


Subject: **Criminology**

Production of Courseware

 - Content for Post Graduate Courses



Paper : **Fundamentals of Crime, Criminal Law and Criminal Justice**

Module : **Culpable Homicide Not Amounting to Murder**



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#### Quadrant I- Description of the Module

Description of Module	
Subject Name	Criminology
Paper Name	Fundamentals of Crime, Criminal Law and Criminal Justice
Module Name/Title	Culpable Homicide Not Amounting to Murder
Module Id	12
Pre-requisites	A general understanding of the primary principles of criminal law is required for a proper understanding of this module.
Objectives	<p>To understand the excusable defences based on consent of the person being harmed or on the consent of his guardian</p> <p>To understand the meaning of the term 'consent' as used in the Indian Penal Code.</p> <p>To understand the excusable defence of doing a beneficial act without consent</p> <p>To understand the excusable defence of communication made in good faith</p> <p>To understand the excusable defence of acts done under compulsion</p> <p>To understand the excusable defence of</p>

	trivial acts.
Key Words	Culpable homicide, grave and sudden provocation, sudden quarrel, sudden fight, public servant, consent, private defense

## Quadrant- II- E-Text

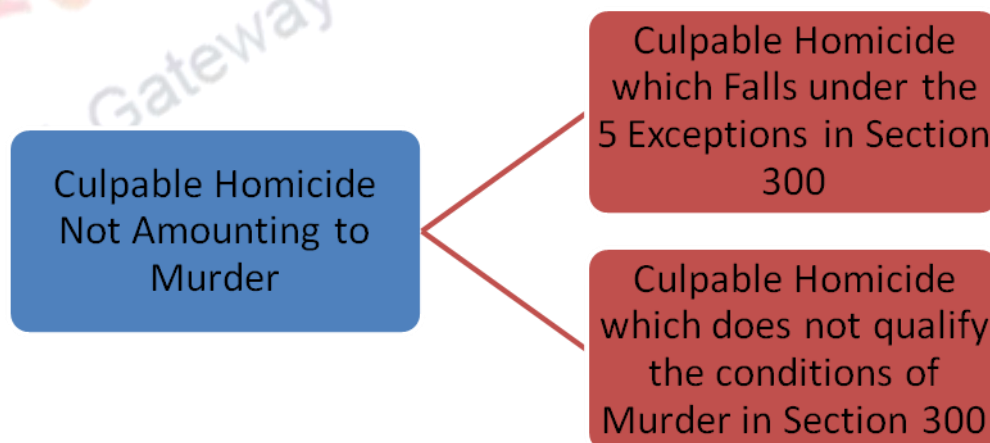
### Introduction

Causing the death of another person is the most severe form of crime against human body contemplated in the Indian Penal Code. Consequently, this crime is accompanied with the maximum punishment of death in case of culpable homicide amounting to murder and life imprisonment in case of culpable homicide not amounting to murder.

Generally, a trial of culpable homicide is time consuming and involves greater complication considering the nature of the offence and the consequences of conviction. Thus it is extremely important to understand the statutory scheme which deals with the offence of culpable homicide.

### Statutory Scheme

Section 299 of the Indian Penal Code defines 'culpable homicide'. Section 300 provides a list of conditions in which culpable homicide will be considered as murder. Section 300 also provides a list of exceptions to the conditions which transform culpable homicide to murder. Thus, whenever any culpable homicide comes under the scope of the conditions set out in Section 300, the same is considered as murder. Whenever any culpable homicide does not come under the conditions set out in section 300 or comes under the exceptions to the conditions set out in section 300, the same is considered as culpable homicide not amounting to murder.



### Definition of Culpable Homicide

Section 299 defines culpable homicide in the following manner;



1. X causes the death of Y by committing an act
2. X commits the act;
  - a. With the intention of causing death  
or
  - b. With the intention of causing such bodily injury as is likely to cause death  
or
  - c. With the knowledge that he is likely to cause death by such an act

It needs to be noted that that when X causes bodily injury to Y which is likely to cause Y's death, it is not necessary for X to have known that the bodily injury being inflicted by him was likely to cause death. It is sufficient if can be established that X intended to cause the bodily injury which he did.<sup>1</sup>

X looking to beat up Y, smashes an iron rod on his chest. Broken ribs of Y pierce his heart and he dies. Here, what needs to be establishes is that X intended to smash the iron rod in Y's chest and that in reality, such bodily injury is likely to cause death. X' knowledge that such bodily injury is likely to cause death need not be established.

The three explanations to section 299 provide further clarity in this regard.

#### Explanation-1

When Y is labouring under any disorder, disease or bodily infirmity and X causes such bodily injury to Y which accelerates Y's death, X is deemed have caused Y's death.

#### Explanation-2

When X causes bodily injury to Y resulting in the death of Y, X is deemed to have caused the death of Y even if Y could have survived by resorting to proper remedies and skilful treatment.

Thus X cannot rely on lack of proper medical treatment to escape criminal liability. While having an argument, X hits Y's head with a wooden plank. Friends of Y try to get him to a hospital but they are delayed due to a strike called by a political party. The doctors are unable to save Y and confirm that chances of his survival would have been better had he been brought in earlier. Here, X is liable for culpable homicide and cannot argue that the reason for Y's death was the delayed arrival in the hospital.

#### Explanation-3

When X causes the death of Y, a child in the womb of his mother, it is not homicide but causing the death of a living child may amount to culpable homicide if any part of that child had been brought forth although the child may not have breathed or been completely born.

### Exceptions in Section 300

#### Exception 1

1. X was deprived of the power of self control
2. X was so deprived due to sudden and grave provocation by Y
3. X causes the death of Y

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<sup>1</sup> Behari v State AIR 1953 All 203



or

- X causes the death of any other person by mistake or accident
4. X did not seek the seek the provocation or did not himself provoke Y as an excuse for killing him or harming him
  5. X was not provoked by something which Y did in obedience to the law
  6. X was not provoked by Y, being a public servant, acting in the lawful exercise of his powers
  7. X was not provoked by anything which Y did in Y's lawful exercise of the right of private defence

Whether provocation is sufficiently sudden and grave to keep culpable homicide from being considered as murder is a question of fact in each case to be decided according the varying and particular circumstances.

For an act to fall under this exception, the provocation caused to X must be both grave and sudden. Provocation which is not grave in nature or which is not sudden in nature will not be considered under this exception. Thus when X is provoked by his wife defiantly proceeding to another man's house for committing adultery<sup>2</sup> and when X is provoked by catching his wife in actual act of adultery<sup>3</sup> are considered separately. In the first case, though the conduct of the wife constitutes provocation, it cannot be classified as grave and sudden. Whereas in the second case, discovering one's wife indulging in adulterous act has been held as grave and sudden provocation.

Though whether the provocation is grave and sudden has to be assessed in each case, the court will generally consider how a reasonable man belonging to the same class of society would react if placed in a similar situation as the accused.<sup>4</sup>

It is equally important that the grave and sudden provocation must have resulted in a loss of self control for the accused. If the conduct of the accused shows that even when provoked, he had not lost self control and was acting deliberately, then any death caused by him will constitute murder.<sup>5</sup>

X catches Y having sexual intercourse with his wife. He immediately leaves the house and check into a hotel for the night. Next day, he comes back to his house talks to his wife. After a conversation, while having a meal, X mixes poison in his wife's food.

This is a situation where it is apparent that X has acted with meticulous planning. Though it can be said that catching his wife red handed in an adulterous act must have provoked him greatly. His actions indicate that he has acted with planning and not under loss of self control. This case will not come under the exception of grave and sudden provocation.

<sup>2</sup> Mathappa Gounda AIR 1954 Mad 538

<sup>3</sup> Mangal AIR 1925 Nag. 37

<sup>4</sup> K.M. Nanavati v State of Maharashtra AIR 1962 SC 605

<sup>5</sup> Mishra, S.N., (2004) *Indian Penal Code* ( pp. 411-413)



## Exception 2

1. X causes the death of Y
2. X, in good faith, was exercising his right of private defence of person or property
3. X exceeds the power given to him by law while exercising his right of private defence
4. X acted without premeditation
5. X acted without any intention of doing more harm than is necessary in exercise of his right of private defence

For this exception to be applicable, it is essential that X indeed had a lawful right of private defence in the given situation.<sup>6</sup>

Y is running towards X with a sword in his hands to attack X. X grabs a brick and throws it at Y in order to prevent him. Unfortunately, the brick hits Y in his head as a result of which Y dies.

This is a situation which will be covered under the exception. Here while trying to defend himself, X has exceeded his right of private defence. X has not intentionally try to strike the head of Y but has thrown the brick in the general direction of Y.

X catches Y, a thief, trying to break into his house. On being caught, Y tries to run away. X shoots at him while Y is trying to run away and the bullet pierces Y's heart.

Here, X will be guilty of murder and not culpable homicide not amounting to murder. The minute Y was trying to run away, there was no persisting danger to the life of X or to his property and thus he no longer had the right of private defence.<sup>7</sup>

<sup>6</sup> Vibhute, K.I., (2011) *Criminal Law* (pp. 803-804)

<sup>7</sup> On when the right to private defence terminates, see *Omkarnath Singh v State of Uttar Pradesh* AIR 1974 SC 1550



### Exception 3

1. X is a public servant or is aiding a public servant acting for the advancement of public justice
2. X causes the death of Y while doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duties
3. X exceeds the power given to him by law
4. X acts without any ill-will towards Y

This exception is not applicable when X is trying to do something illegal or something definitively and explicitly beyond his lawful authority.

X, a police officer has been tasked with arresting, Y, a well known thug. However, Y tries to resist his arrest by becoming physically violent. In order to overpower him, X hits him very hard and Y falls down. While falling down, Y's head hits a stone and he dies due to the head injury.

Here, X will be entitled to the benefit of this exception as the death of Y has occurred while X was trying to discharge his lawful duties.

X, a police officer, suspects Y of having an affair with his wife. When there is a theft in the locality, without any proper investigation or evidence, X accuses Y of being the thief and tries to arrest him. Y resists and a fight breaks out. X points his gun at Y and asks him to stop but Y does not listen. Finally, X fires at Y and as a result Y dies.

In this case, X will not be entitled to the benefit of this exception and will be held guilty of murder. Firstly, X was trying to do something which was clearly illegal. Secondly, it is clear that he was not in genuine belief that Y is responsible for the theft but trying to settle his personal scores.

### Exception 4

1. X causes the death of Y
2. The death was caused in a sudden fight between X and Y
3. The sudden fight was the result of heat of passion upon a sudden quarrel
4. X acts without premeditation
5. X has not taken undue advantage or acted in a cruel or unusual manner
6. It does not matter whether X provoked Y or Y provoked and which one of them commits the first assault.

For this exception to be applicable, a mere verbal argument is not sufficient. There must have been a physical fight between X and Y.<sup>8</sup> The fight must not have been a planned one but which happened in the spur of the moment. In such a scenario, when X has acted without premeditation and has not taken undue advantage or acted in a cruel or unusual manner, he will be held liable for culpable homicide not amounting to murder.<sup>9</sup> It is to be noted that both the quarrel and the fight must be sudden. If the quarrel was premeditated but the fight was sudden, this exception will not apply.

X passes sexual comments on the sister of Y while Y and his sister are walking down the road. Y immediately objects to this and a heated argument ensues between him

<sup>8</sup>Vibhute, K.I., (2011) *Criminal Law* (pp. 805-806)

<sup>9</sup>Dharman v State of Punjab AIR 1957 SC 324

and X. With neither of them relenting, the argument escalates into a fight. From the injuries suffered in the fight, X dies in the hospital.

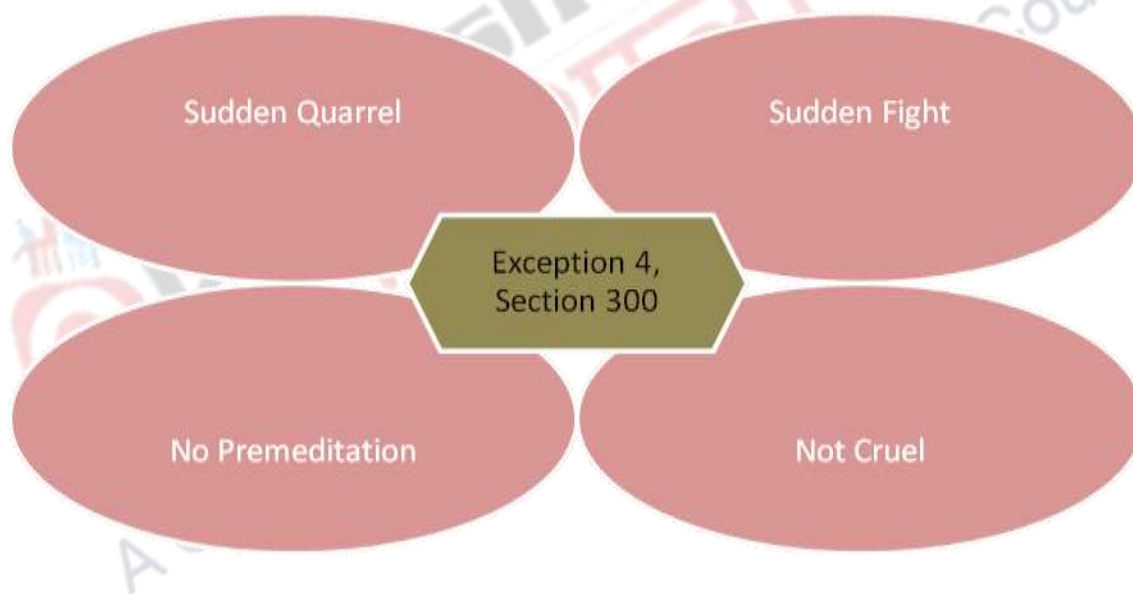
In this case, Y will be liable for culpable homicide not amounting to murder.

X passes sexual comments on the sister of Y. Y's sister complains about this at home in the night. Next day, Y confronts X and fight starts soon after. X dies because of the injuries sustained.

Here Y will not be entitled to the benefit of this exception as the cause of the quarrel was not sudden. The quarrel was premeditated on his part.

X being disturbed with loud party noises from the house of his neighbour Y till late at night, confronts Y and asks him stop the noise. In the fight which ensues, X knocks Y unconscious and while Y is lying motionless on the ground, smashes a big rock on Y's skull repeatedly.

Here, though both the quarrel and the fight were sudden, X acted in a cruel manner. Had Y been killed during the course of fight by an unintended use of extra force, perhaps it would have been culpable homicide not amounting to murder. However, here X had no excuse to smash a rock on Y's skull when Y had already lost the fight and was unconscious.



#### Exception 5

1. X causes the death of Y
2. Y is above the age of eighteen years
3. Y suffers death or takes the risk of death with his own consent

This exception applies to situations where a person has consented to his own death being caused by another person.<sup>10</sup> At one level, it is but the suicidal instincts of a person being executed not by himself but by another person.

<sup>10</sup> Dashrath Paswan v State of Bihar AIR 1958 Pat. 190





X and Y lost their only son in a road accident. Since then Y has been severely depressed and keeps on asking X to terminate Y's life as she cannot bear to live anymore. After failing to counsel her, one day X fulfils Y's desire by administering poison to her.

In this case, X is liable for culpable homicide not amounting to murder.

It needs to be noted that the meaning of consent under this exception will be guided by the guidelines under section 90. Thus, consent under this section has been free. As per section 90, consent is not free;

1. When Consent is given under misconception of fact and if the person committing the act knows or has reason to believe that the consent has been given due to such misconception
2. When Consent is given under fear of injury if the person committing the act knows or has reason to believe that the consent has been given due to such fear
3. When consent is given by a person who due to the unsoundness of his mind is not able to understand the nature and consequences of the act for which he is giving consent
4. When the consent is given by a person who is under twelve years of age

Y is a person of unsound mind and pleads X to kill him so that he swim in the sky with angels. X kills Y.

X will be liable for murder as Y is not a person capable of understanding the consequences of what he is requesting for.

X assures Y that that if Y gives up his life, Y's heart will be transplanted to Y's son which is suffering from severe coronary problems. Thus Y allows X to medically terminate his life. However, X never intended to use Y's heart for Y's son. He instead uses it for Z, the son of a powerful politician.

Here, the consent of Y is given under misconception of fact. X will be liable for murder.

### Summary

1. Any culpable homicide which falls under the exceptions to section 300 or which does not fall under the exceptions but is also not covered under the conditions of murder enumerated in section 300, is classified as culpable homicide not amounting to murder.
2. Grave and sudden provocation which does not result in a loss of self-control does not fall under the purview of Exception 1
3. To claim the exception of grave and sudden provocation, the accused must not have sought the provocation himself.
4. For Exception 2 to be applicable, the right of private defense must be subsisting when the accused causes the death of the victim.
5. For Exception 3 to be applicable, the public servant or the person aiding the public servant must not be doing something illegal or definitively beyond the lawful authority of the public servant.
6. For Exception 3 to be applicable, the public servant or the person aiding the public servant must not have had an ill-will towards the victim.
7. For Exception 4 to be applicable, both the quarrel and the fight must have been sudden and not premeditated.



8. For Exception 5 to be applicable, the consent of the person whose death has been caused must have been a free one.

