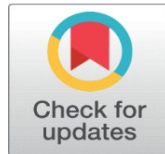
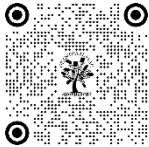


SENTENCING DISPARITY U/S 304 I OF IPC: AN ANALYSIS OF DELHI AND MADRAS HIGH COURT

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ABSTRACT

If an offence u/s 300 is established and it does not fall under any of the exceptions then the offence committed will be culpable homicide amounting to murder. If it falls under any of the exception it will come under s 304. In this section two kinds of punishment can be awarded under two different circumstances. These are:

- If the act by which death is caused is done with intention of causing death or such bodily injury as is likely to cause death then it will fall u/s 304 I
- If the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death then it will come u/s 304 II

1. INTRODUCTION

The law relating to homicide has always fascinated judges, academicians and laymen alike. Provisions relating to murder and homicide are probably most complicated in the IPC and are so technical that they very often lead to confusion.¹ A murder is merely a particular form of culpable homicide. Every murder is culpable homicide but every culpable homicide is not murder. Section 299 defines culpable homicide simpliciter and does not give an exhaustive definition but section 300 of the IPC also defines culpable homicides but which amounts to murder. There are practically three degrees of culpable homicides recognised in the Courts these are

- Culpable homicide of the lowest degree; which is punishable with fine only or with imprisonment up to a limit of 10 years or with both.²
- Culpable homicide of the middle degree; which is made punishable with imprisonment up to a limit of 10 years or with imprisonment for life, to either of which fine may be added.³

¹ K I Vibhute, *PSA Pillai's Criminal Law*, 15th edn. (Lexis Nexis Buttersworth, 2023).

² The Indian Penal Code, 1860 (Act 45 of 1860), s.304(2).

³ The Indian Penal Code, 1860 (Act 45 of 1860), s.304(1).

3. Culpable homicide of homicide of the highest degree; which is made punishable with death or imprisonment for life, to either of which fine may be added.⁴

There is no radical difference between culpable homicide and murder. The true difference between them is only in the degree of intention and knowledge. The greater the degree of intention and knowledge the case would fall under murder. A lesser degree of intention and knowledge the case would fall under culpable homicide not amounting to murder.

2. SENTENCING DISCRETION UNDER SECTION 304: DISCREPANCIES AND DISPARITIES

If an offence u/s 300 is established and it does not fall under any of the exceptions then the offence committed will be culpable homicide amounting to murder. If it falls under any of the exception it will come under s 304. In this section two kinds of punishment can be awarded under two different circumstances. These are:

- i) If the act by which death is caused is done with intention of causing death or such bodily injury as is likely to cause death then it will fall u/s 304 I
- ii) If the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death then it will come u/s 304 II

The author aims to analyse the cases converted or altered from section 302 to section 304 I by the Madras and Delhi High Courts decided from the years 2001 to 2010.⁵ The aim is to bring out the discrepancies in the sentencing practices of these two major courts of the country to highlight the need for sentencing guidelines, especially with regard to murder.

3. ANALYSIS OF MADRAS HIGH COURT CASES U/S 304 I FROM 2001-2010

In the last decade, out of the total 877 cases under Section 302 and 304 decided by the Madras High Court, a total 72 cases were altered from to 304(I).⁶ Table 1 delineates the cases analysed in this regard.

Table 1

	Case	Offence charged	Punishment-Trial Court	Punishment High Court	Aggravating and mitigating factors
1	Kaliyaperumal vs . State rep . by Inspector of Police CrI. Appeal No. 326 of 2001	300/302 /304(1)	LI ⁷	5 years	the act of picking quarrel and attacking was enough provocation
2	Pandian vs . State , rep by the Inspector of Police CrI. Appeal No. 449 of 2005 and CrI. M.P. No. 5511 of 2005	299, 300, 302 and 304	LI	10 years	
3	Panneer Selvam vs . State represented by the Inspector of Police C.A. No. 642 of 1999	302	LI	7 years	no intention or premeditation

⁴ The Indian Penal Code, 1860 (Act 45 of 1860), s.302.

⁵ See, Table 1.

⁶ The no. of cases has been arrived at by calculating the no. of cases reported in the Manupatra legal database.

⁷ Life Imprisonment

4	Aruchamy and Lakshmi vs . State rep . by The Inspector of Police Criminal Appeal Nos. 287 of	302, 304	LI	7 years	"Procecuton shall prove his case beyond reasonable doubt for conviction."
5	Maluku Mohamed vs . State Cri. Appeal No. 360 of 2003	302, 304	LI	5 years	"Courts shall pass proportionate sentences on a proper scrutiny of emanating circumstances at time of occurrence of events."
6	Mangilal vs . State rep . by The Inspector of Police Criminal Appeal No. 672 of 2003	302, 304	LI	6 years	"Conviction shall be reduced if confessed."
7	Mohd . Fazluddin vs . State , represented by Inspector of Police Criminal Appeal No. 194 of 2005	302, 304	LI	5 years	
8	Rayar vs . State , rep . by The Inspector of Police Criminal Appeal No. 670 of 2002	302, 304	LI	7 years	"An accused shall be convicted for criminal offence on the basis of evidence corroborated by testimony of witness."
9	97. Sangiah vs . State rep . by the Inspector of Police Criminal Appeal No. 1004 of 2003	302, 304	LI	5 years	"Mental background created by previous act of victim may be taken into consideration in ascertaining subsequent act for committing offence."
10	D . Dallasbar vs . State , rep . by the Inspector of Police Criminal Appeal (MD) No. 322 of 2005	302, 304	LI	7 years	"Prosecution shall prove its case beyond reasonable doubt on order to establish guilt of Accused."
11	Iswari W / o . Vallavan vs . State , rep . by the Inspector of Police Criminal Appeal (MD) No. 357 of 2005	302	LI	5 years	"Anything done within limit of self-defence, as recognise by law, will not be an offence."
12	Micheal Raj and Vincent vs . State , rep . by the Inspector of Police Criminal Appeal (MD) No. 349 of 2005	302, 304	LI	5 years	When act is done neither deliberate nor intentional but only due to sudden provocation to cause death, it will only amount to culpable homicide

13	Pethan vs . State through the Inspector of Police Criminal Appeal (Md) No. 356 of 2005	302	LI	5 years	"Without Sufficient reason or cause, eyewitnesses shall not be discarded as evidence.'
14	Rajam vs . State , rep . by the Inspector of Police Criminal Appeal No. 169 of 1999	302	LI	10 years	Court shall release accused after considering proper evidences
15	Sekar @ Chandhrasekar vs . State by Inspector of Police Criminal Appeal (MD) No. 1814/2003	302	LI	7 years	
16	Perumal vs . State rep . by Circle Inspector of Police , Palani Chettipatti , MANU/TN/0018/2001	302	LI	7 years	The deceaesd who was the wife of the accused conducted herself in an immoral manner which was sufficient ground for sudden and grave provocation.
17	Vanarani vs . State by Inspector of Police , MANU/TN/0070/2001	302, and 309	LI	3 years	Absence of ill will or premeditation, accused was deprived of her self-control and therefore she is entitled for the benefit of Exception I to Section 300
18	Krishnan Vs. Respondent: State through Inspector of Police , MANU/TN/1772/2002	Sections 302 and 304	LI	7 years	ingredients contemplated under Section 302 not proved , there was no pre-planning to commit offence , no mens rea or intention on part of accused , sudden provocation.
19	Nagappan vs . State , rep . by The Inspector of Police , MANU/TN/0687/2003	34, 302, 304 and 324	LI	7 years	grave and sudden provocation lead to the quarrel
20	Natarajan vs . State rep . by Inspector of Police , MANU/TN/1656/2003	300, 302, 304, 304 (I) and 307	LI	8 years	The accused acted without any premeditation in sudden quarrel in heat of passion ,words uttered and number of injuries caused by accused indicate that he had committed act of culpable homicide not amounting to murder but act by which death is caused is done with an intention of causing death
21	Ramalingam vs . State , represented by Otteri Police Station , MANU/TN/0696/2003	302	LI	7 years	The offence not murder , occurrence took place in sudden quarrel words uttered by deceased provoked accused accused liable to be convicted under Section 304 I.
22	Vellaichamy , vs . State by Inspector of Police , MANU/TN/1769/2002	34, 304, 374	LI	7 years	There was nothing in terms of evidence to show that the attack was premeditated , the accused did not have intention to commit the crime.
23	Arokiam and Gnanaselvam vs . State , represented by Inspector of Police , MANU/TN/0465/2003	34, 302 and 304	LI	7 years	in view of multiple injuries suffered

24	Bhaskaran vs . State , represented by Inspector of Po,llice, MANU/TN/0695/2003	302	LI	7 years	offense committted falls within exception 1 to section 300, it is not necessary to look into the relevant causes of the quarrel.
25	Muthuvel and Sanjeevi Pulavar vs . State by Inspector of Police , MANU/TN/0477/2003	34, 201, 302, 304 and 498A	LI	7 years	The act of the deceased provoked first accused to cause death of deceased – incident occurred in sudden quarrel due to grave and sudden provocation – second accused set fire to dead body of deceased in order to cause disappearance of evidence
26	Ponnusami vs . The State by Inspector of Police , MANU/TN/1717/2003	34, 302 and 304	LI	7 years	The deceased took sphere and assaulted deceased causing abdomen injury which proved fatal accused had knowledge that injury is likely to cause death but without any intention or mens rea
27	Sivakumar and Sampoornam vs . State rep . by Inspector of Police , Varapalayam Police Station , MANU/TN/0134/2003	34, 201, 302 and 304	LI	7 years	sudden provocation also premeditation or ill-will is absent.
28	Sivaraj Siva vs . State of Tamil Nadu rep . by Inspector of Police, MANU/TN/0751/2003	300, 302 and 304	LI	6 years	Accused is an unmarried man aged 24, has to take care of family thus RI 6 years is sufficient
29	Subramanian Subban vs . State rep . by The Inspector of Police , MANU/TN/1031/2003	302, 304 (i) and 324	LI	7 years	no intention to cause death
30	Udaya Kumar vs . State , rep . by the sub Inspector of MANU/TN/1118/2003	201, 302 and 304	LI	10 years	Accused had consumed liquiour and had lost balance there was no premeditation , to commit the crime of murder.

31	Balamurugan @ Bala @ Rajiv Gandhi , S / o . Dharmaraj vs . State , through The Inspector of Police, MANU/TN/2178/2010	302 IPC	LI	7 years	In a heat of passion the appellant/accused No. 1 attacked the deceased and also the previous incident where he was attacked by the deceased in the presence of so many was also lingering in his mind and therefore the act of the accused/appellant No. 1 was neither intentional nor premeditated and the same would fall under Exception No. 4 to Section 300 IPC.
32	Kumaravel vs . State, 2009CriLJ262	302 IPC	LI	Reduced - Imp.R.7Y	The accused had a sudden provocation due to previous conduct of the deceased and that he totally lost his self- control and in a heat of anger, he inflicted injuries on the deceased.

33	Parthasarathy vs . State through represented by Inspector of Police; MANU/TN/1970/2010	302 IPC	LI	Reduced - Imp.R.7Y	As per the prosecution, the deceased developed illicit intimacy with the accused/appellant. In the past, she was actually warned by PW.1 but she did not stop with it. She also got money from the accused/appellant - Rs. 45,000/- and did not repay him, as a result of which he suffered losses in his business. Thus, it is clear that the accused/appellant was really provoked and the fact that she was responsible for his financial and emotional upheaval was actually lingering in his mind.
34	Chandrasekaran @ Sekar vs . State by Inspector of Police; MANU/TN/2780/2010	302 IPC	LI	Reduced - Imp.R.7Y	The accused was suspecting that Saroja and others have hidden his wife Veerammal and they did not permit her to live with him. On the date of occurrence, when he came over there, he uttered the words "You have hidden my wife and not allowed her to live with me". Thus it would be clearly indicative of the suspicion in his mind, which ultimately provoked him to act so. Under the circumstances, it cannot be said to be an act intentionally done or premeditated.
35	Periya Sannasi vs . State rep . by Inspector of Police, MANU/TN/2083/2010	302 IPC	LI	Reduced - Imp.R.7Y	On the date of occurrence, the accused made a demand to which the deceased gave an evasive answer; this was followed by a wordy altercation which is in fact well admitted by P.W.1; and that in that altercation, the occurrence took place. Apart from that, the accused also sustained some injuries which were noted in the accident register copy. P.W.6 also gave evidence to that effect. But, the prosecution was unable to explain the same.
36	Samikannu and Ayyappan vs . State by The Inspector of Police, MANU/TN/2237/2010	302 IPC	LI	Reduced - Imp.R.7Y	When P.W.1 was making attempt to take water, it was objected to by the accused, and there was a wordy altercation, and in that process, A-1 and A-2 have attacked P.W.1 and caused injury. Apart from that, when the deceased Arasan intervened, he was attacked by A-1 and A-2. As far as A-1 is concerned, he has attacked him on the head and caused fatal injury. But, due to the quarrel, A-1 has acted so.
37	S . Sahayaraj @ Raja @ Sahayam vs . The State rep . by The Inspector of Police, MANU/TN/2260/2010	302 IPC	LI	Reduced Imp.R.10Y -	On the date of occurrence at about 6.30 p.m. there was a quarrel between the spouses and P.Ws.1, 2, 4 and others pacified the spouses but the quarrel continued thereafter and when P.W.3 came and informed to P.W.1 about the continued quarrel, P.W.1 and P.W.2, along with P.W.3, went and saw the quarrel continuing even at that point of time and when the request made by the accused was turned down by the deceased saying 'even if she dies, she would not go over to Periyakulam' he was provoked by the same and hence, he attacked her and caused her death instantaneously.

38	Veerapandian @ Poonai vs . The State through Inspector of Police, MANU/TN/2177/2010	302 IPC	LI	Reduced -Imp.R.7Y; sentence confirmed under Section 341	The act of the accused/appellant was neither intentional nor premeditated but due to sudden provocation by the words of the deceased.
39	Murugan @ Raja @ Kollampalam vs . State represented by Inspector of Police; MANU/TN/1954/2010	302 IPC	LI	Reduced - Imp.R.7Y; 341 - sentence confirmed; 506(ii) - sentence confirmed	The evidence clearly indicates that the act of the accused was neither intentional nor premeditated. But, it was following a wordy altercation in a public place and also following a scuffle, the accused thus took a knife and stabbed the deceased. This cannot be termed as murder, but culpable homicide not amounting to murder.
40	Chinna Kalappan vs . State by Inspector of Police MANU/TN/1883/2009	302 IPC	LI	Sentence altered- Section 304 (Part I) of IPC - Imp.R.7Y Sentence confirmed - Section 342 r/w 34 IPC	The deceased borrowed money from appellant, a few months before; but he did not pay it back and was giving false promise. Even on the date of occurrence, he was giving evasive reply, and being irritated and provoked by the answers given, accused has acted so. That apart, it was also pursuant to a quarrel and provocation. It remains to be stated that he had intention to cause such bodily injury as is likely to cause death.
41	Sudalaimani vs . State represented by The Inspector of Police; MANU/TN/2110/2010	302 IPC	LI	Reduced - Imp.R.7Y	There is nothing indicated by the prosecution as motive for the accused to act so. Insofar as the illicit intimacy, there was sustained provocation. As far as the sarcastic remarks made by Antonyammal that the sister of the accused/appellant has taken Rs. 500/- from her house is concerned, he was provoked as a result of which he has acted so. Thus the act of the accused was neither intentional nor premeditated, but due to the provocation, and it cannot be said to be one of murder, but culpable homicide not amounting to murder.

42	Jegan and Shanmugam @ Shanmuga Sundaram vs . State rep . by Inspector of Police; MANU/TN/2778/2010	302 IPC	LI	Reduced - Imp.R.7Y	A1 and A2 had not come to the place with any pre-plan, and it was not premeditated or intentional, but following the wordy altercation, A-1 took the hammer and attacked him, and when it fell down, A-2 took the same and also attacked him.
43	Paramasivam and Kamuthai vs . State rep . by The Inspector of Police, MANU/TN/1729/2008	302 IPC	LI	Reduced - Imp.R.5Y	A2 and witness were quarreling with each other. A1 came with knife and assaulted the deceased with knife. A1 lost his self control and due to sudden provocation, and on being facilitated by A2 by holding the hands of the deceased behind, gave one stab on the spur of the moment which landed on the chest of the deceased resulting in his death.
44	Eswaran alias Shanmugavel vs . State MANU/TN/3621/2009	302 IPC	LI	reduced - Imp.R.7Y	Court is of the view that the offence committed by the accused against the deceased Mani would fall Under Section 304, part I, I.P.C. since it was not intentionally done but only a culpable homicide not amounting to murder.
45	Kandeepan vs . State rep . by Inspector of Police; MANU/TN/1396/2010	302 IPC	LI	Reduced - Imp.R.7Y	The accused, who came in a drunken mood, unarmed, due to the wordy quarrel and sudden provocation, took the iron rod which was found nearby the place of occurrence, attacked the deceased and caused his death. Thus, the act of the accused was neither intentional nor premeditated, but it was due to sudden quarrel and provocation and hence the act of the accused cannot be termed as murder, but it would be one culpable homicide not amounting to murder.
46	D . Prakasam vs . State, 2008CriLJ3471	302 IPC	LI	Reduced - Imp.R.7Y	The possibility of the deceased breathing his last immediately after the attack on his head by the accused due to intoxication cannot be ruled out. Hence, accused liable under 304(i).
47	Samikkannu and Ravi @ Ravichandran vs . The State represented by The Inspector of Police, MANU/TN/0738/2008	302 IPC	LI	Reduced - Imp.R.7Y	At the time of the incident, there was a quarrel between the accused on the one side and the deceased on the other side. In that quarrel, the accused have acted and attacked the deceased and under such circumstances, the act of the accused cannot be said to be an intentional or a premeditated one and the act of the accused would not attract the penal provision of murder, but would attract Section 304(i) I.P.C.

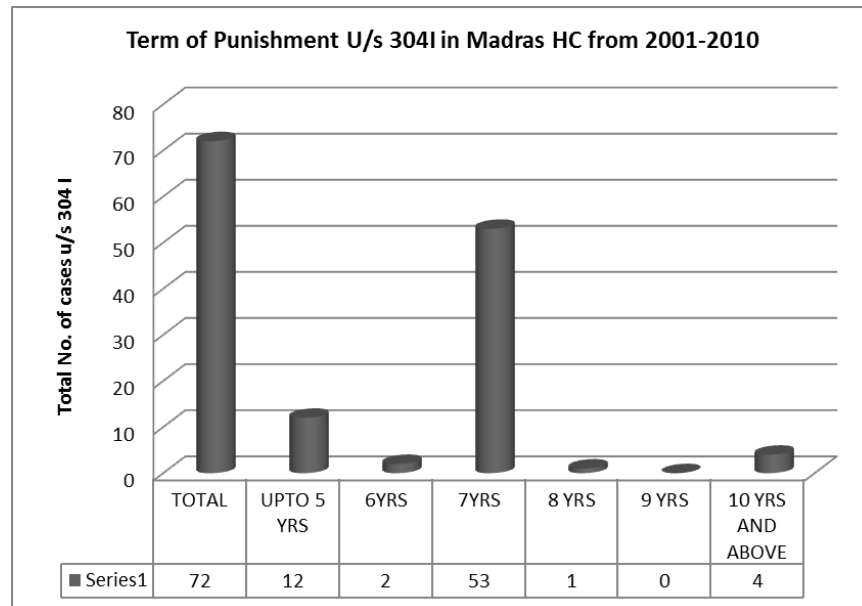
48	N . Nagarajan vs . State, 2008CriLJ4625	302 IPC	LI	Imp.R.7Y	Just prior to the occurrence, there was a wordy quarrel between the accused and the deceased which lasted nearly for an hour and as such it is quite possible for the accused to have lost his self-control due to grave and sudden provocation for committing the offence. Thus, accused is entitled to invoke the benefit of exception 1 to Section 300 IPC.
49	Muruganandham vs . State represented by Inspector of Police, MANU/TN/1481/2009	302 IPC	LI	Reduced - Imp.R.7Y	The act of the accused was not one that was premeditated or pre-planned or intentional, but it was due to sudden quarrel and provocation as the spouse had refused to have intercourse.
50	V . Sasi vs . State rep . By Inspector of Police, MANU/TN/0731/2008	302 IPC	LI	Imp.R.7Y	It was the deceased, who came to the house of the accused and quarreled with him. At that time, the father, who could not tolerate the torture of his son and on being provoked, took the knife and stabbed the deceased. The offence committed was neither intentional nor premeditated, but at the spur of moment and due to provocation.
51	Meiyar vs . State through The Inspector of Police, MANU/TN/2269/2010	302 IPC	LI	Reduced - Imp.R.7Y	There is evidence to show that the deceased was having illicit intimacy with the said Periyakaruppan and she was staying in her parental house. On the date of occurrence, the accused found the deceased and the said Periyakaruppan in a compromising position and at that time, due to sudden provocation, the occurrence took place.
52	Jayaraj vs . State , rep . by Inspector of Police; MANU/TN/0337/2010	302 IPC	LI	Reduced - Imp.R.7y	The act of the accused is neither intentional nor premeditated, but due to the quarrel and sudden provocation and thus, the act of the accused would not attract the penal provisions of murder, but culpable homicide not amounting to murder.
53	Thaveethu @ Thaveethu Arputharaj @ Thaveethu Kumar vs . State rep . by Inspector of Police, MANU/TN/1952/2010	302 IPC	LI	Reduced - Imp.R.7Y	According to P.W.1, there was a quarrel between the deceased and the accused for 15 minutes which resulted in the accused acting so and thus, the act of the accused/appellant cannot be considered as one done with premeditation or intentional, but it was due to sudden quarrel in a public place.
54	Boopathi vs . State by Inspector of Police, MANU/TN/1533/2010	302 IPC	LI	reduced - imp.R.7Y	It was due to provocation of the deceased i.e. words spoken in filthy language against the accused/appellant and against his family members and also in particular, his sister, which was actually lingering on the mind of the accused that caused him to act so.
55	Pokkesan @ Pokkesh vs . State rep . by The Inspector of Police, MANU/TN/1884/2009	Section 302 IPC	LI	Reduced - Imp. R. 3Y	the act of the accused cannot be said to be one premeditated or pre-planned or intentional, but it was due to sudden quarrel and provocation

Sentencing Disparity U/S 304 I Of IPC: An Analysis of Delhi and Madras High Court

56	Gopalasamy vs . State rep . by Inspector of Police; MANU/TN/2017/2010	Section 302 of the Indian Penal Code	LI	reduced - Imp.R.7Y	Even according to P.W. 2, there was a wordy altercation between the Appellant and the deceased at his house. Further, motive was also established. When the accused had developed illicit intimacy with P.W. 3 and staying with her, the deceased intervened and also married her and thus, all these circumstances provoked the accused. There was a wordy altercation and in that process, he acted so, which would not attract the provisions of murder.
57	Saminathan @ Ayyasamy vs . State by the Inspector of Police, MANU/TN/0347/2010	Section 302 of IPC	LI	Reduced - Imp.R.7Y	The accused came to the house at about 3.30 p.m. and when he asked his wife whether she had prepared the mutton, she said she did not prepare. Enraged over the same, he started quarrelling with his wife. Under these circumstances, it would be quite clear that the act of the accused was neither intentional nor premeditated nor planned, but it was done due to sudden quarrel, which arose between the deceased and the accused.
58	Mohamed Ali Jhinna @ Jhinna vs . State by Inspector of Police MANU/TN/3335/2009	Section 302 IPC	LI	Sentence reduced- Imp.R.7Y	The act of the accused was neither intentional nor premeditated nor planned, but it was done due to sudden quarrel, which arose between the deceased and the accused. Hence, the act of the accused would not attract the penal provision of murder, but it would be one culpable homicide not amounting to murder
59	Konusi Subramaniyam vs . Inspector of Police, MANU/TN/0611/2008	Section 302 IPC	LI	Reduced - Imp.R.3Y	Deceased's allegations against wife of accused were grave and provocative - abused his wife in filthy language as if she is doing prostitution; claimed that that unless her private parts are cut, the other women in the village will not get reformed; advised the accused to go back and restrain his wife. Also, the accused was working as an agricultural cooli, father of four children and he was looking after the children with the help of his wife. Therefore, three years sufficient.
60	Kumar vs . The State of Tamilnadu rep . by Inspector of Police MANU/TN/0136/2009	Section 302 IPC	LI	Section 304 part (I) IPC- Imp.R.7Y	The act of the accused at no stretch of imagination can be termed as murder, but it would be one culpable homicide not amounting to murder.
61	Venkatesan vs . State Rep . by Inspector of Police, MANU/TN/2720/2010	Section 302 of IPC	LI	Reduced - Imp.R.7Y	Bhuvaneshwari, the daughter of P. Ws.2 and 3, after the marriage with the accused/Appellant, developed illicit intimacy with P.W.6. All the circumstances are indicative of the fact that he was not only provoked, but also it was lingering in his mind.

62	Raja vs . State by Inspector of Police, MANU/TN/2753/2010	Section 302 of the Indian Penal Code	LI	Reduced - Imp.R.7Y	A quarrel culminated in the occurrence in which the accused took the knife from the nearby place and attacked the deceased. Thus, it would be quite clear that he remained unarmed and at the time of quarrel and only when it reached pitch and on being provoked, he took the koduva from the nearby place and attacked the deceased.
63	Theerthamalai @ Theertham vs . State , rep . by the Inspector of Police, MANU/TN/2163/2010	Section 302 of the Indian Penal Code	LI	Reduced - Imp.R.7Y	The act of the accused was neither intentional nor premeditated, but it was due to sudden quarrel and provocation and hence the act of the accused cannot be termed as murder, but it would be one culpable homicide not amounting to murder.
64	Soori @ Sooriampalayanathan @ Marimuthu vs . State by Inspector of Police, MANU/TN/0600/2008	Section 302 IPC	LI	Reduced - Imp.R.5Y	No premeditation on the part of the accused.
65	Adhinarayanan vs . State by Inspector of Police; MANU/TN/0955/2008	302 IPC	LI	Reduced - Imp.R.7Y	Death occurred due to provocation given by deceased; Hence, the act of the accused would amount to culpable homicide not amounting to murder.
66	Saravanan vs . The State rep . by the Inspector of Police, MANU/TN/2262/2010	Section 302 of IPC	LI	Reduced - Imp.R.7Y	Accused acted due to grave and sudden provocation. The act was neither intentional nor premeditated.
67	Mahendran vs . State by the Inspector of Police, MANU/TN/2345/2010	302 IPC	LI	Reduced - Imp.R.7Y	The act of the accused was neither intentional nor premeditated, but it was due to sudden quarrel and provocation and hence the act of the accused cannot be termed as murder, but it would be one culpable homicide not amounting to murder.
68	Joseph @ Polaya vs . State rep . by Inspector of Police, MANU/TN/1213/2008	Section 302 IPC	LI	Reduced - Imp.R.7Y	Following the quarrel, the accused got provoked and has acted so. Hence the act of the accused cannot be termed as murder, but it would be one culpable homicide not amounting to murder.
69	G . Govindasamy vs . State rep . by its The Inspector of Police MANU/TN/3333/2009	Section 302 IPC	LI	Reduced - Imp.R.7Y	It is true that they are all abrasions, and the prosecution is also not duty bound to explain the superficial and simple injuries in all the cases. But, in the case on hand, the explanation put forth by the prosecution was that the appellant sustained injuries in the natural course of events. This Court is able to see that there should have been some scuffle in which he should have fallen down and sustained injuries on the buttock and back side. All would go to show that the accused has not acted with an intention to cause death.

70	Jothilingam vs . State of Tamil Nadu , through The Inspector of Police; MANU/TN/2107/2010	Section 302 IPC	LI	Reduced - Imp.R.7Y	At the time of occurrence, when there was a demand made by him, there was a flat refusal for making payment. Thus, naturally a coolie like the accused would get provoked. At the same time, when there was a refusal to pay the wages, the accused got provoked and attacked him. Under such circumstances, it cannot be said that the accused attacked him with intention or premeditation, but, due to sudden provocation.
71	Marimuthu vs . State rep . by the Inspector of Police MANU/TN/1318/2009	Section 302 IPC	LI	Reduced - Imp.R.7Y	The accused lost the power of self-control by grave and sudden provocation and acted on the spur of moment, can be accepted. If it is so, Exception 1 to Section 300 I.P.C. is applicable to the facts of the case and the offence would fall under Section 304 Part I IPC and the accused is liable to be convicted for the same.
72	Arivazhagan vs . State by the Inspector of Police MANU/TN/0163/2009	Section 302 IPC	LI	Reduced - Imp.R.7Y	The accused had entered into an oral/verbal sudden quarrel by means of provocation with the deceased.



4. ANALYSIS OF DELHI HIGH COURT CASES U/S 304 (I)

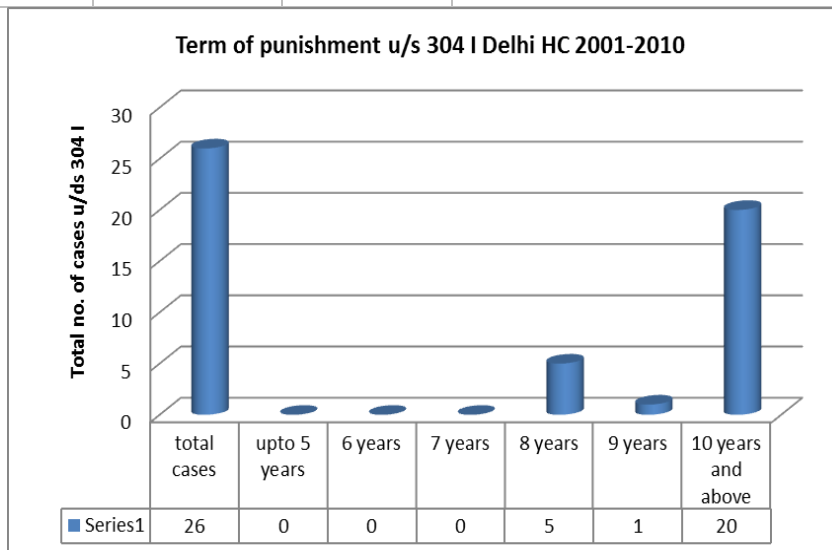
Between the years 2001-2010, around 633 decisions of the Delhi High Court were analysed, wherein a total of 26 cases involved the alteration of the conviction from Section 302 to Section 304(1). Table 2 delineates the cases analysed in this regard.

Table 2

Sr. No	Case	Offence charged	Punishment-Trial Court	Punishment High Court	Aggravating and mitigating factors
1	Sukhdev Singh vs . State 2002CriLJ3964	302, IPC	LI &Rs 200	12 years and Rs 400	was guilty of offence under Section 308
2	Raj Kumar vs State of Delhi , 2005CriLJ3883	IPC-302,304,307	LI & Rs 1000	8 years	Single stab injury caused on account of sudden quarrel. Possibility of deceased not following the line of treatment as advised by the doctor.
3	Khukia Sema vs . State of N . C . T . of Delhi 2007(96)DRJ189	302	LI and Rs 1000	11 years	Test of provocation has to be applied with reference to class of society of accused
4	Ahmed ali sardar vs state , MANU/DE/0329/2009	300,302,304,307,313-IPC	LI	10 years	Evidence that there was no past enmity between the deceased and accused and the fact that the incident occurred as quarrel ensued between the deceased and the accused shows it was not pre-meditated.
5	Amul kumar sardar vs state , MANU/DE/2328/2009	304-IPC	Life	10 years	Incident took place in a dim-lit place and it has not been established by prosecution that the accused intended to cause injury in the stomach.
6	Anil kumar vs state , 2010CriLJ1806	299,300,302,304-IPC	LI	10 years	Injuries caused were sufficient in the ordinary course of nature.
7	Gorelal vs state , MANU/DE/1878/2009	300,302,304-IPC	LI and RS 5000	10 years	Death was a result of sudden quarrel.
8	Gulshan kumar @Budha vs state , MANU/DE/3016/2009	300,302,304-IPC	LI and RS 5000	10 years	incident occurred in the heat of the moment but was not premeditated.
9	liaqat ali vs state , MANU/DE/3010/2009	299,300,302,304-IPC	LI	10 years	accused gave a single blow in a fit of anger and the knife unfortunately landed on the back and chest of the deceased which proved fatal.
10	Mohd Bhure vs state , MANU/DE/1766/2009	302,304-IPC	LI and Rs 5000	10 years	Intention of accused only to cause injury but not death.

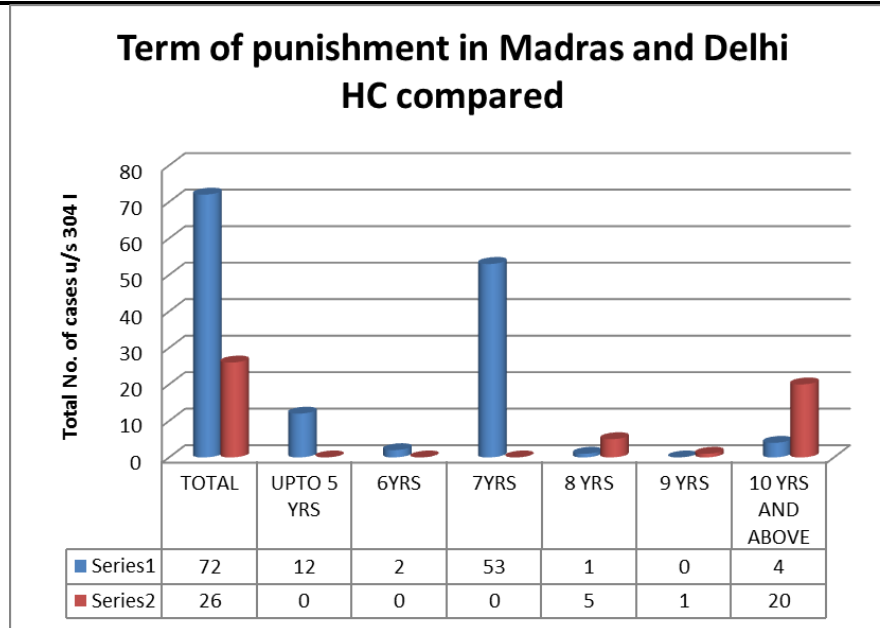
11	Om Prakash vs state , MANU/DE/3439/2009	302,304-IPC	LI	8 years	Attack made in dark and blow directed towards stomach and not heart or lungs which shows intention was not to kill.
12	Pal singh alias Pala vs state , MANU/DE/1138/2009	302,304-IPC	LI	10 years	Infliction of a single blow by the accused suggest that the intention of the accused was to injure the deceased, as nothing prevented the accused to inflict more than one fatal blows.
13	Rajkumar @Raju vs state , MANU/DE/3384/2009	300,302,304-IPC	LI and Rs 2000	8 years	in absence of testimony it is difficult to conclude that intention of causing such bodily injury were likely to cause death.
14	Ram Kishan vs state , MANU/DE/1896/2009	302,304,325-IPC	LI and RS 1000	10 years	Only one blow with a lathi and the intensity of blow is not said to be a ferocious one to cause instant death.
15	Sohanlal@sonu vs state , MANU/DE/3349/2009	300,302,304-IPC	LI and RS 500	9 years	Homicide committed not with any pre mediated intention but in a fit of anger.
16	Surinder pal @Billoo vs state , MANU/DE/3059/2009	300,302,304-IPC	LI and RS 5000	8 years	Deceased intervened in a fight and got killed in the heat of the moment. No chance for premeditation.
17	Rishi @Babbal vs state , MANU/DE/1653/2009	300,304,302-IPC	LI	10 years	Instrument that caused death being a brick which is found anywhere, it can be concluded that fight ensued suddenly and the incident occurred in the spur of the moment.
18	Ram niwas vs state , MANU/DE/2729/2009	300,302,304,304(1),304(11),307-IPC	LI	10 years	Nature of injuries and period after which the victim dies are important factors in conviction.
19	Mohd Razzak and ors vs state , MANU/DE/2915/2009	302,304-IPC	LI	10 years	Injuries spread all over the body suggest that assault was random and not intended at any particular part of the body.
20	Deepak Kumar vs . State MANU/DE/0090/2010	302	LI and Rs 2000	10 years	Appellant was entitled for benefit of doubt
21	Shalla Limbu vs . State of NCT of Delhi MANU/DE/0294/2010	302	LI	10 years	Though there was neither a sudden or a grave provocation nor was there a sudden quarrel, but Appellant was moved upon a sudden and a violent passion

22	Vijay @Kale v. the state Manu/DE/1209/2010	302	LI	10 years	Sudden Quarrel
23	Vinod Kumar vs. State MANU/DE/0447/2010	302	LI	10 years	Post-mortem report proved that knife was stabbed inside the stomach and pulled back in the same position i.e. no attempt was made to rotate the knife inside the stomach
24	.Radhey Shyam vs. State (N . C . T .) of Delhi MANU/DE/1284/2010	302	LI	10 years	Appellant is acquitted of charge of having murdered his mother but is convicted for offence of having caused the homicidal death of his mother but not amounting to murder
25	Khurshid vs. The State (N . C . T . of Delhi) MANU/DE/0865/2010	299	LI	10 years	conviction of Appellant modified from offence punishable for offence of murder to offence of culpable homicide not amounting to murder
26	Santosh @Sanju vs state , MANU/DE/1163/2009	300,304-IPC	LI	8 years	The appellant committed the offence on account of a sudden quarrel when he was in an inebriated state. Exception 4 to S.300.



5. A COMPARISON BETWEEN THE DELHI AND MADRAS HIGH COURTS

Upon analysing the above data, glaring disparities in the sentencing practices by the two courts are apparent. For offences u/s 304 I Madras High Court has majorly awarded 7 years punishment. This has been observed in multiple cases, such that it now seems as a general rule with 53 cases out of 72 (73.6%) being awarded and if an offence is altered from 302 to 304 I and if there are any mitigating circumstances one can observe a reduction in punishment to 5 years and even 3 years. On the other Hand if we look at the Delhi HC 10 years punishment is awarded in majority of cases 20 cases out of 26 total cases (76.9%) and if there are any mitigating circumstances the punishment is generally reduced to 8 or 9 years. Never in Delhi High Court can we see a punishment as low as 7 or 5 years for an offence u/s 304 I. Hence it will not be wrong to say that a person committing an offence u/s 304 in Madras will be in an advantageous position then one committing in Delhi, since there is a fair chance that he will get 3 years less sentence compared to Delhi HC. A difference of 3 years is a very big difference and offenders have to undergo a prison term of lesser or more years just on the basis of the territory where the offence is committed rather than the gravity of offence



Further, if a prescribed punishment is given in the code for a particular offence and the Hon'ble High Courts are awarding a sentence less than the prescribed maximum punishment, they have a legal as well as moral obligation to cite the mitigating circumstances. But unfortunately Hon'ble High Court of Madras seems very reluctant to cite the reasons as to how they determine the sentence.

6. CONCLUSION

The researcher through this analysis is not advocating a higher punishment but is advocating the need for sentencing policy in the country through this example. The researcher is also of the view that when a Court is awarding a far lesser punishment than the statutory maximum then reasons should mandatorily be given for transparency and future references.

While sentencing, it is the duty of the sentencing court to identify the mitigating and aggravating circumstances, and to give clue to the stakeholders as to how the sentence is arrived at. At the same time, the sentence so arrived at must act as precedent for later cases, thus making it easier for the judges to identify aggravating and mitigating circumstances in similar cases. Consistency in approach is one of the most important necessities in the criminal justice system for ensuring consistency in outcome for similarly placed cases. The author is primarily making a case against unwarranted disparities, as the same would under consistency. It is the need of the hour for the legislature to crystallise sentencing policy, and for the higher judiciary to prescribe sentencing guidelines to overcome this issue.

CONFLICT OF INTERESTS

None.

ACKNOWLEDGMENTS

None.