
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

EXCEPTION TO THE OFFENCE OF MURDER: A CRITICAL ANALYSIS- Himanshu¹**INTRODUCTION**

The Indian law on homicide is mainly covered under sections 299 and 300 of IPC. However, the culpability requirement under both the sections is slightly different and it is proportionate to the punishment which is provided for these offences under sections 304 and 302 respectively. In order to highlight this proportionality, I shall first discuss about the ingredients of both these offences in order to locate the exact culpability requirement for the offences mentioned under S. 299 and 300 and thereafter, I will compare it with the partial exceptions as mentioned in s. 300.

First, section 299.

The **first ingredient** of s. 299 is causing death. Here the death might result due to three causes, i.e.,

- a) Death may result from the act of the accused itself.
- b) Death may result from the natural consequences of the act.
- c) Death may result from the acts that are reasonably proximate and ultimately connected with the act of the accused.

But I've highlighted in clause firstly of S. 300 below as how this causing of death and intention to cause that death u/s 299 is slightly different in proportionality from causing death with intention u/s 300.

¹ LL.M Candidate, UILS, Panjab University, Chandigarh

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

The **second element** of S. 299 is doing an act with the intention to cause death or with the intention of causing such bodily injury as is likely to cause death. Here, the intention means that the accused has desire to cause the death as well as foreseeability that his act will cause death. The term “likely” here indicates that accused have no knowledge that whether his act will cause death or not, but it is a mere probability that death may or may not result. I’ve highlighted below that how this likely to cause death in s. 299 is different from “accused knows to likely to cause death” in clause secondly u/s 300 below.

If the death is cause by any of these two ingredients, then the act will be punishable u/s 304 Part I.

The **third element** of section 299 is “causing death by doing an act with the knowledge that he is likely by such act to cause death.” Here, intention is not required at all. The focus is on “knowledge”. Here, the knowledge is a kind of inferential knowledge, i.e., a kind of knowledge which a reasonable man ought to have. By nature, this knowledge for the purpose of S. 299, is a posteriori. That means inference of knowledge is drawn or knowledge is presumed by the results or consequences of the act of the accused. In this sense, the knowledge u/s 299 is very wide in ambit as compared to clauses secondly and fourthly of s. 300. I’ve highlighted this difference below under the discussion of S. 300.

If the act of the accused falls under third ingredient of S.299, then it is lightly punished u/s 304 Part II, as compared to more severe punishment under Part I of section 304.

Now I shall discuss the law on homicide under section 300 IPC and try to locate the exact culpability requirement for that offence.

The section 300 of the Indian Penal Code, 1860 provides for definition of murder and it also provides for some exceptions when the act of causing death will not be considered as murder, but only culpable homicide not amounting to murder as defined in section 299 of the code.

Under section 300, there are four clauses in it and each clause requires different level of mens rea, i.e., different levels of culpability requirement called mental element, to bring the case of death within definition of murder. The exceptions appended to the section 300 of the code serve

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

as partial defences in those cases where the act of causing death is murder as per section 300 but the case of accused is covered under any of the five circumstances as mentioned in the five exceptions.

In order to appreciate different levels of culpability manifested in section 300, it is required to locate the necessary fault element in each clause of section 300, which is as following-

1) Clause firstly of S.300-

As per this clause, the culpable homicide is murder if, “THE” act of causing “THE” death is done with the “INTENTION” of causing death. Here, a more stress is given on words act and death by qualifying them with word “the”. This means that while causing the death, the accused must have a clear intention to cause the death and he must have also intended to cause the death prior to commission of that particular act. This means that the death of the victim results from the very act of the accused and there were no other intervening circumstances which might have accelerated or resulted into the death So, here, in terms of intention, the accused must have desirability to cause death and also the foreseeability that the death will be caused by his act.

The act of culpable homicide is not deemed murder if a person loses self-control in response to a severe and sudden provocation, and as a result, he causes the death of the person who gave the provocation, or induces the death of someone by mistake or accident.

This exception is subject to the requirements listed below: The following terms and conditions are listed:

I) The wrongdoer did not seek out or intentionally manufacture the unanticipated provocation in order to establish an alibi for the killing or injury they perpetrated.

II.) The abrupt provocation is not attributable to anything that was done in accordance with the law or by a public official in the lawful exercise of the authority that comes with being a public employee.

III.) Nothing done in the lawful exercise of one's right to private defence indicated the sudden provocation that transpired .

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Illustration :I. A provokes B by doing a grave and unexpected action. B replies to the provocation by shooting at C with a firearm. He does not intend to kill D, who is nearby, nor does he recognise the likelihood that he will. However, after D disappears from view, B executes him. Therefore, B is not guilty of murder, but is responsible for a homicide that is barely culpable.

II. A bailiff, S, places D under arrest in accordance with the law. As a result of S's arrest and death, D is suddenly overtaken with furious anger. This is a murder since the impetus for it was a public official's use of his government-granted authority. The government provided him with this authority.

Case Law :In *Smt. Suljina Dhan v. the State of Assam (2018)*,² “the Gauhati High Court ruled that the result was the result of a quarrel between the husband and wife, and that such a struggle induced the wife to kill her husband due to a sudden and grave provocation. The judge further stated that the outcome was the result of an argument between the couple. She should therefore be seen as an exception to the rule. Consequently, the wife was responsible for the negligent homicide that did not constitute murder”.

2) Clause secondly of S.300-

In this clause, the culpable homicide will be murder if the harm is done by the act with the “intention” to cause death + the accused had “knowledge” that his act is likely to cause death. This clause requires dual standards of culpability, i.e., intention and knowledge. Here, the intention is to be understood in the same sense as it is in clause firstly. But here knowledge means the “ACTUAL KNOWLEDGE” of the accused. Here knowledge is linked to the circumstances in which the act of causing death is done and not to the consequences. So, the mental attitude of culpability is two -folded here. There is first the intention to cause bodily harm and next there is the subjective knowledge that death will be the likely consequences of the intended injury.

²*Smt. Suljina Dhan v. the State of Assam (2018)*, CrI.A./221/2019

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

If the wrongdoer, in the good faith exercise of the right of private defence of a person or property, exceeds the legal authority granted to him and causes the death of the person against whom he is exercising the right of defence without premeditation or intent to cause more harm than is necessary for private defence, then the culpable homicide is not considered murder .

Illustration : A attempts to beat B while making sure that B won't sustain any significant wounds as a result of the beating. B produces a gun. With a, the onslaught will continue. B chooses to kill A because he sincerely and rationally believes that there is no other option for him to prevent himself from being beaten. B is accountable for the careless homicide that wasn't murder but was nevertheless done against A.

Case Law : In *Ranbir Singh & Ors v. State of Haryana*³(2018), “the Supreme Court of India declared that it is the responsibility of the accused to present proof of self-defense. This burden can be alleviated by establishing a simple majority of probabilities. This can be accomplished in one of two ways: either by setting the foundation for the petition during cross-examination of the prosecution witness, or by introducing evidence on behalf of the defence”.

3) Clause thirdly of S.300-

Here, the culpable homicide will be murder if the harm is done by and act with the intention of causing bodily injury + causing the bodily injury was intended + inflicted bodily injury was sufficient in the ordinary course of nature to cause death. This clause was analysed properly in the case of *Virsa Singh V. State of Punjab*⁴ by the Supreme Court. It was held that the prosecution must prove the following facts before it can bring a case under section 300 thirdly, i.e., -

- a) First, it must be established quite objectively, that a bodily injury is present.
- b) Secondly, the nature of the injury must be proved, also objectively.
- c) Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is, the injury was not accidental or unintentional or that some other kind of injury was intended. This is a subjective investigation.

³*Ranbir Singh & Ors v. State of Haryana, CRM-M-27714 of 2020*

⁴AIR 1958 SC 465

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

d) Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient cause death in the ordinary course of nature. This part of inquiry is purely objective and has nothing to do with the intention of the offender.

Hence, if all these four conditions are satisfied, then the conduct element and fault element of the accused will result in the act of murder.

The act of culpable homicide is not considered to be murder if the offender is a public servant or is assisting a public servant who is working for the development of public justice, exceeds the power granted to him by the law, causes death by committing an act he in good faith believes to be lawful and essential for the due discharge of his duty as a public servant, and has no ill will toward the person whose death is induced. This is true even if the person commits a crime .

Illustration : Y is a criminal, and X is a police officer. X travelled to detain Y. Y was attempting to run away from X. X shoots at Y. X is not responsible for killing Y.

Case Law : In *Dukhi Singh vs. State (AIR 1955 All 379)*,⁵ “the appellant Dukhi Singh is a police officer with the Railway Protection Force (RPF) who accidentally shoots a firefighter while performing his duties. In accordance with the judgement handed down by the Allahabad High Court in this particular case, the appellant is permitted to utilise Section 300 of the India Penal Code, 1860”.

4) Clause fourthly of S. 300-

Here, the culpable homicide will be murder if the act by which the death is caused is done with the following culpability-

- a) The offender “KNOWS” that his act is so imminently dangerous that it “MUST” in all probabilities will cause death; or
- b) The offender “KNOWS” that the act by which bodily injury is caused is likely to cause death + he commits such act without any “EXCUSE” for incurring the risk of causing death or such bodily injury.

⁵*Dukhi Singh vs. State (AIR 1955 All 379)*.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Culpable homicide is not deemed murder if it is performed without premeditation during a sudden fight in the heat of passion over a sudden quarrel, and neither party intended to kill or cause the death of another person. In this case, the victim's death is judged to have been an accident. Furthermore, it is irrelevant whose party attacked first or who initiated the fight by making a provocative statement.

The following is a list of essential elements of Exception 4:

- The accused and the one who was killed must engage in physical conflict.
- The folks who unexpectedly became entangled in a conflict.
- In the midst of the excitement and intensity of a sudden argument.
- The culprit derives no improper benefit from the situation.
- The perpetrator's behavior is neither cruel nor unusual .

Case Law : In *Amirthalinga Nadar v. State of Tamil Nadu (1976)*, 2 SCC 195⁶, “the apex court ruled that there is no room for premeditation when there has been a sudden fight, where the devastating blow was given as part of the sudden fight that provokes out of a sudden quarrel between the appellants and the deceased, and where the sudden fight itself provokes out of the sudden quarrel between the appellants and the deceased. The respondent in this case has acted in an atypical and nasty manner, without taking unfair advantage”.

In this clause, the “intention” to cause death is not required and liability on the accused will be imposed if he had knowledge of the particular circumstances as mentioned in (a) and (b) above. The term “knowledge” has the same meaning as explained in clause secondly of section 300 above. It can be said that the culpability requirement under this clause of section 300 is of recklessness, i.e., where the accused had the foreseeability of the consequences of his act but he didn’t desire those consequences. But at the same time he was so reckless that he commits that foreseeable act without any excuse for incurring the risk of causing death or bodily injury as required in this clause. In **Emperor V. Mt. Dhirajia**⁷, it was held that an act done with the knowledge of its consequences is not prima facie murder under clause fourthly of section 300. It

⁶*Amirthalinga Nadar v. State of Tamil Nadu (1976)*, 2 SCC 195

⁷AIR 1940 ALL 486

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

becomes murder only if it can be positively affirmed that there was no excuse. The requirements of the clause fourthly of section 300 are not satisfied by the act of homicide being one of extreme recklessness. It must in addition be wholly inexcusable.

Hence, after analysing all the four clauses of section 300 and Section 299, it can be said that for every clause u/s 300 and of S. 299, there is a requirement of slightly different culpable elements in the mind of the accused, i.e., mens rea. In the first three clause of S. 300, it is intention along with knowledge of a particular kind which is required and further it is qualification in the subsequent two clause, i.e., clauses secondly and thirdly. In the fourth clause of S. 300, the mens rea element is the knowledge of a particular kind and also there is an element of recklessness as a kind of mens rea. The offence under s. 300 is therefore more seriously punished u/s 302 IPC.

On the other hand, a slightly less degree of culpability is required u/s 299 than S. 300. That is why it is punished lightly u/s 304 than S. 302.

So, even though the resulting consequence of the act of accused is death of the victim, the criminal law, under sections 299 and 300 of the Indian penal code, responds proportionately to the different degree of culpability requirements in the mind of the accused and also for the amount of punishment. It is proportionate to the culpability requirement.

As far as five exceptions of section 300 of IPC are concerned, they are only applicable when the case of the accused falls under any of the four clauses of section 300. One thing that is common in all the five exceptions to S. 300 is that they reduce the charge of murder to culpable homicide not amounting to murder and as a result, the accused, even if his case was covered under section 300, is punished under section 304. This is because of proportionality requirement of S. 299 and 300 as discussed above.

The liability of the accused for punishment is reduced because the law considers that if the case of the accused is covered in any of the circumstances as mentioned in exceptions to S.300, then it is presumed that there was no cold-blooded killing. It means that, there was absence of malice in the mind of the accused aforethought, i.e., absence of malice as required by S.300 prior to the commission of the act which has caused death.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Hence, it can be concluded that Indian law on homicide including the partial defences under Sec 300 IPC respond proportionately to the different degree of culpability manifested in cases where death is caused.

Exception 5: Consent

The act of culpable homicide is not the same as murder when the person whose death is caused is at least 18 years old, suffers from death, or accepts the risk of death voluntarily and without coercion.

Illustration : C, a 15-year-old juvenile, committed suicide after being provoked by D, an adult. Since C is still a minor, he cannot grant his consent for his death. C's passing is attributable to D. D has participated in the murder.

CONCLUSION

If the accused committed a crime due to grave and unexpected provocation, private defence, a sudden battle, or consent, then the accused can utilise these exceptions to avoid punishment for the crime. Section 300 of the Indian Penal Code, which was introduced in 1860, contains the exceptions.

General exceptions are sorts of legal defences that can exonerate an individual of criminal wrongdoing. Numerous situations can render an act or behaviour legal or non-criminal. These conditions include: Any illegal act or omission (offence) performed by the accused may be cleared of criminal liability. The Indian Penal Code, or IPC for short. The emergency protection can be found in sections 76 through 106. This claims that a person can be pardoned for doing a lesser violation in order to avoid committing a greater fault. It is even feasible that innocent people will be killed or injured as a result of this. A person accused of a crime may utilise any of these general exceptions in order to exonerate themselves or prevent them from committing a crime. Depending on the circumstances, it may even cause the death of someone or bring harm to someone who is not accountable for it. Due to the fact that we live in a democratic nation, it is only just that individuals who have been accused have the opportunity to present their side of the story. Consequently, there are a number of exemptions that allow persons to represent themselves in court procedures.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>



For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

©2023 International Journal of Advanced Legal Research