Chapter III

MURDER

3.1 MEANING OF THE TERM

Murder is commonly understood as an act of killing a human being intentionally and unlawfully by another human being. This is the ordinary meaning of the term. The section 300 of IPC defines murder as follows:

...culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –

Secondly, -- if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –

Thirdly, -- if it is done with the intention of causing
bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or –

Fourthly, -- if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.¹

3.2 KILLING AND MURDER: SIMILARITY AND DIFFERENCE

Both killing and murder refer to acts of causing destruction of lives. But though the agency of these acts belongs to humans, in case of killing, action is done upon non-humans, and in the latter, action is done upon humans. Nevertheless both killing and murder agree in the following respects:

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(a) Both killing and murder point towards willful destructions of lives,
(b) Both killer and murderer are the agents of the concerned acts, and
(c) Both the acts of killing and murder are purposive, because there are some visible or invisible purposes lying behind these acts.

3.3 CULPABLE HOMICIDE IS NOT ALWAYS MURDER

Murder is culpable homicide, but each and every culpable homicide is not murder. The IPC mentions following conditions under which a culpable homicide is not murder:

(a) Culpable homicide is not murder if the offender of the act causes death of a person under grave and sudden provocation,
(b) Culpable homicide is not murder if the offender causes death of a person in the exercise of the right of private defence of person or property,
(c) Culpable homicide is not murder if the offender, being a public
servant causes death of a person for the advancement of public justice,

(d) Culpable homicide is not murder if the offender causes death of a person in a sudden fight without premeditation, and

(e) Culpable homicide is not murder when the offender causes death of a sickly person above the age of 18 years who takes the risk of death and has consented to be killed.²

3.4 Why murder contrary to human civilization

Murder is generally looked upon as a wrongful killing of humans as it is not always supported by the drive for self-preservation; rather, the agent of the act is activated by petty selfish interests. Murder is a serious penal offence because it is such a malicious act which precipitates one’s death against his will. Legal aspect of life accords right to life to humans, makes human life more valuable, and demands an active preservation of human life. Therefore, at least legally, we are obligated to consider seriously the interest of humans and it is essentially unlawful to effect one’s death.
It is true that legal aspect of life maintains hierarchy in respect of protection of life, makes some forms of life more valuable than other. It never equates cruelty associated with killing of non-humans with humans, nor does it accord similar punishment to a case of killing of non-humans as in the case of humans. In a civilized society, legal aspect of life is necessary for the preservation of human life, without it, a constant clash between the stronger and the weaker is inevitable, and this situation would not be conducive to the survival of the weaker. And as a result, only a small portion of population of civilized society could hope to survive. In a civilized society, interests of both the stronger and the weaker are treated equal, and legal aspect primarily emerges as an instrument to protect rights and interests of humans to ensure equal justice both for the stronger and the weaker. Therefore, to protect human civilization, murder is branded as a grave offence, because it is thought that if this act be not checked with firm hand, it could be repeated by other members of the society. In our country the section 302 of IPC codifies the punishment for the commission of murder as:

Whoever commits murder shall be punished with
death or imprisonment for life, and shall also be liable to fine.³

3.5 IPC SPEAKS OF DEATH SENTENCE FOR EXCEPTIONAL CASE

It should be pointed out that the section 302 of IPC does not clearly mention anything about the circumstances under which death sentence or imprisonment for life can be imposed and the code of criminal procedure and pronouncement made by supreme court are helpful in this regard.⁴ Prior to the amendment of the section 367(5) of the code of criminal procedure 1898, death sentence was a reasonable punishment for the commission of murder, and imprisonment for life was only an exception; but the amendment of the section 367(5) 1955 empowered the court to impose death sentence or imprisonment for life at its own discretion.⁵ The present position regarding the imposition of death sentence or imprisonment for life follows from the section 354(3) of the code of criminal procedure 1973, which states that

…the normal sentence for murder convicts is
imprisonment for life while special reasons need to be given when death sentence is being awarded.⁶

However, at present a person committing murder, the imposition of life imprisonment is the rule and death sentence is applicable in exceptional cases, in the gravest cases of extreme culpability. Death sentence can be imposed on a case belonging to rarest of rare category.⁷

### 3.6 LEGAL OBLIGATION IS MORE EFFECTIVE

Though primarily the concept of murder has ethico-legal perspective, today it has become increasingly popular as a legal concept in civilized countries. Though moral aspect and legal aspect go hand in hand in preserving human life on this earth, the latter is more effective in respect of preventing crimes, because its laws are codified and more specific. But as the moral laws have no statutory force, they simply dictate us not to commit murder, cannot take any appropriate step to prevent crimes or punish the offender. Today moral restrains cannot check any wrongful act, a member of a civilized society seldom refrains
from doing any wrongful act out of moral sense, he dare not do it because it is legally forbidden.

But the fact deserves to be mentioned here is that though legal obligation towards human life is more effective than moral one, it does not protect human life out of respect or sense of duty to preserve intrinsic worth of human life. In fact, legal aspect of life does not deal with sanctity or value of life. Legal restraints may succeed in controlling our cruel acts or acts of commission only, not our cruel attitude or thought; but moral obligation succeeds in controlling inhumane attitudes and also acts of commission. However, to prevent commission of murder, we need a comprehensive moral approach, we should look upon non-killing of humans to be a duty among other duties rather than a legal compulsion. We should refrain from destroying human life not because it is subject to rigorous punishment; rather it is our moral responsibility. We ought to preserve human life because we ought to honour dignity of human life. Therefore, respect
for human life is an indispensable prerequisite for the preservation of human life.

Of course, murder is a cruel act, but legal aspect weighs cruelty in terms of culpability and culpability is determined by studying circumstances under which crime is committed. Thus the legal proclamation of death sentence or life imprisonment depends on degree of culpability. But ought we to inflict death sentence on a case of extreme culpability?

3.7 CAPITAL PUNISHMENT REFLECTS VINDICTIVE ATTITUDE

There is no denial of the fact that murder is a cruel act which ruthlessly takes one’s life against his will disregarding the dignity of life. But to be moral, we need not be equally ruthless in inflicting death sentence; our actions should not be contrary to sanctity of life. If we admit non killing to be a duty among other duties, it would be difficult on our part to take death sentence to be morally justified, because it overrides the basic human right namely, ‘right to life’. If it be not morally permissible
to take one’s life, it is not even permissible to take one’s life in the
name of laws. Truly speaking, imposition of death sentence is nothing
but a legal murder approved by the society. If we accord priority to
value of life, we should humanize the pattern of punishment, and to
humanize the pattern of punishment decision for imposing punishment
should come alongside dignity of life. In this sense punishment should
be reformatory or correctional.

3.8 ARGUMENTS FOR DEATH SENTENCE

Those who argue for the infliction of death sentence think that death
sentence or capital punishments acts as an effective deterrent which
might deter criminal behaviour throughout the society or deter the killer
from killing again by taking his life or prevent other from committing
similar offence. Some might argue for the defence of capital
punishment on the ground that justice demands an equal treatment.
Whoever takes away life of another, should be deprived of his life, a
man has no right to life who has deprived someone else’s right to life.
3.9 CONSTITUTIONALITY OF DEATH SENTENCE: AN APPRAISAL

As regards the constitutionality of death sentence, Supreme Court observes that it is not unreasonable, nor is it contrary to public interest. It is not violative of article 21 dealing with right to life, because this is not an exclusive punishment, rather an alternative punishment for the commission of murder. According to section 54 of IPC, an offender may resort to clemency of the President of India or the Governor of a State who are constitutionally empowered to commute the sentence of any person convicted of any crime. In fact, death sentence is not arbitrarily imposed on an offender.

Article 134(a), which gives a constitutional right of appeal to the Supreme Court where an accused is acquitted by the Court of Session but is convicted and sentenced to death by the High Court, proves the constitutionality of the provision.
Thus realizing the constitutionality of death sentence, the law commission 1967 resolved not to abolish the provision of death sentence.\textsuperscript{13}

But the constitutionality of death sentence does not make any significant difference as to the moral justification of such a provision. From moral standpoint, commutation of death sentence or its exceptional nature does not justify its acceptability. In fact, such a provision reflects a vindictive attitude of society against one of its members for the loss of another member who could not be brought back by inflicting death sentence. But in a civilized society, it is a sheer inhumane practice to take one's life to take revenge against his wrongful activity. The opponents of capital punishment who look upon death sentence as equivalent to murder in the name of law opine that

\ldots capital punishment encourages violence, acts of
revenge, and murder in society at large because it leads to the rationale that if society can kill its members, then individuals can also take revenge into their own hands.¹⁴

3.10 FALLIBILITY OF DEATH SENTENCE: AN ANALYSIS

The imposition of death sentence, to a great extent, is determined by the circumstantial evidences. But it is a naked truth that sometimes circumstantial evidences enabling to mould the decision regarding the infliction of punishment are not true to facts. Today unjust power has menacgly captured various agencies of govt., and the principle of equality, being a fundamental principle of civilized society is not strictly followed in practice. As a matter of fact, despite the strong circumstantial evidences, a rich man charged with a grave offence may have a chance of honourable acquittal. On the other hand, an innocent poor person accused of murder on the basis of false and fabricated evidences cannot escape from rigorous penalty of murder, because he is not able to afford legal practitioner who may argue in his defence. Thus
it is evident that culpability determined in terms of circumstantial evidences is not correct, and death sentence accruing from incorrect circumstantial evidences is not free from fallibility.

The opponents of capital punishment are partially right in opposing death sentence because of its being fallible, but it does not amount to saying that all death sentences are mistakenly imposed. However, as the value of life is the focal point of our attention, we cannot morally approve a case of capital punishment. Capital punishment is inflicted on offenders to prevent others from committing similar heinous crime. Thus an offender is treated as a means to the fulfillment of some end. But from the Kantian standpoint, this is immoral, because a man should not be treated only as a means. Kantian standpoint approves punishment for the commission of crime, not as a means to the good of the criminal or that of other humans.\textsuperscript{15}
3.11 NON-KILLING OF HUMANS AND ITS CONTEXTUAL INTERPRETATIONS

Though murder is a legal and moral transgression, sometimes we cannot remain steadfast in the principle of non-killing of humans. Under some exceptional circumstances, we are compelled to take human life. Indian penal code also approves five important exceptions under which procuring one’s death does not amount to murder. 16 And we may here mention right of private defence or self defence in exercise of which nothing is an offence. We can resort to any violent means, it does not matter if it leads to the death of one who threatens life.

Thus morality or immorality of killing or non-killing of human being is conditional. If our adherence to truthfulness, for example, causes death of one, we should refrain from speaking truth in the given situation. It is not certainly moral to declare a terminally ill patient that he has no chance of survival which might precipitate his death. Non-killing of humans is certainly good but not unconditionally. But such a practical interpretation of morality, immorality, good, bad etc. does not fit into
Kantian standpoint which rigorously maintains that moral laws are unconditional. A moral law ought to be performed irrespective of circumstances; it is not relative to external situations we pass through. But if it be so, it would make our practical life impossible.

We may, in this context, say that every moral law must have practical relevance. We should not practise moral law in such a way that it puts our life at stake. Thus practically it is impossible to observe non-killing of humans when we are violently attacked by an aggressor who intends to kill us and there is no viable alternative left before us. At this juncture, self-defence is our primary concern and everything else is secondary; we should not be hesitant to take violent means, because our reluctance to adopt violent means is tantamount to an act of suicide.

Thus if a moral law does not amount to human benefit or leads to contrary result, it needs changes in its interpretation. If there occurs any contrariness in a moral law and its application, situation necessitates a re-assessment of moral law and question of its priority in the given case.
Thus knowing well that ‘we ought to refrain from killing of humans’, when a policeman giving priority to a situation kills a miscreant to protect many innocent lives, it is not a wrongful act. The most popular rationale in the given situation is that if the death of one who has voluntarily violated the norms of society leads to the protection of mass of innocent lives or to keep measures for saving life of innocent members of society, if the loss of one member of society becomes unavoidable, it is not an offence. For the greater interest, sometimes violation of moral law is condoned by the society.

3.12 WAR IS CONTRARY TO PRINCIPLE OF NON-KILLING

But despite our adherence to non-killing of innocent lives, we cannot avoid killing of innocent lives, which is inevitable to a war. Quite contrarily, in a war we seldom think that value of life is at stake, rather we consider the entire issue from the standpoint of ‘national self defence’. And morally a country is always

...justified in entering into war if it is unjustly and
overtly attacked by an aggressor nation, but only
after all peaceful means to settle differences or stop
aggression have failed.\textsuperscript{19}

Sometimes a justification of war found in a theory known as ‘Just war
theory’ which justifies war on two conditions- that it must be
necessitated by just cause and supported by just means.\textsuperscript{20} But as regards
the second condition, we find a considerable variation in principle. In
application of its various means, modern war knows no moral law.
Nowadays dropping of bombs not only causes destruction of lives, but
also poses a severe threat to mankind. Today we are scared to think of
nuclear warfare for its devastating nature. Thus commenting on modern
war, Anirudha Jha observes:

\ldots the discovery of atom bombs, hydrogen bombs
and inter-continental missiles, if ever used in any
war, threatens to annihilate the human existence
itself. A war at the present time means victory for none but destruction of all.\textsuperscript{21}

However, to avoid similar devastation as happened in Hiroshima and Nagasaki during the World War II, we need to fix certain limits. A nation should not be allowed to enter into war only for spreading its power, maintaining national prestige or taking possession of territory.\textsuperscript{22} To make effective steps to preserve human race and restore peace, we have to restrain our war-like motives. For restoring peace, Bertrand Russell observes:

So long as there are rich countries and poor countries, there will be envy on one side and possible economic oppression on the other. A continual attempt to move towards economic equality must, therefore, be a part of the pursuit of secure and lasting peace.\textsuperscript{23}
3.13 KILLING OF HUMANS: A RELIGIOUS PERSPECTIVE

If we look at the religious perspective, we see that barring some exceptional circumstances; killing of humans is primarily looked upon as a sinful act as it interferes the activity of God. In Christian tradition, killing of humans is not justified because it violates the Sixth of the Ten Commandments ‘Thou shalt not kill’. In Christianity, a man is enjoined not to take life of fellow-humans as they are property of God. A man is advised to propagate life in this universe. Let us quote following verses from the Genesis:

Who so sheddeth man’s blood, by man shall his
blood be shed: for in the image of God made He
man.  

And you, be ye fruitful, and multiply; bring forth
abundantly in the earth, and multiply therein.
If we take various verses of Qurān, into account, we see that Qurān usually speaks against killing of humans, yet it approves some exceptions. In Islām, nobody is allowed to take anybody else’s life except by way of justice. Thus, Qurān says:

And a believer would not kill a believer except by mistake.\textsuperscript{26}

And whoever kills a believer intentionally, his punishment is hell.\textsuperscript{27}

...whoever kills a person, unless it be for man slaughter or for mischief in the land, it is as though he had killed all men.\textsuperscript{28}

And kill not the soul which Allāh has forbidden except for a just cause. And whoever is slain
unjustly, we have indeed given to his heir
authority....

Hinduism condemns manslaughter, but exceptions are found therein. In ancient Hindu societies, a man having social intercourse with those who killed children, women and persons coming for protection was usually looked upon as an outcast. Sometimes it is found that infliction of punishment in Hinduism was determined by the social status of the victim or class hierarchy. According to sacred law, if a Brāhman is slain intentionally, it is a sinful act and if it is happened unintentionally, the man who slays may be purified. Sometimes a rule is found that a man killing a Kṣatriya is to keep the normal vow of continence during nine years, for Vaisya, it is three years and for Śudra it is one year. But a slayer of a learned Brāhman is to practise following vow during twelve years:

Carrying a skull (instead of dish) and the foot of a bedstead (instead of a staff), dressed in the hide of
an ass staying in the forest, making a dead man's skull his flag, he shall cause a hut to be built in a burial ground and reside there: going to seven houses in order to beg food, while proclaiming his deeds, he shall support life with what (he gets there), and shall fast if he obtains nothing...33

Hinduism justifies murder for right cause. It is stated therein that it is not morally wrong to kill an assassin; no sin is incurred by killing an assassin

...who sets fire to the house of, administers poison to, falls upon with a sword on, steals the wealth, land, and wife of another person.34

Sometimes assassins are said to be of seven kinds, and besides the above five, those who deprive others of their worldly fame, destroy religious merit or property are also designated as assassins.35

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Finally, Hinduism accords importance to an act of self-defence and declares that a man is not definitely an offender who kills an aggressor, approaching with intent to murder or it is not immoral when

...one abused returns the abuse, or if one struck
strikes again, and kills assailant, such a man
commits no offence. 36

3.14 CONTEXTUAL INTERPRETATION IS NOT FINALLY CONVINCING

Now to conclude our discussion on murder, we must say that the above contextual interpretations may give justification to acts of murder in some exceptional cases. But they cannot surely make us blind to the fact that murder is a wrongful act, because once life has begun, it demands a continued existence, and any attempt to interrupt its course or the future state of becoming is not in accord with natural law and hence immoral. To be meticulous in preserving human existence, we must keep in mind
that a man has right to live which should not be traded off against the interests of others. And loss of life cannot be counter-balanced like material loss. Thus to make sustained effort to preserved human race, we must control our hatred at first. M.K. Gandhi has rightly said in this context:

...the supreme tragedy of the bomb is that it will not be destroyed by counter-bombs even as violence cannot be by counter-violence. Mankind has to get out of violence only through non-violence. Hatred can be overcome only by love. Counter-hatred only increases the surface as well as the depth of hatred.
REFERENCES


2. cf., Ibid., pp.332-333.

3. Ibid., p. 367.

4. cf., Ibid., p.367.

5. cf., Ibid., p.368

6. Ibid., p.368.

7. cf., Ibid., p. 375.


12.cf., Ibid., P.387.

13.cf., Ibid., p.388.


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16. cf. Five Exceptions are already mentioned in this chapter under sub-heading(3.3) ‘Culpable Homicide is not always murder’.


18. I borrow this phrase from Jacques, P, Thiroux from Ethics(Theory and Practice) op.cit., p.320.


24. The Bible, Genesis, IX-6.

25. Ibid., IX-7.

27. Ibid., ch-IV, verse 93, p.216
28. Ibid., ch-V, verse 32, p.250
29. Ibid., ch-XVII, verse 33, p.550
32. cf., Ibid., p.212.
33. Ibid., p.211.
35. cf., Max Muller, F(ed), Sacred Books of the East, op.cit., vol VII, p.41