

Exhibiting cow's flesh by carrying it in an uncovered state round a village with the deliberate intention of wounding the religious feelings of Hindus was held to be an offence under this section.^{50.}

[s 298.3] Killing of cow.—

Where on the occasion of Bakr-i-Id, the accused killed a cow at dawn in a semi-private place and the killing was seen by some Hindus walking along the village pathway 50 feet away, it was held that no offence under this section was committed.^{51.} The sacrifice of a cow on the Bakr-i-Id day is not an obligatory religious act for a Muslim and the protection of [Article 25 of the Constitution](#) cannot be claimed for such an act.^{52.}

1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

46. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

47. *Shalibhadra Shah*, [1981 Cr LJ 113](#) (Guj).

48. *Mudassir Ullah Khan v State of UP*, 2013 (81) ALLCC 152 : 2013 Cr LJ 3741.

49. *Narasimha v Shree Krishna*, (1892) 2 Mad Jur 236.

50. *Rahman v State*, (1893) 13 AWN 144.

51. *Sheikh Amjad v State*, (1942) 21 Pat 315.

52. *Kitab Ali v Santi Ranjan*, [AIR 1965 Tripura 22](#) .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

[s 299] Culpable homicide.

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

ILLUSTRATIONS

- (a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.
- (b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.
- (c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

***Explanation 1.*—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.**

***Explanation 2.*—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.**

***Explanation 3.*—The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.**

COMMENT.—

Homicide is the killing of a human being by a human being. It is either (A) lawful, or (B) unlawful.

(A) Lawful homicide, or simple homicide, includes several cases falling under the General Exceptions (Chapter IV).

(B) Unlawful homicide includes—

- (1) Culpable homicide not amounting to murder (section 299).
- (2) Murder (section 300).
- (3) Rash or negligent homicide (section 304A).
- (4) Suicide (sections 305, 306).

(A) Lawful or simple homicide.—This is committed where death is caused in one of the following ways:—

1. Where death is caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution (section 80).
2. Where death is caused justifiably, that is to say,
 - (i) By a person, who is bound, or by mistake of fact in good faith believes himself bound, by law (section 76).
 - (ii) By a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (section 77).
 - (iii) By a person acting in pursuance of the judgment or order of a Court of Justice (section 78).
 - (iv) By a person who is justified or who by reason of a mistake of fact, in good faith, believes himself to be justified by law (section 79).
 - (v) By a person acting without any criminal intention to cause harm and in good faith, for the purpose of preventing or avoiding other harm to person or property (section 81).
 - (vi) Where death is caused in the exercise of the right of private defence of person or property (sections 100, 103).
3. Where death is caused by a child, or a person of unsound mind, or an intoxicated person as will come under sections 82, 83, 84 and 85.
4. Where death is caused unintentionally by an act done in good faith for the benefit of the person killed, when—
 - (i) he or, if a minor or lunatic, his guardian, has expressly or impliedly consented to such an act (sections 87, 88); or
 - (ii) where it is impossible for the person killed to signify his consent or where he is incapable of giving consent, and has no guardian from whom it is possible to obtain consent, in time for the thing to be done with benefit (section 92).

(B) Unlawful homicide.—Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing:

- (i) an act with the intention of causing death;
- (ii) an act with the intention of causing such bodily injury as is likely to cause death;
or
- (iii) an act with the knowledge that it was likely 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.^{1.}

Culpable homicide may be classified in three categories—(1) in which death is caused by the doing of an act with the intention of causing death; (2) when it is committed by causing death with the intention of causing such bodily injury as is likely to cause death; and (3) 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. It would also be relevant to bear in mind the import of the terms "likely by such act to cause death". Herein again lies a distinction as "likely" would mean probably and not possibly. When an intended injury is likely to cause death, the same would mean an injury which is sufficient in the ordinary course of nature to cause death which in turn would mean that death will be the most probable result.^{2.}

[s 299.1] Ingredients.—

The section has the following essentials:

1. Causing of death of a human being.
2. Such death must have been caused by doing an act
 - (i) with the intention of causing death; or
 - (ii) with the intention of causing such bodily injury as is likely to cause death; or
 - (iii) with the knowledge that the doer is likely by such act to cause death.

The fact that the death of a human being is caused is not enough. Unless one of the mental states mentioned in ingredient^{3.} is present, an act causing death cannot amount to culpable homicide.

[s 299.2] 'Causes death'.—

Death means the death of a human being (section 46). But this word does not include the death of an unborn child (*vide* Explanation 3). It is immaterial if the person whose death has been caused is not the very person whom the accused intended to kill: see Illustration (a) and section 301.^{4.} The offence is complete as soon as any person is killed. Death occurs when brain dies completely. A person cannot be said dead if some brain activity is present.^{5.}

[s 299.3] Five-step enquiry.—

According to the Supreme Court, in case where death is alleged to have been caused by a person, there shall be a five-step inquiry:

- (i) Is there a homicide? (ii) If yes, is it a culpable homicide or a 'not culpable homicide'? (iii) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder ([s. 300 of the Indian Penal Code](#)) or is it a culpable homicide not amounting to murder ([s. 304 of the Indian Penal Code](#))? (iv) If it is a 'not culpable homicide' then a case [u/s. 304-A of the Indian Penal Code](#) is made out. (v) If it is not possible to identify the person who has committed the homicide, the provisions of [s. 72 of the Indian Penal Code](#) may be invoked.^{6.}

[s 299.4] 'By doing an act with the intention of causing death'.—

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 by poisoning, starving, striking, drowning, and by a hundred different ways.

Under section 32, words which refer to acts done extend also to illegal omissions, and the word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action (section 43). Therefore, death caused by illegal omission will amount to culpable homicide.⁷

[s 299.5] Need for viscera report.—

Having noticed that, in several cases, where poisoning is suspected, the prosecuting agencies are not taking steps to obtain *viscera* report, the Supreme Court, in *Joshinder Yadav v State of Bihar*⁸, issued certain directions in this behalf. It was held:

We direct that in cases where poisoning is suspected, immediately after the *post-mortem*, the *viscera* should be sent to the FSL. The prosecuting agencies should ensure that the *viscera* is, in fact, sent to the FSL for examination and the FSL should ensure that the *viscera* is examined immediately and report is sent to the investigating agencies/Courts *post-haste*. If the *viscera* report is not received, the concerned Court must ask for explanation and must summon the concerned officer of the FSL to give an explanation as to why the *viscera* report is not forwarded to the investigating agency/Court. The criminal Court must ensure that it is brought on record.

[s 299.6] Death caused by effect of words on imagination or passions.

This may sometimes require a complete study of the person of the deceased, her psychology, nature and disposition. Going by these considerations in a case before it, the Supreme Court came to the conclusion that the death of the young married woman in her matrimonial home was a case of suicide and not that of murder. A letter of hers sensing some foul play against her was neither sufficient for conviction for murder nor to dispel the presumption of suicide generated by the type of person she was and her mental make-up.⁹

[s 299.7] 'With the intention of causing such bodily injury as is likely to cause death'.—

The connection between the 'act' and the death caused thereby must be direct and distinct; and though not immediate, it must not be too remote.¹⁰ Where bodily injury sufficient to cause death is actually caused, it is immaterial to go into the question as to whether the accused had intention to cause death or knowledge that the act will cause death.¹¹ In finding out whether there was the requisite intention or not, the Court has not to go merely by the part of the body where the blow fell, but also the circumstances and the background of the offence and also the ferocity of the attack.

[s 299.8] 'With the knowledge that he is likely by such act to cause death'.—

'Knowledge' is a strong word and imports a certainty and not merely a probability.^{12.}

[s 299.9] Beating for exorcising evil spirit.—

Where the accused, in exorcising the spirit of a girl whom they believed to be possessed, subjected her to a beating which resulted in her death, it was held that they were guilty of culpable homicide.^{13.}

[s 299.10] 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.^{14.}

[s 299.11] Distinction between knowledge and intention.—

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.^{15.}

[s 299.12] Death caused without 'requisite intention' or 'knowledge' not culpable homicide.—

If the death is caused under circumstances specified in section 80, the person causing the death will be exonerated under that section. But, if it is caused in doing an unlawful act, the question arises whether he should be punished for causing it. The Code says that when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment of his offence, without any addition on account of such accidental death. See Illustration (c) to this section. The offence of culpable homicide supposes an intention, or knowledge of likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt,^{16.} or simple hurt.^{17.} It is only 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 do so notwithstanding death being caused, that the offence will not be culpable homicide but grievous or simple hurt. Every such case depends upon the existence of abnormal conditions unknown to the person who

inflicts the injury.¹⁸ A person who voluntarily inflicts injury such as to endanger life must always, except in the most extraordinary and exceptional circumstances, be taken to know that he is likely to cause death. If the victim is actually killed, the conviction in such cases ought ordinarily to be of the offence of culpable homicide.¹⁹ Once it is established that an act was a deliberate act and was not the result of accident or rashness or negligence, it is obvious that the offence would be culpable homicide.²⁰

[s 299.13] Death due to diseased spleen.—

Where the accused gave a blow with a light bamboo stick, not more than an inch in diameter, to the deceased who was suffering from diseased spleen on the region of that organ, it was held that he was guilty of causing grievous hurt.²¹

[s 299.14] CASES.—Knowledge of probable consequence of act.—Beating.—

Where a person struck with a heavy stick and killed a man, being at the time under the *bona fide* belief that the object at which he struck was not a human being but something supernatural, but through terror, having taken no steps to satisfy himself that it was not a human being, he was held to have committed culpable homicide.²²

[s 299.15] Explanation 1.—

A person causing bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerating the death of that other, is deemed to have 'caused his death'. But one of the elements of the offence of culpable homicide must be present.²³

[s 299.16] Explanation 2.—'By resorting to proper remedies death might have been prevented'.—

This Explanation is explicit and gives no room for discussion. 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 man.²⁴

Although proof be given that the wound or other bodily injury if skilfully treated might not have resulted in death, yet, if in fact death is the result, the wound 'causes' death. And it does not avail the offender to prove that the first cause might have been removed or rendered inoperative by the application of proper remedies and that death might have been prevented. 'Proper remedies and skilful treatment' may not be within the reach of the wounded man; or if they are at hand, he may be unable or unwilling to resort to them. But this is immaterial so far as it relates to the due interpretation of the words 'cause of death'. The primary cause which sets in motion some other cause,—as the severe wound which induces gangrene or fever, and the ultimate effect, death, are sufficiently connected as cause and effect, notwithstanding that the supervening sickness or disease might have been cured by medical skill. All that it is essential to establish is that the death has been caused by the bodily injury and, if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one.²⁵

If death results from an injury voluntarily caused, the person who causes that injury is deemed to have caused death although the life of the victim might have been saved if proper medical attention had been given, and even if medical treatment was given but

was not the proper treatment, provided that it was administered in good faith by a competent physician or surgeon.^{26.}

[s 299.17] CASES.—

Where the deceased did not actually die from the injuries but died from the gangrene which set in in consequence of some dirty substance, such as a bandage or the *da* with which the injuries were caused, coming into contact with one injury, although the injuries were not the direct cause of death, the person causing the injuries was held to have caused death.^{27.} Where the facts were that the acts of the accused were in the category of a rash act which brought about dashing against the victim leading to his death. There appeared to be no intention or knowledge of bringing about a fatal consequence. The liability was under section 304A.^{28.}

[s 299.18] Explanation 3.—

The causing of death of a child in the mother's womb is not homicide; such an offence is punishable under section 315. But it is 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. The former Chief Court of Punjab has observed that "if it is not homicide to kill a child in its mother's womb, it can hardly be urged that it is homicide to kill a child that has breathed in the womb and died while yet in the womb and has been brought forth still-born".^{29.}

[s 299.19] Applicability of section 299 whether conviction under section 304 Part I or Part 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.

- "(i) with the intention of causing death; or
- (ii) with the intention of causing such bodily injury as is likely to cause death; or
- (iii) 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, 1860](#), 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 I [IPC, 1860](#) 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, [IPC, 1860](#) 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.^{30.}

1. *Rahee*, (1866) Unrep Cr C 6. *State v Ram Swarup*, 1998 Cr LJ 1067 (All).
2. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] .
3. *Nirbhai Singh*, 1972 Cr LJ 1474 (MP).
4. *Ballan*, 1955 Cr LJ 1448 .
5. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .
6. *Richhpal Singh Meena v Ghasi*, 2014 Cr LJ 4339 : AIR 2014 SC 3595 [LNIND 2014 SC 691] .
7. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] , the enquiry is broad-based without going into every detail, whether there was the intention to strike at a vital part of the body with sufficient force to cause the kind of injury found on the body. *Mohd Asif v State of Uttaranchal*, (2009) 11 SCC 497 [LNIND 2009 SC 558] : 2009 Cr LJ 2789 , no hard and fast rule can be laid down for determining the existence of intention. *Sellappan v State of TN*, (2007) 15 SCC 327 [LNIND 2007 SC 91] , death caused by head injury, despite hospitalisation, plea that proper treatment could have saved, not tenable in view of Explanation 2, section 299.
8. *Joshinder Yadav v State of Bihar*, 2014 Cr LJ 1175 : (2014) 4 SCC 42 [LNIND 2014 SC 34] .
9. *Sharad Birdichand Sarda v State of Maharashtra*, AIR 1984 SC 1622 [LNIND 1984 SC 359] : 1984 Cr LJ 1738 : (1984) 4 SCC 116 [LNIND 1984 SC 359] : 1984 SCC (Cr) 487. See also *Bijoy Kumar Sen v State*, 1988 Cr LJ 1818 (Cal); *Prabhu v State of MP*, 1991 Cr LJ 1373 : AIR 1991 SC 1069 .
10. *Laxman*, 1974 Cr LJ 1271 : AIR 1974 SC 1803 .
11. *Re Thangavelu*, 1972 Cr LJ 390 (Mad); *State of Bihar v Pasupati Singh*, 1973 Cr LJ 1832 : AIR 1973 SC 2699 [LNIND 1973 SC 284] ; *Nishan Singh v State of Punjab*, (2008) 17 SCC 505 [LNIND 2008 SC 2718] : AIR 2008 SC 1661 [LNIND 2008 SC 2718] : (2008) 65 AIC 172 .
12. *Shankar Kondiba Gore v State of Maharashtra*, 1995 Cr LJ 93 (Bom), where a stab injury was inflicted on abdomen but death was caused because the right artery was punctured at ilium, it was held that the accused could only be saddled with knowledge of causing death and could be convicted under section 304, Part II and not under section 302. See also *Dharamvir v State of Haryana*, (1994) 2 Cr LJ 1281 (P&H), sudden and unpremeditated fight, there being no previous enmity, single blow death of one, culpable homicide, not murder. *Muniappan v State of TN*, 1994 Cr LJ 1309 (Mad), in a fight between brother and sister, the brother hit her and her son with a crow-bar, the sister died and the son was injured who in anger attacked the accused in reply, the accused was held to be guilty of culpable homicide and not entitled to the plea of private defence. *Nizamuddin v State of MP*, AIR 1994 SC 1041 : 1994 Cr LJ 1386 : 1995 SCC (Cr) 699, fatal injury caused in exceeding the right of private defence.
13. *Jamaludin*, (1892) Unrep Cr C 603; *Haku*, (1928) 10 Lah 555; *State of MP v Godhe Faguwa*, 1974 Jab LJ 302 : 1974 MPLJ 203 [LNIND 1973 MP 3] : ILR [1976] MP 361 [LNIND 1973 MP 3] .
14. *Jagriti Devi v State of HP*, (2009) 14 SCC 771 [LNIND 2009 SC 1376] : AIR 2009 SC 2869 [LNIND 2009 SC 1376] : (2009) 80 AIC 225 (SC) : (2009) 3 AP LJ 52 (SC).
15. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] ; *Daya Nand v State of Haryana*, (2008) 15 SCC 717 [LNIND 2008 SC 827] : AIR 2008 SC 1823 [LNIND 2008 SC 827] : 2008 Cr LJ 2975 , murder and culpable homicide not amounting to murder, distinction

explained and restatement of interpretation of sections 299 and 300. A similar explanation is to be seen in *Ghelabhai Jagmalbhai Bhawad v State of Gujarat*, (2008) 17 SCC 651 ; *Harendra Nath Borah v State of Assam*, (2007) 15 SCC 249 [LNIND 2007 SC 84] and *Raj Kumar v State of Maharashtra*, (2009) 15 SCC 292 [LNIND 2009 SC 1504] , ingredients and **distinction** restated.

16. *O'Brien*, (1880) 2 All 766 ; *Idu Beg*, (1881) 3 All 776 .
17. *Safatulla*, (1879) 4 Cal 815 ; *Fox*, (1879) 2 All 522 ; *Randhir Singh*, (1881) 3 All 597 .
18. *Bai Jiba*, (1967) 19 Bom LR 823 .
19. *Mana*, (1930) 32 Bom LR 1143 , 1144.
20. *Afrhim Sheikh*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : (1964) 2 Cr LJ 350 .
21. *Megha Meeah*, (1865) 2 WR (Cr) 39; *O'Brien*, (1880) 2 All 766 .
22. *Kangla v State*, (1898) 18 AWN 163.
23. *Fox*, (1879) 2 All 522 .
24. *Krishnaswami*, AIR 1965 Mad 261 .
25. M&M 228. [This is Morgan & Macpherson's [Indian Penal Code](#). Please see 'Explanation of Abbreviations' in the Prelim pages]
26. *Sah Pai*, (1936) 14 Ran 643, as explained in *Abor Ahmed v State*, (1937) Ran 384 (FB). *Pappachan v State of Kerala*, 1994 Cr LJ 1765 (Ker), defence that proper medical attendance was not there was not allowed to be raised.
27. *Nga Paw v State*, AIR 1936 Ran 526
28. *Satpal v State of Haryana*, (2004) 10 SCC 794 .
29. *Mussammat Budho*, AIR 1916 Lah 184 .
30. *Arun Nivalaji More v State of Maharashtra*, (2006) 12 SCC 613 [LNIND 2006 SC 591] : (2007) 2 SCC (Cr) 221 : AIR 2006 SC 2886 [LNIND 2006 SC 591] : 2006 Cr LJ 4057 .