

CRIMINAL LAW -II	COURSE BA.LLB 5 <sup>TH</sup> SEMESTER
UNIT I	PREPERED BY: MR. MOHAMAD YOUSUF DAR

**The objectives of this lecture are:**

- **To understand the meaning of Culpable Homicide.**
- **To study the Principle of liability for Killing.**
- **To study in what circumstances Culpable Homicide does amount to murder and**
- **To study when Culpable Homicide does not amount to murder .**

**Meaning of Culpable Homicide:**

The word homicide is derived from two Latin words - *homo* and *caedere*. *Homo* means human and *caedere* means killing by a human. Homicide means killing of a human being by another human being. A homicide can be lawful or unlawful. Lawful homicide includes situations where a person who has caused the death of another and cannot be blamed for his death. For example, in exercising the right of private defence or in other situations explained in Chapter IV of IPC covering General Exceptions.

Lawful homicide may further be classified into;-

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|-----|--|----------------------|
| i.  |  | Excusable homicide   |
| ii. |  | Justiciable homicide |

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| i. |  | <b>Excusable homicide</b> : this includes homicides which are committed with no criminal intention and knowledge.( for example section 82,83,84 and 85 of IPC ) |
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| ii. |  | <b>Justiciable homicide:</b> a homicide is considered in law to be justified , if death is caused :- |
| a.  |  | Section 76 of IPC  |
| b.  |  | Section 79 IPC   |
| c.  |  | Section 77 IPC   |
| d.  |  | Section 78 IPC   |
| e.  |  | Section 81 IPC   |
| f.  |  | Sections 96 to 106 IPC   |

Unlawful homicide means where the killing of another human is not excusable or justified by law. Culpable Homicide is in this category. Culpable means blame worthy. Thus, Culpable Homicide means killing of a human being by another human being in a blameworthy or criminal manner.

An unlawful homicide may be classified into different categories according to the nature and gravity of offence and its heinousness in order to attach a suitable punishment for each type:-

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|----|-----------------------------|
| a. | Culpable homicide S299, 301 |
|----|-----------------------------|

Ipс

b.	Murder S300 ipc
c.	Culpable homicide not
amounting to murder Section 300 , Exception 1 to 5.	
d.	Death by negligence 304 A
e.	Dowry Death S304 B
f.	Abetment and attempt to
commit of suicide , sections 305,306,and 309	
g.	Attempt to murder and attempt
to commit culpable homicide 307 and 308	

The distinguishing features of these different categories of unlawful homicides are the degree of intention, knowledge, or recklessness with which a particular homicide is committed.

### **Principle of liability for Killing:**

The determination of criminal liability for killing another human being is a matter of utmost gravity, and presents questions of great difficulty and intricacy.

**To fix criminal liability, the causal connection between the act and death must be direct and distinct and though not necessarily immediate, it must not be too remote.**

For instance *in JUTZI-JOHNSON,2001* the Unites States Court of Appeal, Seventh Circuit held that the jail authorities vis-à-vis the Govt of US is not liable to Estate of Federal inmate for damages who hanged himself, alleging jail staff was negligent in failing to discover that inmate has nervous condition and failed to take steps to deal with it the court held that there was no causal connection between Federal Jail Staff's negligence in failing to recognize inmates obsessive scratching and picking at sores on skin as indicative of nervous condition requiring medical or psychiatric attention and inmates suicide by hanging.

These conditions are not fulfilled:-

1. If the connection between the act and the death is obscure(hidden)or
2. If there are concurrent contributory causes which made it impossible to to say that the act in question was a substantial cause, and
3. If the connection is broken by the intervention of the subsequent causes.

Whether in particular cases the conditions are or are not fulfilled is always a question of fact dependent upon circumstances.

### **Culpable homicide:**

The penal code has first defined culpable homicide simpliciter (299) termed as manslaughter under English law which is genius , and then murder (300) which is species of culpable homicide.

### 3 Illustrations and 3 Explanations

299 illustrations a, b and c

299 explanations 1 2 and 3

Section 299 of IPC defines Culpable Homicide as follows –

**Section 299** - Whoever causes death by doing an act with the intention 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 by such act to cause death, commits the offence of Culpable Homicide.

Illustrations -

- a) A lays sticks and turfs (grass and roots) over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of Culpable Homicide.
- b) 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 fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of Culpable Homicide.
- c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of Culpable Homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1 - A person, who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2 - 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 skillful treatment the death might have been prevented.

Explanation 3 - The causing of the death of child in the mother's womb is not homicide. But it may amount to Culpable Homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Based upon the above definition, the following are the essential elements of Culpable Homicide -

1. **Whoever causes death , death means Death of a human being is caused** - It is required that the death of a human being is caused. However, it does not include the death of an unborn child unless any part of that child is brought forth as is clear from Explanation 3 appended to s 299, but the person will not be set free, he would be punishable for carrying miscarriage either under section 312 or 315 depending on the gravity of injury.

The act of causing death amounts to culpable homicide if any part of that child has been brought forth, though the child may not have breathed or been completely born

2. **By doing an act** - Death may be caused by any act for example, by poisoning or by hurting with a weapon. Here act includes even on omission of an act for which one is obligated by law to do. For example, if a doctor has a required injection in his hand and he still does not give it to the dying patient and if the patient dies, the doctor is responsible.

Section 33 omission also and death caused by words is also an act

3. **Intention or Knowledge** - There must be an intention of any of the following -
  1. **Intention of causing death** - The doer of the act must have intended to cause death. As seen in Illustration 1, the doer wanted or expected someone to die. It is important to note that intention of causing death does not necessarily mean intention of causing death of the person who actually died. If a person does an act with an intention of killing B but A is killed instead, he is still considered to have the intention. Illustration a
  2. **Intention of causing such bodily injury as is likely to cause death** - The intention of the offender may not have been to cause death but only an injury that is likely to cause the death of the injured. For example, A might intended only to hit on the skull of a person so as to make him unconscious, but the person dies. In this case, the intention of the person was only to cause an injury but the injury is such that it is likely to cause death of the person. Thus, he is guilty of Culpable Homicide. However, if A hits B with a broken glass. A did not know that B was hemophilic. B bleeds to death. A is not guilty of Culpable Homicide but only of grievous hurt because he neither had an intention to kill B nor he had any intention to cause any bodily injury as is likely to cause death.
  3. **Or the act must have been done with the knowledge** that such an act may cause death - When a person does an act which he knows that it has a high probability to cause death, he is responsible for the death which is caused as a result of the act. For example, A knows that loosening the brakes of a vehicle has a high probability of causing death of someone. If B rides such a bike and if he dies, A will be responsible for B's death. In **Jamaluddin's case 1892**, the accused, while exorcising a spirit from the body of a girl beat her so much that she died. They were held guilty of Culpable Homicide. Sometimes gross Negligence may amount to knowledge - Sometimes even negligence is considered as knowledge. In **Kangla 1898**, the accused struck a man whom he believed was not a human being but something supernatural. However, he did not take any steps to satisfy himself that the person was not a human being and was thus grossly negligent and was held guilty of Culpable Homicide.

### **Murder (When Culpable Homicide amounts to Murder)**

Murder is a type of Culpable Homicide where culpability of the accused is quite more than in a

mere Culpable Homicide. Section 300, says that Culpable Homicide is Murder if the act by which the death is caused is done

1. with the intention of causing death
2. or with an intention of causing such bodily injury as the offender knows to be likely to cause the death of the person,
3. or with an intention of causing such bodily injury as is sufficient in ordinary course of nature to cause death.
4. It is also Murder if the person committing the act knows that the act is so dangerous that it will cause death or such injury as is likely to cause death in all probability and he has no valid reason for doing that act.

### Illustrations -

A shoots Z with an intention of killing him. Z dies in consequence.

A commits Murder.

A intentionally gives Z a sword cut that sufficient in ordinary course of nature to cause death. Z dies because of the cut.

A commits Murder even though he had no intention to kill Z.

A without any excuse fires a loaded canon on a crowd. One person dies because of it.

A commits Murder even though he had no intention to kill that person.

Thus, it can be seen that Murder is very similar to Culpable Homicide and many a times it is difficult to differentiate between them. **J Melvill in the case of R vs Govinda 1876**

**Bom.** analyzed both in the following table -

Culpable Homicide	Murder
<b>A person commits Culpable Homicide if the act by which death is caused is done -</b>	<b>A person commits Murder if the act by which death is caused is done -</b>
1. with the <i>intention</i> of causing death.	1. with the <i>intention</i> of causing death.
2. with an intention to cause such bodily injury as is <i>likely to cause</i> death.	2. with an intention to cause such bodily injury as <u>the offender knows</u> to be likely to cause death of the person <u>to whom the harm is caused.</u> 3. with an intention of causing bodily injury to any person and the bodily injury intended to be inflicted <i>is sufficient in ordinary course of nature to cause death.</i>
3. with the knowledge that such an	4. With the knowledge that the act is so imminently

act is <u>likely</u> to cause death.	dangerous that it must <u>in all probability</u> cause death.
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Based on this table, he pointed out the difference - when death is caused due to bodily injury, it is the probability of death due to that injury that determines whether it is Culpable Homicide or Murder. If death is **only likely** it is Culpable Homicide, if death is **highly probable**, it is Murder.

In **Augustine Saldanha vs State of Karnataka LJ 2003**, SC deliberated on the difference of Culpable Homicide and Murder. SC observed that in the scheme of the IPC Culpable Homicide is genus and Murder its specie. All 'Murder' is 'Culpable Homicide' but not vice-versa. Speaking generally, 'Culpable Homicide' sans 'special characteristics of Murder is Culpable Homicide not amounting to Murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of Culpable Homicide. The first is, what may be called, '**Culpable Homicide of the first degree**'. This is the greatest form of Culpable Homicide, which is defined in **Section 300** as 'Murder'. The second may be termed as '**Culpable Homicide of the second degree**'. This is punishable under the first part of **Section 304**. Then, there is '**Culpable Homicide of the third degree**'. This is the lowest type of Culpable Homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable Homicide of this degree is punishable under the second part of **Section 304**.

It further observed that the academic distinction between 'Murder' and 'Culpable Homicide not amounting to Murder' has always vexed the Courts. They tried to remove confusion through the following table -

<b>Culpable Homicide</b>	<b>Murder</b>
<b>A person commits Culpable Homicide if the act by which death is caused is done -</b>	<b>Subject to certain exceptions , Culpable Homicide is Murder if the act by which death is caused is done -</b>
<b>INTENTION</b>	
(a) with the intention of causing death; or	1. with the intention of causing death; or
(b) with an intention to cause such bodily injury as is likely to cause death.	2. with an intention to cause such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused. 3. with an intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death.
<b>KNOWLEDGE</b>	
(c) with the knowledge that such an act is likely to cause death.	4. With the knowledge that the act is so imminently dangerous that it must in all probability cause death.

Thus, it boils down to the knowledge possessed by the offender regarding a particular victim in a particular state being in such condition or state of health that the internal harm caused to him is

likely to be fatal, notwithstanding the fact that such harm would not, in the ordinary circumstances, be sufficient to cause death. In such a case, intention to cause death is not an essential requirement. Only the intention of causing such injury coupled with the knowledge of the offender that such injury is likely to cause death, is enough to term it as Murder.

**Situations where Culpable Homicide does not amount to Murder**

Section 300 also specifies certain situations when the Murder is considered as Culpable Homicide not amounting to Murder. These are -

**(Short Details)**

1. If the offender does an act that causes death because of grave and sudden provocation by the other.
2. If the offender causes death while exceeding the right to private defense in good faith.
3. If the offender is a public servant and does an act that he, in good faith, believes to be lawful.
4. If the act happens in a sudden fight in the heat of passion.
5. If the deceased is above 18 and the death is caused by his own consent.

**(Full Details)**

**Exception I** - Culpable Homicide is not Murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos -

1. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
2. That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
3. That the provocations not given by anything done in the lawful exercise of the right of private defence.

Explanation-Whether the provocation was grave and sudden enough to prevent the offence from amounting to Murder is a question of fact.

**Illustrations**

1. A, under the influence of passion excited by a provocation given by Z, intentionally kills, Y, Z's child. This is Murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.
2. Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed Murder, but merely Culpable Homicide.
3. A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This Murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

4. A appears as a witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is Murder.
5. A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is Murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.
6. Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only Culpable Homicide, but A is guilty of Murder.

The Supreme Court in **K.M Nanavati v State of Maharashtra AIR 1962 SC605** has extensively discussed the law relating to provocation in India. (**Reasonable man's test**)

**Exception 2** - Culpable Homicide is not Murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

**Illustration** - Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed Murder, but only Culpable Homicide.

**Exception 3** - Culpable Homicide is not Murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

**Exception 4** - Culpable Homicide is not Murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation-It is immaterial in such cases which party offers the provocation or commits the first assault.

In a very recent case of **Byvarapu Raju vs State of AP 2007**, SC held that in a Murder case, there cannot be any general rule to specify whether the quarrel between the accused and the deceased was due to a sudden provocation or was premeditated. "It is a question of fact and whether a quarrel is sudden or not, must necessarily depend upon the proved facts of each case,"

a bench of judges Arijit Pasayat and D K Jain observed while reducing to 10 years the life imprisonment of a man accused of killing his father. The bench passed the ruling while upholding an appeal filed by one Byvarapu Raju who challenged the life sentence imposed on him by a session's court and later affirmed by the Andhra Pradesh High Court for killing his 'drunkard' father.

**Exception 5** - Culpable Homicide is not Murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

**Illustration** - A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted Murder.

Study the following case laws:

1. Reg v. Govinda, ILR (1876) 1 Bom. 342
2. Abdul Waheed Khan v. State of Andhra Pradesh, (2002) 7 SCC 175.
3. Virsa Singh v. State of Punjab, AIR 1958 SC 465
4. K.M. Nanavati v. State of Maharashtra, AIR 1962 SC 605.
5. Bachan Singh v. State of Punjab AIR 1980 SC 898 and AIR 1982 SC 1325
6. Machhi Singh v. State of Punjab AIR 1983 SC 957.
7. Suresh Gupta v. Govt. of NCT of Delhi, AIR 2004 SC 4091.

**Thank you**