

DISTINCTION BETWEEN CULPABLE HOMICIDE AND MURDER

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Abstract : The Bharatiya Nyaya Sanhita, 2023 (BNS) distinguishes culpable homicide from murder and then mitigates liability through five exceptions. This paper first explains the distinction and then critically analyses each exception, examining how courts apply it and where the reasoning remains unsettled. It argues that mitigation must rest on proved facts, not on sympathy, status or the label attached to an incident, and recommends structured judicial reasoning and better investigative records to keep punishment proportionate while protecting human life.

Index Terms - culpable homicide; murder; Bharatiya Nyaya Sanhita; statutory exceptions; provocation; private defence.

I. INTRODUCTION

Not every unlawful killing carries equal moral guilt. A death may follow a planned attack, a quarrel that escalated within seconds, or a defender's panicked overreaction. Criminal law answers these differences through graded offences: culpable homicide under Section 100 of the BNS and murder under Section 101 [1]. Five exceptions in Section 101 reduce murder to culpable homicide not amounting to murder, punishable under Section 105. This paper first distinguishes the two offences and then tests each exception against decided cases.

II. METHODOLOGY

The study is doctrinal. It reads the statutory text alongside reported judgments on intention, knowledge, causation and the conditions of each exception. Because the BNS replaced Sections 299, 300, 302 and 304 of the Indian Penal Code, 1860 (IPC) with a similar structure [2], IPC-era judgments are treated as persuasive authority.

III. DISTINCTION BETWEEN CULPABLE HOMICIDE AND MURDER

Section 100 treats a death as culpable homicide when the act is done with intention to cause death, intention to cause an injury likely to cause death, or knowledge that death is likely. Section 101 makes such homicide murder in four defined situations. Murder therefore requires neither planning nor a wish to kill [1]. The table below summarises the distinction.

Table 1. Distinction between culpable homicide and murder

Basis	Culpable homicide (s. 100)	Murder (s. 101)
Nature	Genus: the wider category	Species: the aggravated form
Mental element	Intention to cause death or an injury likely to cause death, or knowledge that death is likely	Intention to kill; knowledge that the injury is likely to kill the victim; injury sufficient in the ordinary course of nature to cause death; or an imminently dangerous act
Probability of death	Death is likely	Death is highly probable
Effect of exceptions	Offence stays within this category	Reduced to culpable homicide if an exception applies
Punishment	Imprisonment for life, or five to ten years, with fine, where intention is present; up to ten years, with fine, where only knowledge (s. 105)	Death or imprisonment for life, and fine (s. 103(1))

State of Andhra Pradesh v. Rayavarapu Punnayya [4] described culpable homicide as the genus and murder as a species, locating the difference in the degree of probability of death, and advised courts to reason in stages: causation, culpable homicide, then murder or an exception. *Virsa Singh v. State of Punjab* [5] held that an intentionally inflicted injury sufficient in the ordinary course of nature to cause death is murder without separate proof of intention to kill. *Pulicherla Nagaraju v. State of Andhra Pradesh* [6] adds that intention is inferred from the weapon, body part targeted, force used and surrounding circumstances.

IV. EXCEPTION 1: GRAVE AND SUDDEN PROVOCATION

This exception applies when an offender, deprived of self-control by grave and sudden provocation, kills the provoker or, by mistake or accident, another person [1]. It fails where provocation was sought as a pretext or arose from a lawful act, whether done in obedience to law, by a public servant or in private defence. In *K.M. Nanavati v. State of Maharashtra* [7], the Supreme Court denied the benefit because the accused had time to cool, fetched a pistol and then confronted the victim. *Reg. v. Govinda* [8] measured provocation by its effect on an ordinary person. *Mancini v. DPP* [9] similarly requires retaliation to be proportionate to the provocation. Jealousy, wounded pride or perceived dishonour should not be automatic mitigation; that would devalue the victim.

V. EXCEPTION 2: EXCEEDING THE RIGHT OF PRIVATE DEFENCE

This exception applies where an offender, in good faith, exceeds the power given by law in exercising private defence, causing death without premeditation and without intending more harm than necessary [1]. A genuine right must exist before it can be exceeded. *Darshan Singh v. State of Punjab* [10] cautions that a person facing imminent danger cannot be expected to measure defensive force precisely. *Munshi Ram v. Delhi Administration* [11] likewise rejects nice calculation of the force used. Yet the exception cannot shelter retaliation after the danger has passed, so injuries on the accused, the place of occurrence and the sequence of events are decisive.

VI. EXCEPTION 3: PUBLIC SERVANT EXCEEDING LAWFUL POWERS

This exception protects a public servant, or a person aiding one, who exceeds lawful powers but acts in good faith, believing the act lawful and necessary for duty, without ill-will towards the deceased [1]. Under Section 2(11) of the BNS, good faith requires due care and attention [1], as *Harbhajan Singh v. State of Punjab* [12] held under the IPC; honest belief alone is therefore insufficient, and a uniform or superior order cannot establish it. Courts should examine warnings given, alternatives available and the proportion of force used; otherwise the exception may shield custodial or operational abuse.

VII. EXCEPTION 4: SUDDEN FIGHT

This exception covers a sudden fight upon a sudden quarrel, in the heat of passion and without premeditation, where the offender takes no undue advantage and acts in no cruel or unusual manner; who provoked or struck first is immaterial [1]. *Surinder Kumar v. Union Territory, Chandigarh* [13] explained that heat of passion presupposes no time to cool and that a fight involves mutual assault. In *Sukhbir Singh v. State of Haryana* [14], the Supreme Court applied the exception and altered the conviction to culpable homicide under Section 304 Part I IPC, now the first part of Section 105 BNS [2], [1]. Calling an incident a quarrel proves little; courts should examine weapon disparity, the victim's helplessness and whether attacks continued after resistance ended.

VIII. EXCEPTION 5: CONSENT TO DEATH

This exception applies where the deceased, being above eighteen, suffers death or takes the risk of death with his or her own consent [1]. Consent mitigates the offence; it does not make the killing lawful. In *Dasrath Paswan v. State of Bihar* [15], the Patna High Court applied it where an adult wife consented to be killed by her husband. Because consent may mask pressure, dependency, deception or impaired understanding, courts must test whether it was free and informed. Nor is the exception a licence for euthanasia: *Gian Kaur v. State of Punjab* [16], overruling *P. Rathinam v. Union of India* [17], held that the right to life excludes a right to die, while *Aruna Shanbaug v. Union of India* [18] and *Common Cause v. Union of India* [19] allow passive euthanasia only under strict safeguards.

IX. SUGGESTIONS

First, judgments should record, for each exception pleaded, the evidence for and against every ingredient, particularly because the accused must bring the case within an exception under Section 108 of the Bharatiya Sakshya Adhiniyam, 2023 [3]. Second, investigators should prepare consolidated timelines from witness statements, medical findings and digital records, to test suddenness and premeditation. Third, judicial training should address assumptions about honour, consent, defensive conduct and official power.

X. CONCLUSION

The distinction between murder and lesser culpable homicide exists to secure proportionate punishment. Each exception is justified only when its requirements are proved, not when sympathy, authority or emotion is merely asserted. Careful reasoning must recognise reduced blameworthiness without obscuring the victim's life and the offender's responsibility.

XI. REFERENCES

- [1] Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 2(11), 100–101, 103, 105 (India).
- [2] Indian Penal Code, No. 45 of 1860, §§ 299–300, 302, 304 (India).
- [3] Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 108 (India).
- [4] *State of Andhra Pradesh v. Rayavarapu Punnayya*, (1976) 4 S.C.C. 382 (India).
- [5] *Virsa Singh v. State of Punjab*, A.I.R. 1958 S.C. 465 (India).
- [6] *Pulicherla Nagaraju v. State of Andhra Pradesh*, (2006) 11 S.C.C. 444 (India).
- [7] *K.M. Nanavati v. State of Maharashtra*, A.I.R. 1962 S.C. 605 (India).
- [8] *Reg. v. Govinda*, (1876) I.L.R. 1 Bom. 342 (India).
- [9] *Mancini v. Director of Public Prosecutions*, [1942] A.C. 1 (H.L.) (appeal taken from Eng.).
- [10] *Darshan Singh v. State of Punjab*, (2010) 2 S.C.C. 333 (India).
- [11] *Munshi Ram v. Delhi Administration*, A.I.R. 1968 S.C. 702 (India).
- [12] *Harbhajan Singh v. State of Punjab*, A.I.R. 1966 S.C. 97 (India).
- [13] *Surinder Kumar v. Union Territory, Chandigarh*, (1989) 2 S.C.C. 217 (India).
- [14] *Sukhbir Singh v. State of Haryana*, (2002) 3 S.C.C. 327 (India).
- [15] *Dasrath Paswan v. State of Bihar*, A.I.R. 1958 Pat. 190 (India).
- [16] *Gian Kaur v. State of Punjab*, (1996) 2 S.C.C. 648 (India).
- [17] *P. Rathinam v. Union of India*, (1994) 3 S.C.C. 394 (India).
- [18] *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 S.C.C. 454 (India).
- [19] *Common Cause v. Union of India*, (2018) 5 S.C.C. 1 (India).



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