

COMPREHENSIVE NOTES ON

- **CULPABLE HOMICIDE – SECTION 299.**
- **MURDER – SECTION 300.**

CHECK REVISION NOTES ON PAGE 23.

MEANING OF HOMICIDE :

- **Killing** of one human by another human being is homicide.
- *Homi* means man & *Cido* means cut : as per latin.

Sections 45 and 46 of IPC define “life” and “death”. And life and death mean the life and death of a human being. Therefore, causing the death of an animal is not murder.

CLASSIFICATION OF HOMICIDES : The object of law is to preserve life. Homicides can be classified into 2 Types : **(1) Lawful (2) Unlawful**

Lawful Homicides : All homicides are **not criminal or unlawful**. As we have seen in general exceptions under **Chapter IV of the IPC,**

- **Excusable Homicides :** Some homicides are *excused* – Death caused by Child.

Here death is caused unintentionally, by misadventure or without gross or culpable negligence. *Examples :* Section 80, 82-85, 87-89, 92.

- **Justifiable Homicides :** Some homicides are *justified* – Death caused in the Right of Private defence. *Examples :* Section 76-79, 81, 96-106.

Here the death is caused in circumstances authorised by law.

Unlawful Homicides : Homicides which are punishable by the IPC are unlawful homicides. And they are not neither excused nor justified.

- Culpable Homicide not amounting to murder, Section 299
- Murder, Section 300
- Suicide, Sections. 305, 306 and 309.
- Rash and Negligent Homicide, Section 304-A
- Dowry-Death, Section 304-B.

FIVE-STEP INQUIRY IN CASE OF HOMICIDE : In case of a homicide, a five-step inquiry should be carried on *Richpal Singh Meena v Ghasi, AIR 2014 SC 3595 :*

(i) Is there a homicide?

(ii) If yes, is it a culpable homicide or a ‘not culpable homicide’?

(iii) If it is a culpable homicide, is the offence one of culpable homicide amounting to

murder (s. 300 of the Indian Penal Code) or is it a culpable homicide not amounting to murder (s. 304 of the Indian Penal Code)?

(iv) If it is a 'not culpable homicide' then a case u/s. 304-A of the Indian Penal Code is made out.

(v) If it is not possible to identify the person who has committed the homicide, the provisions of s. 72 of the Indian Penal Code may be invoked

Section 299 | Culpable Homicide

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.

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 skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a 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.

Illustration

(a) A lays sticks and turf 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 to fire at the bush. 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.

UNDERSTANDING THE SCOPE | CULPABLE HOMICIDE & MURDER

Culpable homicide is the genus, and murder, its species. Every murder is culpable homicide, but every culpable homicide is not murder.

Therefore, based on section 299 and 300, we can classify like

- *Culpable homicide amounting to murder*
- *Culpable homicide not amounting to murder.*

When a 'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of IPC¹, whereas if an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the IPC.²

CULPABLE HOMICIDE : Section 299 defines what constitutes 'Culpable Homicide'.

ESSENTIAL OF SECTION 299/ CULPABLE HOMICIDE

- (i) there must be death of a person;
- (ii) the death should have been caused by the act of another person; and
- (iii) the act causing death should have been done with:
 - (a) the intention of *causing death*; or
 - (b) the intention of causing such *bodily injury* as is likely to cause death, or
 - (c) with *knowledge* that such act is likely to cause death.

EXPLANATION 1 : Injuring a person who is already is suffering from *disorder, disease or bodily infirmity* and such injury, therefore, is said to have *accelerated and caused his death*. This means that one cannot escape by saying that if injured person did not have disorder, disease or bodily infirmity, he would not have died.

EXPLANATION 2 : One cannot escape criminal liability by saying that *if proper remedies and skilful treatment were available*, death caused by bodily injury might have been prevented.

EXPLANATION 3 : The causing of the death of a 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.

¹ **302. Punishment for murder.**—Whoever commits murder shall be punished with death or [imprisonment for life], and shall also be liable to fine.

² **304. Punishment for culpable homicide not amounting to murder.**—Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

3 KINDS OF MENS REA : There are *3 species of mens rea* in culpable homicide under Section 299.

- (a) an intention to cause death;
- (b) an intention to cause a dangerous injury; and
- (c) knowledge that death is likely to happen

PRINCIPLE : A man expects the natural consequences of his acts and therefore, in law, he is presumed to intend the consequences of his acts.³

If, therefore, a person, in performing some act, either:

- (a) expects death to be the consequence thereof; or
- (b) expects a dangerous injury (i.e., a bodily injury likely to cause death) to be the consequence thereof; or
- (c) knows that death is a likely consequence thereof, and,

in each case, **death ensues, his intention in the first two cases, and his knowledge in the third case, renders the homicide culpable.** ⁴

Motive is something which prompts a man to form an intention. Knowledge is an awareness of the consequences of the act. In many cases, intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things.

Basdev v
State of
Pepsu

MEANING OF INTENTION : First 2 elements of mens rea under Section 299 denote the word 'intention'.

- The word 'intention' means the mental attitude of the man who decides to bring about a certain result.
- In case of culpable Homicide, the expectation that the act of a person *is likely to result in death is sufficient to constitute intention*, **pre-planning or pre-meditation is NOT required.**
- Whether there is intention or not is a question of fact

The difference between an intention to cause death and an intention to cause such bodily injury as is likely to cause death is a difference of degrees only. The latter is a degree lower in the scale of criminality than the former. In either case, the act of the accused must have caused death.

³ R v Lakshman ILR 26 Bom 558

⁴ Gujjar v Emperor 12 Cr LJ 591.

PROOF OF INTENTION : The nature of weapon used, the manner in which blows are dealt, the parts of the body on which they are dealt and the manner in which the weapons are used are important to gather intention of the accused.⁵

In the case of ***Jage Ram Vs. State of Haryana reported in 2015(11) SCC 366*** it has been laid down that although the nature of injury may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances, which includes the words used by the accused at the time of the incident, motive of the accused, part of the body where the injury was caused.

MEANING OF KNOWLEDGE : In case of Culpable homicide, the least or minimum degree of mental element resulting in homicide culpable is the knowledge that the act is likely to cause death.

Knowledge denotes

- state of conscious awareness of certain facts in which human mind remains inactive.
- bare awareness of the consequences of his conduct.

ACT OF KILLING A PERSON NOT INTENDED TO BE KILLED : If the act of a person is not intended or aimed at any particular person, however, if he knows that such act would likely to cause death, it would still amount to culpable homicide. [refer *Illustration (a)*]

DOCTRINE OF TRANSFERRED MALICE
[Refer Section 301 for more understanding]

Gurmail Singh v State of Punjab : A & B on one side and C on the other side were having argument on indecent jokes uttered by C. X intervened to stop this fight. But C gave a blow to A, which fell on X, resulting in his death. SC Held that he is not liable under Section 302, but under Sec.304 Part II.

Kashi Ram v State of Madhya Pradesh : X shot Y, but bullet hit Z, resulting in his death. SC applied doctrine of transferred malice to hold him guilty under s 304, Pt II as he neither aimed at nor intended death of the deceased.

MEANING OF “WHOEVER CAUSES DEATH” : Death is caused by an act or omission. Such act or omission must directly and distinctly result in death of the person, rather than being remote. It means that the nexus between the act and the direct result of the act should be ***killing/death.***

⁵ Nga Min Po (1897-1901) 1 UBR 288; Nga Shwe Baw (1897-1901) UBR 285

Moti Singh v State of Uttar Pradesh	Joginder Singh v State of Punjab
<p>FACTS :</p> <ul style="list-style-type: none"> • G was shot by M in 9th February 1960. • G was admitted in hospital and those injuries were said to be “life-threatening”. • However, G was discharged before he was fully recovered, resulting in his death in 1st March 1960. • M was implicated for murder. <p>HELD : The Supreme court of India held that, there was no evidence to establish the cause of death, therefore, the accused M, could not be said to have caused the death of G.</p>	<p>FACTS :</p> <ul style="list-style-type: none"> • Rupinder Singh(RS) teased the sister of J. • J & M went to RS house and shouted that they would take away his sister. • RS escaped into field, but J & M chased him and feeling threatened, <i>RS jumped into well</i>, resulting in head injuries and consequently, in his death. • J & M were implicated for murder. <p>HELD : The Supreme Court held that the J were about 15 to 20 feet from RS, when he jumped into the well. It cannot be said that RS had no option other than to jump into the well, therefore, J & M was were entitled to be acquitted of the charge of murder.</p>
<p>PRINCIPLE : The connection between the primary cause and the death should not be too remote.</p>	

Rewa Ram v State of Madhya Pradesh :

- R, husband of Gyanvatibai, caused multiple injuries with knife.
- G was admitted in hospital, when being treated, she died due to hyperpyrexia, not because of multiple injuries.
- However, medical evidence was given that, hyperpyrexia was a result of her of multiple injuries, and the post-operative starvation, which was necessary for her recovery, resulted in her death.

HELD : G’s death was a direct consequence of the injuries inflicted on her. R was held convicted for murder.

‘A’ assaulted his wife by kicking her repeatedly on non-vital parts of her body. She fell down and became unconscious. In order to create an appearance that she had committed suicide he took up the unconscious body and thinking it to be a dead body hung it up by a rope. The post mortem examination showed that death was due to hanging. With the help of decided cases determine the culpability of A.

Asked in UPSC 2015 under Question 2(b)

In *Emperor v. Dalu Sardar* 26 Ind. Cas. 157 ; 18 C.W.N. 1279 ; 15 Cr.L.J. 709. In that case, the accused kicked his wife below the navel; she fell down and became unconscious. In order to create an appearance that the woman had committed suicide, he took up the unconscious body and, thinking it be a dead body, hung it by a rope. The Judge has said that as he thought it to be a dead body, he could not have intended to kill her if he thought that the woman was dead, and seem to assume that the intention to cause death is a necessary element in the offence of murder.

In *Re: Palani Golundan v. Unknown* (1919) ILR 547 (Mad) : AIR 1920 Mad 862 :

FACTS : X assumed that he had killed his wife, when she fell unconscious of his beating. He hung the body of his wife to make it look like a suicide. Later when the post mortem was conducted on the body of the wife, it showed the wife had survived the blow of the ploughshare and was only unconscious then and she had died due to asphyxiation.

HELD :

- Accused **was will not be held liable for murder or culpable homicide**. He will instead be held liable only for the grievous hurt caused when using the ploughshare to hit the victim and for tampering with evidence.
- A man is not guilty of culpable homicide, if his intention was directed only to what he believed to be a lifeless body.

In *Kaliappa Goundan v. Emperor*, 145 Ind Cas 953 . In that case, factually, there was a scuffle between the deceased and the accused. The deceased fell unconscious. The accused dragged her to the railway line and laid the body across the rails to make it appear that she died of a train accident. Subsequently, the train hit her and according to the medical evidence, the death was due to hitting by train.

Though it was not specifically pleaded by the accused that they believed that the deceased was dead and under the said belief they dragged the body and laid it across the railway line, the trial court made an inference that the accused would have believed that the deceased was already dead and on that belief, laid it across the railway line to make it appear as though she died of the accident. On this inference, the trial court acquitted the accused holding that the act of the accused would not amount to culpable homicide.

But, the High Court found that in the absence of any evidence or even a plea that the accused believed that the deceased was already dead and under that belief the body was dragged and laid across the railway line, the finding of the trial court cannot be sustained as it is based only on mere surmise. The High Court, therefore, set aside the acquittal and convicted the accused for murder.

In *Sarathi v. State of Madhya Pradesh*, 1976 Cri.L.J. 594 . In that case, the Madhya Pradesh High Court found that the accused had pressed the neck of the deceased and as a result, the deceased fell unconscious. The accused became panicky believing that the deceased was already dead, they hanged the deceased. The death actually occurred due

to hanging. The court held that the accused had no intention to cause death or intention to cause bodily injury as was likely to cause death, but by hanging the body recklessly with gross negligence without verifying as to whether the deceased was dead or not since they hanged the body, they were imputed with the knowledge required under the third limb of section 299 of IPC. Accordingly, the accused were convicted under Section 304(ii) of IPC.

Similarly, in *The King v. Sreenarayan (1948) ILR 27 Pat 67*, the Patna High Court also held that if the belief of the accused that the deceased was no more already is reckless with gross negligence then, he should be imputed with knowledge as required in the third limb of Section 299 of IPC.

MURDER

Section 300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder,
Firstly - if the act by which the death is caused is done with the intention of causing death, or—
Secondly—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
Thirdly—If it is done with the intention 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 such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.—When culpable homicide is not murder.—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:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—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.

Thirdly.—That the provocation is 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

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.

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.

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 without his consent.

UNDERSTANDING THE SCOPE | CULPABLE HOMICIDE & MURDER

300 supplements Section 299. Culpable homicide is the genus, and murder, its species. Every murder is culpable homicide, but every culpable homicide is not murder.

Therefore, based on section 299 and 300, we can classify like

- *Culpable homicide amounting to murder* - if it falls within Clause 1 to 4 of Section 300.
- *Culpable homicide not amounting to murder* - If it falls within 5 exceptions to Section 300.

When a 'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of IPC⁶, whereas if an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the IPC.⁷

⁶ **302. Punishment for murder.**—Whoever commits murder shall be punished with death or [imprisonment for life], and shall also be liable to fine.

⁷ **304. Punishment for culpable homicide not amounting to murder.**—Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Part 2 : or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

THREE DEGREES OF CULPABLE HOMICIDE UNDER IPC

There are practically three degrees of culpable homicide under *IPC*:

- (1) ***Culpable homicide of the first degree [Or Murder]***, which is made punishable with death or imprisonment for life, to either of which fine may be added (Section 302);
- (2) ***Culpable homicide of the second degree [Or Culpable Homicide not amounting to Murder]***, which is made punishable with imprisonment up to a limit of 10 years, or with imprisonment for life, to either of which fine may be added (Section 304, Pt I); and
- (3) ***Culpable homicide of the third degree [Or Culpable Homicide not amounting to Murder]***, which is punishable with fine only, or with imprisonment up to a limit of 10 years or with both (Section 304, Pt II).

UNDERSTANDING MURDER

MURDER | Section 300 has 4 Clauses defining what amounts to murder in reference to Culpable Homicide. Further section 300 is appended with 5 Exceptions. At the end of the day, you should be able to pinpoint 4 Clauses + 5 Exception for our UPSC Law Optional.

<ul style="list-style-type: none"> • if the special requirement under Section 300 Clause 1 to 4 is satisfied, and • if it does not fall within 5 Exceptions. <p>then such culpable homicide will amount to murder.</p>	<ul style="list-style-type: none"> • if the special requirement under Section 300 Clause 1 to 4 is satisfied, and • if it falls within 5 Exceptions. <p>then such culpable homicide not amounting to murder.</p>
<p>Culpable homicide is murder, if it is done with:</p> <p>(i) intention to cause death; or</p> <p>(ii) intention to cause bodily injury knowing that the injury caused is likely to</p>	<p>Culpable homicide does not amount to murder, if it is:</p> <p>1st Exception : Committed on grave and sudden provocation, provided the provocation was not:</p> <p>(a) voluntarily sought or deliberately caused by the accused;</p> <p>(b) a result of any act done by public servant or in</p>

cause death, or
 (iii) intention of causing bodily injury sufficient in the ordinary course of nature to cause death, or
 (iv) knowledge that the act is:
 (a) imminently dangerous that in all probability it will cause death or bodily injury which is likely to cause death, and
 (b) done without any justification for incurring the risk of causing death or the injury.

obedience to law; or
 (c) given by any act done in the exercise of the private defence.

2nd Exception : Committed in the exercise of the right of private defence of body or of property by exceeding, in good faith and without premeditation & without any intention of causing harm more than that was necessary for exercising the right of private defence, the right of self-defence.

3rd Exception : Committed by a public servant or a person aiding a public servant acting in advancement of public justice by exceeding his powers conferred by law on him, provided:
 (a) he believed, in good faith, that the act (leading to death) was lawful;
 (b) he thought it was necessary for discharging his duty, and
 (c) he had no ill-will towards the person whose death was caused.

4th Exception : Committed, without premeditation, in a sudden fight in the heat of passion without taking any undue advantage or acting in a cruel or unusual manner.

5th Exception : Caused to a person above eighteen years of age with his consent.

SECTION 300 (1)-(4) | WHEN CULPABLE HOMICIDE AMOUNTS TO MURDER

CLAUSE 1 | SECTION 300 : Culpable homicide is murder, if it is done with '*intention to cause death*'.

- This is considered to simplest, yet gravest species of murder. This is because the *intention to cause death* to another human being is very clear.
- Such intention can be inferred from action of the person. It can be proved only by its external manifestations.

EXAMPLES :

- When X gives poison to Y, we can simply say that his intention is to kill Y, because the cause of death is poisoning and the effect of poisoning is to cause instant death. [Cause & Effect]
- *Chahat Khan v State of Haryana AIR 1972 SC 2574 : Inflicting injuries in vital parts of the human with sharp-edged instruments* – easily the intention to cause death is attributed.
- *Bandampalli Venkateswarlu v State of Andhra Pradesh (1975) 3 SCC 492 : X had poured kerosene on A, Y sets fire on A – Y's intention* to cause death is clear from his actions.
- *Vasanth v State of Maharashtra AIR 1998 SC 699* : X and Y had previous enmity. X and Y were fighting each other and some other intervened and separated them. But Y after being separated, went into his jeep and drove the car in the wrong way and ran over X. SC held that Y's intention to kill X was clear from his actions.

HONOUR KILLING : Shakti Vahini v UOI, AIR 2018 SC 1601 : Honour killings are treated as murder as defined under Section 300 of the IPC and punishable under Section 302 of the IPC. In this case, the Supreme Court issued detailed preventive, remedial and punitive directives to prevent honour killings in the country

1st Clause of Section 299 and 1st Clause of Section 300 are same. Therefore an act coming under clause (1) of s 300 will also fall under clause (1) of s 299, and in both instances, it will be culpable homicide amounting to murder.⁸

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CLAUSE 2 | SECTION 300 : Culpable homicide is murder, if it is done with "*intention to cause bodily injury knowing that the injury caused is likely to cause death*"

ESSENTIALS

- There should be intention to cause bodily injury/Harm.
- There should be '*subjective knowledge*' that death is the 'likely' result or consequence of such intended bodily injury.

Subjective Knowledge	It is the accused's own personal perception of the consequences of his act, therefore, it is 'subjective'
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This knowledge, as specified in Cl 2 of Sec.300, indicates definiteness or certainty of death and not a mere probability.

State of Rajasthan v Dhool Singh (2004) 12 SCC 546 : X inflicted an incised cut with a sword on the neck of the Y, leading to excessive bleeding and heart failure as a result. SC held that X knew that the bodily injury caused by him would likely cause death of the injured.

⁸ *Gudar Dusadh v State of Bihar (1972) 3 SCC 118*

Willie (William) Slaney v State of Madhya Pradesh AIR 1956 SC 116, (1956) Cr LJ 291(SC) : X was in love with Y. Z was brother of Y, who did not like this. Z asked the X to leave the house. X left and but to come back with this brother. Heated exchange of words happened. Then X got hold of hockey stick and hit in Z's head. It was held by the SC that X did not have 'subjective knowledge' to cause death under Cl 2 of Section 300, therefore held liable under Section 304 Part 2. [*CH not amounting to Murder*]

CLAUSE 3 | SECTION 300 : Culpable homicide is murder, if it is done with '*intention of causing bodily injury sufficient in the ordinary course of nature to cause death*'

In **Virsa Singh v State of Punjab AIR 1958 SC 465**, Essentials of Section 300(3) was laid down, the prosecution must prove the following:

- It must establish, quite objectively, that a bodily injury is present.
- The nature of the injury must be proved.
- It must be proved that **there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or some other kind of injury was intended.**

Once these three elements are proved to be present, the enquiry proceeds further, and It must be proved that the injury of the type just described made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature.

IMPORTANT DIFFERENCE : As we have seen in Sec.300(2) that there should be '*subjective knowledge*' to cause death, but here in Section 300(3)

- the existence and nature of bodily injury must be a matter of pure *objective investigation*, and
- the sufficiency of injury to cause death in ordinary course of nature is a matter of pure objective and inferential and it has nothing to do with the intention of the offender. It does not matter there was no intention to cause death.

TEST FOR ACT/OMISSION TO FALL WITHIN SECTION 300(3) : Veera Muthu v State of Madras (1971) 3 SCC 427 : If an act/omission has intentionally caused the injury, the accused may not be aware that injury was sufficient to cause death or was likely to cause death. But, if his intention to cause the injury is established and the injury caused is sufficient to cause death in the ordinary course of nature, then the accused is guilty of culpable homicide amounting to murder.

“Section 300 (4) of the Indian Penal Code will be applicable in cases where the knowledge of the offender as to the probability of death of a person approximates to practical certainty.” Illustrate the above statement.

Asked in Question 2(a) in UPSC 2018.

CLAUSE 4 | SECTION 300 : Culpable homicide is murder, if it is done with “knowledge that the act is:

- (a) imminently dangerous that in all probability it will cause death or bodily injury which is likely to cause death, and
(b) done without any justification for incurring the risk of causing death or the injury”

ESSENTIALS FOR SECTION 300(4)

- (i) the act must be imminently dangerous;
- (ii) the person committing the act must have knowledge that it is so imminently dangerous OR extra-ordinary recklessness ;
- (iii) that in all probability it will cause (a) death or (b) bodily injury as is likely to cause death, and
- (iv) such imminently dangerous act should be done without any reason or justification for running the risk of causing death or such injury.

ILLUSTRATION : A without any excuses fires a loaded cannon into a crowd of persons and kills one of them. **A is guilty of murder**, although he may not have had a pre-meditated design to kill any particular individual.

The intention to kill anybody is not required under Section 300(4) to constitute the offence of murder. Rather it is recklessness of the act, **without any reason or justification, constitutes murder under Section 300(4).**

‘Imminently dangerous’ means that the danger should be immediate and close at hand. The question of whether an act is imminently dangerous depends upon nature of the act and its evident risk to human life. [lawxpertsmv](http://lawxpertsmv.com)

Judagi Mullah v Emperor AIR 1930 Pat 168, p 171, 31 Cr LJ 243 : X strikes Y in throat with a knife, must know that the blow is so imminently dangerous that it must, in all probability, cause death and the injury intended to be inflicted is sufficient, in the ordinary course of nature to cause death.

State of Madhya Pradesh v Ram Prasad AIR 1968 SC 881 : The Supreme Court held that though generally the Section 300(4) is invoked where there is such callousness towards the result, and the risk taken is such that it may be stated that the person knows that the act is likely to cause death.

- X, husband of Y, cannot say that he had no reason for pouring kerosene and set fire on Y.
- X must have known that the act would result in her death and SC held that his act would fall within *Clause 4 of Section 300*.

Thangaiya v State of Tamil Nadu (2005) 9 SCC 650 : The supreme court held that Section 300(4) is applicable when the knowledge of accused meets the practical certainty that death will be most probable by his action.

Section 302. Punishment for murder

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Section 302 stipulates a punishment for murder as death or imprisonment for life and fine. For conviction, it is not required that *corpus delicti* be found.

EXCEPTIONS TO MURDER | WHEN CULPABLE HOMICIDE IS NOT MURDER

BENEFITS OF 5 EXCEPTION : If, upon the evidence, it appears that the accused is entitled to the benefit of any one of the exceptions, neither the ignorance of the accused, nor the falsity of his defence, nor any mistake or omission of the lower courts or advocates, should deprive him of the benefit of it.⁹

"Culpable homicide is not murder, if it is committed without premeditation, in a sudden fight in the heat of passion." Critically examine the statement with leading case law.

Asked in Question 2(b) in 2016 UPSC

EXCEPTION 1 : Culpable homicide does not amount to murder, if it is Committed on grave and sudden provocation, provided the provocation was not:

- (a) voluntarily sought or deliberately caused by the accused;
- (b) a result of any act done by public servant or in obedience to law; or
- (c) given by any act done in the exercise of the private defence.

GRAVE & SUDDEN : Both element of 'Grave' and 'Sudden' must co-exist to avail the benefit under this exception. If the provocation is sudden but not grave, or grave but not sudden, then this exception not applicable.

The supreme court, however, consider grave provocation, not-so-sudden, as a factor to mitigate/reduce the sentence.¹⁰

QUESTION OF FACT : Explanation to Exception 1 states that whether the provocation was grave and sudden is a question of fact.

IMPORTANT CASE LAW | KM Nanavati v State of Maharashtra AIR 1962 SC 605

FACTS OF THE CASE :

- X was a naval officer, who was married with three children.
- Y, wife of X, confessed to him that she has in intimate relationship with Z.
- X got extremely upset and angered over Z.
- X went to ship and took semi-automatic revolver.

⁹ Motiram Chandiram v Emperor AIR 1941 Sind 117, 42 Cr LJ 786.

¹⁰ Franscis alias Pannan v State of Kerala AIR 1974 SC 2281

- X gone to flat of Z, and shot him dead and surrendered to Police.

QUESTION BEFORE THE COURT : Whether Act of the X would fall within Exception 1 of Section 300?

HELD : X after hearing about illicit relationship of his wife Z, X dropped his wife and children at cinema, then went to ship and took his gun and then shot Z in his flat. And all this happened within time-span of 3 Hours, which would normally be sufficient for man to regain his self-control. For the above-said reason, SC held that Death of Z, by the X would not fall within Exception 1 of Section 300 and was convicted of Murder.

TEST LAID DOWN BY SUPREME COURT IN KM NANAVATI CASE

- The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed, would be so provoked as to lose his self-control
- In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused, so as to bring his act within the first exception to section 300, IPC.
- The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.
- The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

Hansa Singh v State of Punjab AIR 1977 SC 1801 : X was committing sodomy with the Son of Y. Y on seeing this, got enraged and killed X. Held that Exception 1 to Sec.300 applies was convicted u/s 304.

Kandaswamy ramaraj V. The state by inspector of police, CBCID [Supreme Court of India | November 2019]

Facts : The boys residing in the adjoining colony used to enter the prohibited defence area to pluck fruits. X, who was a retired Lieutenant Colonel, had shot the Y, a boy, while he was attempting to pluck fruit.

Held : The supreme court held that there was no calculated intention or premeditation on the part of the X to commit the murder of the Y.

- Domestic help of the X had deposed that he was a short-tempered person, and used to chase the boys who used to jump into the defence compound to pick almonds.
- On one occasion, the boys had even damaged the windshield of his car.
- Therefore, court come to conclusion that, X was deprived of the power of self-control upon sudden provocation by the children. It modified the conviction from Section 302 to Culpable Homicide not amounting to murder under Section 304 Part II.

IF PROVOCATION IS VOLUNTARY, THEN EXCEPTION 1 – NOT APPLICABLE : **The State Of Uttar Pradesh vs Faquirey AIR 2019 SC 844** : X had fired at the Y from his pistol as he had a doubt that the Y was visiting his house with an evil eye on his wife. The Supreme Court has observed that if the provocation was voluntary on the part of the X, accused, it would not attract exception 1 to Section 300 of the Indian Penal Code (Exception to the offence of murder). He was held liable for Section 302 IPC.

EXCEPTION 2 : *Culpable homicide does not amount to murder*, if it is Committed in the exercise of the right of private defence of body or of property by **exceeding**, in good faith and without premeditation & without any intention of causing harm more than that was necessary for exercising the right of private defence, the right of self-defence.

GENUINE : What this exception means is that if a person genuinely exercises his right of private defence within the limits prescribed by law, then he commits no offence. However, if he exceeds the right, it will amount to a lesser offence than murder. When the right to private defence is ended, death caused after that would not fall within this exception, rather it will be a murder.¹¹

QUESTION OF FACT : Whether the exceeding of the right of private defence was done intentionally or unintentionally is a **question of fact based** on the facts and circumstances of each case.

Nathan v State of Madras AIR 1973 SC 665 : X, who was possession of land of Y, was cultivating in that land for several years. However, X failed to pay lease amount for some time. Y, landlord, tried forcefully to evict X and harvest his crops. X in exercise of right to private defence of property, killed the Y.

HELD : X had the right to private defence, but Y did not have any deadly or dangerous weapons, therefore, X his right to private defence was limited, and cannot exceed to cause death. Therefore, it would amount to 'CH not amounting to murder' under Exception 2 of Section 300.

Mohinder Pal Jolly v State of Punjab AIR 1979 SC 577 : There was a dispute on payment of wages, and therefore, X and his colleagues assembled outside factory and raised provocative slogans and thrown brickbats at the factory. Angered by this, Y came out of the factory, and shot X, which killed him instantly. SC held that right to private defence was exceeded, and it would amount to 'CH not amounting to murder' under Exception 2 of Section 300.

EXCEPTION 3 : *Culpable homicide does not amount to murder*, if it is committed by a public servant or a person aiding a public servant (under section 21 of IPC) acting in advancement of public justice by exceeding his powers conferred by law on him, provided:

(a) he believed, in good faith (as per Section 52 IPC) , that the act (leading to death) was lawful;

¹¹ Kattu Surendra v State of Andhra Pradesh (2008) 11 SCC 360

- (b) he thought it was necessary for discharging his duty, and
- (c) he had no ill-will towards the person whose death was caused.

Dakhi Singh v State AIR 1955 All 379 : X, a constable, went to arrest Y, who was suspected-accused of thief. X had no power to shoot the escaping Y, when he did, it shot the Z, who was fireman. X was held to avail the benefit exception 3 of Section 300.

Satyavir Singh Rathi v State through CBI, AIR 2011 SC 1748 : X, a police officer, had fired without provocation at a car killing two innocent persons and injuring one. It was held that X cannot avail the *exception 3 under Section 300*, and was held for murder.

EXCEPTION 4 : Culpable homicide does not amount to murder, if it is committed, without premeditation, in a sudden fight in the heat of passion without taking any undue advantage or acting in a cruel or unusual manner.

FIGHT : Fight implies a combat or contest, *rather than being verbal duel*, in which both parties participate, irrespective of how they fare in it. It is a question of fact and whether a quarrel is sudden must necessarily depend upon the proven facts of each case.

NOT SUDDEN : If the fight is deliberate and contemplated, it cannot be said that there was a sudden and unpremeditated fight, this exception is not applicable.¹²

ESSENTIAL FOR APPLICATION OF EXCEPTION 4 OF SECTION 300 : *Surinder Kumar v Union Territory, Chandigarh AIR 1989 SC 1094 :* (a) There was a sudden fight; (b) there was no premeditation, (c) the act was done in a heat of passion; and (d) assailant had not taken any undue advantage or acted in a cruel manner.

TEST :

- The cause of the quarrel is not relevant, nor is it relevant, who offered the provocation or started the assault.
- The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger.
- The offender must not have taken any undue advantage or acted in a cruel manner.
- Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy, and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception, provided he has not acted cruelly.

Pappu v State of Madhya Pradesh AIR 2006 SC 2659 : In a marriage function, X and Y had altercation on who invited the Z, which led to sudden quarrel and X inflicted a lathi

¹² Lal Singh v Crown 48 Cr LJ 786.

blow on the Z, who was not armed. X availed the benefit of exception 4 of Section 300 and was convicted under Section 304 Part II.

Manoj Kumar vs The State Of Himachal Pradesh AIR 2018 SC 2693

The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed.

- To bring a case within Exception 4 all the ingredients mentioned in it must be found.
- It is to be noted that the "fight" occurring in Exception 4 to Section 300 Indian Penal Code is not defined in Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning.
- A fight is a combat between two and more persons whether with or without weapons.
- It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel.
- It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case.

EXCEPTION 5 : Culpable homicide does not amount to murder, if it is caused to a person above eighteen years of age with his consent.

This exception is applicable, if the person killed is with full knowledge of the facts, determined to suffer death, or take the risk of death and this determination continued, and existed till the moment of his death. If the consent is obtained by either misrepresentation or concealment or incapable, this exception is not applicable.

Masum Ali v Emperor AIR 1929 Lah 50 , In order to avoid the pain of separation in future, X and Y who were in relationship determined to kill themselves. X killed the Y. However, X was held liable for **murder**, as Y was only 16 years old, and could not give valid consent.

Dasrath Paswan v State of Bihar AIR 1958 Pat 190 : X wanted end his life due to sore distress. Y, wife of X, told X to kill her first and then to kill himself. X killed Y, and before he could kill himself, he was caught. Held that Exception 5 to Section 300 was applicable.

In similar facts, in **Queen v Anunto Rurnagat 6 WR 57 (Cr)** : X and Y, husband and wife wanted to kill themselves for the grief of loss of their children. **X killed Y by three blows with an axe**. Held that Exception 5 to Section 300 was applicable.

Section 304. Punishment for culpable homicide not amounting to murder.—

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or

with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

The section is divided into two parts; **Offence under Part 1 of Section 304 is higher degree than Part 2 of Section 304.**

The **first part of Section 304**. is concerned with culpable homicide committed with either of the two types of *intention* i.e., where there is an intention to cause death, or bodily injury likely to cause death. It prescribes a *sentence of imprisonment for life or imprisonment of either description for a term up to ten years and fine.*

the **second part of Section 304** is concerned with culpable homicide committed with *particular knowledge [of a likelihood of death]*. It prescribes an *imprisonment of either description for a term up to ten years and fine.*

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DIFFERENCE BETWEEN CULPABLE HOMICIDE & MURDER | IMPORTANT

“There is a very thin but fine and subtle distinction between culpable homicide and murder. The difference lies merely in the different degrees of probability of death ensuing.” Discuss the statement and refer to decided cases.

Asked in Question 3(a) in UPSC 2017

- ‘Culpable homicide’ is genus and ‘murder’ its specie. All ‘murder’ is culpable homicide, but not vice-versa. For purposes of fixing punishment, proportionate to the gravity of this offence, IPC practically recognises three degrees of culpable homicide. [Refer above]
- Two offences involve the killing of a person, viz, the offence of ‘culpable homicide’ and the more heinous offence of ‘murder’.
- *Special mens rea* (as stated under Section 300 Clause 1 to 4) is required make an killing as murder.

**CULPABLE
HOMICIDE**

MURDER

<p>A person commits culpable homicide, if the act by which the death is caused is done:</p> <p>(a) With the intention of causing death;</p> <p>(b) With the intention of causing such bodily injury as is likely to cause death;</p> <p>(c) With the knowledge that the act is likely to cause death;</p>	<p>Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done:</p> <p>(1) With the intention of causing death;</p> <p>(2) With the intention of causing such bodily injury, as the offender knows to be likely to cause the death of the person to whom the harm is caused;</p> <p>(3) With the intention 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;</p> <p>(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death and committed without any excuse for incurring the risk or causing death or such injury as aforesaid.</p>
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CL (a) of SECTION 299 & CL (1) of SECTION 300 : Clause (a) of Sec.299 & Clause (1) of Sec.300 are identical, therefore, act with intention of causing death is Murder. It is punished by Section 302.

CL (b) of SECTION 299 & CL (2), (3) OF SECTION 300 : Clause (b) of Sec.299 merely stipulates that *if death is caused by an act, with the intention of causing such bodily injury as is likely to cause death it amounts to culpable homicide.*

But in case of Clause (2) of Section 300, if an act is done with the intention of causing such bodily injury which is likely to cause death, further explains that the *intentional causing of bodily injury should be accompanied with the knowledge that the bodily injury is likely to cause death.*

The word 'likely' marks the important difference. In case of Section 299 clause (b) – It is mere possibility or Probability, whereas under Clause (2) of Section 300, denotes not mere probability, rather it is certainty of death.

Similarly, **Section 300 Clause (3)**, in comparison, with Section 299 Cl(b) clarifies that the intention of causing bodily injury is accompanied by a further objective of certainty that such bodily injury is sufficient in the ordinary course of nature to cause death. This clause is also makes the death ***certain***, in comparison to Section 299 Cl(b) where the death is ***probable***.

CLAUSE (C) OF SECTION 299 & CLAUSE 4 OF SECTION 300 : Similar to above-said clause, the word 'likely' indicates the very high degree of probability of death under Section 300 Cl(4) in comparison to Section 299 Cl (c).

SUPPLEMENTS :

A SINGLE BLOW CAUSING DEATH | MURDER OR CULPABLE HOMICIDE?

In *Mahesh Balmiki v. State of M.P.*, (2000) 1 SCC 319, the Supreme Court while deciding the question of whether a single blow with a knife on the chest of the deceased would attract Section 302 IPC, held thus: (SCC pp. 322-23, para 9) “9. ...

- there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC.
- The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case.
- The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him.

In *Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155]* the Supreme Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.

The above-said principles were affirmed in *Stalin vs The State Thr Rep By The Inspector [September 2020] [CRIMINAL APPEAL NO. 577 OF 2020]*

REVISION NOTES ON

- **CULPABLE HOMICIDE – SECTION 299.**
- **MURDER – SECTION 300.**

Killing of Human being is Homicide.

It is classified into **(1) Lawful (2) Unlawful**

Lawful Homicides can be classified into

- *Excusable Homicides* : Some homicides are *excused* – Death caused by Child.
- *Justifiable Homicides* : Some homicides are *justified* – Death caused in the Right of Private defence.

Unlawful Homicides : Homicides which are punishable by the IPC are unlawful homicides. And they are not neither excused nor justified.

- Culpable Homicide not amounting to murder, Section 299
- Murder, Section 300
- Suicide, Sections. 305, 306 and 309.
- Rash and Negligent Homicide, Section 304-A
- Dowry-Death, Section 304-B.

Section 299 | Culpable Homicide

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CULPABLE HOMICIDE : Section 299 defines what constitutes 'Culpable Homicide'.

ESSENTIAL OF SECTION 299/ CULPABLE HOMICIDE

- (i) there must be death of a person;
- (ii) the death should have been caused by the act of another person; and
- (iii) the act causing death should have been done with:
 - (a) the intention of *causing death*; or
 - (b) the intention of causing such *bodily injury* as is likely to cause death, or
 - (c) with *knowledge* that such act is likely to cause death.

EXPLANATION 1 : Injuring a person who is already is suffering from *disorder, disease or bodily infirmity* and such injury, therefore, is said to have *accelerated and caused his death*. This means that one cannot escape by saying that if injured person did not have disorder, disease or bodily infirmity, he would not have died.

EXPLANATION 2 : One cannot escape criminal liability by saying that *if proper remedies and skilful treatment were available*, death caused by bodily injury might have been prevented.

EXPLANATION 3 : The causing of the death of a 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.

3 KINDS OF MENS REA : There are **3 species of mens rea** in culpable homicide under Section 299.

- (a) an intention to cause death;
- (b) an intention to cause a dangerous injury; and
- (c) knowledge that death is likely to happen

MEANING OF INTENTION : First 2 elements of mens rea under Section 299 denote the word 'intention'.

- The word 'intention' means the mental attitude of the man who decides to bring about a certain result.
- In case of culpable Homicide, the expectation that the act of a person *is likely to result in death is sufficient to constitute intention*, **pre-planning or pre-meditation is NOT required.**
- Whether there is intention or not is a question of fact

MEANING OF KNOWLEDGE : In case of Culpable homicide, the least or minimum degree of mental element resulting in homicide culpable is the knowledge that the act is likely to cause death.

Knowledge denotes

- state of conscious awareness of certain facts in which human mind remains inactive.
- bare awareness of the consequences of his conduct.

MEANING OF "WHOEVER CAUSES DEATH" : Death is caused by an act or omission. Such act or omission must directly and distinctly result in death of the person, rather than being remote. It means that the nexus between the act and the direct result of the act should be **killings/death.**

Moti Singh v State of Uttar Pradesh	Joginder Singh v State of Punjab
<p>FACTS :</p> <ul style="list-style-type: none"> • G was shot by M in 9th February 1960. • G was admitted in hospital and those injuries were said to be "life-threatening". • However, G was discharged before he was fully recovered, resulting in his death in 1st March 1960. • M was implicated for murder. <p>HELD : The Supreme court of India held that, there was no evidence to</p>	<p>FACTS :</p> <ul style="list-style-type: none"> • Rupinder Singh(RS) teased the sister of J. • J & M went to RS house and shouted that they would take away his sister. • RS escaped into field, but J & M chased him and feeling threatened, <i>RS jumped into well</i>, resulting in head injuries and consequently, in his death. • J & M were implicated for murder. <p>HELD : The Supreme Court held that the J were about 15 to 20 feet from RS, when he jumped into the well. It cannot be said that RS</p>

establish the cause of death, therefore, the accused M, could not be said to have caused the death of G.

had no option other than to jump into the well, therefore, J & M was were entitled to be acquitted of the charge of murder.

PRINCIPLE : The connection between the primary cause and the death should not be too remote.

Rewa Ram v State of Madhya Pradesh :

- R, husband of Gyanvatibai, caused multiple injuries with knife.
- G was admitted in hospital, when being treated, she died due to hyperpyrexia, not because of multiple injuries.
- However, medical evidence was given that, hyperpyrexia was a result of her of multiple injuries, and the post-operative starvation, which was necessary for her recovery, resulted in her death.

HELD : G's death was a direct consequence of the injuries inflicted on her. R was held convicted for murder.

'A' assaulted his wife by kicking her repeatedly on non-vital parts of her body. She fell down and became unconscious. In order to create an appearance that she had committed suicide he took up the unconscious body and thinking it to be a dead body hung it up by a rope. The post mortem examination showed that death was due to hanging. With the help of decided cases determine the culpability of A.

Asked in UPSC 2015 under Question 2(b)

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In *Emperor v. Dalu Sardar 26 Ind. Cas. 157 ; 18 C.W.N. 1279 ; 15 Cr.L.J. 709*. Intention to cause death is not there, as he did not intend to kill by his kicking to wife in her abdomen.

In *Re: Palani Golundan v. Unknown (1919) ILR 547 (Mad) : AIR 1920 Mad 862* : Same as above-facts. Accused was not held liable for **murder or culpable homicide, but only for** grievous hurt.

In *Kaliappa Goundan v. Emperor, 145 Ind Cas 953* .X placed the unconscious Y across the rails to make it look like she was hit by train. But court held X liable for murder, as X did not specifically pleaded that X believed that the deceased was dead and under the said belief they dragged the body and laid it across the railway line.

In *Sarathi v. State of Madhya Pradesh, 1976 Cri.L.J. 594* . X had pressed the neck of the deceased and as a result, the deceased fell unconscious. X became panicky believing that the deceased was already dead, they hanged the deceased. The death actually occurred due to hanging. The court held that the accused had no intention to cause death or intention to cause bodily injury as was likely to cause death , **but by hanging the body recklessly with gross negligence without verifying as to whether the deceased was dead or not since they hanged the body, they were imputed with the**

knowledge required under the third limb of section 299 of IPC. Accordingly, the accused were convicted under Section 304(ii) of IPC.

MURDER

Section 300. Murder

UNDERSTANDING THE SCOPE | CULPABLE HOMICIDE & MURDER

300 supplements Section 299. Culpable homicide is the genus, and murder, its species. Every murder is culpable homicide, but every culpable homicide is not murder.

Therefore, based on section 299 and 300, we can classify like

- *Culpable homicide amounting to murder* - if it falls within Clause 1 to 4 of Section 300.
- *Culpable homicide not amounting to murder* - If it falls within 5 exceptions to Section 300.

When a 'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of IPC¹³, whereas if an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the IPC.¹⁴

THREE DEGREES OF CULPABLE HOMICIDE UNDER IPC

There are practically three degrees of culpable homicide under *IPC*:

- (4) ***Culpable homicide of the first degree [Or Murder]***, which is made punishable with death or imprisonment for life, to either of which fine may be added (Section 302);
- (5) ***Culpable homicide of the second degree [Or Culpable Homicide not amounting to Murder]***, which is made punishable with imprisonment up to a

¹³ **302. Punishment for murder.**—Whoever commits murder shall be punished with death or [imprisonment for life], and shall also be liable to fine.

¹⁴ **304. Punishment for culpable homicide not amounting to murder.**—Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Part 2 : or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

limit of 10 years, or with imprisonment for life, to either of which fine may be added (Section 304, Pt I); and

- (6) **Culpable homicide of the third degree [Or Culpable Homicide not amounting to Murder]**, which is punishable with fine only, or with imprisonment up to a limit of 10 years or with both (Section 304, Pt II).

UNDERSTANDING MURDER

MURDER | Section 300 has 4 Clauses defining what amounts to murder in reference to Culpable Homicide. Further section 300 is appended with 5 Exceptions. At the end of the day, you should be able to pinpoint 4 Clauses + 5 Exception for our UPSC Law Optional.

<ul style="list-style-type: none"> • if the special requirement under Section 300 Clause 1 to 4 is satisfied, and • if it does not fall within 5 Exceptions. <p>then such culpable homicide will amount to murder.</p>	<ul style="list-style-type: none"> • if the special requirement under Section 300 Clause 1 to 4 is satisfied, and • if it falls within 5 Exceptions. <p>then such culpable homicide not amounting to murder.</p>
<p>Culpable homicide is murder, if it is done with:</p> <p>(i) intention to cause death; or</p> <p>(ii) intention to cause bodily injury knowing that the injury caused is likely to cause death, or</p> <p>(iii) intention of causing bodily injury sufficient in the ordinary course of nature to cause death, or</p> <p>(iv) knowledge that the act is:</p> <p>(a) imminently dangerous that in all probability it will cause death or bodily injury which is likely to cause death, and</p> <p>(b) done without any justification for incurring the risk of causing death or the injury.</p>	<p>Culpable homicide does not amount to murder, if it is:</p> <p>1st Exception : Committed on grave and sudden provocation, provided the provocation was not:</p> <p>(a) voluntarily sought or deliberately caused by the accused;</p> <p>(b) a result of any act done by public servant or in obedience to law; or</p> <p>(c) given by any act done in the exercise of the private defence.</p> <p>2nd Exception : Committed in the exercise of the right of private defence of body or of property by exceeding, in good faith and without premeditation & without any intention of causing harm more than that was necessary for exercising the right of private defence, the right of self-defence.</p> <p>3rd Exception : Committed by a public servant or a person aiding a public servant acting in advancement of public justice by exceeding his powers conferred by law on him, provided:</p> <p>(a) he believed, in good faith, that the act (leading to death) was lawful;</p> <p>(b) he thought it was necessary for discharging his duty, and</p> <p>(c) he had no ill-will towards the person whose death was caused.</p> <p>4th Exception : Committed, without premeditation, in a sudden fight in the heat of passion without taking any undue advantage or acting in a cruel or unusual manner.</p>

5 th Exception : Caused to a person above eighteen years of age with his consent.
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SECTION 300 (1)-(4) | WHEN CULPABLE HOMICIDE AMOUNTS TO MURDER

CLAUSE 1 | SECTION 300 : Culpable homicide is murder, if it is done with '*intention to cause death*'. Such intention can be inferred from action of the person. It can be proved only by its external manifestations.

EXAMPLES :

- *Chahat Khan v State of Haryana AIR 1972 SC 2574* : *Inflicting injuries in vital parts of the human with sharp-edged instruments* – easily the intention to cause death is attributed.
- *Bandampalli Venkateswarlu v State of Andhra Pradesh (1975) 3 SCC 492* : *X had poured kerosene on A, Y sets fire on A – Y's intention to cause death* is clear from his actions.
- *Vasanth v State of Maharashtra AIR 1998 SC 699* : X and Y had previous enmity. X and Y were fighting each other and some other intervened and separated them. But Y after being separated, went into his jeep and drove the car in wrong way and ran over X. SC held that Y's intention to kill X was clear from his actions.

HONOUR KILLING : Shakti Vahini v UOI, AIR 2018 SC 1601 : Honour killings are treated as murder as defined under Section 300 of the IPC and punishable under Section 302 of the IPC.

CLAUSE 2 | SECTION 300 : Culpable homicide is murder, if it is done with "*intention to cause bodily injury knowing that the injury caused is likely to cause death*"

ESSENTIALS

- There should be intention to cause bodily injury/Harm.
- There should be '*subjective knowledge*' that death is the 'likely' result or consequence of such intended bodily injury.

This knowledge, as specified in Cl 2 of Sec.300, indicates definiteness or certainty of death and not a mere probability.

State of Rajasthan v Dhool Singh (2004) 12 SCC 546 : X inflicted incised cut with a sword on the neck of the Y, leading to excessive bleeding and heart failure as a result. SC held that X knew that the bodily injury caused by him would likely cause death of the injured.

Willie (William) Slaney v State of Madhya Pradesh AIR 1956 SC 116, (1956) Cr LJ 291(SC) : *Hit with hockey stick in the head of the deceased while altercation* - SC that X did not have '*subjective knowledge*' to cause death under Cl 2 of Section 300, therefore held liable under Section 304 Part 2. [*CH not amounting to Murder*]

CLAUSE 3 | SECTION 300 : Culpable homicide is murder, if it is done with 'intention of causing bodily injury sufficient in the ordinary course of nature to cause death'

In **Virsa Singh v State of Punjab** AIR 1958 SC 465, Essentials of Section 300(3) was laid down, the prosecution must prove the following:

- It must establish, quite objectively, that a bodily injury is present. [Whereas in 300(2), it is subjective]
- The nature of the injury must be proved.
- It must be proved that **there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or some other kind of injury was intended.**

TEST FOR ACT/OMISSION TO FALL WITHIN SECTION 300(3) : Veera Muthu v State of Madras (1971) 3 SCC 427 : Awareness that certain act will likely to cause death is not required, if the act is sufficient to cause death in the ordinary course of nature, then the accused is guilty of culpable homicide amounting to murder.

CLAUSE 4 | SECTION 300 : Culpable homicide is murder, if it is done with “knowledge that the act is:

(a) imminently dangerous that in all probability it will cause death or bodily injury which is likely to cause death, and

(b) done without any justification for incurring the risk of causing death or the injury”

ESSENTIALS FOR SECTION 300(4)

- (i) the act must be imminently dangerous;
- (ii) the person committing the act must have knowledge that it is so imminently dangerous OR extra-ordinary recklessness ;
- (iii) that in all probability it will cause (a) death or (b) bodily injury as is likely to cause death, and
- (iv) such imminently dangerous act should be done without any reason or justification for running the risk of causing death or such injury.

The intention to kill anybody is not required under Section 300(4) to constitute the offence of murder. Rather it is recklessness of the act, **without any reason or justification, constitutes murder under Section 300(4).**

Judagi Mullah v Emperor AIR 1930 Pat 168, p 171, 31 Cr LJ 243 : Blow in throat in knife is sufficient, in the ordinary course of nature to cause death.

State of Madhya Pradesh v Ram Prasad AIR 1968 SC 881 : Section 300(4) is invoked where there is such callousness towards the result, and the risk taken is such that it may be stated that the person knows that the act is likely to cause death.

Thangaiya v State of Tamil Nadu (2005) 9 SCC 650 : The supreme court held that Section 300(4) is applicable when the knowledge of accused meets the practical certainty that death will be most probable by his action.

Section 302 stipulates a punishment for murder as death or imprisonment for life and fine. For conviction, it is not required that *corpus delicti* be found.

EXCEPTIONS TO MURDER | WHEN CULPABLE HOMICIDE IS NOT MURDER

EXCEPTION 1 : Culpable homicide does not amount to murder, if it is Committed on *grave and sudden provocation*, provided the provocation was not:

- (a) voluntarily sought or deliberately caused by the accused;
- (b) a result of any act done by public servant or in obedience to law; or
- (c) given by any act done in the exercise of the private defence.

QUESTION OF FACT : Explanation to Exception 1 states that whether the provocation was grave and sudden is a question of fact.

IMPORTANT CASE LAW | KM Nanavati v State of Maharashtra AIR 1962 SC 605 X after hearing about illicit relationship of his wife Z, X dropped his wife and children at cinema, then went to ship and took his gun and then shot Z in his flat. And all this happened within time-span of 3 Hours, which would normally be sufficient for man to regain his self-control. For the above-said reason, SC held that Death of Z, by the X would not fall within Exception 1 of Section 300 and was convicted of Murder.

TEST LAID DOWN BY SUPREME COURT IN KM NANAVATI CASE

- The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed, would be so provoked as to lose his self-control.
- Words & gestures can cause grave and sudden provocation.
- Provocation & time interval to cool down will be taken into account.

Hansa Singh v State of Punjab AIR 1977 SC 1801 : X was committing sodomy with the Son of Y. Y on seeing this, got enraged and killed X. Held that Exception 1 to Sec.300 applies was convicted u/s 304.

EXCEPTION 2 : **Culpable homicide does not amount to murder**, if it is Committed in the exercise of the right of private defence of body or of property by **exceeding**, in good faith and without premeditation & without any intention of causing harm more than that was necessary for exercising the right of private defence, the right of self-defence.

QUESTION OF FACT : Whether the exceeding of the right of private defence was done intentionally or unintentionally is a **question of fact based** on the facts and circumstances of each case.

Nathan v State of Madras AIR 1973 SC 665 : Y tried forcefully to evict the X. X in exercise of right to private defence of property, killed the Y. Y did not have any deadly or dangerous weapons, therefore, X his right to private defence was limited, and cannot exceed to cause death. Therefore, it would amount to 'CH not amounting to murder' under Exception 2 of Section 300.

Mohinder Pal Jolly v State of Punjab AIR 1979 SC 577 : Y killed X, who raised provocative slogans and thrown brickbats at the factory. SC held that right to private defence was exceeded, and it would amount to 'CH not amounting to murder' under Exception 2 of Section 300.

EXCEPTION 3 : Culpable homicide does not amount to murder, if it is committed by a public servant or a person aiding a public servant (under section 21 of IPC) acting in advancement of public justice by exceeding his powers conferred by law on him, provided:

- (a) he believed, in good faith (as per Section 52 IPC) , that the act (leading to death) was lawful;
- (b) he thought it was necessary for discharging his duty, and
- (c) he had no ill-will towards the person whose death was caused.

Dakhi Singh v State AIR 1955 All 379 : X, a constable, went to arrest Y, who was suspected-accused of thief. X had no power to shoot the escaping Y, when he did, it shot the Z, who was fireman. X was held to avail the benefit exception 3 of Section 300.

Satyavir Singh Rathi v State through CBI, AIR 2011 SC 1748 : X, a police officer, had fired without provocation at a car killing two innocent persons and injuring one. It was held that X cannot avail the *exception 3 under Section 300*, and was held for murder.

EXCEPTION 4 : Culpable homicide does not amount to murder, if it is committed, without premeditation, in a sudden fight in the heat of passion without taking any undue advantage or acting in a cruel or unusual manner.

ESSENTIAL FOR APPLICATION OF EXCEPTION 4 OF SECTION 300 : *Surinder Kumar v Union Territory, Chandigarh AIR 1989 SC 1094* : (a) There was a sudden fight; (b) there was no premeditation, (c) the act was done in a heat of passion; and (d) assailant had not taken any undue advantage or acted in a cruel manner.

TEST :

- What is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger.
- The offender must not have taken any undue advantage or acted in a cruel manner.
- Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy, and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception, provided he has not acted cruelly.

Manoj Kumar vs The State Of Himachal Pradesh AIR 2018 SC 2693

- It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel.
- It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case.

EXCEPTION 5 : Culpable homicide does not amount to murder, if it is caused to a person above eighteen years of age with his consent.

Masum Ali v Emperor AIR 1929 Lah 50 , 16 Year old girl is incapable to give consent to kill herself. X, who killed her, would be liable for murder.

Dasrath Paswan v State of Bihar AIR 1958 Pat 190 : X wanted end his life due to sore distress. Y, wife of X, told X to kill her first and then to kill himself. X killed Y, and before he could kill himself, he was caught. Held that Exception 5 to Section 300 was applicable.

In similar facts, in **Queen v Anunto Rurnagat 6 WR 57 (Cr)** : X and Y, husband and wife wanted to kill themselves for the grief of loss of their children. **X killed Y by three blows with an axe**. Held that Exception 5 to Section 300 was applicable.

Section 304. Punishment for culpable homicide not amounting to murder.—

The section is divided into two parts; **Offence under Part 1 of Section 304 is higher degree than Part 2 of Section 304.**

The **first part of Section 304**. is concerned with culpable homicide committed with either of the two types of *intention* i.e., where there is an intention to cause death, or bodily injury likely to cause death. It prescribes a *sentence of imprisonment for life or imprisonment of either description for a term up to ten years and fine*.

the **second part of Section 304** is concerned with culpable homicide committed with *particular knowledge [of a likelihood of death]*. It prescribes an *imprisonment of either description for a term up to ten years and fine*.

DIFFERENCE BETWEEN CULPABLE HOMICIDE & MURDER | IMPORTANT

- ‘Culpable homicide’ is genus and ‘murder’ its specie. All ‘murder’ is culpable homicide, but not vice-versa. For purposes of fixing punishment, proportionate to the gravity of this offence, IPC practically recognises three degrees of culpable homicide. *[Refer above]*
- Two offences involve the killing of a person, viz, the offence of ‘culpable homicide’ and the more heinous offence of ‘murder’.
- *Special mens rea* (as stated under Section 300 Clause 1 to 4) is required make an killing as murder.

CULPABLE HOMICIDE	MURDER
<p>A person commits culpable homicide, if the act by which the death is caused is done:</p> <p>(a) With the intention of causing death;</p> <p>(b) With the intention of causing such bodily injury as is likely to cause death;</p> <p>(c) With the knowledge that the act is likely to cause death;</p>	<p>Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done:</p> <p>(1) With the intention of causing death;</p> <p>(2) With the intention of causing such bodily injury, as the offender knows to be likely to cause the death of the person to whom the harm is caused;</p> <p>(3) With the intention 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;</p> <p>(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death and committed without any excuse for incurring the risk or causing death or such injury as aforesaid.</p>

CL (a) of SECTION 299 & CL (1) of SECTION 300 : Clause (a) of Sec.299 & Clause (1) of Sec.300 are identical, therefore, act with intention of causing death is Murder. It is punished by Section 302.

CL (b) of SECTION 299 & CL (2), (3) OF SECTION 300 : Clause (b) of Sec.299 merely stipulates that *if death is caused by an act, with the intention of causing such bodily injury as is likely to cause death it amounts to culpable homicide.*

But in case of Clause (2) of Section 300, if an act is done with the intention of causing such bodily injury which is likely to cause death, further explains that the *intentional causing of bodily injury should be accompanied with the knowledge that the bodily injury is likely to cause death.*

The word 'likely' marks the important difference. In case of Section 299 clause (b) – It is mere possibility or Probability, whereas under Clause (2) of Section 300, denotes not mere probability, rather it is certainty of death.

Similarly, **Section 300 Clause (3)**, in comparison, with Section 299 Cl(b) clarifies that the intention of causing bodily injury is accompanied by a further objective of certainty that such bodily injury is sufficient in the ordinary course of nature to cause death. This clause is also makes the death ***certain***, in comparison to Section 299 Cl(b) where the death is ***probable***.

CLAUSE (C) OF SECTION 299 & CLAUSE 4 OF SECTION 300 : Similar to above-said clause, the word 'likely' indicates the very high degree of probability of death under Section 300 Cl(4) in comparison to Section 299 Cl (c).