Central University of Kashmir

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Course Code: IL-403 **Law of Crimes-II**

Objectives: Objective of this course is to acquaint a student with the various general offences against human body including, murder, culpable homicide, rash and negligent act, hurt and grievous hurt, kidnapping and abduction under the Indian Penal Code. Students are also imparted knowledge of various amendments and court judgements in this area.

Unit-I- Offences against Human Body

I. Culpable Homicide- (Sec 299)
II. Murder (Sec 300)
III. Hurt and Grievous hurt (Sec 319 & 320)
IV. Assault and Criminal force (Sec 350 & 351)
V. Kidnapping & Abduction (Sec 359 & 362)

Course Title: Law of Crimes- II

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UNIT I

Offences against Human Body

I Section 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 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.

General Comments

Culpable homicide and murder are the gravest of offences against a human being. The word homicide has been derived from the Latin word *'homo'*, which mean a man, and '*caedere'* which means to cut or kill. Thus, homicide means the killing of a human being by a human being.[1]It may be lawful or unlawful homicide. Lawful homicide is of two types- excusable and justified homicide (cases falling under the General Exceptions, Ch. IV). Unlawful homicide includes:

a) Culpable homicide not amounting to murder (Sec. 299, 301, and Exceptions to Sec. 300),
b) Murder (Sec. 300),
c) Homicide by rash or negligent acts (Sec. 304A),
d) Dowry death (Sec. 304B),
e) Suicide (Secs. 305, 306, 309), and
f) Attempt to murder/culpable homicide (Secs. 307, 308)

The distinguishing features of these different categories of unlawful homicides are:

- the degree of intention,
- knowledge, or recklessness with which a particular homicide is committed.[2]

Culpable Homicide

Section 299 of the Indian Penal Code lays down 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.

Essential Ingredients

The essential elements of the culpable homicide consist of the following, viz.,

- there must be death of a person;
- the death should have been caused by the act of another person;
- the act causing death should have been 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 it was likely to cause death.

[1] K D Gaur, *Criminal Law: Cases and Materials*, Eighth Edition, 2015, Lexis Nexis, P389
[2] Ashok K. Jain, *Criminal Law-I*, Fifth Edition, 2015, Ascent Publications, p171&172

The definition itself provides for three circumstances, wherein the presence or absence of certain factors in causing death is nevertheless treated as causing culpable homicide. These circumstances are death within Explanations 1-3.

Whoever causes death

In order to hold a person liable under the impugned section there must be causing of death of a human being as defined under Section 46 of the Code. The causing of death of a child in the mother's womb is not homicide as stated in Explanation 3 appended to Section 299, I.P.C. But the person would not be set free. He would be punishable for causing miscarriage either under section 312 or 315 I.P.C depending on the gravity of the injury. The act of causing death amounts to Culpable Homicide if any part of that child has been brought forth, though the child may not have breathed or been completely born. The clause 'though the child may not have breathed' suggests that a child may be born alive, though it may not breath (respire), or it may respire so imperfectly that it may be difficult to obtain clear proof that respiration takes place. Causing of death must be of a living human being which means a living man, woman, child and at least partially an infant under delivery or just delivered.[3]

Causing Death: Tests for Determining

The term *'whoever causes death'* may be simple enough to understand, but has shown itself to be words of great import in deciding whether a particular act would amount to culpable homicide or not. The very first test to decide whether a particular act or omission would be covered by the definition of culpable homicide, is to verify whether the act done by the accused has caused the death of another person. The relevant consideration for such verification is to see the death is caused as a direct result of the act committed by the accused.[4]

In *Joginder singh v. State of Punjab*[5], the deceased Rupinder Singh had teased the sister of the accused. In retaliation, the two accused went to Rupinder's house and shouted that they had come to take away the sister of Rupinder Sigh. In the meantime, the cousins of Rupinder Singh intervened. One of them was given a blow on the neck by the accused. Meanwhile, Rupinder Singh started running towards the field. The accused started chasing him and Rupinder Singh jumped into a well. As a result of this, he sustained head injuries, which made him loose consciousness and thereafter he died due to drowning. The Supreme Court held that the accused were 15 to 20 feet from Rupinder Singh, when he jumped into the well. There was no evidence to show that the accused drove Rupinder Singh into the well or that they left him no option but to jump into the well. Under these circumstances, it was held that

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[3] For more details see: *http://www.legalservicesindia.com/article/article/culpable-homicide-582-1.html,* (Accessed on 07/02/2016)

[4] PSA Pillai's, *Criminal Law*, Tenth Edition, 2008, Lexis Nexis, p784

[5] AIR 1979 SC 1876, Cr LJ1406 (SC)

the accused could have caused the death of Rupinder Singh, and hence they were entitled to be acquitted of the charge of murder.

By doing an act with the intention of causing death

Death may be caused by a hundred and one means, such as by poisoning, drowning, striking, beating and so on and so forth. As explained under Section 32, I.P.C the word 'act' has been given a wider meaning in the Code in as much as it includes not only an act of commission, but illegal omissions as well and the word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which is prohibited by law, or which furnishes ground for civil action (Sec.43). Therefore death caused by illegal omission will amount to Culpable homicide.[6]

Death caused by effect of words on imaginations or passions

Death may also be caused by effect of words such as by making some communication to another person which caused excitement which results in death although it would be difficult to prove that the person, who spoke the words, anticipated from them an effect which except under very peculiar circumstances and in very peculiar constitutions no word would produce. For example, A with the intention or knowledge aforesaid, gives B his choice whether B will kill himself, or suffer lingering torture; B kills himself by taking poison. A would be liable for culpable homicide.[7]

With the Intention of Causing such bodily injury as is likely to cause death

The word 'intention' in clause (a) to Section 299, I.P.C has been used in its ordinary sense, i.e., volitional act done without being able to forsee the consequence with certitude. 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. If the nature of the connection between the act and the death is in itself obscure, or if it is obscured by the action of concurrent causes, or if the connection is broken by the intervention of subsequent causes, or if the interval of time between death and the act is too long, the above condition is not fulfilled. Where a constable fired five shots in succession at another constable resulting in his death, it was held that it would be native to suggest that he had neither intention to kill nor any knowledge that injuries sufficient to kill in ordinary course of nature would not follow. His acts squarely fell in clauses 2,3 and 4 of Sec.300, I.P.C i.e., Culpable Homicide amounting to murder.[8]

In *Joginder Singh's* case [AIR 1979 SC 1876] it has been held that the connection between the act and the death caused by the act must be direct and distinct; and though not immediate it must not be too remote. Where person jumped into a well in order to save himself from two

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[6] *Supra* note 3

[7] SN Mishra, *Indian Penal Code*, Twelfth Edition, Central Law Publications, p386

[8] *Supra* note 3

chasing persons and dies, the death of the victim was not caused by an act of chasing persons with intention or knowledge specified in Sec. 299

With the knowledge that he is likely by such act to cause death

'Knowledge' is a strong word and imports certainty and not merely a probability. Here knowledge refers to the personal knowledge of the person who does the act.[9] If the death is caused under circumstances specified under 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, without any addition on account of such accidental death. 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, or simple hurt. It is only where death is attributed to an injury which the offender did not know would endanger life 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 injury. Once it is established that an act was a deliberate act and not the result of accident or rashness or negligence, it is obvious that the offence would be culpable homicide.[10]

In *Kesar Singh v State of Haryana* (2008) 15 SCC 753, Court said knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine and 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 specified end which the human mind conceives and perceives before itself.

Death caused of person other than intended

To attract the provisions of this Section it suffices if the death of a human being is caused whether the person was intended to be killed or not. For instance, B with the intention of killing A in order to obtain the insured amount gave him some sweets mixed with poison. The intended victim ate some of the sweets and threw the rest away which were picked up by two children who ate them and died of poisoning. It was held that B is liable for murder of the children though he intended to kill only A.[11]

Explanation 1 - This explanation provides a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of

[9] *Supra* note 7
[10] *Supra* note 3
[11] *Ibid.*

that other, shall be deemed to have caused his death. But one of the elements of culpable homicide as contained in Sec 299 must be present. That is, if the bodily injury so inflicted was not with such intention or knowledge as required in Sec 299 the offence is not culpable homicide.

Explanation 2 - According to this explanation 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. It simply means if death results from an injury voluntary 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 treatment, provided that the treatment was given in good faith by a competent person. However, where X caused simple injury to Z and Z subsequently died of septic meningitis which developed on account of the use of wrong remedies and neglect in treatment, such death cannot be said to have been caused by the bodily injury within the terms of this explanation.

Explanation 3 - This explanation provides that 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. It means complete birth of a child is not required in order to invoke Sec. 299.

II Section 300 Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly- If it is done 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-

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is laboring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is laboring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1- When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing. or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defense.

Explanation- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills. Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defense, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defense.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3- Culpable homicide is not murder if the offender, being a public servant or aiding. a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.- Culpable homicide is not murder 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.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

General Comments

Scope: Section 300 of the Indian Penal Code defines murder with reference to culpable homicide laid down under Sec. 299. If the special requirements provided in Clauses 1-4 of the Sec 300 are fulfilled, culpable homicide will then amount to murder, provided, of course, the act does not fall within any of the Exceptions provided in Sec 300. If an act, which falls within Clause 1-4 of Sec 300, also falls within one of the Exceptions, then it will be culpable homicide not amounting to murder. It would probably have been simpler and less complicated if the Code had first defined homicide and then defined separately culpable homicide and murder. Since some clauses in Secs 299 and 300 overlap, it had led to a lot f

discussions and differences in judicial pronouncements about the scope of each section and the discussions and differences between them.[12]

Essential Ingredients

The following are the important ingredients of Section 300:

a) Act by which the death is caused is done with the intention of causing death;
b) with the intention of causing such bodily injury as the offender knows to be likely to cause death;
c) with the intention of causing bodily injury to any person which is sufficient in the ordinary course of nature to cause death
d) person committing the act knows that it is so imminently dangerous that it must, in all probabilities, cause death or such bodily injury as is likely to cause death..without any excuse for incurring the risk of causing death

Further, culpable homicide will not be murder, if it is:

Exception 1: On grave and sudden provocation;

Explanation:

a) the provocation should not be voluntary sought or deliberately caused by the accused;
b) it should not be a result of act by public servant or in obedience to law;
c) it should not be in self-defence

Exception 2: In the exercise of right of private defence of person or property;

a) exercise of private defence without premeditation and without intention.

Exception 3:

b) act done by public servant or in aiding an public servant;
c) acting in advancement of public justice;
d) such act of the public servant is in excess of the powers conferred on him, but exercised in good faith;
e) such act is necessary to discharge duty;
f) and is without ill will.

Exception 4:

a) a sudden fight without premeditation;
b) the offender should not take undue advantage or act in a cruel or unusual manner.

Explanation: who started the fight or quarrel is not material.

Exception 5: death caused to a person above 18 years of age with his consent.

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[12] PSA Pillai's, *Criminal Law*, Tenth Edition, 2008, Lexis Nexis, p791

a) Act by which the death is caused is done with the intention of causing death

A question of intention is always a matter of fact. In determining the question of intention the nature of the weapons used, the part of the body on which the blow was given, the force and number of blows, are all factors from which an inference as to the intention can, as a fact, be drawn.[13] In *Ramesh v State*[14] the accused gave repeated knife blows to the victim resulting in his death, it was held that the intention was to kill. In *Ghasi Ram v State*[15]court held stabbing wife with the aid of torch, in the middle of the back with such force as to penetrate the spinal cavity, the intention could only have been to kill her.

In *Vasanth v State of Maharshtra*[16] there was previous enmity between the accused and the deceased. The accused and the deceased were seen grappling with each other. Some persons who were present separated the two. The accused then went running to his jeep, drove it on the wrong side and towards the deceased in high speed, knocked him down and ran over him, killing him. The road on which the incident took place was a wide and deserted one. There was no reason or necessity for the accused to have driven the jeep in the wrong direction. The Supreme Court held that the accused had deliberately dashed his jeep against the accused and ran over him with the intention to cause his death.

It is pertinent to point out that the first clause of Sec 300, which is act done with intention of causing death, is identical to the first clause of Sec 299, which is also doing an act with the intention of causing death. Therefore, an act coming under Clause 1 of Sec 300 will also fall under clause 1 of Sec 299 and in both instances, it will be culpable homicide amounting to murder.[17]

b) With the intention of causing such bodily injury as the offender knows to be likely to cause death

In case of an offence falling under this clause the mental attitude of the accused is twofold, First, there is intention to cause bodily harm and secondly, there is the subjective knowledge that death will be likely consequence of the intended injury. Here the offender knows that bodily injury intended to be inflicted is likely to cause death of the person. It applies to those special cases where the person injured is in such a condition or state of health that his death would be likely to be caused by an injury which would not ordinarily cause the death of a person in sound heath and where the person inflicting the injury *knows* that owing to such condition or state of health, he is likely to cause the death of the person injured. A case would fall under this clause if the offender having knowledge that a person was suffering from some

[13] Ashok K. Jain, *Criminal Law-I,* Fifth Edition, 2015, Ascent Publications, p181
[14] 1979 CRLJ 727
[15] AIR 1952 MP 25
[16] AIR 1998 SC 699
[17] *Supra* note 12 at 794

disease or was of unsound health, causes hurt to him which may not have been sufficient in the ordinary course of nature to cause death had the deceased been of sound health, but which with the special knowledge of the diseased condition of the accused, his assailant must have known to be likely to cause his death. Here *knowledge* on the part of the offender imports certainty and not merely a probability.[18]

In *William Slaney v State of Madhya Pradesh,*[19]the accused was in love with the deceased's sister, which the deceased did not like. There was a quarrel between them and the deceased asked the accused to leave the house. The accused went and came back with his brother. He called out for the deceased's sister. Instead, the deceased came out. There was a heated exchange of words. The accused snatched a hockey stick, which was with his brother, and hit the deceased on his head. As a result, there was a fracture of the skull and the deceased died. In this case, the Supreme Court held that the act of the accused is only one which was likely to cause death and the accused did not have any knowledge to bring in under Clause 2 of Sec 300. The accused was convicted under Sec 304, Part II, and not under Sec 300.

c) with the intention of causing bodily injury to any person which is sufficient in the ordinary course of nature to cause death

In order to bring the case within Para 3 of Sec 300, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. The element being absent Sec 300 Clause (3) goes out of the way and the offence answer not murder but culpable homicide not amounting to murder. It is fallacious to contend that when death is caused by a single blow Clause (3) is not attracted and therefore it would not amount to murder. The ingredient intention in that clause is very important and that gives the clue in a given case whether offence involved is murder or not. For the purpose of considering the scope of Clause 3 it is not necessary to embark upon an examination of the entire scope of Sec 299 and 300, intention is different from motive or ignorance or negligence. It is the knowledge or intention with which the act is done that makes difference in arriving at a conclusion whether the offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of these expressions as used in these provisions. In Clause 3 the words intended to the inflicted are significant. When a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury, In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the

[18] SN Mishra, *Indian Penal Code,* Twelfth Edition, Central Law Publications, p397
[19] AIR 1956 SC 116

presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case.[20]

In *Garasia Rajendrasinh Jethybai v State of Gujarat,*[21]D, the deceased in the presence of his father F and brother B scolded the accused for easing near his place. A, left the place with a threat that he would see him when they would meet alone. A week later A attacked D with a knife and dealt three blows on vital parts like neck. Two of the blows were given after D fell down after the first blow. Accordingly to the medical evidence the first injury had cut internal carotid artery and tributaries of internal jugular vein and was sufficient in the ordinary course of nature to cause death. The accused was held liable for murder.

In *Virsa Singh v State of Punjab,*[22] the Supreme Court laid down that in order to bring a case within Clause 3 of Sec 300, the prosecution must prove the following:

I. First, it must establish, quite objectively that a bodily injury is present;
II. Secondly, the nature of the injury must be proved; these are purely objective investigation;
III. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended;
IV. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.[23]

d) person committing the act knows that it is so imminently dangerous that it must, in all probabilities, cause death or such bodily injury as is likely to cause death..without any excuse for incurring the risk of causing death (knowledge of imminently dangerous act)

Unlike the first three clauses of Sec 300, intention is not an essential ingredient of this clause. The 4th clause contemplates the doing of an imminently dangerous act in general, and not the doing of any bodily harm to any particular individual. The Clause cannot be applied until it is clear that Clauses 1, 2, and 3 of the section each and all of them fail to suit the circumstances. This Clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as it likely to cause death. The expression

[20] Ratanlal and Dhirajlal, *The Indian Penal Code*, 32 Enlarged Edition, (2013), Lexis Nexis, p1325
[21] 1979 CRLJ 68 (Guj)
[22] AIR 1958 SC 465
[23] *Supra* note 12 at 796

'imminently dangerous act' approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability.[24]

In *State of Madhya Pradesh v Ram Prasad,*[25]this clause was applied by the Supreme Court in a totally different context. In this case, the accused Ram Prasad and his wife had a quarrel. Villagers were called to mediate, but to no avail. At that time, the accused poured kerosene oil over the wife and set her on fire. She suffered extensive burn injuries and died as a result of the injuries. The Supreme Court observed that in respect of Clause 1-3 of the Sec 300, the question would arise as what was the intention of the accused, the nature of injuries he intended to cause etc, which would all be matters of speculation. The Supreme Court opined that it would be simpler to place reliance on Clause 4, because it contemplates only knowledge and no intention. The court held that though generally the clause is invoked where there is no intention to cause the death of any particular person, the clause may on its terms be used in those in those cases where there is such callousness towards the result, and the risk taken is such that it may be stated that the person knows that the act is likely to cause death. In the present case, when the accused poured kerosene and set fire to his wife, he must have known that the act would result in her death. As he had no reason for incurring such risk, the offence was held to fall within Clause 4 of Sec 300 and would be culpable homicide amounting to murder.[26]

Again in *Jagtar Singh v State of Punjab,*[27] a sudden quarrel on a spur of moment arose out of a trivial reason on a chance meeting between the accused and the victim. The accused caused a single blow by knife in chest of victim resulting in his death. On these facts it was held that intention to cause death or causing part particular injury could not be imputed to the accused, There was no proof of premeditation or malice. Therefore, merely knowledge on the part of the accused that he was likely to cause injury which was likely to cause death could be inferred.

Distinction between Culpable Homicide (Sec 299) and Murder (Sec 300)

In *Reg v Govinda*[28] distinction between Sec 299 and Sec 300 was made clear by Justice Melville. In this case the prisoner, a young man of 18, kicked his wife and struck her several times with his fist on the back. These blows seemed to have caused her no serious injury. She, however, fell on the ground and then the accused put one knee on her chest, and struck her two or three times on the face. One or two of these blows were violent and took effect on the girl's left eye, producing a contusion and discolouration. The skull was not fractured, but

[24] *Supra* note 13 at 185
[25] AIR 1968 SC 881
[26] *Ibid.*
[27] 1983 CrLJ 852
[28] 1876 ILR 1 Bom 342

the blow caused an extravasation of blood in the brain and the girl died in consequence. The Session's Judge found the prisoner guilty of murder and sentenced him to death. The case was sent up for confirmation by the High Court. There being a difference of opinion between the judges as to what offence the prisoner had committed, the case was referred to the third judge, Melville J for his opinion.

Justice Melville held:

For the convenience of comparison, the provisions, of Sec 299 and Sec 300 of the Indian Penal Code may be stated thus:

Culpable Homicide **Section 299**	**Murder** **Section 300**
A person is said to commit culpable homicide, if the act by which the death is caused is done	Subject to the five exceptions, culpable homicide is murder, if the act by which the death is caused is done
a) with the intention of causing death;	a) with the intention of causing death;
b) with the intention of causing such bodily injury as is likely to cause death;	b) with the intention of causing such bodily injury as the offender knows to be likely to cause death of that particular person;
c) with the knowledge that the act is likely to cause death.	c) with the intention of causing bodily injury to any person, such injury being sufficient in the ordinary course of nature to cause death;
	d) with the knowledge that the act is so imminently dangerous that it must , in all probability, cause death or such bodily injury as is likely to cause death.

Further, Melville, J stated:

...Whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder.

....The offence is murder, if the offender knows that the particular person injured is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinary cause death.

There remains to be considered III (b) of Sec 299 and Sec 300, and it is on a comparison of these two clauses that the decision of doubtful cases like the present must generally depend. The offence is culpable homicide, if the bodily injury intended to be inflicted is likely to

cause death; it is murder, if it such injury is sufficient in the ordinary course of nature to cause death. The distinction is fine, but appreciable. It is a question of degree of probability. Practically, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or stick on a vital part may be likely to cause death; a wound from a sword is a vital part is sufficient in the ordinary course of nature to cause death. The offence is culpable homicide, and not murder. Neither was there an intention to cause death, nor was the bodily injury sufficient in the ordinary course of nature to cause death. Ordinarily, it would not cause death.

But a violent blow in her eye from a man's fist, while the person struck is lying with his or her head on the ground, is certainly likely to cause death, either by producing a contusion or extravasation of blood on the surface or in the substance of the brain.

Convicted of culpable homicide and sentenced to seven years imprisonment.[29]

When Culpable Homicide is not Murder

Clauses 1-4 of Sec 300 provide the essential ingredients wherein culpable homicide amounts to murder. The section also provides five exceptional situations, the existence of which will remove a case from the purview of Sec 300. In other words, even if a case falls within any of the four clauses of Sec 300, if it also falls within any of the five exceptions, then it will cease to be murder. It will merely be culpable homicide not amounting to murder. It may be noted that Clause 4 of Sec 300 has a in-built exception clause. It stipulates that the imminently dangerous act should be done without any excuse for incurring the risk of causing death or such injury. It thus indicates that an immediately dangerous act is not murder if it is done to prevent a greater evil. It is evident that the exceptions provided in the section are applicable uniformly to all the four clauses of Sec 300. In which case, it is only logical to conclude that the words without excuse used in Clause 4 contemplates situations other than those which fall within the five exceptions provided. It will also apply to situations, which fall short of the exceptions or which are other than the exceptions.[30]

The following exceptions are the exceptions provided for under Sec 300:

a) grave and sudden provocation
b) private defence
c) acts of public servants
d) sudden fight
e) consent

[29] K D Gaur, *Criminal Law: Cases and Materials*, Eighth Edition, 2015, Lexis Nexis, P398
[30] *Supra* note 12 at 800

a) Grave and Sudden Provocation (Exception 1)

Coke distinguishes intentional killing of a person in hot blood and an intentional killing of a person when the blood is cool. The former was killing in provocation and was considered to be a less heinous kind of homicide than the latter one done by a man who was in possession of his control. Under the English Common law three conditions must be fulfilled before provocation can be established as a defence, (a) it must be sufficient to deprive a reasonable man of his self control so that he might be considered as not being at the moment the master of his own understanding; (b) the fatal blow must be clearly traced to the passion arising from that provocation; and (c) the mode of resentment must bear a reasonable relationship to the provocation. A fourth condition has been added that there must not have been sufficient time between occurrence of the provocation and the killing for the accused's blood to cool and for reason to resume its seat.[31]

Culpable homicide will not be murder, if the offender, on account of grave and sudden provocation, is deprived of his power of self control and causes the death of a person. The person, whose death is caused, may be the person who gave the provocation or any other person by mistake or accident. The exception is itself subject to three exceptions:

1. First, the provocation should not have been sought for voluntarily by the offender, as an excuse for killing or doing any harm to any person.
2. Secondly, the provocation is not as a result of an act done in obedience of law or by the act of a public servant in the lawful exercise of his powers.
3. Thirdly, the provocation is not a result of anything done in the exercise of the right of private defence.

In order that this exception should apply, the provocation should be both grave and sudden. If the provocation is sudden but not grave, or grave but not sudden, then the offender can not avail of the benefit for this exception. Further, it should also be shown that the provocation was of such a nature that the offender is deprived of the power of self-control.[32]

In *KM Nanavati v State of Maharashtra*,[33] the accused was a naval officer. He was married with three children. One day, his wife confessed to him that she had developed intimacy with the deceased. Enraged at this, the accused went to his chip, took a semi automatic revolver and six cartridges from the store of the ship, went to the flat of the deceased ,entered his bedroom and shot him dead. Thereafter, the accused surrendered himself to the police. The question before the Supreme Court was whether the act of the accused could be said to said to

[31] *Supra* note 18 at 411
[32] *Supra* note 12 at 801
[33] AIR 1962 SC 605

fall within Exception 1 of Sec 300. The Supreme Court laid down the following postulates relating to grave and sudden provocation:

1. The test of grave and sudden provocation is whether a reasonable man belonging to the same class of society as the accused, laced in the situation in which the accused was placed, would be so provoked as to lose his self-control.
2. In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused, so as to bring his act within the first exception to Sec 300.
3. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for the offence.
4. The fatal blow should be clearly traced to the influence of passion arising from provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

In *Nanavati's* case, the Supreme Court, which laid down the contours of the law, held that the accused, after his wife confessed to her illicit relationship with the deceased, may have momentarily lost control. He had thereafter dropped his wife and children at a cinema, went to the ship, collected the revolver, did some official business there, drove his care car to the office of the deceased, there was sufficient time for him to regain his self control. In view of this, the court held that the provisions of Exception 1 to Sec 300 were not attracted. The accused was convicted for murder and sentenced to life imprisonment.[34]

b) Exceeding the Right of Private Defence (Exception 2)

This exception deals with death caused by the excessive exercise of the right of private defence, provided the accused caused the death of a person without premeditation and when the accused caused the death of a person he had no intention of doing more harm than was necessary for the purpose of defence.[35]

In *Kripal Singh v State of Punjab*,[36]the court has said that the right commences as soon as a reasonable apprehension of danger arises and ceases when the apprehension ceased or on the offence being committed. A person cannot avail himself of the plea of self defence in a case of homicide when he was himself the aggressor and wilfully brought on himself without legal excuse the necessity for the killing.

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[34] *Supra* note 12 at 802
[35] *Supra* note 13 at 243
[36] AIR 1951 Punj. 137

In *Mohinder Pal Jolly v State of Punjab*[37] the deceased and his colleagues were workers in the factory of the accused. There was a dispute between them with regard to payment of wages. On the day of occurrence, the workers had assembled outside the factory and raised provocative slogans and hurled brickbats at the factory. Some property of the accused was damaged. The accused thereafter came out of his office room and standing on the *Thari* fired a shot from his revolver which killed the deceased instantaneously. The Supreme Court held that the accused had a right of private defence of his body, but the circumstances were not such as to create apprehension in his mind that the death or grievous would be the consequence, if his right of private defence was not exercised. It was held that the accused had exceeded his right of private defence. Exception 2 to Sec 300 was held not applicable to the facts of the case.

c) Act of Public Servants (Exception 3)

In order this exception may apply the following conditions must be fulfilled:

1. Offence must be committed by a public servant or by some other person acting in the aid of such public servant, in the advancement of public justice.
2. Public servant or such other person exceeds the powers given to him by law.
3. Death is caused by doing an act which he in good faith believes to be lawful and necessary for the discharge of his duty as such public servant.
4. Lastly, act must have been done without any ill will towards the person whose death is caused.

This exception shall not apply where the act of public servant is illegal and unauthorised by law or if he glaringly exceeds the powers entrusted to him by law. Where X, a police constable fired at certain reapers under the orders of Z, a superintendent of Police and it was found that neither the constable nor the officer believed it necessary for public security to disperse those reapers by firing upon them, it was held that the constable was guilty of murder.[38]

In *Lakhi Singh v State*,[39]where a suspected thief who has been arrested by a police officer, escapes by jumping down from train and the police officer finding that he is not in a position to apprehend him, shoot at him but kills another person. It was held that the case is covered under this exception of the Sec 300.

d) Death caused in Sudden Fight (Exception 4)

For the application of Exception 4 to Sec 300 of the IPC, following conditions must be satisfied:

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[37] AIR 1979 SC 577
[38] *Supra* note 18 at 418
[39] AIR 1955 All 379

1) death must be caused in sudden fight
2) that sudden fight must be without any premeditation
3) sudden fight must occur in the heat of passion upon a sudden quarrel
4) the offender must not have taken undue advantage or must not have acted in a cruel or unusual manner
5) it is immaterial as to which party offered the provocation or committed the first assault.
6) the fight must have been with the person killed.

Explanation appended to Exception provides that it is immaterial which party offers the provocation or commit the first assault.

In *Kesar Singh v State of Haryana*,[40]Supreme Court of India beautifully explained Exception 4 to Sec 300. The Court said the word fight is used to convey something more than a verbal quarrel. It postulates a bilateral transaction in which blows are exchanged even if they all do not find their target. Provocation *per se* is not fight. Asking somebody to do something again may not be a provocation. Expressing a desire to one's neighbour digging foundation that some passage may be left may not be considered to be a demand. In the Instant case, prosecution alleging that when the deceased merely asked the accused to leave free some passageway, the said accused exhorted that the deceased must be taught a lesson and accused hit him on the head with reverse side of spade resulting in his death a few days later. The contention that there was an altercation with the deceased was found baseless by the court. There was, thus, no fight, far less a sudden fight. Hence, there was nothing to show that a sudden fight and heat of passion as envisaged under Exception 4 to sec 300, had developed. The Supreme Court finds that the case falls under Sec 300 and does not fall under Sec 300 Exception 4.[41]

e) Death by Consent (Exception 5)

Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his/her own consent. For the application of Exception 5 to Sec 300, following conditions must be satisfied:

1) the death must have been caused with the consent of the deceased person;
2) the deceased person should be above 18 years of age;
3) such consent must be voluntary and free and given under fear or misconception.

In *Dasrath Paswan v State of Bihar*[42]the accused, who was a student of tenth class, failed in his examination thrice in succession. He was upset and frustrated by these failures and

[40] (2008) 15 SC 753
[41] *Supra* note 13 at 246
[42] AIR 1958 Pat 190

decided to put an end to his life and informed his wife, a literate girl of about 19 years of age. The wife thereupon requested him to kill her first and then kill himself. In pursuance of the pact, he killed his wife but was arrested before he could end his life. The Patna High Court, relying upon Exception 5 to Sec 300, convicted him under Sec 304, Part II of the Indian Penal Code.

III Section 304A Causing Death by Negligence

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

General Comments

The Indian Penal Code drafted in 1860 had no provisions providing punishment for causing death by negligence. Section 304A was inserted in the Code in 1870 by the Indian Penal Code (Amendment) Act 1870. It does not create a new offence. This section is directed at offences, which fall outside the range of Secs 299 and 300, where neither intention nor knowledge to cause death is present. This section deals with homicide by negligence and covers that class of offences, where death is caused neither intentionally nor with the knowledge that the act of the offender is likely to cause death, but because of the rash and negligent acts which cause death, but falls short of culpable homicide of either description. When any of these two elements, namely intention or knowledge is present, Sec 304A has no application. In fact, if this section is also taken into consideration, there are three types of homicides which are punishable under the IPC, namely (i) culpable homicide amounting to murder; (ii) culpable homicide not amounting to murder; (iii) homicide by negligence.[43]

To impose criminal liability under Sec 304A, it is necessary that the death should have been the direct result of rash and negligent act of the accused, and that the act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans* (immediate or operating clause); it is not enough that it may have been the *causa sine qua non* (a necessary or inevitable cause). That is to say, there must be a direct nexus between the death of a person and the rash or negligent act of the accused.[44]

[43] PSA Pillai's, *Criminal Law*, Tenth Edition, 2008, Lexis Nexis, p818
[44] K D Gaur, *Criminal Law: Cases and Materials*, Eighth Edition, 2015, Lexis Nexis, P507

Rash and Negligent act

Rash or negligent act is an act done not intentionally. A rash act is primarily an over hasty act, and is thus opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate is yet done without due deliberation and caution. Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. Rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. Negligence is the genus of which rashness is a species. The words rashly and negligently are distinguishable and one is exclusive of the other. The same act cannot be rash as well as negligent. The rash or negligent act means the act which is the immediate cause of death and not any act or omission which can at most be said to be a remote cause of death. In order that rashness or negligence may be criminal it must be of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be caused thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences.[45]

In *Mohd Ayniddin v State of A.P,*[46]court said criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to its consequences. A rash act is primarily an overhasty act and is opposed to a deliberate act; even if it is partly deliberate , it is done without due thought and action.

Though the term negligence has not been defined in the Indian Penal Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would do.[47]

The term negligence as used in this section does not mean mere carelessness. The rashness or negligence must be of such nature so as to be termed as a criminal act of negligence or rashness. Section 80 of the Indian Penal Code provides that nothing is an offence which is done by accident or misfortune and without any criminal knowledge or intention in the doing of a lawful act in a lawful manner by a lawful means and with proper care and caution. It is

[45] SN Mishra, *Indian Penal Code*, Twelfth Edition, Central Law Publications, p481
[46] AIR 2000 SC 2511
[47] Ashok K. Jain, *Criminal Law-I,* Fifth Edition, 2015, Ascent Publications, p263

absence of such proper care and caution, which is required of a reasonable man in doing an act, which is made punishable under this section.[48]

In *Vasant v State of Maharashtra*[49]the deceased was run over by the jeep of appellant. The trial court held him guilty under Sec 304A and not under Sec 302, as it found lack of intention to kill. But the High Court held that there was enmity between the deceased and the appellant, and on the fateful day, the appellant after exchange of words with victim ran towards his jeep and ran over the victim at high speed. there was no point of being rash and negligent as the road was very broad and there was no traffic. Hence, the Court found the appellant guilty under Sec 302. The Supreme Court after appreciating the deliberations of the High Court dismissed the appeal and confirmed the conviction of appellant under Sec 302 of the Indian Penal Code.

Rash and Negligent Act in Medical Treatment

During the recent past the Supreme Court has attributed a different standard to negligence when it comes to a professional, particularly, a medical practitioner. Courts have repeatedly held that great care should be taken before imputing criminal rashness or negligence to a professional man acting in the course of his professional duties. A doctor is not criminally liable for patient's death unless his negligence or incompetence passes beyond a mere matter of competence and show such disregard for life and safety, as to amount to a crime against state.[50]

In *Suresh Gupta v NCT of Delhi and Anor*[51]the Supreme Court held that for fixing criminal liability of a doctor, the standard of negligence should not merely be lack of necessary care, attention and skill. The standard of negligence required to be proved should be so high as can be described as gross negligence or recklessness.

In *Jacob Mathew v State of Punjab*[52] the Supreme Court not only approved the principle laid down in *Suresh Gupta's* case but also opined that negligence in the context of medical profession necessarily calls for a treatment with a difference...a case of occupational negligence is different from one of professional negligence. Delving into liability of a doctor for his rash or negligent act leading to death of his patient, it ruled that:

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[48] *Supra* note 43 at 819
[49] AIR 1998 SC 699
[50] *Supra* note 43 at 825
[51] AIR2004 SC 4091
[52] 2005 CrLJ 3710

...a professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or he did not exercise with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession.

IV Section 319 Hurt

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

General Comments

The Indian Penal Code on the basis of the gravity of the physical assault has classified hurt into simple and grievous hurt, so that the accused might be awarded punishment commensurate to his guilt. Though, it is very difficult and absolutely impossible to draw a fine line of distinction between the two forms of hurts, simple and grievous, with perfect accuracy, the Code has attempted to classify certain kinds of hurts as grievous (Secs 320, 322 and 325) and provided for severe punishment depending upon the gravity of the offence in question.[53]

Section 319 defines hurt as 'whoever causes bodily pain, disease or infirmity to any person is said to cause hurt'. This section does not define any offence. It merely states what is the meaning of hurt. The expression bodily pain means that the pain must be physical as opposed to any mental pain. So, mentally or emotionally hurting somebody will not be hurt within the meaning of this section. However, in order to come within this section, it is not necessary that any visible injury should be caused on the victim. All that the section contemplates is the causing of bodily pain. The degree or severity of the pain is not material factor to decide whether this section will apply or not. A blow or a fisticuff will come within the meaning of causing bodily pain and hence will be covered under this section.[54]

In *Abdul Sattar v Smt Moti Bibi*,[55]the accused went with the Nazir of a Court to execute a decree for a house they had obtained against their sister's husband. Delivery of possession was resisted by the accused's sister the complainant, on the ground that the house belonged to her and she was not a party to the decree. The accused forcibly dragged the complainant out of the house. the accused were held guilty under this section because she was not a party to the decree.

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[53] K D Gaur, *Criminal Law: Cases and Materials*, Eighth Edition, 2015, Lexis Nexis, P543
[54] PSA Pillai's, *Criminal Law*, Tenth Edition, 2008, Lexis Nexis, p884
[55] AIR 1930 Cal 720

Causing disease means communicating a disease to another person. However, the communication of the disease must be done by contact.[56]

Infirmity has been defined as inability of an organ to perform its normal function which may either be temporary or permanent.[57] A state of temporary impairment or hysteria or terror would constitute infirmity for the purpose of Sec 319.[58]

Section 320 Grievous Hurt

The following kinds of hurt only are designated as "grievous"

First. - Emasculation.

Secondly. - Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

Fifthly. -Destruction or permanent impairing of the powers of any member or joint.

Sixthly. - Permanent disfiguration of the head or face.

Seventhly. - Fracture or dislocation of a bone or tooth.

Eighthly. - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

General Comments

Section 320 of the Indian Penal Code states specifically the nature of injuries that can be categorised as grievous hurt. No other hurt outside the categories of injuries enumerated in Sec 320 can be termed as grievous hurt. Therefore, unless a hurt caused comes within the injuries specified in Sec 320, this section will not apply. Clauses 1- 7 to Sec 320 state the specific nature of injuries, such as emasculation, loss of sight, loss of hearing, loss of limb or joint, loss of use of any limb or joint, disfiguration of the head or face, fracture or dislocation of a bone or tooth. The eight clause is a general clause which covers all injuries which endanger life or which caused bodily pain or disrupted a person's routine activity for 20 days or more. But every grievous hurt need not to be one which endangers life. Clause 8 of this section like any clause needs to be construed strictly. Mere hospitalisation for more than 20 days does not *ipso facto* turn the hurt into grievous hurt. Therefore, if the victim has not

[56] *Supra* note 54
[57] *Anis Beg v Emperor* AIR 1924 All 215
[58] Ashok K. Jain, *Criminal Law-I,* Fifth Edition, 2015, Ascent Publications, p281

cooperated or not consented for operation, the hurt caused would not be grievous hurt and the accused therefore cannot be held guilty for causing grievous hurt. [59]

The authors of the Code observed: we have found it very difficult to draw a line with perfect accuracy is, indeed absolutely impossible, but it is far better such a line should be drawn, though widely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good man should hardly resent, would be classed together.[60]

The expression 'emasculation' means depriving a person of masculine vigour, castration or causing such injury to the scrotum of a person as would render him impotent. For the purpose of this section injury caused to another person must be voluntary. Causing injury to himself resulting in emasculation is not within the purview of Sec 320.

Disfiguration means causing such injury to a man which detracts from his personal appearance, but does not weaken him. Cutting off a man's nose or ear or an injury resulting in some permanent mark on the face of a person are examples of disfiguration.

For the purpose of this section fracture or dislocation of a bone is also considered to be a grievous hurt as it causes pain to the person injured. May be that the bone fractured may be rejoined or the bone dislocated may be reset but this does not change the nature of injury because of painful suffering it causes to the victim.[61] Fracture or dislocation of a bone or tooth causes great pain and suffering to the injured person and hence it is considered grievous hurt. For application of this clause it is not necessary that a bone should be fractured through and through or that there should be a displacement of any fragment of bone. Any break or splintering of the bone, rupture or fissure in it would amount to fracture. Although fracture has not been defined in sec 320 IPC, but as per Supreme Court judgment in the case of *Hori lal and Anr v State of U.P*[62] incised wound to the bone is to be consider as fracture, hence, grievous hurt.[63]

An injury can be said to endanger life if it is in itself that it put the life of the injured in danger. There is thin line between degree of body injury dangerous to life and likely to cause death. So, the line separating grievous hurt and culpable homicide is very thin. In grievous hurt, the life is endangered due to injury while in culpable homicide death is likely to be

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[59] PSA Pillai's, *Criminal Law*, Tenth Edition, 2008, Lexis Nexis, p887
[60] SN Mishra, *Indian Penal Code*, Twelfth Edition, Central Law Publications, p509
[61] *Ibid.*
[62] AIR 1970 SC 1969
[63] For more details see: *http://medind.nic.in/jal/t13/i2/jalt13i2p160.pdf(* Accessed on 10/02/1016)

caused. In *Niranjan Singh v State of Madhya Pradesh*[64], the Court observed that the term "endangers life" is much stronger than the expression "dangerous to life". The mere fact that a man has been in hospital for twenty days is not sufficient; it must be proved that during that time he was unable to follow his ordinary pursuits. A disability for twenty days constitutes grievous hurt; if it constitutes for a smaller period, then the offence is hurt. Ordinary pursuits means acts which are a daily routine in every human being's day to day life like eating food, taking bath, going to toilet, etc.[65]

In *Govt of Bombay v Abdul Wahab*[66]the court observed that the line between culpable homicide not amounting to murder and grievous hurt is very thin. In one case the injuries must be such as are likely to cause death and in the other they endanger life. Thus hurt with endangers life is lesser in degree than injuries which are likely to cause death.

In *Prithvi v State of Haryana*,[67]during a quarrel between the accused and the deceased, the accused kicked the deceased on the testicles. No medical treatment was given to the deceased for two days. The doctors opined that death was due to Toxaemia because of gangrene which could be the result of injury to testicles. The court held that the injury to the testicles was not the direct cause of death. Thus, an offence under Sec 323 for causing voluntary hurt.

Difference between Hurt and Grievous Hurt

Hurt **(Section 319**	**Grievous Hurt** **Section 320**
Whoever causes i) bodily pain ii) disease or iii) infirmity to any person is said to cause hurt .	The following eight 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 twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

[64] 1972 CrLJ
[65] *Supra* note 63
[66] AIR 1946 Bom 38
[67] AIR 1994 SC 1582

V Section 350 Criminal Force

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here Z has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending, or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding. in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the

throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes. A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy, Z, he has criminal force by Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing, A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with that water so situated that such contact must affect Z's sense of feeling ; A has therefore intentionally used force to Z ; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

General Comments

The force becomes criminal force when it is used in order to the committing of the offence and is used without consent and when it is intentionally used to cause injury, fear or annoyance to some other person. The term battery of English law is included in criminal force. The criminal force may be very slight as not amounting to an offence as per section 95 of the Indian Penal Code. Its definition is very wide so as to include force of almost every description of which a person may become an ultimate object.[68]

Essential Ingredients

Following are the essential ingredients of Sec 350 of the Indian Penal Code:

1. intentional use of force to any person
2. such force should have been used without the consent of the victim
3. such force must have been used to commit an offence or with the intention to cause injury, fear or annoyance to the person to whom it is used

[68] SN Mishra, *Indian Penal Code*, Twelfth Edition, Central Law Publications, p528

Criminal force is concerned with the use of force on a human being alone and not against immovable property or inanimate objects. Further, the section contemplates the physical presence of the person on whom the force is used. When the lock of a house was broken in the absence of the occupant of the house, then it is clear that the accused had taken possession of the house without any force or show of force. Further, the use of force which causes motion, change of motion or cessation of motion to another person, done without the consent of such person, in order to commit an offence, or cause annoyance to the said person will amount to criminal force. No bodily hurt or injury need to be caused.[69]

For instance if X spits over Z, X would be liable for using criminal force against Z because spitting must have caused annoyance to Z.

Section 351 Assault

Whoever makes any gesture, or any preparation intending or knowing. it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation- Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z, A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

[69]PSA Pillai's, *Criminal Law*, Tenth Edition, 2008, Lexis Nexis, p909

General Comments

This section defines the term assault. Whether a particular act amounts or does not amount to an assault depends upon the circumstances of each case. A particular act may not amount to an assault in one case, but the same act taken along with the surrounding circumstances may amount to an assault in another case. In the instant case, the accused interposed between the officer and the cattle that were being removed under his order and he then indulged in the use of abusive language and thereafter went away threatening he would return and teach them a lesson. Soon afterwards he did come back armed with a *lathi*. He had his companions also, though they were not armed. He came sufficiently close to the officer to raise in their mind a reasonable apprehension that actual force was likely to be used. It was held that the accused's act came within the definition of assault. Pointing a gun at a person is an assault unless done in protection of person or property. If it is pointed at a person without legal excuse it is an unlawful act. The gesture by lifting *lota* to hit another is enough to constitute the act of assault.[70]

Essential Ingredients

Following are essential ingredients of this section:

I. that the accused should make a gesture or preparation to use criminal force;
II. such gesture or preparation should be made in the presence of the person in respect of whom it is made;
III. there should e intention or knowledge on the part of the accused that such gesture or preparation would cause apprehension in the mind of the victim that criminal force would be used against him;
IV. such gesture or preparation has actually caused apprehension in the mind of the victim, of use of criminal force against him.

The apprehension of the use of criminal force must be from the person making the gesture or apprehension, but if it arises from some other person it would not be assault on the part of that person. Where X points a loaded pistol at Z it would be an offence of assault. In *Muneshwar Bux Singh's*[71] case the accused did nothing which may come within the meaning of assault but made such a gesture that his followers advanced a little forward towards the complainant in a threatening manner, he was not held liable for an offence under this section because criminal force cannot be said to be used by one person to another by causing only

[70] JN Bannerji and HKL Bhagat, *Exhaustive and Critical Commentary on the Indian Penal Code*, Federal law Depot, 1958, p293
[71] *Muneshwar Bux Singh v Emperor* 1938 14 Luck 409

some change in the position of others. The gist of this offence is the intention or knowledge that the gesture or preparations made by the accused would cause such effect upon the mind of another that he would apprehend that criminal force was about to be used against him.[72]

Difference between Assault and Criminal Force

Assault is something less than the use of force. In assault the force is cut short before the blow actually falls upon the victim. It seems to consist in an attempt or offer by a person having present capacity with force to cause any hurt or violence to the person of another. In criminal force the assault is committed as force is actually used. In assault the accused must be having enough means and ability to carry his threat into effect and must also cause an apprehension in the mind of another that he was about to use criminal force but actually there is no use of criminal force. Every use of criminal force includes assault but in assault there is merely apprehension of use of force and no use of actual force.[73]

VI Kidnapping and Abduction

Section 359 Kidnapping

Kidnapping is of two kinds:- kidnapping from India, and kidnapping from lawful guardianship.

General Comments

The literal meaning of kidnapping is 'child stealing'. Kidnapping is of two kinds:

a) Kidnapping from India and;

b) Kidnapping from lawful guardianship.

In certain cases two forms of kidnapping may overlap each other. For example, a minor kidnapped from India may well at the same time be kidnapped from his lawful guardianship also.[74]

Kidnapping Genesis

Section 359 provides that kidnapping are of two kinds- one kidnapping from India and another kidnapping from lawful guardianship. Section 360 details the offence of kidnapping from India of any person irrespective of age. Section 361 first part lays down what kidnapping from lawful guardianship stands for. The word kidnapping has its genesis in the

[72] SN Mishra, *Indian Penal Code*, Twelfth Edition, Central Law Publications, p530
[73] *Ibid.*
[74] Ashok K. Jain, *Criminal Law-I*, Fifth Edition, 2015, Ascent Publications, p331

Dutch word 'Kid' meaning a child and 'nap' meaning 'to steal'. In England it is the forcible abduction or stealing away of a person whether man, woman, or child. It is an offence punishable at common law by fine and imprisonment; and the kidnapping of a child under fourteen is an offence under the Offences against Person Act, 1861. The use of force or fraud is an essential element of the offence of kidnapping. As stated in BLACK on Law Dictionary at common law it is the forcible abduction or stealing and carrying away of a person from own country; it includes the unlawful seizure and removal of a person from own country or state against his will.[75]

Kidnapping whether Continuing Offence

Continuing offence is an offence which is susceptible of continuance and is distinguishable from an offence which is committed once for all. The expression continuing offence means that if an act or omission constituting an offence continues from day to day, then fresh offence is committed every day on which the act or omission is repeated, recurred or continues. A continuing wrong or continuing offence is a breach of duty which itself is continuing. The plain meaning of continuing is carrying on and not ceasing to be the default does not cease until compliance with the statute has been made.[76]

Kidnapping is not a continuing offence.[77] Thus A having kidnapped a minor girl from the lawful guardianship of her father was joined by B on the way along with the girl kidnapped. B was not guilty of kidnapping because the kidnapping was complete the moment the girl is removed and it was not a continuing offence.[78]

Section 360 Kidnapping from India

Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of the person, is said to kidnap that person from India.

General Comments

The words used in the section are 'beyond the limits of India'. This means that the offence under this section is complete, the moment a person is taken outside the geographical territory of India. It is not necessary that the persons should reach their destination in some other foreign territory. By the same token, if a person is apprehended before he crosses the

[75] Ratanlal and Dhirajlal, *The Indian Penal Code*, 32 Enlarged Edition, (2013), Lexis Nexis, p1984
[76] *Ibid.*
[77] *Emperor v Gokaran,* AIR 1921 Oudh 226
[78] *Damoder v State of Rajasthan,* AIR 1953 Raj 127

Indian border, then the offence will not be complete. At best, it may amount to an attempt to commit the offence of kidnapping from India under Sec 360, IPC. Till then, he has a *locus paenitentia.* The taking away of a person outside the territory of India is made a separate offence, because it has the effect or removing a person from the jurisdiction of the Indian law enforcing agencies.[79]

Section 361 Kidnapping from lawful guardianship

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or. any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful Guardianship.

Explanation- The words "lawful guardian" in this section include any person lawfully entrusted with the care of custody of such minor or other person.

Exception- This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

General Comments

This section defines the offence of kidnapping from lawful guardianship. In order to support a conviction of kidnapping a girl from lawful guardianship the ingredients to be satisfied are:

1. taking or enticing away a minor or a person of unsound mind;
2. such minor must be under the age of 16 years, if a male or under the age of 18 years, if a female;
3. the taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind;
4. the taking or enticing must also be without the consent of the guardian.

Takes or Entices

There is an essential distinction between the two words 'take' and 'entice'. The mental attitude of the minor is not of relevance in the case of taking. The word take means to cause to go, to escort or to get into possession. When the accused takes the minor with him whether she is

[79] PSA Pillai's, *Criminal Law*, Tenth Edition, 2008, Lexis Nexis, p938

willing or not, the act of taking is complete and the condition is satisfied. The word 'entice' involves an idea of inducement by exciting hope or desire in the other. One does not entice another unless the latter attempted to do a thing which she or he would not otherwise do so. When the accused takes a girl along with him, he has taken her out of the father's custody within the meaning of the section.[80]

In *S. Varadarajan v State of Madras*[81] a minor girl voluntarily left her father's house and arranged to meet the accused at a certain place and went to the sub-registrar's office, where the accused and the girl registered an agreement to marry. There was no evidence whatsoever that the accused had taken her out of the lawful guardianship of her parents, as there was no active part played by the accused to persuade her to leave the house. It was held that no offence under this section was made out.

The offence under this section is complete when the minor is actually taken lawful guardianship and the offence is not continuing one until the minor's return to his guardian. Where A kidnaps a girl B and gives her to C who accepts her not knowing that she had been kidnapped, A is guilty of kidnapping but C is not. It may sometimes be difficult to determine the precise moment at which the taking is complete but generally speaking, the keeping of the guardian would be an end when the person of the minor had been transferred from the custody of the guardian or some person on his behalf into the custody of the stranger. The act of taking is not a continuous process, therefore, once the boy or girl is taken out of the keeping, the act is complete one and subsequent taking of a minor who has already been kept out of his guardianship no more constitutes taking in the proper sense of the term under this section.[82]

For the purpose of this section the unsoundness of mind must be because of natural reasons, it should not be temporary insanity produced due to alcoholic excess or such other reason. Where a girl aged 20 years was made unconscious due to *dhatura* poisoning when she was taken away by X, it was held that X was not guilty of kidnapping because the girl could not be said to be of unsound mind. Further, the person kidnapped must be under the age of 16 years if a male and under the age of 18 years if a female. Knowledge of the accused that the person kidnapped was below the statutory age is immaterial.[83]

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[80] JN Bannerji and HKL Bhagat, *Exhaustive and Critical Commentary on the Indian Penal Code*, Federal law Depot, 1958, p304
[81] AIR 1965 SC 942
[82] SN Mishra, *Indian Penal Code*, Twelfth Edition, Central Law Publications, p536
[83] *Ibid.*

Section 361 of the Code makes the taking or enticing of any minor person or person of unsound mind out of the keeping of the lawful guardian, an offence. The meaning of the words 'keeping of the lawful guardian' came up for consideration before the Supreme Court in *State of Haryana v Raja Ram*[84]the court observed that the word keeping in the context connotes the idea of charge, protection, maintenance and control. The Court compared it with the language used in English statutes, where the expression used was take out of the possession and not out of the keeping. The difference in the language between the English statutes and this section only goes to show that Sec 361 was designed to protect the sacred right of the guardians with respect of their minor wards. The term used in the statute is lawful guardian and not legal guardian. The term lawful guardian is a much more wider and general term than the expression legal guardian. Legal guardian would be parents or guardians appointed by courts. Lawful guardian would include within its meaning not only legal guardians, but also such persons like a teacher, relatives, etc who are lawfully entrusted with the care and custody of a minor.[85]

Distinction between Kidnapping and Abduction

The points of difference between the kidnapping and abduction are as follows:

Kidnapping (From Guardianship)	**Abduction**
It is committed only in respect of minor or a person of unsound mind	It is committed in respect of any person of any age
Consent of the person enticed is immaterial	Consent of the person removed if freely and voluntary given condones the offence
The intent of the offender is irrelevant	Intention is important
It is substantive offence and punishable under Sec 363	It is an auxiliary act, not punishable by itself unless accompanied with some criminal intent
It is not a continuing offence	It is a continuing offence
The person kidnapped is removed from lawful guardianship	The person abducted need not be in the keeping of any body

[84] AIR1973 SC 819
[85] *Supra* note 79 at 940

The minor on the person of unsound mind is simply taken away or enticed to go with offender	Force, compulsion, or deceitful means are employed

Section 362 Abduction

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

General Comments

Section 362 merely defines what abduction is. It does not define an offence. Abduction becomes an offence only when it is accompanied by one of the intentions described in Secs 364 (kidnapping or abducting in order to murder), 365 (kidnapping or abduction with intent secretly and wrongfully to confine person) and 366 (kidnapping, abducting woman to compel her marriage etc) of the India Penal Code. Abduction laid down under this section requires two essentials:

1. forcible compulsion or inducement by deceitful means, and
2. the object of such compulsion or inducement must be the going of a person from any place

The expression 'deceitful' means in this section is wide enough to include the inducting of a girl to leave her guardian's house on pretext, deceit according to its plain dictionary meaning signifies anything intended to mislead another. It is really speaking a matter of intention and even if the promise held out by the accused is fulfilled by him, the question is whether he is acting in a *bona fide* manner when he is extending certain promises to a woman and thereby inducting to accompany him.[86]

The main ingredient of the offence of abduction is that the accused should have by force compelled any person to go from one place to another. The word force in this section means actual force and not merely a show or threat of force.[87]

In *Vinod Chaturvedi v State of Madhya Pradesh*[88] the appellant was alleged to have abducted the deceased Brindaban. during the course of investigation it was found that Brindaban on being persuaded by the accused persons and Vinod in particular went inside his house, came

[86] JN Bannerji and HKL Bhagat, *Exhaustive and Critical Commentary on the Indian Penal Code*, Federal law Depot, 1958, p305
[87] *Ibid.*
[88] AIR 1984 SC 911

out properly dressed to accompany the group to village Rmapura. It was held that Brindan was not abducted by the accused persons.

In *Abdulvahab Abdul Majid Sheikh v State of Gujarat*[89] victims were abducted and ransom money was realised from them. This was the only intention of accused persons and there was no evidence to prove that they intended to create disharmony among different sections of people. Ransom money was later on recovered from possession of the accused but there was no evidence to prove that such a huge amount was paid as ransom. Co-accused had not involved the accused in his confessional statement. Acquittal of the held was held proper.

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