Singapore Journal of Legal Studies
[2012] 112–133

MURDER MISUNDERSTOOD: FUNDAMENTAL ERRORS IN SINGAPORE, MALAYSIA AND INDIA'S *LOCUS CLASSICUS* ON SECTION 300(C) MURDER

JORDAN **TAN** ZHENGXIAN*

Section 300(c) of the *Penal Code* is the murder provision most frequently used by the prosecution and also the most problematic. Despite a diversity of academic and judicial views on its proper interpretation, there is a surprising consensus on the correctness of the Supreme Court of India's interpretation of that provision in *Virsa Singh v. State of Punjab*, which has become the *locus classicus*. This article respectfully submits that the *Virsa Singh* approach is wrong for contradicting the express statutory language in Illustration (b) to s. 300, failing to give effect to the ordinary meaning of the words in s. 300(c), and ignoring the important legal and historical context in which that provision was drafted. It argues for a new approach which restores the severity of the injury which the accused intended to inflict, regardless of whether it is the same as the injury actually inflicted, as the touchstone of the offence.

I. INTRODUCTION

No offence is more serious than murder in the class of offences against the person,[1] and no provision more capable of causing confusion than s. 300(c) of all the provisions in the *Penal Code*.[2] That provision, which is the progeny of the offence of murder by causing grievous bodily harm under English law, prescribes one of four instances in which the offence of culpable homicide is murder, punishable with a sentence of

* Assistant Registrar, Supreme Court of Singapore. For their valuable insight, I thank my friends, in particular Kevin Tan Eu Shan, the anonymous referee, as well as Professors Alan Tan Khee Jin and Stanley Yeo Meng Heong, who have also been an inspiration to me in law school. I record also my gratitude to my wife for her unstinting support. All errors are mine.

1 See Baron Thomas Babington Macaulay, "Introductory Report upon the Indian Penal Code" in *The Works of Lord Macaulay* (London: Longmans, Green, and Co, 1866), vol. 7 at 493 ["Introductory Report"] where Lord Macaulay, the principal drafter of the *Indian Penal Code*, *infra* note 3, opined thus to the Governor-General of India, Lord Auckland: "The first class of offences against the body consists of those offences which affect human life; and highest in this first class stand those offences which fall under the definition of voluntary culpable homicide."

2 Cap. 224, 2008 Rev. Ed. Sing. See *Abstract of the Proceedings of the Council of the Governor-General of India, Assembled for the Purpose of Making Laws and Regulations 1867*, vol. 6 (Calcutta: Office of Superintendent of Government Printing, 1868) at 46 where Sir Henry James Sumner Maine, a member of the original Council of the Governor-General of India which enacted the *Indian Penal Code*, *infra* note 3, took the view that "the definitions of murder and homicide in the Code did not appear… to be by any means the happiest examples of technical description exhibited by that body of law." See also Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (London: Macmillan and Co., 1883), vol. 3 at 313 [*History of Criminal Law of England*] where the author expressed the view that "[t]he definitions of culpable homicide and murder are… the weakest part of the Code."

death.[3] As a crime of such import and with such consequence, the interpretation of that provision is of interest to all concerned with the criminal laws of Singapore (as well as India and Malaysia, which share the same murder provisions). Section 300(c) also serves as one of the models for comparison in recent efforts to reform English law on murder.[4]

Section 300(c) provides that culpable homicide is murder "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". It is the most frequently used murder provision in Singapore by the prosecution in preferring a charge of murder[5] and has generated copious articles and judgments on the subject of its proper interpretation.[6] Despite the diversity of views, there is a surprising consensus on the correctness of the Supreme Court of India's interpretation of that provision in *Virsa Singh v. State of Punjab*[7] ("the *Virsa Singh* approach"), which is the *locus classicus* on this subject in Singapore,[8] Malaysia[9] and India.[10] This article respectfully submits that the *Virsa Singh* approach, which has been repeatedly endorsed by the courts of those three jurisdictions and represents the current orthodoxy, is wrong for various reasons, chief of which is its inconsistency with the statutory text. It examines the ramifications of this error and concludes by proposing an interpretation of s. 300(c) which gives effect to the ordinary meaning of its words and makes the severity of the injury which the accused intended to inflict, regardless of whether it is the same as the injury actually inflicted, the touchstone of the offence.

II. The Penal Codes of Singapore, Malaysia and India— A Shared Heritage of English Colonisation

The *Indian Penal Code* arrived on Singapore and Malaysia's shores when it was enacted in the Straits Settlement by Ordinance 4 of 1871.[11] The first draft of the

---

[3] See s. 302 of the *Penal Code*, *ibid.*, and the *Penal Code* (Act No. 574) (Revised 2006) (Malaysia) [*Malaysian Penal Code*]. The *Indian Penal Code*, *1860* (Central Act 45 of 1860) [*Indian Penal Code*] differs in that s. 302 provides that "whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine." A proposal to replace the mandatory death sentence for s. 300(c) murder with a discretionary death sentence is being considered by Parliament at the time of the publication of this article.

[4] See U.K., Law Commission, *A New Homicide Act for England and Wales?* (Consultation Paper No. 177) (2005) at para. 3.105.

[5] See Victor V. Ramraj, "Murder Without an Intention to Kill" [2000] Sing. J.L.S. 560 at 560. This trend continues unabated from a perusal of all the reported cases on murder in the Singapore Law Reports.

[6] See Chan Wing Cheong, "What's Wrong with Section 300(c) Murder?" [2005] Sing. J.L.S. 462 at 462 for a list of the more important reported cases.

[7] A.I.R. 1958 S.C. 465 [*Virsa Singh*].

[8] See *Public Prosecutor v. Lim Poh Lye* [2005] 4 S.L.R.(R.) 582 (C.A.) at para. 17 [*Lim Poh Lye* (C.A.)] where the Court of Appeal described the *Virsa Singh* approach as the "time-honoured pronouncement on s 300(c)".

[9] See *Chan Kwee Fong v. Public Prosecutor* [2010] 1 M.L.J. 441 (Putrajaya C.A.) at para. 78 where the Court of Appeal referred to *Virsa Singh*, *supra* note 7, as the starting point for the determination of liability under the Malaysian equivalent of s. 300(c).

[10] See *Thangaiya v. State of Tamil Nadu* A.I.R. 2005 S.C. 1142 where Arijit Pasayat J. referred to *Virsa Singh* as the *locus classicus* on the interpretation of the s. 300(c) equivalent under the *Indian Penal Code*.

[11] *Penal Code* (No. 4 of 1871, S.S.) was passed by the Governor of the Straits Settlement Major-General Sir Harry St. George Ord and came into operation at the same time as the *Penal Code Amendment Ordinance* (No. 3 of 1872, S.S.).

Indian Penal Code, which was completed in 1837,[12] was the product of the First Law Commission under the Chairmanship of Lord Macaulay.[13] That draft was subsequently modified and finalised by a Select Committee[14] which made significant changes to the provisions on voluntary culpable homicide and murder.[15] The Select Committee's report is lost to history and this is most unfortunate for it would have shed light on the reasons for the modifications.[16] Eventually, the provisions were adopted without change in Singapore and Malaysia, save for the renumbering of the sub-sections. They read as follows:[17]

> **Culpable homicide**
> **299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.[18]

---

[12] See *supra* note 1.

[13] The First Law Commission was established in 1834 under s. 53 of the *Government of India Act, 1833* (U.K.), 3 & 4 Will. IV, c. 85 (also known as the *Charter Act of 1833*), which converted the office of the Governor-General of Bengal into the office of the Governor-General of India and empowered him to legislate for the whole of India. See *History of Criminal Law of England*, *supra* note 2 at 298.

[14] The draft Code was first circulated throughout India for consultation; see Indian Law Commissioners, "A Penal Code" (1838) 31 The London and Westminster Review 393 ["A Penal Code"]. Subsequently, it was revised by two other Commissioners between 1845 and 1847. This revised draft was rejected by a Select Committee appointed by the Legislative Council of India which preferred Macaulay's original draft which was retained with modifications. The final draft received the assent of the Governor-General on 6 October 1860 and came into force on 1 January 1862; see Stanley Yeo, *Fault in Homicide* (New South Wales: The Federation Press, 1997) at 98, 99; and Barry Wright, "Macaulay's Indian Penal Code: Historical Context and Originating Principles" in Wing-Cheong Chan, Barry Wright & Stanley Yeo, eds., *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform* (Surrey: Ashgate, 2011) 19 at 37.

[15] Based on "A Penal Code", *ibid.* at 398, 399, the original provisions (omitting illustrations) read as follows:

> 294. Whoever does any act, or omits what he is legally bound to do, with the intention of thereby causing, or with the knowledge that he is likely thereby to cause, the death of any person, and does by such act or omission cause the death of any person, is said to commit the offence of 'voluntary culpable homicide'.
> 295. Voluntary culpable homicide is 'murder,' unless it be one of the three mitigated descriptions hereinafter enumerated; that is to say,
> *First*, Manslaughter;
> *Secondly*, Voluntary culpable homicide by consent;
> *Thirdly*, Voluntary culpable homicide in defence.

[16] See Yeo, *supra* note 14 at 99, note 19. See also Sir Rupert Cross, "The Making of English Criminal Law: (5) Macaulay" [1978] Crim. L. Rev. 519 at 524.

[17] See *Penal Code*, *supra* note 2, ss. 299, 300; and *Malaysian Penal Code*, *supra* note 3, ss. 299, 300.

[18] The following illustrations and explanations accompany this section:

> *Illustrations*
> (a) *A* lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. *Z*, believing the ground to be firm, treads on it, falls in and is killed. *A* has committed the offence of culpable homicide.
> (b) *A* knows *Z* to be behind a bush. *B* does not know it. *A*, intending to cause, or knowing it to be likely to cause *Z*'s death, induces *B* to fire at the bush. *B* fires and kills *Z*. Here *B* may be guilty of no offence; but *A* has committed the offence of culpable homicide.

Murder

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;

(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;

(c) 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

(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.[19]

III. The *Virsa Singh* Approach to Interpreting Section 300(c)

In *Virsa Singh*, the accused thrust a spear into the abdomen of the victim, puncturing his abdominal wall, causing his intestines to spill out, amongst other injuries, which ultimately killed him. Although the accused did not intend to cause death, it was found that he intended the injury actually inflicted and was convicted for murder. Bose J. delivered the judgment of the Supreme Court of India and stated the approach to interpreting s. 300(c) as follows:[20]

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the 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.

[19] The following illustrations accompany this section:

(a) *A* shoots *Z* with the intention of killing him. *Z* dies in consequence. *A* commits murder.

(b) *A*, knowing that *Z* is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. *Z* dies in consequence of the blow. *A* is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if *A*, not knowing that *Z* is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here *A*, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) *A* intentionally gives *Z* a knife-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. *Z* dies in consequence. Here *A* is guilty of murder, although he may not have intended to cause *Z*'s death.

(d) *A*, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. *A* is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

[20] See *Virsa Singh*, *supra* note 7 at paras. 22-26 [emphasis added and original paragraph numbers omitted].

> First, [the prosecution] must establish, quite objectively, that a bodily injury is present;
>
> Secondly, the nature of the injury must be proved; [t]hese are purely objective investigations.
>
> Thirdly, it must be proved that there was an intention to inflict *that particular bodily injury*, that is to say, that it was not accidental or unintentional, *or that some other kind of injury was intended.*
>
> Once these three elements are proved to be present, the enquiry proceeds further and[,]
>
> Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

The third and fourth inquiries need some explanation. First, the prosecution must prove that the accused intended to inflict the particular bodily injury actually inflicted and not "some other kind of injury". If the accused intended "some other kind of injury", he would be acquitted under the *Virsa Singh* approach. Bose J. anticipated situations in which the accused would argue that he could not have intended a particular bodily injury because he was unfamiliar with the human anatomy. For instance, the accused may argue that he could not have intended an injury to the lung because he was unaware that where he struck was where the lung was situated. Bose J. explained that it was not necessary for the accused to intend the injury actually inflicted *as described with medical specificity* in the sense that the accused intended peritonitis to result or to puncture a particular vital organ.[21] It is an enquiry "based on commonsense: the kind of enquiry that 'twelve good men and true' could readily appreciate and understand".[22]

Second, when it is proved that the accused intended to cause the injury actually inflicted, the expression "the bodily injury intended to be inflicted" is treated as being merely descriptive of the injury actually inflicted. The prosecution must then show that the injury actually inflicted was sufficient in the ordinary course of nature to cause death. Bose J. made this clear in the following remarks:[23]

> [W]hen it comes to the question of intention, that is subjective to the offender and it must be proved that *he had an intention to cause the bodily injury that is found to be present*.
>
> Once that is found, the enquiry shifts to the next clause—"and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."
>
> *The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it*, that is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or

---

[21] *Ibid.* at para. 21.

[22] *Ibid*.

[23] *Ibid.* at paras. 19-21 [emphasis added and paragraph numbers omitted].

> of that nature, is not proved. In that case, the first part of the clause does not come into play. *But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining—"and the bodily injury intended to be inflicted" is merely descriptive.*

Bose J. further emphasised that the second part of s. 300(c), *viz*., "the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death", has nothing to do with the intention of the accused to cause death or his knowledge that his act was likely to cause death:[24]

> It does not matter that there was no intention to cause death. *It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two).* It does not even matter that there is no knowledge that an act of that kind will be likely to cause death.

Simply put, the *Virsa Singh* approach interprets s. 300(c) to mean that the accused must intend the injury actually inflicted (as described in a commonsensical manner) and "not some other kind of injury", and the injury actually inflicted, as determined objectively, must be sufficient in the ordinary course of nature to cause death.

IV. The Error in the *Virsa Singh* Approach

It is respectfully submitted that the *Virsa Singh* approach is wrong because it erroneously interprets the words "the bodily injury intended to be inflicted" in s. 300(c) to refer to the injury intended to be inflicted *and* actually inflicted. It wrongly limits the scope of s. 300(c) to situations where the accused actually inflicts the same injury as that which was intended. It therefore leaves out situations in which the accused intended to inflict an equally serious or even more serious injury but ends up inflicting a *different* but still fatal injury, exculpating such accused persons. This is not all. More importantly, in so limiting the scope of s. 300(c), the *Virsa Singh* approach wrongly focuses the inquiry on whether the accused intended the actual injury and whether the severity of the actual injury is sufficient in the ordinary course of nature to cause death. This is the wrong focus as what is indicative of the moral culpability of the accused is the severity of what was *intended* and that may or may not be the same as that which was actually inflicted. The courts are therefore unnecessarily sidetracked into determining whether the accused intended the injury actually inflicted. This problem with the *Virsa Singh* approach is particularly pronounced in 'struggle' cases[25] where the intended injury and the actual injury are likely to be different. In such cases, the courts often look, quite rightly, to the purpose of the acts of the accused (for example, whether to temporarily subdue or to permanently silence the victim). It is unsurprising that the courts gravitate towards considering such factors as they are indicative of moral culpability for they point to the severity of the harm which was intended, *i.e*. the severity of the intended injury. But, instead of openly considering such factors for the purpose of evaluating the severity of the intended

---

[24] *Ibid.* at para. 27 [emphasis added].

[25] Credit for this useful characterisation goes to Professor Alan Tan in Alan Tan Khee Jin, "Revisiting Section 300(c) Murder in Singapore" (2005) 17 Sing. Ac. L.J. 693 at 696.

injury, the courts are forced to fit the analysis rather awkwardly within the rubric of the *Virsa Singh* approach and consider such factors for the erroneous purpose of determining whether the accused intended the actual injury instead of some other injury. This is an unnecessarily circuitous way of ascertaining moral culpability for the purposes of determining liability and is in fact contrary to statutory language.

Nonetheless, before exploring these points in full, it is important to note a disconnect which is often overlooked in the following oft-quoted pronouncement by Bose J.:[26]

> Once the intention to cause *the bodily injury actually found to be* [*present* is] proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. *No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder.* If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was *accidental or otherwise unintentional.*

Bose J.'s articulation of the rationale underlying s. 300(c) that "[n]o one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder" is commonsensical and persuasive. It justifies an approach which objectively evaluates the severity of the injury as opposed to relying on what the accused subjectively perceived. However, the rationale as articulated by Bose J. does not support him restricting the interpretation of "bodily injury intended to be inflicted" to mean the bodily injury intended to be inflicted and actually inflicted. As explained, the *Virsa Singh* approach unjustifiably absolves accused persons who intended an even more serious or equally serious but different injury from the actual injury. This introduction of an arbitrary 'moral luck' element detracts from Bose J.'s stated rationale of s. 300(c).

The disconnect in the above pronouncement by Bose J. has gone unnoticed and the rationale he articulates for s. 300(c), which is sensible and very persuasive, has perhaps made persuasive by association his restrictive interpretation of the requirement of intention which, it is respectfully submitted, is wrong. As we shall soon see, the potentially problematic results to which the *Virsa Singh* approach leads in situations where the intended injury and actual injury are different were actually anticipated by the drafters of the *Indian Penal Code* and its progenies, and dealt with in express statutory language in Illustration (b) to s. 300. This was unfortunately overlooked in *Virsa Singh* and by subsequent courts and academics who have considered s. 300(c).

The errors in the *Virsa Singh* approach are demonstrated by its inconsistency with express statutory language, especially Illustration (b) to s. 300, and its failure to give effect to the ordinary meaning of the words in s. 300(c).

A. *The* Virsa Singh *Approach is Inconsistent with Illustration (b) to Section 300*

The first and most obvious reason why the *Virsa Singh* approach is wrong is that it is inconsistent with Illustration (b) to s. 300, acquitting in situations where Illustration

---

[26] *Virsa Singh*, *supra* note 20 at para. 27 [emphasis added].

(b) requires conviction. Illustration (b) reads as follows:[27]

> *A*, knowing that *Z* is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. *Z* dies in consequence of the blow. *A* is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if *A*, not knowing that *Z* is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here *A*, although he may intend to cause bodily injury, is not guilty of murder, *if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.*

This illustration corresponds to s. 300(b) but sheds light as well, by the emphasised words, on the scope of s. 300(a) and 300(c). In this illustration, if *A* intends to inflict an ordinarily minor and non-fatal injury on *Z* but somehow causes death because *Z* has a medical condition which exacerbated the effects of the injury (for instance, *Z* is a haemophiliac), *A* is guilty of murder under s. 300(b) provided he knew that *Z* is likely to die from the injury as a result of *Z*'s medical condition. If *A* did not know of *Z*'s medical condition and thus did not know that the injury would likely cause *Z*'s death (so as not to satisfy the s. 300(b) *mens rea* requirement), he is not guilty of murder. However, this is only so "if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death." *A* may have merely inflicted an ordinarily minor and non-fatal injury ("[*A*] gives [*Z*] such a blow as would not in the ordinary course of nature kill a person in a sound state of health") but this somehow causes death. The *actus reus* requirement is satisfied even though the injury is ordinarily minor and non-fatal as Explanation 1 to s. 299 expressly deems a person causing a bodily injury to another who is suffering from a pre-existing medical condition, thereby accelerating that person's death, as having caused his death. Moving on to the *mens rea* requirement, if *A* possessed either of the *mens rea* requirements in s. 300(a) and (c), in that he intended to cause death or such bodily injury as in the ordinary course of nature would cause death, he would nonetheless be liable for murder. Take for instance a situation where *A*, intending to stab *Z* in the chest but not intending to cause death, ends up stabbing *Z* in the arm, severing a major artery and causing *Z* to bleed to death. It can be shown that the stab wound to the arm is ordinarily non-fatal. *A* would nonetheless be liable for murder if it could be shown that he intended to cause death (liable under s. 300(a)) or if a stab to the chest would be sufficient in the ordinary course of nature to cause death (liable under s. 300(c)). Even though the injury actually inflicted and the injury intended to be inflicted are *different*, Illustration (b) demonstrates that the scope of s. 300(c) is such that *A* could still be liable for murder.

More importantly, Illustration (b) demonstrates that the proper focus of the s. 300(c) inquiry is on the *mens rea*, in particular, the severity of the *intended* injury regardless of whether this is the same as the actual injury. To establish the offence, the actual injury is relevant, but for the separate and different purpose of determining *actus reus*, specifically, whether the accused had committed an act causing death by inflicting the actual injury.

---

[27] Emphasis added.

Hence, contrary to the *Virsa Singh* approach, which requires *A* to have intended the injury actually inflicted on *Z* in order to convict and that the actual injury be sufficient in the ordinary course of nature to cause death, Illustration (b) demonstrates that even if the actual injury is ordinarily minor and non-fatal and not the same as the intended injury, the accused could still be convicted provided that the *intended injury* is sufficient in the ordinary course of nature to cause death.

It may be argued that Illustration (b) is merely an illustration and this diminishes its significance. However, the illustrations in the *Indian Penal Code* and its progenies were given pride of place by its drafters as an important interpretive tool to determine the scope of its provisions. Lord Macaulay said thus of the illustrations in the *Penal Code*:[28]

> One peculiarity in the manner in which this code is framed will immediately strike your Lordship in Council—we mean the copious use of illustrations. *These illustrations will, we trust, greatly facilitate the understanding of the law, and will at the same time often serve as a defence of the law.* In our definitions we have repeatedly found ourselves under the necessity of sacrificing neatness and perspicuity to precision, and of using harsh expressions because we could find no other expressions which would convey our whole meaning, and no more than our whole meaning… [W]e hope that when each of these definitions is followed by a collection of cases falling under it, and of cases which, though at first sight they appear to fall under it, do not really fall under it, the definition and the reasons which led to the adoption of it will be readily understood.

Although Illustration (b) was introduced by the Select Committee, and Lord Macaulay's involvement in crafting it is unknown, it is an important tool in understanding the scope of s. 300.

Furthermore, where statutory examples or illustrations are given, it is the duty of the court to give effect to it in the exercise of statutory interpretation.[29] Where legislation includes an example or illustration of its operation, this is to be treated as a detailed indication of legislative intent on the operation of the enactment in practice.[30] It is only where the examples or illustrations are repugnant to or inconsistent with the operative provisions that they may be rejected by the courts.[31] Although Illustration (b) corresponds to s. 300(b), it is an illustration appended to s. 300 as a whole. The use of the language of s. 300(a) and (c) in Illustration (b) also makes it clear that the drafters intended to shed light as well on the scope of those provisions.

Illustration (b) makes it clear that liability under s. 300(c) can attach even if the injury actually inflicted is ordinarily non-fatal and is different from the intended injury as long as the intended injury is sufficient in the ordinary course of nature to cause death. The *Virsa Singh* approach is therefore in direct contradiction with this illustration and acquits in situations where Illustration (b) mandates conviction. The *Virsa Singh* approach may therefore be rejected for inconsistency with Illustration (b).

---

[28] See "Introductory Report", *supra* note 1 at 422 [emphasis added].

[29] Francis Bennion, *Bennion on Statutory Interpretation*, 5th ed. (U.K.: LexisNexis Butterworths, 2008) at 739.

[30] *Ibid*.

[31] *Ibid*. See also s. 7A(b) of the *Interpretation Act* (Cap. 1, 2002 Rev. Ed. Sing.).

The courts cannot continue to apply an interpretation of s. 300(c) which is contrary to express statutory language.

The inconsistency of the *Virsa Singh* approach with Illustration (b) is symptomatic of further ills in the approach. The *Virsa Singh* approach misinterprets the words of s. 300(c), failing to give effect to the ordinary meaning of its words and ignoring the important legal and historical context in which it was drafted.

B. *The* Virsa Singh *Approach Fails to Give Effect to the Ordinary Meaning of the Words in Section 300(c)*

Sections 299 and 300 have been structured so that the *actus reus* requirements for both sections are the same. Section 299 sets out the *actus reus* requirement of an act causing death and s. 300 refers to and adopts that same requirement in its four provisions by the use of the words "if the act by which the death is caused is done",[32] "if it is done"[33] and "if the person committing the act".[34] The primary difference between ss. 299 and 300 is, as explained by the Supreme Court of India in *Andhra Pradesh v. Punnayya*,[35] in the *mens rea* requirements. The s. 299 *mens rea* requirements are (1) intention of causing death; (2) intention of causing such bodily injury as is likely to cause death; or (3) knowledge that the accused is likely by such act to cause death. The first *mens rea* requirement in s. 299 corresponds to s. 300(a), the second to s. 300(b) and (c), and the third to s. 300(d).[36] Save for s. 300(a), the *mens rea* requirements of the other sub-sections are more stringent than the *mens rea* requirements under s. 299 to which they correspond. Section 300(b) and (c) require more than an intention of causing such bodily injury as is likely to cause death. Section 300(b) requires the offender to *know* as well that his act is likely to cause death. Section 300(c) requires the bodily injury intended to be inflicted be *sufficient in the ordinary course of nature* to cause death and not just likely to cause death. Section 300(d) too requires more than the knowledge that the act is likely to cause death: it requires the accused to know that his act is so imminently dangerous that it must *in all probability* cause death or such bodily injury as is likely to cause death. In other words, the *mens rea* requirements for s. 300, save for s. 300(a), are more stringent and more difficult to prove than that in s. 299. This provided the difference, along with the exceptions, between an offence of culpable homicide and murder.

Given the structure of ss. 299 and 300, where the *mens rea* requirements are concerned, s. 300 is focused on the intention (s. 300(a) and (c)) and knowledge of the accused (s. 300(b) and (d)). Section 300(c) in particular is concerned with the severity of the injury *intended* to be inflicted and not simply that which was actually inflicted. The actual injury is relevant for the purpose of determining *actus reus*,

---

[32] *Penal Code*, *supra* note 2, s. 300(a).

[33] *Ibid.*, ss. 300(b), 300(c).

[34] *Ibid.*, s. 300(d).

[35] A.I.R. 1977 S.C. 45 at 49 [*Punnayya*].

[36] *Ibid.* at 50. See also *History of Criminal Law of England*, *supra* note 2 at 314, 315. Although Sir Stephen criticised the drafting of ss. 299 and 300 as being repetitive in that apart from the five exceptions appended to s. 300, it was difficult to suggest a case of culpable homicide which was not murder, the Supreme Court of India in *Punnayya* pointed out that save for s. 300(a), the *mens rea* requirements of the other s. 300 sub-sections were higher than the *mens rea* requirements under s. 299.

specifically, whether the accused had committed an act causing death, and should not be confused with the *mens rea* requirement. In this context, it is unsurprising that the words "bodily injury intended to be inflicted" were used in the second part of s. 300(c), *viz*., "the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death". Those words do not lend themselves naturally to Bose J.'s interpretation that they refer to the injury intended to be inflicted *and* actually inflicted. In fairness, what may have also been confusing is the ambiguity in the use of the indicative mood in the choice of the word "is" in the expression "is sufficient in the ordinary course of nature to cause death", as opposed to "would be". Nonetheless, the presumption against surplusage in the use of words in a statute militates against reading the second part of s. 300(c) in a way which does not give effect to the ordinary meaning of the words "intended to be inflicted" which would refer to an injury intended to be inflicted regardless of whether it is the same as the actual injury.

Furthermore, the requirement that the accused intend the injury actually inflicted and not "some other kind of injury" is not borne out by s. 300(c) and in fact puts a strain on the words of that provision and runs counter to the important legal and historical context in which that provision was drafted. The first part of s. 300(c) provides that culpable homicide is murder "if it is done with the intention of causing bodily injury to any person". These words do not suggest that the accused needs to intend to cause the injury actually inflicted. In fact, by the use of the words "any person", these words do not even require the accused to intend to cause bodily injury to the actual victim (the accused may intend to cause bodily injury to another person), still less the injury actually inflicted on the actual victim. The ordinary meaning of those words can accommodate variations of both victim and injury: they do not limit the scope of s. 300(c) to situations in which the accused succeeds in inflicting the intended injury on the intended victim.

What is often overlooked in analyses of s. 300 is the companion provision in s. 301 of the *Indian Penal Code* and its progenies which makes it clear that culpable homicide may be committed on an unintended victim, and likewise murder if the requisite *mens rea* requirements are satisfied.[37]

Section 301 reads as follows:

> **Culpable homicide by causing the death of a person other than the person whose death was intended**
>
> **301.** If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

---

[37] See also *Penal Code*, *supra* note 2, s. 300, Illustration (b) to Exception 1 on provocation, which reads as follows:

> *Y* gives grave and sudden provocation to *A*. *A*, on this provocation, fires a pistol at *Y*, neither intending nor knowing himself to be likely to kill *Z*, who is near him, but out of sight. *A* kills *Z*. Here *A* has not committed murder but merely culpable homicide.

This illustration demonstrates that the 'transferred malice' doctrine applies to the offence of culpable homicide and murder, and the defence of provocation can also operate in such a situation.

Section 301 embodies the 'transferred malice' doctrine which has deep roots and was a well-established doctrine at the time of the drafting of the *Indian Penal Code*.[38] It was included initially as s. 296 in Lord Macaulay's draft code and renumbered as s. 301.[39] Although Lord Macaulay in his report to the Governor-General had suggested that it was not desirable to take as the groundwork of the *Indian Penal Code* any of the systems of law in force at the time in any part of India, including English criminal law as it was in need of reform, in response to criticism of this approach, he clarified that "the truth is, that the Commissioners not only took suggestions from the Laws actually in force in India, but borrowed also from the legislation of the most civilised countries of Europe."[40] Sir Stephen in his commentary on the *Indian Penal Code* also opined thus:[41]

> Speaking with singularly little qualification, the Penal Code is simply *the law of England* freed from technicalities, and systematically arranged according to principles of arrangement so simple and obvious that they cannot fail to suggest themselves to any one who considers the subject.

It is therefore unsurprising that the doctrine of 'transferred malice' was included as s. 301 of the *Indian Penal Code* and its progenies. The wording of s. 301, by specific reference to an intention to cause death or knowledge that death is likely to be caused, suggests that it applies only to s. 300(a) and (b). This is probably due to the fact that given their wording, those provisions are victim-specific, as compared, for instance, to s. 300(d) which does not require the accused to direct his acts towards any particular victim, and therefore the drafters needed to include s. 301 to incorporate the 'transferred malice' doctrine for the purposes of s. 300(a) and (b).

Like s. 300(d), s. 300(c) is not victim-specific and can accommodate variations in victim because of the use of the words "any person". By the use of those words (which are also used in s. 301), s. 300(c) incorporates the 'transferred malice' doctrine without more. The incorporation of this doctrine for the purpose of s. 300(c) is unsurprising as it was, after all, well-established at the time of the drafting of the *Indian Penal Code* that the 'transferred malice' doctrine applied to the offence of murder by causing death by grievous bodily harm (of which s. 300(c) murder is a progeny) as well.[42] English criminal law at the time did not require the accused

---

[38] See Sir Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; And of Other Crown Cases: to which are Added Discourses Upon a Few Branches of the Crown Law*, 3rd ed. (London: E. and R. Brooke, 1792) at 262. See also *History of Criminal Law of England*, *supra* note 2 at 22 for Sir Stephen's restatement of this principle as part of the law of murder by causing grievous bodily harm, and at 81 for s. 174 of the Criminal Code Commission's draft code which encapsulates Sir Stephen's restatement. See also *Re Attorney General's Reference (No. 3 of 1994)* [1998] A.C. 245 at 254 (H.L.) for Lord Mustill's account of the history of this doctrine.

[39] See "A Penal Code", *supra* note 14 at 398.

[40] See Baron Thomas Babington Macaulay, "The First Report on the Penal Code" in Baron Thomas Babington Macaulay *et al.*, *The Indian Penal Code, as Originally Framed in 1837, with notes by T. B. Macaulay… [and others] and the First and Second Reports There-on* (Madras: Higginbotham, 1888) at para. 44.

[41] See *History of Criminal Law of England*, *supra* note 2 at 322 [emphasis added].

[42] See Sir Stephen's restatement of the offence of murder by causing grievous bodily harm in art. 228 of Sir James Fitzjames Stephen, *A Digest of the Criminal Law (Crimes and Punishments)* (St. Louis, Soule: Thomas & Wentworth, 1877), and art. 174 of the Criminal Code Commissioners' draft code, both as presented in *History of Criminal Law of England*, *ibid.* at 80.

to intend to cause bodily injury to the unintended victim to convict, and certainly did not require an intention to inflict the injury actually inflicted on the unintended victim.[43]

Section 300(c), by the use of the words "any person", thus does not require the accused to intend to cause bodily injury to the actual victim (so long as he intended to cause bodily injury to any person), still less the particular injury actually inflicted on the victim. The *Virsa Singh* approach thus interprets s. 300(c) in a manner which ignores statutory language, in particular, the use of the words "any person" and is unable to accommodate either variations in victim or variations in injury, contrary to the position in English law at the time on the 'transferred malice' doctrine[44] which was expressly incorporated in s. 300(c) by the use of the words "any person".

In summary, the *Virsa Singh* approach's failure to give effect to the ordinary meaning of the words in s. 300(c) has led to its inconsistency with Illustration (b). Contrary to the *Virsa Singh* approach, Illustration (b) does not require the actual injury to be sufficient in the ordinary course of nature to cause death or to be the same as the intended injury for s. 300(c) liability to attach. These differences between the *Virsa Singh* approach and Illustration (b) explain why the *Virsa Singh* approach acquits in situations where Illustration (b) convicts. Illustration (b) which emanates from the drafters of s. 300(c) is, unsurprisingly, more consistent with the ordinary meaning of the words in s. 300(c) than the *Virsa Singh* approach. It also gives effect to the words "any person" in s. 300(c) for it accommodates variations in victims and injuries. The words in s. 300(c), Illustration (b), and the legal and historical context in which those provisions were drafted, demonstrate that the touchstone of the offence is the severity of the intended injury, regardless of whether it is the same as the injury actually inflicted and whether it is inflicted on the intended victim.

The *Virsa Singh* approach is thus defective as it is inconsistent with Illustration (b), strains the language of s. 300(c) by failing to give effect to the ordinary meaning of its words, and ignores the important legal and historical context at the time of the drafting of the provision.

V. The Ramifications of the *Virsa Singh* Approach

The intention of the accused in committing an act is a "marker (arguably *the* marker) of serious culpability."[45] By requiring the "bodily injury intended to be inflicted" to be sufficient in the ordinary course of nature to cause death (whether the accused thought this would be the likely effect or not), the drafters provided a relatively high threshold (although not as high as the other types of murder under s. 300) of the moral culpability required for s. 300(c) liability to be attracted. This is why, under

---

[43] *Ibid*. See also *R. v. Latimer* (1886) 17 Q.B.D. 359 in which the accused aimed a blow with his belt at another and struck him lightly but the belt bounded off and struck the victim, cutting her face open and wounding her severely. The accused was convicted of unlawfully and maliciously wounding the victim even though she had been struck accidentally. See also David Ormerod, ed., *Smith and Hogan Criminal Law*, 12th ed. (Oxford: Oxford University Press, 2008) at 127; and *Ratanlal and Dhirajlal's Indian Penal Code*, 33rd ed. (Wadhwa Nagpur: LexisNexis Butterworths, 2010) at 544.

[44] *Ibid*.

[45] See Michael S. Moore, "Intention as a Marker of Moral Culpability and Legal Punishability" in R.A. Duff and Stuart P. Green, *Philosophical Foundations of Criminal Law* (Oxford: Oxford University Press, 2011) 179 at 179 [emphasis in original].

Illustration (b), even if *A* only inflicted an ordinarily minor non-fatal injury which causes death because of *Z*'s pre-existing medical condition unbeknownst to *A*, but did so intending to cause another injury which is sufficient in the ordinary course of nature to cause death, he is judged by the severity of the intended injury as that provides the accurate measure of his moral culpability.

The *Virsa Singh* approach thus wrongly focuses the inquiry on whether the accused intended the actual injury, and then evaluating the severity of the actual injury to determine if it is sufficient in the ordinary course of nature to cause death. The only redeeming feature of the approach is that in situations where the intended injury and the actual injury are the same, an evaluation of the severity of the actual injury is likewise an evaluation of the intended injury and so the moral culpability of the accused is accurately determined, albeit in a circuitous manner. In factual situations where the actual injury and the intended injury are different, the *Virsa Singh* approach does not provide the accurate measure of moral culpability and thus erroneously acquits where it should convict. The first type of situation is that stated in Illustration (b) which has already been considered. The other situation is where *A* intends to cause a particular injury which is sufficient in the ordinary course of nature to cause death but causes another injury which is *also* sufficient in the ordinary course of nature to cause death.

The erroneous focus of the *Virsa Singh* approach has also confused the courts, which have developed various approaches,[46] the worst of which was that developed in two cases which abrogated completely the marker of moral culpability in s. 300(c). In the 1978 case of *Public Prosecutor v. Visuvanathan*,[47] the accused was charged with s. 300(c) murder for stabbing the victim in the heart. The court found that he intended to cause the injury actually inflicted. On the facts of this case, the intended injury being the same as the injury actually inflicted, no real injustice was caused as the severity of the intended injury justified conviction. However, the High Court (Choor Singh and A.P. Rajah JJ. delivering a combined judgment) made the following troubling observations:[48]

> It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental.

In making this observation, the High Court omitted any reference to the need for the prosecution to prove under the *Virsa Singh* approach that the accused did not intend "some other kind of injury".

The Court of Appeal in the 1992 case of *Tan Joo Cheng v. Public Prosecutor*,[49] took the strict *Visuvanathan* approach further. In this case, the accused, armed with a knife, tried to rob the victim in his flat. In the course of the struggle, the victim was stabbed in the neck. On appeal, the Court of Appeal found that the accused intended

---

[46] See Tan, *supra* note 25 where Professor Alan Tan embarks on an extensive survey on the various approaches taken in the more important s. 300(c) cases with a view to determining their consistency with the *Virsa Singh* approach.

[47] [1977-1978] S.L.R.(R.) 27 (H.C.) [*Visuvanathan*].

[48] *Ibid.* at para. 6.

[49] [1992] 1 S.L.R.(R.) 219 (C.A.) [*Tan Joo Cheng*].

to cause the injury present and added that:[50]

> Even if an accused intended to inflict *only a relatively minor injury*, if the injury that he *in fact inflicted* pursuant to that intention was an injury sufficient in the ordinary course of nature to cause death, the provisions of cl (c) of s 300 would be attracted.

The court presented a modified version of the *Virsa Singh* approach, retaining its fixation on the severity of the actual injury and not the intended injury, but failing to also insist (as the *Virsa Singh* approach requires) that the actual injury and the intended injury be the same. This latter requirement although also erroneous, as explained above, allowed the *Virsa Singh* approach to measure the moral culpability of the accused, albeit in a circuitous manner. This modification of the *Virsa Singh* approach meant that even if an accused intended to inflict only a relatively minor injury, he could be guilty of murder if the injury actually inflicted was sufficient in the ordinary course of nature to cause death. His moral culpability as measured by the severity of the intended injury is rendered irrelevant, leaving s. 300(c) with no real marker of moral culpability. Professor Alan Tan quite rightly characterises this as a "startling approach" which "renders s 300(c) totally out of kilter with the very high *mens rea* culpability needed to satisfy [the other s. 300 provisions on murder]."[51]

The *Virsa Singh* approach, if applied strictly in its original form, is perhaps benign in cases where the intended injury and actual injury are the same, but it is fertile ground for misapplication, as exemplified in the problematic approach developed in *Tan Joo Cheng*.

The *Tan Joo Cheng* approach has since been discredited with the Court of Appeal returning to the *Virsa Singh* approach in its original form. In the 2005 case of *Lim Poh Lye* (C.A.),[52] the three accused abducted the victim, forcing him to sign several cheques which they attempted to cash. They stabbed him in the thigh to prevent him from escaping. In so doing, they severed the right femoral vein in his thigh, causing him to bleed to death. Before the High Court, the trial judge acquitted the accused on the ground that the accused only intended to prevent the victim from escaping and did not intend to sever his femoral vein. Choo Han Teck J. took the view that s. 300(c) would not apply in "very special circumstances" where "the intended action… was inflicted for a specific non-fatal purpose".[53]

On appeal, the Court of Appeal applied the *Virsa Singh* approach and, in finding that the accused intended to cause the injury actually inflicted, which injury is sufficient in the ordinary course of nature to cause death, reversed the trial judge's decision and convicted the accused. In coming to its decision, the Court of Appeal disavowed the *Tan Joo Cheng* approach stating:[54]

> If the court should at the end of the day find that the accused only intended to cause a particular "minor injury", to use the term of the court in *Tan Joo Cheng*, which injury would not, in the normal course of nature, cause death, but, in fact

---

[50] *Ibid.* at para. 18 [emphasis added].
[51] Tan, *supra* note 25 at para. 11.
[52] *Supra* note 8.
[53] [2005] 2 S.L.R.(R.) 130 (H.C.) at para. 15 [*Lim Poh Lye* (H.C.)].
[54] *Lim Poh Lye* (C.A.), *supra* note 8 at para. 22.

caused a different injury sufficient in the ordinary course of nature to cause death, cl (c) would not be attracted.

The Court of Appeal explained also that s. 300(c) liability would be attracted "if the injury caused was clearly intended but the offender did not realise the true extent and consequences of that injury".[55] As Professor Alan Tan recognises, this decision "restores the original logic of Bose J's test" in *Virsa Singh*.[56] Nevertheless, as the *Virsa Singh* approach remains contrary to express statutory language and conceptually defective for failing to focus on the severity of the intended injury (whether this is the same as the actual injury or not), it cannot continue to be applied.

VI. The Proposed Interpretation of Section 300(c)

A. *The Proposed Approach to Interpreting Section 300(c)*

Before setting out the proposed approach to interpreting s. 300(c), for ease of reference, that section is reproduced:

> **Murder**
> **300.** Except in the cases hereinafter excepted culpable homicide is murder —…
> (c) 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[.]

It is submitted that the proper approach to interpreting s. 300(c) is as follows:

> The prosecution must prove the following—
>
> First, that the accused had voluntarily committed an act causing death.
>
> Second, that the accused had intended to cause a bodily injury to any person regardless of whether that person is the person whose death was caused.
>
> Third, that the nature of the injury intended to be inflicted, which may or may not be the injury actually inflicted, is such as to be sufficient in the ordinary course of nature to cause death. This is an objective enquiry and the accused does not need to have thought that the injury was sufficient in the ordinary course of nature to cause death.

The first requirement is simply the *actus reus* requirement of a voluntary act causing death as provided for by s. 299 and referred to by the words "if it is done" in s. 300(c). With regard to establishing causation, the explanations appended to s. 299 are pertinent.[57] In particular, Explanation 1 expressly deems a person causing a bodily injury to another who is suffering from a pre-existing medical condition, thereby accelerating that person's death, as having caused his death. This is consistent with the position in Illustration (b) which convicts where *A* causes an ordinarily minor and non-fatal injury to *Z* who is labouring under a disease, killing him, if the requisite *mens rea* is established. Explanation 1 precludes the argument that it is the pre-existing medical condition and not the accused's act which caused the victim's death.

---

[55] *Ibid.* at para. 23.
[56] Tan, *supra* note 25 at para. 34.
[57] *Supra* note 18.

The second requirement gives effect to the ordinary meaning of the words in the first part of s. 300(c), in particular the words "any person", which enables the operation of the 'transferred malice' doctrine. As for the third requirement, it gives effect to the ordinary meaning of the words in the second part of s. 300(c) and shifts the focus of the inquiry to the severity of the intended injury. The third requirement does not require the prosecution to prove that the accused intended the injury actually inflicted. It must be noted that it is not necessary for the accused person to have thought that the harm caused by the injury he intended was sufficient in the ordinary course of nature to cause death.[58] Knowledge of the sufficiency of the injury to cause death in the ordinary course of nature is not required. A parallel may be drawn to the offence of murder by causing grievous bodily harm under English law which does not require the accused to think that the harm he was causing was serious.[59]

B. *The Problem of Proof*

It is accepted that the proposed interpretation makes it more difficult for the prosecution to prove s. 300(c) murder in situations where the intended injury is not the same as the injury actually inflicted because the prosecution will have to prove that the injury *intended to be inflicted* is sufficient in the ordinary course of nature to cause death (although the prosecution would not have to prove that the accused knew of the severity of the intended injury), and accused persons will likely always argue that they intended some kind of minor injury. The prosecution in proving the nature of the intended injury will likely have to rely on *indirect* evidence, such as eye-witness accounts of the attack, the motive of the accused, the type of weapon used and the force of the attack, and this will increase the difficulty of proving its case.

However, where statute has provided a particular test, the courts cannot disregard that test on the basis that it presents certain difficulties with proof, and prefer another approach (the *Virsa Singh* approach) for reasons of practicality where that approach is inconsistent with express statutory language. More importantly, the proper reference point for comparison in terms of difficulty of proof *is not* the *Virsa Singh* approach but the other provisions under s. 300. The proposed interpretation of s. 300(c) still remains easier to prove than (1) s. 300(a) which requires proof of an intention to cause death, (2) s. 300(b) which requires proof that the accused *knew* that the injury was likely to cause death and (3) s. 300(d) which requires proof that the accused "*knows* [that his act] is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death".[60]

Hence, although the proposed approach makes it more difficult for the prosecution to prove s. 300(c) murder as compared to the *Virsa Singh* approach, it does not make

---

[58] This distinguishes the proposed approach from that in *Mohamed Yasin bin Hussin v. Public Prosecutor* [1974-1976] S.L.R.(R.) 596 (P.C.) [*Mohamed Yasin*] which required the prosecution to prove that the accused intended to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death; the proposed approach makes it clear that it is not necessary for the accused person to have appreciated fully the harm he would have caused. See Tan, *supra* note 25 at note 20 where Professor Alan Tan voices out the lingering concern that Lord Diplock's *dictum* in *Mohamed Yasin* "could be interpreted to suggest a subjective determination" of the seriousness of the intended injury.

[59] See Ormerod, *supra* note 43 at 481.

[60] Emphasis added.

s. 300(c) murder more difficult to prove as compared to the other types of murder under s. 300. It may in fact be argued that the very reason why s. 300(c) is most often used by the prosecution is because the erroneous *Virsa Singh* approach makes it much easier to prove as compared to the other provisions.

C. *Comparing the Approaches From a Criminal Philosophy Perspective*

"Intention" is a protean word reflecting diverse states of mind.[61] Suppose Paris, at a dance class, swings his foot to the right, hitting Achilles, who was standing close by, in the ankle, causing a bruise. Due to a rare pre-existing medical condition affecting his ankle, Achilles dies as a result of the bruise. Paris *intentionally* swung his foot to the right but did not intend to hit Achilles. When we say Paris' actions are intentional, we mean that Paris intended to move his foot in a certain way. When we say Paris did not intend to strike Achilles, we refer to intention in terms of the result Paris desired to bring about and believed would be brought about by his act. As Paris was simply executing a dance move, he neither desired nor believed that his bodily movement would strike Achilles. When we say that Paris did not intend to cause Achilles' ankle to bruise, we are also referring to intention in terms of the result, albeit characterised further down the chain of events to refer to the type or nature of the injury. We could also say that Paris did not intend to cause Achilles' death, and here we are also referring to intention in terms of the result.

It is the latter three examples of the use of the word "intention" to mean an intention to bring about a result that is often used to determine criminal responsibility, and is a type of *mens rea* requirement. It is this meaning of "intention" with which we are concerned.

It is a well-established general principle of criminal responsibility that in construing the *mens rea* requirement for an offence, the type of intention required must coincide with the *actus reus*.[62] Section 300(a), for instance, requires the accused to intend to cause death. This form of *mens rea* coincides precisely with the *actus reus* as provided for in s. 299, *viz*., an act causing death, and incorporated by the opening words of s. 300(a). An exception to the general principle is the incorporation of *mens rea* requirements which do not coincide entirely with the *actus reus* but indicate moral culpability close enough to that evinced by a *mens rea* requirement which does coincide with the *actus reus*.[63] This exception to the fundamental principle allows lawmakers to deal with situations in which the accused manifests a particular *mens rea* which demonstrates moral culpability equal or very close to that evinced by an intention to cause the *actus reus*. The provisions in s. 300, apart from s. 300(a), do not coincide precisely with the *actus reus* of an act causing death and fall within this exception.

The inclusion of s. 301 incorporating the 'transferred malice' doctrine is another example. Where *A* intending to shoot and kill *B*, kills another person, *Z*, *A* is not entitled to argue that he did not intend to cause *Z*'s death. Although *A*'s *mens rea*, intending to cause *B*'s death, does not coincide with the *actus reus* (an act causing

---

[61] Moore, *supra* note 45 at 185-190.
[62] *Ibid*. at 200.
[63] *Ibid* at 201, 202.

Z's death), the doctrine of 'transferred malice' allows *A* to be punished as he had manifested a *mens rea* (intending to cause *B*'s death) which demonstrates moral culpability equal to that for intending to cause *Z*'s death.

Professor Moore opines that the 'transferred malice' doctrine "at most creates a safe harbour where we know certain differences don't matter".[64] More difficult however, are the following situations:[65]

> For example, the defendant intends to hit [the] victim with a stick, but does not intend to injure the victim with such a light blow (the victim is, unbeknownst to [the] defendant, peculiarly susceptible to injury) [("the first example")], or the defendant intends to put out the victim's left eye with a blow from a stick, but instead puts out the victim's right eye [("the second example")]… In cases such as these, whether the act done in execution of some intention comes close enough to the type of act intended is left open by the transferred intent rule.

These situations can happen in murder cases but, given the remarkable foresight of the drafters, are actually dealt with in s. 300. With regard to the first example, suppose *A* intends to inflict an ordinarily minor non-fatal injury to *Z* but causes death because of *Z*'s pre-existing condition, s. 300(b) provides that *A* would not be liable if he did not know that the injury was likely to cause *Z*'s death. In this factual situation, *A*'s moral culpability is neither equal to nor close enough in terms of moral culpability to that evinced by an intention to cause death, to regard *A* as a murderer. However, the same cannot be said if *A*, even though he was unaware of *Z*'s pre-existing condition, actually intended to cause death or intended to cause an injury which is sufficient in the ordinary course of nature to cause death. This is why Illustration (b) clarifies that the scope of s. 300(a) and (c) is such that *A* would nonetheless be treated as a murderer if he possessed the *mens rea* stipulated in either of those provisions. Upon proof of either of the *mens rea* requirements, *A* is to be treated as equally culpable (if he possessed the *mens rea* in s. 300(a), *viz*., an intention to cause death) or almost as culpable (if he possessed the *mens rea* in s. 300(c)). This is why he is convicted for murder albeit under s. 300(a) or (c).

With regard to the second example, an analogous situation would be where *A*, although not intending to cause death, intends to stab *Z* in the heart and ends up stabbing *Z* in the neck, causing death. In such a situation, *A* intends to cause a particular injury which is sufficient in the ordinary course of nature to cause death but ends up causing *another* injury which is *also* sufficient in the ordinary course of nature to cause death. *A*'s moral culpability in intending to stab *Z* in the heart would be approximately the same if he had instead intended to stab *Z* in the neck. Described in general terms of an intention to cause an injury which is sufficient in the ordinary course of nature to cause death, the moral culpability demonstrated by such an intention is close enough to that evinced by an intention to cause death to treat *A* as a murderer.[66]

---

[64] *Ibid.* at 204.

[65] *Ibid*.

[66] Close enough in the view of the drafters to have included this as s. 300(c) for the offence of murder. Also, close enough from the perspective of English law which recognises an offence of murder by causing grievous bodily harm. This is notwithstanding the fact that these offences do not require the accused to appreciate fully the severity of the harm their acts would have caused.

The proposed approach, contrary to the *Virsa Singh* approach, recognises this, as did the drafters who crafted Illustration (b), and treats *A* no differently if he had intended to cause a particular injury which is sufficient in the ordinary course of nature to cause death but ends up causing *another* injury which is *also* sufficient in the ordinary course of nature to cause death. From a criminal philosophy point of view, the proposed interpretation ascribes the proper measure of moral culpability to *A* based on his intentions and punishes accordingly as compared to the *Virsa Singh* approach which creates a wholly unjustified distinction between cases where moral culpability is equal. It may be argued that the *Virsa Singh* approach introduces the element of 'moral luck' unjustifiably and this is yet another reason why the proposed approach should be adopted instead.

D. *A Significant Development the Proposed Approach Could Herald*

It may be argued that adopting the proposed approach leads to no real difference from the *status quo* as the aforementioned examples of instances in which the *Virsa Singh* approach leads to a wrong result are rare and therefore the proposed approach only makes, at best, a theoretical difference. It is submitted, however, that the difference between the proposed approach and the *Virsa Singh* approach is by no means theoretical. The most important difference between the proposed approach and the *Virsa Singh* approach is that the proposed approach changes the nature of the inquiry before the trial court entirely by focusing the inquiry on the severity of the intended injury, and therefore making the most direct and accurate measure of moral culpability the touchstone of the offence. The key practical difference, amongst others, is that the court is not restricted to considering whether the accused intended the actual injury but is free to openly consider all evidence pointing to the severity of the intended injury which may or may not be the same as the actual injury, including the motive of the accused in inflicting the injury. This is particularly important in 'struggle' cases in which the actual injury and intended injury are more likely to be different.[67] In *Tan Chee Hwee v. Public Prosecutor*,[68] the two accused were charged with the murder of a maid while attempting to burgle the house of a friend (who was complicit). When they were seen by the maid, they ended up in a struggle. To tie the maid up to keep her from screaming, the first appellant tried to slide a cable under her body while she was sprawled on the floor and struggling. He ended up strangling her to death with the cable. The Court of Appeal in overturning their conviction held that the injury was not intentionally but accidentally or unintentionally caused.

Interestingly, Choo J. in *Lim Poh Lye* (H.C.) read *Tan Chee Hwee* as adding a new element to the s. 300(c) inquiry, and that is to take into consideration the subjective intention or purpose of the act causing the injury.[69] The Court of Appeal disagreed with this view and overruled Choo J.[70] Quoting copiously from the decision in *Tan Chee Hwee*, the Court of Appeal pointed out that all that was decided in that case was

---

[67] See Tan, *supra* note 25.
[68] [1993] 2 S.L.R.(R.) 493 [*Tan Chee Hwee*].
[69] *Lim Poh Lye* (H.C.), *supra* note 53 at para. 14.
[70] See *Lim Poh Lye* (C.A.), *supra* note 8 at paras. 26-36.

that the injury was caused "accidentally" or "unintentionally", using the terminology of the *Virsa Singh* approach.[71] The Court of Appeal explained that in *Tan Chee Hwee*, it was found that the first appellant had no intention to cause the deceased any bodily injury at all, still less the injury actually inflicted.[72]

Although Choo J.'s characterisation of *Tan Chee Hwee* as adding a new element to the s. 300(c) inquiry to consider the subjective intention or purpose of the act causing the injury may technically be wrong because the Court of Appeal in that case used *Virsa Singh*'s terminology in making the finding that the injury inflicted was accidental or unintentional, it is undeniable that, in essence, the Court of Appeal, in acquitting the accused of s. 300(c) murder, was very much persuaded by the fact that the purpose of tying up the deceased was to keep her from screaming and not to kill her. The purpose of the act is instinctively an important consideration as it speaks to the severity of the intended injury, which in turn provides the accurate measure of moral culpability. The differences in Choo J.'s and the Court of Appeal's characterisation of *Tan Chee Hwee* arose as a result of an attempt to fit this important consideration within the rubric of the *Virsa Singh* approach.

When freed of the strictures of the *Virsa Singh* approach and applying the proposed approach, the court may openly and directly consider all factors, such as the purpose of the act causing the bodily injury, and other relevant evidence pointing to the severity of the intended injury, in determining liability. Although in certain situations (such as that in Illustration (b) to s. 300) the proposed approach would convict where the *Virsa Singh* approach would acquit, the proposed approach is by no means stricter than the *Virsa Singh* approach. This is so as the proposed approach allows the court to directly consider all factors which point to the severity of the intended injury instead of introducing such considerations in a circuitous manner. The proposed approach is therefore neither more lenient nor stricter than the *Virsa Singh* approach. Instead, it is more calibrated and more sensitive in measuring the moral culpability of the accused than the *Virsa Singh* approach.

VII. Conclusion

On the strength alone of the reason that the *Virsa Singh* approach is inconsistent with Illustration (b) to s. 300, the courts can no longer apply the *locus classicus* for to do so would be to ignore statutory language. Apart from that, the *Virsa Singh* approach, in misinterpreting the words "bodily injury intended to be inflicted" in s. 300(c), has created possibilities for error, manifested plainly in the developments found in *Visuvanathan* and *Tan Joo Cheng*, although the position taken in these cases has been abandoned in *Lim Poh Lye* (C.A.). The errors in the *Virsa Singh* approach have gone unnoticed for five decades because the approach is generally benign in cases where the injury intended to be inflicted and the injury actually inflicted are the same. However, what is perhaps most undesirable about the *Virsa Singh* approach is that it has caused the courts to be sidetracked into focusing, wrongly, on whether the accused intended the actual injury instead of focusing on the severity of the intended injury. In so doing, the *Virsa Singh* approach has forced the courts to

[71] See *e.g.*, *ibid.* at para. 37.
[72] *Ibid.* at para. 36.

develop various mechanisms, such as that introduced by the High Court in *Lim Poh Lye* (H.C.) in reinterpreting *Tan Chee Hwee*, so as to measure moral culpability, albeit in a circuitous fashion. The proposed interpretation avoids such problems and, more importantly, restores the marker of moral culpability, namely the severity of the injury intended to be inflicted, as the touchstone of s. 300(c) liability and makes it the focus of the court's inquiry.