HOMICIDE

I

Homicide from the earliest times has fascinated the human mind and has always been considered as the most heinous of offences. But then, not all cases of homicide are culpable as all systems of law do distinguish between lawful and unlawful homicides.[1] Further, with the growth of the concept of criminal responsibility, the laws of most countries admit gradations of unlawful homicides according to their heinous nature in order to fix suitable punishment for each. These distinctions are recognised by the Indian Penal Code as well. Under the Penal Code punishable homicide may be murder, culpable homicide not amounting to murder or only homicide by rash and negligent act. Further in some cases the accused may be punished for a lesser offence (*e.g.*, hurt) even though death has resulted, if the injury resulting in death though voluntarily caused was not likely to cause death. For example, A gives B a blow and B, who suffers from an enlarged spleen of which A is not aware, dies as a result. A is not guilty of culpable homicide as his intention was merely to cause an injury that was not likely to cause death.[2]

II

The difference between murder and culpable homicide not amounting to murder is based upon very subtle distinctions of the intention and knowledge involved in these crimes. Although much legal ingenuity has been expended in differentiating between these offences the differences are none too precise and clear. That is perhaps why Stephen described the definitions of murder and culpable homicide as the weakest part of the code.[3] The vagueness of their difference is considered a major defect of the Penal Code.[4] In the original draft of

1. Under the Indian Penal Code homicide is excusable when it is governed by the following general exceptions in Ch. IV of the Code : Mistake of Fact (Ss. 76, 79), Accident (S. 80), Infancy (S. 82-3), Insanity (S. 84), Intoxication (Ss. 85-6) and it is justifiable when governed by the following general exceptions: acts obligatory or justifiable according to law (Ss. 76-9), choice of evils (S. 81), Consent (Ss. 88, 89, 92 excluding cases of intentional causing of death), compulsion by threats (S. 94 excluding the case of murder), and Private defence (Ss. 100, 103).

2. *R.* v. *Fox* (1879) 2 All. 522.

3. Stephen. *History of English Criminal Law*, Vol. III pp. 313-14.

4. See Govindarajulu, *Some aspects of the law of Homicide*, M.L.J. (1941) p. 91 at 94. As the learned writer points out, such vagueness and the consequent uncertainty

the Penal Code prepared by Lord Macaulay and his colleagues the treatment of the subject was very simple. Section 294 of the draft read "Whoever does any act or omits what he is legally bound to do, with the intention of thereby causing or with the knowledge that he is likely thereby to cause the death of any person and does by such act or omission cause the death of any person is said to commit the offence of "voluntary culpable homicide". Under Sec. 295 of the draft, voluntary culpable homicide was murder unless it came under three specified mitigated descriptions, *i.e.*, when it was committed on grave and sudden provocation, when it was committed in excess of the right of private defence as limited by law, and when it was committed with the consent of the victim. But there was an attempt in a Code prepared by the Government of India in 1851, it would appear, to state the law in the technical terms of the English law.[5] In that Code Sec. 328 defined murder thus: "Whoever maliciously kills any other person commits murder"; Section 331 ran "Whoever otherwise than maliciously or by mischance kills any other person being neither a convict lawfully put to death in execution of a lawful sentence nor a person lawfully killed in war or in exercise of the right of defence commits man-slaughter." The succeeding sections defined "Extennuated manslaughter" and "Justified man-slaughter". However, finally the original draft provisions were enlarged considerably and enacted in their present form. Section 299 of the Penal Code as it now stands, defines culpable homicide thus: "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.*

---

were sought to be avoided by the Law Commissioners who prepared the first draft. The Commissioners said "There are two things which a Legislator should always have in view while he is framing laws: The one is that they should be as far as possible precise; the other that they should be easily understood.....A loosely worded law is no law, and to whatever extent a legislature uses vague expressions, to that extent it abdicates its functions, and resigns the power of making law to the courts of justice".

5. See Rust, *Hurt and Homicide*, 3rd edn. at p. 45.

* The following three explanations are given:

Explanation 1: A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2: Where death is caused by bodily injury the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Section 300 defines murder thus: "Except in the cases * hereinafter excepted, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or secondly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or thirdly, if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or fourthly, if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid". The second Clause of 299 (Intention to cause such bodily injury as is likely to cause death) as will be seen is an addition and consequent on it, clauses 2 and 3 of Sec. 300 have become necessary, Clause 4 of 300 is new. Two further exceptions, exceptions 3 and 4 to S. 300 are new. The words "or omits what he is legally bound to do" in the original draft are omitted and a general provision covering illegal omissions (S. 32) added. The new clauses creating more degrees of homicide and defining fresh extenuating circumstances seem to have been added by Princep, a Judge of the Calcutta Supreme Court between 1837 and 1851.[6]

III

If there is no chance of proving one of the exceptions to Sec. 300, the simple question that arises is whether S. 299 or S. 300 will apply to a given case. Some have been maintaining the view that there is no offence of culpable homicide not amounting to murder save that which arises from the application of the exceptions to Sec. 300.[7]

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.

* The excepted cases are (i) homicide under provocation, (ii) homicide by an act done in excess of the right of self-defence (iii) homicide by a public servant in discharge of a duty by acts which he believes to be necessary but which are not so in reality (iv) homicide upon a sudden quarrel (v) homicide by consent of a person over 18 years of age.

6. See Alan Gledhill, *Recent Developments in the Law of Homicide in England,* Jaipur Law Journal 1961, at p. 2.

7. Kemp, J., in *Pooshoo* v. *Emperor,* 1865, 4 W.R. Cr. 33; Wazir Hussain, J., in *Ramlal* v. *Emperor,* I.L.R. 3 Luck 244. Macknay, J., in *King* v. *Aung Nyun,* 1940 Rang. 441: Sir John Beaumont said in his evidence before the Royal Commission:

Perhaps one of the reasons for this view is the belief that in India, as in England, every homicide is murder unless the accused proves some mitigating circumstance to reduce it to man-slaughter. But as pointed out by Lord Sankey in *Woolmington* v. *Director of Public Prosecutions*,[8] this is certainly not the law in England. There, as in India, it is for the prosecution to establish beyond doubt the prescribed *mens rea* for murder (*i.e.*, malice aforethought). The generally accepted view is, however, that Sections 299 and 300 are distinguishable[9] on the basis of the *mens rea* specified and that exceptions apart, every case of culpable homicide is not necessarily murder. In fact, in many cases the accused have been acquitted of the charge of murder and convicted of the offence of culpable homicide not amounting to murder although there was no question of the applicability of any of the exceptions to Section 300; the decisions were based on the "fine but appreciable" distinction between Sections 299 and 300.[10]

IV

Section 304[11] which provides punishment for culpable homicide not amouting to murder repeats the expressions as to *mens rea* stated in S. 299. But Section 304 is also applicable in cases where, though the *mens rea* of the higher type specified in S. 300 is present, the exceptions

"It is quite unnecessary to put in that further description of culpable homicide in Sec. 300. It always seemed to me, that culpable homicide as defined in Sec. 299 is murder unless it comes within one of the exceptions in Sec. 300". See Report of the Royal Commission on "Capital Punishment" (1949-53) Cmd. 8932, p. 439. Stephen thought it difficult though perhaps not impossible to suggest any case of culpable homicide, other than the five excepted cases, which is not murder. See Stephen, *History of Crminal Law*, Vol. III pp. 314-15.

8. 1935 A.C. 462.

9. "Nothing is commoner than the ordinary mistake (that) unless the act is covered by one of the exceptions to Sec. 300 culpable homicide is murder", Mayne, *The Criminal Law of India*, 4th edn. p. 478, See *Reg.* v. *Govinda*, 1 Bom. 342 for the distinction.

10. *e.g.*, *Reg.* v. *Govinda* 1 Bom. 342. *Inder Singh* v. *The Crown* of 10 Lah. 477. *Gahbar Pande* v. *Emperor* 7 Pat. 638. *Willie* (William) *Slaney* v. *State of Madhya Pradesh*, A.I.R. 1956, S.C. 116.

11. "Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life or imprisonment of either descriptions for a term which may extend to ten years and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine or with both, if the act is done with

to S. 300 also apply. Sometimes a judge while sentencing an accused under Section 304 not merely relies on one of the exceptions but also on the fact that the *mens rea* is of the lower type mentioned in S. 299.[12] The application of the exceptions implies that notwithstanding that the act is done with the *mens rea* specified in S. 300 the offence is still culpable homicide not amounting to murder and at the same time there is the finding that the *mens rea* is of the lower type mentioned in S. 299. This leads one to doubt whether in such cases any effort has been made to determine the specific intention or knowledge actually present and it tends to obscure the distinction referred to in the previous paragraph.

V

Likewise, a jumbled reference [13] to the different clauses of S. 300 without indicating which of them is applicable, while distinguishing between Sections 299 and 300 tends to blur the distinction further. For example, in *William Slaney* v. *The State of Madhya Pradesh*,[14] following a heated exchange of words between the accused and the deceased the accused slapped the deceased on the cheek. The deceased lifted his fist. The accused gave one blow on the head of the deceased with a hockey stick with the result that the skull was fractured. The deceased died in the hospital 10 days later. The accused was convicted under Section 304 Part II (which deals with homicide committed with knowledge of the likelihood of death resulting from the act). Since the exceptions to S. 300 were not invoked the discussion should have centred round the distinction between cl. (4) of S. 300 and cl. (3) of S. 299 but one finds that all the clauses are loosely expressed and discussed. Chandrasekara Aiyar, J., observes " It is obvious that the appellant did not intend to kill the deceased. The evidence of the doctor is that the injury was likely to result in fatal consequences. This by itself is not enough to bring the case within the scope of S. 300. *There is nothing to warrant us to attribute to the appellant knowledge that the injury was liable to cause death or that it was so imminently dangerous that it must in all probability*

---

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 ".

12. *Chamru Badhwa* v. *The State* 1954 Cr.L.J. 1676, *Thommen Thomas* v. *The State* 1957 Cr.L.J. 635.

13. *State* v. *Bhairu Sattu Bherad* A.I.R. 1956 Bom. 609, *Charan Singh* v. *The State* A.I.R. 1959 All. 255, *W. Slaney* v. *State of Madhaya Pradesh* A.I.R. 1956 S.C. 116, *Gahbar Pande* v. *Emperor* 7 Part 638.

14. A.I.R. 1956 S.C. 116.

cause death. The fact that Donald lived for ten days shows that it was not sufficient in the ordinary course of nature to cause death. The elements specified in Section 300 of the Indian Penal Code are thus wanting. We take the view considering all the circumstances that the offence is the lesser one." (*Italics supplied*). There is a jumble of clauses 3 and 4 of Section 300 and clause 3 of S. 299 apart from the use of the expression 'liable to cause death' which is nowhere found in the Code. The sentence italicised would render both Section 300 clause 4 and Section 299 clause 3 inapplicable and the conviction then becomes unsupportable while the reference to the injury not being sufficient in the ordinary course of nature to cause death is out of place.[14a]

VI

The first clause of S. 300 provides that it is murder if the offender had the intention of causing death. What is required is a finding as an actual fact that the accused desired to cause death whether as an end in itself or as a means to something else.

It is difficult to appreciate the difference between culpable homicide not amounting to murder and murder unless one keeps in mind the meaning and import of the word " intention " as used in the Code and its purposeful separation from mere knowledge of the likelihood of the consequences. ' Intention ' in the code is a specific and distinct state of mind which ought not to be mixed up with the other states of mind provided for in the Code. The Code recognises besides ' intention ', ' knowledge of the likelihood of the consequence ', 'reason to believe the consequence to be likely ' and ' rashness and negligence ' as *mens rea* which will attract responsibility.

In the civil law responsibility for injury is determined by the well known fore-knowledge test which fixes liability if the injury was actually foreseen or if it would have been foreseen by an average reasonable person in the position of the wrongdoer. The basis of the test is the maxim that every man is presumed to intend the natural consequences of his act. Now this *intention* imputed to the wrongdoer is very different from the intention of the Code for it includes besides the intention of the Code, the other three states of mind as well. In other words intention under the Code is but a fraction of ' intention '

14a. See further the judgment of Bose, J., in the same case who refers to clauses 2, 3 and 4 of 300 in a diffused manner, the clauses being not accurately stated.

referred to in the maxim. Further, intention under the Code has to be determined as a fact, the enquiry being purely subjective whereas according to the maxim it is a fiction of the Law. On the other hand, in England the much discussed decision of the House of Lords in *Director of Public Prosecutions* v. *Smith*[14b] has adopted the objective test in determining intention. Such a criterion would be wholly out of place under the Code. Nevertheless it is not unusual for judges to rely on the maxim to determine intention under the Code.

The interpretation of the other clauses of Section 300 is by no means simple and the following are noticeable conflicts in the matter of interpretation. (1) Section 300 clause 2 reads '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." The stress is on the offender's knowledge (which is a purely subjective consideration) of the likelihood of death resulting to the victim. One view is that this clause deals with cases where the injury that is intentionally inflicted is known to be likely to cause the death of the particular victim to whom it is caused by reason of the victim's physical infirmity (*e.g.* enlarged spleen), or peculiarity of the constitution known to the offender and *that it does not cover cases* where the injury is known to be likely to cause the death of a normal person.[15] Another view is that the words of the Section are wide enough to include the causing of death of a normal individual *i.e.*, if the bodily injury intended is such as is known to be likely to cause the death of the particular person normal or abnormal to whom the harm is caused.[16] Even if this view is conceded, Sec. 300 cl. (2) can be applied only to those cases where the court can safely conclude that the accused *knew* that he was likely to cause the death of the

---

14b. 1960 3 W.L.R. 546; For a recent critical appraisal of this ruling see Sir Cyril Salmon "*The Criminal law relating to intent,*" Current Legal Problem; 1961 p. 1.

15. See Ratan *'Culpable Homicide'* pp. 55-56 where emphasis is laid on the expression "the person to whom the harm is caused"; *Aung Nyun* v. *R.* A.I.R. 1940 Rang. 259 (F.B.); *Waryam Sher Mohamed* v. *Emperor* A.I.R. 1938 Lah.834, *Behari and Others* v. *The State* A.I.R. 1953 All. 203.

16. See Govindarajulu: *Some Aspects of the Law of Homicide,* 1941 M.L.J. 91, at pp. 105-6; In *Inder Singh* v. *The Emperor* 10 Lah 477 referring to S. 300 cl. (2) it is observed "It has therefore ordinarily been applied to those cases where the offender has special knowledge of facts or circumstances which make the act done particularly dangerous to the life of the person to whom that harm is done. Thus if A knows that B is suffering from an enlarged spleen and B dies the offence comes within cl. 2 of S. 300 and not within S. 299 because of the special knowledge of

particular (normal) person killed. The intention to cause bodily injury is common to Sec. 299 cl. (2) and Sec. 300 cl. (2) and the only difference between them is that under the latter there should also be the knowledge that the injury is likely to cause the death of the person to whom the injury is caused. As this additional element of knowledge is subjective, it should be inferred from the evidence as a matter of fact and should not be imputed to the accused. Section 300 cl. (2), then, really appears to be a combination of cl. (2) and cl. (3) of Sec. 299,[17] which from the stand point of responsibility is equated with an intention to cause death and hence liability for murder.

(2) Section 300 cl. (3) reads " 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."

This clause is distinguishable from cl. (2) of Sec. 299 on the basis of the higher degree of probability of death resulting from the injury denoted by the expression 'sufficient in the ordinary course of nature to cause death.' Prof. Alan Gledhill considers the distinction between an injury likely to cause death and the one sufficient in the ordinary course of nature to cause death artificial and observes " In many cases the result of a trial must turn on the medical evidence and a man's life may depend upon the unchallenged opinion on the nature of an injury, given by a not over-competent member of the subordinate medical service who has performed a casual autopsy".[18] These clauses, clause 2 of Sec. 299 and cl. 3 of Sec. 300, are not only difficult to understand in the abstract but lead to considerable arbitrariness in their application to any given case.

(i) The view has been expressed in interpreting the third clause of S. 300 that not only should the injury be intentionally inflicted but that the accused should have further intended that it should be

---

A. I do not propose to lay down that this is the only class of cases which is covered by cl. 2 of S. 300 but this is the commonest type of cases falling under S. 300 cl. (2)." In the following cases S. 300 cl. (2) has been applied without any advertence to any peculiarity in the constitution of the victim. *Ghurey and Another* v *Rex*, 50 Cr. L.J. 353 ; *Emperor* v. *Ratan*, A.I.R. 1932 Oudh 186 ; *Kelu Ayyappan* v. *The State*, A.I.R. 1959 Kerala 230 ; *Bahadvin* v. *Emperor* A.I.R. 1927 Lah. 63.

17. *See Rahiman Ismail* v. *R*, A.I.R. 1939 Lah. 245.

18. See Prof. Alan Gledhill *"The Indian Penal Code in the Sudan and Northern Nigeria"* Year Book of Legal Studies 1960, Department of Legal Studies, Madras, p. 17.

sufficient in the ordinary course of nature to cause death.[19] This would convert the clause into one of intention to cause death *i.e.*, cl. (i) of Sec. 300. It is not possible to see how "intention to cause bodily injury intended to be sufficient to cause death" is different from intention to cause death.[20]

(ii) Another view is that if any serious injury is intentionally inflicted and that injury actually caused death, it is to be regarded as sufficient in the ordinary course of nature to cause death; the case would fall under cl. (3) of Sec. 300.[21]

(iii) The proper view to take is that the bodily injury suffered by the deceased and found sufficient to cause death should be actually intended by the offender. Whether the injury intended by the accused and actually caused is sufficient in the ordinary course of nature to cause death or not must be determined objectively as a question of fact. In *Virsa Singh* v. *The State* [22] the Supreme Court observes "To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 "thirdly"; First, it must establish quite

19. Roberts, C.J., in *King* v. *Abor Ahmed* A.I.R. 1937 Rang. 396; *Aung Nyun* v. *The King* A.I.R. 1940 Rang. 441. Manohar Pershad, J., in *Mahanandi Reddi in re*: (1960) 1 An. W.R. 313 observed "Section 300 would only apply if it were possible to go a step further and say that the offender intended the injury to be sufficient in the course of nature to cause death or knew that in the special circumstances of the case, not death merely but the death of the particular person to whom the injury was caused was likely. If he new that, he had knowledge from which the intention to cause the death of such a person could be inferred." This view has however been disapproved of recently in 1962 1. An. W.R. 84 *Public Prosecutor* v. *Veeraiah* as being opposed to the view of the Supreme Court in *Virsa Singh's* case (see foot note 22).

20. See *Rehman* v. *R.* A.I.R. 1939 Lah. 245.

21. *In Public Prosecutor* v. *Koramutla Narasingadu* 1937 (2) M.L.J. 490 Horwill, J., said "Having found that the accused bad voluntarily caused grievous hurt, the learned judge really found for the prosecution most of the ingredients necessary for murder. Now if the assailant causing any grievous hurt, intended to cause that grievous hurt then undoubtedly under Sec. 300 (3) he would be guilty of murder for in the words of that Section he would have intended to cause bodily injury and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. One can however be guilty of grievous hurt without intending it if he knows the hurt to be likely but a person is considered to intend the probable consequences of his act and a person who hits another man on the head with such a force as to cause a complicated fracture of the kind actually caused here must be considered to have intended such bodily injury as would be sufficient in the ordinary course of nature cause death." See *Bai Jiba* v. *Emperor* 18 Cr. L.J. 1010; See also *Ratan, Culpable Homicide* pp. 40-42.

22. 1958 Cr.L.J. 818; See also *Rehman* v. *Emperor* A.I.R. 1939 Lah. 245; *Naga Khwet* v. *The King* A.I.R. 1941 Rang. 319. *Faquira* v. *State* A.I.R. 1955 All. 321. *Thannoo* v. *The State* A.I.R. 1959 All. 131.

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. Once these three elements are proved to be present, the enquiry proceeds further; and 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 the 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." Though it is thus emphasised that the accused's anticipation of the nature of the consequences is immaterial some times we find that the knowledge of the accused as to the injury being sufficient in the ordinary course of nature to cause death considered as being material. Prof. Alan Gledhill after referring to cl. (3) and cl. (2) of Sec. 300 observes ".....why, in the case of a victim of normal health and strength, should the knowledge of the consequences of the injury intended to be caused be irrelevant, if it is essential when death is caused to a person suffering from bodily disease or infirmity? Why, again, when the victim is a person of normal health and strength must the intended injury be sufficient in the ordinary course of nature, when intention to cause injury likely to cause death is enough, if it is caused to an infirm person?" [23]

Again, in some cases, knowledge of the accused that the injury is sufficient in the ordinary course of nature to cause death is discussed while applying Sec. 300 cl. (3).[24] Knowledge of the accused can only be relevant under Sec. 300 cl. (2) but not under Sec. 300 cl. (3). From the above it is clear that the minute sub-divisions of the state of mind leads to practical difficulties. Further, the presumption as to intention and knowledge, sometimes, is scarcely more than a speculation in the absence of anything in the evidence to disclose the actual mental condition of the accused. This clause has probably been introduced by the framers of the code so that persons in whose cases it may be difficult to prove an absolute intention to kill may not escape liability.[25]

23. *The Indian Penal Code in the Sudan and Northern Nigeria*, Year Book of Legal Studies (1960) p. 17. See also *Varkey Joseph* v. *State of Kerala* A.I.R. 1960 Ker. 301 *Nanbu* v. *The State* A.I.R. 1956 M.B. 207.

24. *Public Prosecutor* v. *Ramaswamy Nadar* 1940 (5) M.L.J. 92. *Nga Ohu Pe* v. *The Emperor* 38 Cr. L.J. 52; and *Nga Bau* v. *The Emperor*, 39 Cr. L.J. 217.

25. See Ratan '*Culpable Homicide*' p. 62.

(3) Section 300 clause (4) reads "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". This is a good illustration of tautology and the artificial nature of the criteria laid down".[25a]

(i) There is a conflict of opinion as to whether this clause applies to a case in which death has been caused by an act committed with reference to a particular person[26]. Such a restricted interpretation of Sec. 300 cl. (4) would mean that cases where the accused commits an act directed against a particular person with the knowledge 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 are not covered either by clause 4 or clauses 1, 2 and 3 because in such cases the injury is not intentionally caused. As Sec. 300 is exhaustive, this will mean that the authors of the Code have failed to provide for such a case.

(ii) In the next place with reference to the operation of the exceptions to Sec. 300 an anomalous position seems to exist while construing Sec. 300 cl. (4). Referring to this a learned commentator observes: "The operation of the five exceptions to Sec. 300 is practically somewhat different in respect to an act which falls within one of the first three clauses of Sec. 300 and in respect to an act which falls within the fourth clause.....There is no inconsistency involved in finding that an act falls within one of these clauses and also falls within an exception, for all the circumstances of an exception may co-exist

25a. Prof. Alan Gledhill remarks: "Knowledge of a probability of a likelihood envisaged by the second alternative is a concept which would stagger a grammarian and logician and the cases held to come within this clause usually ignore it basing the decision on the first alternative, though the section itself appears to put knowledge of moral certainty and knowledge of a likelihood on the same footing", Prof. Alan Gledhill *op. cit.* p. 17; Fitz Gerald remarks: "The Indian Law of murder in (b), (c), (d) of Sec. 300 is universally admitted to be complicated. In an extreme case the Court may be called upon to find (300 Cl. (4) whether the mind of the accused contained the certainty of a present risk of a probability of a likelihood". *The Reform of the Law of Murder*—Current Legal Problems. (1949) p. 37.

26. See Ratanlal *Law of Crimes* (19th Edition) p. 723 and Gour *Penal Law of India* (5th Edition) p. 988; *Shwe Ein* v. *Emperor* 3 Cr. L.J. 355; *Mahindralal* v. *Emperor* 38 Cr. L.J. 868; For a contrary view see Ratan *Culpable Homicide* pp. 67-8; *Faquira* v. *The State* A.I.R. 1955 All 321; *Garib* v. *Emperor* A.I.R. 1919 All. 445; and *Parshaeli and Others* v. *The Emperor* A.I.R. 1929 All. 160.

with the murderous intentions. When, however, an act falls within the fourth clause of Sec. 300, as regards the knowledge with which it is done, and the circumstances constituting an exception exist, there is this difference, it cannot consistently be affirmed (at the end of a trial and upon all evidence) of an act causing death done with the knowledge, described, in one breath that it was done without any excuse of running the risk of causing death and in the next breath that it was done under circumstances which the law declares to be an excuse for the act of causing death to the extent of preventing the Culpable homicide amounting to murder.....".[27] To this may be added the further distinction that while the absence of excuse under Sec. 300 cl. (4) will have to be proved by the prosecution, the presence of circumstances constituting the exceptions must be proved by the accused.

(iii) Section 300 cl. (4) being concerned with a wholly inexcusable act of extreme recklessness, it is felt that there are too many gradations in the categories of criminal negligence and that section 300 cl. (4) is anomalous in its present context.[28]

VII

Difficulties are occasionally encountered in the field of causation thus:

(A) In one series of cases, the accused strikes and knocks down the deceased and believing the victim to be dead commits a further act with a view to remove the traces of his original crime, but it is subsequently established that the latter act alone caused death,[29] *e.g.* A strikes B on the head with a stick and B falls down senseless. Believing B to be dead A throws the body into the well. B dies due to the drowning and not due to the initial assault. In such cases the Courts have found it none to easy to decide whether the accused is guilty of murder or not.

(i) One view is that the intention of the accused must be judged not in the light of the actual circumstances but in the light of what he

27. *Ratanlal Law of Crimes* 19th Edition p. 726. See also Rust, *Hurt and Homicide* 3rd Edition p. 81.

28. See Rust *Op. cit.* p. 83. There is a further suggestion that S. 299 cl. (3) be amended. See Ratan *Culpable Homicide* p. 70.

29. *Khandu* v. *R.* 15 Bom. 194: *Palani Goundan* v. *Emperor* (1919) 42 Mad. 547; *Kaliappa Goundan* v. *Emperor* 57 Mad. 158; *Thavamani* v. *Emperor* 1943 (2) M.L.J. 13; *Chinnathambi in re*: 1952 (2) M.L.J. 550; *Lingaraj Das* v. *R.* 24 Pat. 131 *Emperor* v. *Dalusardar* 18 C.W.N. 1270; *Emperor* v. *Khubi* 25 Cr. L.J. 703; *Emperor* v. *Gajjan Singh* 32 Cr. L.J. 413.

supposed the circumstances to be and that it follows that a man is not guilty of culpable homicide if his intention was directed only towards what he believed to be a lifeless body.[30]

(ii) Another view is that both under Section 299 cl. (2) and Sec. 300 cl. (3) the intention provided for is confined to 'bodily injury' and not the 'death' and what attracts liability for murder is that injury should be sufficient in the ordinary course of nature to cause death, entirely apart from intention or knowledge and as the subsequent act causes such a bodily injury the offence is murder.[30a]

(iii) A third and better opinion from the commonsense point of view is that if the accused began with the intention of causing death and if the two acts committed by him so closely follow upon and are so intimately connected with each other that they cannot be separated but must both be ascribed to the original intention which prompted the commission of those acts, the offence would be culpable homicide[31] "In these cases the accused intends to kill and does kill; his only mistake is as to the precise moment of death and as to the precise act that effects death. Ordinary ideas of justice and commonsense require that such a case shall be treated as murder.[31a] But where the original intention is merely to cause hurt the offence will not be culpable homicide but hurt simple or grievous as the case may be.

(B) The problem of causation takes a different form in those cases in which the accused intends to kill a certain person, but in fact kills another towards whom he had no malice.[32] Such cases will ordinarily fall under Sec. 301 [33] and the accused would be found guilty of murder. Also, Sec. 299 does not require that the accused

30. Sadasiva Aiyar, J., in *Palani Goundan* v. *Emperor* 42 Mad. 547; *In re Chinnathambi* 1952, 2 M.L.J. 550; *Emperor* v. *Dalu Sardar* 18 C.W.N. 1270; Birdwood, J., and Sergeant, C.J., in *Khandu* v. *R.* 15 Bom. 194. See also *Thabo Meli* v. *The King* (1954) I.W.L.R. 228 and the criticism thereof in Russel on Crimes (XIth Edition) at p. 62.

30a. Napier, J., in *Palani Goundan* v. *Emperor*, 42 Mad, 547.

31. Parsons, J., in *R.* v. *Khandu* 15 Bom. 194; at p. 200; *Thavamani* v. *Emperor* 1943 2 M.L.J. 13; *R.* v. *Khubi* 25 Cr. L.J. 703; *Lingarajadas In Re*, 24 Pat. 131; *Thabo Meli* v. *The King* (1954) 1 W.L.R. 288 and the criticism of that case at p. 60-62 Russel on Crimes XIth Edn. See Mayne *The Criminal Law of India*, 4th Edn. 538.

31a. Glanville Williams *Criminal Law* Edn. 2, p. 174.

32. *In re Jeoti* 39 All. 161; *In re: Suryanarayanamurthy*, 22 M.L.J. 333.

33. Sec. 301 reads: "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 committed by the offender is of the description of which

should intend to kill any particular person. This is clear from illustration (a) to Sec. 299 which reads: "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". But complications arise when both the person whom the accused intended to kill and a third person die as a result of the criminal act, and also when the effect is not due merely to the act of the accused but to the intervening acts of the deceased or other third person. One view is that the accused should not be held guilty of the death of those whose death was not intended by him and could not have been foreseen by him as likely and that Sec. 301 is confined to those cases in which one person alone dies and that not the one whose death was intended.[34] It is also felt that a person's conduct should not be held to be the cause of a consequence which would not result without the intervention of another human agency. The other view is that Sec. 301 should be applied to such cases.[35] It is difficult to be categorical in these cases when the result is due to a series of causes. We have to consider in each case the relative value and efficiency of the different causes.

VIII

In the above paragraphs it was pointed out that where an offence satisfies only the requirements of Sec. 299 and not those of Sec. 300, it would be culpable homicide not amounting to murder and not murder. But even where the offence amounts to murder the Code recognises certain extenuating circumstances which reduce it to culpable homicide not amounting to murder. This is not something unique to the Code. Almost all the legal systems provide for some mitigating factors. As already stated in the original draft prepared by Macaulay, three exceptions were listed and subsequently, two more were added to raise the total to five. The idea in providing these exceptions is that the accused should not be made entirely responsible for an offence that he was caused to commit by an external factor like provocation. Exception I to Sec. 300 provides: "Culpable homicide

it would have been if he had caused the death of the person whose death he has intended or know himself to be likely to cause".

34. Sundara Aiyer, J., in, *Suryanarayanamurthy In re*, 22 M.L.J. 333.

35. Benson, J., in *Suryanarayanamurthy In re*, 22 M.L.J. 333.

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. In the original draft of the Code it was explained [36] that the provocation would be grave when it is such as would be likely to move a person of ordinary temper to violent passion, but in the explanation to exception to Sec. 300 there is now no reference to "ordinary person". The explanation reads "whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact". The Law Commissioners in their first report thought that the special circumstances relating to the offender will have to be considered [37] in judging the effect of the provocation. The English authorities lay down that in considering a plea of provocation the jury must consider whether a reasonable man would have been deprived of self-control and the peculiar susceptibilities of the accused are irrelevant.[38] The view has been taken in some Indian cases that it is the standard of the accused that should be adopted in judging the effect of provocation [39] while a contrary view is taken in other cases that the standard of the "reasonable man" should be adopted.[40] But who is this reasonable man and what is the standard of reasonableness? Does it refer to the man on the Clapham omnibus as in English law, *i.e.*, to a mythical man of reasonable prudence? Is there an abstract standard of reasonableness

36. Explanation 1 to S. 297 of the draft.

37. "These remarks are deserving of attention but it seems to us that Mr. Payne has overlooked the discretion which is purposely left to the Court to judge whether the provocation be such as would be likely to move a person of ordinary temper to violent passion, not any person, it is to be understood, but a person of the same habits manners and feelings. A discreet judge would of course take into consideration such points as were adverted to by Mr. Payne and would probably reject the plea of provocation by insulting words in one case while he could as properly admit in another accordingly as the party might be shown to belong to a class sensitive to insults of this kind or otherwise". First report on the Penal Code by the Indian Law Commissioners (1846) para 271.

38. *See Bedder* v. *Director of Public Prosecutions*, 1954, 1 W.L.R. 1119. The Royal Commission while sympathising with the view that provocation must be judged by the standard of the accused however expressed, the view that a change in the law was not called for; paras 144-45 of the report of the Royal Commission on the Abolition of Capital Punishment Cmd. 8932 (1949-53).

39. *Bhuranga Uraon* v. *The Emparor* 37 Cr. L.J. 221; *Channan* v. *Emperor* A.I.R. 1943 Lah 123; *Empress* v. *Khogaayi* 2 Mad. 122.

40. *Dinabandhu Oriya* v. *The Emperor* A.I.R. 1930 Cal 199; *Sohrab* v. *Emperor* 5 Lah 67; *Das Raj* v. *Emperor* 20 Lah 345; *Khadim Hussain* v. *Emperor* 7 Lah. 488.

to be applied faithfully in every case? The Supreme Court in a recent case [40a] has answered these questions in the negative and has stated that the standard of reasonableness varies from one social group to another. As Subba Row, J., delivering the judgment of the Bench, put it "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. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision; it is for the court to decide in each case, having regard to relevant circumstances". In other words the test is not what a reasonable man judged by some abstract standard would do, but what a reasonable man belonging to the same social group as the accused would do. To put it differently, if the accused is found, as a matter of fact, to be a reasonable man, would he have done what he actually did? The objective test is that qualified by the circumstances mentioned by the Supreme Court.

The next three exceptions to Sec. 300 do not present problems of any importance. Exception 5 which provides that culpable homicide is not murder when the person whose death is caused being above the age of 18 years, suffers death with his own consent, raises an interesting point. The point is whether this exception can be applied to bands of rioters who go out with the premeditated determination to meet and fight each other and are armed with deadly weapons. One view is that exception 5 is not applicable [41] to such cases because exception 4 makes it clear that to reduce murder to culpable homicide not amounting to murder, a fight should be sudden, without premeditation and in the heat of sudden passion on a sudden quarrel. The opposite view is that if the facts make out that the deceased did consent to suffer death or take the risk of death at the hands of a member of the hostile party, it will come under Exception 5. [42] Mayne is of the view that there is no question of consent to suffer death in these cases; the question is what does he take the chance of? The answer to this depends upon the facts of the case. If the party is armed with sticks then obviously the case will not fall under Exception 5.

40a. *Nanavati* v. *The State of Maharashtra* A.I.R. 1962 S.C. 605 at 630.
41. Ainsle, J., in *Emperor* v. *Rohimuddin & Others* 5 Cal. 31.
42. Pigot, J., in *Queen Empress* v. *Nayamuddin & Others* 18 Cal. 484.

Much discussion, in recent times, has taken place on the subject of Euthanasia. Under English Law, it would be murder (except where it is connected with suicide pacts) and under Indian Law it would be culpable homicide under Sec. 300 Exception (5). The Royal Commission in England felt that no change in existing law was necessary.[43] However in view of the changed outlook as to the purpose of punishment, the topic of Euthanasia as well as that of suicide[44] may be re-examined.

In England the rule of law whereby it is a crime for a person to commit suicide has recently been abrogated by S. 1 of the Suicide Act, 1961 (9 and 10 Eliz. 2 C. 60). The Act, however, provides that persons abetting suicide shall be punished.

IX

Two further exceptions to Sec. 300 may be suggested. One of them is that infanticide[45] (Infanticide is here used in the sense of killing of a child by the parent), should not be treated as murder. The Indian Substantive Criminal Law contains no special provision dealing with infanticide[46] as a less serious type of homicide. The English

43. Paragraphs 177-180 of the Report of the Royal Commission (1949-53) Cmd. 8932. See Glanville Williams *The Sanctity of Life and the Criminal Law*, ch. 8 for an exhaustive discussion.

44. (1) " True as all this is, we are however forced to admit that suicide belongs to those anti-social actions which cannot be fought with the weapons at the disposal of modern criminal law. In a Penal System that is not excessively cruel or stigmatising punishment cannot act as a deterrent on an individual who has already shown his readiness to throw away his life ". Hermann Manheim, *Criminal Justice and Social Reconstruction* (1946) p. 10.

(2) " While it is desirable to discourage suicide as much as possible by indirect means there can be no possible justification for penalising any one for attempting to destroy his own life, since there could be no right more fundamental than the right to dispose of one's own life.....The punishment of attempted suicide is based in large part upon the theological notion that only God has the right to take away the life which he is alleged to give. But it is also partly for the prevention of suicide. For this purpose it is a grossly stupid measure. It can obviously be of no avail whatsover in deterring anyone so desperate as to wish to kill himself" Parmalee, *Criminology* (1918) p. 481.

45. " Social anthropologists distinguish between infanticide and murder. Infanticide is the killing of a new born child committed by the parents or with their consent. The killing of another man's child is according to this definition, simple murder ; it is killing by or on behalf of the parent that raises special problems." Glanville Williams *The Sanctity of Life and the Criminal Law* p. 26.

46. Rule 260. The Criminal Rules of Practice (Madras) however provides " In all cases where women are convicted for the murder of their infant children a

Law [47] in certain specified circumstances deals with it as manslaughter. Having regard to the social and economic causes that lead to infanticide it would be desirable to make special provision for punishment of infanticide. It may be that a mother loving her children kills them to save them from the menace of insanity or desparate poverty or perhaps to save them from bearing the stigma of illegitimacy. And after all as Dr. Glanville Williams says " a woman who kills her child under the stress of any of these adverse circumstances is almost certainly not dangerous to anyone but her other children and not necessarily to them ".[48] In any case infanticide does not cause a sense of insecurity in the society. In England the outcome of many an infanticide trial is merely probation or discharge but still a severe judge may send a woman to prison. In India as the offence is murder the court has little choice and has to sentence the mother to death or imprisonment for life though there have been instances of Judges recommending a reduction in sentence.[49] It is submitted that punishment should not be governed by such recommendations and that infanticide should be recognised as an exception to Sec. 300.[50]

The other suggestion is that the Penal Code should recognise the concept of diminished responsibility and this is really a criticism of

---

reference should be made through the High Court to the Government with an expression by the Sessions Judge of his opinion as to the propriety or otherwise of reducing the sentence ". The Female Infanticide Prevention Act (Act VIII of 1870) relates to the preventive measures that may be necessary to prevent the killing of female children in certain areas where the evil is rampant.

47. (i) The Infanticide Act, 1938 (1 and 2 Geo. VI C. 36). The Act takes no account of the circumstances of mitigation other than disturbance of mind resulting from giving birth or lactation and for this reason is applied only for a year after birth. Laws of Ceylon, Canada, Victoria and Tasmania contain similar provision. See Report of Royal Commission on the Abolition of Capital Punishment Cmd. 8932 (1949-53) at p. 447. The Royal Commission felt that no change in the law was called for (para 162 of the Report). Dr. Glanville Williams pleads for further leniency in the matter. See *The Sanctity of Life and the Criminal Law*, p. 39.

(ii) Art. 116 of the Swiss Penal Code (1937) provides 'If a mother intentionally kills her child during delivery or while under the influence of child birth, she shall be confined in the penitentiary for not over three years or in the prison for a minimum term of six months ".

48. Glanville Williams: *The Sanctity of Life and the Criminal Law*, p. 42.

49. *Alambill* v. *Emperor* A.I.R. 1932 Lah. 297 *Lakshmakka* v. *Emperor* 1939 M.W.N. 1130.

50. The Code of Northern Nigeria which is modelled after the Indian Penal Code provides for " infanticide " as an additional exception to S. 300. See Alan Gledhill " *The Indian Penal Code in the Sudan and Northern Nigeria* " Year Book of Legal Studies (1960) p. 17.

Sec. 84. Sec. 84[51] insists that the accused should be of unsound mind to be exempted from liability whereas this concept makes even an abnormality of the mind as substantially impairs the mental responsibility of the accused a mitigating circumstance. This doctrine can be introduced into the Penal Code either by amending Sec. 84 or by adding an exception to Sec. 300. It is felt that it would be wiser to confine the application of this doctrine to homicide and add an exception to S. 300, on the following lines: " Culpable homicide is not murder if the offender at the time he committed the offence was not of unsound mind within the meaning of Sec. 84 of this Code but was nevertheless suffering from a disease of the mind which disabled him partially from understanding the full consequences of his act ".[52] Section 2 of the Homicide Act has introduced this doctrine in England. On the Continent this is applicable to all crimes as a partial defence. In Scotland it is limited to homicide.[53]

X

Three problems in connection with punishment for homicide deserve mention. Section 302 provides for imprisonment for life as an alternative punishment to death. The Judge had till recently to state the reasons for awarding the lesser penalty[54] as the sentence of death

51. Section 84 reads: " Nothing is an offence which is done by a person who at the time of doing it is by reason of unsoundness of mind, incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law ".

52. This doctrine however has been severely criticised. Among the points levelled against it are (i) This would introduce a fine gradation of responsibility and makes a very subjective consideration in extenuating circumstance; (ii) It may be interpreted to include an irresistible impulse; (iii) An insane person might prefer to plead diminished responsibility successfully and undergo imprisonment for a short while rather than plead insanity and be confined to a mental home; (iv) It would result in psychopaths being confined with normal convicts. See Prof. Alan Gledhill, *Recent Developments in the Law of Homicide in England.* Jaipur Law Journal p. 1. See Prevezer ' *The Law of Murder* ' 1961 Current Legal Problems page 16, (28-34) regarding the working of the rule.

53. Alan Gledhill, *ibid* p. 6.

54. Section 367 Cr. P. C. amended in 1955 with regard to cl. 5; Recently a bill was moved in Parliament to the effect that persons under 18 found guilty of murder should be awarded imprisonment for life unless for reasons to be recorded the death sentence is considered necessary. The offender should also be liable to fine (Bill No. 34 of 1960 moved by Ajit Singh on 26-8-1960). Under the Children's Acts in several states a child delinquent cannot be sentenced to death (*e.g.*, Sec. 22, Bombay Children Act; Sec. 22, Children Act (Central Act X of 1960) applicable to Union territories).

was to be the normal penalty. The controversy as to the total abolition of capital punishment apart, the desirability of requiring the judge to give reasons for awarding the sentence of death may be examined.

A second problem relates to the sentence conforming to the judgment. In some cases it is found that the findings would indicate a particular type of culpable homicide whereas the sentence happens to be awarded for a different type.[55]

The last and most important problem is the simplification of the law relating to homicide in view of the changed outlook as to the rationale of punishment. We have to see whether the gradations of guilt now incorporated in the definitions of culpable homicide and murder serve any purpose and whether as Walsh says, " In practice these works of art in draftsmanship break down and the simple English dichotomy of " murder and manslaughter " is to be preferred.[56] Fewer categories with wider discretion in imposing punishment is preferable to a plethora of categories. Section 300 may be recast omitting the four clauses that repeat the *mens rea* so that every culpable homicide will be murder save in the cases to which the exceptions apply. Further a sentence of imprisonment which may extend up to 14 years may be provided as a third alternative in Section 302, and the judge should be required to give reasons in all cases where the death penalty is to be

---

In a recent case it was stated. " After the amendment of Sec. 367(5) Cr. P. C. in 1956 there is no statutory direction that a court should in such cases record its reasons why the lesser penalty is being awarded, still the courts are not absolved of their duty of exercising their judicial conscience as to whether the extreme penalty should be awarded or only the life sentence. " *Mojia Ratna* v. *The State*, A.I.R. 1961 Madhya Pradesh, 10 at p. 12.

55. *Indersingh Bagga* v. *The State* A.I.R. 1955 S.C. 439; *William Slaney* v. *The State of Madhya Pradesh* A.I.R. 1956 S.C. 116; *Kapur Singh* v. *The State of Pepsu* A.I.R. 1950 S.C. 654; *Gahber Pande* v. *Emperor*, 7 Pat. 638; *Inder Singh* v. *The Crown*, 10 Lah. 477.

56. (i) " The beautifully moulded definitions of murder and of culpable homicide not amounting to murder set out every phase of thought through which a man's mind may pass when he is engaged in a fight and burning to defeat and injure his enemy. But men do not think aloud in a confused fight when they are " seeing red " and expecting every minute to be knocked out themselves. How are you to apply almost metaphysical processes of reasoning to the mental processes of half-mad savages when you are not quite sure of what the real facts are ? " Walsh C.: *Crime in India*, quoted in Administrative cases, Statutes and Commentaries by Michael and Weschler (1940) p. 1292.

awarded. The punishment for culpable homicide not amounting to murder in the first part of section 304 may be altered to a single one of imprisonment which may extend up to 14 years.

(ii) The Royal Commission observed "We think it is abundantly clear however that so far as a difference between murder and culpable homicide can be maintained apart from the excepted cases, it rests on a distinction far too subtle and refined to constitute a just criterion of liability to suffer capital punishment, (para 511). Sir Reginald Craddock is quoted as having said that he did not believe any jury would ever quite gather the difference between culpable homicide and murder as defined in the Indian Law" (para 511). The Report on the Abolition of Capital Punishment Cmd. 8932 (1949-53).