

CODIFYING CULPABILITY: THE TRANSITION FROM IPC 1860 TO BHARATIYA NYAYA SANHITA 2023 AND THE FUTURE OF THE 'KNOWLEDGE' REQUIREMENT

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ABSTRACT

The adjudication of homicide under the Indian Penal Code, 1860 (IPC), necessitates a rigorous inquiry into the mental state of the accused, specifically distinguishing between "intention"

(*dolus*) and "knowledge" (*scienter*). While intention represents the volitional desire to cause a result, knowledge operates within the cognitive domain, signifying an awareness of consequences that are likely to occur. This dissertation examines knowledge as a distinct, independent basis for criminal liability, bridging the gap between the highest culpability of purposeful murder and the lower culpability of negligence. The study analyses the epistemic framework of liability by contrasting the statutory definitions of Culpable Homicide (Section 299) and Murder (Section 300). It explores the "fine but real" distinction in the probability of death foreseen by the offender, differentiating between acts "likely to cause death" (Section 299) and those so "imminently dangerous" that they must cause death in "all probability" (Section 300). Through an analysis of landmark judicial decisions, including *State of Andhra Pradesh v. Rayavarapu Punnayya* and *State of Madhya Pradesh v. Ram Prasad*, the research highlights how courts utilize the "degree of probability" test to determine whether an act escalates from culpable homicide to murder.

Furthermore, the dissertation investigates the complex boundary between "knowledge" and "rashness/negligence" (Section 304A). It critiques the judiciary's evolving approach to "attributed knowledge" in cases of vehicular homicide involving intoxication, such as *Alister Anthony Pareira v. State of Maharashtra*, where courts impute knowledge to bridge the gap between objective negligence and subjective culpability. Contrastingly, the study notes the higher evidentiary threshold required in corporate and medical negligence cases, such as the Bhopal Gas Tragedy and *Jacob Mathew*, where "actual knowledge" remains a strict requirement.

Finally, the research evaluates the role of Section 304 Part II as a vital "safety net" for penalizing offenders who possess awareness of risk without the "evil intent" to destroy. The study concludes by mapping these principles to the newly enacted Bharatiya Nyaya Sanhita (BNS), 2023, assessing how the structural distinctions

between intention and knowledge are

preserved and modernized in the new criminal code.

1.1 Knowledge as a Basis for Liability

The adjudication of homicide under the Indian Penal Code, 1860 (IPC), requires a rigorous inquiry into the

accused's mental state, a domain in which the distinction between "intention" (*dolus*) and "knowledge" (*scienter*) forms the bedrock of criminal liability. While intention represents the volitional aspect of crime, the conscious desire to bring about a specific result, knowledge operates within the cognitive domain. It signifies awareness of the consequences likely to follow a voluntary act, irrespective of whether the offender actively desires those

consequences. In the architecture of the IPC, particularly in the interplay between Sections 299 and 300, knowledge constitutes a distinct, independent basis for liability, bridging the gap between the highest culpability of purposeful killing and the lower culpability of mere

negligence.

The jurisprudential journey of "knowledge" in Indian criminal law is complex, marked by a century of judicial attempts to delineate the precise boundaries of probability required to elevate an act from culpable homicide to murder. This section examines the epistemic framework of liability, analysing how courts discern the contents of an offender's mind and the

degree of foresight required to sustain a conviction for knowledge.

1.1.1 Theoretical Framework: The Epistemology of Culpability

In criminal law theory, the mental element, or *mens rea*, is the "guilty mind" that justifies state punishment. "Knowledge" as a form of *mens rea* holds that moral blameworthiness attaches

not only to those who intend harm but also to those who act despite knowing the risks involved. This aligns with the concept of *dolus eventualis* in civil-law systems, or "recklessness" in English common law. However, the IPC avoids the term "recklessness" in favour of the more precise formulations of "knowledge of likelihood".¹

The IPC distinguishes between intention and knowledge based on the offender's attitude toward the result. Intention involves a "positive mental attitude" where the result is the object of the

act. Knowledge, conversely, consists of a realisation that the result is a probable consequence, even if the

offender is indifferent to it or even hopes it will not happen. As observed in *Jagrati Devi v. State of Himachal Pradesh*,² "The bare reading of the section makes it crystal clear that the first and the second clause of the section refer to intention apart from the knowledge and

the third clause refers to knowledge alone and not intention". This separation is crucial because it allows the law to punish the "indifferent killer" the terrorist who bombs a building to destroy property, knowing people will die, or the driver who plows through a crowd. They may not "intend" to kill in the sense of desiring death. Still, their knowledge of the inevitability of death renders them equally culpable.

The challenge for the judiciary lies in the evidentiary process: how does a court prove "knowledge"? Unlike intention, which can often be inferred from the motive, knowledge must be inferred from the objective circumstances, the nature of the weapon, the force used, the part of the body injured, and the surrounding context. This gives rise to tension between subjective knowledge (what the accused actually knew) and objective knowledge (what a reasonable person would have known). This theme permeates the interpretation of Sections 299 and 300.³

1.1.2 Statutory Anatomy: Section 299(c) versus Section 300(4)

The statutory definitions of culpable homicide (Section 299) and murder (Section 300) employ nuanced language to distinguish degrees of knowledge. This gradation is not merely semantic but represents a "fine but real" distinction in the probability of death foreseen by the offender.⁴

Section 299: Culpable Homicide

Section 299 defines the genus of the offence. A person commits culpable homicide if they cause death by doing an act:

1. With the intention of causing death;
2. With the intention of causing such bodily injury as is likely to cause death; or 3. **With the knowledge that he is likely by such act to cause death.**⁵

Clause (c) of Section 299 establishes the baseline for knowledge-based liability. The operative phrase is "likely to cause death." The term "likely" denotes a

substantial probability, a risk that is real and appreciable, not merely a remote possibility. It implies that the offender, at the time

of the act, was conscious that death could well be the outcome.

Section 300: Murder

Section 300 defines the species of murder, which is an aggravated form of culpable homicide. The knowledge elements are found in Clause (2) and Clause (4).

☒ **Clause (2):** If the act 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.⁶

☒ **Clause (4):** If the person committing the act **knows** that it is so imminently dangerous that it must, in **all probability**, cause death or such bodily injury as is likely to cause death, and commits such an act **without any excuse** for incurring the risk of causing death or such injury.⁷

The relationship between Section 299(c) and Section 300(4) is one of degree. While Section 299(c) requires knowledge of "likelihood," Section 300(4) requires knowledge of "imminent danger" and "all probability" of death.

Table 1.1: Comparative Analysis of Knowledge Provisions

Aspect	Section 299 Clause (c)	Section 300 Clause (4)
Mental Element	Knowledge	Knowledge
Probability of Death	"Likely" to cause death	"Must in all probability" cause death
Nature of Danger	Substantial risk	Imminently dangerous
Normative Requirement	None specified	Without any excuse for incurring the risk
Degree Culpability	o Culpable Homicide	Murder
Judicial Test	Probability (Probable consequence)	Virtual Certainty (Most probable consequence)

1.1.3 The "Likelihood" Test: State of Andhra Pradesh v. Rayavarapu Punnayya

The Supreme Court's decision in *State of Andhra Pradesh v. Rayavarapu Punnayya*⁸ remains the locus classicus on the distinction between the knowledge clauses of Section 299 and Section 300. In this case, a dispute between two factions led to the accused brutally beating the deceased

with heavy sticks. The victim died of shock and haemorrhage. The trial court convicted the accused of culpable homicide not amounting to murder, but the High Court and Supreme Court had to determine if the act amounted to murder.

Justice Sarkaria, speaking for the bench, articulated that "culpable homicide" is the genus and "murder" is the species. The distinction lies in the degree of risk to human life. The Court

observed:

"The word 'likely' in clause (b) of Section 299 conveys the sense of 'probable' as distinguished from a mere possibility... The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury."⁹

Although *Punnayya* primarily dealt with the intention to cause injury, its reasoning extends to the knowledge clauses. The court held that whenever a court is confronted with the question of whether an offence is murder or culpable homicide, it must approach the problem in three

stages:

1. Is there a causal link between the act and the death?
2. Does the act amount to culpable homicide under Section 299?
3. Does the act fall within any of the four clauses of Section 300? If yes, it is murder; if no, it is culpable homicide not amounting to murder (Section 304).

For the knowledge clause (Section 299(c) vs 300(4)), the court emphasised that the "degree of probability of death" is the determining factor. If the act is such that death is merely a "likely" result, it remains within Section 299. However, if the act is "so imminently dangerous" that death is a virtual certainty, in all probability it escalates to Section 300(4). This high threshold prevents ordinary reckless acts from being classified as murder, reserving the capital offence

for acts that demonstrate a total disregard for human life.

1.1.4 Imminent Danger and Universal Malice: *State of Madhya Pradesh v. Ram Prasad*

Section 300 Clause (4) covers a category of acts often described as "universal malice" acts that threaten life generally without necessarily targeting a specific individual. The classic illustration is firing a loaded cannon into a crowd of people. The offender may not intend to kill any particular person, A or B, but they **know** that the act is so dangerous that someone will

almost certainly die.

The application of this clause was vividly demonstrated in *State of Madhya Pradesh v. Ram Prasad*.¹⁰ In this case, the accused, Ram Prasad, quarrelled with his mistress, Mst. Rajji. In a fit of rage, he poured kerosene oil over her and set her clothes on fire. She died from severe burns. The trial court convicted him under Section 304 Part II (culpable homicide not amounting to murder), reasoning that

he may not have intended to kill her but only to cause burns.

The Supreme Court, however, overturned this and convicted him of murder under Section 302. Justice Hidayatullah reasoned that the act of pouring a highly inflammable substance like

kerosene on a human being and setting them alight is inherently "imminently dangerous."

"The act... was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and the appellant committed such act without any

excuse for incurring the risk of causing death."¹¹

The Court held that no rational person could perform such an act without the **knowledge** that death was the probable result. The defence that he only intended to cause "hurt" was rejected because the nature of the act itself communicated the highest degree of knowledge. This case

establishes that Section 300(4) does not require a "motive" or "intention" in the traditional sense; the "knowledge of imminent danger" serves as a functional equivalent of intention. The

cruelty and extreme danger of the act supply the necessary *mens rea*.

1.1.5 Specific Knowledge of Infirmity: Section 300 Clause (2)

While Clause (4) deals with generalised danger, Clause (2) of Section 300 deals with particular, personalised knowledge. It applies when the offender causes bodily injury with the intention of causing that injury, coupled with the **knowledge** that the victim is in a peculiar state of health that makes the injury fatal.

This provision is critical because it bridges the gap between the objective nature of the injury and the subjective state of the victim.

☒ **Scenario A:** A punches B in the stomach. B is healthy. B suffers pain but does not die. This is simple hurt (Section 323).

☒ **Scenario B:** A punches B in the stomach. B has an enlarged spleen (splenomegaly). The spleen ruptures, and B dies. If A **did not know** about the spleen, A is

liable only

for causing hurt or perhaps culpable homicide not amounting to murder if the blow was severe, because a punch is not "sufficient in the ordinary course of nature" to kill a healthy person.¹²

☒ **Scenario C:** A punches B in the stomach, **knowing** that B has an enlarged spleen and that a blow is likely to kill him. This is **murder** under Section 300(2).

The Supreme Court in *State of Andhra Pradesh v. R. Punnayya* highlighted that the

"distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition". This

knowledge converts an act that would otherwise be a lesser offence into murder.

In *State of Maharashtra v. Malan*,¹³ The courts further clarified that this knowledge must be positive and precise. Mere suspicion or general awareness that the victim is "weak" may not suffice to attract Section 300(2); there must be knowledge that the specific injury inflicted is

likely to cause death *due to* that condition.

1.2 Distinguishing from Recklessness or Negligence

A persistent challenge in Indian criminal law is distinguishing the "knowledge" required for homicide (Sections 299/300) from the lower forms of culpability, such as "rashness" and

"negligence" (Section 304A). This distinction determines whether an accused faces a maximum of two years' imprisonment (for negligence) or life imprisonment (for culpable homicide).

1.2.1 The Concept of Recklessness: Comparative Perspectives

The Indian Penal Code does not explicitly use the term "recklessness." Instead, the concept of recklessness is bifurcated:

1. **Advertent Recklessness (High Degree):** Subsumed under "Knowledge" in Section 299(c). The offender foresees the likelihood of death and acts anyway.

2. **Advertent Recklessness (Lower Degree):**

Subsumed under "Rashness" in Section 304A. The offender foresees a risk of injury but hopes to avoid it.

This contrasts with English law, which has struggled with a unified definition of recklessness. ☒ **Subjective Recklessness (*R v. Cunningham / R v. G*):** The accused must have *actually foreseen* the risk. In *R v. G* (2003), the House of Lords overruled the objective test, holding that a person cannot be reckless unless they subjectively realised the risk.¹⁴

☒ **Objective Recklessness (*R v. Caldwell - Overruled*):** Under the now-defunct *Caldwell* test, a person was reckless if the risk was obvious to a reasonable person, even if the accused did not foresee it.

The Indian position generally aligns with the subjective test in *R v. G*. For an offence to fall within Section 299 (Knowledge), the prosecution must prove that the accused actually knew that death was likely. If the accused did not know, but a reasonable person would have known, it constitutes negligence (Section 304A). However, as we will see in the context of traffic offences, Indian courts have occasionally drifted toward an objective "attributed knowledge" standard, resembling the *Caldwell* recklessness test, to address public safety concerns.

1.2.2 Section 304A: The Domain of Negligence

Section 304A was inserted into the IPC in 1870 to cover cases of death caused by "rash or negligent acts" that do not amount to culpable homicide.¹⁵ It applies when there is:

- ☒ No intention to cause death.
- ☒ No knowledge that the act is likely to cause death.

Rashness vs. Negligence:

☒ **Criminal Rashness:** Hazarding a dangerous or wanton act with the knowledge that it is so, and that it *may* cause injury, but without the intention to cause injury or knowledge that it will *probably* cause injury. The criminality lies in the risk of committing such an act with recklessness or indifference to the consequences.¹⁶

☒ **Criminal Negligence:** The gross and culpable neglect or failure to exercise that reasonable and

proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances

out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

The crucial boundary line is "Knowledge of Likelihood."

☒ If the risk of death is merely "possible" (Risk < Probability), it is Section 304A.

☒ If the risk of death is "likely" or "probable" (Risk > Probability), it elevates to Section 299/304 Part II.

1.2.3 The "Attributed Knowledge" Doctrine: Vehicular Homicide

The distinction between Section 304 Part II and Section 304A has been most fiercely contested in cases of fatal accidents caused by drunken or dangerous driving. In recent decades, the Supreme Court has adopted a stricter approach, willing to impute or "attribute" knowledge to

drivers who exhibit extreme recklessness.

Case Study: *Alister Anthony Pareira v. State of Maharashtra (2012)*

In this landmark case, the appellant drove a car onto a pavement in Mumbai, killing seven labourers sleeping there. He was under the influence of alcohol. The Supreme Court upheld his conviction under **Section 304 Part II** (Culpable Homicide), rejecting the argument that it was

merely Section 304A (Negligence).

The Court formulated the principle of "attributed knowledge":

"A person, responsible for a reckless or rash or negligent act that causes death, which he had knowledge as a reasonable man that such an act was dangerous enough to lead to some untoward thing and the death was likely to be caused, may be attributed with the knowledge of

the consequence..."¹⁷

This ruling implies that voluntary intoxication coupled with driving creates a presumption of knowledge. The "reasonable man" standard is invoked to attribute

knowledge to the accused,

effectively bridging the gap between objective negligence and subjective knowledge.

Case Study: *State v. Sanjeev Nanda (The BMW Case)*

Similarly, in *State v. Sanjeev Nanda (2012)*, the accused drove a BMW at high speed, killing six persons. The Supreme Court held that the conviction under Section 304 Part II was

appropriate. The Court observed:

"The accused had sufficient knowledge that his action was likely to cause death... and the trial court has rightly held so".¹⁸

Counter-Point: *Kuldeep Singh v. State of Himachal Pradesh (2008)*

However, not all fatal accidents qualify as culpable homicide. In *Kuldeep Singh*, a bus driver lost control on a hilly road, leading to deaths. The Supreme Court maintained the conviction under **Section 304A**, holding that no evidence of intoxication or extreme recklessness would

suggest the driver *knew* death was likely. It was a case of error of judgment or simple rashness.¹⁹

4.2.4 Corporate and Medical Negligence: The Higher Threshold

While courts are increasingly willing to attribute knowledge in street crimes, they maintain a higher threshold for "knowledge" in professional and corporate settings, often reverting to

Section 304A unless actual knowledge is strictly proven.

The Bhopal Gas Tragedy Legacy

In *Keshub Mahindra v. State of MP*, arising from the catastrophic Union Carbide gas leak, the Supreme Court quashed charges under Section 304 Part II against the senior management, downgrading them to Section 304A. The Court held that while the accused may have been negligent in maintaining the plant, there was no material to show they had the **specific knowledge** that "by operating the plant on that fateful night... they were likely to cause death

of any human being".²⁰

Uphaar Cinema Fire Case

In the *Uphaar Cinema* tragedy, where 59 people died in a fire, the theatre owners (Ansals) were convicted under Section 304A. The prosecution argued for Section 304 Part II, citing the gross violations of safety norms. However, the courts held that these violations constituted "rashness" and "negligence" but did not establish that the owners **knew** death was a likely consequence of operating the cinema on that day.²¹

Medical Negligence: Suresh Gupta and Jacob Mathew

In the medical domain, the Supreme Court has set a very high bar for criminal liability to protect doctors from harassment. In *Suresh Gupta v. Govt. of NCT of Delhi*²² and *Jacob Mathew v. State of Punjab*²³ The Court held that, for a doctor to be liable even under Section 304A, the negligence must be "gross". For a doctor to be charged under Section 304 Part II (Knowledge), the act must be reckless to the point of indifference.

Recent Developments: Yuvraj Laxmilal Kanther (2025)

The recent Supreme Court judgment in *Yuvraj Laxmilal Kanther v. State of Maharashtra*²⁴ reinforces the strict requirement for knowledge in industrial accidents. Two workers died of electrocution while installing a signboard. The prosecution charged the employers under Section 304 Part II. The Supreme Court discharged the accused of the Section 304 Part II charge, holding that while the failure to provide safety gear might be negligent (Section 304A), it did not demonstrate that the employers **knew** death was "likely" to result.

1.3 Applications in Culpable Homicide Not Amounting to Murder

Section 304 of the IPC prescribes the punishment for culpable homicide not amounting to murder. It is divided into two parts, reflecting the distinction between intention and knowledge.

- ☒ **Section 304 Part I:** Punishment for acts done with **intention** to cause death or bodily injury likely to cause death (Imprisonment for life or up to 10 years + fine).
- ☒ **Section 304 Part II:** Punishment for acts done with

knowledge that it is likely to cause death, but without any intention to cause death or such bodily injury (Imprisonment up to 10 years + fine).

1.3.1 Section 304 Part II: The Penal Consequence of Knowledge

The application of Section 304, Part II, often arises in cases where the charge of murder (Section 302) fails because the prosecution cannot prove the requisite intention. "Knowledge" serves as the fallback *mens rea*. As noted in *State of Maharashtra v. Mohd Yakub*,²⁵ When the act is done with knowledge but without intention, the case falls under Part II. This distinction is vital for sentencing, as Part II carries a significantly lighter sentence (10 years maximum) compared to Life Imprisonment for murder or Part I.

1.3.2 Sudden Fights and the Knowledge of Injury

A frequent application of Section 304 Part II is in the context of "sudden fights" or "heat of passion" crimes, where there is no premeditation.

Gurmail Singh Analysis

In *Gurmail Singh v. State of Punjab*²⁶ The accused struck a blow to the deceased during a sudden quarrel. The High Court acquitted him of murder, finding no "common intention" to kill. However, the Supreme Court convicted him under **Section 304 Part II**. The Court reasoned that while the accused may not have intended to kill (negating Section 300/302), hitting someone on the head with a weapon carries the **knowledge** that death is a likely consequence.

Velthepu Srinivas (2024): Individual Culpability in Group Violence

The 2024 Supreme Court judgment in *Velthepu Srinivas v. State of Andhra Pradesh*²⁷ provides a nuanced analysis of knowledge in group attacks. Four accused attacked the deceased. A-1,

A-2, and A-4 used lethal weapons (axes/swords) and were convicted of murder (Section 302) based on common intention (Section 34). However, A-3, who used a stone, was treated differently. The Court found he did not share the common intention to kill. But by participating in the assault with a stone, he possessed the **knowledge** that death was likely.

"We acquit A-3 of the conviction and sentence under Section 302 read with Section 34 and convict him under Section 304 Part II. The cumulative circumstances... clearly indicate that he had no intention to commit murder... but could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death."²⁸

This case is pivotal because it decouples "knowledge" from "common intention." A participant in a mob can be liable for Culpable Homicide (based on their own knowledge) while others are liable for Murder (based on intention).

1.3.3 The Transition to Bharatiya Nyaya Sanhita (BNS) 2023

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, to replace the IPC, maintains the structural distinction between intention and knowledge but renumbers and refines the sections.

Comparative Mapping:

☒ **IPC Section 299 (Culpable Homicide)** \$ \rightarrow \$ **BNS Section 100**. The definitions are identical, preserving the "knowledge that he is likely by such act to cause death" clause.²⁹

☒ **IPC Section 300 (Murder)** \$ \rightarrow \$ **BNS Section 101**. The four clauses, including the "imminently dangerous" knowledge clause, are retained with modernised language.³⁰

☒ **IPC Section 304 (Punishment)** \$ \rightarrow \$ **BNS Section 105**. It retains the Part I/Part II distinction based on intention vs. knowledge.³¹

☒ **IPC Section 304A (Negligence)** \$ \rightarrow \$ **BNS Section 106**. This section covers causing death by negligence.

Key Innovation: Mob Lynching (Section 103(2) BNS)

The BNS introduces a specific provision for murder by a group (mob lynching) in Section 103(2). This effectively codifies the "common intention" aspect seen in cases like *Velthepu Srinivas* but imposes a severe penalty (Death or Life Imprisonment) for all members of the mob. This may reduce the scope for arguing "individual knowledge" (Section 304 Part II) in group attacks, as the statute presumes a collective culpability for the group act.³²

1.3.4 Conclusion

The analysis of "knowledge" in homicide offences under the IPC reveals a sophisticated legal mechanism designed to calibrate punishment to moral blameworthiness. "Knowledge" serves as the pivot between the "evil intent" of murder and the "carelessness" of negligence.

1. **Epistemic Gradation:** The law distinguishes between "likely" (Section 299) and "imminently dangerous/all probability" (Section 300), requiring courts to assess the offender's subjective foresight of risk.

2. **Attributed Knowledge:** In the interest of public policy, courts have expanded "knowledge" to include "constructive knowledge" in cases of extreme recklessness like drunk driving (*Alister Pereira*), while maintaining a strict "actual knowledge" standard for industrial and medical liability (*Bhopal Gas Tragedy, Suresh Gupta*).

3. **Residual Liability:** Section 304 Part II functions as a vital safety net, ensuring that those who kill with an awareness of the risk but without the desire to destroy are punished more severely than for mere negligence but less severely than for murder.

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- 32 Section 103(2), *The Bharatiya Nyaya Sanhita*, 2023.