

1. What is Homicide? Discuss it with classification.

Answer: Homicide is the act of one human being causing the death of another. It is not always illegal. The law classifies homicide based on intent, circumstances, and legal justification.

Classification: Homicide are two types.

1. Lawful Homicide: Which may be either (a) Excusable or (b) Justifiable.
 2. Unlawful Homicide: It includes (a) Culpable homicide not amounting to murder and (b) Culpable homicide amounting to murder.
- A. Excusable Homicide: Excusable homicide refers to the lawful killing of a person without criminal intent, where the perpetrator bears no moral blame or legal guilt. It is recognized under the Penal Code when death occurs under circumstances that negate criminal liability. E.g. Death by Accident or Misfortune (S.80 PC). *A legally fires a gun at a shooting range. A stray bullet accidentally kills B, who was hidden behind a target.*
- B. Justifiable Homicide: Justifiable homicide is the intentional killing of a person recognized as lawful under specific circumstances. Unlike *excusable homicide* (which involves no criminal intent), justifiable homicide may involve intent but is sanctioned by law to protect societal order, justice, or innocent lives. It incurs no criminal liability. E.g. **S.76 PC**: Acts done due to a **mistake of fact** in good faith. *Example*: A soldier kills B believing B is a terrorist (but B is actually a civilian).
- ® Culpable homicide not amounting to murder (S.299 PC): Death caused with:
- « Intention to cause death, OR
 - « Intention to cause bodily injury likely to cause death, OR
 - « Knowledge that the act is likely to cause death.
- « Punishment: Up to 10 years or life imprisonment (S.304 PC).

- ® Culpable homicide amounting to murder. Culpable homicide becomes murder if:
- « *Intention* to cause death, OR
 - « *Intention* to cause bodily injury *known to likely cause death*, OR
 - « *Intention* to inflict injury *sufficient in ordinary course to cause death*, OR
 - « *Knowledge* that the act is *imminently dangerous* and must cause death.
- Punishment: Death or life imprisonment (S.302 PC).

Exceptions: When Murder Reduces to Culpable Homicide

(S.300 Exceptions)

1. **Grave and sudden provocation.**
2. **Excess private defence.**
3. **Public servant exceeding powers in good faith.**
4. **Sudden fight.**
5. **Victim's consent** (if victim is >18 years).

Example: A kills B after B publicly humiliates A's deceased wife (grave provocation).

→ **Charge:** Culpable homicide, not murder.

2. Does a person have right to kill someone? If yes, Which circumstances?

Answer: Section 97 of the Penal Code (IPC) grants every person the legal right to defend:

1. Their own body, or
 2. The body of any other person,
 3. Their own property, or
 4. The property of another person,
- against any act that constitutes an offence under the PC.

Under the Section 100 of Penal Code, 1860 Death is justifiable only if the offence poses:

1. Reasonable Apprehension of Death
 - a. *Example:* An attacker points a gun at you.
2. Reasonable Apprehension of Grievous Hurt

- a. "Grievous hurt" includes:
 - i. Emasculation, permanent vision loss, fractures, disfigurement, etc. (S.320 IPC).
 - b. *Example*: An assailant threatens to cut off your hand with an axe.
- 3. Assault to Commit Rape
 - a. *Example*: Killing a person attempting rape.
- 4. Assault to Satisfy Unnatural Lust
 - a. *Example*: Defending against forced sodomy or bestiality.
- 5. Assault to Kidnap or Abduct
 - a. *Example*: Preventing a child's kidnapping.
- 6. Assault to Wrongfully Confine
 - a. Applies if the victim reasonably believes they cannot seek public help (e.g., locked in a basement).
 - b. *Example*: Killing captors while escaping unlawful imprisonment.

3. What is Hurt and Grievous Hurt?

Answer: According to section 319 of the Penal Code, 1860 *Whoever causes bodily pain, disease, or infirmity to any person is said to cause "hurt"*.

Punishment (S.323 PC): Simple imprisonment up to 1 year, or fine up to BDT. 1,000, or both.

And Under section 320 of the PC Grievous hurt includes 8 specific injuries, considered severe due to lasting impact:

- 1. Emasculation (depriving male potency).
- 2. Permanent privation of sight/vision.
- 3. Permanent privation of hearing.
- 4. Privation of any limb/joint (loss of function).
- 5. Destruction or permanent impairment of limb/joint.
- 6. Permanent disfigurement (e.g., acid attack scars).
- 7. Fracture or dislocation of bone/tooth.
- 8. Any hurt that:
 - a. Endangers life,
 - b. Causes severe pain for 20+ days,
 - c. Renders victim unable to pursue ordinary activities.

Punishment (S.325 PC): Imprisonment up to 7 years + fine.

4. What is theft? Whether a person can be convicted of stealing his own property?

Answer: Based on section 378 Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property, is said to commit theft.

Yes, a person can be convicted of stealing his own property. E.g. A gives his watch to B for repairs. B repairs the watch but A does not pay the repairing charges, because of which B does not return the watch as a security. A forcibly takes his watch from B. Here, A is guilty of theft of his own watch.

Based on this definition, the following are the essential constituents of Theft –

- Dishonest intention to take property
- Property must be movable
- Property must be taken out of possession of another
- Property must be taken without consent
- Physical movement of the property is must
- « Punishment: according to section 379 of PC Imprisonment up to 3 years or fine or both.

4. When a theft becomes robbery?

Answer: A theft becomes a robbery when the following two conditions are satisfied –

1. when someone voluntarily causes or attempts to cause
 - a. death, hurt, or wrongful restraint or
 - b. fear of instant death, instant hurt, or instant wrongful restraint
2. the above act is done
 - a. in order to the committing of theft or
 - b. committing theft or
 - c. carrying away or attempting to carry away property obtained by theft.

For example, A holds Z down, and fraudulently takes Z's money from Z's clothes, without Z's consent. A has committed theft and in order to commit that theft, he voluntarily caused wrongful restraint to Z. Thus, A has committed robbery.

« Punishment: Rigorous imprisonment up to 10 years + fine. (Section 392)

5. What is Dacoity?

Answer: As per section 391, a Robbery committed by five or more persons is dacoity.

Section 391 – When five or more persons conjointly commit or attempt to commit robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding is said to commit dacoity.

Conjointly implies a collective effort to commit or attempting to commit the action. It is not necessary that all the persons must be at the same place but they should be united in their efforts with respect to the offence. Thus, persons who are aiding the offence are also counted and all are guilty of dacoity. However, if 5 persons were identified and out of them 2 were acquitted, the remaining three cannot be convicted of dacoity.

« **Punishment:** Rigorous imprisonment up to 10 years + fine. (Section 395).
But if it is Dacoity with murder then Guilty persons will be faced death penalty or imprisonment for life + fine.

6. What are the distinctions between ‘Dishonest misappropriation of property’ and ‘Criminal breach of trust’?

Answer: Some key differences between Dishonest Misappropriation of Property and Criminal Breach of Trust are:

1. Transfer of property: Dishonest Misappropriation of Property: The property comes into the possession of the accused naturally.

Criminal Breach of Trust: The property comes into the possession of the accused either by an express entrustment or by a contractual manner. There is a conversion of the property held by a person in a fiduciary capacity.

2. Nature of Property: Dishonest Misappropriation of Property: It can only be a movable property.

Criminal Breach of Trust: It can be a movable as well as immovable property.

3. Relationship between the victim and the accused: Dishonest Misappropriation of Property: There is no contractual relationship between the victim and the accused.

Criminal Breach of Trust: There is a contractual relationship between the victim and the accused.

4. Nature of Offence: Dishonest Misappropriation of Property: It is a Non – cognizable, bailable, compoundable with the permission of the court and is triable by any magistrate.

Criminal Breach of Trust: It is an It is a Non – cognizable, bailable, non - compoundable and is triable by a magistrate of the first class.

5. Punishment for the offence: Dishonest Misappropriation of Property: 2 years of imprisonment or fine or both.

Criminal Breach of Trust: 3 years of imprisonment or fine or both

7. What is House Trespass?

Answer: Section 441 of the PC defines criminal trespass as:

“Whoever enters into or upon property in possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass.”

In simpler terms, criminal trespass involves:

- Unauthorised entry into someone else’s property.
- Remaining unlawfully on the property despite lawful initial entry.
- Intent to commit an offence, intimidate, insult, or annoy the lawful possessor.

Ingredients of Criminal Trespass

1. Unlawful Entry: Entry without permission onto another’s property.

2. Possession by Another: The property must be in possession of someone other than the accused.
3. Unlawful Remaining: Even if entry was lawful, staying with criminal intent makes it trespass.
4. Intent: The accused must have intent to commit a crime, intimidate, insult, or annoy the possessor.

Examples of Criminal Trespass

- Entering someone's private garden or farmland without permission.
- Remaining in a public place after being asked to leave.
- Unauthorised entry into a fenced property.

Punishment for Criminal Trespass (Section 447, PC)

- Imprisonment: Up to three months.
- Fine: Up to BDT. 500.
- Or both.

8. Define House Breaking. How it differs from Criminal Trespass?

Answer: Section 442 of the PC defines house trespass as:

“Whoever commits criminal trespass by entering into or remaining in the building, tent, or vessel used as a human dwelling, or any building used as a place of worship, or as a place for the custody of property, is said to commit house trespass.”

House trespass is a more serious form of criminal trespass that involves entering a residence, office, religious place, or storage facility without authorisation.

Key Differences from Criminal Trespass

- Property Type: Involves buildings, tents, or vessels meant for human dwelling, worship, or storage.
- Higher Level of Intrusion: Unlike general criminal trespass, house trespass invades a person's private or sacred space, making it a more severe offence.

- **Physical Entry Required:** Even introducing any part of the body (such as a hand through a window) is enough to constitute house trespass.

Examples of House Trespass

- Breaking into someone's home without permission.
- Entering an office building to commit theft.
- Unauthorised access to a temple, mosque, or church.

Punishment for House Trespass (Section 448, PC)

- Imprisonment: Up to one year.
- Fine: Up to BDT. 1,000.
- Or both.

9. Which act we can consider as House Breaking?

Answer: A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:

Firstly. -If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly. -If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly. -If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly. -If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly. -If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly. -If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Punishment: 3 years + fine.

10. Where any dispute arises about land property, what procedure likely to follow to stop the breach of peace?

Answer: Section 145 of the Code of Criminal Procedure contains provisions related to a breach of peace on account of a dispute over land or water. If there is a dispute between two parties/groups who own a piece of land, water, or a boundary, this will result in a breach of peace and the Executive Magistrate has the power to take action in this regard.

The following conditions must be met in order for a magistrate to have jurisdiction under Section 145:

Dispute Criteria:

- That there is a dispute.
- That it might result in a breach of peace.
- That the disputed property includes buildings, markets, fisheries, crops, or other agricultural products, as well as the land's boundaries, rentals, or profits.
- That the alleged possession occurred within two months of the Magistrate's first order.
- That it falls within the Magistrate's jurisdiction.

Example:

Let's consider a scenario where there is a dispute over a piece of land. The criteria for the dispute to be addressed by the Magistrate are as follows:

A' approaches 'B' with other men carrying deadly weapons and tells him that he will return on Monday and forcefully capture the land, firing a few bullets into the air.

Being a short-tempered individual himself, "B" threatens "A" not to attempt to capture the land on Monday and fires a few rounds into the air as well.

In such a circumstance, the parties are extremely likely to engage in a deadly fight. Therefore, in such a circumstance, if the Executive Magistrate is informed by the police report or any other material that a breach of peace is likely to occur, he might order the parties to appear in court and present their written arguments to him.

11. When can a magistrate attach the disputed land property?

Answer: CrPC Section 146 deals with the attachment of the subject matter of a dispute and the appointment of a receiver.

This section empowers a Magistrate to attach the subject matter of a dispute if it is necessary to prevent its disposal, alienation, or removal, which might prejudice the rights of any party involved in the dispute. The Magistrate can appoint a receiver to take possession and manage the attached property.

12. What are the grounds for attachment under section 146? What are the powers of the receiver?

Answer: The grounds are:

- a. To prevent the disposal of the subject matter of the dispute.
- b. To prevent the alienation of the subject matter of the dispute.
- c. To prevent the removal of the subject matter of the dispute.

Any party involved in the dispute can apply for an attachment order.

The receiver's powers are determined by the Magistrate's order. They typically include taking possession of the attached property, managing it, and preventing its disposal or alienation.

13. Which acts are considered as public nuisance?

Answer: when a District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate empowered by the Government has been so notified of a report made by a police officer or otherwise, and having examined any evidence in support, he himself is satisfied that any of the following exist are public nuisance.

- **Unlawful Obstruction or Nuisance in Public Places:** It includes obstructions or nuisances of any kind in any public place, way, river, or channel which are used by the public.
- **Health Hazards from Trade or Occupation:** It is concerned with cases wherein a trade, occupation or the storage of goods is detrimental to the health or comfort of the community. The Magistrates may grant permission to prohibit, regulate, remove, or store under control such goods.
- **Fire and Explosion Hazards:** It involves construction or demolition of structures which may lead to a fire explosion. The Magistrate can be able to stop or prevent such work.
- **Dangerous Structures:** This involves buildings, tents, structures, or trees likely to fall and thereby endanger persons living, working, or passing near them. The Magistrate can require them to be demolished, repaired, or supported.
- **Unfenced Excavations:** It is the dangerous, unfenced tanks, wells, or digs situated near any public way or place. The Magistrate can make an order for fencing such sites to protect the public.
- **Dangerous Animals:** It relates to the issue of dangerous animals. The Magistrate can issue orders for destruction, confinement, or proper removal of such animals.

14. When a wrongfully confined person can be searched?

Answer: If any Metropolitan Magistrate, Magistrate of the first class or an Executive Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

15. Elaborate conducting a search- step by step process.

Answer: "Conducting a Search: Step-By-Step Process" under Section 100, 102 and 103 of CrPC as shown:

1. Obtaining a Search Warrant: A search warrant is usually required to carry out a search under Section 100 of the Criminal Procedure Code (CrPC). This warrant must be issued by a magistrate and shown to the person before the search begins. It includes reasons for the search and the specific areas to be searched.
2. Initiating the Search: Once the warrant is obtained, police officers must inform the person in charge of the place being searched. They must explain the purpose of the search and show the warrant. This makes the process legal and transparent.
3. Role of Independent Witnesses: Neutral or independent witnesses must be present during the search. They ensure the process is fair and can testify later in court if needed.
4. Documenting the Search: Every action taken during the search must be recorded properly, including: What was done What evidence was found Who witnessed it This documentation is important for court use and investigation integrity.
5. Handling of Evidence: Evidence must be handled with care and strict protocols to avoid tampering or contamination. Items must be properly labeled and stored to ensure they can be used in court.