



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Analysis of Exceptions of Murder amounting to Culpable Homicide

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Received 25 March 2022; *Accepted* 11 April 2022; *Published* 15 April 2022

There have been various issues regarding the understanding of two terms as used in the Indian Penal Code came in 1860. The terms are described under section 299 and section 300 as Culpable Homicide and Murder respectively. There raised many critics against the IPC in the context of these two sections. Sir James Stephen also stated, after reviewing that, the definitions given in the IPC of Culpable homicide and murder closely resemble each other. Both are described 'as the causing of death, forming the similarities between the two. According to Sir James Stephen, it is described as the weakest part of the Indian Penal Code, therefore, making it quite difficult to understand and distinguish the terms. This manuscript deals with the difference between culpable homicide and murder. Research then proceeds to the exceptions of murder, which is a topic of significance, while dealing with culpable homicide and murder, together. Various cases are put forward with the aim of a clear understanding. Culpable homicide in simple words is the Unnatural death of a human being, while murder is the culpable homicide with intention.

Keywords: *culpable homicide, murder, exceptions, IPC.*

INTRODUCTION

In this article, we shall learn about various offenses affecting the human body such as the Analysis of exceptions if murder, amounts to culpable homicide. we will also get to know that culpable homicide and murder seems to be similar to each other but there is a very minor difference between them .they both are correlated to each other. But when we talk about such differences we can also differ from the culpable homicide, amounting to and not amounting to murder. The provision that we are going to discuss in this article covers the wide range of offenses that can be committed against any human. Firstly we will discuss the two essential ingredients of crime that are mens rea and actus reus. The term, mens rea means the guilty mind i.e. the person having the intention of committing a crime and causing harm to others whereas actus reus refers to the guilty act of the person. This article talks about the two important sections of IPC i.e. sec 299¹ and sec 300² which tell about culpable homicide and murder respectively.

CULPABLE HOMICIDE

Acts done can be accidental and intentional. In accidental acts, no criminal intention arises in section 80³ of the IPC. There is liability under the law of torts if the cause of death is negligence and no gross negligence, there the liability can arise under both criminal and civil law. The word homicide has been derived from the Latin word 'homo' meaning man and 'cidi' meaning I cut. An act or omission irrespective of its nature causes the death of the person.

HOMICIDE IS EITHER LAWFUL OR UNLAWFUL

Unlawful homicide includes

- A culpable homicide does not amount to murder (section 299).
- Murder (section 300).

¹ Indian Penal Code, 1860, s 299

² Indian Penal Code, 1860, s 300

³ Indian Penal Code, 1860, s 80

- Rash or negligent homicide (section 304A⁴).
- Suicide (sections 305 and 306⁵).

Culpable homicide may or may not amount to murder. It is a less severe offense than murder being punishable with imprisonment for life, whereas murder is punishable with death or imprisonment for life. It can be easily assumed that Homicide per se is not an offense, whereas the Indian Penal Code makes provision for Culpable Homicide. The meaning of the word "Culpable" is blameworthy or it can also be said a person is responsible for the death of another human being. Hence, to charge someone for Culpable Homicide the ingredients of section 299 of the Indian Penal Code have to be present.

SECTION 299⁶, I.P.C. provides: whenever a person causes death by doing an act or omission to cause death and such bodily injury as it also likely to cause death or with the intention that he likely by such act to cause death and commits the offenses of culpable homicide.

Example: 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 A was not guilty of culpable homicide, he did not intend to kill B, or cause death by doing an act.

This illustration indicates that merely because death is, so to say, accidentally caused by the commission of an unlawful act that by itself will not convert the accidental killing into murder. All killing is not necessarily murder. A's primary motive or intention was not to murder. If and shot both the fowl and b he would be guilty of murder, his motive being to kill b under the pretext of killing the fowl. Section 299 defines the concept of culpable homicide as a genus including both kinds of homicides i.e. murder and a homicide not amounting to murder.

MURDER

Section 300⁷ of the Indian Penal Code, talks about the concept of murder. Murder is a type of culpable homicide only. Murder is, causing death to someone in the presence of men's rea,

⁴ Indian Penal Code, 1860, s 304A

⁵ Indian Penal Code, 1860, s 305 and s 306

⁶ Indian Penal Code, 1860, s 299

various cases have the men's rea and other elements of murder but are still not considered to be murder, these are known as the exceptions of section 300 i.e. murder.

EXCEPTIONS TO MURDER

There are some exceptions to murder which are described below:

Exception 1: sudden and grave provocation:

If any person loses its self-control due to sudden and grave provocation, which is causing the death of the person who gave rise to such provocation or any other person due to accident, then he will be held liable under culpable homicide not amounting to murder.

The essential condition is as:

1. It needs to be sudden.
2. The accused must have lost his controlling power and self-control.
3. The deceased must have provoked the accused.
4. There must be the cause of death of the person who gave the provocation.
5. It also needs to be grave.
6. A person should not have malafide intention.

For example A insults and abuses the sister of B and gives the sudden and grave provocation to B. B loses his self-control and fires a pistol at A. Therefore, A died immediately. Bis is liable for culpable homicide not amounting to murder.

Case - *K.M Nanavati v Maharashtra*⁸: It is a landmark case. The court gave its decision in the case, is as follows:

⁷ Indian Penal Code, 1860, s 300

⁸ *K.M Nanavati v Maharashtra* (1962), AIR 605

- The sudden and grave provocation to an accused is due to gestures and words under certain situations to bring the person's action under this exception.
- For determining the sudden and grave provocation, a test is established if any reasonable man having the same belongings and capacity to the same class and section of the society and if placed in the same situation as the accused person would also be provoked as to lose his/her self-control and power.
- To determine whether the act of the deceased was sufficient to cause a sudden and grave provocation, the previous act of the victim is to be taken into consideration.

Exception 2: Private defense:

If the person, exercises in good faith of the right of private defense of property and a person and exceeds the power given to him by-law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without the intention of doing more harm than is necessary for such defense.

The person will be held liable for murder if he exceeds his right of private defense intentionally.

Exception 3: Public servant exceeding his power:

Any public servant causing the death of a person with the aim of providing public justice is exempted from the liability of a murderer.

Case – *Dukhi Singh v the State of UP*⁹

In this case, the constable of the Railway Protection Force¹⁰ went to arrest the person. The thief was trying to run he fired a shot to catch him. The judgment of the court, in this case, is that the constable is entitled to benefits.

Exception 4: Sudden Fight

⁹ *Dukhi Singh v State of UP* AIR 1955, All 379

¹⁰ Railway Protection Force Act, 1957

There was no intention of any person to kill and cause death to any other person. Hence, It means that the fight was unexpected or sudden.

*Case-Narayan Nair v State of Travancore*¹¹

In this case, it was held by the court that “There must be the fight with the person killed” in order to cover the case to the extent of exception.

Exception 5: Consent:

When the person himself agrees to suffer the harm and gives his consent then it will be culpable homicide not accounting to murder.

Essentials – the person whose death is caused should be above the age of 18 years.

- He must have given his consent.
- Consent must be voluntary and free

DISTINCTION BETWEEN MURDER AND CULPABLE HOMICIDE

The distinction between murder and culpable homicide is a matter of concern as murder is a type of culpable homicide. By many scholars, culpable homicide is considered to be a genus and murder as its species. Therefore, it can be said that all murders come under culpable homicide but all culpable homicides are not murder. Culpable homicides meet the requirements and essentials of both the sections, firstly section 299¹² and section 300¹³. Any wrongful act which doesn't meet the requirements of section 299 is not considered a culpable homicide. Although there is not much difference between the essentials of both, still they are essential to study for understanding the two concepts properly.

Essentials of culpable homicide (section 299);

¹¹ *Narayan Nair v The State of Travancore* AIR 1956, SC 99

¹² Indian Penal Code, 1860, s 299

¹³ Indian Penal Code, 1860, s 300

- Mens rea;
- An act, causing intentional body injury, which may cause death;
- Knowing the consequences of that act

Essentials of murder (section 300);

- Mens rea;
- The Act that may cause death;
- Intentional body injury, sufficient to cause death;
- Knowing that the act, in all possibilities, would lead to the death of the person.

The difference between the two concepts, according to the language of the bare act, is almost negligible but this thin line difference can and does make huge differences. The difference between the two is uncertainty, in the elements of culpable homicide, “an act” is used, showing the uncertainty of death of the person, with whom the act is being done; while in the elements of murder, instead of “an act”, “the act” is being used, hence, show the certainty in the context. It shows the certainty of the death of the person, with whom the act is being done.

The basic difference between murder and homicide is the degrees of intention and knowledge. For example Illustration (a) of section 299¹⁴ is an example of the degree of knowledge and intention. In this a person, covers a pit on the road, to cause the death of another person, who was about to walk that road, this is termed as culpable homicide. Now next part of the illustration shows the elements of murder, a person, putting poisonous snakes in the same amounts to the offense of murder as the degree of intention and knowledge is quite high in the case.

ANALYSIS: EXCEPTIONS OF MURDER AMOUNTING TO CULPABLE HOMICIDE

There have been many explanations on how culpable homicide amounts for murder, but very few on whether all the exceptions of murder amount to culpable homicide or not. Every offense which falls under the category of section 299, amounts to culpable homicide. On the

¹⁴ Indian Penal Code, 1860, s 299

other hand, every offense which falls under the category of section 300, amounts to murder and culpable homicide. While talking about exceptions of murder, it's normally mentioned as offenses, which does not amount to murder, but it's rarely mentioned anywhere that these exceptions amount to culpable homicide too. Death caused by the accused due to some grave provocation by the other, death by some public servant by exceeding his power, death in the case of private defense, death the consent of another, and during a sudden fight will not cause murder as given in section 300 but it doesn't mean that they wouldn't amount to culpable homicide. Therefore all the murders and all the exceptions of murder amount to culpable homicide as described in section 299 of the Indian penal code.

CONCLUSION

The research paper is about the rare concept of "exceptions of murder amounting to culpable homicide, the concept of culpable homicide is the longest topic in the Indian penal code, starting from section 299 to section 377¹⁵. This research paper talked about 2 sections of this vast topic, sections 299 and 30¹⁶. This research paper is written to analyze the concepts of exceptions of murder, that amount to culpable homicide. In making, the author used secondary data for the research work to meet the requirements. The research paper used descriptive and analytic methods to cover the important concepts of the topic, "Analysis on Exceptions of murder, amounting to culpable homicide". Commencing with making the concepts of culpable homicide and murder, the paper proceeds to the distinction between the two. To switch on the main focus of the paper, exceptions to murder are being discussed. The analysis on the main topic concludes the topic, mentioning that the exceptions of murder amount to the offense of culpable homicide. This issue has always been in an area of concern, the paper is written to contribute and minimize a bit of confusion on the topic.

¹⁵ Indian Penal Code, 1860, s 377

¹⁶ Indian Penal Code, 1860, s 299 and s 30