Sections 299 and 300 of the Penal Code: A revisit and further suggested amendments

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SECTIONS 299 AND 300 OF THE PENAL CODE: A REVISIT AND FURTHER SUGGESTED AMENDMENTS

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The 2012 Penal Code Amendments have gone some way to remedying existing weaknesses in the Penal Code’s provisions on culpable homicide and murder. In this article, it is suggested that there are still existing weaknesses inherent in the structure of the existing culpable homicide and murder provisions. Suggestions will then be offered as to how these weaknesses can be overcome.

I. INTRODUCTION

Since its inception more than a century ago, Singapore’s homicide laws have undergone their most significant reform in 2012, where the mandatory death penalty has been replaced with judicial discretion in sentencing for certain limbs.1 Although the reform is positively regarded as a watershed in the history of Singapore’s criminal law,2 it is submitted that there are still fundamental issues relating to the definitions in homicide law that have yet to be addressed.3

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1 Penal Code (Cap 224, 2008 Rev Ed Sing), s 302.


3 See Tham Kai Yau v Public Prosecutor [1977] 1 MLJ 174 ("the provisions relating to murder and culpable homicide are probably the trickiest most tricky in the Code and are so technical as to frequently lead to confusion.")
As homicide laws in the Penal Code⁴ attract the severest penalties, it is pivotal to resolve its outstanding ambiguities through legislative amendments. Reforms should correct long-standing interpretation problems, align penalties with varying degrees of moral culpability and revitalise the structural integrity of homicide provisions.⁵

The paper will begin with an evaluation of current homicide laws. The inadequacies of the present regime will be highlighted, thereby setting the ground for further reforms. In particular, recent case law will be examined to understand the precise contours of the revised regime. This is followed by suggestions that can be further implemented. Lastly, it is proposed that the distinction between murder and culpable homicide be retained,⁶ as this provides a normative anchor for gradations in moral responsibility. Model provisions have also been enclosed for illustration purposes.

II. THE REVISED HOMICIDE REGIME IN SINGAPORE: POST-REFORM CASE LAW

Pursuant to the 2012 Penal Code amendments to the homicide law of Singapore,⁷ the death penalty is now mandatory only for charges under s 300(a) of the Penal Code. In other words, the death sentence is discretionary for murder falling within the meaning of ss 300(b), (c) and (d) of the Penal Code. This is in stark contrast to the previous position where the punishment for murder was the mandatory death penalty, regardless of the limb of murder that the accused person is convicted of.

Two years down the road, it is submitted that the application of the new regime is promising as seen from how the courts have dealt with the transitory and new

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⁴Penal Code, supra note 1.
⁶The writers advocate in Part V-A, below, that the offence of “culpable homicide not amounting to murder” be renamed as “manslaughter”.
⁷The legislative amendments came into effect on 1 January 2013 pursuant to Penal Code (Amendment) Act 2012 (No. 32 of 2012).
cases.\textsuperscript{8} While the revised regime is still at its infancy, there are several insightful holdings that the courts have laid down which can provide preliminary guidance for practitioners. Notably, some of these cases have considered the manner in how judicial discretion will be exercised in imposing the death penalty.

First, the courts have held that for a death sentence to be meted out, the Prosecution will need to show how life imprisonment and/or caning are inadequate and why the death sentence would be congruent with the principle of deterrence: \textit{PP v Wang Wenfeng} (“Wang Wenfeng”).\textsuperscript{9} Therefore, although the accused person in \textit{Wang Wenfeng} had hidden the body of a taxi driver whom he intended to rob, Justice Lee Seiu Kin (“Justice Lee”) held that the death penalty was not warranted, as there was no pre-meditation (the accused person had only wanted to rob him) to murder the victim. The aggravating act of trying to extort money from the victim’s death did not show that he intended to commit murder. Eventually, Justice Lee sentenced the offender to life imprisonment and 24 strokes of the cane.

Second, the courts have indicated that there is no default starting position in terms of the punishment to be meted out in homicide cases. In \textit{PP v Kho Jabing} (“Kho Jabing (HC)”),\textsuperscript{10} Justice Tay Yong Kwang (“Justice Tay”) held that where the court had discretion to impose either the death penalty or life imprisonment under ss 300(b), (c) and (d) of the \textit{Penal Code}, there should not be a default position or presumptive sentence that the court has to consider. Rather, a “facts-sensitive approach” should be adopted in calibrating a sentence that is commensurate to the act committed by the accused person.\textsuperscript{11} Some of the factors to be taken into account include the choice of weapon and the existence of pre-meditation. Whilst the recent reform may spell less certainty in the final sentence that would be imposed on an


\textsuperscript{9} \textit{Ibid}.

\textsuperscript{10} \textit{Kho Jabing (HC), supra} note 8.

\textsuperscript{11} \textit{Ibid}.
accused person, Justice Tay opined that ultimately, Singapore would have to develop its own jurisprudence of sentencing guidelines over time.

In *Kho Jabing* (HC), the accused person was initially sentenced to life imprisonment with caning. On appeal however, the Court of Appeal in *PP v Kho Jabing* (“Kho Jabing (CA)”)\(^\text{12}\) reversed the High Court’s judgment and in a 3-2 decision, sentenced the accused person to death. It is noted that the Judges did not disagree on the principles to apply in determining whether a death penalty should be imposed, but rather, differed on the weight to be accorded to various facts.\(^\text{13}\) Justice of Appeal Chao Hick Tin (“Justice Chao”) held for a unanimous bench that the key test in deciding whether the death penalty should be imposed is whether the acts of the offender would “outrage the feelings of the community”.\(^\text{14}\) In this regard, the court must consider “whether the offender has acted in a way which exhibits a blatant disregard for human life”. The court must also consider all the other circumstances of the case, and accord appropriate weight to each of these factors. Nonetheless, the question of what would outrage the feelings of the community cannot be exhaustively answered, and the threshold that has to be met remains unsettled.

The recent judicial decisions show that where warranted, the courts have not shied away from meting out the death penalty. Moreover, the court has repeatedly underscored the vital factors of sentencing that are necessary in ensuring that justice is upheld. As seen from *Kho Jabing* (CA), judges would have to apply stringent guiding principles in determining whether capital punishment should be imposed. By vesting the Judiciary with considerable – albeit guided – leeway in the sentencing of homicide offenders, the moral culpability of the accused persons has also been more extensively accounted for in contrast to the previous regime. As such, the concerns about laxity and ambiguity in sentencing may be alleviated.\(^\text{15}\)

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\(^{12}\) *Public Prosecutor v Kho Jabing* [2015] SGCA 1, [2015] 2 SLR 112 [*Kho Jabing (CA)*].

\(^{13}\) *Ibid* at [86], where Lee Sieu Kin J in delivering the minority judgment stated at the outset that they “respectfully agree with the analysis in the Majority Judgment of the law in relation to the imposition of the death penalty on a charge under s 300(c), and punishable under s 302(2), of the PC.”

\(^{14}\) *Ibid* at [44].

\(^{15}\) *Ibid* at [80], the CA emphasised the importance of being guided by “clear and practicable principles in order to prevent any form of capriciousness and arbitrariness”.
Third, the new sentencing regime appears to have had the effect of compelling the Prosecution to make charging decisions which are more specific. As a person’s life or death could now hinge on which s 300 limb an accused person is charged under, the Prosecution has to exercise greater prudence in framing its charge. The issue of non-specificity in charges surfaced in Muhammad bin Kadar v PP ("Kadar"),\textsuperscript{16} where prior to the new sentencing regime, the Prosecution had failed to specify in the Charge Sheet which limb of s 300 the accused person was being convicted under. This was because the mandatory punishment for murder then was the death penalty, regardless of the limb that an accused person was charged under. As a result of such ambiguity in the charge, the Court of Appeal had to ascertain which limb of s 300 the murder committed by the offender fell under. However, with the new regime, the Prosecution would have to proceed with a specific limb, thereby averting such a problem.

III. INADEQUACIES IN SINGAPORE’S HOMICIDE LAW

Notwithstanding the changes to the sentencing regime, the definitions of the homicide provisions remain fundamentally unchanged. While the revised regime allows judges to accord offenders with a sentence commensurate to his/her moral culpability, this inevitably introduces a degree of uncertainty in the exercise of their judicial discretion. Often, judges can at best state that sentencing essentially depends on the factual matrix of the case. It is worth noting that in Kho Jabing (CA), the accused person was sent to the gallows by a difference of just one vote, showing the difficulties of applying the law as it currently stands.\textsuperscript{17} Therefore, it is suggested that further reforms relating to the definitions of homicide law are required in due course. The present section highlights the continuing inadequacies of the provisions and why further changes are needed.

\textsuperscript{16}Kadar, \textit{supra} note 8.

A. The Use of 19th Century Values and Language Is Outdated

First, the Penal Code was drafted in the 19th century and reflects the values and language of that era.\(^\text{18}\) However, such language might have become anachronistic. The values and principles underpinning the Penal Code should also be reviewed, in order to ensure relevance to the Singapore society. Many of the illustrations to s299 and s 300, for example, depict the practices and mores of the community in the 19th century.

Lord Macaulay had intended for the Penal Code to be precise, comprehensible and relevant,\(^\text{19}\) and he had proposed a revision mechanism so that case law clarifying ambiguities in the Penal Code can be incorporated where necessary by the Legislature. In his view, every time an appellate court reversed a lower court’s decision on the interpretation of a provision, the matter should be referred to the Legislature, and if necessary, amended.\(^\text{20}\) Yet, such a mechanism has never featured in Singapore. Instead, piecemeal reforms\(^\text{21}\) have resulted in judges having to contort the archaic language to fit contemporary societal norms and principles.\(^\text{22}\)

B. The Distinction Between Section 299 and Section 300 Is Overly Complicated

Secondly, murder at present is a species of culpable homicide not amounting to murder (“culpable homicide”),\(^\text{23}\) the crucial difference between them being *mens rea*

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\(^\text{18}\) Chan Wing Cheong, Barry Wright & Stanley Yeo, *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform* (England: Ashgate, 2011) at 4 [Chan, Wright & Yeo].

\(^\text{19}\) Macaulay, Macleod, Anderson & Millet, *supra* note 5.

\(^\text{20}\) Chan, Wright & Yeo, *supra* note 18 at 6.


and the probability of death ensuing.\textsuperscript{24} It is submitted that practically, there are three consequences to such a categorisation.

First, the type of harm and probability of death ensuing, which the accused person intends or knows, demarcate murder from culpable homicide. \textsuperscript{25} This distinction has been criticised and Sir Beaumont has commented that it is unnecessary to distinguish murder from culpable homicide, since culpable homicide already encompasses murder.\textsuperscript{26} In his view, the current structure of s 299 and s 300 means that murder is viewed as a subset of culpable homicide to be distinguished by the Prosecution when a charge is meted out.

Secondly, given that s 299 and s 300 are defined in closely related terms, it can be challenging for the Prosecution to determine which charge and which limb a case should fall under.\textsuperscript{27} The distinction has been criticised as arbitrary and overly technical.\textsuperscript{28} Thus, the purportedly fine lines demarcating the two sections have often led to practical difficulties faced by the Prosecution, Defence and the courts.\textsuperscript{29} While prosecutorial discretion is undoubtedly subject to legal limits and such power must never be exercised arbitrarily or for any extraneous purpose,\textsuperscript{30} the Court of Appeal also observed that the Public Prosecutor is generally not obliged to disclose the reasons for making a particular prosecutorial decision.\textsuperscript{31} Furthermore, as

\begin{itemize}
\item \textsuperscript{24} Ibid.
\item \textsuperscript{25} State of Andhra Pradesh v Rayavarapu Punnayya AIR [1977] SC 45 [Punnayya]. See also Tham Kai Yau [1977] 1 MLJ 174, Raja Azlan Shah FJ (“if the act must in all probability cause death, the offence is within s 300, Penal Code, and if the act is only likely to cause death, the offence falls within s 299, Penal Code”) [Tham Kai Yau].
\item \textsuperscript{26} United Kingdom (UK), Royal Commission on Capital Punishment, Report, (London: H.M.S.O., 1953).
\item \textsuperscript{27} Yeo, Morgan & Chan, supra note 5 at [9.29]. See Tham Kai Yau, supra note 25 (“[n]ot only does the Code draw a distinction between intention and knowledge but subtle distinctions are drawn between the degrees of intention to inflict bodily injury”). See also Punnayya, supra note 25, at [13].
\item \textsuperscript{28} Colin Walsh, Crime in India (1920) and quoted in India Law Institute, Essays on the Indian Penal Code (Bombay: N M Tripathi, 1962).
\item \textsuperscript{29} Terence Morris & Louis Blom-Cooper, Fine Lines and Distinctions: Murder, Manslaughter and the Unlawful Taking of Human Life (Hook, Hampshire: Waterside Press, 2011) at 23.
\item \textsuperscript{30} Ramalingam Ravinthran v Attorney-General [2012] SGCA 2, [2012] 2 SLR 49 at [51] [Ramalingam].
\item \textsuperscript{31} Ibid at [74].
\end{itemize}
prosecutorial power and judicial power enjoy co-equal status in the constitutional realm, the presumption of constitutionality applies to prosecution power. This means that the courts would have to presume that the Public Prosecutor’s decisions are constitutional or lawful until proven otherwise. The burden of disproving such a presumption lies on the accused person – it is an extremely onerous burden to discharge in the absence of reasons for the Attorney-General’s decision. The wide discretion afforded to the Prosecution under the current constitutional framework gives the Prosecution rather broad powers in preferring the charge against the offender, so long as such power is exercised in good faith.

The problem is further exacerbated by the drastic difference in punishment between ss 299 and 300 – an offender is certainly punished with life imprisonment under the former but possibly death under the latter. Given that the life and liberty of the accused person is at stake, the distinction between ss 299 and 300 should be made clearer.

Thirdly, the distinction could result in judges having to face a moral dilemma in applying the law. As commented by Member of Parliament Alvin Yeo in Parliament, there have been occasions where judges might have applied ss 299 liberally to avoid the death penalty, though it is acknowledged that the recent amendments seem to have ameliorated this phenomenon. Although guidelines have been suggested in ascertaining which section a case falls under, it is submitted that in certain cases, the facts might be so equivocal that it is nearly impossible to determine whether culpable homicide qualifies as murder. Thus, the distinction

33 Ramalingam, supra note 30 at [43]–[45].
34 Gary Chan, “Prosecutorial Discretion and the Legal Limits in Singapore” (2013) 25 SAcLJ 15 at [71].
35 Constitution, supra note 32, Art 35(8).
36 Ramalingam, supra note 30 at [17]. See also Law Society of Singapore v Tan Guat Neo Phyllis [2007] SGHC 207 [2008] 2 SLR 239 at [149].
37 Parliamentary Debates (14 November 2012), supra note 21 (Alvin Yeo).
38 Ibid, (“[s]ometimes, judges are faced with the moral dilemma of whether to apply the law in its strictest sense, and convict someone who did not intend to kill or murder”).
39 Punnayya, supra note 25 at [21].
between s 299 and s 300 is hair-splitting and sometimes confusing when applied to actual cases.\footnote{Yeo, Morgan & Chan, \textit{supra} note 5 at [9.89].}

Given the criticisms above, it is submitted that a relook into the structure of culpable homicide and murder is warranted. The next section deals with the problems which arise in relation to proving \textit{mens rea}. It lends strength to the case for a relook as to how s 299 and s 300 should be structured and worded.

C. \textit{There Are Problems With the Mens Rea Requirement As It Currently Stands}

Thirdly, the differences in the \textit{mens rea} requirement between s 299 and s 300 are very fine. In fact, all cases falling within s 300 must necessarily fall within s 299 but not vice versa.\footnote{Tham Kai Yau, \textit{supra} note 25.} However, whether a case falls under s 300 or s 299 would depend on the degree of risk to human life and the probability of death, which would ultimately turn on the evidence of each case. Yet, it is unclear what the relevant threshold that would distinguish a s 300 case from a s 299 case is. Here, the relevant limbs of the two sections will be compared individually.

1. \textit{Sections 299 and 300(a)}

First, the first limb of s 299 and s 300(a) are worded very similarly. To illustrate, a comparison table is set out:

| 299. Whoever causes death by doing an act with the intention of causing death, … | 300. Except in the cases hereinafter excepted culpable homicide is murder — (a) if the act by which the death is caused is done with the intention of causing death; |

[emphasis added]
Both s 299 and s 300(a) refer to the intention of the accused person to cause death. Despite the illustrations in the Penal Code, it remains equivocal how an intention to cause death may fall under s 300(a) rather than s 299. The reliance on the probability of death as the touchstone for whether a case constitutes murder or culpable homicide is problematic, as this places undue emphasis on the evidence that will be established at trial when charging decisions are made prior to that.

2. Sections 299 and 300(b)

Secondly, s 300(b) is more stringent than the second limb of s 299. Both are set out as follows:

| 299. Whoever causes death by doing an act … with the intention of causing such bodily injury as is likely to cause death, … |
| 300. Except in the cases hereinafter excepted culpable homicide is murder – (b) 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; |

[emphasis added]

Thus far, s 300(b) has rarely been invoked due to the high degree of culpability that must be satisfied. It also appears to be redundant in so far as it is highly similar to s 300(a): if the elements in s 300(b) have been fulfilled, it is likely that an intention to kill can be inferred, since the accused person would have intentionally caused an injury likely to cause death.

S 300(b) is also similar to s 300(d), in so far as the liability of one who deliberately seeks to exploit a victim’s weakness can also be based on whether there was such a high level of culpability that the person had the intention to kill, or the knowledge that the acts would in all probability cause death as per s 300(d). As such, s 300(b)

43 Tham Kai Yau, supra note 25 at 176.
44 Yeo, Morgan & Chan, supra note 6 at [10.72].
45 Penal Code, supra note 1, s 300(a).
46 Penal Code, supra note 1, s 300(d).
seems repetitive of its sister provisions in ss 300(a) and (d), and its relevance is therefore questioned.

3. A comparison between sections 299 and 300(d)

Thirdly, the third limb of s 299 and s 300(d) are concerned with the accused person’s knowledge of the likelihood of the victim’s death. Both are set out as follows:

<table>
<thead>
<tr>
<th>299. Whoever causes death by doing an act … with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.</th>
</tr>
</thead>
<tbody>
<tr>
<td>300. Except in the cases hereinafter excepted culpable homicide is murder – (d) 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.</td>
</tr>
</tbody>
</table>

[emphasis added]

The confusion in interpretation arises mainly from the second limb of s 300(d). On an objective reading, the Prosecution must prove that the accused person knew that the act was so imminently dangerous that it would in all probability cause bodily injury and that he knew that such a bodily injury was likely to cause death.\(^{47}\) However, this would result in s 300(d) being co-extensive with the third limb of s 299, which deals with exactly the same issue.\(^{48}\) While some might suggest that the stricter wording of s 300(d) implies a higher standard of moral culpability, it is submitted that in the absence of any guidance by way of definitions, it is difficult for judges, the Prosecution, and the Defence to make meaningful sense of that fine line.

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\(^{47}\) Yeo, Morgan & Chan, *supra* note 5 at 198-201.

\(^{48}\) Yeo, Morgan & Chan, *supra* note 5 at [38.3].
D. Improvements Can Be Made to Section 300 so that Moral Culpability Is Better Reflected

It is submitted that s 300 can be further improved by (a) refining the meaning of “intention”; and (b) remedying the weakness inherent in the interpretation of s 300(c).

1. The definition of “intention” in section 300(a) does not account for different levels of moral culpability

First, the definition of “intention” in s 300(a) is undefined. Yet, it is a crucial ingredient in the offence which has to be made out. It is submitted that this has led to difficulty on the Prosecution’s part in seeking to prove “intention”.49

While the mandatory death penalty was retained for murder falling within the meaning of s 300(a), case law has established that intention can arise spontaneously,50 or with premeditation,51 thus reflecting different levels of moral culpability even for situations that fall within s 300(a).52 Spontaneous killing, for example, was seen in Ismail bin Hussin v Public Prosecutor,53 where the intention to kill was constituted when the accused person suspected that the deceased was a terrorist and fired shots at him. Although such intention was formed on impulse – without any “conscious or reasoned thought”,54 the Malaysian court held that it would be too narrow to construe the intention to kill as one that has to be expressly formed. Moreover, it was held that it was inconsequential that the accused person

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49 Parliamentary Debates (14 November 2012), supra note 21 (Ellen Lee) where Ellen Lee observed that it is difficult to prove whether the accused has a clear intention to kill. This is further exacerbated by the inconsistencies in sentencing.

50 Ismail bin Hussin v Public Prosecutor [1953] MLJ 48.


52 Parliamentary Debates (14 November 2012), supra note 21 (Sylvia Lim), where Sylvia Lim noted that s 300(a) encompassed a wide range of circumstances where the intention to kill can be found, ranging from mercenaries hired under contracts to kill to those where the accused is not inherently a killer.

53 Ismail bin Hussin, supra note 50.

54 Ismail bin Hussin at 48, supra note 50.
merely harboured suspicion of the victim’s identity and did not actually know who he was – the moment the accused person noticed the victim and shot him at close range, the intention to kill was formed. On the other hand, such intention can also be established from evidence of the accused person’s systematic planning to kill the deceased. This was evident in *Ler Wee Teang Anthony v Public Prosecutor*,\(^{55}\) where the accused person deliberately planned the killing of his divorced wife by plotting her death with a teenager under 18 years of age and also repeated his intention to do so numerous times.\(^{56}\)

As seen from case law, the finding of an intention to kill can be evinced on different levels and to varying degrees. This reflects the varying degrees of moral culpability of the accused person. However, the 2012 amendments do not address this difference in culpability.\(^{57}\)

2. *The interpretation of section 300(c) is erroneous*

Furthermore, the interpretation of s 300(c) is beset with problems. The *locus classicus* on the interpretation of s 300(c) is *Virsan Singh v State of Punjab* (“*Vrisa Singh*”),\(^{58}\) which has been affirmed in Singapore.\(^{59}\) Nevertheless, inconsistencies in interpretation of s 300(c) will continue to persist if the *Vrisa Singh* test remains.

Where the intended and actual injuries are similar, the *Vrsis Singh* test poses little problem – criminal liability under s 300(c) is established as long as the injury can be objectively determined to be sufficient in the ordinary course of nature to cause death, and there is a subjective intention on the offender’s part to cause a serious injury.\(^{60}\) The application of the *Vrisa Singh* test is, however, tricky where the

\(^{55}\) *Ler Wee Teang Anthony, supra* note 51.


\(^{58}\) *Virsan Singh v State of Punjab* AIR 1958 SC 465 [*Virsan Singh*].

\(^{59}\) *Public Prosecutor v Lim Poh Lye* [2005] SGCA 31 [2005] 4 SLR(R) 582. See also Alan Tan Khee Jin, “Revisiting Section 300(c) Murder in Singapore” (2005) 17 SAcLJ 693 at 712.

\(^{60}\) *Virsan Singh, supra* note 58.
intended and actual injuries are different, or where the factual matrix of the case becomes more complicated.

First, under the Virsa Singh test, an accused person will be exculpated if the injury he intended was different from the injury he actually inflicted, though both may be fatal. By restricting the scope of s 300(c) to circumstances where the intended and inflicted injuries are the same, it unwittingly excludes situations where the accused person intends for a more serious injury than what he actually inflicted, which should technically fall within s 300(c).

Secondly, the Virsa Singh test remains irreconcilable with the retributivist ideal that men should not be convicted beyond what he is morally culpable for. Since the accused person does not need to be aware that the injury he intended can cause death, his moral culpability under s 300(c) should not be equivalent to its sister provisions where death is intended. The Virsa Singh test therefore incorrectly considers whether the accused person subjectively intended the actual injury, and whether the severity of the actual injury was objectively sufficient in the ordinary course of nature to cause death.

Thirdly, the Virsa Singh test also contradicts the express statutory language of s 300(c). It flies in the face of Illustration (b) to s 300(c), which demonstrates that the s 300(c) inquiry should focus on the severity of the intended injury, regardless of whether the intended injury coincides with the actual injury. Given the innumerable problems that the Virsa Singh test poses, it should be rejected. Although

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62 Ibid.
63 Jordan Tan, “Murder Misunderstood: Fundamental Errors in Singapore, Malaysia and India’s Locus Classicus on Section 300(c) Murder” (2012) SJLS 112 at 117 [Tan, “Murder Misunderstood”]
64 Alan Tan, “Revisiting Section 300(c) Murder in Singapore” (2005) 17 SAcLJ 693 at 714 [Tan, “Revisiting Section 300(c) Murder”]
65 Parliamentary Debates (14 November 2012), supra note 21 (Sylvia Lim).
66 Stanley Yeo, “Fault for Homicide in Singapore” in Jeremy Horder, ed, Homicide Law in Comparative Perspective, (Oxford, UK: Hart Publishing, 2007) [Yeo, “Fault for Homicide in Singapore”], where s 300(c) was criticised for creating a form of “constructive murder” – a person who intends only to inflict a minor injury but happens to cause death is sentenced to death.
67 Tan, “Murder Misunderstood”, supra note 63.
Law Minister K Shanmugam has said that it is perhaps unnecessary to amend s 300(c) presently, it is submitted that its revision is apposite and needful in light of the problems caused by inconsistencies in judicial interpretation.

IV. PRINCIPLES GUIDING HOMICIDE LAW REFORM

Accordingly, it is submitted that the Penal Code needs to be restructured to ameliorate rigidity in sentencing, and to better reflect the different scales of moral culpability that can possibly arise. Three principles are employed in the formulation of the suggested reforms.

A. The Amendments Must Abide by the Macaulay Objectives

First, Professor Stanley Yeo (“Professor Yeo”) has opined that there are four core values to abide by when drafting the Penal Code: comprehensibility, accessibility, precision and democracy. As Lord Macaulay stated:

There are two things which a legislator should always have in view while he is framing laws: the one is that they should be as far as possible precise; the other that they should be easily understood … That a law, and especially a penal law, should be drawn in words which convey no meaning to the people who are to obey it, is an evil. On the other hand, a loosely worded law is no law, and to whatever extent a legislature uses vague expressions, to that extent it abdicates its function, and resigns the power of making law to the Courts of Justice.

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68 Parliamentary Debates (14 November 2012), supra note 21.
69 Yeo, Morgan & Chan, supra note 5 at [1.33].
70 See also Chan, Wright & Yeo, supra note 18 at 4 where it is commented that Macaulay’s general principles of precision, comprehensibility and active legislative lawmaking have stood the test of time and remain as progressive general aims for law reform in the twenty-first century.
To achieve these general aims, Professor Yeo has prescribed six precautions that should be considered when amending the *Penal Code* to preserve its proper function. They are as follows:

(a) The revision to the existing law should sit well with other closely related provisions and be a definite improvement of the law.

(b) Adhere strictly, wherever possible, to the wording and concepts used in the *Penal Code*.

(c) Ensure that words used for the revision are intended to have the meanings that have already been assigned to them by the Code.

(d) Should new words or concepts need to be introduced, they should be fully explained.

(e) Judges’ statements should not be made part of a revised provision.

(f) A holistic approach should be undertaken rather than confining the revision exercise to the errant provision.

B. *The Amendments Must Uphold the Government Policy of Crime Deterrence*

Secondly, the reforms must account for and support the prevailing policy of ensuring that Singapore’s streets remain safe. In this regard, Law Minister K Shanmugam has stressed that the overarching aim of Singapore’s criminal justice system is to ensure the safety and security of Singapore, while upholding fairness and justice. 

\[\text{\textsuperscript{71}}\] See generally Yeo, “A Penal Code Reviser’s Checklist”, *supra* note 23. See also Chan, Wright & Yeo, *supra* note 18 at 8 where it is commented that the replacement of s 84 of the *Penal Code* in 1935 was one which left the provision rather unclear due to a change in terminology, made worse by the different interpretations that the courts have taken.

Deterrence remains the cardinal principle and capital punishment continues to be an integral part of our criminal justice system. Therefore, the suggested reforms must be consistent with this aim.

C. The Amendments Must account for Moral Culpability

During the Parliamentary Debates, there was consensus on the moral culpability of the accused person under ss 300(b), (c) and (d) being lower than that of the accused person under s 300(a). Even for s 300(a), it was questioned whether the mandatory death penalty is deserved in all cases. Member of Parliament Sylvia Lim pointed out that an intention to kill can manifest in a “wide range of circumstances” and submitted that they “should not be lumped together for the same sentence of death”. Professor Chen Siyuan has also commented that each person has a right to a consistent weighting of the importance of moral harm. With these three guiding principles, the rest of the paper will set out and evaluate the proposed reforms.

V. PROPOSED REFORMS

Three main areas of reform are proposed in this paper. First, it is suggested that the genus-species structure between s 299 and s 300, along with their overlapping provisions, be abolished. Secondly, key terms should be defined for greater precision as to the legislative intent behind them. Thirdly, s 300 should be amended to better reflect moral culpability of accused persons. Model provisions have been suggested at Section VI of this paper.

73 Ibid.
74 Ibid (Sylvia Lim).
75 Ibid.
A. *Abolish the Genus-Species Structure of Sections 299 and 300*

Although the distinction between murder and a less morally culpable form of killing should be retained, the genus-species structure of s 299 and s 300 should be abolished.⁷⁷ Presently, murder is seen as a subset of culpable homicide.⁷⁸ It is submitted that renaming culpable homicide to manslaughter would better reflect the interconnectedness between murder and manslaughter, while discarding the notion that one is a subset of another.⁷⁹ The provisions should begin with the highest type of fault for intentional killing. This is followed by manslaughter, which is defined as non-intentional killing. Non-intentional killing refers to the category of cases where an accused person inflicts intended injuries that are sufficient in the ordinary course of nature to cause death. Finally, the provisions pertaining to death caused by rash and negligent acts will be introduced. The appropriate punishment to be meted out will be left to the sentencing stage, which is based on the offender’s moral culpability.⁸⁰ The relationship between murder, manslaughter and death due to rashness or negligence will be defined by variations in the degree of the offender’s mental fault. This is illustrated by Diagram 1:

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⁷⁸*Tham Kai Yau, supra* note 25.

⁷⁹ Law Reform Commission of Western Australia, *supra* note 57 at 6, where the Commission suggested that the offences of murder and manslaughter should be differentiated on the basis of intentional and unintentional killing.

⁸⁰ Yeo, *supra* note 23 at 294.
The revised sections contain only mutually exclusive fault elements. This is advantageous for the following reasons:

(a) First, this overcomes the persistent ambiguities in interpreting s 299 and s 300 and the issue of when the evidence is actually sufficient to turn a case from culpable homicide to murder. For example, so long as an intention to cause death is established, murder will be constituted under the new provision.\(^{81}\) This removes the confusing overlap between the first limb of s 299 and s 300(a), both of which currently provide for the “intention to cause death”.

(b) Secondly, stricter and more precise formulations of the homicide offences have the virtue of closely adhering to the principle of fair labelling in criminal law.\(^{82}\) Professor Ashworth highlights this as promoting criminal justice and informing the public of the law’s declaratory function in sustaining social standards.\(^{83}\) By continuing to distinguish between murder and manslaughter, fault elements of each offence will be pegged closely to the offender’s moral culpability. While the differences between murder and manslaughter are fine, they are also genuine, and should therefore be retained.\(^{84}\)

(c) Thirdly, the different tiers of murder, manslaughter and death due to rashness or negligence promote certainty and avoid the

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81 See s 1 of the Model Provision, below.
82 Yeo, “Fault for Homicide in Singapore”, supra note 65 at 214. See also Glanville Williams, “Convictions and Fair Labelling” (1983) 42 CLJ 85.
83 Andrew Ashworth, Principles of Criminal Law, 6th Ed (Oxford, UK: OUP Oxford, 2009) at 78. See also NSW Law Reform Comission, supra note 40 at 16, where it is commented that the word “murder” carries with it powerfully condemnatory connotations and the effect of labelling someone as a murderer cannot be discounted.
84 Punnayya, supra note 25.
“necessity of fiction in laying a charge”. Through the relatively finer classification of fault elements, there will be a more definite reflection of sentencing outcomes based on the relevant offence.

(d) Lastly, the abolition of the genus-species structure between s 299 and s 300 will allow the Prosecution and Defence to better assess different degrees of mens rea, while simultaneously maintaining the overall structural integrity of Singapore’s Penal Code. Furthermore, since an offender’s intention to kill does not change even if he were to succeed in pleading special exceptions, it is submitted that there is no need for the charge to be reduced to manslaughter under the new proposal. Rather, the exculpatory effect of special exceptions should be reflected in the sentencing outcome. This is contrasted with the current scheme where murder could be reduced to culpable homicide not amounting to murder, in the event that the accused person falls into any one of the four exceptions in s 300 of the Penal Code.

B. Define Key Terms to Ensure Greater Precision in Interpretation

Secondly, key terms should be defined so as to ensure that there is greater harmony in the manner which judges assess concepts such as “intention”. The imprecision of s 300 has been noted in Parliament, where Member of Parliament Ellen Lee commented that:

85 Yeo, supra note 23 at 103; Parliamentary Debates (14 November 2012), supra note 22 (Alvin Yeo).
87 See s 3(1)(a)(i) of the Model Provision, below.
88 This was also suggested by Neil Morgan in his chapter in Chan, Wright and Yeo, supra note 19 at 69-70.
89 Parliamentary Debates (14 November 2012), supra note 21 (Ellen Lee)
At the moment, our judicial system is still not perfect. Under definitions stipulated in s 300, it is very difficult for the court or the prosecution to prove whether the accused person had clear intention to cause the death of the victim. Some academics have also observed that there have been inconsistencies in sentencing.

The use of definitions can be seen in other countries: the New York Penal Code offers definitions of homicide and mental states to facilitate the interpretation of homicide provisions. This is also adopted in the Australian Commonwealth Criminal Code 1995 and the Criminal Code of Canada. Similarly, Singapore can consider including the definitions of murder, manslaughter, intention and knowledge under Chapter II of the Penal Code, as this clarifies differences and provides greater guidance for all stakeholders. While cross-jurisdictional reference of definitions is helpful, the Law Reform Committee can also account for local case law clarifications and codify judicial positions where appropriate.

C. Amendments to Section 300

As an overriding change, it is proposed that ss 300(b), (c) and (d) be categorised under manslaughter instead of murder. Despite the earlier observation that an intention to cause death can be a strong inference once the elements of ss 300(b), (c) and (d) are fulfilled, and that s 300(c) seems to be distinct from the other three

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90 New York Penal Law USC (US) §15.05 and §15.00(6) (1967), where a basic definition of homicide is first provided before murder and manslaughter are distinguished based on mens rea.
91 Act No 12 of 1995.
92 RSC, 1985, c. C-46.
93 See definitions in the Model Provision, below.
94 Yeo, Morgan & Chan, supra note 5 at [4.37].
95 Macaulay, Macleod, Anderson & Millet, supra note 5 at 10–11.
96 See Goode, “Codification of the Australian Criminal Law” (1992) 16 Criminal Law Journal 5, where “an experienced body of legal practitioners and scholars” have “drawn upon the latest thinking on the general principles of criminal responsibility”. However, it is unwise to adopt foreign definitions wholesale; a proper study of whether they are consistent with Singapore’s Penal Code should be conducted.
limbs in terms of moral culpability, it is submitted that these three limbs still do not constitute murder per se in the classical s 300(a) sense. For liability to be established under s 300(a), there must be an indisputable intention to put an end to a victim’s life. On the other hand, the common thread underlying ss 300(b), (c) and (d) is that these three limbs apply to situations where accused persons intentionally inflict severe injuries, which are likely to cause death, on their victims. Moreover, the wide range of factual circumstances which ss 300(b), (c) and (d) seek to address can be captured by the range of punishments meted out to the offenders. As such, it may be more prudent to categorise ss 300(b), (c) and (d) as manslaughter, distinct from s 300(a). More specific points are now addressed.

1. Amend section 300(c) and abolish the Virsa Singh test

First, s 300(c) aims to nab offenders who possess the subjective intention to inflict a bodily injury that is highly probable to cause death in the ordinary course of nature, without considering the victim’s susceptibility to particular injuries. 97 The seriousness of such injuries is ascertained medically, 98 with the inquiry on the intended injury’s severity, 99 and the Prosecution should not have to prove that the accused person intended the injury actually inflicted. 100

Since the Virsa Singh test arose as a result of defective drafting of s 300(c), legislative amendments should be made to ameliorate its adverse effects. 101 It is suggested that s 300(c) be rephrased such that s 300(c) is anchored in the fact that an offender who inflicts such a serious injury is highly likely to harbour the intention to kill. With the proposed amendment, the Prosecution may have a harder task of establishing its case under s 300(c), especially where the intended injury differs from the actual injury. It will have to rely predominantly on indirect evidence to ascertain what the intended injury was. This addresses the problem caused by the erroneous

97 Tan, “Murder Misunderstood”, supra note 63 at 118.
98 Virsa Singh, supra note 57. Medical advancements have helped in accurately ascertaining the severity of injuries.
99 Tan, “Murder Misunderstood”, supra note 63 at 127.
100 This is where the proposed approach departs from the Virsa Singh test.
101 Tan, “Murder Misunderstood”, supra note 63.
Virsa Singh test – that s 300(c) has always been much easier for the Prosecution to prove murder compared to the other limbs in s 300.102 This proposed approach is also advantageous for several reasons: (a) the trial court will focus on the severity of the intended injury and not the inflicted injury – this is most significant in “struggle” cases;103 (b) the most direct and accurate measure of moral culpability will be inferred from the severity of the injury that the offender intended to inflict, which should be the touchstone of murder;104 and (c) it removes the element of “moral luck”.105

2. Amend section 300(d) to aid understanding

Secondly, it is suggested that the first limb of s 300(d) be amended such that the phrase “in all probability” be replaced with “virtually certain”. This can aid the prosecutors and judges in understanding the scope of s 300(d).106 The second limb of s 300(d) on bodily injury should be repealed due to the significant problems of interpretation mentioned earlier in section III.D(2). This will also cohere with the principles of reform as aforementioned.

3. Gradation in sentencing as a reflection of mens rea

Thirdly, definitional reforms of murder cannot be undertaken in isolation from sentencing options. The 2012 Penal Code amendments to the punishment for murder highlight the need for a greater connection between the offence and its corresponding sentence. It also demonstrates the government’s willingness to temper justice with mercy while upholding the principle of deterrence.107

More substantial reforms to sentencing are required to balance justice to the victim, justice to the accused person, and the mercy that is required in appropriate

102 Ibid at 113.
103 Tan, “Revisiting Section 300(c) Murder”, supra note 59 at 696
104 Tan, “Murder Misunderstood”, supra note 63 at 133.
105 Ibid at 131.
106 Yeo, supra note 23 at 294.
cases. Indeed, in Public Prosecutor v Lim Ab Seng, Sundaresh Menon JC (as he then was) held that “[e]very killing is tragic; but this does not mean that every killer is to be punished in the same way”. It is also germane that Law Minister K Shanmugam opined, “[m]andatory sentences are and should be the exception”. Proposed reforms are thus steered towards greater judicial discretion in line with cardinal principles of criminal law and sentencing guidelines. Besides reviewing the definitions of s 299 and s 300, commensurate penalties are also equally important in any criminal law reform. The developments that have taken place thus far are steps in the right direction. Nonetheless, there are two further suggestions that we propose.

4. Pre-meditated murder

There is a spectrum of moral culpability even when the accused person harboured an intention to kill. It is thus recommended that a distinction between premeditated murder and on-the-spur deliberate killings be drawn during the sentencing stage, due to the difference in the moral opprobrium of the acts. Given the higher level of moral culpability involved in premeditated murder, the sentence should be the mandatory death penalty. Such a distinction is currently employed in France, where Article 221-3 of the Code pénal prescribes the mandatory life sentence for premeditated murder. This approach would also cohere with Singapore’s stand on using the death penalty for only murders that shock the conscience of the community. The judicial approach adopted in Wang Wenfeng appears to support this view.

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108 Ibid.
109 Public Prosecutor v Lim Ab Seng [2007] SGHC 40, [2007] 2 SLR(R) 957 at [1].
110 Parliamentary Debates (14 November 2012), supra note 21.
111 Parliamentary Debates (14 November 2012), supra note 22 (Sylvia Lim).
113 Kho Jabing (CA), supra note 12.
Presently, where special defences are applicable, charges are reduced to culpable homicide from murder. The new approach would see the accused person still convicted of murder even with special defences, but the sentence reduced appropriately. This illustrates the expressive function of the law to manifest the seriousness of murder.\textsuperscript{115}

5. Non pre-meditated intentional murder

For non-premeditated intentional murder, judicial discretion would suffice in determining whether the death penalty or a jail term should be meted out.\textsuperscript{116} After \textit{Kho Jabing} (CA), the local test is clear with respect to the administration of the discretionary death penalty. It is submitted that the recent cases decided after the 2012 amendments show that the judges have been able to exercise such discretion judiciously, thus instilling confidence in the public of a robust and fair criminal justice system in Singapore.

6. Model provisions for consideration

Finally, model provisions are included below:

\begin{quote}
\textbf{“Intention”}
A person acts with an intention with respect to a result or to conduct when his conscious objective is to cause such result or to engage in such conduct.\textsuperscript{117}
\end{quote}

\begin{quote}
\textbf{“Knowledge”}
A person has knowledge of a circumstance or a result if he is aware that it exists or will exist in the ordinary course of events.\textsuperscript{118}
\end{quote}

\textsuperscript{114} Yeo, Morgan & Chan, \textit{supra} note 5 at 172–179.
\textsuperscript{116} See Model Provisions in Part VI, below.
\textsuperscript{117} Adapted from \textit{New York Penal Law USC} (US) § 15.05 (1967).
\textsuperscript{118} Adapted from the \textit{Commonwealth Criminal Code 1995} (Cth).
“Rashness”
A person is rash when he acts with the consciousness of the consequences to follow but with the hope that they will not materialise.\(^{119}\)

“Negligence”
A person is negligent when he acts without the consciousness of the consequences to follow but which he would have known if he had fulfilled his duty to check.\(^{120}\)

“Murder”
A person commits murder if his actions evidence an intention on his part to cause death.

“Manslaughter”
A person commits manslaughter if the act that he intends causes death or may cause death on an objective view.

Murder
1. Whoever causes death by doing an act with the intention of causing death commits murder.

Manslaughter
2. Where a person causes death by doing an act — (a) with the intention of causing bodily injury which the offender knows will most probably cause death; or

\(^{119}\) Adapted from Chan Wing Cheong, Stanley Yeo & Michael Hor, *Criminal Law for the 21st Century: A Model Code for Singapore* (Singapore: Academy Publishing, 2013) at 97 [Chan, Yeo & Hor] (the authors also comment that the proper way to interpret rashness is that it is a subjective state of mind to be ascertained from objective facts in order to arrive at its determination). See also provisions relating to recklessness in England and Australia at 100–103.

\(^{120}\) Adapted from Chan, Yeo & Hor, *ibid* at 99. See also provisions relating to negligence in England and Australia at 100–103.
(b) with the intention of causing a serious bodily injury as is highly probable to cause death, regardless of whether he was aware of the severity of the act; or with the knowledge that such act is virtually certain\textsuperscript{121} to cause death, and without any justification for incurring such risk; the person commits manslaughter.

**Punishment for murder**

3.—(1) Whoever commits murder within the meaning of s 1 shall—

(a) if the act by which death is caused is done with the \textit{premeditated} intention of causing death, be punished with death. Where special exceptions apply, the offender will be punished with life imprisonment.

(b) if the act by which death is caused is done without a \textit{premeditated} intention of causing death, be punished between a minimum of twenty years imprisonment and death, and shall, if he is not punished with death, also be liable to caning.

**Punishment for manslaughter**

4. Whoever commits manslaughter shall be imprisoned with a term of minimum ten years, which may extend to punishment by death and shall also be liable to caning.

**Punishment for causing death by rash or negligent act**

5. Whoever causes the death of any person by doing any rash or negligent act not amounting to manslaughter, shall be punished –

(a) in the case of a rash act with imprisonment of a term up to 5 years, with or without a fine; or

(b) in the case of a negligent act with imprisonment of a term up to 2 years, with or without a fine.

\textsuperscript{121} Modelled after Professor Yeo’s suggestions in Yeo, \textit{supra} note 23.
VII. CONCLUSION

Justice and mercy are fundamental concepts that “animate the criminal tribunals of civilised nations”.¹²² In this article, ambiguities in the original provisions are addressed through the proposed codifications of case law and amendments to existing provisions. Further, it is suggested that greater judicial discretion should be introduced to sentencing, thus ensuring that punishment is proportional to moral culpability. The deterrent effect of the law should also be sustained through sentencing precedents, as well as retaining the distinction between murder and culpable homicide.

Wrongful conduct must be well defined to reflect moral culpability and allow for sufficient differentiation in sentencing. While the 2012 reforms have gone some way in achieving this, the proposed reforms seek to go further by differentiating punishments based on moral culpability, and ensuring that the Prosecution exercises its wide prosecutorial powers in the most appropriate manner. With the reforms, it is hoped that every killer will be meted his appropriate punishment, while preserving the deterrent effect of the law and ensuring greater justice for all.