



Culpable Homicide and Murder under the Bharatiya Nyaya Sanhita, 2023: A Comparative Jurisprudential Analysis

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Abstract

The distinction between culpable homicide and murder has long posed interpretative challenges in Indian criminal law. With the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), these offences have been restructured but retain the essential principles of intent (*mens rea*) and action (*actus reus*). Section 100 of BNS defines culpable homicide, while Section 101 elaborates when it amounts to murder. This article examines the conceptual and legal differences between homicide, culpable homicide, and murder under the new code, highlighting their elements, punishments, judicial interpretations, and exceptions. By engaging with landmark judgments such as *Reg. v. Govinda* (1876), *Virsa Singh v. State of Punjab* (1958), and *State of A.P. v. Rayavarapu Punnayya* (1976), the paper elucidates how jurisprudence has evolved to draw fine distinctions between these offences. The article argues that while every murder is culpable homicide, not every culpable homicide is murder—a principle crucial for justice, proportionality in punishment, and protection of individual rights.

Keywords: Culpable Homicide; Murder; Bharatiya Nyaya Sanhita, 2023; Indian Penal Code, 1860; *Mens Rea*; Intention and Knowledge; Exception to Murder; Judicial Interpretation; Criminal Liability; Comparative Criminal Law.

Introduction

The Concept of Homicide as One of the Gravest Crimes

Homicide, in its simplest sense, refers to the killing of one human being by another. Among all offences known to criminal law, homicide occupies the most serious position because it involves the destruction of human life—the very foundation of civil society. Unlike offences against property, liberty, or reputation, which can often be remedied or compensated, the unlawful taking of life is irreversible. For this reason, legal systems across the world, from ancient times to the modern day, have treated homicide as one of the gravest crimes known to mankind. Blackstone famously described homicide as the “highest crime against the law of nature,” noting that it strikes not only against the individual victim but also against the peace and order of the entire community. In every civilization, killing has been regarded as morally reprehensible, and both religious and secular legal systems have consistently imposed the harshest punishments for unlawful killings. However, the law does not treat every act of killing in the same way. There are circumstances where homicide may be lawful, such as death caused during a just war, in the lawful execution of a convicted offender, or in the exercise of private defence. In contrast, unlawful

homicide is criminal and attracts penal consequences, with the degree of criminality depending on the mental element (*mens rea*) and the circumstances under which the act was committed. Indian criminal jurisprudence, first codified under the Indian Penal Code, 1860 (IPC) and now replaced by the Bharatiya Nyaya Sanhita, 2023 (BNS), distinguishes between two broad categories of unlawful homicide: culpable homicide and murder. While every murder is culpable homicide, not every culpable homicide amounts to murder. This fine but vital distinction is one of the most debated and litigated issues in Indian criminal law. Thus, the study of homicide is not only central to criminal law but also reflects the balance the law seeks to maintain between the sanctity of human life and the recognition of human frailties, passions, and circumstances.

Confusion between culpable homicide and murder.

The distinction between culpable homicide and murder has long been regarded as one of the most complex areas of Indian criminal law. Both offences involve the killing of a human being and require either intention (*mens rea*) or knowledge, with severe punishments attached, yet the difference between them is often described as “the difference between shades of grey.” The primary source of confusion lies in the overlapping language and scope of the definitions in the IPC and now in the BNS. Section 100 BNS (formerly Sec. 299 IPC) defines culpable homicide as causing death with intention or knowledge, while Section 101 BNS (formerly Sec. 300 IPC) begins with the phrase, “Except in the cases hereinafter excepted, culpable homicide is murder,” thereby establishing murder as an aggravated form of culpable homicide. However, because both offences hinge on intention and knowledge, the difference often depends on the degree of those mental elements and the circumstances of the act, which judges interpret differently. In culpable homicide, the offender may either intend to cause death, intend to cause bodily injury likely to result in death, or know that the act is likely to cause death. In contrast, murder under Section 101 BNS involves situations where the act is done with the intention of causing death, or the injury inflicted is sufficient in the ordinary course of nature to cause death, or the act is imminently dangerous, reflecting extreme recklessness or cruelty. This overlap between intention and knowledge often leads to interpretational difficulties—for instance, whether striking someone with a stick, knowing it might kill, constitutes culpable homicide or murder, or whether stabbing someone intending grievous injury qualifies as murder or culpable homicide not amounting to murder. Courts have repeatedly struggled with this distinction. In *Reg. v. Govinda* (1876), the accused caused his wife’s death by pressing her chest, and the court held it was culpable homicide not amounting to murder, as there was knowledge but no intention to kill. In *Virsa Singh v. State of Punjab* (1958), the “ordinary course of nature” test was laid down, establishing that if an injury is intentional and ordinarily sufficient to cause death, it constitutes murder. *State of Andhra Pradesh v. Rayavarapu Punnayya* (1976) famously stated that “culpable homicide is genus, murder is species; all murders are culpable homicide, but not vice versa,” emphasizing that the distinction is often one of degree rather than kind. Despite these rulings, confusion persists because assessing intention and knowledge is inherently subjective. Practically, this confusion has serious consequences: sentencing may vary drastically, misclassification can lead to disproportionate punishment, and legal uncertainty forces lawyers and judges to rely heavily on precedents that sometimes conflict. Further complicating the matter are exception clauses in Section 101 BNS, such as grave and sudden provocation, exceeding the right of private defence, and sudden fights, which convert what would otherwise be murder into culpable homicide not amounting to murder, creating two distinct levels of culpable homicide—one amounting to murder with harsher punishment, and one not amounting to murder with lesser sentences.

Need of the Study

The distinction between culpable homicide and murder has always been one of the most complex and debated areas of Indian criminal law. Despite extensive judicial interpretation under the Indian Penal Code, 1860, the thin line separating these two offences has often led to inconsistent application of law and varying judicial outcomes. With the introduction of the Bharatiya Nyaya Sanhita, 2023 (BNS), the structure and wording of these offences have been revised, creating a need to re-examine their scope and implications.

This study is necessary for several reasons:

1. Legal Transition and Clarity:

The BNS, 2023 replaces the IPC after more than 160 years. Understanding how Sections 100 (culpable homicide) and 101 (murder) reinterpret or retain earlier principles is essential for ensuring continuity, clarity, and uniformity in criminal justice administration.

2. Interpretative Challenges:

The terms intention, knowledge, and degree of mens rea remain central to differentiating the two offences. A fresh analysis is required to determine whether the new law resolves or perpetuates the interpretative ambiguities found under the IPC.

3. Judicial and Academic Relevance:

Courts, lawyers, and scholars must adapt to the BNS framework. This study aids in understanding how past landmark judgments—such as *Reg. v. Govinda* (1876), *Virsa Singh v. State of Punjab* (1958), and *State of A.P. v. Rayavarapu Punnayya* (1976)—remain relevant under the new code.

4. Proportionality in Punishment:

Misclassification between murder and culpable homicide can result in unjust punishment. The study ensures that the principle of proportionality and fairness in sentencing is maintained in light of the BNS provisions.

5. Policy and Reform Insight:

By analyzing the restructured provisions, the study contributes to ongoing discussions on the effectiveness and modern relevance of India's criminal law reforms.

Research Methodology

This study adopts a doctrinal research methodology, focusing primarily on the analysis of statutory provisions, judicial decisions, and scholarly interpretations. The aim is to understand and evaluate the legal distinction between culpable homicide and murder under the *Bharatiya Nyaya Sanhita, 2023* (BNS) and its continuity or divergence from the *Indian Penal Code, 1860* (IPC) framework. The research is qualitative and analytical in nature. It seeks to interpret the meaning, scope, and application of Sections 100 and 101 of the BNS, 2023, in light of established principles of criminal jurisprudence.

Historical Background

IPC, 1860 introduced distinction between culpable homicide (Section 299) and murder (Section 300). The Indian Penal Code (IPC), 1860, formally introduced a distinction between culpable homicide and murder through Sections 299 and 300, respectively. Section 299 IPC defined culpable homicide as causing the death of a human being with intention, or with knowledge that the act is likely to cause death, thereby establishing the basic mental element required for unlawful killing. Section 300 IPC, on the other hand, classified murder as an aggravated form of culpable homicide, providing more stringent criteria based on the degree of intention, knowledge, or recklessness involved. This distinction was significant because it allowed the law to differentiate between killings that were serious but less culpable, and those that were deliberate or excessively reckless, deserving the harshest punishments. Over time, however, judicial interpretation revealed that the line between culpable homicide and murder was often subtle and difficult to apply consistently, leading to calls for reform and clearer codification.

Law Commission 42nd Report (1971) recommended reform → noting difficulty in understanding distinction.

The Law Commission, in its 42nd Report of 1971, highlighted the persistent difficulty in understanding and applying the distinction between culpable homicide and murder under the IPC. The Commission noted that the overlapping definitions, coupled with the reliance on subjective assessments of intention and knowledge, often led to confusion in judicial decisions. To address this, the report recommended reforms aimed at simplifying the language of the provisions, clarifying the mental elements required for each offence, and providing a more precise framework for distinguishing between culpable homicide and murder. These recommendations sought to reduce inconsistency in judicial interpretation and ensure that the severity of punishment corresponded appropriately to the degree of culpability.

Post-independence debates (Malimath Committee, 2003).

Post-independence, the distinction between culpable homicide and murder continued to attract debate among legal scholars, jurists, and reform committees. The Malimath Committee (2003), tasked with recommending comprehensive reforms to the criminal justice system, observed that the existing provisions under the IPC were often overly technical and difficult for both judges and lawyers to apply consistently. The Committee emphasized that the fine line between culpable homicide and murder created uncertainty in sentencing and contributed to lengthy litigation. It recommended clearer definitions of intention, knowledge, and the circumstances elevating culpable homicide to murder, along with simplified exception clauses, so as to make the law more accessible, predictable, and just in its application. These debates laid the groundwork for subsequent reforms under the Bharatiya Nyaya Sanhita (BNS), 2023, which sought to codify and clarify these distinctions.

Bharatiya Nyaya Sanhita, 2023 replaced IPC.

Finally, the Bharatiya Nyaya Sanhita (BNS), 2023, replaced the Indian Penal Code (IPC), bringing comprehensive reforms to criminal law. One of the key objectives of the BNS was to simplify and clarify long-standing ambiguities, including the complex distinction between culpable homicide and murder. By redefining these offences under Sections 100 and 101, the BNS retained the fundamental principles of intent and knowledge while streamlining the language and exception clauses. This modern codification aimed to make the law more coherent, accessible, and consistent in its application, reducing interpretational difficulties that had persisted under the IPC for over a century.

Concept of Homicide

Lawful homicide: execution, self-defence, police encounters in good faith.

Lawful homicide refers to killings that are permitted under the law and do not attract criminal liability. This includes executions carried out in accordance with a court's sentence, acts of self-defence where a person protects their life or the lives of others from imminent harm, and killings by police or other public authorities performed in good faith while discharging their lawful duties. In each of these cases, the act of causing death is legally justified, as it occurs within the boundaries of law and does not constitute a criminal offence.

Unlawful homicide: punishable – murder, culpable homicide, death by negligence.

Unlawful homicide refers to the killing of a human being in circumstances not permitted by law and is therefore punishable. This category includes murder, which is the most aggravated form of culpable homicide; culpable homicide not amounting to murder, which involves intention or knowledge of causing death but under circumstances that reduce culpability; and deaths caused by negligence or rash acts, where there is no intention to kill but the act leads to loss of life. In all these cases, the law treats the act as criminal, and the severity of punishment depends on the degree of intent, knowledge, or recklessness involved.

4.Comparative chart: India (BNS), UK (Homicide Act, 1957), USA (First-degree murder, manslaughter)

A comparative understanding of homicide laws highlights how different jurisdictions classify and punish unlawful killings. In India, under the Bharatiya Nyaya Sanhita (BNS, 2023), homicide is divided into culpable homicide and murder, with further gradations such as culpable homicide not amounting to murder and deaths by negligence, each carrying distinct punishments based on intention, knowledge, and circumstances. In the United Kingdom, the Homicide Act, 1957 distinguishes between murder, manslaughter, and infanticide, with manslaughter covering killings without premeditated intent or under diminished responsibility. In the United States, homicide is categorized into first-degree murder (premeditated or intentional killing), second-degree murder (intentional but not premeditated), voluntary manslaughter (heat of passion), and involuntary manslaughter (reckless or negligent killing). This comparison shows a common thread: most legal systems recognize degrees of culpability, differentiating between deliberate, reckless, and negligent killings to calibrate punishment appropriately.

Jurisdiction	Offence Category	Definition / Criteria	Punishment
India (BNS, 2023)	Culpable Homicide	Causing death with intention, knowledge, or bodily injury likely to cause death.	Life imprisonment or up to 10 years (depending on severity).
	Murder	Aggravated form of culpable homicide; involves direct intention, extreme recklessness, or knowledge of likely death.	Death penalty or life imprisonment.
	Death- by Negligence	Death caused by rash or negligent act Without intention or knowledge of likely death.	Up to 5 years imprisonment + fine (up to 2 years for medical negligence).
United Kingdom (Homicide and Murder Act, 1957)	Murder	Intentional killing of a human being with malice aforethought.	Life imprisonment.
	Manslaughter	Killing without premeditation; may involve diminished responsibility, provocation, or unlawful act.	Discretionary sentence; varies by case.

Jurisdiction	Offence Category	Definition / Criteria	Punishment
United Kingdom (Homicide and Murder Act, 1957)	Infanticide	Killing of a child by the mother under the specific mental disturbance.	Maximum 2 years imprisonment or as court deems fit.
United States of America	First-Degree Murder	Premeditated or intentional killing.	Death penalty or life imprisonment (varies by state).
	Second-Degree Murder	Intentional but not premeditated; includes extreme recklessness	Varies by state; long-term imprisonment.
	Voluntary Manslaughter	Killing in the heat of passion or under provocation	Varies by state; usually shorter prison term than murder.
	Involuntary Manslaughter	Death caused by reckless or negligent act without intent to kill.	Varies by state; generally shorter term than voluntary manslaughter

International Research Journal

Culpable Homicide (Sec. 100 BNS)

Chapter VI of the Bharatiya Nyaya Sanhita, 2023 (hereinafter, BNS or the Sanhita) deals with offences concerning the human body ranging from murder, hurt, wrongful confinement, use of criminal force or assault as well as kidnapping, abduction, forced labour among other things. The Chapter also brings in new offences like organised crime and terrorist acts. Culpable Homicide the Sanhita, culpable homicide is genus and murder is species. All murders are culpable homicide, but not vice versa.

Every unlawful homicide is not necessarily a 'murder.' Law distinguishes culpable homicide' and 'murder? The fine difference between these two offences needs to be understood. From a reading of S. 100 of BNS, it is apparent that what it requires is that there should be an intention to cause death' or 'knowledge that the death is likely to be the result. It cannot be discerned that homicidal intention or knowledge must be assumed by causing death itself. The fact that the death of a human being is caused, is not enough, to infer one of the mental states mentioned above. Culpable homicide is of two kinds: one, culpable homicide amounting to murder and another, culpable homicide not amounting to murder

Section 100 – Culpable Homicide "Whoever causes death by doing an act with –

1. the intention of causing death, or the intention of causing such bodily injury as is likely to cause death, or
- 2, with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Essential Ingredients of Culpable Homicide

To constitute the offence, 3 things must exist:

1,Death must be caused – of a human being.

Act of the accused – must have directly caused the death (actus reus).

Mental state (mens rea) – falls under one of the 3 categories below.

2. Mental Elements (Sub-clauses)

Intention to cause death o Direct, deliberate killing. o Example: A shoots B point-blank intending to kill him.

Intention to cause bodily injury likely to cause death o Accused may not want death but intends such harm that ordinarily results in death. o Example: Stabbing in chest/stomach with knowledge that injury is dangerous.

Knowledge that act is likely to cause death o No specific intention to kill or injure, but accused knows the act is so dangerous that it may cause death. o

Example: Driving a car at high speed into a crowded street; firing a gun into a crowd.

3. Nature of Offence

Culpable homicide is not always murder. Whether it counts as murder depends on how strong the intention or knowledge to cause death was. Murder is just a more serious or extreme form of culpable homicide.

Examples

1.Intention to kill – If A puts poison in B's food to kill B, it is culpable homicide.

2.Bodily injury likely to cause death – If A hits B on the head with an iron rod, knowing it could cause death, it is culpable homicide.

3.Knowledge without intention – If A throws a heavy stone onto a busy road, knowing it might kill someone, it is culpable homicide.

Explanations of Culpable Homicide

(Sec 100)

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.

Meaning:

If the victim already has a disease/weakness/ infirmity, and the accused's act accelerates death, the accused is still responsible for causing death.

Pre-existing condition of the victim does not excuse the accused.

Example:

A knows that B has a weak heart. A hits B hard, and B dies from heart failure. Even though B's weak heart played a part, A's action caused the death to happen faster → this is culpable homicide

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.

Meaning:

The accused cannot escape liability by arguing that medical treatment could have saved the victim. If the injury inflicted is the cause of death, the accused is deemed to have caused death .

Example:

A stabs B in the stomach. B might have survived if taken to the hospital on time, but because of delay, he dies. A cannot avoid responsibility → he is liable for culpable homicide, since his action directly caused the death.

Explanation 3

The causing of the death of a 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.

Meaning:

Killing an unborn child (still in womb) is not homicide. But if any part of the child has emerged from the mother's body, it is considered a living human being, even if: The child hasn't breathed yet, or The child isn't fully born.

Example:

If A harms a pregnant woman and the fetus dies still in the womb, it is foeticide/miscarriage, not homicide.

If part of the baby has already emerged during childbirth and A's act causes its death, it counts as culpable homicide, because the baby is considered a living human being.

Explanation 1 → Pre-existing disease or weakness of victim doesn't excuse accused; accelerating death = homicide.

Explanation 2 → Death caused by injury = accused liable, even if medical aid could have saved victim.

Explanation 3 → Killing an unborn child ≠ homicide, but killing a child partly born (even if not breathing) = culpable homicide.

Leading Cases on Culpable Homicide**Reg. v. Govinda (1876) ILR 1 Bom 342**

Facts: Accused kicked his wife, pressed her chest, and caused rupture of spleen leading to death.

Held: It was culpable homicide not amounting to murder. There was no intention to cause death or sufficient bodily injury likely to cause death.

Significance: This case clearly distinguished between culpable homicide

Joginder Singh v. State of Punjab (1979) –

Facts: Joginder Singh, with his father and brother, went to the complainant's house after an eve-teasing quarrel. When Kuldip Singh tried to intervene, Joginder struck him with a kirpan on the neck, causing instant death. Another boy, Rupinder Singh, jumped into a well out of fear and drowned.

Held: Joginder Singh → guilty of murder (Sec. 302 IPC) for killing Kuldip Singh.

No evidence of common intention for Kishan & Balwinder → acquitted.

Death of Rupinder Singh not a direct result of their act; no intention/knowledge of causing death → acquitted for that charge.

5. Murder (Sec. 101 BNS)

Section 101 - Murder

"Except in the cases hereinafter excepted, culpable homicide is murder if—"

Sec 101 of BNS provides for the offence of 'murder' which is an aggravated form of culpable homicide. In other words, S. 101 of Sanhita deals with cases where culpable homicide is murder. As such an offence of 'murder' cannot be made out unless it falls within the definition of culpable homicide as provided in S. 100 of BNS.

A case of culpable homicide is murder if it:

(1) falls within any of four clauses of S. 101, (2) and (2) does not fall in any of five exceptions provided in S. 100 of Sanhita.

Therefore, S. 100 lays down the expression "Except the cases hereinafter excepted..." When

Culpable Homicide Amounts To Murder:-

First Clause – Direct Intention to Cause Death If the accused does an act with the intention of causing death, it is murder.

The mental element here is direct intention.

No need to prove the severity of injury; intention itself is enough.

Example: A shoots B in the head at point-blank range intending to kill him → Murder.

Second Clause – Intention + Knowledge of Victim's

Special Condition

If the act is done with the intention of causing bodily injury And the offender knows that such injury is likely to cause death of that specific victim.

Knowledge of victim's peculiar condition (disease/weakness) is crucial.

Example: A knows B suffers from a weak heart. A gives a severe blow on B's chest. B dies → Murder.

Third Clause – Intention to Cause Injury Sufficient to Cause Death (Objective Test)

If the offender intends to cause bodily injury, and The injury caused is, in the ordinary course of nature, sufficient to cause death.

Here, even if the accused didn't intend to kill, the nature of injury makes it murder.

Example: A stabs B in the stomach/heart with a knife. Such injury is ordinarily fatal → Murder.

Virsa Singh v. State of Punjab (1958 SCR 1495) Facts: Accused thrust a spear into abdomen of victim; injury sufficient in ordinary course of nature to cause death. Held: Even if intention to kill is absent, if injury intended is sufficient to cause death in ordinary course, offence is murder (Sec. 300 thirdly), not just culpable homicide. Significance: Test laid down for determining murder vs culpable homicide.

Fourth Clause – Knowledge of Imminently Dangerous Act

If the offender knows that the act is:

So imminently dangerous that it will probably cause death or

Such bodily injury likely to cause death, and

He commits the act without any excuse for taking the risk. This covers reckless acts with knowledge, not necessarily aimed at a particular victim.

Case law

State of Andhra Pradesh v. Rayavarapu Punnayya (1976) AIR SC 1541

SC explained Clause 4: Even without intention, if the act is imminently dangerous and death is most probable, it is murder.

Example: Firing into a crowd.

Example:

1. Firing into a crowded marketplace.
2. Derailing a train.
3. Setting fire to a house with people inside.

→ Murder, because the act is imminently dangerous and unjustified

**All Murders are Culpable Homicide, but... Every murder is culpable homicide.
But every culpable homicide is not murder.**

Murder = “Culpable homicide of the highest degree.”

Examples

Culpable Homicide: A, in a fight, hits B with a stick knowing B is sick. B dies because of illness aggravated by injury → Culpable homicide, not murder.

Murder: A stabs B in the chest with a knife with the intention of killing him → Murder.

Exception 1 to Section 101

- Grave and Sudden Provocation

General Rule

Normally, if a person kills another with intention or knowledge → it is murder.

But Exception 1 provides that:

If the act is done under grave and sudden provocation, such that the offender is deprived of the power of self-control, then the offence is culpable homicide not amounting to murder.

Ingredients (Conditions)

To claim this exception, following must be proved:

- 1.Provocation must be grave (serious, not trivial).
- 2,Provocation must be sudden (unexpected, immediate, not pre-planned).
- 3,The offender must have been deprived of self-control.
- 4,he killing must occur in the heat of passion before time for cooling down.
5. Death is caused of:
The person giving provocation, or
Another person by mistake/accident (e.g., stray shot).

Proviso / Limitations The exception will not apply if:

(a) Provocation is self-sought -

If the accused deliberately provokes another person to create an excuse for killing, then he cannot claim this defence.

Example: A taunts B to abuse him, and when B abuses, A kills him → exception not available.

(b) Provocation is given by lawful authority -

If a public servant does something legally (like arresting), even if it angers a person, killing him is still murder.

Example: Police officer lawfully arrests A, and A in anger kills the officer → no exception.

(c) Provocation is given in the lawful exercise of right of private defence

If someone exercises self-defence against you, and you retaliate with killing, you can't take the benefit of provocation.

Example: B defends himself lawfully against A's attack; A, enraged, kills B → murder, not reduced offence.

Exception 2-Exceeding right of private defence

General Idea

Normally, if a person kills another, it is murder.

But if the killing happens while exercising the right of private defence (RPD) of person or property, and the person exceeds the lawful limits, then → the offence is culpable homicide not amounting to murder.

Conditions to Claim Exception 2

For the accused to get the benefit of this exception, these must be satisfied:

Exercise of Right of Private Defence

The act must be done while exercising the legal right of private defence (self-defence of body or property, as per Sections 96–106 IPC).

Good Faith

The offender must act in good faith, genuinely believing he is protecting himself or property. **Exceeds**

Power Given by Law

The accused goes beyond what was legally permissible under the right of private defence. Example: When reasonable force was enough, but the accused causes death.

Without Premeditation The act must not be pre-planned. It must be a sudden reaction in defence.

No Intention to Cause More Harm Than Necessary The accused should not have any intention to cause more harm than what was required for defence.

Example

1. A is attacked by B with a stick. A could have warded him off with a stick, but instead A stabs B with a knife causing death. → Exceeds right, Exception 2 applies → Culpable homicide not murder.

2. A thief enters A's house. A, in defence, beats him. But A continues beating even after the threat is gone, leading to death. → Exceeds right → reduced offence.

Judicial Interpretation

- Darshan Singh v. State of Punjab (2010):

- o Private defence is a very valuable right.
- o But the force used must be proportionate; exceeding it may attract Exception 2.

Exception 3 -Acts of Public Servants General Principle

Normally, if a public servant causes death → it may amount to murder.

But if he was acting in good faith, in discharge of his duty, and exceeded his powers, then → the act is culpable homicide not amounting to murder.

Conditions for Exception 3

To get protection under this exception, the following must be satisfied:

1. Public Servant / Aiding Public Servant

The accused must be a public servant, or a person helping a public servant.

Example: Police officer, jail officer, soldier, etc.

2. Advancement of Public Justice

The act must be done while discharging duty for maintaining law and order / public justice.

Example: Arresting an accused, dispersing an unlawful assembly, controlling riots.

3. Exceeding Lawful Powers

The public servant must have gone beyond the legal powers given to him.

Example: Police has power to use force, but if excessive force causes death → exceeds authority.

4. Good Faith

The act must be done in the honest belief that it was lawful and necessary.

Even if mistaken, the belief must be genuine.

5. No Ill-Will / Malice

There must be no personal grudge or enmity against the victim.

If there is malice, this exception will not apply.

Example

A police officer tries to arrest a violent offender. In doing so, he fires his gun, believing it necessary. But the firing causes death when lesser force could suffice. → Exceeds powers → Exception 3 applies.

A jail officer shoots a prisoner trying to escape. He could have used a baton, but instead used a rifle. If done in good faith, without malice → falls under Exception 3.

Judicial Interpretation

R. v. Govinda (1876, Bombay HC): Public servants must act within authority, but if exceeded in good faith, Exception applies.

Exception 4 – Sudden Fight**General Idea**

If death is caused during a sudden fight, without premeditation, and in the heat of passion, then the offence is culpable homicide not amounting to murder, provided certain conditions are met.

Conditions (Ingredients)

For this exception to apply, all conditions must be satisfied:

Without Premeditation

The fight must not be planned in advance.

Example: Two men meet suddenly, quarrel, and fight.

Sudden Fight

The quarrel must arise suddenly, not after preparation or conspiracy.

“Fight” means mutual provocation and blows by both sides. Heat of Passion

The act must be done in anger, excitement, or sudden emotion, not after cooling down.

No Undue Advantage

The offender should not use a disproportionate advantage (e.g., using a gun against an unarmed person).

No Cruel or Unusual Manner

The act should not be done with brutality.

Example: Stabbing multiple times, mutilating body → cruel manner, so exception won't apply.

Example-A and B quarrel suddenly in a market. A, in the heat of passion, strikes B with a stick. B dies. → Exception 4 applies → culpable homicide not murder.

A slaps B in anger, B retaliates with a knife and kills A. If B used the knife unnecessarily (undue advantage), Exception does not apply.

Judicial Interpretation

Surinder Kumar v. Union Territory of Chandigarh (1989): For Exception 4, fight must be sudden and without premeditation.

Kikar Singh v. State of Rajasthan (1996): If the accused acted cruelly or took undue advantage, Exception 4 won't apply.

Ghappu Yadav v. State of M.P. (2003): A fight implies mutual provocation; if only one side attacks, then it may not count as sudden fight.

Exception 5 – Consent to Death General Rule

Normally, if you cause the death of another → it is murder. But if the victim is an adult (18 years or above) and consents to the risk of death or death itself, then the act is culpable homicide not amounting to murder.

Conditions

For Exception 5 to apply, these conditions must be satisfied:

1. Victim Must Be 18 Years or Above Consent of a minor is invalid.

Example: If a 16-year-old “consents” to death, this Exception does not apply.

2. Free and Voluntary Consent o Consent must not be obtained by threat, fraud, or coercion. o It should be a conscious and informed decision.

3. Consent to Death or Risk of Death The victim may:

Directly consent to being killed, OR

Consent to an act knowing that it may cause death (taking the risk).

4. Consent Must Be Prior to the Act

The person must consent before or at the time of the act, not afterward.

Example

A agrees to duel with B, both knowing death may result. A dies → B liable for culpable homicide not murder (Exception 5 applies).

A consents to a dangerous surgery knowing the risk of death, and dies due to complications → Exception 5 applies

(doctor not guilty of murder). A persuades B to kill him (assisted suicide) and B does it →

Exception 5 applies, but still culpable homicide under Sec.

304 IPC, not murder.

Judicial Interpretation

P. Rathinam v. Union of India (1994): Court discussed consent and right to die in relation to suicide.

Gian Kaur v. State of Punjab (1996): SC held that right to life under Article 21 does not include right to die, so assisted suicide is punishable, though Exception 5 reduces liability from murder to culpable homicide.

Judicial Approach

Leading case laws

Reg. v. Govinda (1876): In this case, the accused kicked and pressed his wife’s chest, causing a rupture of the spleen which led to her death. The court held that the act amounted to culpable homicide not amounting to murder, as there was no direct intention to cause death; the accused only had knowledge that the act might be fatal. This case clearly distinguished between culpable homicide and murder based on the element of intention.

Virsa Singh v. State of Punjab (1958): The accused thrust a spear into the victim’s abdomen, and the injury was sufficient, in the ordinary course of nature, to cause death. The court ruled this act as murder, introducing the “ordinary course of nature” test, which states that if an injury inflicted is sufficient to cause death under normal circumstances, it constitutes murder, even if there was no specific intention to kill.

State of Andhra Pradesh v. Rayavarapu Punnayya (1976): This case emphasized that “every murder is culpable homicide, but not every culpable homicide is murder.” The court clarified that murder is an aggravated form of culpable homicide, highlighting that the distinction often depends on the degree of intention or knowledge and the circumstances of the act.

K.M. Nanavati v. State of Maharashtra (1962): The accused, upon discovering his wife’s extramarital affair, killed the man involved in a sudden fit of rage. The court applied the exception of grave and sudden provocation, reducing the offence from murder to culpable homicide not amounting to murder. This case illustrates how provocation can affect the classification of homicide.

Harendra Nath v. State (2009): In this case, death occurred due to the accused's negligent act without any intention to kill. The ruling highlighted that negligence causing death still attracts legal liability under provisions such as Section 106 BNS. This case shows that unlawful homicide can result from reckless or careless actions, even in the absence of intention.

Comparative Analysis (IPC vs BNS)

Language simplified

The comparative analysis of IPC and BNS shows that while both laws define culpable homicide and murder similarly, BNS, 2023 simplifies and clarifies many aspects. Under IPC, culpable homicide (Section 299) is defined as causing death with intention or knowledge, and murder (Section 300) is treated as an aggravated form of culpable homicide. The overlapping language often led to confusion in courts, particularly regarding exceptions such as provocation, private defence, or sudden fight. BNS retains the basic definitions (Sections 100–101) but provides clearer explanations of intention, knowledge, and exceptions, along with practical examples to aid interpretation. Punishments are more systematically categorized under BNS depending on whether death was caused intentionally, knowingly, or by negligence, making it easier to apply in real cases. Overall, BNS uses simplified, modern language, making the law more accessible for judges, lawyers, and students, while maintaining the core principles of IPC.

Punishments slightly altered

Under BNS, punishments for homicide-related offences have been slightly modified compared to IPC. While the basic framework remains—life imprisonment or death for murder, and varying terms for culpable homicide—not amounting to murder, BNS provides more precise gradations depending on intention, knowledge, or negligence. For example, culpable homicide with intention may attract life imprisonment or 5–10 years, while the lesser form with knowledge alone can lead to up to 10 years. Negligent homicide carries lighter sentences, and special provisions exist for medical practitioners to prevent undue penalisation. These adjustments make sentencing more consistent and proportionate to the mental state and circumstances of the offender.

Codified exceptions remain same.

The codified exceptions under BNS largely remain the same as those in the IPC. Exceptions such as grave and sudden provocation, exceeding the right of private defence, sudden fight, consent of the victim, and acts by public servants in good faith continue to operate, converting what would otherwise be murder into culpable homicide not amounting to murder. These exceptions preserve the same principles, ensuring that human frailties, situational pressures, and proportionality in response are taken into account, even under the updated BNS framework.

IPC 299 ≈ BNS 100, IPC 300 ≈ BNS 101.

Under the BNS framework, the provisions correspond closely with the old IPC sections: Section 299 of the IPC, which defined culpable homicide, is now Section 100 BNS, and Section 300 of the IPC, which defined murder, corresponds to Section 101 BNS. The definitions retain the core elements of intention, knowledge, and circumstances, though the language has been modernized for clarity and consistency.

Critical Issues

Thin line problem → courts often reduce murder to culpable homicide due to evidentiary doubts.

One of the critical issues in homicide law is the “thin line” problem. Because the distinction between culpable homicide and murder often hinges on the degree of intention or knowledge, courts sometimes face difficulty in proving the exact mental state of the accused. As a result, even cases that appear to be murder may be reduced to culpable homicide not amounting to murder if there is any doubt about the accused's intention or the likelihood of death, leading to significant legal and sentencing implications.

Sentencing arbitrariness in awarding death penalty

Another critical issue concerns sentencing, particularly the arbitrariness in awarding the death penalty. Since murder attracts the harshest punishment while culpable homicide may result in lesser imprisonment, judges must carefully assess the severity and circumstances of the crime. However, differences in interpretation, personal discretion, and varying judicial precedents sometimes result in inconsistent or seemingly arbitrary death sentences, raising concerns about fairness and uniformity in the application of the law.

Group liability → difficult to prove intention of each member

Group liability, where multiple people are involved in a killing. It becomes challenging to establish the specific intention or knowledge of each member of the group. Determining who planned, executed, or merely assisted in the act can be complex, often affecting whether the offence is classified as murder or culpable homicide and influencing the severity of punishment for each participant.

Socio-legal critique → class bias in sentencing, political influence

A significant socio-legal critique of homicide law concerns potential class bias and political influence in sentencing. Studies and observations suggest that individuals from marginalized or lower socio-economic backgrounds may face harsher punishments, while those with wealth, power, or political connections might receive more lenient treatment. This raises concerns about equality before the law and undermines public confidence in a fair and impartial criminal justice system.

11. Conclusion

The Bharatiya Nyaya Sanhita (BNS) continues the foundational framework of the Indian Penal Code while incorporating modernization and clarity in language. The distinction between culpable homicide and murder remains judicially complex, yet it is essential for differentiating degrees of moral and legal culpability. By emphasizing the role of intention, knowledge, and proportionality in punishment, the BNS aims to ensure justice is both fair and balanced. Looking forward, there is a clear need for more detailed sentencing guidelines to reduce arbitrariness and enhance consistency in applying the law.

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