

LAW OF CRIMES -II

Q.1-Define Culpable Homicide .Discuss the circumstances in which culpable homicide is murder. Distinguish between murder and culpable homicide.

Q.1.(a)-What do you understand by term Homicide?

- Homicide is derived from the Latin phrases *homi* (man) and *cido* (cut).
- Homicide literally means “the killing of a human being by another human being.”
- The term ‘homicide’ refers to the act of causing or hastening the death of a human being by another human being.
- However, not all homicides are illegal or criminal.
- There are two sorts of homicides:
 - Lawful homicides and,
 - Unlawful homicides.
- Lawful homicides are ones that fall under the IPC’s Chapter on General Exceptions and are hence not penalised.
- The homicides that are penalised under the Code clearly fall within the category of unlawful homicides.

Q.1.(b)- What is Culpable Homicide?

Ans.Culpable Homicide-

- Sec.299 and 300 of the IPC,1860 deals with culpable homicide and murder, respectively.
- Section 299 of the Indian Penal Code defines culpable homicide, whereas Section 300 deals with the concept of murder.
- Section 299 defines Culpable Homicide as follows-
“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.”

EXPLANATIONS –

1. A person who causes bodily injury to the other person who is suffering from a disease or disorder and thereby accelerates the death of the person shall be deemed to have caused his death.
2. Where death is caused by such bodily harm, the person shall be deemed to have caused death, although proper remedies and treatments are provided.
3. If the death of the child is caused in mother’s womb then it will not amount to culpable homicide, until and unless any body part of the baby is out of the womb and only then death will amount to culpable homicide.

Q.1(c) Write down essentials of culpable homicide.

Essential ingredients of culpable homicide-

The following are the essential elements of culpable homicide:

- a person must be dead;
- the death must have been caused by the act of another person; and
- the act causing death must have been done with:
 - (a) the intention of causing death; or
 - (b) the intention of causing bodily injury likely to cause death; or
 - (c) with the knowledge that such an act is likely to cause death.

Q.1(d) Write three Important Cases Related To Culpable Homicide .

Ans.

1. **Narasingh Challan v. State of Orissa, (1997) 2 Crimes 78 (Ori).** “Culpable homicide” is the genus, and “murder” is the species. All “murder” are culpable homicide but not vice-versa;
2. **Virsa Singh vs State of Punjab (AIR 1958 SC 465):** In this case, the Supreme Court held that there must be a direct consequence of the injuries inflicted on the deceased. Therefore, intervening causes must not be independent or unconnected with the injury sustained by the deceased.
3. **Joginder Singh vs State of Punjab (AIR 1979 SC 1876):** The Supreme Court held that there has to be a proximate causal link between the two, i.e. death and the act. The death must be a direct consequence of such an act.

Q.1.(d)- What is murder?

Under Section 300 of IPC, Subject to certain exceptions,culpable homicide is murder,

1. if the act by which the death is caused is done with the intention of causing death, or-
2. 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-
3. 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-
4. 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

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Q.2 When does culpable homicide does not amount to murder?What is the punishment for it.Distinguish between murder and culpable homicide.

Q.2.(a)- When does culpable homicide does not amount to murder?

Ans.Section 300 states Following 5 exceptions when **culpable homicide does not amount to murder.**

- 1.Culpable homicide is not murder if the offender causes the death in grave and sudden provocation of the person who delivered the provocation.
2. 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.
3. Culpable homicide is not murder if the offender, while acting as a public servant or assisting a public servant acting for the benefit of public justice, exceeds the powers granted to him by law and causes death by doing an act.
4. Culpable homicide is not murder if it is committed in the heat of emotion during a sudden conflict and without the offenders taking undue advantage or acting in a cruel or unusual manner.
5. Culpable homicide is not murdered if the dead individual is beyond the age of eighteen years and suffers or risks death with his consent.

Q.2.(b) What is the punishment under IPC for Culpable Homicide not amounting to murder and Murder ?

Ans.Punishment for Culpable Homicide not amounting to murder

- According to section 304 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; then the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,
- And , if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death,the punishment is imprisonment of either description for a term which may extend to ten years, or with fine, or with both,

Q.2(c) What is the Punishment for murder.

Ans.

- Punishment for murder is given in sec 302.
- According to sec 302 Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.
- Death penalty provided under this section is only given under rarest of rare cases.(Bachan Singh v. State of Punjab,1980)
- In the case of Machhi Singh And Others v. State Of Punjab, the Indian Judiciary stated the grounds on which death penalties were, they are as follows:
 1. When the murder committed is extremely brutal, ridiculous, diabolical, revolting, or reprehensible manner.
 2. The magnitude of the crime is at a large scale which means causing multiple deaths;
 3. When death is caused because of the caste and creed of the person;
 4. When the motives of the accused were cruelty or total depravity; and
 5. When the murder victim is an innocent child, a helpless woman or person (due to old age or infirmity), a public figure, etc.

Q.2(d) Distinguish between murder and culpable homicide.

- The court made distinction between culpable homicide andmurder for the first time in R v. Govinda.
- In the landmark judgment of *State of AP. v. Rayavarappu Punnaya (1977)*, the Apex Court created a comparison table to grasp the key differences between them.

Culpable homicide	Murder
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done –
Intention With the intent to cause death; or with the intention to cause physical damage that is likely to result in death; or	Intention With the intention of causing death; or with the intention of inflicting physical injury that the offender knows will result in the death of the person to whom the harm is inflicted; or with the intention to inflict bodily damage on any person and the physical injury intended to be inflicted is sufficient to cause death in the ordinary course of nature, or
Knowledge Knowing that the conduct is likely to result in death.	Knowledge With the knowledge that the conduct is so immediately harmful that it must almost certainly result in death or bodily injury that is likely to result in death and without any justification or risk of causing death or injury as described above.

LL.B(3 YEAR.) SEM-2 UNIT-1

LAW OF CRIMES –II

Q.3 What are the essentials of Dowry death according to section 304-B of IPC.Explain Dowry Death with the help of decided cases.

Q.3.(a)-What do you understand by the term dowry death?

Ans. DOWRY DEATH

- Dowry death is defined in Sec 304B.
- According to Sec 304B,
“Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.”

Q.3(b) Define Dowry.

- The term ‘dowry’ has not been defined in **Indian Penal Code,1860 (IPC)** but in ‘**Dowry Prohibition Act, 1961**’.
- According to the act, it has been defined as **any property or valuable security** given or agreed to be given **directly or indirectly**:
 - By **one party** to a marriage to the **other party** to a marriage or
 - By the **parents of either party** to a marriage or by **any other person** to **either party to the marriage** or **any other person** at or before or any time after (on three occasions) the marriage in connection with the marriage of the said parties.

Q.3(c) Write down the Essentials of Section 304B.

- The **death of a woman** must be caused within by **burns or bodily injury** or otherwise than under normal circumstances.
- The **death must** occur within **7 years of marriage**.
- **Woman** must have been subjected to **cruelty or harassment** by her **husband or his relatives**.
- **Cruelty or harassment** should be in connection with the **demand of dowry** and soon before death.
- Such **cruelty or harassment** is shown to have been meted out to the woman soon before her death.

Punishment

- Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Q.3(d) Discuss the Important Cases on Dowry death

Ans.(1.)Kamesh Panjiyar @ Kamlesh v. State of Bihar (2005)

In this case, the Supreme Court stated the key ingredients of dowry death (Section 304B, IPC) as follows:

1. A woman’s death should be caused by burns, physical harm, or some other unusual event.
2. She should have died during the first seven years of her marriage.
3. Her husband or a relative of her husband must have treated her cruelly or harassed her.
4. Such cruelty or harassment should be in response to or in conjunction with a dowry demand.
5. It must be proven that the woman was subjected to such brutality or harassment shortly before her death.

(2.) Satbir Singh vs The State of Haryana (2021),

In this case it was held by the Apex Court that if the prosecution can establish the ingredients of Section 304-B of IPC the burden of proof of innocence completely lies on the defence.

(3.) Mustafa Shahadal Shaikh v. the State of Maharashtra (2012),

- The ratio decidendi of the court was states that the language used under Section 304-B, “soon before death” does not prescribe any definite time frame as such under both the Indian Penal Code as well as under Section 113-B of Indian Evidence Act.
- Accordingly, the term “Soon before death” could be determined by Courts depending upon the facts & circumstances of the case

(4.) State Of Punjab vs Gurmit Singh

- The accused was presecuted under Section 304B for causing the death of Gurjit Kaur, Paramjit Singh’s wife.
- The respondent claimed he could not be prosecuted since he was not a relative of the deceased.
- The court ruled that because he did not meet the description of a relative, he could not be prosecuted under Section 304B, but he might be tried under other provisions for any offence committed.
- The case examined the term ‘relative’ and decided that only individuals connected by blood, adoption, or marriage may be held responsible under Section 304B, while others can be held guilty under other provisions.

(5.)Reema Aggarwal v. Anupam (2004)

- The language used in this Section can be interpreted to mean not just people who are legally married, but also those who have experienced some sort of marriage and hence appears to be the husband.

LL.B(3 YEAR.) SEM-2 UNIT-1

LAW OF CRIMES -II

Q.4-What do you mean by term “Hurt”. Distinguish it from grievous hurt.

Q4.(a)-What do you understand by term “hurt”?

Section 319 of the Indian Penal Code, 1860 (hereinafter “IPC”) defines hurt as: “whoever reasons bodily pain, disorder or disease to any man or woman is said to have caused harm.”

To constitute any one or more of essentials of simple hurt must be present:

- Bodily Pain
- Infirmity to another
- Disease

Bodily Pain

According to Section 319 of the Indian Penal Code, whoever causes bodily ache, disorder or disease to any individual is said to cause hurt. The expression ‘physical pain’ means that the pain must be physical instead of any mental pain. So mentally or emotionally hurting anyone will no longer be ‘harm’ inside the meaning of Section 319.

Infirmity to another

Infirmity denotes the bad state of frame of mind and a state of transient intellectual impairment or hysteria or terror would constitute disease inside the meaning of this expression inside the section. It is an incapability of an organ to carry out its everyday function, whether temporarily or completely. It may be delivered through the administration of a toxic or poisonous substance or by means of taking alcohol administered by way of any other person.

Disease

A communication of ailment or disease from one individual to another through the way of touch would constitute hurt. But, the idea is unclear with respect to the transmission of sexual sicknesses from one individual to every other.

In Raka vs. Emperor, the accused was a prostitute and she inflicted syphilis to her customers. It was held that accused, the prostitute was liable under Section 269 of IPC- negligent act likely to spread infection of any disease dangerous to the life of another person.

Q.4.(b)- What is Grievous hurt?

Ans. Section 320 defines grievous hurt.

The following kinds of hurt only are termed as “grievous”:

1. Emasculation,
2. Permanent injury to eyesight or either of the eye,
3. Permanent deafness or injury to either of the eye,
4. Privation of any member or joint (loss of limb),
5. Impairing of Limb,
6. Permanent disfiguration of the head or face,
7. Fracture or dislocation of a bone or tooth,
8. Any hurt which risks life or which causes the victim to be during the time of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

If any person causes injury enumerated in section 320 of the Indian penal code, he is said to cause grievous hurt. The person shall be punished with imprisonment up to seven years and fine.(Sec 325)

LL.B(3 YEAR.) SEM-2 UNIT-1

LAW OF CRIMES -II

Q.5-Write short notes on the following.

- (a) Wrongful Restraint (b) Wrongful Confinement
(c) Criminal Force (d) ASSAULT

Q.5.(a)- What do you mean by Wrongful restraint?

Ans. Wrongful Restraint

According to Section 339 of the Indian Penal Code;

To establish the offence of wrongful restraint the complainant must prove all the following essential:

1. That there was an obstruction;
2. That the obstruction prevented the complainant from proceeding in any direction;
3. That the person/complainant so proceeding must have a right to proceed in the direction concerned.

Section 341 of the Indian Penal Code imposes punishment against the wrongdoer under Section 339 with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both.

Q.5(b) What do you mean by Wrongful Confinement?

According to Section 340 of the Indian Penal Code;

The essential ingredients of the offence of wrongful confinement are:

1. The accused should have wrongfully restrained the complainant (i.e. all ingredients of wrongful restraint must be present)
2. Such wrongful restraint was to prevent the complainant from proceeding beyond certain circumscribing limits beyond which he or she has the right to proceed.
 - Section 342 of the Indian Penal Code states that whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both .
 - The classification of this offence is that it is cognizable, bailable and Triable by any Magistrate. Further, it is Compoundable by the person confined with the permission of the court

Q.5.(c) Explain criminal force and assault.

Ans. Criminal Force(Sec.350)

Essentials Of Criminal Force

Criminal force constitutes the following essentials:

1. There must be use of force.
2. The force should be used intentionally.
3. The force must have been used;

a. For committing of an offence; or

b. With the intention to cause fear, injury or annoyance to the other with knowledge.

From this, we understood that the use of force is mandatory but mere force is not punishable under law.

Section 349 defines force but it is not treated as an offence. That can be used in a positive sense also;

Q.5(d) Explain Assault.

Ans. Assault(Section351)

Essentials Of Assault

1. Gestures or preparation:- that the accused should make a gesture or preparation to use criminal force.
2. Such gestures or preparation should be made in the presence of the person in respect of whom it is made.
3. The act was with an intention to cause an apprehension of harm or injury;
4. The act caused apprehension in the eyes of the victim that he would be harmed by another person's action.

LL.B(3 YEAR.) SEM-2 UNIT-1

LAW OF CRIMES -II

Q.6- What do mean by Kidnapping. What are the types of Kidnapping? Distinguish between kidnapping and Abduction?

Q.6.(a) What do you mean by kidnapping?

- Kidnapping means taking away a person against his/her will by force, threat or deceit. Usually, the purpose of kidnapping is to get a ransom, or for some political or other purposes etc.
- Kidnapping is classified into two categories in Section 359 of the Indian Penal Code and defined in Section 360 and 361 of the Indian Penal Code.

Q.6(b) How many kinds of kidnapping are there?

As per Section 359 of the Indian Penal Code, Kidnapping is of two types:

1. Kidnapping from India,
2. Kidnapping from lawful guardianship.

Q.6. (c) What do you understand by kidnapping from India?

- Section 360 explains kidnapping from India. According to section 360, if any person takes a person beyond the limits of India against the consent of that person or against the consent of someone who is legally entitled to give consent on that person's behalf, then the offence of kidnapping from India is committed.
- **Illustration:** 'A' is a woman living in New Delhi. 'B' takes 'A' to Bangladesh without her consent. 'B' committed the offence of kidnapping 'A' from India.

Q.6(d) What do you understand from kidnapping from lawful guardian?

Ans. Section 361 of the code deals with the **Kidnapping from lawful guardian. According to this section-**

“Whoever takes or entices any minor under 16 years of age if a male, or under 18 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

The following are the ingredients of Section 361:

1. Taking away or enticing of a minor or a person of unsound mind

2. Such minor must be under 16 years of age if a male and under 18 years of age if a female.

3. The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.

4. The taking or enticing must also be without the consent of the guardian.

The act of taking is not a continuous act and as such when once the boy or girl has been actually taken out of the keeping, the act is complete.

Important Case law-

State of Haryana v Raja Ram (1973)

- In this case, the accused induced the prosecutor who was of 14 years of age away from her lawful guardianship.
- The Supreme Court in this case held that the persuasion by the accused created a will on the part of the minor who kept her away from her lawful guardianship and therefore it resulted in 'kidnapping'.

Vardaragan v. State of Madras.

- In this case, the court, highlighted the dichotomy between 'taking' and 'allowing a minor to accompany a person'.
- Stating that the two are not synonymously held that where the minor having capacity to understand the consequences of her actions voluntarily joins the accused of her free will, the accused cannot be held liable for taking her away from the keeping of a lawful guardian.

Pradeep Kumar v. State of Bihar and Anr. In this case, Supreme Court held that the consent obtained by lying to the father of the girl regarding the purpose of taking his minor daughter away cannot be termed as consent under the purview of this section and such taking away would amount to kidnapping.

Thakorlal D. Vadgama v. State of Gujarat (1973),

- In this case accused, Thakori Lal was held liable for kidnapping under Section 363.
- He kidnapped a minor girl, Mohini from the lawful guardianship of her father by inducing her to leave her father's place and by encouraging her that he would give her shelter.
- The Supreme Court in this case held that mere circumstances that his action does not cause her to immediately leave her parental home would not be a defence for the accused to absolve him from the offence of kidnapping.

Q.6(e) Define Abduction.

Ans. Abduction has been defined under Section 362 of the Indian Penal Code which states that if a person either by force compels a person or induces another person to go from any place is said to abduct such person.

Ingredients

This section requires two things:

1. Forceful compulsion or inducement by deceitful means.
2. The object of such compulsion or inducement must be the going of a person from any place.

Case law- Bahadur Ali v King Emperor

- In this case, the accused misrepresented himself as a police constable and kept a girl in his house for a certain time regarding money. The court in this case held that his act amounted to abduction.

Vishwanath v. State of Uttar Pradesh AIR 1960 SC 67. In this case, It was held that mere abduction is no offence at all. The guilty and wrongful intention must be present for the offence to be punishable.

Q.6 (f) Distinguish between kidnapping and Abduction?

Ans.

S.no.	Kidnapping	Abduction
1.	Section 359 defines the offence of kidnapping.	Section 362 defines the offence of abduction.
2.	Kidnapping refers to taking away a minor or person of unsound mind from its legal guardianship or taking away any person beyond the limits of India.	Abduction refers to compelling or inducing any person by using force or through any deceitful means, to take him/her from one place to another.
3.	It is not a continuing offence. It is completed soon at the moment a person is separated from lawful guardianship.	It is a continuing offence. It continues till the person is removed from one place to another.
4.	Section 359 defines two types of kidnapping: 1. Kidnapping from India (Section 360) 2. Kidnapping from lawful guardianship (Section 361)	Section 362 defines only one type of abduction.
5.	It involves minors, i.e., girls upto the age of 18 years or boys upto the age of 16 years, or persons of unsound mind	It can take place in reference to a person of any age.
6.	Means used are immaterial.	Force, compulsion or deceitful means should be involved.
7.	In the case of "kidnapping from lawful guardianship", the consent of a lawful guardian is relevant to decide the commission of the offence. But in the case of "kidnapping from India", it must be shown that it was done without the consent of the person or the person legally authorised to give consent on that person's behalf.	The consent of the person is induced by force or compulsion or means of deceit.
8.	It is a substantive offence. It means merely the act of taking away constitutes kidnapping.	It is not a substantive offence. It constitutes an offence when it was done with the intention to commit other offences.
9.	Sec 363 prescribes punishment for kidnapping which is imprisonment that may extend to 7 years and a fine.	Mere abduction is not punishable unless done with intent to commit other offences as provided in Sections 364 to 369.