**Prologue**

Under Indian Penal Code, offences against human body is defined. Humans, who claim to be the only intelligible species on this earth, feel they have humanity amongst them but the fact is that the humans in 21st century are the ones who do not have a humanistic approach; they are self-centered. They think only about themselves and can go to any extent to achieve what they want; even harming the other person.

There are categorically many offences mentioned as Offences Against Human Body which includes but is not limited to:

- Culpable Homicide,
- Murder,
- Dowry Death,
- Various kinds of hurt,
- Kidnapping- Abduction,
- Wrongful restraint and confinement,
- Rape,
- Unnatural offences etc.

There are series of offences listed in the Indian Penal Code and various laws of the other nations.

Offences against the human body is not only committed in India but in major countries of the world.

## Murder

Homicide (Latin homo- man, cide-cut) is the killing of a human being by a human being. Causing the death of an animal is not murder. It might amount to the offence of mischief or to cruelty to animals. It may be lawful or unlawful. Lawful homicide (cases falling under General Exceptions- Secs. 76-106)) is of two types - excusable and justified homicide.

## Unlawful homicide includes:

a. culpable homicide not amounting to murder (Sec. 299),
b. murder (Sec. 300), and,
c. homicide by rash or negligent acts (Sec. 304-A).

## Sec. 299: Culpable Homicide

**Section 299 defines culpable homicide which is a wider offence than that of murder:** Whoever causes death,

a. by doing an act with the intention of causing death, or
b. with the intention of causing such bodily injury as is likely to cause death, or
c. 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, falls in and is killed. A has committed the offence of culpable homicide.
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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 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.
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c. A, by shooting at a foul 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.

## Essential Ingredients of Sec. 299

1. Whoever causes death - It is immaterial if the person whom the accused intended to kill was not killed but some other person. The death could be caused by words deliberately used by a person. For example, a seriously ill person may die by hearing some agitating words.

   The death must result as a proximate and not a remote consequence of the act of violence. There should not be the intervention of any considerable change of circumstances between the act of violence and the death. Where the victim died three weeks after the occurrence due to negligence on his part and sepsis consequent to the bad handling of the wound, this section was held not attracted.
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2. By doing an act with the intention of causing death - It is important to note that acts done extend to illegal omission also.

   Intention is a question of fact which is to be gathered from the acts of the parties (viz. nature of the weapon used, the part of the body on which the blow was given, the force and number of blows, etc.). The legal maxim is that everyone must be presumed to intend the normal consequences of his act. Intention does not imply or assume the existence of some previous design, it means an actual intention, the existing intention of the moment. Causing serious injury on a vital part of the body of the deceased with a dangerous weapon must necessarily, lead to inference that the accused intended to kill.
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3. With the intention of causing such bodily injury as is likely to cause death - It means an intention to cause a particular injury, which injury is, or turns out to be, one likely to cause death. It is neither the death itself which is intended nor the effect of the injury. Thus, where bodily injury sufficient to cause death is actually caused, it is immaterial to go into the question of whether the accused had intention to cause death. For example, where a person falsely arrested in a dacoity case, and mercilessly beaten at the police station which resulted in his death; beating for exorcising evil spirit resulting in death.
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4. With the knowledge that he is likely by such act to cause death - Knowledge in comparison to intention is a strong word and imports a certainty and not merely a probability. Intention is the purpose or design with which an act is done. It is the fore knowledge of the act coupled with the desire of it. Knowledge is an awareness of the consequences of the act. A person who voluntarily inflicts injury such as to endanger life must always, except in the most extraordinary circumstances, be taken to know that he is likely to cause death (e.g. when the accused fired his gun in the air to scare away the opposite party and in the act one stray pellet caused gunshot wound to a person killing him).

The word **knowledge** includes all cases of rash acts by which death is caused, for rashness imports a knowledge of the likely result of an act which the actor does inspite of the risk. In some cases, gross negligence may amount to knowledge. For example, where the accused kills a person by hitting him under the belief that he was hitting at a ghost.

In **Palani Goundan v. Emperor** [1919 ILR 547 (Mad)], the accused struck his wife on the head with a ploughshare, which made her unconscious. Believing her to be dead, in order to lay the foundation of a false defence of suicide by hanging, the accused hanged her. The hanging actually caused her death. The court observed that the intention of the accused must be judged not in the light of 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 believes to be a lifeless body. It was held that the accused cannot be convicted of culpable homicide or murder, but for the offence of grievous hurt and attempt to create false evidence by hanging his wife (However, the accused could be guilty of murder if he had an intention to kill the deceased when the deceased was alive).

Death caused without **requisite intention or knowledge** is not culpable homicide. In the absence of intention or knowledge, the offence committed may be hurt or grievous hurt. It may be noted that ordinarily, without corpus delicti (i.e. dead body of the victim), it is dangerous to convict. However, if there is strong evidence the accused can be convicted.

## Explanations to Sec. 299

**Explanation I:** A person who causes bodily injury to another who is labouring under a disease, disorder or bodily infirmity, and thereby accelerates the death of the other, shall be deemed to have caused his death.

**However, it is one of the elements of culpable homicide as contained in Sec. 299 and the court must be satisfied:**

1. that the death at the time when it occurs is not caused solely by the disease; and
2. that it is caused by the bodily injury to the extent, that it is accelerated by such injury.

It is important that the accused knows that condition of the deceased was such that his act was likely to cause death. When the accused has no knowledge of victim's ailment, the accused held guilty of grievous hurt.

**Explanation II:** 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.

Even the fact that victim dies because of wrong treatment could not absolve the accused of his guilt. If victim dies as a result of the original injuries as well as the operation, the accused will be guilty.

**Explanation III:** 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.

**Sec. 301**
Culpable homicide by causing death of person other than person whose death was intended - If a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide is said to be committed.

This section embodies what the English authors describe as the doctrine of transfer of malice or the trans-migration of motive. An accident makes no difference - if A makes a thrust at B, and C throwing himself between the two dies. A will be guilty. Where wife gave poisoned food to her husband, eaten also by four others. One person died. She was held guilty of murder. Similarly, held in **Public Prosecutor v. Mushunooru Suryanaraycmmoorthy** [(1912) 13 Cr. L.J. 145], where the accused with the intention of killing A, gave him some poisoned halva. A ate a portion of it and threw the rest away and this was picked up by accused's brother-in-law's daughter (a girl of 8 years) who ate it and also gave some to another child. The two child died, but A eventually recovered.

## Sec. 300: Murder

1. 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;
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2. 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
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3. 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
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4. 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.
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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 the blow might not have been sufficient in the ordinary course of nature to cause death of a person in a sound state of health.
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c. 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.

## Distinction between Culpable Homicide and Murder

I. In the scheme of the Penal Code, **culpable homicide** is genus and murder' its species. All murder' is culpable homicide' but not vice versa. Speaking generally culpable homicide' (manslaughter) is culpable homicide not amounting to murder'. Murder is an aggravated form of culpable homicide [Anda v. State of Rajasthan AIR 1966 SC 148].
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II. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code recognises three degrees of culpable homicide.

   a. Culpable homicide of first degree - gravest form of culpable homicide i.e. murder under Sec. 300, punishable under Sec. 302.
   b. Culpable homicide of second degree - punishable under the 1st part of Sec. 304.
   c. Culpable homicide of third degree - punishable under the 2nd part of Sec. 304 (lowest punishment).
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III. The safest way of approach to the interpretation and application of these provisions; as suggested by the Supreme Court, is to keep in focus the key words used in the various clauses of Secs. 299 and 300 [State of A.P. v. R. Punnayya, AIR 1977 SC 45].

There is a broad difference between the offences of murder and culpable homicide. In the case of murder, the offender has a positive intention to cause the death of the victim. In the case of culpable homicide the intention or knowledge is not so positive or definite. The injury caused may or may not cause death. Degree of probability of death ensuing is high in case of murder. In cl. (3) of Sec. 300 instead of the words likely to cause death', occurring in the corresponding clause (b) of Sec. 299, the words sufficient in the ordinary course of nature' have been used.

Clause (b) of Sec. 299 corresponds with cls. (2) and (3) of Sec. 300. The distinguishing feature of the mens rea requisite under cl. (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health (e.g. enlarged spleen) that the intentional harm caused 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 health (see illustration (b) to Sec. 300). Clause (b) of Sec. 299 does not postulate any such knowledge on the part of the offender. Thus, if the assailant had no knowledge about the disease of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

# Analysis of Sec. 300

**Clause 1:** 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. Where the accused gave repeated knife blows to the victim resulting in his death, it was held that the intention was to kill.

**Clause 2:** With the intention of causing such bodily injury as the offender knows to be likely to cause death - The expression intention to cause bodily injury as is likely to cause death merely means an intention to cause a particular injury which injury is, or turns out to be, one likely to cause death. It is not the death itself which is intended nor the effect of the injury.
A person inflicting a violent blow on the head of his victim with a lethal weapon such as an ironstone must be presumed to intend to cause such injury as he knew was likely to cause death.

**Clause 3:** With the intention of causing bodily injury to any person sufficient in the ordinary course of nature to cause death - Clause thirdly consists of two parts. Under the first part, it has to be shown that there was an intention on the part of the accused to inflict the particular injury found on the body of the deceased i.e. the injury caused was not unintentional or accidental.

The second part requires that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. When both these parts are satisfied, then the offence is under Sec. 300 thirdly. It does not matter that there was no intention (or knowledge) to cause death. [**Virsa Singh v. State of Punjab**, AIR 1958 SC 465].

Even if none of the injuries by themselves was sufficient in the ordinary course of nature to cause the death, but were cumulatively sufficient to cause death in the ordinary course of nature, the case is covered by Sec. 300 thirdly [**Brij Bhushan v. State of U.P,** AIR 1957 SC 460].

In **Rajwant Singh v. State of Kerala** (AIR 1966 SC 1874), while committing a burglary, death took place as a direct result of the acts of the accused (the nostrils of the victim were closed and he died of breathlessness). It was held that thirdly was attracted. In another case, there was an intention to cause an injury to the victim. A single knife blow was administered, which accidently fell upon the left shoulder cutting a wound through it and tearing up vital arteries which came in the path of knife. The injury was sufficient in the ordinary course of nature to cause death. Held that to come under thirdly of Sec. 300, the intention to cause the requisite type of injury is absolutely necessary.

In **Gurmail Singh v. State of Punjab** 1982 Cr.LJ 1946(SC), when **A** attempted to intervene to save **B** and **C** from further harm a barcha was given by accused **D** which landed on **A**. There was nothing to indicate in the evidence that **D** ever intended to cause any injury to **A**. It was held that it could not be said that accused **D** intended to cause that particular bodily injury which in fact was found to have been caused. It does not matter that injury was sufficient in the ordinary course of nature to cause death. Thirdly was not attracted.

**Clause 4:** 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... without any excuse for incurring the risk of causing death - 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 [illustration (d) to sec. 300]. This 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.

An act done with the knowledge of its consequences is not prima facie murder. It becomes murder only if it can be positively affirmed that there was no excuse. When a risk is incurred even a risk of the gravest possible character which must normally result in death - the taking of that risk, is not murder, when there is an excuse to do so [**Emperor v. Dhirajia,** AIR 1940 All. 486]. In the above case, a woman jumped into a well with a baby in her arms due to panic or fright caused by her incoming husband with whom she had quarreled.

The court held that the act of jumping into a well with a baby in one's arm was so imminently dangerous an act that however primitive a person may be and however frightened he or she may be, the knowledge of the likely consequences must be supposed to have remained with him or her. The court held it to be a case of culpable homicide. However, she had an excuse and that excuse was panic or fright.

Thus, the clause 4thly was not attracted. She was held guilty of culpable homicide not amounting to murder under Sec. 304.

However, in **Gyarsibcti v. State** (AIR 1953 M.B. 61), where the woman jumped into a river with her three children as her life had become unbearable on account of family discord, it was held that there was no excuse for the accused for incurring the risk of causing death of her children. Thus, the case was held to be covered under 4thly of Sec. 300.

## Sec. 302: Punishment for Murder

Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine. It is to be noted that the death sentence is awarded only in rarest of rare' cases e.g. assassination of Prime Minister Indira Gandhi.

## Sec. 304: Punishment for Culpable Homicide Not Amounting to Murder

Part I of this section provides punishment of imprisonment for life or imprisonment for 10 years and fine.
Part II provides imprisonment for 10 years, or with fine, or both. If the offence comes under clause 2 of Sec. 299 (i.e. with intention), than Part
III applies. If offence comes under clause 3 of Sec. 299 (only knowledge), than Part
IV applies. If the offence falls within clauses 1, 2 and 3 of Sec. 300 but is covered by any of the five exceptions, it will be punishable under Part I. If the offence comes under clause 4 of Sec. 300 but is covered by any of the exceptions, it will be punishable under Part II.

## Exceptions to Offence of Murder

Exceptions to Sec. 300 of the IPC reduce the offence of murder to that of culpable homicide not amounting to murder. The five exceptions specified in this section are special exceptions in addition to the general exceptions mentioned in Chapter IV.
The special exceptions are:

1. Provocation,
2. Right of private defence,
3. Exercise of legal powers,
4. Absence of premeditation and heat of passion, and,
5. Consent.

Strictly speaking, they are not exactly defences, but are in the nature of mitigating or extenuating circumstances. Burden is on the accused to establish circumstances which would bring his case within any exception. However, the general burden to establish the guilt of the accused is on the prosecution.

**Exception I, Sec. 300 (Provocation)**
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.
Second - 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.
Third - That the provocation is not given by anything done in the lawful exercise of the right of private defence.

**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 is 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.
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b. Y gives grave and sudden provocation to A. A, on this provocation, fires at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. A has not committed murder, but merely culpable homicide.
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c. A is lawfully arrested by Z,. 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.
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d. A attempts to pull Z's nose. Z, in the exercise of the right of private defence, 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 defence.
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e. 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.

## The essential ingredients of first exception to Sec. 300 are:

i. The provocation must be both grave and sudden and should not be from the side of the accused.
ii. The provocation must be such as would deprive any reasonable man (and not a hasty or hot-tempered or unusually excitable person) of his power of self-control over himself.
iii. The act of killing must be done under the immediate impulse of provocation. It must be distinguished from provocation which inspires an actual intention to kill.
iv. The offender must not have reflected, deliberated or cooled, between the provocation and the mortal stroke. However, the mental background created by the previous act of the victim may be taken into consideration for ascertaining whether the subsequent act caused grave and sudden provocation.
v. The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.
vi. Mere words or gestures or confession are enough in some cases to cause grave and sudden provocation (However, under English law, it is not so) [**K.M. Nanavati v. State of Maharashtra** AIR 1962 SC 605].

In the above case, the wife confessed to husband of her illicit intimacy with one Ahuja. The accused drove his wife and children to a cinema, left them there, went to his ship, took a revolver, drove his car to Ahuja's flat and shot him dead. Between his wife's confession and Ahuja's murder, three hours had elapsed, and therefore the accused had sufficient time to regain his self control. His conduct clearly shows that the murder was a deliberate and calculated one. Consequently, Exception 1 do not apply.

Where an accused sees his wife in company with her lover and kills her, he must be held to have acted under grave and sudden provocation [**Fatta v. Emperor**, 30 Cr. L.J. 481]. However, mere suspicion of unchastity would not be a sudden provocation. A statement by the wife that she intends to commit adultery or live with another person is not grave and sudden provocation (1971 Raj LW 486).

## Exception 2, Sec. 300 (Right of Private Defence)

Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence 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 defence without premeditation, and without any intention of doing more than is necessary for the purpose of such defence.

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.

## Exception 3, Sec. 300 (Exercise of Legal Powers)

**The ingredients of this exception are:**

1. The person accused must be a public servant.
2. He must believe in good faith that the act which resulted in the death was lawful and necessary for the due discharge of his duties.
3. He must bear no ill-will to the deceased.

Where a suspected thief who has been arrested by a police officer, escapes by jumping down from the train and the police officer finding that he is not in a position to apprehend him, shoot at him and kills him. Held that the case is covered by Exception 3 to Sec. 300.

## Exception 4, Sec. 300 (Sudden Quarrel)

Culpable homicide is not murder if it is committed

i. without premeditation
ii. in a sudden fight
iii. in the heat of passion upon a sudden quarrel and
iv. 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.

Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly. Where the deceased was an old man and was innocent intervener who was asking the parties not to quarrel, there was no justification for the appellant to have given such a serious injury (a blow by iron bar on the head) to him resulting in his death. Moreover, the appellant acted in a cruel manner [**Pandurang v. State of Maharashtra** AIR 1978 SC 1082].

## Exception 5, Sec. 300 (Death by Consent)

Culpable homicide is not murder when the person whose death is caused, being 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.

In order to bring the offence under Exception 5, the consent by the deceased must be given unconditionally and without any reservation. In a case, the wife flatly refused to go back to her mother and said that if her husband insisted on her doing so she would rather be killed. The husband killed her. Here the consent was not the type which is contemplated by Exception 5, and the husband was held guilty of murder.

A doctor pleading consent to an operation which proved fatal must prove that the patient

accepted the risk and was fully aware of it. Where the accused because of successive failures in examinations decided to end his life and informed the wife of his decision, and the wife asked him to first kill her and then kill himself, and the accused killed his wife but was arrested before he could kill himself, it was held that the case is covered by Exception 5 [Dasarath v. State of Bihar AIR 1958 Pat 190]. The consent was not given by deceased under a fear of injury or under a misconception of fact.

## Sec. 304-A: 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.

## This section does not apply to the following cases:

i. death is caused with any intention or knowledge (voluntary commission of offence), i.e. the act must not amount to culpable homicide,
ii. death has arisen from any other supervening act or intervention which could not have been anticipated, i.e. death was not the direct or proximate result of the rash or negligent act,
iii. death occurred due to an accident (e.g. where an accused on dark night believing a man to be a ghost killed him.

Sec. 304-A applies where there is a direct nexus between the death of a person and the rash or negligent act. The act must be the causa causans, it is not enough that it may have been the causa sine qua non. 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 (i.e. without belief in the result of such doing).

**Criminal negligence** is the gross and culpable neglect or failure to exercise the reasonable and proper care and precaution to guard against injury either to the public generally or to a particular individual [**Bala Chandra v State of Maharashtra** AIR 1968 SC 1319]. An illegal omission if negligent, may come under this section.

## Rash and negligent driving:

The mere fact that a fatal motor run-over accident took order to impose criminal liability on the accused, it must be found as a fact that a collision was entirely or at least mainly due to rashness or negligence on the part of the driver. An error of judgement on the part of the driver would not make him liable under Sec. 304-A.

In **Cherubin Gregory v State of Bihar** (AIR 1964 SC 205), the accused fixed up a naked live electric wire in the passage to latrine so that no trespasser may come and use the latrine. There was no warning that the wire was live. A trespasser who manages to enter the latrine without touching the wire, happens to receive a shock while coming out and dies soon. It was held that the act of the accused was an actionable wrong under Sec. 304-A. The mere fact that the

person entering a land is a trespasser does not entitle the owner or occupier to inflict on him personal injury by direct violence or indirectly by doing something on the land the effect of which he must know was likely to cause serious injury to the trespasser.

In **S.N. Hussain v. State of A.P.** (AIR 1972 SC 685), the accused, a bus driver, finding a level crossing gate open at a time when there is no train scheduled to pass, tried to cross the railway line and the bus collided with an on-coming goods train resulting in death of four passengers and injuring others. Held that there was no rashness on the part of the driver: It is very clear from the evidence that the driver received no warning either from the approaching train or from passengers in bus in sufficient time to prevent the collision. The train while approaching the level crossing did not give any whistle. The railway track was at a higher level and the road was lined by babool trees and, therefore, a passing train coming from a distance was not visible from the bus.

The Court also held that there was no negligence on the part of the driver: Where a level crossing is unmanned it may be right to insist that the driver of a vehicle should stop and look both way to see if a train is approaching. But where a level crossing is protected by a gateman and gateman opened out the gate allowing vehicles to pass, it will be too much to expect of any reasonable and prudent driver to stop his vehicle and look out for any approaching train. The Court held that the accident was due to the negligence of the gateman.

## Distinction between Civil and Criminal Negligence

i. Negligence in a criminal case must be culpable and gross and not negligence based on error of judgement. Thus, for the purpose of criminal law, a high degree of negligence is required to be established.
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ii. Principles of the avoidance of liability, when there is contributory negligence by the injured person, is no defence in criminal law. Where there is ample proof that the accused had brought about the accident by his own negligence and rashness, it matters not whether the deceased was deaf, or drunk, or, in part contributed to his own death.
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iii. Mere carelessness is not sufficient for fixing criminal liability. Sec. 304-A, like other sections of the Penal Code, requires a mens rea or guilty mind. Criminal rashness or negligence requires a particular mens rea which is very helpful in distinguishing a criminal culpable wrong from a tort.

## Sec. 319: Hurt

**Whoever caused bodily pain, disease or infirmity to any person is said to cause hurt.** There is nothing in this section to suggest that the hurt should be caused by direct physical contact between the accused and the victim. However, the pain must be bodily and not mental and may be caused by any means. Dragging by hair in aggressive manner and fisting in course of attack are not trivial acts and constitute offence of causing hurt. **Infirmity** has been defined as inability of an organ to perform its normal function which may either be temporary or permanent. A state of temporary impairment or hysteria or terror would constitute infirmity.

## Sec. 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.

The mere fact that the injured remained in the hospital for 20 days would not be enough to conclude that he was unable to follow his ordinary pursuits during that period.

An injury may be called grievous only if it endangers life'. A simple injury cannot be called grievous simply because it happens to be caused on a vital part of the body close to the carotid artery, unless the nature and dimensions of the injury or its effect are such that in the opinion of the doctor it actually endangers the life of the victim.

Hurt or grievous hurt to be punishable must be caused voluntarily, as defined in Secs. 321 and 322 of IPC.

## Sec. 321: Voluntarily Causing Hurt

Whoever does any act with the intention thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said voluntarily to cause hurt.

## Sec. 322: Voluntarily Causing Grievous Hurt

Whoever voluntarily causes hurt, if the hurt which he intends to cause or know himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt.

**Explanation -** A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration - A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Punishment for voluntarily causing hurt or grievous hurt is provided under Sec. 323 (imprisonment up to one year, or with fine up to one thousand rupees, or with both) and Sec. 325 (imprisonment for a term which may extend to seven years and shall also be liable to fine) respectively.

## Grievous Hurt Resulting in Death

In **Government of Bombay v. Abdul Wahab** (AIR 1946 Bom 38) 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. Where death results on account of grievous hurt and evidence shows that the intention of the assailants was to cause death, the case would fall under Sec. 302 and not under Sec. 325 [**Laxman v State of Maharashtra** AIR 1974 SC 1803].

Where an accused squeezed the testicles of a victim resulting in his death almost instantaneously and the incident took place all of a sudden, it could not be said that the accused had any intention casuing the death of deceased nor could he be attributed with knowledge that such act was likely to cause his cardiac arrest resulting in his death. It was held that the case fell under Sec. 325, IPC [**State of Karnataka v. Shivlingaiah** AIR 1988 SC 115].

In **Rambaran Mahton v The State** (AIR 1958 Pat 452), the deceased and the accused were brothers. On one day, an altercation took place between two, the accused dashed the deceased to the ground and sat upon his stomach and hit him with fists and slaps. The deceased became senseless and eventually died. The deceased had received some serious injuries on the head, chest and the spleen.

The High Court held: The essential ingredients of the offence of voluntarily causing grievous hurt are:

1. Grievous hurt must first be caused. If the hurt caused is simple, a person voluntarily causing grievous hurt even if he intended.
   Â
2. The offender intended, or knew himself, to be likely to cause grievous hurt. If he intended or knew himself to be likely to cause only simple hurt, he cannot be convicted for the offence under Sec. 325 even if the resultant hurt was grievous.

When the act the accused did in the process of causing hurt, is such as any person of ordinary intelligence knows it likely to cause grievous hurt, he may safely be taken to have intended or contemplated grievous hurt. In the present case, there could have been no intention on the part of accused to cause grievous hurt.

But the way in which he assaulted his brother (who did not tried to defend himself), he should have known that he was likely to cause grievous hurt. Three ribs and the spleen of the deceased was ruptured - these injuries could not have been caused unless blows were given to the deceased with great force.

Having regard to the relationship between the parties and also the fact that this unfortunate incident occurred on the spur of the moment due to provocation given by the deceased himself and also considering the fact that there was absolutely no intention on the part of the appellant either to kill him or to cause him such bodily injury as was likely to cause his death. Thus, the act of the accused amounts to grievous hurt even though the death has resulted.

## Kidnapping and Abduction

The mischief intended to be punished by the provisions relating to kidnapping and abduction may partly consist, in the violation or the infringement of the guardian right to keep their wards under their care and custody but more important object is to afford security and protection to the wards themselves against seduction or abduction for improper purposes [**State v. Harbans Singh Kishan Singh** AIR 1954 Bom 339].

## Sec. 359: Kidnapping

Kidnapping is of two types: kidnapping from India, and kidnapping from lawful guardianship. The literal meaning of kidnapping is **child stealing**. The 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.

**Sec. 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 that person, is said to kidnap that person from India.

**India** means the territory of India.

For an offence under this section, it does not matter that the victim is a major or minor. If a person has attained the age of majority and has given his consent to his being conveyed, no offence is committed.

The age of consent for the purposes of the offence of kidnapping is 16 years for boys and 18 years for girls.

**Sec. 361: Kidnapping from Lawful Guardianship**

**Leading Cases: S. Vardarajan V State Of Madras** (Air 1965 SC 942)

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 or 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 the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

**Besides the four essential ingredients of this offence mentioned in Sec. 361, the courts have formulated certain other guiding principles:**

i. In the case of minor girls this section is attracted irrespective of the question whether she is married or unmarried [State of H.P. v. Mt Kala AIR 1957 H.P. 42].
ii. The consent of the minor is immaterial [State of Haryana v. Raja Ram AIR 1973 SC 819].
iii. The motive or intention of the kidnapper is also immaterial [State v. Sulekh Chand AIR 1964 Punj. 83]. That is why, kidnapping is a strict liability offence.

The intention with which kidnapping is effected can be ascertained from the circumstances of the offence at the time of occurrence or prior or subsequent to it. A kidnapping does not per se lead to any inference of intent or purpose of kidnapping [Badshah v. State ofU.P. (2008) 3 SCC 681].

iv. If the kidnapped girl turns out be under 18 years of age, the kidnapper must take the consequences, even though he bona fide believed and had reasonable ground for believing that she was over eighteen [R. v. Prince (1875) L.R.2],

v. The defence that the girl was of easy virtue would not be sufficient to make accused not liable (1976 CrLJ 363).

**Analysis of Sec. 361**

Sec. 361 is intended more for the protection of the minors and persons of unsound mind than for the right of guardians of such persons.

**(1) Taking or enticing -** The word **takes** means to cause to go, to escort or to get into the possession; it does not imply force, actual or constructive. When the accused takes the minor with, whether she was willing or not, the act of taking is complete.

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 he or she would not otherwise do. There is an essential distinction between taking and enticing. Unlike taking, the mental attitude of the minor is relevant in enticing. The word entice' involves the idea of inducement or allurement [**Biswanath Mallick v. State**, 1995 CrLJ 1418 (Ori)].

It is not necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section [**Prakash v State of Haryana** AIR 2004 SC 227]. However, if the minor herself leaves her father's house without any inducement by the accused who merely allows her to accompany him, he cannot be said to have taken her out of the keeping of the father [State of Haryana v Raja Rani].

**Dowry Death:**

This is essentially a crime that happens against a woman. Dowry is essentially a crime that has been prevalent in Indian society for hundreds of years and in spite of many steps taken this evil till now is not completely eradicated.

According to Black's Law Dictionary, **Dowrymeans money and property brought into a marriage by a bride.**

Dowry is the main reason which has resulted in female foeticide and infanticide. Since centuries the death of many unborn girls has taken place because of dowry.

Dowry death means when the death of a woman is caused by any burns or bodily injury within 7 years of marriage not under natural circumstances rendering a great suspicion who is the offender of such a crime.

Dowry is a serious threat to society as it has resulted in many women either committing suicide as such they cannot handle such torture and stress or else they are killed by the in-laws and later it is forged into an accident. Though Indian Penal Code section 304-B punishes the person for committing dowry death which is not less than 7 years but which may extend to life imprisonment, this has not helped the nation to solve the problem of dowry.

Dowry Prohibition Act, 1961 has also been passed to protect the evil of dowry.

**According to one data, a women becomes the victim of dowry death every one hour in India.** Dowry death happens but now within the 4 walls of the house which protects the offender.
Hence, strict vigilance and law enforcement is required to check on these laws.

**Rape:**
According to the Black's Law Dictionary:
RAPE is defined as having sex with a person without their permission (such as if they are sleeping or unconscious) or forcing them to have sex against their consent.

IPC does not define consent in positive terms but what cannot be regarded as consent is explained by Section 90 which reads as **consent given firstly under fear of injury and secondly under a misconception of fact is not consent at all.**

Rape has been a serious menace in today's era. A hell lot of rape cases are being heard in India the recent being raping and murder of an eight-year-old girl, Asifa whose death once again united the whole nation to fight for a common cause. Earlier the nation was united to fight for the **Nirbhaya Gang rape case**.

The crime of rape is considered a serious offence against the human body, especially against females. The female who becomes the victim of rape feels shame, regret, have suicidal tendencies and she is believed to bring dishonour to the family; she keeps herself locked in the 4 walls of the house.

It is the society because of which the rape victims are unable to boost themselves. The concept of **Victim Blaming** is very much prevalent in Indian society though steps are taken to eradicate it. According to this concept, people blame the victim for her rape rather than the perpetrator.

Society passes such comments, **Why was the girl out of the house after 10**, **Why was she wearing such a short dress**, **What was she doing at such a place where people don't usually go**, **She might have asked for** etc. Such remarks of the society accuses the woman of her rape rather than the actual accused. Rape is Rape and nothing can justify rape. Even if the perpetrator was drunk and then raped a woman cannot justify his committing rape.

Sexual violence apart from being a dehumanizing act is an unlawful intrusion in the right to

privacy and sanctity of women.

**Steps have been taken by the Supreme Court to eradicate the menace of dowry by passing various landmark judgments:**

Case : SIRIYA v. STATE OF M.P

In this case, a 13-year-old girl was raped by her own father. The SC held that if the protector becomes the violator, punishment needs to be increased.

Even if the accused rapes a prostitute or woman of easy virtue, he cannot take the defense that the woman being of loose character, he can rape her as her consent was implied. Even the woman of loose character or prostitute can also file complain of rape.

Case : STATE OF MAHARASHTRA v. MADHUKAR NARAIN

In this case, a police officer went to the house of the victim; she is a woman of easy virtue, he asked her to have sex with him but she denied. When he forced her, she shouted and people from nearby came. In the court, the officer said that as she was a woman of easy virtue, her statement should not be relied on but then held him guilty.

**A murderer kills the body but a rapist kills the soul.**- Hon'ble Mr. Justice Krishna Iyer

In spite of so many provisions made for a woman to save them from sexual violence still, it is going up the scale rather than coming down.

The ruling Government 2 days back passed an ordinance after the gruesome Asifa rape case; how much this ordinance will be successful is yet to be known.

**Every coin has two sides**

The rape provisions are made very stringent for protecting the girls but in recent times it has come out that women are misusing the provisions.

There must come an amendment that equalizes the burden of proof on both sides and the law works smoothly. It should be such that contradicts the statement i.e. Law is there for vigilant.

**Conclusion**

Crimes are committed in every part of the world and there is not a single country that is crime-free. Countries still have to struggle to bring a complete stoppage on crimes against the human body because humans are having emotions and in the course of their life various emotions such as revenge, jealousy, ego are expected to crop up and because of all this they commit a crime.

After a person commits a crime he should not be punished but we as a society should believe in a reformative approach rather than a punitive approach; we should understand the person's nature, the reason he turned delinquent and the other factors connected thereto to understand why the person committed a crime.

Once the reasons are to be known, steps should be taken to reform the person and make him a better citizen so that he can adjust himself in society according to the people's expectations. We

all know of the stringent laws like death penalty or life imprisonment in cases of murder, rape and like; in spite of such provisions being there people commit a crime which means legislations have failed to stop the people from committing a crime.