

Section a child in
mother's womb is



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BUSTER**

Section 316 is read with the third explanation of Section 299, which explains about culpable homicide. According to third explanation to Section 299, the causing of the death of a child in mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought forth, though the child may not have breathed or been completely born. The provisions of Section 316 and Third Explanation to Section 299 apply to the incident causing the death of the child in the womb where pregnancy has advanced beyond the stage of quickening and where the death is caused after the quickening and before the birth of the child. An act is done against the mother or child to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born with an intention or with knowledge comes under Section 299. An act done against the child or mother with an intention to preventing the child from being born alive or causing it to die after its birth comes within the purview of Section 316.

Punishment under Section 299 is more severe than the punishment under Section 316. In *Murugan v. State of Tamil Nadu* [(1991) Cr. LJ 1680 (Mad.)], the accused struck his wife and caused her death. The postmortem report stated that she was carrying a child of 20 weeks.

The trial court imposed punishment under Section 316 opining that foetus gets life after 12 weeks of conception. Offence under Section 316 is cognizable, non-bailable, non-compoundable, and triable by Court of Session.