section 299, Indian Penal Code, 1860

<sup>2</sup> Satyam, TOPIC – Homicide Punishment under Indian Penal Code, 1890, Symbiosis Law School, NOIDA Symbiosis International University, PUNE, INDIA

<sup>3</sup> Section 76 of the Indian Penal Code

- Judges when delivering judgement or acting judicially in the exercise of any power which is in good faith he believes to be, given to him by law is also justified by law.<sup>4</sup>
- The person is not immune if he is exceeding the limit and found abusing his position as a public servant.<sup>5</sup> Justified by a person acting in pursuance of the judgement or order of a court of justice.
- By a person who is justified or who by reason of a mistake of fact, in good faith, believes himself to be justified by law.<sup>6</sup>
- By a person acting without any criminal intention to cause harm and in good faith, for the purpose of preventing or avoiding other harm to person or property.<sup>7</sup>
- Whereas, under sections 100 and 103, any act performed in the exercise of a person's or property's right to private defence is prohibited.

Death caused by a child under the age of seven, or between seven and twelve years depending on maturity and understanding of the consequences of the act, or a person of unsound mind, or an intoxicated person who is forcefully intoxicated by someone else, are also protected under the general exceptions, and these acts are declared lawful by the Indian Penal Code.

## II. Unlawful Homicide

Unlawful homicide occurs when part IV of the Indian Penal Code, i.e. the general exemption, does not apply. In general, unlawful homicide is classified into two categories:

- Culpable Homicide not amounting to murder (section 299)
- Murder (section 300)

### Culpable Homicide

Causing death by doing an act with the intent,<sup>8</sup> or with the knowledge, of causing physical injury that is likely to cause death or with the knowledge that it was likely to cause death are the major qualifications for culpable homicide. Even though an act is criminal in nature, it will not be considered responsible murder if one or both of those factors are missing.<sup>9</sup>

The offence of culpable homicide is defined by Section 299 of the Indian Penal Code: "Whoever causes death by doing an act with the intent of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely to cause death by such act."

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<sup>4</sup> Section 77 of the Indian Penal Code

<sup>5</sup> State vs. Yeshwant Parashram Sawant, (1977) 79 BOMLR 693

<sup>6</sup> Section 79 of the Indian Penal Code

<sup>7</sup> Section 81 of the Indian Penal Code

<sup>8</sup> Mirza Ghani Baig vs. State of Andhra Pradesh, (1997) 2 Crimes 19 (AP)

<sup>9</sup> State vs. Ram Swarup, 1988Cr.LJ 1067 All

When it came to defining culpable homicide, Section 299 focused on purpose first, then knowledge that is 'likely' to result in death. The term "likely" is used here to denote "likely," not "possible." The planned injury is likely to cause death since it is sufficient in nature to cause death, which means death is the most likely outcome.<sup>10</sup> In the case of *Sunder Lal vs. State of Rajasthan*,<sup>11</sup> the weapon of choice was a gandasi and a lathi, with the gandasi delivering only one strike to the head. The gandasi and the lathi also caused multiple more injuries to the hands and legs. The conviction for murder under Section 302 of the Indian Penal Code was changed to a conviction for Culpable Homicide under Section 304 of the Indian Penal Code by the High Court. In order to determine responsible homicide, purpose and knowledge are key factors to consider.

## **Murder**

Although all culpable homicide is murder, not all murder is culpable homicide. Murder is defined as any conduct that comes inside one or more of Section 300's four clauses, as well as the definition of culpable homicide in Section 299 of the Indian Penal Code. Section 300 of the Indian Penal Code, 1860, defines murder. It states that culpable homicide is murder unless the act that causes the death is done with the intent of causing death, or secondly, if the act is done with the intention of causing such bodily injury as the offender knows is likely to cause the death of the person to whom the harm is caused, or thirdly, if it is done with the intent of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or fourthly, if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits the act without any excuse for incurring the risk of causing death or such injury.

## **INGREDIENTS OR ESSENTIALS :**

There are several fundamental characteristics of culpable homicide, according to Section 299 of the Indian Penal Code. They are discussed in the following order:

The intention of causing death - The intention of causing death to a person by an act is a factual issue that involves knowledge of the act prior to acting in a way that demonstrates the willingness or intention to produce such an impact on another person.

The goal of the perpetrator to cause a bodily damage likely to result in death - In order to prove that a crime amounted to culpable homicide, the offender's intention to cause the victim's death was directly linked to the act performed by him.

The knowledge of an act that is likely to result in death — when an act is undertaken, the person conducting the act is believed to be aware of the outcome. However, such awareness should not be mistaken for the intent to commit a criminal act. This is due to the fact that intention and knowledge awareness are two distinct notions.

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<sup>10</sup> Keshar Singh vs. State of Haryana, 2008 15 SCC 753

<sup>11</sup> 2007 (6) Civil Suit 296/63

## **CULPABLE HOMICIDE AND MURDER:**

There are mechanisms in place to distinguish between the ideas of murder and responsible homicide. The distinction is concealed in the language of seriousness of aim. In this regard, the Supreme Court has ruled:

There are several points to be noted once a crime has occurred in order to determine if it is a murder or culpable homicide. To begin, the person investigating the crime must determine whether or not the act was murderous. Then he must determine whether the crime meets the requirements of Section 300 of the IPC. The next step is to determine if the offence is culpable homicide, which is not the same as murder, or some other similar crime that qualifies for the exceptions to murder, such as private defence. Finally, as stated in the Pigeon Hole Theory, the crime would fit into a certain hole, and so the punishment for that crime would be bound, and the offender would be punished in accordance with the crime committed.

When an offender causes injury to a person or victim that is likely to cause death, it is considered culpable homicide. Murder occurs when the victim's injury causes him to die in the usual and ordinary course of events. The difference between the two is the severity of the victim's injuries. If the victim is determined to have several injuries, the offender is charged with murder under Section 300 of the Indian Penal Code.

In the situation of a person stabbing another person in the chest or abdomen with a knife, it is considered Pima facie Murder. This Act would be considered Murder under Section 300 of the IPC if multiple people conspired to inflict injuries on that individual that resulted in death. Similarly, if an offender inflicts any injury to a victim by smashing his skull with a hammer, fracturing bones in the head, it is clear and obvious that he intended to murder that person. As a result, whether it is culpable homicide or murder is determined by the probability.

### **In both of these conceptions, there is a difference between the possibility of death:**

Every murder occurs after a culpable homicide, yet every culpable homicide is not the same as murder. Murder is considered a more serious kind of culpable homicide. The presence of one of the ingredients of Section 300 of the Indian Penal Code transforms the crime into a murder, whereas the exceptions to murder transform the crime into a culpable homicide that does not constitute murder.

In both notions, there is a purpose to kill a person, which is known as mens rea. However, in some cases, the offender will not be certain that his act will result in the death of the victim, in which case the crime committed by the offender is a Culpable homicide, whereas in other cases, the offender will be certain that his act will result in the death of the victim, in which case the crime committed by the offender is a Murder. Because the probability of death in murder is high, whereas the probability of death in culpable homicide is minimal.

### **Culpable Homicide not amounting to murder (section 300, read with exceptions 1 to 5)**

There are additionally five exceptions under Section 300. We can claim that if these exceptions apply, the instances will be classified as responsible homicide rather than murder.

If any of the exceptions apply, the murder becomes culpable homicide. Section 300 allows for the following exceptions:

- Grave and sudden provocation
- Private defence
- Act of public servant
- Sudden fight
- Consent

### **Exception I. Grave and Sudden Provocation**

If a person loses his or her self-control as a result of a grave and immediate provocation and kills someone, it is culpable homicide, not murder. The person who causes death may be the one who provoked the death or any other person who died by accident. In order for this exception to apply, the provocation must be serious and unexpected. There are a couple of exceptions to this rule:

- The offender should not seek provocation voluntarily.
- The provocation is not the result of a conduct committed in defiance of the law or the authorised use of power by a public worker.
- The provocation is unrelated to any actions taken in the exercise of one's right to self-defense.

If the following requirements are met, culpable homicide is not considered murder under this exception:<sup>12</sup>

1. The deceased must have given provocation to the accused.
2. The provocation must be grave.
3. The provocation must be sudden.
4. The offender, by reason of the said provocation, shall have been deprived of his power of self-control.
5. He should have killed the deceased during the continuance of the deprivation of the power of self-control.
6. The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

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<sup>12</sup> K.M. Nanavati v. State of Maharashtra (AIR. 1962 SC 605)

In the famous case of *K.M. Nanavati vs. State of Maharashtra*,<sup>13</sup> the Supreme Court laid down some suggestion relating to grave and sudden provocation.

1. The criteria for "grave and immediate" provocation is whether a reasonable individual from the same social class as the accused would be so provoked as to lose his self-control in the position in which the accused was put.
2. In India, words and gestures may also generate grave and immediate provocation to an accused, bringing his behaviour within the first Exception to section 300 of the Indian Penal Code.
3. When determining whether the subsequent act produced grave and immediate provocation for committing the offence, the mental context created by the victim's earlier act may be taken into account.
4. The fatal strike should be clearly traced to the effect of passion coming from that provocation, not after the passion had cooled down due to passage of time or otherwise allowing for premeditation and calculating.

In another instance, *Hansa Singh vs. State of Punjab*,<sup>14</sup> the accused witnessed the dead engaging in sodomy with his son, which upset him, and he killed him. The conviction under section 302 was overturned by section 304 of the Indian Penal Code, which stated that this is a condition of a grave and immediate provocation.

### **Exception II. Private Defense**

A person's right to private defence of property and person extends to causing death in certain circumstances. Sections 96 through 106 of the Indian Penal Code provide for the right of private defence. A person does not commit an offence if he or she legitimately utilises his or her right to private defence within the limits set by law. However, if it is exceeded, it will be considered culpable homicide rather than murder. In these situations, the person's intent is crucial once again. The right to a private defence should be utilised without any premeditation or malice.

The Supreme Court declared in *Kattu Surendra vs. State of Andhra Pradesh*<sup>15</sup> that death caused by a person after his right to private defence has expired is not covered by the exception.

### **Exception III. Act of public servant**

This exception applies in cases where a public official exceeds his legal authority in the performance of his responsibilities and causes death. This exception has six basic features:

1. The crime must be committed by a government employee.
2. Exerted power beyond that which has been delegated to him or her.

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<sup>13</sup> AIR 1962 SC 605

<sup>14</sup> AIR 1974 SC 387

<sup>15</sup> (2008) 11 SCC 360

3. It was carried out in good faith.
4. It must be while he is performing his tasks.
5. With the conviction that his actions were both legal and necessary.
6. The absence of malice.

In *Dakhi Singh vs. State*,<sup>16</sup> a suspected thief was apprehended and taken by police, but he tried to flee. A police constable tried to apprehend him but was unable, so police fired on him. However, during this procedure, police officers struck and killed the firefighter. The case was found to be covered by this exception.

#### **Exception IV. Sudden fight**

The fourth exception to section 300 pertains to conduct committed in a spur-of-the-moment altercation. This exception only applies to occurrences that aren't covered by the first one. The only difference between the first and this exception is that in this one, the offender loses his ability to think due to a quick arousal of passion.

In the case of *Kikar Singh vs. State of Rajasthan*,<sup>17</sup> the following conditions were imposed:

1. Without forethought
2. Involved in a sudden battle, in the heat of emotion, or in the midst of a conflict.
3. Without taking unfair advantage of others or acting cruelly or unusually.

#### **Exception V. Death by Consent**

When the individual who causes the death is over the age of 18 and suffers death or takes the danger of death with his own agreement, culpable homicide is not murder. The following are the only points that must be proven:

1. The death was caused with the deceased's permission.
2. The deceased was over the age of eighteen at the time.
3. The consent was given voluntarily and freely.

In *Darshan Singh vs. State of Bihar*,<sup>18</sup> the accused failed three times in examinations, became frustrated, and resolved to end his life, informing his 19-year-old wife. Wife demanded that she be killed first, followed by him. He murdered his wife and was apprehended shortly before his death. The case was found to fall under the exemption 5th of section 300 of the Indian Penal Code.

#### **Criticisms and Possible Improvements**

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<sup>16</sup> AIR 1955 All. 379

<sup>17</sup> AIR 1993 SC 2426

<sup>18</sup> AIR 1958 Pat. 190

Although the clauses have served their function well, they could be improved upon. Several authors have suggested proposals<sup>19</sup> to improve the provision's structure. They argue that the Indian Penal Code, which was written in the nineteenth century, no longer reflects the ideals and language of our time. They argue that the illustrations are likewise insufficient because they depict activities from a previous century. The analogies that follow provisions are intended to reduce ambiguity and clarify the law by providing a relevant example based on society's present moral, legal, and social fabric. Because the Indian Penal Code's images have not been updated, they frequently do not resemble or come near to the reality at hand.

Furthermore, the mens rea norm as it currently stands has flaws. The distinctions in the mens rea requirements between s. 299 and s. 300 are minor, and whether a case falls under the former or the latter would be determined by the degree of risk to human life and the likelihood of death, both of which are determined based on the facts in the case. As a result, the dividing line between the two portions is quite hazy. In terms of mens rea, it is also asserted that clause first's definition of 'intention' does not account for the various levels of moral guilt.<sup>20</sup> It's a critical component of the crime that needs to be identified, but it's still unclear. The moral culpability attributed must change depending on whether the purpose originated spontaneously or was pre-planned.<sup>21</sup>

Another criticism that may be levelled at the current version of the Indian Penal Code is that it lacks any mechanism for resolving basic issues that have emerged over the past century and a half. Lord Macaulay wanted the Code to be accurate, understandable, and useful. As a result, a revision process to clear out misunderstandings would be appropriate. However, such an institutional framework has never been formed, and 'piecemeal reforms' have led in judges twisting and building the provision's terms to meet the case at hand. As a result, there are differences in how words are interpreted and how the provision is construed, particularly when it comes to the single blow concept, hazardous weapon doctrine, and important component doctrine. As previously indicated, there have been numerous cases where the same court has rendered contradictory decisions in similar fact situations because they read intention differently and focused on a different external manifestation of it. Definitions of essential concepts such as intention and knowledge can be provided so that the interpretation of intention is more consistent.<sup>22</sup> This can be seen in various countries' penal codes. The New York Penal Code, for example, provides definitions for terms like homicide and other mental states to aid in the interpretation of the rules.<sup>23</sup> The Australian Commonwealth Criminal Code Act, 1995, and the Criminal Code of Canada, 1985, both follow a similar pattern.

Second, the clause's relevancy can be called into question. It was not included in Macaulay's original manuscript and was added to reflect the Indian background, people suffering at the hands of British officers, and the unique ailment of enlarged spleens that existed at the time. Since then,

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<sup>19</sup> 1 Jonathan Muk Chen Yeen and Chin Wan Yew Rachel, "Sections 299 and 300 of the Penal Code: A Revisit and Further Suggested Amendments" 33 Sing. L. Rev. 129 (2015).

<sup>20</sup> Frank Brenner, "The Impulsive Murder and the Degree Device" 22(3) Fordham Law Review (1953).

<sup>21</sup> Stanley Yeo, "Staying True to the Indian Penal Code: A Case Study on Judicial Laxity" 4 NUJS L. Rev. 2 (2011).

<sup>22</sup> Stanley Yeo, Neil Morgan et al., Criminal Law in Malaysia and Singapore 48 (Lexis Nexis, 2nd edn., 2013).

<sup>23</sup> New York Penal Law U.S.C. (U.S.) §15.05 and §15.00(6) (1967).

the situation has drastically changed, and neither of these two conditions is still valid. In practise, this provision is not appealing since there is frequently such a high level of purpose and culpability that subjective knowledge is irrelevant, and it is more suitable to apportion culpability under the first, third, or fourth categories. Any event that falls under the second clause can be covered by the first or fourth clauses, with the latter also addressing cases when the victim's frailty is intentionally exploited. Furthermore, the existence of the secondly clause has frequently been misapplied in place of the thirdly clause, with the apex court either correcting the error by changing the clause under which liability is assigned, or, more dangerously, going largely unnoticed and weakening the construction of the clauses. This is hazardous because it disturbs established standards of interpretation and introduces a level of uncertainty, particularly among lower courts, which is neither ideal nor consistent with India's criminal policy goals.<sup>24</sup>

### **Concluding Remarks**

Thus, when it comes to the murder provision and assigning criminal obligation under it, the clauses first and second are the most fundamental provisions. Different conditions and degrees of mens rea are addressed in the two sentences. They have been interpreted and created by the courts throughout time; nevertheless, it is now clear that this is insufficient, and that certain modifications are required to ensure that the Code remains faithful to its original purposes and meets the standards that its drafters intended. It must account for moral guilt and maintain the deterrent policy. The Macaulay Objectives of comprehensibility, accessibility, precision, and democracy must also be adhered to in any construction or alteration.<sup>25</sup>

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<sup>24</sup> Saachi Agrawal, SECTION 300: IS THE MURDER CLAUSE IN NEED OF REVISION? DELHI LAW REVIEW STUDENT EDITION Vol. VI (2018-19) ISSN 0973-00IX

<sup>25</sup> M. Sornarajah, "The Definition of Murder under the Penal Code" 1994 Singapore J.L.S. 1 (1994)