



DELHI LAW ACADEMY

BHARATIYA NYAYA SANHITA

Sample : Sections 100 - 105

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BHARATIYA NYAYA SANHITA [Sections 100 - 105]

Section 100

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

Explanatory Notes from DLA on section 100

What is culpable homicide?

- Section 100 defines culpable homicide as the act of causing death with one of these:
 - with the intention of causing death,
 - with the intention of causing such bodily injury as is likely to cause death,
 - with the knowledge that the act is likely to cause death.
- It is **not** necessary that any **intention** should exist with regard to the particular person whose death is caused, as in the familiar example of a shot aimed at one person killing another, or poison intended for one being taken by another.
- The **intention** demanded by the section must stand in some relation to a person who either is alive, or who is believed by the accused to be alive.
- *The **knowledge** must have reference to the particular circumstances in which the accused is placed.*



Question:

- **Is a man guilty of culpable homicide if he shoots at the stump of a tree?**

Ans:

- If a man kills another by shooting at what he believes to be a third person whom he intends to kill, but which is in fact the stump of a tree, it is clear that he would be guilty of culpable homicide.
- This is because though he had no criminal intention towards any human being actually in existence, he had such an intention towards what he believed to be a living human being.

[Authority: **Palani Goundan v. Emperor 1919**]

Question:

- **Is a man guilty of culpable homicide if he shoots at a living human being believing him to be dead?**

Ans.:

- *The intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances.*
- It follows that a man is not guilty of culpable homicide if his intention was directed only to what he believed to be a lifeless body.

[Authority: **Palani Goundan v. Emperor 1919**]



Illustrations to section 100

Illustration (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

The first illustration shows that **it is not necessary that the intention to cause death should be towards any particular person**. It could be quite general in nature. Here, the intention is to cause death of **whoever** comes that way and walks on the trap.

Illustration (b)

- A knows Z to be behind a bush
 - B does not know it
- A **intending** to cause or knowing it likely to cause Z's death
 - **induces** B to fire at the bush
- B fires and kills Z
- Here B may be guilty of no offence
 - but A has committed the offence of culpable homicide

The second illustration holds an abettor guilty of committing culpable homicide. In the absence of this illustration, A would be guilty of abetment only, but by force of this illustration, he is to be held guilty of committing culpable homicide.



Section 101

MURDER

- Except in cases hereinafter excepted:
- **culpable homicide is murder**

(a)

- **if** the act by which death is caused
 - is done with the **intention** of causing death

(b)

- **if** the act by which death is caused
 - is done with the **intention** of causing such **bodily injury**
 - as the offender **knows** likely to cause death of the **person** to whom the harm is caused

(c)

- **if** the act by which death is caused
 - 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*

(d)

- 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



Explanatory Notes from DLA on section 101

Analysis of clause (b):

- The distinguishing feature of the mens rea requisite under clause (b) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition.
- The 'intention to cause death' is not an essential requirement of this clause. Only the **intention** of causing the bodily injury coupled with the offender's **knowledge** of the likelihood of such injury causing the death of the particular victim is sufficient.
- It requires both; some intention and some knowledge.
- **Instances** of cases falling under clause (b) of Section 101: Where the assailant causes death by a fist blow intentionally given, knowing that the victim is suffering from an enlarged liver or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of rupture of the liver or spleen or failure of the heart.

Authority: **State of A.P. v. Rayavarapu Punnayya** [1977 SC]

Analysis of clause (c):

The prosecution must prove the following facts before it can bring a case under Section 101 (c):

- *First, it must establish, quite objectively, that a bodily injury is present.*
- *Secondly, the nature of the injury must be proved; these are purely objective investigations.*



- *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.*
- *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.*

Main requirements for application of clause (c):

- Subjective: The accused had the **intention** to cause the bodily injury actually found to be present
- Objective: The injury actually caused is sufficient in the ordinary course of nature to cause death.

Once these are established:

- It does not matter that there was no intention to cause death.
- It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature .
- It does not even matter that there was no knowledge that an act of that kind will be likely to cause death.

Source: **Virsa Singh v. State of Punjab** [1958 SC]

Analysis of clause (d):

- Clause (d) of Section 101 would be applicable where **knowledge** of the offender as to the probability of death of a person or persons in general - as



distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty.

- Such knowledge on the part of the offender must be of the **highest degree of probability**, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

Source: **State of A.P. v. Rayavarapu Punnayya** [1977 SC]

Correspondence between the three clauses of section 100 with the four clauses of section 101

- Clause (a) of Section 100 corresponds with clause (a) of Section 101. Both require **intention to cause death**.
- Clause (b) of Section 100 corresponds with clauses (b) and (c) of Section 101. Both require **intention to cause bodily injury**. The difference between clause (b) of Section 100 and clause (c) of Section 101 is one of the degree of probability of death resulting from the intended bodily injury. The word “likely” in clause (b) of Section 100 conveys the sense of ‘probable’ as distinguished from a mere possibility. The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.
- Clause (c) of Section 100 corresponds with clause (d) of Section 101. Both require **knowledge** of the probability of the act causing death.

Source: **State of A.P. v. Rayavarapu Punnayya** [1977 SC]



Illustrations to section 101

There are four illustrations to section 101, each dealing with one limb of the section.

Illustration (a)

- A shoots Z with the intention of killing him
 - Z dies in consequence
 - A commits murder

This illustration illustrates the **first** limb where there is intention to cause death.

Illustration (b)

- A knowing that Z is labouring 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 blow might not have been sufficient in ordinary course of nature
 - to cause death of a person in a sound state of health
- But if A
 - not knowing that Z is labouring 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

This illustration illustrates clause (b) of section 101.



Illustration (c)

- A intentionally gives Z a sword-cut or club-wound
 - **sufficient** to cause 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

This illustration illustrates clause (c) of section 101.

Illustration (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 had no premeditated design to kill any particular individual

This illustration illustrates clause (d) of section 101

EXCEPTIONS

There are five exceptions to section 300, each of which takes away a case from the offence of "murder" and makes it a case of "culpable homicide not amounting to murder".

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 death of the person who gave the provocation or
 - causes death of any other person by mistake or accident



Explanatory Notes from DLA on Exception 1

Essential ingredients of Exception 1

- (1) The deceased must have given provocation to the accused.
- (2) The provocation must be grave.
- (3) The provocation must be sudden.
- (4) The offender, by reason of the said provocation, shall have been deprived of his power of self-control.
- (5) He should have killed the deceased during the continuance of the deprivation of the power of self-control.
- (6) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

What is the test of grave and sudden provocation?

- The test of “grave and sudden” provocation is whether **a reasonable man**, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control.
- Thus, it is the test of a reasonable man.
- The test is whether a **reasonable person** placed in the same position as the accused was, would have reacted to the provocation in the same manner in which the accused did.



Is there any uniform standard of reasonableness?

- *No, what a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs.*

Whether words and gestures alone, unaccompanied by acts, may also cause grave and sudden provocation?

- Yes, 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 Section 300 of the Indian Penal Code.

Can the mental background created by the previous act of the victim be taken into consideration?

- *Yes, 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 committing the offence*

What is the effect of time lag between the act of provocation and the commission of offence?

- The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after passion had cooled down by lapse of time or otherwise giving room and scope for premeditation and calculation.



Exception 2

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

Exception 3

- Culpable homicide is **not murder**
 - if the offender, being a public servant
 - 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 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
 - 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 provocation or commits the first assault

Explanatory Notes from DLA on Exception 4

Essential ingredients of Exception 4

- *In whatever way the dispute might have started, the subsequent conduct of both parties puts them, in respect of guilt, upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side.*
- *The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side.*
- *There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.*
- *Heat of passion requires that there must be no time for the passions to cool down.*
- *For application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner.*
- *The expression 'undue advantage' as used in the provision means '**unfair advantage**'.*



Comparison between Exception 1 and Exception 4

- *Exception 4 is founded upon the same principle as Exception 1, for in both there is absence of premeditation. But, while in case of Exception 1, there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do.*
- *There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation.*
- *In whatever way the dispute might have started, the subsequent conduct of both parties puts them, in respect of guilt, upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side.*
- *The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side.*

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

Transfer of Malice

Section 102

Death of person other than intended

- If a person by doing anything which he intends or knows likely to cause death
 - commits culpable homicide by causing death of any person
 - whose death he neither intends nor knows himself likely to cause



- the culpable homicide committed by the offender
 - is of the description of which it would have been
 - if he had caused death of the person
 - whose death he intended or knew himself likely to cause

Section 103

Punishment for murder

- Whoever commits murder
 - shall be punished with **death** or imprisonment for life and fine

Explanatory Notes from DLA on section 103

In what cases can death penalty be imposed?

- The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence
- While considering the question of sentence to be imposed for the offence of murder under Section 103; the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.
- For persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That



ought not to be done save in the **rarest of rare cases** when the alternative option is unquestionably foreclosed.

Authority: Bachan Singh v. State of Punjab [1980 SC]

Section 104

Punishment for murder by life-convict

- Whoever being under sentence of imprisonment for life commits murder
- shall be punished
 - with death or
 - with imprisonment for life, which shall mean the remainder of that person's natural life

Section 105

Punishment for culpable homicide not amounting to murder

- Whoever commits culpable homicide not amounting to murder
- shall be punished with
 - imprisonment for life or
 - imprisonment for a term which shall not be less than five years but which may extend to ten years, and fine
 - if the act by which death is caused is done
 - with the intention of causing death or
 - with the intention of causing such bodily injury as is likely to cause death or
 -
 - with imprisonment of upto ten years and fine
 - if the act is done with the **knowledge** that it is likely to cause death
 - but **without any intention** to cause death or to cause such bodily injury as is likely to cause death



Explanatory Notes from DLA on section 105

Three types of punishment for culpable homicide:

For the purpose of fixing punishment, the Sanhita practically recognises three degrees of culpable homicide.

- The first is what may be called, ‘culpable homicide of the first degree’. This is the greatest form of culpable homicide, which is defined in Section 101 as ‘murder’.
- The second may be termed as ‘culpable homicide of the second degree’. This is punishable under the first part of Section 105.
- Then, there is ‘culpable homicide of the third degree’. This is the lowest type of culpable homicide and the punishment provided for it is, also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 105.

It is **the degree of probability of death** which determines whether a culpable homicide is of the gravest, medium or the lowest degree.

- The word “**likely**” in clause (b) of Section 100 conveys the sense of ‘**probable**’ as distinguished from a mere possibility. The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “**most probable**” result of the injury, having regard to the ordinary course of nature.

When does culpable homicide become murder?

- In the scheme of the Sanhita, ‘culpable homicide’ is the genus and ‘murder’ is its species.
- All ‘murder’ is ‘culpable homicide’ but not vice-versa.



- Speaking generally, ‘culpable homicide’ sans ‘special characteristics of murder’, is ‘culpable homicide not amounting to murder’.

"Judgment writing" and "approach of a Court" on culpable homicide and murder:

Whenever a court is confronted with the question whether the offence is ‘murder’ or ‘culpable homicide not amounting to murder’, on the facts of a case, it will be convenient for it to approach the problem in three stages.

(1) The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another.

(2) Proof of such causal connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 100.

(3) If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 101 is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of ‘murder’ contained in Section 101.

- If the answer to this question is in the negative, the offence would be ‘culpable homicide not amounting to murder’, punishable under the first or the second part of Section 105, depending, respectively, on whether the second or the third clause of Section 100 is applicable.
- If answer to this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 101, the offence would still be ‘culpable homicide not amounting to murder’, punishable under Section 105. Else, it is murder, punishable under section 103.



CASE LAW ON SECTIONS 100 - 105

1. Palani Goundan	v.	Emperor	[1919 Mad]
2. Kapur Singh	v.	State of PEPSU	[1956 SC]
3. In Re Thavamani			[1943 Mad]
4. Rawalpenta Venkalu	v.	State of Hyderabad	[1956 SC]
5. Virsa Singh	v.	State of Punjab	[1958 SC]
6. State of A.P.	v.	Rayavarapu Punnayya	[1977 SC]
7. Emperor	v.	Mt. Dhirajia	[1940 All.]
8. Gyarsibai	v.	The State	[1953 M.B.]
9. K. M. Nanavati	v.	State of Maharashtra	[1962 SC]
10. Ghapoo Yadav	v.	State of M.P.	[2003 SC]
11. Bhagwan Dass	v.	State (NCT of Delhi)	[2011 SC]
12. Jai Prakash	v.	State (Delhi Admn)	[1991 SC]
13. Gudar Dusadh	v.	State of Bihar	[1972 SC]
14. Mahesh Balmiki	v.	State of M.P.	[2000 SC]
15. Dhupa Chamar	v.	State of Bihar	[2002 SC]

All judgments have been condensed by DLA, retaining the original language of Judges and the ratio decidendi.
