

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CULPABLE HOMICIDE

AUTHORED BY - PIULI BANERJEE

Abstract

Homicide is a phrase derived from the Latin words 'homo' (human) and 'caedere' (killing). Homicide is an act that has existed from the beginning of time. Early men used to murder one other for food or to establish dominance, monarchs used to commit homicide to gain territory, and now people kill each other out of jealousy, greed, and other emotions.

Culpable homicide (Section 299 of the Indian Penal Code)¹ and **Culpable Homicide amounting to murder (Section 300 of the Indian Penal Code)**² are the two types of homicide in India. Both of these have relatively little variances, yet these distinctions are critical for the judicial system since they affect the delivery of a fair judgement.

Keywords

Culpable homicide, Indian penal code, murder, section 299, section 300

Introduction

Manslaughter is also known as Culpable Homicide. It is a legal phrase in Scotland and England that refers to a variety of criminal killings that are equal to manslaughter in other legal criminal countries. Culpable Homicide is defined in Section 299 of the Indian Penal Code as "whoever causes death by doing an act with the intention of causing death, or with the knowledge that such act is likely to cause death, commits the offence of Culpable Homicide."

The Penal Code defines culpable homicide simpliciter (Section 299, I.P.C), often known as manslaughter under English law, as a genus, and murder (Section 300, I.P.C), as a species of homicide.

¹ <https://indiankanoon.org/doc/305371/>

² <https://indiankanoon.org/doc/626019/>

Explanation 1 - A person who causes bodily damage to someone who is suffering from a condition, disease, or bodily infirmity, therefore hastening that other's death, is judged to have caused his death.

Explanation 2 - Where death is caused by physical harm, the person who causes such bodily injury is regarded to have caused the death, even if the death might have been avoided by using adequate remedies and skilled treatment.

Explanation 3: It is not murder to cause the death of a kid in the mother's womb. However, causing the death of a live child may constitute culpable homicide if any portion of that kid was brought forth, even if the infant did not breathe or be born totally.

Lawful and unlawful homicide

A suspect in a homicide cannot always be held accountable. This is where the concept of legal homicide comes from, when the accused has a valid motive to conduct the crime. In certain instances, the individual will not be prosecuted and may be excused from the charges.

These can include death caused by self-defence, error of fact, or lawful execution, among other things. Hence Homicide can be both legal and illegal. Justifiable and excusable homicide are examples of lawful homicide. Death through reckless and careless conduct (Sec 304-A), suicide (Sec 309), or culpable murder are all examples of unlawful homicide.

Essential elements of culpable homicide

Culpable murder is the first type of unlawful murder as described in Section 299, I.P.C. It seeks to define and explain when an act of causing death is Culpable Homicide. The critical factors are:

- 1) the death of a human being.
- 2) Such death must have been caused by an act committed i. with the aim of causing death; or ii. with the intention of inflicting such physical damage as is likely to cause death; or iii. with the knowledge that the doer is likely to cause death by such an act.

The mere fact that a human person is killed is insufficient. An act resulting in death cannot be considered culpable homicide unless one of the mental states listed in the ingredient is present. Thus, where a constable with a loaded but defective gun attempted to arrest an accused who was riding on a bullock cart by climbing on the cart, a scuffle ensued, during which the gun went off and killed the constable, it was held that the accused could not be held guilty of Culpable Homicide.

Culpable homicide not amounting to murder(section 299)

It is simply referred to as culpable murder, and it is covered under Section 299 of The Indian Penal Code 1862, which states:

He will be committing the offence of culpable homicide if he does an act with the goal of causing death or physical damage that is likely to cause death, or with knowledge that his conduct will likely cause death.

After splitting the term, we have three requirements that must be met in order to be charged under Section 299 of the Indian Penal Code:

- The aim to cause death.
- The purpose to do physical harm that is likely to result in death.
- With the awareness that he is likely to cause death by doing so.

In **Nara Singh Challan v. State of Orissa (1997)**,³ it was determined that Section 299 of the Indian Penal Code is the genus and Section 300 of the Indian Penal Code is the species. As a result, there are no separate sections dealing with culpable homicide that does not amount to murder; instead, Section 300 of the IPC defines Murder.

Culpable homicide amounting to murder(section 300)

Murder is a crime that falls under the jurisdiction of Section 300 of the Indian Penal Code 1862, which states:

Culpable homicide is murder if the act is committed with the intent of causing death or such bodily injury as is likely to cause the death of the person, or if the inflicted bodily injury is sufficient in the ordinary course of nature to cause death, or if there is knowledge involved that the act is so fatal that in all probability it can cause death or such bodily injury as is likely to cause death and commits such an act.

After splitting the term, we have four requirements that must be met in order to invoke Section 300 of the Indian Penal Code, which are as follows:

- The aim to cause death.

³ <https://www.casemine.com/judgement/in/5ac5e3ed4a93261a672ca1c9>

- The purpose to cause physical damage that the criminal knows is likely to result in the death of the person to whom the harm is done.
- With the purpose to cause bodily harm to any person, and the physical harm intended to be inflicted is sufficient to cause death in the regular course of nature.
- The person conducting the act is aware that it is so imminently hazardous that it must, in all likelihood, result in death or physical damage that is likely to result in death, and conducts the act without any justification for taking the risk.

Exception to section 300 of IPC

When an act is done with the aim to cause death, it is considered culpable homicide, however in the instances listed below, this concept does not apply. The following actions may constitute culpable homicide but not murder. Exceptions 1-5 in the (d) and (f) illustrations of Section 300 of the IPC specify situations in which culpable homicide does not amount to murder, as follows:

- It is not culpable homicide amounting to murder if it is perpetrated by a person who loses control and kills someone as a result of a grave and immediate provocation.
- When an offender causes the death of someone while exercising his right to private defence of person and property in good faith, it is not culpable homicide amounting to murder.
- It is not culpable homicide amounting to murder if a public worker kills someone while carrying out his responsibilities in good faith and thinks that his actions were legal.
- If a person causes the death of another person in a violent fight in the heat of passion during a sudden argument, it is not criminal homicide amounting to murder.
- When a person over the age of 18 suffers death with his own agreement, it is not culpable homicide amounting to murder.

This is not new legislation; it dates back to the British Empire. In the case of **R. v. Latimer** ⁴(1886), a man got into a battle and, in order to punish the guy, he pulled out his belt and struck it, but it bounced and hit a lady, who was severely hurt. According to the court, The defendant is to be held accountable for the woman's injuries, notwithstanding the fact that he had no intention of harming her. The men's anger has shifted from the man he was about to attack with his belt to the woman.

⁴ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1836/index.do>

As seen by the case of **Rajbir Singh v. State of U.P.**,⁵ this piece of legislation is so perplexing that some judges forget it even exists.

In this case, the Supreme Court chastised the Allahabad High Court for failing to examine Section 301 of the Indian Penal Code.

In this case, a girl was killed by a gunshot fired at another person. The High Court concluded in its judgement that there was a mistake and that the accused had no intention of killing the girl.

The Supreme Court ruled that the accused's intent should be disregarded in this instance. The court further ruled that the Allahabad High Court's basis for labelling the act as an accident is invalid since it was incorrect. He was eventually held accountable for his acts.

Punishment

- Section 304 of the Indian Penal Code provides punishment for culpable homicide that does not amount to murder (Section 299 IPC). It states that whoever causes death with intent or causes bodily injury that is likely to cause death or with knowledge that death is likely to be caused as a result of the act shall be liable for life imprisonment or imprisonment of either description for a term that may extend to ten years, and shall also be liable to fine (Section 304(1) IPC).

Second, anyone who causes death without intending to cause death or bodily injury that is likely to cause death, or who has no knowledge that his act could cause death, is sentenced to imprisonment of either description for a term that may extend to ten years, as well as a fine (Section 304(2)IPC).

- Section 302 of the Indian Penal Code prescribes punishment for murder or culpable homicide equivalent to murder (as defined in Section 300 of the IPC). It states that whomever commits murder faces life imprisonment or the death sentence, as well as a fine.

However, the death sentence can only be used in the most exceptional of circumstances, as stated in the case of **Bachan Singh v. State of Punjab**⁶, where it was remarked that since the court had the

⁵ <https://indiankanoon.org/doc/1255997/>

⁶ <https://indiankanoon.org/doc/1235094/>

option of life imprisonment, why should the court resort to such an awful punishment as the death penalty? The Indian judiciary has specified specific situations under which the death penalty may be employed as a remedy. These requirements were spelled down in the case of **Machhi Singh and Others v. State of Punjab** ⁷ and are as follows:

When the murder is performed in an extraordinarily violent, absurd, devilish, repugnant, or despicable manner that arouses the community's intense and severe wrath. For example, lighting fire to someone's house with the goal of burning it down.

The crime was committed on a big scale, resulting in several deaths.

When a person dies because of his or her caste or faith;

When the accused's motivations were cruelty or complete depravity; and

When the murder victim is an innocent kid, an elderly or infirm lady or man, a prominent figure, etc.

However, determining what is the rarest of the rare and what is not remains subjective. As a result, it leaves an ambiguity as to when the death penalty can be applied, and recent developments in the **Mukesh & Anr vs State for Nct of Delhi & Ors (Nirbhaya case)**, ⁸ in which all of the accused were sentenced to death penalty, have made this topic the epicentre of several heated debates across the country. The major question raised is that, like other countries, why can't India abolish the death penalty when there is another option.

Culpable homicide vs murder

"All murders are culpable homicides, but not all culpable homicides are murders," is a popular expression used to distinguish culpable homicide from murder. It discusses the point that I've previously proven: responsible homicide is the genus, and murder is the species. The main distinction is that murder is a more serious type of culpable homicide. There is no ambiguity in murder that the act may or may not kill, as there is in culpable homicide, as evidenced by Section 299 of the Indian Penal Code, which states unequivocally:

"If he commits an act with the intent of causing death or bodily injury that is **LIKELY** to cause death, or with knowledge that his act is **LIKELY** to cause death, he will be committing the offence of culpable homicide."

⁷ <https://indiankanoon.org/doc/545301/>

⁸ <https://indiankanoon.org/doc/68696327/>

As Sir James Stephen said, it is exceedingly difficult to discern between Culpable Homicide and Murder because both result in death. But there is a difference, although a minor one; it all boils down to a very slight variance in the purpose and knowledge involved in both offences. The true difference is in the degree of the deed; there is a significant variation in the degree of purpose and knowledge between the two offences.

Case laws

Bhagwan Singh v. state of Uttarakhand⁹

The judgement in this case was recently issued, however the matter dates back to 2007. In this case, 5 persons were injured, and two of them died as a result of celebratory shooting. The Supreme Court's outraged bench, comprised of C.J.I. S.A. Bobde, BR Gavai, and Surya Kant, JJ, stated:

The number of occurrences has increased due to celebratory gunfire, which is viewed as a status signal. A licenced gun meant for protection should not be used in celebratory occasions since it can be lethal.

According to the evidence, the accused pointed the pistol at the house's roof, but the bullets were deflected and damaged. The accused pled not guilty, claiming that he had no intention of killing anyone. The accused was carrying a loaded revolver in public and did not take adequate care of his surroundings, according to the court. He must have imagined that the pellets may deflect and injure someone.

He was found guilty by the court. The offence amounted to criminal murder under IPC Section 299, punishable under IPC Section 304 Part 2.

Ram Kumar v. state of Chhattisgarh¹⁰

In this case, the appellant is so in love with his sister-in-law that he summons her to a field and slashes her head with an axe one day before her wedding. The girl ran back to her residence and then to the police station to register a FIR. She was then sent to the hospital, but she died on the way. The court attempted to concentrate on the legal character of the FIR in order to determine if it was acceptable

⁹ <https://indiankanoon.org/doc/25328436/>

¹⁰ <https://indiankanoon.org/doc/28119442/>

The court, citing **Dharam Pal v. State of Uttar Pradesh**¹¹, stated that a FIR might be regarded a dying declaration if the victim dies before appearing in court.

In this case, the appellant was sentenced by the District Court under section 302 of the Indian Penal Code (punishment for murder), but the accused filed a criminal appeal in the High Court against the District Court's judgement, wherein the court, after reviewing the post mortem report, which revealed that if the girl had arrived at the hospital sooner, she could have been saved, changed the appellant's conviction and sentenced him under section 304 part I India.

Conclusion

Culpable Homicide is a broad area with practical applications. It encompasses all felonious homicides other than murder. It is essentially a killing that the perpetrator did not intend or foresee as likely to occur; it is an unintentional, blamable felonious killing. There have been several instances when this area of law has been used and appropriately applied. Sections 299, 301, 304, and 304A deal in detail with the various aspects covered by this subject. However, the provisions are not exhaustive, and there is a need to put many of the Law Commission's suggestions for better administration of justice into practise in order to aid in the evolution of this subject over time.

References

- <https://blog.ipleaders.in/culpable-homicide-under-indian-penal-code/>
- <https://www.legalservicesindia.com/article/582/Culpable-Homicide.html#:~:text=Section%20299%20of%20the%20Indian,the%20offence%20of%20Culpable%20Homicide.%E2%80%9D>

¹¹ <https://indiankanoon.org/doc/436026/>