

Leading cases:—*Shalibhadra Shah. Nandkishore Singh. Chandanmal Chopra. T Parameswaran v District Collector.*

3. Voluntarily disturbing a religious assembly lawfully engaged in the performance of religious worship or religious ceremonies (**section 296**).

4. Trespassing in a place of worship or burial place, offering any indignity to corpse, or disturbing persons performing funeral ceremonies, with intent to wound the feelings, or insult the religion of any person or with the knowledge that the feelings of any person are likely to be wounded (**section 297**).

5. Uttering any word or making any sound in the hearing of that person, or making any gesture in the sight of that person, or placing any object in the sight of that person (**section 298**).

Offences affecting human body. Chapter XVI.

Offences against the person are—

- (1) Unlawful homicide.
 - (a) Culpable homicide.
 - (b) Murder.
 - (c) Homicide by rash or negligent act.
 - (d) Suicide.
 - (e) Being a Thug.
- (2) Causing miscarriage.
- (3) Exposure of infants and concealment of births of children.
- (4) Hurt and grievous hurt.
- (5) Wrongful restraint.
- (6) Wrongful confinement.
- (7) Criminal force.
- (8) Assault. prostitution.
- (9) Kidnapping.
- (10) Abduction.
- (11) Slavery.
- (12) Selling or buying a minor for prostitution.
- (13) Forced labour.
- (14) Rape and other sexual offences.
- (15) Unnatural offence.

Culpable homicide, the genus, and murder, the species, are defined in very close resembling terms.

Culpable homicide.

A person commits murder (**section 300**) culpable homicide if he causes death by doing an act— (**section 299**) if he causes death by doing an act—

(1) with the intention of causing death; or
(2) with the intention of causing such bodily injury as is *likely* to cause death;

(3) with the knowledge that he is *likely* by such act to cause death.

[Imprisonment for life; or 10 years and fine, if the offence comes under clause 2. If it comes under clause 3, then 10 years, or fine, or both— (**section 304**).]

(1) with the intention of causing death; or
(2) with the intention of causing such bodily injury as the offender *knows to be likely* to cause death of the person to whom the harm is caused; or

(3) with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is *sufficient in the ordinary course of nature to cause death*; or

(4) with the knowledge that it is so *imminently dangerous* that it must *in all probability* cause death, or such bodily injury as is likely to cause death.

Capital punishment, or imprisonment for life, and fine—(**section. 302**).

An offence cannot amount to murder unless it falls within the definition of culpable homicide; but it may amount to culpable homicide without amounting to murder. All acts of killing done with the intention to kill, or to inflict bodily injury sufficient to cause death, or with the knowledge that death must be the most probable result are *prima facie* murder; while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. Where the act is not done "with the intention of causing death" (clause 4, section 300) the difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. It is culpable homicide where death must have been known to be a *probable* result. It is murder where it must have been known to be *the most probable* result. If an injury is deliberately inflicted, in the sense that it is not accidental or unintentional, and the injury, objectively speaking, is sufficient to cause death in the ordinary course of nature and death results, the offence is murder (clause 3, section 300).

Leading cases:—State of AP v R Punnayya. R v Govinda. R v Idu Beg. R v Gora Chand Gopee. Virsa Singh.

English case.—"Likely".—The accused was convicted of an offence of behaving in a manner likely to endanger the safety of an air craft by the persistent use of his mobile telephone in mid-flight. His appeal against conviction failed because the word "likely" was correctly construed in its statutory context as meaning "a real risk not to be ignored." (*R v White house*).

Death caused by an act, for example, setting a house on fire, done with foresight that someone may die, but without any intention of that kind, has been held by an English Court to be not murder but only culpable homicide. Foresight is not the same thing as an intention. Foresight may only be an evidence of intention.

Leading case:—R v Nadrick.

Other circumstances may also prove intention. For example, a married woman burning in the kitchen and her husband and others not at all coming up to her, held by the

Supreme Court to be evidence of intention. *Subedar Tewari v State of UP*.

Where death is caused by poison, the earlier legal propositions, one of which required that the accused must be shown to have possessed poison of the kind in question, have now been revised.

Death in police custody is not capable by itself of creating an inference of murder. *State v Balkrishna*.

Leading case:—*Bhupinder Singh v State of Punjab*.

Death caused by the effect of words on the imagination or the passions of a person amounts to culpable homicide. If a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment provided for the offence, without any addition on account of the accidental death. Culpable homicide presupposes an intention, or knowledge of likelihood, of causing death. In the absence of these elements, even if death be caused, the offence will be that of hurt or grievous hurt, e.g., death caused by kicking a person suffering from a diseased spleen.

A person who causes bodily injury to another who is labouring under a disease or bodily infirmity, and thereby accelerates the death of that other is guilty of homicide (**Explanation 1**). Similarly, where death is caused by bodily injury, the person who causes such injury is guilty of this offence, although by resorting to proper remedies and skilful treatment death might have been prevented (**Explanation 2**). The causing of the death of a child in the mother's womb is not homicide. 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 (**Explanation 3**).

If death is caused by the voluntary act of the deceased resulting from fear of violence on the part of the offender, the offence will be murder. For instance, if four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, the persons threatening him will be guilty of murder.

Where the attack was aimed at one person but it fell upon another resulting in the latter's death, it was held that under the doctrine of transfer of malice, the attacker would be guilty of murder. *Nagaraj v State*, (2006) Cr LJ 3724 (Mad—FB); *Rahimbux v State of MP*, (2008) 12 SCC 270 [LNIND 2008 SC 2798] .

The punishment for murder is either death or imprisonment for life and also fine. The Supreme Court has, in a long course of decisions, made it an established principle that the normal punishment for murder is life imprisonment and that "death" should be awarded in "rarest of rare cases". Examples of such rarest of rare cases are:

Leading cases:—*Kehar Singh v State (Delhi Administration)*. *Lichhmadevi v State of Rajasthan*.

An abnormal delay in executing a death sentence has been recognised as a ground for converting death sentence into life imprisonment.

Leading cases:—*Bachan Singh v State of Punjab* *Triveniben v State of Gujarat* *Madhu Mehta v UOI*.

The Supreme Court has noted serious changes which have taken place in the state of the society since the categories for award of death sentence were laid down. Because of such changes, there should be some flexibility in the application of the categories. *Swami Shraddhananda v State of Karnataka*, (2008) 13 SCC 767 [LNIND 2008 SC 1488] .

The Supreme Court has also taken opportunities to explain the impact of the special State-wise enactments for punishment of children *vis-a-vis* IPC, 1860: *Bhoop Ram v State of UP*.

There is no difference in the liability of the offender if the injury intended for one falls on another by accident (**section 301**).

Exceptions.

Culpable homicide is not murder in the following cases:—

Provocation.

1. Grave and sudden provocation depriving the offender of the power of self-control, provided that the provocation is not—

- (a) sought or voluntarily provoked by the offender as an excuse;
- (b) given by anything done in obedience to the law or by a public servant in the lawful exercise of his powers;
- (c) given by anything done in the lawful exercise of the right of private defence.

Provocation resulting from abusive language has been considered to be grave enough. Female infidelity is a common cause of provocation.

An English decision allowed even a self-induced provocation to be taken into account for recording a finding of manslaughter: *R v Johnson*.

The longer the gap between the provoking incidents, less likely the defence of provocation is to succeed. The loss of self-control need not be immediate. The mental state of accused at the time of the incident may be taken into account for determining whether the response was the result of the loss of self-control: *R v Ahluwalia*; *Dhandayuthan v State*.

Private defence.

2. If the offender, in the exercise in good faith of the right of private defence of person or property, exceeds it, and causes death without premeditation and without intending more harm than is necessary.

Public servant.

3. If the offender being a public servant or aiding a public servant exceeds his legal powers and causes death by an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty, and without ill-will towards the deceased.

Sudden fight.

4. If it is committed, without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner.

The fight should not have been pre-arranged.

Consent.

5. When the deceased, being above the age of 18 years, suffers death or takes the risk of harm with his own consent.

Where any of the five exceptions applies, the offence will be punishable under the first part of section 304.

The special category of murder enshrined in section 303 under the heading "punishment for murder by life-convict" has been declared by the Supreme Court to be unconstitutional.

Leading case:—Mithu

The result is that all murders are now punishable under section 302.

Culpable homicide which does not amount to murder is punishable under section 304 for a term extending to 10 years, if the act by which death is caused is done with the intention of causing death or by causing such bodily injury as is likely to cause death. The same section in its second paragraph, popularly known as Part II, provides that the accused causing death may be punished with imprisonment extending to 10 years or fine or both, if the act is done without intention to cause death or such bodily injury as is likely to cause death, but with only knowledge that it is likely to cause death (**section 304**).

The nature of the intention has to be gathered from the kind of weapon used, the part of the body hit, the amount of force employed, and attending circumstances. *Manubhai Atabhai v State of Gujarat*, (2007) 10 SCC 358 [LNIND 2007 SC 822] .

For distinction between section 304 and section 304-A, see Supreme Court decision noted of p 615.

Death by negligence.

Causing the death of any person by doing any rash or negligent act not amounting to culpable homicide is punishable (section 304A). [Two years and fine.]

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, or knowledge that injury will probably be caused.

Criminal negligence is acting without the consciousness that the illegal and mischievous effect will follow but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had he would have had the consciousness.

If death results from injury *intentionally* inflicted this section does not apply. Death should have been the direct result of the rash and negligent act and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causacausans*; it is not enough if it is *causa sine qua non*.

Dowry death.

An unnatural death of a woman within seven years of marriage, whether by burns or injury or otherwise, taking place in the background of cruelty or harassment for dowry, is called a "dowry death". Whoever is guilty of causing such death is punishable for a term not less than seven years and which may extend to imprisonment for life. The ingredients of section 304-B offence have been stated by the Supreme Court in *Shanti v State of Haryana* (**section 304-B**).

Leading cases:—*R v Nidamarti Nagabhushanam. R v Ketabdi Mundal. Bhalchandra. Syed Akbar.*

The expression "soon before" as occurring in the section has been construed by the Orissa High Court in *Keshab Chand Pandit v State*, (1995) Cr LJ 175 (Ori), and also by the Supreme Court in *Yashoda v State of MP*, (2004) 3 SCC 98 [LNIND 2004 SC 155] . *Deen Dayal v State of Up*, (2009) 11 SCC 157 [LNIND 2009 SC 19] .

The Supreme Court has observed that death "otherwise than in normal circumstances" would mean that the death was not in the usual course but apparently under suspicious circumstances if it was not caused by burn or bodily injury. Death of a woman by suicide occurring within seven years of marriage cannot be described as occurring in normal circumstances. (*Rajayyan*). The court has to analyse the facts and circumstances leading to the victim's death to see whether there is proximate connection between the cruelty or harassment for dowry demand and death. *State of Rajasthan v Jaggu Ram*, (2008) 12 SCC 51 [LNIND 2007 SC 1514] . *Kailash v State of MP*, (2006) 12 SCC 667 [LNIND 2006 SC 803] ; *Dhian Singh v State of Punjab*, (2004) 7 SCC 759 .

Suicide.—There are two provisions regarding abetment of suicide:—

(1) Abetment of suicide of a child or an idiot or an insane or a delirious or an intoxicated person (**section 305**).

(2) Abetment of suicide by any person (**section 306**). There can be abetment of suicide through dowry demand.

Attempts.

Attempts to destroy life are of three kinds:—

1. Attempt to murder, i.e., doing an act with such intention or knowledge, and under such circumstances that if the doer by that act caused death he would be guilty of murder (**section 307**). [Ten years and fine. If hurt is caused, then imprisonment for life or 10 years. If the offender is under sentence of imprisonment for life, then death.]

The Bombay High Court held that there may be an attempt under section 511 which does not come under this section. It is not intended to exhaust all attempts to commit murder which can be punished under the Code (*R v Cassidy*). But the Allahabad High Court has laid down that section 511 does not apply to attempts to commit murder which are fully and exclusively provided for by this section (*R v Niddha*).

The Supreme Court held that a person commits an offence under this section when he has an intention to commit murder and in pursuance of that intention he does an act towards its commission irrespective of the fact whether that act is the penultimate act or not (*Om Prakash*); *Samersimh Umedsinh Rajput v State of Gujarat*, (2007) 13 SCC 83 [LNIND 2007 SC 1450] .

Leading case:—State of Maharashtra v Balaram Bama Patil.

In the matter of suicide by a married woman in the circumstances specified in the amendments, the burden of proving that her in-laws had not abetted the suicide has been put upon them.

Leading case:—Gurbachan Singh v Satpal Singh. Brij Lal v Prem Chand.

There must be proof of the fact that the death in question was due to suicide.

Leading case:—Wazir Chand v State of Haryana.

2. Attempt to commit culpable homicide, i.e., doing an act with such intention or knowledge, and under such circumstances, that, if the doer by that act caused death, he would be guilty of culpable homicide not amounting to murder (**section 308**). [If hurt is caused, then seven years, or fine, or both; in other cases three years, or fine, or both.]

3. Attempt to commit suicide.— An act towards the commission of this offence should have been done (**section 309**). [One year, or fine, or both.] The act must have been done in the course of the attempt, otherwise no offence is committed.

Criminologists feel that an attempt to commit suicide being the manifestation of a diseased condition of mind, this section should be deleted from the Code; as such a person requires sympathy and treatment rather than condemnation and punishment. The Supreme Court ruled that the section was unconstitutional and, therefore, void *P Rathinam v UOI*. This decision was subsequently **reversed** by another Supreme Court decision *Gian Kaur v State of Punjab*. The section is thus back to its honourable position in the Code as a measure to dissuade people from horrifying the society by attempting self-demolition. See also [section 115 of the Mental Healthcare Act, 2017](#), which lays down that notwithstanding anything contained in [section 309 of IPC, 1860](#), any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

Thug.

A 'thug' is a person who has been

(1) habitually associated with any other or others for the purpose of committing—

(a) robbery, or

(b) child stealing,

(2) by means of, or accompanies with, murder (**section 310**). [Imprisonment for life and fine (**section 311**).]

Miscarriage, exposure of children, etc.

The following offences relate to birth and exposure of children:—

1. Voluntarily causing a woman with child or quick with child to miscarry, otherwise than in good faith for the purpose of saving the life of the woman (**section 312**) and without her consent (**section 313**).

The [Medical Termination of Pregnancy Act, 1971](#), provides for the termination of pregnancy under several other circumstances mentioned in that Act and these sections should now be read subject to those provisions.

2. Causing the death of a woman by an act done with intent to cause miscarriage (**section 314**). *Jacob George v State of Kerala*.

3. Doing an act without good faith with intent to prevent a child being born or to cause it to die after birth (**section 315**).

4. Causing the death of a quick unborn child by an act amounting to culpable homicide (**section 316**).

5. Exposure and abandonment of a child under 12 years by parent or persons having care of it (**section 317**).

6. Concealment of birth by secret disposal of dead body (**section 318**).

Whoever causes (1) bodily pain, (2) disease, or (3) infirmity, to any person is said to cause hurt (**section 319**).

Hurt.

A person voluntarily causes hurt, if he does any act

(a) with the intention of thereby causing hurt to any person, or

(b) with knowledge that he is likely thereby to cause hurt (**section 321**). [One year, or fine up to Rs. 1,000, or both (**section 323**).]

Acts which will amount to hurt may amount to assault. But hurt may be caused by many acts which are not assaults, for instance, a person who mixes poison and places it on the table of another, or conceals a scythe in the grass on which another is in the habit of walking, or digs a pit in a road intending that another may fall into it, will be guilty of hurt and not assault.

Grievous hurt.

The following kinds of hurt are designated as 'grievous':—

1. Emasculation.

2. Permanent privation of the sight of either eye.

3. Permanent privation of the hearing of either ear.

4. Privation of any member or joint.

5. Destruction or permanent impairing of the powers of any member or joint.

6. Permanent disfiguration of the head or face.

7. Fracture or dislocation of a bone or tooth.

8. Any hurt which endangers life, or which causes the sufferer to be, during the space of 20 days, in severe bodily pain, or unable to follow his ordinary pursuits (**section 320**).

A seller of arrack who mixed with it a dangerous substance was awarded maximum punishment which was possible under the section. *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88].

Voluntarily causing grievous hurt is voluntarily causing hurt, intending it or knowing it likely to be grievous (**section 322**). [Imprisonment for seven years and fine (**section 325**).]

The following are aggravated forms of the above two offences:—

1. Voluntarily causing hurt (**section 325**), or grievous hurt (**section 326**), by an instrument used for shooting, stabbing, or cutting or which used as a weapon of offence is likely to cause death; or by fire or any heated substance or poison, or any explosive or deleterious substance, or by means of any animal, Voluntarily causing grievous hurt by use of acid (**section 326A**). [Voluntarily throwing or attempting to throw acid is also made an offence by introducing **section 326B**.]
2. Voluntarily causing hurt (**section 327**), or grievous hurt (**section 329**), to extort from the sufferer or anyone interested in him, property or valuable security; or to constrain him to do anything illegal; or to facilitate the commission of an offence.
3. Causing hurt by administering poison or any stupefying, intoxicating, or unwholesome drug, with intent to commit or facilitate the commission of an offence (**section 328**).
4. Voluntarily causing hurt (**section 330**), or grievous hurt (**section 331**), to extort from the sufferer or anyone interested in him, a confession or any information which may lead to the detection of an offence; or to constrain the restoration of property, or the satisfaction of any claim.
5. Voluntarily causing hurt (**section 332**), or grievous hurt (**section 333**), to a public servant in the discharge of his duty, or to prevent or deter him from so discharging it. Humiliation and abuse of the head master and other teachers of a Government school after entering the premises was held to be covered by the section. *Madhudas v State of Rajasthan*.

Hurt or grievous hurt caused on grave and sudden provocation is not severely punished (**sections 334 and 335**). Rash or negligent acts which endanger human life or the personal safety of others are made punishable even though no harm follows (**section 336**); and if hurt or grievous hurt is caused by such acts the punishment will be more severe (**sections 337 and 338**).

Wrongful restraint.

Wrongful restraint is (1) voluntarily obstructing a person, (2) so as to prevent him from proceeding in any direction, (3) in which he has a right to proceed. There must be the right to proceed *Vijay Kumari v SM Rao*, (SC). The word "voluntarily" connotes direct physical restraint. There should be a restriction on the normal movement of a person. *Keki Harmusji Ghada v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] (**section 339**). [One month, or Rs. 500, or both (**section 341**).]

The slightest unlawful obstruction to the liberty of a person to go lawfully when and where he likes to go is punishable.

Wrongful confinement.

Wrongful confinement is (1) wrongfully restraining a person, (2) in such a manner as to prevent him from proceeding beyond certain circumscribing limits (**section 340**). [One year, or Rs. 1,000 or both (**section 342**).]

Wrongful confinement is a form of wrongful restraint. Wrongful restraint keeps a man out of a place where he wishes to be. Wrongful confinement keeps a man within limits out of which he wishes to go, and has a right to go.

In wrongful confinement there must be a total restraint, not a partial one. If a man merely obstructs the passage of another in a particular direction, leaving him at liberty to stay where he is or to go in any other direction if he pleases, he cannot be said thereby to confine him wrongfully. Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict, is sufficient. But there must be voluntary obstruction to the person alleged to be confined so as to prevent him from proceeding in any direction. Malice is not necessary. The period of confinement is immaterial except with reference to punishment.

Leading cases:—Bird v Jones. Dhanial v Clifford. Austin v Dowling.

The Court can award compensation for false imprisonment in cases where the victim gains his freedom through Court order. *Poonam v SI of Police; Paoting v State of Nagaland.*

The following are aggravated forms of this offence:—

1. Wrongful confinement for three or more days (**section 343**).
2. Wrongful confinement for ten or more days (**section 344**).
3. Wrongful confinement of a person knowing that a writ for his liberation has been issued (**section 345**).
4. Wrongful confinement is secret so as to indicate an intention that the confinement of such person may not be known to any person interested in that person or to any public servant (**section 346**).
5. Wrongful confinement for the purpose of extorting any property or valuable security, or constraining person to do anything illegal or to give any information which may facilitate the commission of an offence (**section 347**).
6. Wrongful confinement for the purpose of extorting confession or information which may lead to the detection of an offence, or compelling restoration of any property or valuable security or the satisfaction of any claim or demand (**section 348**).

Force.

A person is said to use force to another,

- (1) if he causes motion, change of motion, or cessation of motion to that other, or
- (2) if he causes to any substance such motion, or change of motion or cessation of motion as brings that substance into contact (a) with any part of that other's body, or (b) with anything which that other is wearing or carrying, or (c) with anything so situated that such contact affects that other's sense of feeling; provided that he does so in any of the three following ways:—