THE INDIAN PENAL CODE
CULPABLE HOMICIDE AND MURDER

'All murders are culpable homicide, but all culpable homicides are not murders. Culpable homicide is the genus, and murder, its species'

MEANING

Homicide is the killing of a human being by a human being. The word homicide comes from the Latin term, *homo* which means 'man' and *cido* which means 'I cut'. Section 45 and 46 define 'life' and 'death' respectively.

Homicide may be culpable or non-culpable. The term culpable refers to blameworthy or a thing which is offensive.

It may either be lawful or unlawful. **Lawful Homicide** includes several cases falling under *Chapter IV* dealing with General Exception. *Chapter XVI* begins with the "Offences Affecting Life" and deals with homicide offences. **Unlawful homicide** is of the following kinds:

- Murder **(Section 302)**;
- Culpable homicide not amounting to murder **(Section 304**);
- Causing death by negligence **(Section 304A)**; and
- Suicide **(Sections 305 and 306)**

CULPABLE HOMICIDE (Section 299)

Culpable homicide is the first kind of unlawful homicide. **Section 299** defines culpable homicide. **Section 304** provides for punishment for culpable homicide not amounting to murder and **Section 308** provides for punishment for attempt to commit culpable homicide.

Ingredients of culpable homicide – The following are the essentials of culpable homicide:

1. Causing of death of a human being;

2. Such death must have been caused by doing an act;
3. The act must have been done:

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 the doer is likely, by such act, to cause death.

Without one or other of those elements, an act, though it may be in its nature criminal and may occasion death, will not amount to the offence of culpable homicide.

Culpable homicide may be classified into three categories: As far as the offence of culpable homicide is concerned, there are three species or degrees of mens rea present:

- In which death is caused by the doing of an act with the intention of causing death
- When it is committed by causing death with the intention of causing such bodily injury as is likely to cause death; and
- Where the death is caused by an act done with the knowledge that such act is likely to cause death.

Knowledge and intention should not be confused. Section 299 in defining first two categories does not deal with the knowledge whereas it does in relation to the third category.

The Supreme Court in **Richpal Singh Meena v. Ghasi,** AIR 2014 SC 3595, has suggested a five-step enquiry in deciding whether the accused causing death of person should be guilty of culpable homicide under section 299 or should be guilty of murder under Section 300. Whether the act or omission of accused causing death, is culpable homicide or not, can be determined by applying the five-step test as follows:

1. Is there homicide?
2. If yes, is it culpable or not culpable homicide?
3. Is it a culpable homicide amounting to murder (i.e., Sec. 300, IPC) or culpable homicide not amounting to murder under Section 304, IPC?

4. If it is not culpable homicide, then a case under Section 304-A of IPC can be made out.
5. If it is not possible to identify the person who has committed the homicide, the provisions of Section 72, IPC may be invoked. Such cases generally arise if the investigation is defective or if the evidence is insufficient.

"Intention", in the context of the definition of culpable homicide, does not always necessarily mean pre-planning to kill person. The expectation that the act of a person is likely to result in death is sufficient to constitute intention. However, no hard and fast rule can be laid down for determining the existence of intention. **[Mohd. Arif v. State of Uttaranchal,** (2009) 11 SCC 497]

Whoever causes death

Causing death means killing directly, distinctly and not too remotely. The fact that the death of a human being is caused is not enough. Unless one of the mental states mentioned in the ingredient is present, an act causing death cannot amount to culpable homicide. Death means death of human being. **It does not include the death of an unborn child, such as a child in the mother's womb.** But in view of **Explanation 3** it may amount to culpable homicide to cause death of a living child if any part of the child has been brought forth, though the child may not have breathed or been completely born. **However, it is not necessary that the person whose death has been caused must be the very person whom the accused intended to kill. The offence is complete as soon as any person is killed.**

Death under this section may be caused by bodily injury (e.g. stabbing) or otherwise than by bodily injury (e.g. Starving). Death occurs when brain dies completely. **A person cannot be said dead if some brain activity is present. [Aruna Ramchandra Shanbaug v. Union of India,** 2011 4 SCC 454]

The death must result as a proximate and not a remote consequence of the act which means the connection must be direct and distinct though not immediate. There should not be the intervention of any considerable change of circumstances

between the act of violence and the death. The act must be *causa causans* and not merely *causa sine qua non*.

By doing an act

None of the endless variety of modes, by which human life may be cut short before it becomes in the course of nature extinct, is excluded. Death may be caused in a number of ways; such as by poisoning, starving, striking, drowning, or communicating some shocking news, etc. The word Act has to be read in light of ***Sections 32 and 33***. Act here includes illegal omission also.

An omission is illegal if it be an offence, if it be a breach of some direction of law, or if it be such a wrong as would be a good ground for a civil action. Therefore, death caused by illegal omission will also amount to culpable homicide. The legal maxim is that everyone must be presumed to intend the normal consequences of his act.

In **Moti Singh v. State of Uttar Pradesh**, AIR 1964 SC 900 it was held by the Supreme Court that 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. It was further held that death is an essential element for proving of culpable homicide.

Death caused by effect of words

A with the intention or knowledge aforesaid, relates some exciting or agitating news to B who is in a critical stage of a dangerous illness; B dies in consequence. A will be held liable of culpable homicide.

Intention of cause death

Intention means the expectation of the consequence in question. When a man is charged with doing an act, of which the probable consequence may be highly injurious, the intention is an inference of law resulting from the doing of the act. Intention is inferred from the acts of the accused and the circumstances of the case. Thus, a deliberate firing by a loaded gun at one leads to inference that the intention was to cause death.

An intention also includes foresight of certainty. A consequence is deemed to be intended though it is not desired when it is foreseen as substantially certain. In determining the question of intention the nature of the weapon used, the part of the body on which the blow was given, the force and number of blows are all factors from which an inference as to the intention can, as a fact, be drawn.

With the intention of causing such bodily injury as is likely to cause death

The intention of the offender may not be to cause death, it would be sufficient if he intended to cause such bodily injury which was likely to cause death. Thus, where bodily injury sufficient to cause death is actually caused, it is immaterial to go into the question of whether the accused had the intention to cause death**.**

The difference between the two expressions 'intention to cause death' and 'intention of causing such bodily injury as is likely to cause death' is a ***difference of degrees in criminality*****.** The latter is a lower degree of criminality than former. But as, in both the cases, the object is the same, the law does not make any distinction in punishment.

The connection between the 'act' and the death caused by the act must be direct and distinct; and though not immediate it must not be too remote. **Grover, J.** has rightly emphasized in **Mohammed Hossein's case 1864** the *"it is indispensable that the death should be clearly connected with the act of violence, not merely by chain of causes the effects, but by such direct influence as is calculated to produce the effect without the intervention of any considerable change of circumstances."*

The connection between the act and the death caused by the act must be direct and distinct; and though not immediate it must not be too remote. In **Joginder Singh v. State of Punjab,** AIR 1979 SC 1876, the deceased was being chased by the accused persons and he jumped into the well. As a result, he sustained head injury resulting in his becoming unconscious and he died due to drowning. The apex court held that there was no evidence that the deceased was left with no option but the jump and hence the accused cannot be said to have caused death. The act of the accused was not the direct cause of the death.

With the knowledge that he likely by such act to cause death

Knowledge is a strong word and imports a certainty and not merely a probability. Here knowledge refers to the personal knowledge of the person who does the act. If A, B, C attacks M with lathis, the blows being directed at the head of M, they must be fixed with the knowledge that they were likely to cause death. In the case of **Kesar Singh v. State of Haryana,** 2008 15 SCC 753, the Apex Court clarified that the word likely would mean probably and not possibly. When an intended injury is likely to cause death, the same would mean an injury sufficient in the ordinary course of nature to cause death which in turn would mean that death would be the most probable result.

Sometimes even gross negligence may amount to knowledge– If a person acts negligently or without exercising due care and caution he will be presumed to have knowledge of the consequences arising from his act.

Death caused without intention or knowledge– In those cases where death is attributed to an injury which the offender did not know would endanger life or would be likely to cause death and which in normal conditions would not be so, notwithstanding death being caused, the offence will not be culpable homicide but grievous or simple hurt. Section 80 and Illustration (c) attached to Section 299 support and explain this proposition.

Example: In the course of an altercation between A and C on a dark night, the former aimed a blow with his stick at the head of the latter. To ward off the blow

C's wife W, who had a child on her arm intervened between them. The blow missed its aim and fell on the head of the child causing severe injuries, due to which the child died. It was held that, inasmuch as the blow, if it had fell upon the complainant would have caused simple hurt, the accused was guilty of causing simple hurt.

In **Kusa Majhi v. State of Orissa,** 1985 Cri. LJ 1460, the deceased admonished her own son for not going for fishing with the co-villagers. Infuriated on this the accused, the son, brought an axe and dealt blows on her shoulder and she died. There was no pre-plan or premeditation. The blows were not on the neck or head region. The accused dealt blows likely to cause bodily injury which was likely to cause death and he dealt blows on the spur of moment and in anger. Therefore, it was held to be case of culpable homicide falling under this section.

Clauses 1 and 2: Intention of causing such bodily injury as is likely to cause death– Knowledge that he is likely by such act to cause death:

The practical difference between these two phrases is expressed in the punishment provided in Section 304. But the phrase 'with the knowledge that he is likely by such act to cause death' includes all cases of rash acts by which death is caused, for rashness imports a knowledge of the likely result of an act which the actor does in spite of the risk.

Both the expressions intent and knowledge occurring in Section 299 postulate existence of a positive mental attitude which is of different degrees. Further, such mental attitude towards consequences of conduct is one of intention and knowledge. If death is caused in any of the circumstances envisaged in Section 299, offence of culpable homicide is said to have been committed. **[Jagriti Devi v. State of H.P.,** 2009 14 SCC 771]

Distinction between intention and knowledge

Intention and knowledge are used as alternate ingredients to constitute the offence of culpable homicide. However, they are two different things. The

difference between the two came to be considered by the Supreme Court in **Basudev v. State of Pepsu,** AIR 1956 SC 488.

"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."

Knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact. **[Kesar Singh v. State of Haryana,** 2008 15 SCC 753]

Intention compared with knowledge requires something more than the mere foresight of the consequences, namely, the purposeful doing of a thing to achieve a particular end. **[Nankaunoo v. State of Uttar Pradesh,** AIR 2016 SC 447]

EXPLANATIONS TO SECTION 299

Explanation I to Section 299: However, it is one of the two elements of culpable homicide as contained in Section 299 and the court must be satisfied i. that the death at the time when it occurs is not caused solely by the disease; and ii. That it is caused by the bodily injury to the extent, that it is accelerated by such injury.

It is important that the accused knows that condition of the deceased was such that his act was likely to cause death. It is then only will he be guilty of culpable homicide.

Explanation II to Section 299: The reason for this provision is obvious that it is not always that proper remedies and skilful treatment are within the reach of a

wounded person. The accused is responsible for the natural consequences of his conduct and the fact that the natural consequences could have been averted by artificial means is no answer.

Explanation III to Section 299: The causing of the death of a child in the mother's womb is not homicide. But is 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. Such an offence is punishable under section 315.

APPLICABILITY OF SECTION 299 WHETHER CONVICTION UNDER SECTION 304 PT I OR PT II

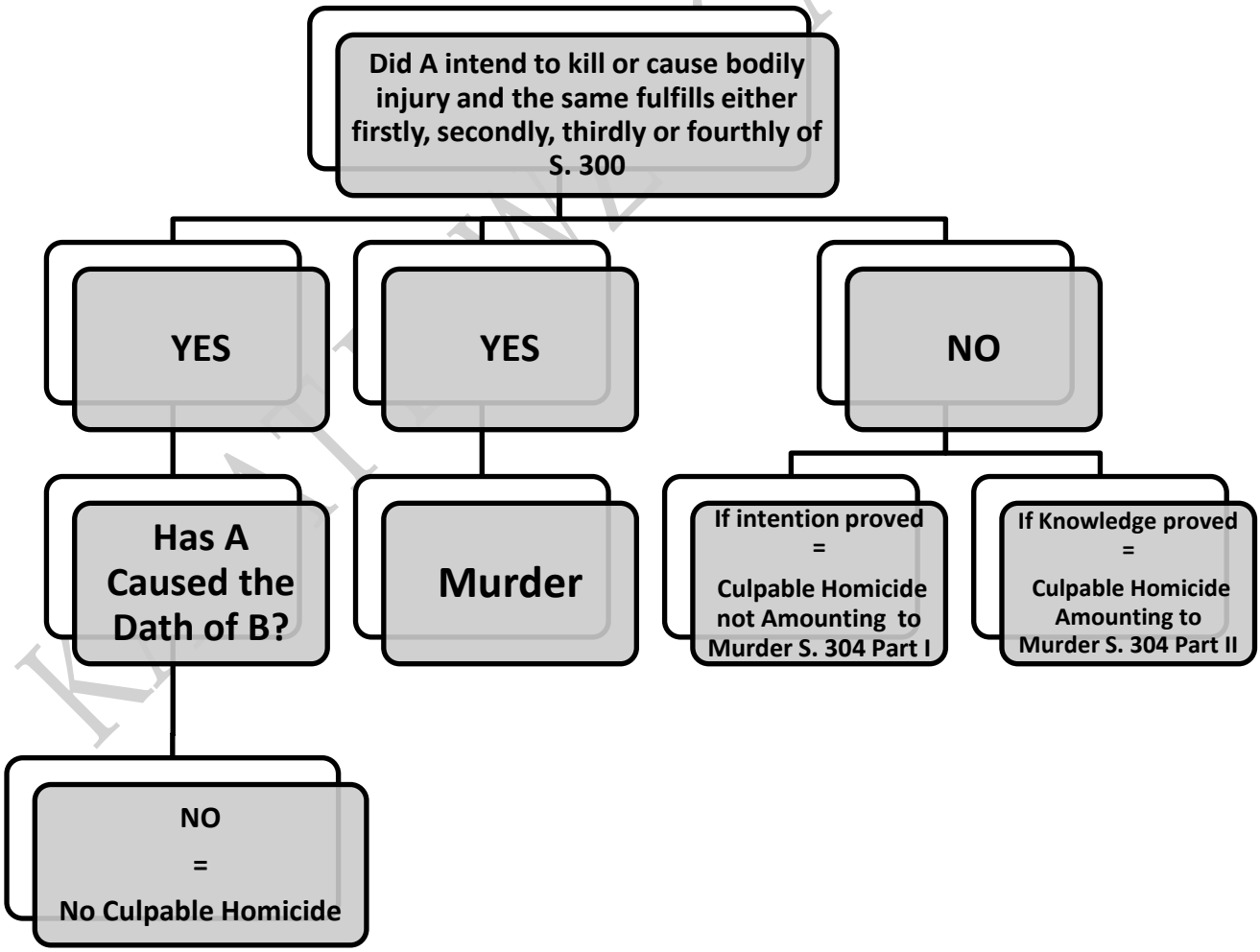
A plain reading of section 299 will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause it is the knowledge of the offender which is relevant and is the dominant factor. Analysing section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done.

- 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 the act is likely to cause death.

If the offence is such which is covered by any one of the clauses, but does not fall within the ambit of clauses, Firstly-Fourthly of section 300 IPC, it will not be murder and the offender would not be liable to be convicted under section 302. In such a case if the offence is such which is covered by clause (i) or (ii), the offender would be liable to be convicted under section 304 Part 1 IPC as it uses the expression "*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*" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii) the offender would be liable to be convicted under section 304 Part II because of the use of the expression "*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" where knowledge is the dominant factor**. [Arun Nivalaji More v. State of Maharashtra,** 2006 12 SCC 613]

Section 304 provides punishment for culpable homicide not amounting to murder. The offender would be punished with imprisonment for life or imprisonment up to 10 years and also fine if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. [Part I, Section 304] Under Part II, the punishment is imprisonment up to 10 years or fine or both if the act is done with the knowledge that it is likely to cause death but without an intention to cause death or cause such bodily injury as is likely to cause death.



MURDER (Section 300)

Section 300 deals with the cases where culpable homicide is murder. Therefore, an offence cannot amount to murder if it falls within the definition of culpable homicide. Murder includes culpable homicide, but a culpable homicide may or may not amount to murder.

A case of culpable homicide is murder if it falls within any one of the four clauses of Section 300. In order to ensure justice in a murder trial the court should go by evidence produced before it, it should remain dissociated from heat generated outside court room either through news media or through flutter in public opinion.

Clause 1: Act by which the death caused is done with the intention of causing death.

A question of intention is always a matter of fact. In determining the question of intention the nature of the weapons used, the part of the body on which the blow was given, the force and number of blows are all factors from which an inference as to the intention can, as a fact to be drawn.

Act includes illegal omission also. Death may, therefore, be caused by illegal omission as well. Thus, where parents neglect to provide proper sustenance to their children although repeatedly warned of the consequences and the child dies, it will be murder. **[Raju Das v. State of Rajasthan,** 1995 Cri LJ 25 (Raj)]

In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous part of the body, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to inquire into every last detail as, for instance, whether the accused intended to penetrate liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he

cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad based and simple and based on common sense: the kind of enquiry that *"an ordinary man"* could readily appreciate and understand **[Kesar Singh v. State of Haryana,** (2008) 15 SCC 753].

In **Nishan Singh v State of Punjab** (AIR 2008 SC 1661), the appellant submitted that he was unarmed and had snatched the knife from P2 and inflicted knife injuries; hence intention to commit murder was ruled out. The Apex Court held that if a person snatches a weapon carried by someone else and brutally kills another, it cannot be said that he did not have any intention to cause death; injuries were inflicted on vital parts of the body and some of them were sufficient in the ordinary course to cause death or likely to cause death. Whether the accused had any intention to kill the deceased must be judged upon taking into consideration the fact situation obtaining in each case.

In **State of Rajasthan v. Hukam Singh,** (2012) 1 Cri. LJ 1159 SC, accused had himself the taken deceased to hospital. This by itself indicates that he had no intention to commit crime and that too, give gunshot which would inevitably result in death of victim. Therefore, the Supreme Court held that the judgment of acquittal of court below was not perverse and therefore could not be interfered with.

Motive when essential in murder– It was held in **Abu Thakir v. State** (2010) 3 Cr. LJ 2840 SC, that motive loses significance when direct evidence is available.
Where the accused sets fire to the room in which the victim was sleeping and the room was locked from outside, and the villagers were prevented from rendering help, the intention to kill is fully made out. **[R. Venkalu v. State,** AIR 1956 SC 171]

Clause 2: With the intention of causing such bodily injury as the offender knows to be likely to cause death:

This clause applies where the act by which death is caused 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. It applies in special cases

where the person injured is in such a condition or state of health that his or her death would be likely to be caused by an injury which would not ordinarily cause the death of a person in sound health and where the person inflicting the injury knows that owing to such condition or state of health it is likely to cause the death of the person injured. This clause also applies to cases of special knowledge of the constitution or physical condition or ailments of the deceased.

In case of an offence falling under this clause the mental attitude of the accused is two-fold. **First,** there is intention to cause bodily harm and **secondly**, there is the subjective knowledge that death will be the likely consequence of the intended injury.

In **Bavisetti Kameshwara Rao alias Babai v. State of A.P.,** 2008 3 CrLJ 2987 SC, some verbal altercation took place between accused (a motor mechanic) and deceased. Thereupon accused inflicted injury on abdomen of deceased with screw driver. Injury was 12 cms. Deep damaging liver and spleen and death were caused almost instantaneously. It was held that accused could be said to have intended to cause injury sufficient to cause death. Use of screw driver (a common tool of mechanic) cannot be said to be innocuous. The plea of accused that incident was sudden and without premeditation is not tenable and the accused was held liable to be convicted for murder.

Examples:
In a case B administered arsenic to D, a boy of 9 years with the object of preventing the father of the boy from appearing as a witness against him. It was held that B was guilty of murder.

A woman of 20 year of age administered dhatura (a poisonous herb) to three members of her family. In this case it was held that the administration of dhatura was likely to cause death although she might not have administered it with that intention.

Clause 3: Injury sufficient in the ordinary course of nature to cause death

For the application of clause 3 two things need to be proved; one that the injury was intentionally inflicted and secondly, that the injury inflicted was sufficient in the ordinary course of nature to cause death of any person. Where a man intentionally inflicts bodily injury sufficient in the ordinary course of nature to cause death, he would be liable for murder.

The distinction between this clause and clause 2 of section 299 depends upon the degree of probability of death from the act committed. If from the intentional act of injury committed the probability of death resulting is high, the finding will be that the accused intended to cause death, or injury sufficient in the ordinary course of nature to cause death; if there was probability in a less degree of death ensuing from the act committed, the finding will be that the accused intended to cause injury likely to cause death**. [Abbas Ali v. State of Rajasthan,** 2007 9 SCC 129]

In the case of **Virsa Singh v. State of Punjab,** AIR 1958 SC 465, it was held that what is relevant is whether the accused intended to inflict the injury that is proved to be present. Once the existence of the injury is proved, the intention to cause it will be presumed unless the evidence or the circumstances warrant and opposite conclusion. The meaning of the word sufficiency was throwed light upon.

In **Kesar Singh v. State of Haryana,** (2008) 15 SCC 753, the Apex Court observed: It does not matter that there was no intention to cause death, or even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two), or that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury is actually found to be proved (which is subjective to the offender), the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. They can only escape if it can be

shown or reasonably deduced that the injury was accidental or otherwise unintentional.

Even if none of the injuries by themselves was sufficient in the ordinary course of nature to cause the death, but were cumulatively sufficient to cause death in the ordinary course of nature, the case is covered by Sec. 300 "thirdly" **[Brij Bhushan v. State of U.P.,** AIR 1957 SC 460] Where the doctor's evidence shows that the injuries are of a dangerous character, the fact that the deceased linger for about 12 days will also not help. **[Sudarshan Kumar v. State** AIR 1974 SC 2328]

Principle of Exclusion

The Supreme Court in **Rampal Singh v. State of Uttar Pradesh,** 2012 8 SCC 289**,** opined that the evidence led by the parties with reference to all the circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view, i.e. by applying the principle of exclusion. This principle could be applied while taking recourse to a two-stage process of determination. First, the court may record a preliminary finding if the accused has committed an offence punishable under the substantive provisions of Section 302 that is culpable homicide amounting to murder. Then it may proceed to examine if the case fell in any of the exceptions to Section 300.

Contradiction between ocular and medical evidence

The position of law can be crystallized to the effect that though the ocular testimony of a witness has a greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence **[Umesh Singh v. State of Bihar,** 2013 4 SCC 360]

"Secondly" and "Thirdly" distinguished: The two clauses are disjunctive and separate. Clause "Secondly" is subjective to the offender. It must, of course, first be found that bodily injury was caused and the nature of the injury must be

established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present. First part of clause "Thirdly" envisages infliction of bodily injury with the intention to inflict it i.e. it must be proved that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proven facts about the nature of the injury and has nothing to do with the question of intention. **[Kesar Singh v. State of Haryana,** (2008) 15 SCC 753]

Clause 4: Knowledge of imminently dangerous act

This clause comprehends generally the commission of imminently dangerous acts which must in all probability cause death or cause such bodily injury as is likely to cause death. When such an act is done with the knowledge that death might be the probable result and without any excuse for incurring the risk of causing death or injury as is likely to cause death, the offence is murder. The act done must be accompanied with the knowledge that the act was so imminently dangerous that it must in all probability cause **(i)** death, or **(ii)** such bodily injury as is likely to cause death. **Intention is not an essential ingredient of this clause,** unlike the first three clauses.

The 4th clause contemplates the doing of an imminently dangerous act in general, and not the doing of any bodily harm to any particular individual. This clause cannot be applied until it is clear that clauses 1, 2 and 3 of the section each and all of them fail to suit the circumstances. This clause may on its terms be used in those cases where there is such callousness towards the result (general disregard for human life) and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as it is likely to cause death. **[State of M.P. v. Ram Prasad,** AIR 1968 SC 881]

The expression *"imminently dangerous act"* approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability. **[Budhilal v. State of Uttarakhand,** 2009 1 CrLJ 360 SC]

In the case of **Emperor v. Dhirajia,** AIR 1940 ALL 486, the accused woman after an altercation with her husband ran away; her husband followed her. When she heard him coming after her, she turned round in a panic, ran a little distance, and then jumped into a well with the baby girl in her arms. The baby died but she escaped. Held, that there was no intention to cause death; it is a case of culpable homicide. Clause "fourth" of Section 300 was not attracted. Though her act was imminently dangerous but she had an excuse and that excuse was panic or fright on account of her husband.

Examples:

- The accused poured kerosene oil upon the clothes of his wife and set fire to those clothes. As he had no cause for incurring that risk, he committed an act so imminently dangerous that it was in all probability likely to cause death or to result in an injury that was likely to cause death.
- The accused offered a child to a crocodile under a superstitious but a bona fide belief that the child would be returned unharmed but the child was killed. He was held guilty of murder under this clause.

EXCEPTIONS TO SECTION 300

Section 300 provides for **five exceptions** where culpable homicide will not amount to murder. Exceptions to Section 300 of the IPC reduce the offence of murder to that of culpable homicide not amounting to murder. The five exceptions specified in the section are special exceptions in addition to the general exceptions mentioned in Chapter IV. The special exceptions are:

- Grave and sudden provocation
- Right of private defence
- Exercise of legal powers
- Absence of premeditation and heat of passion
- Consent

Burden is on the accused to establish circumstances which would bring his case within any exception. However, the general burden to establish the guilt is on the prosecution.

Exception 1 (Grave and Sudden Provocation)

Anger is a passion to which good and bad men are both subject, and mere human frailty and infirmity ought not to be punished equally with ferocity or other evil feelings. The act must be done whilst the person doing it is deprived of self-control by grave and sudden provocation. That is, it must be done under the immediate impulse of provocation. Indian Law on provocation is contained in Exception 1 to section 300.

Commenting upon these provisions **Mayne** observes: In order that provocation may be pleaded in partial defence to charge of murder for mitigation of the offence four things are necessary: **(1)** there must be provocation; **(2)** provocation must be grave and sudden; **(3)** by reason of such grave and sudden provocation the offender must have been deprived of the power of self-control; and **(4)** the death of the person who gave provocation or of any person, by mistake or accident, must have been caused.

Under Indian law provocation may be caused by words and gestures, but under English Law no provocation of words will reduce the crime of murder to that of man-slaughter.

Essentials:

- Person must be deprived of power of self-control.
- Person must cause death of the person who gave grave and sudden provocation.
- Death may be caused by some other person by mistake or by accident.
- Provocation must not be sought or voluntarily provoked by the offender. **[Proviso I]**
- Provocation is not given by anything done in obedience of law or by public servant in exercise of public duty. **[Proviso II]**

- Provocation is not given by anything done in the lawful exercise of the right of private defence. [**Proviso III]**

Explanation: According to this explanation whether the provocation given was grave and sudden is a question of fact.

Meaning of the words "grave" and "sudden": The expression 'grave' indicates that provocation to be of such a nature so as to give cause for alarm to the accused. 'Sudden' means an action which must be quick and unexpected so far as to provoke the accused. The question whether the provocation was grave and sudden is a question of fact and not one of law. Each case is to be considered according to its own facts. **[Sukhlal Sarkar v. Union of India,** 2012 5 SCC 703]

In the case of **K.M. Nanavati v. State of Maharashtra,** AIR 1962 SC 605, the Supreme Court observed that it is not all provocation that will reduce the crime of murder to manslaughter. The Court stated the law thus:

- 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 same situation in which the accused was placed, would be so provoked as to lose his self-control.
- Mere words or gestures or confessions are enough in some cases to cause grave and sudden provocation. However, it is not so under English Law.
- The act of provocation must be such as to cause a sudden and temporary loss of self-control; and it must be distinguished from provocation which inspires an actual intention to kill.
- Time-interval between the provocation and act is very important. The act should have been done during the continuance of that state of mind, i.e., **before there was time for passion to cool** and for reason to regain domination over the mind, or giving room and scope for premeditation and calculation.
- 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 mode of resentment must bear a reasonable relation to the provocation.

Self-Control: This term as it appears in Section 300 Exception 1 is a subjective phenomenon and can be inferred from the surrounding circumstances in a given case. In order to find out whether the last act of provocation on which the offender caused the death was sufficiently grave to deprive the accused of the power of self-control, the previous acts of provocation caused by the person can always be taken into consideration.

In **Sheikh Rafi v. State of A.P.** (2007) 3 CrLJ. 2746 SC, there was a family dispute over claim for partition. The deceased picked up quarrel with the accused; the accused chased him and inflicted 19 knife injuries on him (the deceased was unarmed). Injuries were caused in cruel and unusual manner. It was held that number of injuries caused though relevant but are not determinative of the nature of offence. Nineteen injuries caused in quick succession cannot be as a result of grave and sudden provocation and therefore accused is liable to be convicted under Sec. 300 and not under Sec. 304, Part II.

In **Raj Kumar v. State of Maharashtra,** (2009) 15 SCC 292, the appellant inflicted polpat-blow on the head of his wife resulting in her death. The wife, entitled to initiate maintenance proceedings against her husband, had refused to accede to unreasonable demand made by her husband to withdraw the maintenance proceedings. The husband sought it as provocation by the wife. It was held that it could hardly be said that her denial would amount to grave and sudden provocation within the meaning of Exception 1, Sec. 300. The husband was held guilty of Murder (Thirdly of Sec. 300).

"Provocation" is an external stimulus which can result into loss of self-control. Such provocation and the resulting reaction need to be measured from the surrounding circumstances. Provocation must be such as will upset not merely a hasty, hot-tempered and hypersensitive person but also a person with calm nature and ordinary sense. The intention of legislature in creating such exception is to take into consideration reaction of a person with normal behaviour to given incidence of provocation. Thus, protection is extended to the "normal person acting normally". **[Arun Raj v. Union of India,** (2010) 6 SCC 457]

Exception 2 (Exceeding right of private defence)

This exception deals with death caused by the excessive exercise of the right of private defence, provided the accused caused the death of a person without premeditation and when the accused caused the death of a person, he had no intention of doing more harm than was necessary for the purpose of defence.

Essentials:

- Act must be done in exercise of right of private defence of person or property.
- Act must have been done in good faith.
- The person doing the act must have exceeded his right given to him by law and have thereby caused death.
- Act must have been done without premeditation and without any intention of causing more harm than was necessary in self-defence.

Examples:

- A found B a feeble old woman was stealing his crop, A beat her so violently that she died from the effect of the attack, it was held that A, was guilty of murder and this exception would not apply.
- A pursued a thief B and killed him after the house trespass had ceased, A was held guilty of murder.
- A attacks B with a stick. In order to defend himself, B takes out his pistol but before he could fire a shot, A kills B by hitting his head with a heavy stone. In this case if A takes the plea of self-defence, he will not succeed because he was himself an aggressor.

In the case of **Kripal Singh v. State of Punjab,** AIR 1951 SC 137, it was held by the court that the right commences as soon as a reasonable apprehension of danger arises and ceases when the apprehension ceased or on the offence being committed. A person cannot avail himself of the plea of self-defence in a case of homicide when he was himself the aggressor and wilfully brought on himself without legal excuse the necessity for the killing.

When several accused armed with guns and sticks entered the field of the complainant illegally according to a premeditated plan and fired at the complainant and his servants from close quarters and chased them, while the latter were unarmed, their resorting to firing is without reasonable cause and no right of defence of property or person can be claimed by the accused, though injuries upon the persons of the accused may be unexplained by the prosecution. **[Narsimha Raju v. State of A.P.,** AIR 1971 SC 1232]

In **Jassa Singh v. State of Haryana,** AIR 2002 SC 520, the deceased committed trespass in respect of an agricultural land. The accused appellants went there with guns and deadly weapons and caused death of the deceased by wilding those weapons. The court held that there was premeditation on the part of the appellants and from the acts committed by them, it is evident that they had intention of doing more harm than was necessary for the purpose of self-defence. Therefore, the acts committed by the appellants will not come within Exception 2, Section 300, so as to make it culpable homicide not amounting to murder. They are liable to be convicted under Section 300.

In **Shanmugam v. State of T.N.,** AIR 2003 SC 209, the accused, on being questioned by his brother (deceased) as to why he was whistling at a place frequented by ladies, all of a sudden entered his house and came out with a spear and attacked the deceased with it inflicting several injuries on him. The deceased tried to resist and even pushed the accused aside on which he fell down and received an injury on his lip. Held that the plea of self-defence, on facts, was not established because it was the accused that attacked the unarmed deceased with a dangerous weapon. There was no intention to cause death, but an intention to cause severe bodily injuries. The nature of injuries and medical opinion unmistakably pointed to the fact that the bodily injuries inflicted on the deceased were of such nature that they were likely to cause death. Thus, the appellant was liable to be convicted under Section 304, Part I instead of Section 302.

In **Mohanan Pillai v. State of Kerala,** (2010) 3 SCC (Cri) 264, the deceased father chastised his daughter. The accused son aged 33 years, being enraged inflicted blows and fists on father aged 74 years. The father flashed out a knife and inflicted

some injuries on the son. The son snatched the knife from father, sat on his chest and inflicted 26 wounds on his body. Thereafter, son brought a wooden leg piece of a bench and hit his father which resulted in his death. The defence case was that accused committed the act under greatest provocation though the charge of accused being aggressor at the first instance could not be refuted. It was held that requirement of Exception 2 to Section 300 of acting without any intention of doing more harm than was necessary was not satisfied. Hence, conviction under Sec. 302 was justified.

Exception 3 (Where the act is done is exceeding the right by public servant or in aiding a public servant)

This exception protects a public servant, or a person aiding a public servant acting for the advancement of public justice, if either of them exceeds the power given to them by law and cause death.

Essentials:

- Offence committed by a public servant, or by some other person acting in the aid of such public servant, in the advancement of public justice.
- Public servant or such other person exceeds the powers given to him by law.
- Death is caused by doing an act which he in good faith believes to be lawful and necessary for the discharge of his duty as such public servant.
- The act must have been done without any ill-will towards the person whose death is caused.

The exception shall not apply where the act of a public servant is illegal and unauthorized by law or if he glaringly exceeds the powers entrusted to him by law.

Example: A, a police constable fired at certain reapers under the orders of B, a Superintendent of Police and it was found that neither the constable nor the officer believed it necessary for public security to disperse those reapers by firing upon them; it was held that the constable was guilty of murder.

Exception 3 to Section 300 pre-supposes that a public servant who causes death, must do so in good faith and in due discharge of his duty as a public servant and without ill-will towards the person whose death is caused. The positive case set up by the defence that firing was in self-defence has been rejected by the trial court, High court as well as the Supreme Court, the question of any good faith does not arise. The appellants had fired without provocation at the car killing two innocent persons and injuring one. The obligation to prove an exception is on the preponderance of probabilities but it nevertheless lies on the defence. **[Satyavir Singh Rathi v. State Through C.B.I.,** AIR 2011 SC 1748]

Exception 4 (Death caused in sudden fight)

This exception protects the party committing murder in a sudden quarrel.

Essentials:

- Death must be caused in a sudden fight.
- Sudden fight must be without any premeditation.
- It must occur in the heat of passion upon a sudden quarrel. Have acted in a cruel or unusual manner.
- The offender must not have taken undue advantage or must not have acted in a cruel or unusual manner.
- The fight must have been with the person killed.

It is immaterial as to which party offered the provocation or committed the first assault.

"Fight": meaning of: The 'fight' occurring in Exception 4 to Section 300 IPC is not defined under the Code. **It takes two to make a fight.** Fight here means something more than a verbal quarrel. A fight is a combat between two or more persons whether with or without weapon. This exception is attracted only when there is a fight or quarrel which requires mutual provocation and blows by both sides in which the offender does not take undue advantage.

The expression "sudden fight" implies mutual provocation; a bilateral transaction in which blows are exchanged. The expression "heat of passion" has been explained by the courts to mean that there is no time for passion to cool down. The act must have been committed in a fit of anger. **[Suchand Bouri v. State of West Bengal,** AIR 2009 SC 2319]

Fight implies mutual attack by both the parties. The fight must be with the person who is killed. It does not matter that the sudden quarrel flowed from an earlier incident. **[State of H.P. v. Wazir Chand,** AIR 1978 SC 315] A mere verbal quarrel before a stab with a knife would not make the Exception applicable, unless the case is very rare.

Where the deceased was an old man and was innocent intervener who was asking the parties not to quarrel, there was no justification for the appellant to have given such a serious injury (a blow by iron bar on the head) to him resulting in his death. Moreover, the appellant acted in a cruel manner. **[Pandurang v. State of Maharashtra,** AIR 1978 SC 1082]

In the case of **Sukhbir Singh v. State of Haryana,** AIR 2002 SC 1168, it was held by the Supreme Court that 'Sudden fight' though not defined under the Act, implies mutual provocation. A fight is not per se palliating circumstance and only unpremeditated fight is such. The time-gap between quarrel and the fight is an important consideration to decide the applicability of the incident.

In the case of **Jagrup Singh v. State of Haryana,** 1981 3 SCR 839, it was held by the Apex Court that where the accused-appellant had struck the deceased with the blunt side of the weapon in the heat of the moment, without premeditation and in a sudden fight, the case was covered by Exception 4 to Section 300.

Comparison of Exception 1 and Exception 4

In the leading case of **Ghapoo Yadav v. State of M.P.,** 2003 3 SCC 528, the Supreme Court distinguished between Exception 1 and Exception 4 to Section 300.

The court observes that the fourth exception deals with a case of prosecution not covered by the first exception to Section 300, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1, there is total deprivation of self-control, in case of Exception 4, there is only the heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. Notwithstanding the origin of provocation, the subsequent conduct of parties put them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side – may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. In case of Exception 1, there is unilateral provocation.

Exception 5 (Death caused with the consent of the person)

This exception abrogates the rule of English law that a combatant in a fair duel who kills his opponent is guilty of murder. Under this exception the person who is killed in a duel **"suffers or takes the risk of his death by his own choice"**.

Essentials:

- Person whose death is caused must have consented to the causing of his death or the taking of the risk of death.
- The person consenting must be **above the age of 18 years.**
- The consent contemplated by this exception must be unconditional without any reservation and must be unequivocal that is, there must be no choice of alternatives to which the person taking the life more or less has driven the person.

A snake charmer professed that he was able to cure from snake-bites and by so professing persuaded one of his audience to consent to be bitten by a snake on the belief that he would be able to cure him. The deceased was bitten by a snake and died. It was held that this case did not fall under this exception because the consent given by the deceased was founded on misconception of fact based on

misrepresentation made by the accused. Thus, the accused was guilty of murder. **[Poonai Fattemah v. Emperor,** 1869 12 W.R. (Cr.) 7]

English law: Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt. In every charge of murder, if the prosecution have proved homicide, namely, the killing by the accused, the prosecution must prove further that the killing was malicious and murder, as there is no presumption that the act was malicious, and at no point of time in a criminal trial can a situation arise in which it is incumbent upon the accused to prove his innocence, subject to the defence of insanity and subject also to any statutory exception. Where intent is an ingredient of a crime there is no onus on the accused to prove that the act alleged was accidental**. [Woolmington v. The Director of Public Prosecutions,** 1935 AC 462]

DIFFERENCE BETWEEN CULPABLE HOMICIDE AND MURDER

It was held in the case of **Rawal Penta Venkalu v. State of Hyderabad,** AIR 1956 SC 171 that each of the clauses of Section 299 and 300 can overlap with each other. 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.

CULPABLE HOMICIDE	MURDER
• With the intention of causing death. • With the intention of causing such bodily injury as is likely to cause death. • With the knowledge that the act is likely to cause 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. •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. •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.

The distinction between section 299 and 300 was made clear by Melvill, J. in **R. v. Govinda,** ILR (1876) 1 Bom 342. In this case the accused had knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain and she died in consequence, either on the spot, or very shortly afterwards, there being no intention to cause death and the bodily injury not being sufficient in the ordinary course of nature to cause death. The accused was liable for culpable homicide not amounting to murder.

In the case of **Anda v. State of Rajasthan,** AIR 1966 SC 148, it was held by the Supreme Court that murder is an aggravated form of culpable homicide. If the risk is of lower degree, it is culpable homicide and if the risk is higher and death is the probable result, it will be murder.

In the case of **State of A.P. v. R. Punnayya,** AIR 1977 SC 45, it was held by the Apex Court that if two elements – i. whether the bodily injury found on the deceased was intentionally inflicted by the accused, and ii. If so, were they sufficient to cause death in the ordinary course of nature – are established, the

offence will be murder irrespective of the fact that accused did not intended to cause death.

CULPABLE HOMICIDE BY CAUSING DEATH OF PERSON OTHER OF PERSON OTHER THAN PERSON WHOSE DEATH WAS INTENDED (Section 301)

The underlying idea behind section 301 appears to be that where an act is in itself criminal, the doing of the act is an offence irrespective of the individuality of the person harmed.

The English doctrine of transfer of malice or the transmigration of motive has been embodied in section 301 of the Code. The doctrine of transfer of malice is subject to certain qualifications:

- The harm that follows is to be of the same kind. One cannot be condemned if his mens rea related to one crime and actus reus to different crime because that would be to disregard the requirement of an appropriate mens rea.
- Since the law of transferred malice does not dispense with the need of proof of the usual mens rea it follows that defences are in effect transferred with the malice. Thus there is no guilt if intended force was lawful.

The difference of person can make no difference in the offence or its consequences, as the crime consists in the wilful doing of a prohibited act. Similarly, there will be no difference where the injury intended for one falls on another by accident.

Liability for homicide by mistake: A person killing by mistake a man other than he intended to kill is, as regards his criminality, in the same position as if he had killed the person he intended to kill. Where A gave a poisoned apple to his wife intending to poison her, and the wife, ignorant of the matter, gave it to a child who took it and died. A would be guilty of murder even though he, being present at the time, endeavoured to dissuade his wife from giving the apple to child.

In **Jagapal Singh v. State of Punjab,** AIR 1991 SC 982, the accused went to the house of the person whom he wanted to kill but when he shot at him, his wife fell

a prey and was shot dead. The accused was convicted under Section 302/307, IPC and sentenced to imprisonment for life and his defence that he never intended to kill the innocent wife of the person whom he actually intended to kill was of no avail applying the doctrine of transferred malice.

PUNISHMENT FOR MURDER (Section 302)

This section provides punishment for murder. **Life imprisonment is the rule and death penalty is an exception in an offence of murder.** The Court has no power to rule any lesser sentence. For a conviction of murder *corpus delicti* must be found. If there is any doubt about the guilt of the offender, the only proper verdict is to acquit him and not to impose a lesser sentence of imprisonment for life. **[Santosh v. State of Madhya Pradesh,** AIR 1975 SC 654]

Section 354 (b) of the CrPC requires that special reasons should be recorded while awarding death penalty. In the confirmation proceedings, the High Court is required to reappraise and reassess the facts in toto, examine the entire evidence on record and to draw its own conclusions about the merits of the case and propriety of the death sentence imposed by the sentencing court. **[Kunal Majumdar v. State of Rajasthan,** (2012) Cr LJ 4635 SC]

Constitutionality of Death Penalty: The constitutionality of death sentence was challenged in the case of **Jagmohan Singh v. The State of UP,** (1973) 1 SCC 20. The Constitution Bench while upholding the constitutionality of death penalty examined whether total discretion can be conferred on the judges in awarding death sentence, when the statute does not provide any guidelines on how to exercise the same. The decision was rendered when the present Code of Criminal Procedure, 1973 was not in existence. However, the aforesaid position substantially changed with the introduction of a changed sentencing structure under the present CrPC. In **Rajendra Prasad v. State of U.P.,** (1979) 3 SCR 646 it was held that the special reasons necessary for imposing a death penalty must relate not to the crime but to the criminal. It could be awarded only if the security of the state and society, public order in the interest of the general public compelled that course.

Evolution of Sentencing Policy: Capital punishment has been a subject matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one undisputable statement of law follows that it is neither possible nor prudent to state any universal formula which would be applicable to all the cases of criminology where capital punishment has been prescribed. It shall always depend upon the facts and circumstances of a given case. **[Sunder v. State,** AIR 2013 SC 777]

Phase-l (Focus on Crime): The case of **Jagmohan Singh v. The State of UP,** (1973) 1 SCC 20, laid down that discretion in the matter of sentencing is to be exercised by the judge after balancing all the aggravating and mitigating circumstances "of the crime". Jagmohan Singh also laid down in proposition that while choosing between the two alternative sentences provided in Section 302 of the IPC (sentence of death and sentence of life imprisonment), the Court is principally concerned with the aggravating or mitigating circumstances connected with the "particular crime under inquiry".

Legislative Changes: The **41st Law Commission Report** proposed extensive changes in 1898 Code. The Commission recommended set new provisions for governing "trials before a Court of sessions". The most significant change brought about by the incorporation of the recommendation of Law Commission, is the giving of an opportunity of hearing to the accused on the question of sentence. This opportunity of hearing at the post-conviction stage, gives the accused an opportunity to raise fundamental issues for adjudication and effective determination by Court of its sentencing discretion in a fair and reasonable manner.

In **Santa Singh v. State of Punjab,** (1976) 4 SCC 190, Court held that this new provision is in consonance with the modern trends in penology and sentencing procedures. It was further held that proper exercise of sentencing discretion calls for consideration of various factors like the nature if offence, the circumstances, the prior criminal record of the offender, age, education, personal life, emotional and mental condition, prospects of rehabilitation and many more.

Phase-II Doctrine of "Rarest of rare"(Shifting the focus from crime to criminal): In **Bachan Singh v. State of Punjab,** AIR 1980 SC 898**,** another Constitution Bench, while upholding the constitutional validity of death sentence observed that for persons convicted of murder, **life imprisonment is the rule and death sentence an exception**. The principal questions that fall to be considered in this case are:

- "Whether death penalty provided for the offence of murder in Section 302, Penal Code is unconstitutional.
- If the answer to the foregoing question be in the negative, whether the sentencing procedure provided in Section 354(3) of the CrPC is unconstitutional on the ground that it invests the Court with unguided and untrammelled discretion and allows death sentence to be arbitrarily or freakishly imposed on a person found guilty of murder or any other capital offence punishable under the Indian Penal Code with death or, in the alternative, with imprisonment for life.".

The conclusion of the Constitution Bench was that the sentence of death ought to be given only in the 'rarest of rare cases' and it should be given only when the option of awarding the sentence of life imprisonment is 'unquestionably foreclosed".

The Supreme Court in **Machhi Singh v. State of Rajasthan,** (1983) 3 SCC 470, revived the Balancing of aggravating and mitigating circumstances through a balance sheet theory. In doing so, it sought to compare aggravating circumstances pertaining to the crime with the mitigating circumstances pertaining to the criminal. It hardly need to be stated, with respect, that these are completely different and distinct elements and cannot be compared with one another.

Factors to be considered while determining the "rarest of rare" case:

I. Manner of commission of Murder
II. Motive for commission of Murder
III. Anti-social or socially abhorrent nature of crime
IV. Magnitude of crime
V. Personality of victim of murder

A careful reading of the *Machhi Singh* categories will make it clear that the classification was made looking at murder mainly as an act of maladjusted individual criminal(s). In 1983 the country was relatively free from organised and professional crime. There were no private armies. There were no mafia concerning huge government contracts purely by muscle power. There were no reports of custodial deaths and rape and fake encounters by police or even by armed forces. These developments would unquestionably find a more pronounced reflection in any classification if one were to be made today. **[Swamy Shraddanana (2) v. State of Karnataka,** AIR 2008 SC 3040]

In **Santosh Kumar Satish Bhushan Bariyar v. State of Maharashtra,** (2009) 6 SCC 498, while sharing Supreme Court's *"unease and sense of disquiet"* it was observed that the balance sheet of aggravating and mitigating circumstances approach invoked on a case to case basis has not worked sufficiently well so as to remove the vice of arbitrariness from our capital sentencing system. It can safely be said that the Bachan Singh threshold of *"the rarest of rare cases"* has been most variedly and inconsistently applied by various High Courts as also this Court.

In **Shankar Kisanrao Khade v. State of Maharashtra,** (2013) 5 SCC 546, the Supreme Court referring to the thitherto application of the Apex Court of the balancing of aggravating and mitigating circumstances in capital sentencing, proposed a ***triple test*** in place of the existing balance test. The triple test requires the judge to award death penalty because the situation demands, not because they desires. The test arguably, overcomes the *'judge-centric'* sentencing to in capital offence and move closer to the *'principled-sentencing'*.

In **Mohinder Singh v. State of Punjab,** (2013) 3 SCC 294, the Bench analysed the various principles laid down in decisions reported in various cases and held that a conclusion as to *the 'rarest of rare'* aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal and the expression 'special reasons' obviously means founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

The Supreme Court held in **Mukesh v. State for NCT of Delhi,** 2017 (5) Scale 506, the accused persons guilty of offences which are brutal, diabolic and barbaric in nature and fall within the category of rarest of rare cases.

Crime Test, Criminal Test and the R-R test

The tests which are to be applied while awarding death sentence are Crime Test, Criminal Test and the R-R test and not the Balancing test.

Circumstantial Evidence: An accused can be held guilty of murder on the basis of circumstantial evidence if the circumstances unerringly point to the guilt of the accused and they are consistent with his guilt. In a conviction for murder if direct evidence is satisfactory and reliable the same cannot be rejected on hypothetical medical evidence.

Legality of Capital Punishment: Though capital punishment has to be awarded in rarest of rare cases, yet the SC held in no uncertain terms that capital punishment is legal and does not violate Articles 14, 19 and 21 of the Constitution. **[Bachan Singh v. State of Punjab,** AIR 1980 SC 898] It has further been held that the mode of executing death sentence by hanging as in Section 354(5) of the CrPC is not violative of Article 21 as it is not a cruel, barbarous or degrading method. **[Shashi Nayar v. Union of India,** AIR 1992 SC 395]

Quantum of Punishment: It was held in **State of U.P. v. Virendra Prasad** (2004) 9 SCC 37, that proportion between crime and punishment is a goal respected in principle, and inspite of errant notions, it remains strong influence in the determination of sentence. No formula of a fool proof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime.

It is always preferred not to fetter the judicial discretion by attempting to make excessive enumeration, in one way or another; and that both aspects namely aggravating and mitigating circumstances have to be given their respective

weightage and that the Court has to strike the balance between the two and see towards which side the scale/balance of justice tilts. **[Vasanta Sampat Dupare v. State of Maharashtra,** AIR 2017 SC 2530]

Delay in execution of death sentence: it is well established that exercising of power under Article 76/161 by the President or the Governor is a Constitutional obligation and not a mere prerogative. **[Shatrughan Chauhan v. Union of India,** (2014) 1 SCR 609] Time taken in court proceedings cannot be taken into account to say that there is a delay which would convert a death sentence into one for life.

PUNISHMENT FOR MURDER BY LIFE CONVICT (Section 303)

Section 303 provides for punishment for murder by life convict, which is death. There is no discretionary power to the court in such a case. **This section has been struck down by the SC as void and unconstitutional.**

Constitutionality of Section 303: In **Mithu v. State of Punjab,** (1983) 2 SCC 277, the legality of Section 303 was examined by the Full Bench of the Supreme Court. The majority opinion was that this section violates the guarantee of equality contained in Article 14 and also the right contained in Article 21 of the Constitution. It was, held that the section proceeds on the assumption that life convicts are a dangerous breed of humanity as a class but that assumption is not supported by any scientific data. The majority view was that it mainly violates Article 21 of the Constitution.

PUNISHMENT FOR CULPABLE HOMICIDE NOT AMOUNTING TO MURDER (Section 304)

This section provides punishment for two separate degrees of culpable homicide depending upon the intention to cause death or bodily injury likely to cause death under Para 1 and knowledge that the act is likely to cause death under Para 2.

Section 304, Part I:

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 – Punishment is

- Imprisonment for life; or
- Imprisonment of either description which may extend to 10 years; and
- Shall also be liable to fine

In **State of U.P. v. Lakhami,** AIR 1988 SC 1007, the respondent was charged with the offence of murder. The Supreme Court on examination found that because the accused had seen one of the prosecution witnesses near his wife which enraged him and he murdered his wife. The Supreme Court allowed the benefit of grave and sudden provocation to the accused and held him liable under section 304, Indian Penal Code and not under section 302, of Indian Penal Code.

In **State of Rajasthan v. Raj Narayan,** AIR 1998 SC 2060, the accused and the complainant were neighbours and had dispute over boundary wall. On the date of incident quarrel took place between accused and complainant. The accused brought a knife from his house and aimed at complainant. The knife hit the complainant's brother who died consequently. It was held that upon considering the fact, the accused had no intention to cause death of complainants' brighter who had intervened in the quarrel, hence the conviction of the accused under section 304, Part I would be proper.

Main distinction between Exceptions 1 and 4 to Section 300, I.P.C. is that while in Exception 1 there is total loss of self-control; in Exception 4 there is heat of passion which clouds one's sobriety.

Section 304, Part II:

If the act is done with the knowledge that is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death – Punishment is

- Imprisonment of either description which may extend to 10 years; or

- With fine, or with both

In **Sandhya Jadhav v. State of Maharashtra,** (2006) 4 SCC 653, the accused persons are tenants of complainant landlord. Landlord demanded rent from tenants and the accused persons assaulted the landlord. When nephew of landlord tried to intervene he was also given knife blow resulting in his death. The Supreme Court held that Exception 4 to Section 300 has full application and conviction of the accused under Section 302 is liable to be altered to Section 304, Part II as neither there was intention to kill nor injuries inflicted were sufficient in the ordinary course of nature to cause death. There was only knowledge that injury was likely to cause death.

In **Harender Nath Mandal v. State of Bihar,** AIR 1993 SC 1977, the accused caused injury on the head of a man with back portion of his weapon. The injured survived the injury. Still the accused was convicted under section 304, Part I. It was held by the Supreme Court that the accused could not be convicted under section 304 because for the application of 304, death must have been caused under any of the circumstance mentioned in five exception of section 300.

Distinction between the provisions of Section 304 Part I and Part II: Linguistic distinction between the two Parts of Section 304 is evident from the very language of this section. There are two apparent distinctions, one in relation to the punishment while other is founded on the intention of causing that act, without any intention but with the knowledge that the act is likely to cause death. It is neither advisable nor possible to state any straight-jacket formula that would be universally applicable to all cases for such determination. Every case essentially must be decided on its own merits. The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused. **[Rampal Singh v. State of UP,** (2012) 8 SCC 289]