

Subject: LAW

Production of Courseware

e- Content for Post Graduate Courses



Paper : SUBSTANTIVE CRIMINAL LAW

Module : CULPABLE HOMICIDE



Quadrant-I (B) Description of Module:

Description of Module	
Subject Name	Law
Paper Name	Substantive Criminal Law
Module Name/Title	Culpable Homicide Not Amounting to Murder
Module Id	Module 05
Pre-requisites	A foundational understanding of the basic principles of criminal law.
Objectives	To understand culpable homicide and how it differs from murder
Keywords	Homicide, murder, knowledge

Quadrant – II – e-Text

CULPABLE HOMICIDE

Introduction

Some crimes are creations of statutes. These are called statutory offences. Other crimes come from years of judicial decisions together with legal principles founded on Institutional Writers. These are called common law offences. Murder and culpable homicide are both common law offences. Most common law offences require two essential elements before there can be a conviction. There must be a guilty act (called *actus reus*) and a guilty mind (*mens rea*). The degree and extent of the guilty mind can vary from crime to crime. For a conviction for any common law offence however there must be some degree of guilty mind (*mensrea*).

Homicide means the killing of a human being by a human being¹. Homicide is the highest order of bodily injury that can be inflicted on a human body. Since it is considered as a most serious harm which may be inflicted upon another person, it bags maximum punishment. Under Indian law and US law imposes death penalty² and in English law proposes mandatory life imprisonment. However in every case of homicide the culprit is not culpable. There may be cases where a law will not punish a man for committing homicide. For example, death caused in exercise of self defence, by reason of mistake of fact, bonafide execution of law etc. Likewise, if death is caused without any criminal intent or by an accident or misfortune, the man will be excused from criminal liability. On the other hand if

¹ Stephen “ *A history of the Criminal Law of England*”, (1883), Vol.III, P.1

² In india for all homicide capital punishment is not mandatory and can invoke only in rarest of rare case only.

the killing is not justified either by law or facts the accused will be prosecuted and punished under law. Hence homicide may be lawful or unlawful.

Lawful homicide may be classified as excusable and justifiable homicide³. Unlawful homicide may be divided into three categories, culpable homicide, cause death by rash and negligent driving and suicide. Under Indian law culpable homicide is classified into two; culpable homicide amounting to murder and culpable homicide not amounting to murder. Under English law there are several homicide offences: murder, manslaughter (both voluntary and involuntary) infanticide, death by rash driving and suicide⁴.

Learning out Come

This module will enable the learners to :

- i. Understand culpable homicide
- ii. Difference between culpable homicide and murder
- iii. To understand the degrees of intention in culpable homicide

Culpable homicide- statutory meaning

In common law culpable homicide means the crime of killing someone illegally but without intending or planning to kill them. The scheme of the Indian penal code , culpable homicide⁵ termed as manslaughter under English law which is the genus and then murder which is a specious of culpable homicide. The residuary of culpable homicide after the special characteristics of murder have been taken away from it, is culpable homicide not amounting to murder. Definition under section 299⁶ is not exhaustive. However the definition says, the important elements are:

- a. causing of death of a human beings,
- b. such death must have been caused by doing an act
 - i. with the intention of causing of death; or

³ All offences under chapter IV of the IPC comes under the category of excusable and justifiable offences.

⁴ Suicide was an offence until the Suicide act 1961 but some aspect of crime sill remain.

⁵ Section 299 of Indian Penal Code

⁶ 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 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.

- ii. with the intention of causing such bodily injury as is likely to cause death; or
- iii. with the knowledge that the doer is likely by such act to cause death.

Further explanation I provides for a situation where the injured person is suffering from some disorder, disease or bodily infirmity, which quickened his death. Explanation II provides for a situation wherein a person who has been injured could have recovered and escaped death, if, he had been given prompt and proper medical treatment. Explanation III states that if the death of the child is caused when he is in the womb, it is not culpable homicide. However if any portion of the child, comes out of the mothers womb, even if it is not fully born, and if death is caused to such child, then it would amount to culpable homicide. The murder provisions of the Penal Code are part of the broader category of culpable homicide offences under section 299. Hence, every murder is necessarily culpable homicide as well, but not *vice versa*.

Mental element in culpable homicide

The word “intention” in clause (a) to section 299, IPC has been used in its ordinary sense, volitional act without being able to foresee the consequences with certitude. An act is said to be intentional when it is done with a desire that certain consequence will follow it. When the result is substantially certain or inevitable, no difficulty arises because in such cases one can resume from the circumstances of the case the consequences to be intended. As a general rule, every sane person is “presumed to intend” the necessary or natural and probable consequences of his acts; and this presumption of law will prevail unless from consideration of all the evidence the court entertains a reasonable doubt as to whether such intention existed.

Intention under section 299 does not always necessarily mean pre-meditation or pre-planning to kill a person. The requisite is that the act of the person is likely to result in death is sufficient to constitute intention. It is presumed that every man for his every act expects certain consequences unless contrary is proved. So, if a person in performing some act either (i) expects death to be the consequences thereof ; or (ii) expects a dangerous injury to be the consequences of his act; or (iii) knows that death is likely consequences of his act, and in each case death ensues, his intention in the first two case, and his knowledge in the third renders the act a homicide⁷. A guilty intention or knowledge is thus essential to the offence

⁷ *Mohammed Arif v. State of Uttaranchal* (2009) 11 SCC 497, PSA Pillas “ *Criminal Law*”, Lexis Nexis, New Delhi, (12th- edn-2014) p.573

under this section. Intent and knowledge in section 299 postulate the existence of positive mental attitude which is of different degrees.

In *state of Andra Pradesh v. Rayavarapu Pannayya*⁸, the honourable Supreme Court recognised three degrees of culpable homicide such as ;

- a. Culpable homicide of the lowest degree which is punishable with fine only or with imprisonment upto a limit of ten years or with both.
- b. Culpable homicide of second degree, which is made punishable with imprisonment upto a limit of ten years, or with imprisonment of life, to either of which fine may be added
- c. Culpable homicide of the highest degree or murder which is made punishable with death or imprisonment for life to either of which fine may be added.

In a difficult case where the defendant may not have acted with the purpose of killing or causing grievous bodily harm, but that was extremely likely the result of the defendants actions, then the jury should be given the *Woollin*⁹ directions, that jury may find intention only if the death or grievous bodily harm was a virtually certain result of the defendants action and the defendant realized this was so. The same proposition was taken by the Supreme Court in *Moti Singh v.State of Uttar Pradesh*¹⁰ that the connection between the primary cause and the death should not be too remote. The presence of intention is always a question of fact. Direct proof of intention is always very difficult to obtain. However it can be ascertained through subsequent conduct , motive, nature of weapons used and so on. In *Chahat Khan v, State of Haryana*¹¹, supreme court held that when injuries are inflicted on vital parts of the body like abdomen by a lethal or sharp edged weapon, the irresistible inference is that the accused intended to kill the deceased.

The first illustration to section 299 explains that even if the act of a person is not indented or aimed at any particular person, it would amounts to culpable homicide. Illustration (d) to clause of section 300 also gives an example of a person randomly shooting into a crowd and killing one of them. He is said to be guilty of murder. Both these illustrations are the best examples where the offenders did not have intention against any particular person¹².

⁸ AIR 1977 SC 45

⁹ *R v. Woollin*, [1999] AC 82 (HL);[1998] 4 All ER 108.

¹⁰ AIR 1964 SC 900, (1964) CrLJ 727 (SC)

¹¹ AIR 1972 Sc 2574.

¹² PSA Pillas “ *Criminal Law*”, Lexis Nexis, New Delhi, (12th- edn-2014) p.574

In *Kashi Ram v. State of Madhya Pradesh*¹³, in which the accused fired a shot at a particular member of the adversary party but it hit another person and killed him, the Supreme court applied the doctrine of transferred malice to hold him guilty under section 304, part II as he neither aimed at nor intended death of the deceased.

Knowledge as mensereae

The third degree of intention contemplated under the definition of culpable homicide is knowledge. In the scheme of the section, the least or the minimum degree of mental element contemplated to make an act of homicide culpable is the knowledge that the act is likely to cause death. It denotes the state of consciousness of certain facts in which human minds remain inactive. The offender should reasonably expect that the consequence of his act probably would result in the death of the person, even if he does not intend to cause death. The word “likely” denotes a lower degree of likelihood of death. The word likely in section 299 conveys the sense of probability as distinguished from merely possibly or probability.¹⁴

In an English case, *R v. Cunningham*¹⁵, where the House of Lords upheld the conviction of a defendant who killed a victim by hitting him on the head with a chair. Even though there was no intent to kill, the defendant intended to cause grievous bodily harm, and that was sufficient for a murder conviction. Historically the mensrea for murder has been described as “malice afterthought”, although this is a misleading phrase because there is no need to show any kind of malice or ill-will¹⁶. Here the court took a different connotation for the term intention. Lord Asquith in *Cunliff v. Goodman*¹⁷ explained the intention “connotes a state of affair which a party intending... does more than merely contemplate: it connotes a state of affair which, on the contrary, he decides, so far as in him lies, to bring about”

Intention and knowledge appear in section 299 are used as an alternative ingredients to constitute the offence of culpable homicide. The difference between the two came to be considered by the supreme court in *Basde v. State of Pesp*¹⁸, held:

“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

¹³ AIR 2001 SC 2002

¹⁴ *Rajpal v. State of Haryana*, (2006) 9 SCC 678, PSA Pillas “*Criminal Law*”, Lexis Nexis, New Delhi, (12th-edn-2014) p.573

¹⁵ [1982] AC 566 (HL); [1981] 2 All E.R.863

¹⁶ Jonathan Herring “*Criminal Law Text, Cases, and Materials*” Oxford University press, United Kingdom, (Fifth Edition-2012) P.240.

¹⁷ [1950]2 KB 237, 253 (CA)

¹⁸ AIR 1956 SC 488

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 cannot be different things”¹⁹

In *R v. Nedrick* ²⁰, court of Appeal held that knowledge or foresight of the probable consequences of an act cannot take the place of intention. Further added, with regard to the mental element in murder a jury is merely required to determine whether, having regard to all the circumstances, including what he said and did, the defendant intended to kill or do serious bodily harm. It followed that the judge’s discretion was wrong because it equated foresight with intent whereas foresight of consequences could be only evidence of intent to commit murder. Knowledge is a strong word and imports a certainty and not merely a probability and also attributes intention²¹.

A death may be caused either by commission or omission. In the case of omission, a person will be culpable only if a legal duty is attached to him. In order to ascertain whether omission amounts to crime, the first test to identify is the duties which tend to the preservation of life. These duties include both legal as well as moral. For instance, duty of the husband to take care of his wife, son’s duty towards parents, a doctor’s duty towards patient, a fellow citizen’s duty towards his counterpart etc. In *R v. J.M. Sheppard and R v. J.C. Sheppard*²², a 16 year old child died due to some diseases. But the parents failed to call the doctors because of their poverty and low intelligence. The Court of Appeal convicted the parents for the wilful neglect to take care of their child. However, the House of Lords quashed the conviction and held that mensrea is necessary to prove the guilt of the parents and the question is whether such person is aware at the relevant time the child’s health might be at risk if it did not receive medical aids, or that parents awareness of that fact was due to his not caring whether his child’s health was at risk or not. Prior to this judgment rule in *Seniors case*²³ was in existence that in a statutory charge of cruelty to children it was sufficient for the prosecution to establish that a child had in fact been neglected and that the state of mind of parent or other custodian are irrelevant²⁴. In another unprecedented case, *Dog Mauling Case*, Los Angeles Court held owner liable for manslaughter (culpable homicide) by gross negligence for death caused by a vicious dog. The court rejected the

¹⁹ Ibid, para 5

²⁰ [1986] 3 All ER 1 (CA)

²¹ *Shankar Kondiba Gore v. State of Maharashtra*, 1995 2 CrLJ 1281 (P&H); *Takhaji Hiraji v. Thakore Kubersing*, AIR 2001 SC 2328.

²² [1980] 3 WLR 961 (HL)

²³ *R v. Seniors*, [1899] 1 QB 283

²⁴ K.D. Gaur “*The Commentary on Indian Penal Code*” Universal Law Publishing Co, New Delhi (2nd ed-2013) P.731.

theory of accidents and held the very act of keeping such ferocious dog clearly indicates that the defendant has acted in conscious disregard of a known risk to human life for which he is liable for manslaughter. In *Director of Public Prosecution v. Newbury and Jones*²⁵, held killing by gross negligence amount to constructive manslaughter.

The Allahabad high court in *Brij Lal Verma v. SP, CBI*²⁶ expressed its anguish over increasing incidents of police encounters in the country said that police encounters are nothing but murders and the guilty police officers deserves death penalty. Further in *Prakash kadam v. Ramprasad viswanth Gupta*²⁷, the supreme court also expressed the same.

Punishment for culpable homicide

Section 308²⁸ of the IPC deals with attempt to commit Culpable Homicide, Section 304, punishment for culpable homicide not amounting to murder and 307 deals with attempt to murder. Section 304²⁹ says about punishment for culpable homicide not amounting to murder. On the basis of imposition of punishment, the section can be divide into two parts. The punishment –prescribed under the section varies with a wide range from imprisonment for life to the imposition of mere fine. The varying sentence depends on the degree of intention and knowledge of causing death that is imputed to the accused. The first part prescribes a sentence of imprisonment for life or imprisonment of either description for a term of ten years and fine for 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. This part clearly shows that this part covers offences where intention to commit the offence is present. However the second part applies to offences where the act is done with the knowledge that is likely to cause death, but without any intention to cause death or such bodily injury as is

²⁵ [1976] 2 All ER365 (HL)

²⁶ 2001 All LJ 1144

²⁷ (2011) 6 SCC 189

²⁸ Section 308-Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Illustration A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

²⁹Section 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.

likely to cause death. The offence under section 304 part is of higher degree than that under its second part. The intention and knowledge prescribed under this section is of a lesser degree than that which is described under section 300, IPC.

Section 307 and 308 provides punishment for attempt to commit murder and culpable homicide. To invoke this section two elements are essentials, firstly, intention or knowledge to commit murder, secondly the actual act of trying to commit the murder³⁰

Difference between culpable homicide and murder.

The true difference between culpable homicide and murder is only the difference in degrees of intention and knowledge. A greater the degree of intention and knowledge, the case would fall under murder. A lesser degree of intention or knowledge, the case would fall under culpable homicide. However, it is difficult to arrive at any categorical demarcations or strait jacket difference between culpable homicide and murder.³¹

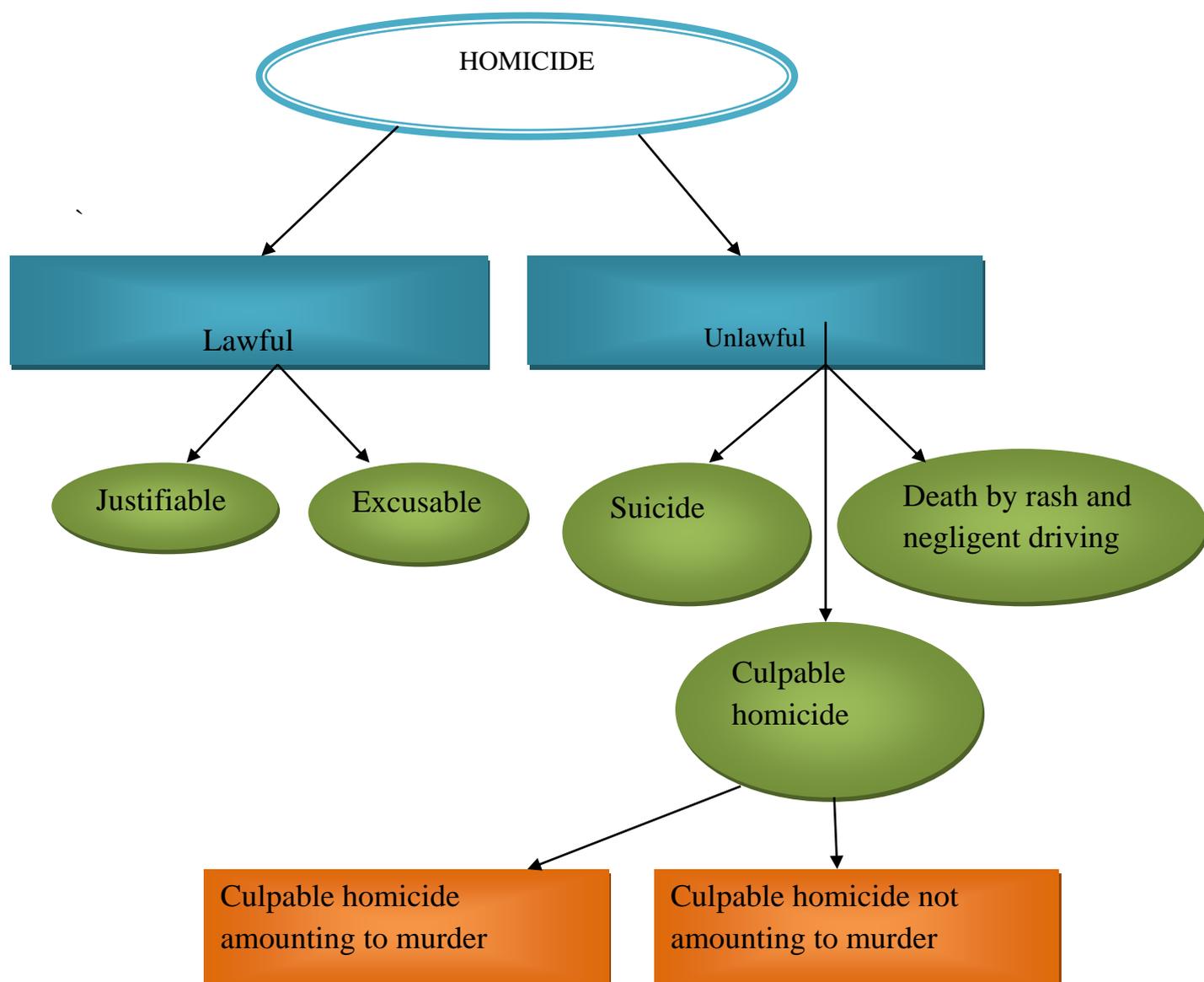
CULPABLE HOMICIDE		MURDER
1.	With the intention of causing death	a. with the intention of causing death b. with the intention of causing such bodily injury, as the offender knows to be likely to cause the death of the person to whom the harm is caused
2.	with the intention of causing such bodily injury as is likely to cause death	with the intention of causing such bodily injury to any person, and the bodily injury indeed to be inflicted is sufficient in the ordinary course of nature to cause death.
3.	With the knowledge that the act is likely to cause death	With the knowledge that the act is imminently that it must in all probability causes death, or such bodily injury as is likely to cause death and committed with out any excuse for incurring the risk or causing death or such injury as aforesaid.

³⁰ *Sumersimbh Umedsinh Rajput v. State of Gujarat*, (2007) 13 SCC 83

³¹ PSA Pillas “ *Criminal Law*”, Lexis Nexis, New Delhi, (12th- edn-2014) p.573

Conclusion

One of the criticism is both the culpable homicide and murder are not properly defied. The Fifth Law Commission³² suggested to redefine section 299 and 300. Apart from this, it also recommended two proposals with regard to punishment: (1) the punishment of life imprisonment, as it has never been awarded, be deleted from the provision and (ii) only one maximum punishment(of punishment for a term upto ten years with fine) should be provided for culpable homicide not amounting to murder. However, these proposals are not counted either in criminal Law Amendment Bill, 1978 or the 156th report on the IPC of the fourteenth Law Commission.



³² Law commission of India, ' forty second Report- The Indian Penal Code', Government of India, 1972

Culpable homicide
(sec-299)

Ingredients

Causing of death of a human beings

Such death must have been caused by doing an act

- i. with the intention of causing of death; or
- ii. with the intention of causing such bodily injury as is likely to cause death; or
- iii. with the knowledge that the doer is likely by such act to cause death.

Explanation I

Where the injured person is suffering from some disorder, disease or bodily infirmity, which quickened his death.

Explanation II

A person who has been injured could have recovered and escaped death, if , he had been given prompt and proper medical treatment.

Explanation III

Explanation III states that if the death of the child is caused when he is in the womb, it is not culpable homicide. However if any portion of the child , comes out of the mother's womb, even if it is not fully born, and if death is caused to such child, then it would amount to culpable homicide.