

Difference between Murder and Culpable Homicide: Explained

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❖ **Culpable Homicide**

Section 299 of the Indian Penal Code defines Culpable Homicide as “ Whosoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as it 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 .”

The essentials of Culpable Homicide are :-

- 1) Whoever causes death – Death means death of a human being . It does not include the death of an unborn child , but it may amount to culpable homicide to cause death of a living child if any part of the child has been brought forth . However its not necessary that the person whose death has been caused must be the very person whose death was intended.
- 2) By doing an act – death may be caused in number of ways such as by poisoning , starving , striking , drowning or communicating some shocking news etc. . Act here includes illegal omissions . An omission is illegal if it be an offence and in some direction is a breach of law .
- 3) (a) Intention to cause death – Intention means the expectation of the consequence in question . when a man is charged with doing the act of which the probable consequence maybe highly injurious , the intention is inferred from the acts of the accused and circumstance of the case .
 (b) 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.
 (c) With the knowledge that he is likely by such an 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.

Some of the examples of culpable homicide are –

- A lays sticks and turf over a pit, with the intention of causing death or with the knowledge that death is likely to be caused. Z believing the ground to be firm treads on it, falls in it and dies. Here A has committed culpable homicide .

- A kicked the abdomen of B with such a violence as to cause fracture in 2 ribs and rupture of spleen which was normal due to which B died. It was held that A knew that the abdomen is the most delicate and vulnerable part of human body and presumed to have kicked with the knowledge that by so kicking he was likely to cause death

Section 304 defines punishment for culpable homicide not amounting to murder – the punishment is of imprisonment for life or imprisonment which may extend to ten years and also be liable to fine

Case Law 1: Kusa Majhi v State of Orissa 1985 Cr. L.j 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 with the blows on her shoulder and she died. There was no pre plan of the offence. 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 anger. Therefore it was held to be a case of culpable homicide .

Case Law 2: Ganesh Dooley Tulsa I.L.R 20 All . 143

A snake charmer exhibited in public a venomous snake , whose fangs he knew had not been extracted and to show his skills without any intention to cause harm to anyone , placed the snake on head of one of the spectators . The spectator trying to push off the snake was bitten and died in consequence . The snake charmer was held to be guilty of culpable homicide not amounting to murder.

❖ **Murder**

Section 300 of the Code defines murder as – Except in the cases , culpable homicide is murder if –

1. If the act by which the death is caused is done with the intention of causing death .
2. If it is done with the intention of causing such bodily injury as the offender knows likely to cause death of the person to whom the harm is caused

3. If it is done with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death
4. If the person committing the act knows that it is so immediately dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such an act without an excuse for incurring the risk of causing death or such bodily harm

As in case of Culpable Homicide intention and knowledge for committing the act is important. Where a man intentionally inflicts bodily injury sufficient in the ordinary cause of nature to cause death, then such a person will be liable for murder in case of murder the probability of death is more than in the case of culpable homicide

Ingredients of Murder are –

1. **Act by which the death caused is done with the intention of causing death:** When an act is done with the intention of causing death, then it is culpable homicide amounting to murder. ‘Act’ includes illegal omission also. Death may be caused by illegal omission as well. It is the action of a person with the clear intention of killing a person.
2. **With the intention of causing such bodily injury as the offender knows to be likely to cause death:** As per second clause of Section 300, if a person intentionally causes bodily injury, with the knowledge that such bodily injury will cause death of the person injured, then it will be culpable homicide amounting to murder. In case of offence falling under clause (2) of Section 300, there is first, the intention to cause bodily harm and next, there is the ‘subjective knowledge’ that death will be the likely consequence of the intended injury.
3. **With the intention of causing bodily injury to any person –** sufficient in the ordinary course of nature to cause death: According to clause (3) of Section 300, it is sufficient that there is intention to cause the bodily injury that was actually caused. The subjective factor ends with that. There need be no further enquiry whether the offender has the intention or the knowledge that such bodily injury should be sufficient in the ordinary course of nature to cause death
4. **Person committing the act known that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death**

:Clause (4) of Section 300 applies to cases of dangerous action without an intention to cause specific bodily injury to any person e.g., furious driving or firing at a target near the public road. However, the act 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.

Some of the examples of murder are:-

- A shoots Z with the intention of killing him. Z dies in the consequence. A commits murder.
- A without any excuse fires a loaded canon into the crowd of persons and kills one of them. A is guilty of murder

Case law 1: B.N. Srikantiah v. Mysore State [AIR 1958 SC 672]

There were as many as 24 injuries on the deceased and of them 21 were incised. They were either on his head, the neck, or the shoulders or on the forearms. Since, most of the injuries were on vital parts and the weapons used were short, it was held that the intention of causing bodily injuries was established, bringing it under the cover of Section 300

Case Law 2: State of AP vs M Sobhar Babu

Accused A1 And A2 entered the house of deceased armed to commit robbery. Accused on being overpowered by deceased caused the knife injury on the abdomen of the deceased. He also caused injury to sister of deceased who came to rescue the deceased. Co – accused also caused knife injuries on the legs of the deceased and threatened others with dire consequences. It was held that though accused came to commit robbery and common intention can be inferred from circumstances of the case. Intention can be gathered from circumstances as they arise even during the incident. As such the case was the accused will be held for murder.

Section 300 of the Code also mentions 5 exceptions where culpable homicide does not murder-

- 1) Exception 1: Sudden and grave provocation – Sometimes a person may commit an act which leads to death of another person due to grave and sudden provocation. Then such a person will be held for culpable homicide not amounting to murder. In such a case the person loses his self-control for a moment and commits such an act.

Essentials of this exception are –

- There must be a provocation
 - The provocation must be grave and sudden
 - By reason of such grave and sudden provocation the offender must have been deprived power of self-control.
 - The death of the person who gave provocation or of any other person by mistake or accident must have been caused.
- 2) Exception 2: Exceeding the right of private defence- The law contained in this exception is based on the rule that in a case in which law itself empowers an individual to inflict any harm short of death, it ought hardly to visit him with highest punishment if he inflicts death.

Essentials of this exception are –

- An act must be done in exercise of right to 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 already caused the death.
 - Act must have been done with premeditation and without any intention of causing more harm than was necessary in self defence.
- 3) Exception 3: Offence committed by a public servant – This exception shall not apply where the act of a public servant is illegal and unauthorised by law or if he glaringly exceeds the powers entrusted to him by law .

Essentials of this exception are-

- 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.
- 4) Exception 4: Death caused in sudden fight- By fight here we mean something more than a verbal quarrel. A fight is a combat between two or more person whether with or

without weapons. Fight per se is not a palliating circumstance, it must be sudden, nor pre-arranged. Therefore the time gap between the quarrel and fight is very important.

Essentials of this exception are-

- Death must be caused in a sudden fight
- Sudden fight must be without any premeditation.
- It must occur in the heat of passion upon sudden quarrel.
- The offender must have not taken undue advantage or must have not acted in a cruel or unusual manner.
- It is immaterial as to which party offered the provocation or committed the first assault.
- The fight must be with the person killed.

Exception 5: Death caused of person consenting to it: Culpable homicide is not murder when the person whose death is caused being above the age of 18 years, suffers death or takes the risk of death with his own consent.

Essentials of this exception are:-

- The death was caused with the consent of the deceased;
- The deceased was then above 18 years of age;
- That such consent was free and voluntary and not given through fear or misconception of facts.

The main points of difference between culpable homicide and murder are:

1. Culpable homicide is wider than the term murder. Culpable homicide is therefore considered as the genus while as murder is regarded as a species. All murders are culpable homicide but all culpable homicides are not regarded as murder.
2. Murder is an aggravated form of culpable homicide.
3. In murder, the offender has a definite knowledge that the act would result in the death while as in culpable homicide the knowledge is not so definite.
4. The probability of causing death is higher in murder than culpable homicide.