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Genus and Species: Re-Drawing the Line Between Culpable Homicide and Murder Under the Bharatiya Nyaya Sanhita, 2023

DHARSHINI G* AND LEKSHMI VS**

ABSTRACT

Indian criminal law has, for over a century and a half, wrestled with a single deceptively simple question: when does a killing amount to murder, and when does it remain the lesser offence of culpable homicide? The Bharatiya Nyaya Sanhita, 2023 ("BNS") has replaced the Indian Penal Code, 1860 ("IPC"), and in doing so has renumbered, though not fundamentally reworked, this distinction. Section 100 of the BNS now defines culpable homicide, while Section 101 sets out the four situations in which culpable homicide is elevated to murder, subject to five statutory exceptions. This paper argues that the persistence of interpretative difficulty is not a drafting failure peculiar to the BNS but an inherent feature of any offence built on graduated mental states. Using a doctrinal method, the paper traces the historical development of the distinction from the IPC through the Law Commission's Forty-Second Report and the Malimath Committee, examines the statutory ingredients of Sections 100 and 101 of the BNS, and revisits the jurisprudence that continues to govern their application, most notably Govinda, Virsa Singh, and Rayavarapu Punnayya. It concludes that while the BNS offers linguistic continuity rather than conceptual reform, the underlying principle that every murder is culpable homicide, but not every culpable homicide is murder, remains indispensable to proportionate sentencing and the protection of individual liberty.

Keywords: Culpable Homicide, Murder, Bharatiya Nyaya Sanhita 2023, Indian Penal Code 1860, Mens Rea, Grave and Sudden Provocation, Judicial Interpretation, Comparative Criminal Law

I. INTRODUCTION

Of all the wrongs recognised by criminal law, the taking of a human life occupies a singular place. Property may be restored, reputation rebuilt, and liberty regained, but death admits no remedy. It is this irreversibility that has led legal systems, ancient and modern, religious and

* Author is a Student at Anvikshiki School of Law for Women, SCSVMV University, Enathur, Kanchipuram, Tamil Nadu, India.

** Author is an Assistant Professor at Anvikshiki School of Law for Women, SCSVMV University, Enathur, Kanchipuram, Tamil Nadu, India.

secular, to treat homicide as the gravest of crimes. Blackstone called it an offence against the law of nature itself, a wrong that injures not merely the victim but the peace of the whole community.¹

Yet not every killing is unlawful. A soldier acting in a just war, an executioner carrying out a lawful sentence, and a person exercising the right of private defence all cause death without incurring criminal liability. Where a killing does attract liability, Indian law, first under the IPC and now under the BNS, divides it into gradations keyed to the accused's state of mind. Culpable homicide is the broader category; murder is its most aggravated form. The proposition that every murder is culpable homicide, but not every culpable homicide is murder, is one of the oldest maxims of Indian criminal law, and it remains the organising idea of this article.

The purpose of this study is threefold: to explain why the line between the two offences continues to generate litigation despite two centuries of judicial elaboration; to set out, section by section, how the BNS has restated the ingredients of culpable homicide and murder; and to assess whether the 2023 codification has resolved, or merely relocated, the difficulties identified by earlier law reform bodies.

II. THE CONCEPTUAL OVERLAP BETWEEN CULPABLE HOMICIDE AND MURDER

Section 100 of the BNS, the successor to Section 299 of the IPC, defines culpable homicide as causing death with the intention of causing death, with the intention of causing bodily injury likely to cause death, or with the knowledge that the act is likely to cause death.² Section 101, the successor to Section 300 of the IPC, opens with the words “except in the cases hereinafter excepted, culpable homicide is murder if”, language that immediately signals that murder is not a separate offence built on different ingredients but an aggravated subset of culpable homicide itself.³

Because neither offence can be identified from the physical act alone, the real difficulty is evidentiary: a court must reconstruct, from external conduct, a state of mind that the accused will rarely admit to. A single blow with a blunt weapon may found either offence depending on facts that a trial court can only infer, which is why appellate outcomes on near-identical facts have not always converged.

Three decisions show how the judiciary has approached this line at different points in time. The earliest, *Reg v Govinda*, arose out of a domestic assault in which the accused's wife died after

¹ 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 177 (Clarendon Press 1769).

² Bharatiya Nyaya Sanhita, 2023, § 100 (India); cf. Indian Penal Code, 1860, § 299 (India).

³ Bharatiya Nyaya Sanhita, 2023, § 101 (India); cf. Indian Penal Code, 1860, § 300 (India).

being pinned down and struck. The Bombay High Court reduced the charge to culpable homicide not amounting to murder on the footing that the accused knew his conduct was dangerous but had neither intended her death nor inflicted an injury of a kind ordinarily fatal.⁴

Nearly a century later, *Virsa Singh v State of Punjab* took the analysis a step further by separating two questions that had previously been run together: whether the accused meant to inflict the particular wound found on the body, and whether that wound, viewed objectively, was one that would ordinarily prove fatal. The Court held that once both questions are answered affirmatively, the offence is murder even if the accused would have preferred that the victim survive.⁵

State of Andhra Pradesh v Rayavarapu Punnayya supplied the vocabulary that later courts and commentators have used ever since to describe the relationship between the two offences, holding that culpable homicide is the genus and murder is the species, and that every instance of the species is necessarily also an instance of the genus, though the converse does not follow.⁶

The five exceptions appended to Section 101 of the BNS, namely grave and sudden provocation, exceeding the right of private defence, acts of a public servant, sudden fight, and consent, complicate matters further by creating a second layer of culpable homicide: killings that would otherwise satisfy the definition of murder but are reduced to the lesser offence because of the circumstances in which they occurred.⁷ The result is a three-tier structure, comprising lawful homicide, culpable homicide not amounting to murder, and murder, within which fine factual distinctions carry enormous consequences for sentencing.

III. RATIONALE AND OBJECTIVES OF THE STUDY

The re-enactment of the homicide provisions under the BNS provides an occasion to ask whether a century of accumulated case law under the IPC continues to apply, and whether the recodification has resolved any of the interpretative difficulties that troubled earlier reform bodies. Four considerations motivate this inquiry.

First, legal continuity: the BNS replaces a code that had governed Indian criminal law for over 160 years, and it is necessary to establish with precision which principles carry over and which, if any, have changed. Second, interpretative clarity: intention and knowledge remain the operative mental elements in both Sections 100 and 101, and their relative degree continues to determine the line between the two offences. Third, judicial and academic continuity: landmark

⁴ *Reg. v. Govinda*, (1876) ILR 1 Bom 342 (India).

⁵ *Virsa Singh v. State of Punjab*, AIR 1958 SC 465 (India).

⁶ *State of Andhra Pradesh v. Rayavarapu Punnayya*, (1976) 4 SCC 382, AIR 1977 SC 45 (India).

⁷ Bharatiya Nyaya Sanhita, 2023, § 101 excs. 1–5 (India).

judgments decided under Sections 299 and 300 of the IPC, foremost among them *Govinda, Virsa Singh*, and *Rayavarapu Punnayya*, remain authoritative under the renumbered provisions, and practitioners require a clear statement of how the old law maps onto the new. Fourth, proportionality: because misclassification between murder and culpable homicide has direct sentencing consequences, ranging from a fixed term of imprisonment to death, the study also considers whether the BNS advances the goal of consistent and proportionate punishment.

IV. RESEARCH METHODOLOGY

This article adopts a doctrinal method. It examines the text of Sections 100 and 101 of the BNS alongside their predecessor provisions, Sections 299 and 300 of the IPC, together with the case law interpreting them and the reports of law reform bodies that shaped their drafting. The analysis is qualitative rather than empirical: its object is to state, explain, and compare the legal position under the two codes rather than to measure sentencing outcomes.

V. HISTORICAL BACKGROUND

The IPC, 1860 was the first Indian statute to draw a formal line between culpable homicide and murder. Section 299 defined culpable homicide by reference to intention or knowledge of causing death; Section 300 then carved out of that broader category the aggravated instances that amounted to murder, subject to five exceptions.⁸ The scheme allowed the law to reserve its harshest punishment for the most deliberate or reckless killings while still penalising less culpable, but nonetheless unlawful, homicides. Over the following century, however, the subtlety of the distinction proved a persistent source of appellate litigation.

The Law Commission's Forty-Second Report of 1971 acknowledged as much, observing that the overlapping language of Sections 299 and 300, combined with the inherently subjective task of inferring intention or knowledge from proved facts, produced genuine inconsistency in judicial outcomes, and recommended a simplification of language so that the mental elements required for each offence would be easier to identify and apply.⁹

Three decades later, the Committee on Reforms of Criminal Justice System, chaired by Justice V.S. Malimath, returned to the same theme, describing the provisions as overly technical and recommending a clearer articulation of the mental elements distinguishing culpable homicide from murder, together with simplified exception clauses, so that the law would be more predictable in application.¹⁰

⁸ Indian Penal Code, 1860, §§ 299–300 (India).

⁹ LAW COMMISSION OF INDIA, FORTY-SECOND REPORT: THE INDIAN PENAL CODE (1971).

These recommendations fed, directly or indirectly, into the drafting of the Bharatiya Nyaya Sanhita, 2023, which replaced the IPC in its entirety. Sections 100 and 101 of the BNS retain the substantive tests developed under Sections 299 and 300 of the IPC almost verbatim, but the surrounding chapter has been renumbered and, in places, its language tidied. The continuity of substance means that the extensive case law built up under the IPC remains directly relevant to the interpretation of the BNS.

VI. THE CONCEPT OF HOMICIDE: LAWFUL AND UNLAWFUL

Homicide, in its plain sense, is simply the killing of one human being by another; it says nothing, by itself, about legal responsibility. Lawful homicide covers killings that the law permits and does not punish: execution carried out under a valid death sentence, killing in the genuine exercise of the right of private defence, and killing by police or other public servants acting in good faith in the discharge of their duty. Unlawful homicide, by contrast, is punishable, and is itself graded by the degree of the accused's culpability. It includes murder, the most aggravated form; culpable homicide not amounting to murder, where intention or knowledge of causing death is present but circumstances reduce culpability; and death caused by a rash or negligent act, where there is no intention to kill at all but the act nonetheless causes death.

A. A comparative note: India, England and Wales, and the United States

A brief comparative glance shows that most common law systems recognise a similar gradation, even if the labels differ. In England and Wales, the Homicide Act 1957 distinguishes murder from manslaughter and infanticide, with manslaughter covering killings committed without the settled intention required for murder or under diminished responsibility.¹¹

In the United States, most states distinguish first-degree murder, being a premeditated and intentional killing, from second-degree murder, being an intentional but unplanned killing, as well as voluntary manslaughter, being a killing in the heat of passion, and involuntary manslaughter, being a killing through recklessness or negligence.¹² The common thread across all three systems is the calibration of punishment to the degree of deliberation, recklessness, or negligence involved in causing death, even though the precise statutory labels and thresholds differ.

¹⁰ COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, REPORT (Ministry of Home Affairs, Government of India 2003) (the Malimath Committee).

¹¹ Homicide Act 1957, 5 & 6 Eliz. 2 c. 11, § 2 (UK).

¹² See MODEL PENAL CODE § 210.2 (AM. LAW INST. 1985).

VII. CULPABLE HOMICIDE: SECTION 100 OF THE BHARATIYA NYAYA SANHITA

Chapter VI of the BNS deals with offences affecting the human body, ranging from murder and hurt to wrongful confinement, assault, kidnapping, and forced labour, and also introduces new offences such as organised crime and terrorist acts.¹³ Section 100 provides that a person causes culpable homicide where death is caused by an act done with the intention of causing death, with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act is likely to cause death.

Three ingredients must be established before the offence is made out. First, the death of a human being must actually have been caused, and that death must be the direct result of the accused's act, which is the *actus reus* of the offence. Second, the accused's mental state at the time of the act must fall within one of the three categories set out in Section 100: an intention to kill, as where an accused shoots the victim at point-blank range; an intention to cause bodily injury of a kind ordinarily likely to cause death, as where an accused stabs the victim in the chest or abdomen knowing the danger such a wound presents; or knowledge, without any specific intention to kill or injure a particular person, that the act is so dangerous that it may cause death, as where a person drives at high speed into a crowded street or fires a weapon into a crowd. Third, it must be borne in mind that culpable homicide is not automatically murder; whether it becomes murder depends on the strength of the intention or knowledge involved, murder being simply the most extreme point on the same continuum.¹⁴

A. Illustrations

A puts poison in B's food intending to kill B: this is culpable homicide founded on direct intention. A strikes B on the head with an iron rod, aware that the blow could cause death: this is culpable homicide founded on an intention to cause an injury likely to cause death. A throws a heavy stone onto a busy road, aware that it might kill a passer-by though intending no particular victim: this is culpable homicide founded on knowledge alone.

B. The statutory explanations

Section 100 is accompanied by three explanations that extend or clarify the scope of the offence.¹⁵ The first provides that where the victim already suffers from a disorder, disease, or bodily infirmity, and the accused's act accelerates death, the accused is nonetheless deemed to have caused the death; a pre-existing vulnerability in the victim is no defence. If A, knowing

¹³ Bharatiya Nyaya Sanhita, 2023, ch. VI (India).

¹⁴ Bharatiya Nyaya Sanhita, 2023, § 100 (India).

¹⁵ Bharatiya Nyaya Sanhita, 2023, § 100 expls. 1–3 (India).

that B has a weak heart, strikes B hard and B dies of heart failure, A has still caused B's death for the purposes of the section.

The second explanation provides that where death is caused by a bodily injury, the person inflicting the injury is deemed to have caused the death even though prompt or skilful medical treatment might have prevented it. If A stabs B in the abdomen and B dies because timely treatment was unavailable, A cannot escape liability by pointing to the possibility that different medical care might have saved B.

The third explanation addresses the unborn child: causing the death of a child in the mother's womb is not homicide at all, but causing the death of a living child, once any part of that child has been delivered, even if it has not yet breathed or been completely born, may amount to culpable homicide. The death of a foetus still in the womb is therefore a matter for the law of miscarriage, not homicide, whereas an act that kills a child during the process of birth, once part of the child has emerged, falls within Section 100.

C. Leading authority

Reg v Govinda is still taught as the clearest early illustration of the boundary that Section 100 draws. The rupture of the victim's spleen, caused when her husband pinned her down during a domestic assault, satisfied the requirement of knowledge but fell short of either an intention to kill or an injury of the kind ordinarily regarded as fatal, which is precisely why the case settled as culpable homicide rather than murder, and why it continues to be cited whenever a court must separate the two mental states in practice rather than in the abstract.¹⁶

A second line of authority is concerned less with the intention-versus-knowledge divide than with attributing that intention correctly among multiple participants in a single violent episode. In *Joginder Singh v State of Punjab*, three family members confronted a household after an earlier altercation, and when a relative of that household stepped in to plead for calm, one of the three struck him fatally on the neck; a second man present, unconnected to that blow, drowned after jumping into a well while fleeing in fear. The Supreme Court convicted only the person who struck the fatal blow, holding that murder liability could not be extended to his companions without proof that they shared his specific intention, and that the drowning was too far removed from anything the accused had done or intended to be treated as a homicide at all.¹⁷

¹⁶ *Govinda*, *supra* note 4.

¹⁷ *Joginder Singh v. State of Punjab*, (1979) INSC 131 (India).

VIII. MURDER: SECTION 101 OF THE BHARATIYA NYAYA SANHITA

Section 101 opens with the words “except in the cases hereinafter excepted, culpable homicide is murder if”, confirming that murder cannot exist independently of culpable homicide as defined in Section 100; it is simply culpable homicide of the most serious kind, provided that none of the five exceptions applies.¹⁸ A case of culpable homicide becomes murder if it falls within one of the four clauses of Section 101 and does not fall within any of the five exceptions.

A. The four clauses

Under the first clause, an act done with the direct intention of causing death is murder, without any need to assess the severity of the resulting injury; the intention to kill is, by itself, sufficient. A, who shoots B in the head at point-blank range intending to kill him, commits murder on this basis alone.

Under the second clause, an act done with the intention of causing bodily injury, where the offender additionally knows that such injury is likely to cause the death of that particular victim because of some special condition known to the offender, is murder. If A knows that B suffers from a weak heart and delivers a severe blow to B's chest, from which B dies, the offence is murder because A's knowledge of B's condition supplies the necessary mental element, even without a specific intention to kill.

The third clause shifts from a subjective to a largely objective inquiry: once the accused is shown to have intended a particular bodily injury, it no longer matters whether death itself was intended, because the offence is murder if that injury, judged against ordinary medical experience rather than the accused's own expectations, was one likely to kill. *Virsa Singh v State of Punjab* remains the leading authority for keeping the two enquiries, namely the intention to cause the injury and the objective gravity of the injury, analytically distinct rather than allowing proof of one to be treated as automatic proof of the other.¹⁹

The fourth clause departs from the first three in dispensing with any injury or intention directed at a specific person altogether: it catches conduct so obviously lethal in its risk to human life generally that the offender's awareness of that risk, coupled with an unjustified decision to proceed anyway, is treated as equivalent to an intention to kill. *State of Andhra Pradesh v Rayavarapu Punnayya* locates the threshold at something close to practical certainty of death,

¹⁸ Bharatiya Nyaya Sanhita, 2023, § 101 (India).

¹⁹ *Virsa Singh*, *supra* note 5.

using firing into a crowded market, derailing a train, and setting fire to an occupied dwelling as the paradigm examples.²⁰

B. The exceptions to murder

Exception 4 rests on the idea that a killing born of a genuinely spontaneous affray is morally distinguishable from one carried out in cold blood. For the exception to apply, the encounter must have been unplanned on both sides, must not have given either party the chance to premeditate, and must not have been marked by cruelty or by the accused pressing an advantage the other side did not have. Because the provision speaks of a “fight” rather than a one-sided attack, courts have insisted on some degree of mutual engagement before treating the exception as available, and have withdrawn it altogether where the violence used went beyond what the sudden quarrel could explain.²¹

The provocation exception proceeds from a related but distinct premise: that a person who kills after being suddenly deprived of self-control by the victim's own conduct is less culpable than one who kills after time to reflect. *K.M. Nanavati v State of Maharashtra* remains the case against which every later provocation plea is measured, precisely because the accused's discovery of his wife's infidelity, followed by an interval before the fatal shooting, forced the courts to confront directly how much delay is consistent with provocation still being sudden, and how much converts what might have been a defence into evidence of premeditation.²²

Exception 5 addresses consent. Ordinarily, causing the death of another person is murder regardless of any consent given by the victim, but where the person killed is above the age of eighteen and voluntarily consents, whether to death itself or to the risk of death, the offence is reduced to culpable homicide not amounting to murder. Four conditions must be satisfied for the exception to apply: the victim must be an adult, since the consent of a minor is invalid; the consent must be free, informed, and not procured by threat, fraud, or coercion; the consent must relate to death or to the risk of death; and the consent must precede or accompany the act, not follow it.²³ A duel in which both parties knowingly risk death, or a hazardous surgical procedure undertaken with full knowledge of the risk of death, are commonly cited illustrations of circumstances in which the exception may apply.

²⁰ *Rayavarapu Punnayya*, *supra* note 6.

²¹ *Bharatiya Nyaya Sanhita*, 2023, § 101 exc. 4 (India); *see Ghapoo Yadav v. State of Madhya Pradesh*, (2003) 3 SCC 528; *Surinder Kumar v. Union Territory, Chandigarh*, (1989) 2 SCC 217 (India).

²² *K.M. Nanavati v. State of Maharashtra*, AIR 1962 SC 605 (India).

²³ *Bharatiya Nyaya Sanhita*, 2023, § 101 exc. 5 (India).

The constitutional dimension of assisted suicide and consent to death has been considered by the Supreme Court on more than one occasion. In *P. Rathinam v Union of India*, the Court initially took the view that the right to life under Article 21 of the Constitution encompassed a right not to be compelled to live, but this position was overruled in *Gian Kaur v State of Punjab*, where the Court held that Article 21 does not include a right to die, so that assisted suicide remains punishable, though Exception 5 to Section 101 may still operate to reduce the liability of the person who assists from murder to culpable homicide.²⁴

IX. PERSISTENT DIFFICULTIES

Four difficulties recur in the application of Sections 100 and 101, and none of them is resolved simply by renumbering the provisions.

The first is what may be called the thin-line problem: because the distinction between culpable homicide and murder turns on the degree of intention or knowledge, and that mental state can only be inferred from external facts, courts frequently face genuine evidentiary doubt, and a charge that appears on its face to be murder is not infrequently reduced to culpable homicide not amounting to murder where the prosecution cannot establish the higher mental element with sufficient certainty.

The second is sentencing variability. Because murder attracts the harshest punishment available under the BNS while culpable homicide not amounting to murder carries a materially lower sentence, the classification exercise carries enormous stakes, and differences in judicial approach to essentially similar facts can produce inconsistent outcomes.

The third is the difficulty of establishing individual culpability in cases of group violence, where it is often unclear which participant possessed the intention or knowledge required for murder and which participant merely shared a common object falling short of that threshold, as the facts in *Joginder Singh* illustrate.²⁵

The fourth is a broader socio-legal concern: commentators have observed that sentencing outcomes in homicide cases can be affected by the relative social and economic position of the accused, raising questions about the even-handed application of an already discretion-laden framework.²⁶ This is not a criticism unique to the BNS, but it is a consideration that any future reform of the sentencing framework for homicide would do well to address.

²⁴ *P. Rathinam v. Union of India*, (1994) 3 SCC 394 (India), overruled by *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648 (India).

²⁵ *Joginder Singh*, *supra* note 17.

²⁶ See K.D. GAUR, TEXTBOOK ON THE INDIAN PENAL CODE (7th edn, LexisNexis 2020).

X. CONCLUSION

The Bharatiya Nyaya Sanhita, 2023 preserves, in substance, the framework that the Indian Penal Code developed over more than a century: culpable homicide as the genus, murder as its most aggravated species, and a set of exceptions that recognise the law's traditional sympathy for provocation, sudden affray, and genuine consent. What has changed is the numbering, and in places the phrasing; what has not changed is the underlying difficulty of translating a mental state into a legal category on the basis of external, and often ambiguous, evidence. The jurisprudence built up under *Govinda*, *Virsa Singh*, and *Rayavarapu Punnayya* therefore remains directly applicable to Sections 100 and 101 of the BNS, and will continue to supply the tests by which trial courts distinguish the two offences. If the recodification is to achieve more than a change of section numbers, future reform should focus on the area the Law Commission and the Malimath Committee both identified as most in need of attention: clearer sentencing guidance that narrows, rather than merely inherits, the discretion courts currently exercise in classifying a killing as murder or as culpable homicide not amounting to murder.
