

LEGAL STUDY ON HOMICIDAL OFFENCES UNDER CRIMINAL LAW IN MYANMAR

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Abstract

Homicide refers to the act of killing a human being. Homicide can be lawful or unlawful. Culpable homicide is punishable by law is divided into two categories; such as culpable homicide amounting to murder and culpable homicide not amounting to murder. Culpable homicide is a kind of unlawful homicide. It is provocation caused by grave and sudden circumstances, exceeding the right of private defence. Murder means to commit the crime of intentionally killing a person. All the cases of murder are culpable homicide but culpable homicide is not murder. Murder is the highest offence in the Criminal Law. Intention and knowledge are important points of the culpable homicide amounting to murder. There is a thin line between murder and culpable homicide. In practice, the circumstance of two offences are closely connective. In deciding of a culpable homicide or murder, it must be decided and considered based on the facts whether there is premeditation or not, kind of injury. It is important to clarify that engaging in actions with the aim to cause death or harm that is likely to result in death constitutes culpable homicide or murder. The paper is focused on examining the degree of criminal liability for homicidal offenses. Moreover, the offences affecting life do not include group homicide, there is no specific offence for group killing in Myanmar. It is necessary to regulate an offence to solve the group homicide in Myanmar. It is the duty of National to protect life of the people because of the promoting the peaceful and inclusive societies for the sustainable development, providing access to justice for all and building the effective, accountable and inclusive institutions at all levels. A summary of the interplay between the Sustainable Development Goals and homicidal offence is provided below.

Keywords: Culpable homicide, Homicide, murder

Introduction

In Criminal Law, there are two kinds of offences affecting the human body; offences affecting life, and offences affecting human body. The existing prohibition can be seen in Penal Code of Myanmar since 1879 as the offences relating to human life. The offences affecting life includes culpable homicide, murder, causing death by negligence and suicide or abetment of suicide. The word homicide simply means one human being killed another and a homicide may therefore not be criminal. It is divided into two categories namely, lawful and unlawful homicide.

The Penal Code contains three primary homicide offences. In order of seriousness, they are culpable homicide not amounting to murder, murder and causing death by rash or negligent conduct. These offences attract very different penalties, ranging from the death penalty for murder to a maximum of two years' imprisonment for causing death by negligent conduct.

In Myanmar, the law governing offences of culpable homicide and murder are provided in Section 299 and Section 300 of Penal Code. The elements of the offences are an act or omission, which caused a death of a human being, with intention and/ or knowledge to cause death. The state of mind of the person that caused the death determines whether the said act falls under culpable homicide or murder.³

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³ The Myanmar Penal Code, 1861

Culpable homicide is a kind of unlawful homicide. It is provocation caused by grave and sudden, exceeding the right of private defence, public servant exceeding power given by law, of the right of private defence, death caused without premeditation in a sudden fight and death caused by consent, there are culpable homicide. It can be punished for a term which may extend to ten years imprisonment, or twenty years imprisonment and fine for the one who break up a culpable homicide.¹

Murder is the act of killing a human being. All instances of murder are considered culpable homicide, although not all culpable homicides are classified as murder. Murder is the highest offence in the Criminal law. 'Intention' and 'knowledge' are important points of the culpable homicide amounting to murder. Whoever commit murder being under sentence of imprisonment for a term of twenty years, or with premeditation, or in the course of committing any offence punishable under Penal Code with imprisonment for a term which may extend to seven years, shall be punished with death, and shall also be liable to fine. Whoever commits murder in any other case shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.² The paper is focused on examining the degree of criminal liability for homicidal offenses. Moreover, the offences affecting life do not includes group homicide, there is no specific offence for group killing in Myanmar. It is necessary to regulate as offence to solve culpable homicide in Myanmar.

Aim and Objectives

This paper aims to analyze the homicidal offences and other offences affecting life in Penal Code. The objective of the paper is to examine the degree of criminal liability between culpable homicide and other offences affecting life.

Materials and Methods

An analysis was conducted on the Concept of Criminal Law and various forms of homicide. Analytical analysis of offenses impacting life and related instances is conducted.

Research Questions

1. How does the Penal Code define the crimes of Homicide and other related offenses?
2. What are the unlawful acts?

I. Concept of Homicide

The word 'homicide' has been derived from Latin term homo (man) and cido (cut). Homicide is the act of one human being causing the death of another human being. A Homicide includes an act or an omission of a person which results in the death of another. Hence, it can be said that when one has caused another to die, it is a homicide. There can be a lawful homicide and unlawful homicide in Law. The term lawful does not mean it is legal to cause a person's death; it means that the homicide is either excusable or justifiable under certain situations under the law.

¹ Section 299 of the Myanmar Penal Code, 1861

² Section 300, Ibid.

Other than the stipulated situations, a homicide is an unlawful one. By law, the offence of Criminal homicide can be broken down into different levels, according to its seriousness, guided by the Penal Code. There are three primary homicide offences, which include culpable homicide not amounting to murder, murder, and causing death by rashness or negligence.¹

Meaning of Homicide

Homicide is any killing of a human being by another human being; most commonly used to refer to an unlawful homicide such as murder or manslaughter.² Homicide is the act of killing a human being. Unlawful homicide, which constitutes the crime of murder, manslaughter or infanticide, can only be committed if the victim is an independent human being, the act itself causes the death, and the victim dies within a year after the act alleged to have caused the death. Lawful homicide occurs when somebody uses reasonable force in preventing crime or arresting an offender, in self-defence or defence of other, or in defence of his property, and causes death as a result.

The word 'homicide' has been derived from the Latin terms *homo* which means man and *cido* which means cut. Homicide, therefore, is a word denoting the killing of a human being by another. It is divided into two categories namely; lawful and unlawful homicide.³

According to the Black's Law Dictionary, the killing of any human creature. The killing of one human being by the act, procurement, or omission of another. The act of a human being. Homicide is not necessarily a crime. It is a necessary ingredient of the crime of murder and manslaughter, but there are other cases in which homicide may be committed without criminal intent and without criminal consequences, as, where it is done in the lawful execution of a judicial sentence, in self-defense, or as the only possible means of arresting an escaping felon. The term 'homicide' is neutral; while it describes the act, it pronounces no judgment on its moral or legal quality.⁴

II. Kinds of Homicide

Homicide is the act of one human being killing another human being. There are two types of homicide:

- (1) Lawful and
- (2) Unlawful.

Lawful homicide or simple homicide, includes several cases falling under the General Exception of Penal Code. Unlawful homicide includes: (1) culpable homicide not amounting to murder; (2) murder; (3) rash or negligent homicide; (4) Suicide.

Lawful Homicide

Lawful homicide is those types of homicide which are not amount to any offence. These are distinct from criminal homicide.

¹ Ratanlal and Dhirajlal, *The Law of Crimes*, 25th Edition, 2002, p. 1261

² *Law Dictionary* Third Edition, Steven H. Gifts, p. 221

³ Elizabeth A. Martin (ed.), *Dictionary of Law*, 5th edition, Oxford University Press, 2003, p. 232

⁴ *Black's Law Dictionary*, Fifth Edition, 2016.

A culprit in a case of Homicide cannot always be culpable. This derives the notion of lawful homicide where the accused had a valid reason to commit the crime. In these cases, the person will not tend to be tried by the law and can also be exempted from the charges.

These can include death caused in self-defense or by mistake of fact or there was a bonafide execution of the law etc. Hence Homicide can be lawful as well as unlawful. Lawful Homicide may include justifiable and excusable homicide.¹

Lawful homicide or simple homicide is committed where death is caused in one of the following ways:

- (1) Where death is caused by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution.²
- (2) Where death is caused justifiable that is to say;
 - (a) By a person, who is bound, or by a mistake of fact, in good faith, believes himself, bound, by law.³
 - (b) By a judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given him by law.⁴
 - (c) By a person acting in pursuance of the judgment or under of a court of justice.⁵
 - (d) By a person who is justified, or who, by reason of a mistake of fact, in good faith, believes himself to be justified by law.⁶
 - (e) By a person acting without any criminal intention to cause harm, and in good faith, for the purpose of preventing or avoiding other harm to person or property.⁷
 - (f) Where death is caused in the exercise of the right of private defence of persons.⁸
 - (g) Where death is caused in the exercise of the right of private defence of property.⁹
- (3) Where death is caused unintentionally by an act done in good faith for the benefit of the person killed, when: -
 - (a) Act not intended and not known to be likely to cause death or grievous hurt, done by consent.¹⁰

¹ Bryan, A. Garner, Black's Law Dictionary, 9th edition, West, 2006, p. 1615

² Section 80 of the Myanmar Penal Code, 1861

³ Section 76, of the Myanmar Penal Code, 1861

⁴ Section 77, Ibid.

⁵ Section 76, Ibid.

⁶ Section 78, Ibid.

⁷ Section 79, Ibid.

⁸ Section 81, Ibid.

⁹ Section 100, Ibid.

¹⁰ Section 103, Ibid.

¹⁰ Section 87, Ibid.

- (b) Act not intended to cause death, done consent in good faith for person's benefit.¹
- (c) Where it is impossible for the person killed to signify his consent or where he is incapable of giving consent and has no guardian from it is possible to obtain consent in time for the thing to be done with benefit (S.92).

Lawful homicide is those types of homicide which are not amount to any offence. These are distinct criminal homicide.

Lawful or simple homicide may be divided into two classes. Excusable homicide and Justifiable homicide.²

Excusable Homicide

Excusable homicide is the accidental or self-defence killing of another person. Blackstone defined excusable homicide as,

‘Excusable homicide is of two sorts: either per infortunium; or se defendendo, upon a principle of self-preservation.

Per infortunium homicide is where a man, doing a lawful act without any intention of hurt, unfortunately kills another, as where a man is at work with a hatchet, and the head thereof flies off and kills a stander by.

Homicide in self defence upon a sudden affray is also excusable. They cannot legally exercise this right of private but in sudden and violent cases, when certain and immediate suffering would be the consequence of waiting for the assistance of the law.

Excusable homicide are those of homicide committed by the offender but they are in one of the exceptions mentioned in section 80, 82, 83, 84, 85, 87, 88, 92 of the Penal Code.

Therefore, as it been stated before the concept of lawful homicide is also recognized by Penal Code, 1860. Lawful homicide is committed where death is caused in one of the following ways under the Penal Code:

Where the death is caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution.³

1. Nothing is an offence which is done by a child under seven years of age.⁴
2. Nothing is an offence which is done by a child above seven years age and twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on the occasion.⁵
3. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.⁶

¹ Section 88, Ibid

² Ratanlal and Dhirajhal, The Law of Crimes, 25th Edition, 2002, p.1262

³ Section 80 of the Myanmar Penal Code, 1861

⁴ Section 82, Ibid.

⁵ Section 83, Ibid.

⁶ Section 84, Ibid

4. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge of against his will.¹
5. Where the death is caused unintentionally by an act done in good faith, for the benefit of the person killed, when-
 - i -he or, if a minor or lunatic, his guardian, has expressly or impliedly by consented to such an act, or
 - ii -Where it is impossible for the person killed to signify his consent, or where he is incapable of giving consent, and has no guardian from it is possible to obtain consent in time for the thing to be done with benefit.²

Justifiable Homicide

Justifiable homicide includes cases where the death is caused: -

- (i) By a person, who bound, or by a mistake of fact, in good faith, believe himself, bound, by law.³
- (ii) By a judge when acting judicially in the exercise of any power which is or which is or which in good faith, he believes to be given him by law.⁴
- (iii) By a person acting in pursuance of the judgment or order of a court of justice.⁵
- (iv) By a person is justified, or who, by reason of a mistake of fact, in good faith, believes himself to be justified by law.⁶
- (v) By a person acting without any criminal intention to cause harm, and in good faith, for the purpose of preventing or avoiding other harm to person or property.⁷
- (vi) Where the death is cause in exercising the right of private defence of person.⁸
- (vii) Where the death is cause in exercising the right of private defence of property.⁹

Under the Myanmar Penal Code, justifiable homicide are those kinds of homicide committed by the offender but they are in one of the exceptions mentioned in sections 76,77,78,79,81,100,103 of the Penal Code.

Justifiable homicide or privilege: Due to the circumstances, although a homicide occurs, the act of killing is not unlawful for example, a killing on the battlefield during war is normally

¹ Section 85, Ibid.

² Ratanlal and Dhirajlal, The Law of Crimes, 25th Edition, 2002, p. 1262

³ Section 76 of the Myanmar Penal Code, 1861

⁴ Section 77, Ibid.

⁵ Section 78, Ibid.

⁶ Section 79, the Myanmar Penal Code, 1861

⁷ Section 81, Ibid.

⁸ Section 100, Ibid.

⁹ Section 103, Ibid.

lawful, or a police officer may shoot a dangerous suspect in order to protect the officer's own life or the lives and safety of others.

III. Unlawful Homicide

Unlawful homicide is the killing of a human being in circumstances where the law does not excuse killing. Unlawful homicide is generally classified as either murder or manslaughter. The distinction between murder and manslaughter is seen to reflect degrees of seriousness of unlawful killings, based on the everyday understanding that some killing are more blameworthy than others. Both murder and manslaughter require proof that the accused's act, or failure to act, caused the death of another human being. The assessment of the seriousness of particular killing, is based on the state of mind of the accused at the time.

Unlawful Homicide includes -

- (1) Culpable homicide not amounting to murder,
- (2) Murder,
- (3) Causing death by rash or negligent act
- (4) Suicide.¹

The distinguishing features of these different categories of unlawful homicide are:

- the degree of intention,
- knowledge, or recklessness with a particular homicide is committed.²

In Myanmar, culpable homicide have been provided in Chapter - 16 of the Penal Code. The offence of culpable homicide is defined in –

Section 299-

- (1) whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death commits the offence of culpable homicide not amounting to murder.
- (2) whoever causes death by doing act with the intention of causing death, or with the intention of causing such bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of culpable homicide not amounting to murder in any of the following cases: -
 - (A) If he, whilst deprived of the power of self- control by grave and sudden provocation, causes the death of the person who give the provocation, or causes the death of any other person by mistake or accident:

Provided-

- Firstly - that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;

¹ Ratanlal and Dhirajlal, Law of Crimes, 25th Edition, 2002, p.1257

² Ashok K. Jain, Criminal Law-1, fifth Edition, 2015, Ascent Publications, p. 171-172

Secondly - that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the power of such public servant; and

Thirdly - that the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation - Whether the provocation was grave and sudden enough to deprive the offender of the power of self- control is question of fact.

(B) If he, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

(C) If he, being a public servant or aiding a public servant or aiding a public servant for the advancement of public justice, exceeds the power given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of the duty of such public servant and without ill-will towards the person whose death is caused.

(D) If he acts without premeditation in sudden fight in the heat of passion upon a sudden quarrel and without having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.

(E) If he causes the death of a person who is above the age of eighteen years and who suffers death or takes the risk of death with his own consent.

In Myanmar, the intention is absent, then the crime is dealt under section 299 of Penal Code.

This section defines culpable homicide as the act of causing death:-

- (1) with the intention of causing death or
- (2) with the intention of causing such bodily injury as is likely to cause death, or
- (3) with the knowledge that such act is likely to cause death.

This statement that the first and second clauses of the section refer to intention apart from knowledge and the third clause refers to knowledge apart from intention.¹

(1) **Culpable homicide** is the first kind of unlawful homicide. Culpable homicide is genus and murder its specie. Every 'murder' is 'culpable homicide' but not vice versa.

Culpable Homicide include two categories under Section 299 of the Penal Code. Firstly, any person causing death by doing an act with the intention of causing such bodily injury as is likely to cause death under Section 299 sub-section (1) of the Penal Code. Secondly, if

¹ Ratanlal and Dhirajlal, Law of Crimes, 2002, 25th Edition, p. 1260

amounting to murder and act fall within five exception of Section 299, sub-section (2) of the Penal Code are culpable homicide¹.

Whoever commit culpable homicide not amounting to murder shall be punished with imprisonment for a term of twenty years or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.²

This Section provides punishment for culpable homicide not amounting to murder. Under it there are two kinds of punishment applying to two different circumstances.

- (1) If the act by which death caused is done with the intention of causing death on such bodily injury as is likely to cause death, the punishment is twenty years or imprisonment of either description for a term which may extend to ten years and fine.
- (2) If the act is done with the knowledge that it is likely to cause death but without any intention to cause death or 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 both³.

This section are defined for the punishment of culpable homicide under Section 299(1) and (2) of the Penal Code. It is not usual to present to court for the case of death normally. The burden of proof that is culpable homicide not amounting to murder is on the accused under Section 105 of Evidence Act, so it can take action by 'Murder'

It is amounting to culpable homicide if the following any condition is inclusive in the case of cause death.

- (1) Causing such bodily injury as is likely to cause death, (or)
- (2) Committing cause of sudden provocation,
- (3) Causing death because of using the right of private defence more than necessary in the protection of property or person,
- (4) Causing death by the action in good faith of public servant as to use more than necessary undue the law;
- (5) Causing death, while it is sudden provocation without premeditation or without having taken under advantage, (or)
- (6) Causing death by the consent of the person who above the age of eighteen, if it will be homicide⁴.

In the case of *Mg Tin Mya Vs. The Union of Myanmar*,⁵ it was held that, it can be punished to the accused although it has one believe able witness because there is no limitation of the witnesses to convict. But it is very difficult to accept the testimony of witnesses that memorized in the condition of lacking light, and threatening condition.

¹ The Phay, U, *The Knowledge of Criminal Law*, 5th Edition, 2009, p. 533

² Section 304 of the Myanmar Penal Code, 1861

³ Ratanlal and Dhirajlal, *Law of Crimes*, 22nd Edition, 1959, p. 250

⁴ Thet Phay, U, *The Knowledges of Criminal Law*, 5th Edition, 2009, P. 551

⁵ 1966, M.L.R, p. 644

In the case of *Mg Tin Phay Vs. The Union of Myanmar*¹, the Court decided that, Mg Tin Phay pointed by the torch light to the place where he heard the voice, the deceased standing by holding sword that he saw, he shot to that person cause of lacking response, so he cause the death. The distance from the deceased and offender are nearly 24 feet, besides while the deceased stood without moving was shot that is appeared, then the deceased gone up and was arrested, he could not release that is decided by court. Thus, it is cleared that Mg Tin Phay acted more than necessary, he is convicted by culpable homicide then he is sentenced from 10 years imprisonment to 3 years with rigorous imprisonment lightly by lowest Court.

In the case of *Mg Min Aung Vs. The Union of Myanmar*², the Court held that, in confession, "I attacked U Aye attack me, that stick is using before the Court" on the evidence stick and the spade, there is human blood that is a clear as (evidence-B) that the death the death person U Aye blow Win Nyunt by stick, so Win Nyunt attacked U Aye that statement must be considered. The accused should be enhanced sentence because Win Nyunt attack to the death person more than the right of private defence because the forehead and skull of person crushed.

If such was his purpose and design, or such his knowledge, and non of the General Exception of this Code are applicable, the act is an offence within this definition, although there is no apparent motive for it. If the intention or knowledge is clearly shown, it is needless to enquire into the motives. It must not, however, be forgotten that under certain circumstances the existence of a motive may become an important element is a chain of presumptive evidence, as tending to show the intention of the accused person.³

It can be arrested to the offender without warrant who commit "culpable homicide". It can be non-bailable after arrest with warrant. That is the case of un compoundable. It is a cognizable offence.

By studying above the provision, we can find that, it can be sentenced for the case of culpable homicide under this section. It is obvious that to learn the punishment of culpable homicide is from the ten years imprisonment and the highest form the twenty years. The Criminal Law will be great value to promote the rule of law at the national and international levels and ensure equal access to justice for all.

(2) **Murder** occurs when one human being unlawfully kills another human being. In another word murder is the killing of another person without justification or valid excuse, and it is especially the unlawful killing of another person with malice aforethought Murder occurs when one human being unlawfully kills another human being. In another word murder is the killing of another person without justification or valid excuse, and it is especially the unlawful killing of another person with malice aforethought. Murder is the most serious type of criminal homicide. Definition of murder is enunciated in section 300 of the Penal Code. An offence cannot amount to murder unless it falls within to culpable homicide without amount to murder.

Elements Necessary to Constitute an Offence

1. It must be proof clearly that the death of a person.
2. Obviously, it must be proof that the death is caused by the accused.

¹ 1966, M.L.R(H.C), p. 1001

² 1994, M.L.R, p.140

³ Ratanlal and Dhirajlal, Law of Crimes, 2002, 25th Edition, p. 1550

3. It must the distinctly proof that the death is caused with the intention of causing bodily injury as in fact is sufficient in the ordinary course death by the accused.¹

To be punished with murder by the accused, the following facts must be appeared.

- (1) The accused caused death by doing any act to someone.
- (2) In that death is caused, the accused
 - (a) Being intention to cause death to the deceased;
 - (b) Being intention of causing bodily injury is sufficient in the ordinary course of nature to cause death.

The following any fact doesn't appear.

- (a) Death caused by grave and sudden provocation.
- (b) Death caused by exceeding right of private defence.
- (c) Death caused by exceeding power given by law by the public servant.
- (d) Death caused without premeditation in a sudden fight.
- (e) Death caused by taking the risk with his own consent by the person who is above the age of eighteen years.²

It is decided based on the circumstances and the effect of action because it can't be known what a person did some action by any kind of intention. It can be assumed surely that the accused committed with the intention to be death cause of the action cutting to the someone's neck, thus it is death.³

In the case of *Mg Aung Htwe Vs. The Union of Myanmar*⁴, the Court held that, the accused shot to the deceased person who is sleeping in his home. The Appellate Court decided that the accused is with rifle and in any other house before shooting, committing the robbery of gun, threatening to the deceased person that he would kill him, shooting to the deceased person with intention by 8 stiff of bullets, based on all these facts committed the murder with intention.

In the absence of direct evidence of the common intention, which is available only in rare cases⁵.

In the case of *Mg Khin (a) Aye Maung Vs. The Union of Myanmar*⁶, the Court decided that, no need to argue that at the night of robbery, the insurgent was shooting at the show. Based on the kinds of injury and the death of two villagers, the robbers are inclusive under Section 302 of the Penal Code.

It is needed to criticize based on the facts that the action of the accused has intention or not position of injury, the used force, action by the big arms or not, cutting until it is death or not⁷.

By studying the above mention facts, we can find that it is amounts to murder if cases death by doing an act with the intention of causing death or with the intention of causing bodily

¹ Ba Kyain, U, *Murder, Culpable Homicide and Hurt of Criminal Law*, 2004, p. 2

² Mya, U, *Legal Case of Culpable homicide and Murder*, 1984, p. 4

³ Thet Phay, U, *The Knowledges of Criminal Law*, 5th Edition, 2009, p. 532

⁴ 1965, M.L.R., (C.C), p. 611

⁵ Ibid, p. 1300

⁶ 1971, M.L.R., (C.C), p. 24

⁷ Ba Kyain, U, *Murder, Culpable Homicide and Hurt of Criminal Law*, 2004, p. 3

injury is sufficient in the ordinary course of nature to cause death. Intention is essential element in the offence of murder.

- (3) **Rash or negligent homicide** is a kind of unlawful homicide. Definition of causing death by negligence in section 304A of the Penal Code. This section deals with homicide by negligence and covers that class of offences, where death is caused neither intentionally nor with the knowledge that the act of the offender is likely to cause death, but because of the rash and negligent acts which cause death, but falls short of culpable homicide of either description.
- (4) **Suicide** at common law, suicide was a crime. Section 305 and 306 apply when suicide is in fact committed, whereas 309 applies where a person attempts to commit suicide. 'suicide' is self-destruction by a person.

Therefore, Unlawful homicide which includes culpable homicide not amounting murder, murder, rash or negligent homicide and suicide under the Penal Code. The legal aspect of culpable homicide and murder are review in the paper. The paper was made of the Concept of Criminal Law and types of homicide. Moreover, unlawful homicide not includes corporate homicide no specific offence in Criminal Law. It is necessary to solve culpable homicide in Myanmar.

Mens Rea in Homicide

Mens Rea means a guilty mind; the mental state accompanying a forbidden act. For an act to constitute a criminal offense, the act usually must be illegal and accompanied by a requisite mental state. Criminal offenses are usually defined with reference to one of four recognized criminal states of mind that accompanies the actor's conduct: (1) intentionally; (2) knowingly; (3) recklessly; and (4) grossly (criminally) negligent. The *mens rea* may be general, a general intent to do the prohibited act, or SPECIFIC, which means that a special mental element is required for a particular offense such as 'assault with intent to rape' or larceny which requires a specific intent to appropriate another's property. In a criminal prosecution, the state must prove beyond a reasonable doubt that the required mental state coexisted with the doing of the proscribed act. Defenses of insanity, intoxication and mistake may either nullify or mitigate the existence of a SPECIFIC MENS REA. Crimes that are prohibit often do not require any specific *mens rea*.¹

The mental element in culpable homicide, that is the mental attitude of the agent towards the consequences of his conduct, is one of the intention. Motive is immaterial so far as the offence is concerned, and need not be established. The intention refers to either the death itself or a bodily injury which is likely cause death, that is an injury dangerous to life.

The term, '*mens rea*' meaning 'a guilty mind; a guilty or wrongful purpose; a criminal intent,' is shorthand for a broad network of concepts encompassing much of the relationship between the individual and the criminal law.²

¹ Steven H. Giftis, Law Dictionary, Third Edition, 1991, p. 296

² Cases and Materials on Criminal Law, Second Edition, 1999, p. 131

Mens rea or criminal intent, is the essential mental element considered in court proceeding to determine whether criminal guilt is present, while *actus reus* function as the essential physical element.

Mens rea has roughly four different degrees of magistrate, which are intention or purpose, knowledge recklessness and gross or criminal negligence. The same offence (eg. killing a man) can incur a wide range of punishment, mind at the time of crime was committed. Depending entirely on what level of *mens rea* is found present in the criminal's mind at the time of crime was committed.

Findings

Homicidal offences include both offences that do not amount to murder and those that amount to murder. In practice, these two offences of circumstance are closely connected, and an important factor for consideration is often misunderstood. The determination of whether an act constitutes culpable homicide or murder must be based on the facts, such as whether there was premeditation and the type of injury caused. Therefore, it is essential to distinguish whether the act was committed with the intention to inflict in injury lively to result in death to constitute culpable homicide or murder.

Conclusions

Homicide means killing of a human being by a human being. A homicide includes an act or an omission of a person which results in the death of another. It includes, lawful homicide and unlawful homicide. Lawful homicide may justifiable and excusable homicide. A homicide is excusable if it is the result of an accident that occurred during a lawful act and that did not amount to criminal negligence. Justifiable homicide are intentional killings done in accordance with legal obligation, or in circumstance where the recognizes no wrong.

Committing culpable homicide involves intending to cause physical injury likely to cause death, intending to cause death, or intending to cause bodily injury that is sufficient to cause death in the ordinary course of nature. A person can be punished to a maximum of 10 or twenty years in prison for committing culpable homicide under Section 304 of the Penal Code.

Where there is an intention to kill, the offence is always murder. It is committing the murder if the act done with the intention to cause death is caused death. It is committed the murder. It can be sentenced to the offender who commits murder from at least ten years imprisonment to the highest death sentence, according to section 302 of the Penal Code.

In homicide is divided into two forms; culpable homicide not amounting to murder and culpable homicide amounting to murder. Both of these have a very minimal difference but these differences prove to be very crucial for the legal system as delivery of a fair judgment is dependent on these differences. There is a thin line between murder and culpable homicide. Then it can be noted that focused on examining the degree of criminal liability for homicidal offenses. This paper advocates for supporting peaceful and inclusive societies to achieve sustainable development, ensuring access to justice for everyone, and establishing effective, responsible, and inclusive institutions at all levels. Additionally, countries with higher levels of violence tend to have a higher prevalence of mental health concerns, which adds strain to public health facilities.

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References

Laws

India Penal Code (Act XLV of 1860)
 Myanmar Law Report, 1971
 Myanmar Law Report, 1965
 The Criminal Procedure Code 1898
 The Myanmar Code, Volume VIII, 1957 Amendment up to 1974
 The Myanmar Penal Code, 1861

Books

Ashok K. Jain, Criminal Law-1, fifth Edition, 2015, Ascent Publications
 Ba Kyain, U, Murder, Culpable Homicide and Hurt of Criminal Law, 2004
 Ba Thaung Tin, U, Digest of Myanmar Rulings, (Criminal Cases), (1923-1973)
 Black's Law Dictionary, 5th Edition, 2016
 Cases and Materials on Criminal Law, Second Edition, 1999
 Law Dictionary Third Edition, Steven H. Gifts, 1991
 Mya, U, Legal Cases of Murder and Culpable Homicide, 1984
 Myint Naing, U, Digest of Myanmar Rulings, (Criminal Cases), (1973-1993)
 Ratanlal and Dhirajlal, Law of Crimes, 2002, 25th Edition
 Steven H. Giftis, Law Dictionary, Third Edition, 1991
 Thaung Tun, U, Digest of Myanmar Rulings, (Criminal Cases), (1974-2005)
 Thet Phay, U, The Knowledge of Criminal Law, 5th Edition, 2009