

# Section 106(1) & (2) of Bhartiya Nyaya Sanhita (BNS -2<sup>nd</sup> amendment) Act 2023. with 304-A Indian Penal Code 1860 – a comparative study along with practical approach towards its implementation

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## ABSTRACT

Since BNS Act 2023 has not yet enforced and there is likelihood of discussions among concerned stakeholders. Therefore this article is trying to make out a balance in implementation as to make out road journeys much safer. As we all know that road journey is a big challenge and full of risk. <sup>1</sup>Approximate 1.6 to 1.7 lakhs deaths and around 4 lakhs accidents are reporting every year. It was found that existing laws are not sufficient and deterrent, thus country and its people requires an stringent law. Parliament has enacted a new legislation, Bhartiya Nyaya Sanhita (Second amendment) 2023 having punishment extendable up to 10 years and fine (u/s 106 (2) under hit & run cases where information is not passed to police /Magistrate, otherwise extendable up to 5 years and fine 106(1) BNS Act 2023. This new Act likely to be implemented but increased punishment have created a sensation among citizen especially 30 cr vehicle drivers /users from all across society. The effect of new Act will be known at least after two years when data will come in public domain. However, an effort is made to describe the present scenarios under which such massive accidents are taking place. It is expected that in such situation stringent punishments may have a deterrent effect in reducing accidents and fatalities. This paper is looking the new Act in a comparative and practical ways and recommending few suggestions which may help in reducing accidents /deaths, if identified and implemented timely.

**Keywords:** Restorative justice, comparative, stringent, trauma, rash & negligent driving, hit & run, culpable homicide not amount to murder.

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## INTRODUCTION

Its fact that a large number accidents are taking place in India. National Crime Records Bureau, MHA, Govt of India is having its two publications ie Crime in India and Accidents & Suicides in India. Few highlights are as follows

Deaths due to accidents on roads have reported approximately (1.52 Lakhs) 2018, (1.54 Lakhs )2019, (1.33 lakhs ) 2020, ( 1.55 lakhs ) 2021 & ( 1.71Lakhs ) 2022 . Thus average deaths 1.53 Lakhs reflects about 12750 per month and 425 per day which is no doubt very high and more so over its innocent lives which have been loosed either on their faults or by some one else.

National Highways are 1.33 lakhs Km and State Highways are 1.80 lakhs KM out of 63.3 Lakhs Km of total roads in the country. Thus majority roads are of State Govts and Local bodies. NH are contributing 2.1 % of the road length and sharing 30.5% accidents of the total accidents. Similarly, SH contributing 2.8 % of the entire road lengths, sharing 23.8% accidents of the total accidents. 45.8 % accidents are on other roads like State and Local bodies. This shows that NH being better maintained than SH and Local roads, carrying more volume of traffics, resulting which more accidents and fatalities.

Roads	KMs	Accidents (numbers)	Deaths (number)	Cases/100 Km	Deaths /100 KM
NH	132499	136122	<b>59673</b>	103	45

SH	179535	106155	<b>42003</b>	59	23
Other Roads	60,19,723	204491	<b>69424</b>	03	01
Total	63,311757	446768	<b>1,71,100</b>	07	03

Among total accidents, Expressways has reported 2446 cases where in 1780 death occurred.

<sup>2</sup>The vehicle wise Road Accident Deaths during 2022 where in two wheeler 45.5 %, pedestrian 14.5 %, cars 14.1%, truck/lorry 8.8% ,Other motorized vehicles 5.1%, and rickshaw 4.5%etc. Thus two wheelers and pedestrians deaths are 60% of total deaths. Here this is a vary big question how to make safeguards to these two vulnerable classes of the road traffics? Is it volume of traffics, road congestions, lack of road discipline, human activities beyond control of drivers, poor road engineering and unscientific dividers etc ?

<sup>3</sup>A total number of 4,61,312 road accidents have been reported by States and Union Territories (UTs) during the calendar year2022, claiming 1,68,491 lives and causing injuries to 4,43,366 persons. The number of road accidents in 2022 increased by11.9 percent compared to previous year2021. Similarly, the number of deaths and injuries on account of road accidents were also increased by 9.4 percent and 15.3percent respectively (Table 1.1). These figures translate, on an average, into 1,264accidents and 462 deaths every day or 53accidents and 19 deaths every hour in the country.

Causes are several but main cause is **over speeding 58.1%** ( 1,00,726 , dangerous and **rash driving 26.4%** ( 45161 ), driving under influence of alcohol 1.7% ,animal crossing 1.1% etc.

<sup>7.4</sup>Killed person due to various ways on the road, head on collision 16.9%, hit and run 14.6%, hit from side 15.4%, parked vehicles 3.1%, hit from back 21.2%, fixed objects 3.3%, run of road 4.5%, overturn 4.4%, other reason 16.5% etc.

Accidents are reported in rural areas 60% and 40% in urban areas (cities /towns/markets).

462 deaths daily due to accidents. 12% increase in road accidents and 9.4% death from 2021 in 2022.Thus there is increasing trend in accidents and deaths.

Over speeding 65% contribution in accidents, 4.5% non -lane driving, 2.35% drunken driving has been reported for NH.

Accidents under weather conditions such as **sunny /clear days have also been studied and suggested that 71.6% in sunny days**, foggy 9%, rainy 6.9% etc. . .

Annual income loss is around 3.14% of GDP. In India cost on per seriously injured person r. 3.64 lakhs, minor injured Rs.77938/- and 91.16 lakhs on per death . It suggest that cost in India is more than 100times than injury cost. It showed that if we suceeed in preventing deaths in a road accidents victims to minor injuries only, can save 90 lakhs /person. (Hon’ble Union Minister or Road Transport and Highways ,13<sup>th</sup> Feb 2021, PTI, www.deccanherald.com)

**Person killed in accidents on NH classified by the type of vehicles impacting in 2022.**

Victims /Deaths	Accused. contributing maximum role
Pedestrian	19.7% two wheelers
Riders	58.5% two wheelers.
Car	21.8% Cars
Trucks	14.9% Truck

<sup>5</sup>Comparison with Foreign Countries: The data shows that rate of accidents are low with USA, Japan and China.

USA	19,27,654 accidents.	injury	590/one lakh population.	Person killed in Road accidents in one lakh population. USA 11.7%
Japan	4,30,601		340/one lakh POP	.....
China	3,62,393		1538/ one lakh POP	4.4%
India	3,45,238		<b>25 /one lakh POP</b>	9.5%

**Hypothesis:** The stringent punishments as provided under B.N.S. (second amendments) 2023, u/s 106 (1) & (2), which is yet to be implemented, will reduce accidents and further fatalities and at the same time will have a reality check of the road.

**Object:**

1. To understand the differences between new and old sections related dealing with fatalities.
2. Effect of new law over the existing criminal justice system.
3. A way forward / recommendation.

**Methodology:** Article is based upon doctrinal and comparative research. In this regard various authoritative legal books, Acts, Rules, Judicial verdicts, Policies, Crime in India, MoRTH data, UK/USA accidents data, Prisoners Act, Model Prison Manual etc. have been taken into consideration.

**Legal Position:**

- A) Accidents cases are covered u/s 279, 336, 337, 338, 304-A IPC 1860 are cognizable, bailable and maximum punishment is 2 years or fine.
- B) The Bhartiya Nyaya (Second) Sanhita 2023 (not implemented yet) has made 106(1) and 106(2) regarding fatal accidents on roads.

106 (1): Death due to rash and negligent drive, not culpable homicide, punishable extended to 5 years and fine in the case where information passed to magistrate / police.

106(2): Here 10 years imprisonment and fine in case driver has not informed to Police/Magistrate and ran away.

**Analysis:** As to have a detailed analysis it is necessary that few relevant topics have to be discussed, thus an effort is made towards its practical approach also.

**Prison Population in India and possible impact of 106(1)/(2) BNS Act :**

Total under trials and inmates including detenu are 5,73,220 people on 31.12.2022. There are overcrowding in the prisons already, for example 180% overcrowding in Tihar itself. Certainly this provision will increase prison population and will have cascading effects and collateral damage. Rehabilitation and Reformation are major objective of our criminal Justice system. Now offences are extendable up to 10 years in hit and run cases and 5 years where deaths have reported due to accidents on roads but concerned officials are informed. Over all 1,71,000 people are dying on road, it means all accused have to get Bail from Court as punishments are extendable 5 to 10 years and fines. All accused have to be arrested by Police and put behind bars in Police Custody or Judicial in Prisons. First hand once fatal accidents reports, drivers/ owners of the vehicles will reach to Session Courts for anticipatory bails, it will make huge expenses about a lakh of rupees to the lawyers in the court because drivers in India are hardly 20,000-30,000/- salary monthly and majority belongs down-trodden background with lesser education. Thus owner of the vehicles will only expedite bail otherwise driver may remain months in the Jail because neither he will be able to pay bail securities, nor provide local securities.

As far as cases are concerned, mostly all cases will be charge sheeted. It is owner again, who will pay advocate fees into the various courts. It means once driver gets involved into accidents cases 106 BNS Act, he has to remain always with the owner, this becomes a serious form of exploitation also. This aspect affecting driver's life, needs a balance approach so that he can come out from such traps and easily presents his case in court.

As far as accidents are concerned, it is inevitable in most of the situation. Accidents will happen on roads, few may have serious injuries or deaths also. Strict punishments are need of hour but its cascading effect which is destroying drivers, putting economic burdens on the owners, needs a through study otherwise it will make injustice to the entire transport industry.

**Drivers, Police & Court:**

<sup>7</sup>Are drivers of trucks, buses are only affected? answer is no. India has a total of 13,34,385 Electric Vehicles and 27,81,69,631 non-Electric Vehicle in use. Thus there are around 28 cr vehicles in 2022. (e-Vahan portal of Ministry of Road Transport and Highways). Total number of the trucks are approximate 28 lakhs which amounts hardly more than 1% of the total volume of the vehicles on roads. These all drivers are mostly non owners in cases of trucks and Buses, however majority of drivers are mostly owners especially in four wheelers and two wheelers. The law is classless, genderless and treating everybody equal. This shows that majority of drivers who are owners, will face prosecution in case fatal accidents took place either their negligence or someone else. As per procedure vehicles will be attached in crime, drivers and owners will run to courts and police, herculean task. Thus 1,70,000 drivers are going to enter into four closed walls until not get anticipatory bail. How it is different from earlier 304 A? It is bailable and maximum 2 years punishment or fine or both. Thus bail was given at Police station, hence it was not making overcrowding into the prisons which is already overcrowded. Now under new law, accused drivers will certainly try to avoid police arrest and

get eloped until court is not giving bails. In case driver goes to report to Police, may be arrested if not found local because police may need local security which is not possible for a driver of different states. Since offence is less than 5 years if driver passed information to Police /Magistrate, he /she should not be arrested [under 41 (A) Cr.P.C (offences less than 7 years, person will be called to join investigation)]. But if it is hit and run, not informed, certainly will be arrested as punishment is extendable to 10 years and fine. Thus entire process of arrest, chargesheet becomes more cumbersome than earlier. It will not only make lower courts more burdened but also all higher courts because of convictions, which are likely in such cases, may not be accepted by the Drivers/Owners. A big litigations are going to start in the future which will not only engage accused parties but also govt advocates as all these cases are state cases. Data further suggest that 10 % cases are increasing yearly, vehicles are increasing, speeds on roads are more up to 120 KM/H (express ways) and number of courts /APP remained same.

#### **SC views on rash and negligent driving, Pendency's of Court Cases and Disposals:**

“ SC concerned over growing rash driving cases, urges stricter punishment ( <http://indianexpress.com>, 30<sup>th</sup> march 2015 ). A bench led by the then CJI underlined that a maximum punishment of two years in jail with fine u/s 304 A IPC may not serve the purpose of a law being deterrent which could be an imperative necessity at times. [State of Panjab v. Saurabh Bakshi, (2005) 5 SCC 182. , HC has reduced jail term in lieu of paying compensation and the S C observed the same in realm of misplaced sympathy while increasing punishments”.

The Courts are already overburdened. Around 4.5 Cr cases are pending in spite of ADRs (alternate dispute redressal systems), including over 1,69, 000 court cases pending for more than 30 years in districts and High Courts (doj.gov.in dated 09.11.2022.) . Further adding around 2 lakhs cases without making quick disposals, may not sound better judicial managements. It is not only persons are involved but vehicle are also seized along with goods, resulting huge economic loss. Police is directing parties to approach courts towards release of the vehicle and goods, which is again a very difficult process. Thus disposal of cases will take more time, drivers will remain involved in a crime as a suspected accused. This process needs expeditious otherwise adversely affecting economy. It would be better a special Courts to be notified. This court should deal accidents cases and completing within time .Infactmajority of the cases can be disposed of within a fortnight by police until -unless viscera /forensic report is not required . Similarly,court can also conclude such cases within time, say 6 months.

#### **Victims' v. Accused and MV Act & Law of Tort:**

Life of a person is very valuable, loss of life cannot be equated and compensated with any number of punishments. In ‘National Insurance Company Limited v Pranay Sethi’. Hon'ble S C of India agrees with the view on the standardization of the addition to revenue againstfuture prospects in accordance with Article 168 of the Motor Vehicle Act 1988. At present MACT provides in case of injuries 50,000/- and 5 lakhs under death category. Victim may also get some money from Insurance companies if it has done. In-fact in central govt health scheme (CGHS) now days medical issues are covered unlimited and cashless for central govt officials, but other officials and employees are not having such schemes. As far as punishments are concerned, it's a long court battle, therefore immediate need of victims is, sufficient compensation as to lead his/her family life . It's grey area still as it lacks comprehensive uniform policies /law.

#### **Investigating skill and use of technology:**

Police is only investigating agency and these cases will be investigated by local police. These cases are not sophisticate and delicate one for the investigation point of view. There are three roles of police ie regulation of traffic on road, investigation of cases/disposals and training /awareness drives among Police , students , drivers and Owners as well as other stakeholders. Theoretical aspects have been well defined such as receiving information of accidents, diverting PCR vans ,Trauma vehicles and Local Police station to the scene of offence/accident (only in few cities) immediately . Now days mostly every police organization by and large is equipped, hence there are reasonable time in reaching spots especially on NHs and SHs. I/O proceeds with scene memo and enquire/investigate the cases. After receiving necessary reports from vehicle inspector, forensics, medical , cases are disposed of . Much more depends upon scene and some time scene is also not known like hit and run cases, thus scientific evidences like CCTV on road becomes more helpful as to decide fault.

As far as practical aspect are covered, blame goes to drivers of the vehicles mostly, especially when pedestrian / two wheelers are victims. Situation becomes more serious when crowd becomes restless, stone pelting, road blockades, morcha at Police station, social media's unauthentic reporting and burning of vehicles etc . This pressure tactic of the crowd put police in tight loop and demands arrest of accused immediate as well as huge compensation from drivers /owners / Govt. Under such charged atmosphere and lack of cctv /scientific evidences from roads, police role becomes difficult. Most of the time injured or victims' family wants to take compensation from accused in-spite of that they will get their suitable claim from their insurance or MV Tribunal, but they want extra money from drivers/ owners and expect police to help. Thus accused, even may not be faulty, get cornered. They are arrested, vehicle seized with costly goods. Such situation is not in every case but even if it is in one case, throws shortcoming on the system. Driver may be acquitted after 10 years of court battle but huge expanse, court fees and harassments cannot be reverted back . The present practice even if it is at a very low scale, gives demoralizing to the entire transport industry. Driving is only a

skill, where an ordinary person with his skill, gets a livelihood for himself and his families. In India where job scarcity is very severe, a sizable population are engaged in driving. Around 28 Cr. vehicles indicates that more than one third of the population knows driving either himself or hiring drivers. Thus country has a vast pool of drivers but certainly expects better investigation as to get justice.

Investigations are mostly carried by lower rank officials like Head Constable/ Assistant Sub Inspectors etc. Here quality of investigations requires more improvement. These two officials no doubt are back bone of the Police but cyber knowledge is still a grey areas, needs at par with skilled cyber experts because these officers needs to analyse call data records, CCTVs data /dump data, e-mails and simple mathematical application while drawing sketch, drawing and measurements on the roads. Photography at the scene of offence becomes another way to create evidence besides recording of statements of the witnesses, making CDs and providing certificates u/s 65 B of IT Act etc. Now days investigation or enquiry starts from CCTNS itself. One has to type in this window itself and save it. Now majority of places/police stations, these cases are send to courts online also. Thus investigation is an art in summarizing evidences and completing full cycles as to make successful case. A fraction of doubt raised by defendant, will demolish prosecution. Thus prosecution has to rely on scientific investigation and for that continuous training is only gold. In view of punishments 5-10 years and fine u/s 106 BNS Act 2023, strong collection of evidences are needed and level of the lower rank officers may not be given cases under this category. It should be better with skilled PSI/PI. In fact crime team should be separated from L/O and investigate these cases. It will help in value addition, enhancing expertise and timely disposal in a judicious way. Since offences have been made more stringent punishments, quality of the officials entrusted should also be highest quality integrity and must be monitored by state vigilance units.

Prakash Singh v. Union of India 2006, SC of India on Police Reform, has already mentioned in its various recommendations including one separation of law and order from investigation, needs to be implemented at all police stations including traffic. It has not been implemented in its letter and spirit. There may be several reasons of not implementing but **will power** of senior managements of police functionaries is one of the major reasons.

#### **Fundamental Right and Speedy Justice:**

The OBC Advocates Welfare association v. State of MP, vide W.P.no. 7660/2020, wherein Hon'ble HC Jabalpur, MP has stated that speedy disposals are fundamental right of the person under article 21 of the constitution of India and same is on the line of, Raghbir Singh & others v. State of Bihar 1986, SCI. The speedy justice is a big challenge. As per national judicial data grid data, cases pending in various district courts as on 31<sup>st</sup> Dec 2014 and 31<sup>st</sup> Dec 2022 were 2,37,43,263 and 4,32,61,070 respectively, thus there is an increase of 82% in 8 years. The disposals of the cases with respect to pendency's in 2022 is approximate 34% (5 big states UP, MH, Raj, WB Bihar pendency's 22586774 and disposal 7636416). As per NCRB data, approximate 50 lakhs new cases are charge sheeted annually (besides previous years pending cases) and around 12-15 lakhs are disposed off by courts. Thus there is a huge gap in disposals and entry of the cases in courts annually. Several methods are introduced like ADRs and they are also successful. But Village Nyayalays Act and their courts are lingering for want of implementation. One has to keep in mind that pendency's beyond its reasonable time, are increasing criminality in the society. It reflects poor state of security which is basic need of a human being and society. It collateral effect comes in adverse ways over economic growth of the areas and society in spite of that, govt may bring better infrastructures and motivate investors. Thus provisions of BNS Act 2023 under section 106 is welcome but with speedy justice, otherwise it will loose its teeth.

#### **Drivers & uniformity in road signages:**

Drivers' community are basically lesser educated and few may not able to read and write also. In the country there are not uniform language and signages even on NHs. These person may not able to read English or other languages than their own language. Thus **uniformity of language on the road is very much necessary**. Signages may be in triple language formula. It is essential for unabatted traffic in the Country. It will support to the "PM GATI SHAKTI" Plan.

#### **Road infrastructure and Drivers:**

Transport sector being highest job providing sector as well as fast growing economy, needs better welfare measures for drivers such as safety and security. In view of Fast Tag introduction and taxation annually / quarterly for entire India has brought a great revolution in smooth business in this sector. Drivers needs good mechanics, machinery parts, hotels, rest houses, medical facilities and network connectivity through out road. Although there have been a see change in this sector but still grey areas are in few govt related departments. It can not be accepted that, senior officials are not aware. They can just take a simple survey from drivers mouths and will know easily. Any how days of revolution has come, people and social media are going to be more alert in near future and hope science will illuminate those things and bring pure system. In fact getting third party data is not difficult, HODs may engage reputed agencies or their own officials /vigilance etc, for their action. Empirical study can be conducted by Hods and no need that some one from outside to guide. These drivers needs a better trust and confidence of the law enforcement agencies. Now in India time has changed when our PM has washed feet of sanitary workers at Allahabad in Feb 2019 and expressed gratitude towards the dedicated workers by showering them with flower petals at Ram Lalla Temple Ayodhya on 22<sup>nd</sup> January 2024. Thus a lesson has to be learnt and this person who is at the last leg of this industry, must be respected for his contribution in the over all growth in GDP. As far as punishments are concerned, law will take its own course but his

great contribution managing wheels deserves appreciation . No doubt things have improved a lot, but still much more has to do to make transport services friendly .

### **Informing to Magistrate / Police: a mandatory legal requirement-tough task for a layman .**

It is not possible for a drivers or any individual citizen/foreigner to search a **Jurisdictional Police Station or Magistrate** as it is mentioned in the 106 BNS Act 2023.They may not be aware about locality, areas or spoken/written languages etc on road. A simple, friendly, technically sound and reliable solution has to be find out like Nirbhaya Alert system (Emergency Response Support System (ERSS) associated with 112 which is pan India Police control Room number). In the case of accident, driver may press button and Control Room of the District, may get recorded log entry for further necessary action by Trauma , PCR, Police Station. Thus, Drivers may be asked to inform 112 and from here Police Control Room will take action such as sending emergency vehicles and Police stations etc. In this way victim can be shifted to hospitals immediately by PCR Van or Trauma vehicles etc. It is true fact that unknown numbers are not lifted by Magistrate/ Police officials. The behaviours of Police station is also not friendly. Therefore accident information must reach then and there through electronic means at the 112, it is easy and Control room will take further care by informing local police etc.

### **Drivers Duty towards Victim:**

Prevention is better than cure. Drivers to drive carefully, rash and negligent driving must be avoided .Maximum fatalities are of pedestrian and two wheelers, who need immediate shifting to near by Hospitals .If driver can do it through its assistant /helpers , try to send to the hospitals. As far as place of occurrence is concerned, photographs to be taken, area can be demarcated and vehicle may be removed. It has been seen that people are also and waiting police with a huge jam etc. Under such situation where even police can not reach, it is advisable that demarcation may be done and vehicles may be removed.

Once accident takes place, situation becomes very tense. Few suggestions may be helpful.

- Driver / Owner should sent SMS / WhatsApp /email to PCR and Jurisdictional Police Station.
- It is possible only when above numbers are available on road over signages at the starting of PS Jurisdiction.
- In view of Zero registration of FIR, it can be registered at any Police station. Thus driver may inform on any PS which ever close to him. It should be known to the driver and owner.

### **Accidents and Fatalities in few Developed Countries:**

#### **USA:**

<sup>8</sup>In 2021, there were an estimated **6,102,936** police-reported vehicle accidents in the United States in which, **39,508** were fatal. It makes the effective deadly car crash death rate 0.7% and more positively, the percentage of car crashes not resulting in fatalities 99.3%. As far as punishments are concerned, it varies from 9 to 15 years if driver has not run away, otherwise it may extended up to 30 years and fines.

#### **UK:**

<sup>9</sup> In fact, the most recent data available shows that there are approximately **126,247(1558 Fatal )** road accidents in Great Britain in 2021 , which works out as almost 346 each day. Britain was witnessing around 5500 deaths in 1979 and in 2022 it has been reported as 1700 around.

<sup>10</sup> The Punishments under Section 1 of the Road Traffic Act 1988 (as amended by the Road Traffic Act 1991, section 1) was lesser around 15 years and or unlimited fine but after 28 June 2022 the maximum sentence was made life imprisonment.

From above two countries, no doubt their population are very less, number of vehicles in proportionate to India are much more but whatever may be, both countries have controlled over accidents and fatalities. In India total accidents reported on road in 2022 were around 4,50,000 and fatalities were 1,71,000 which is around 26 % of the total accidents. However, in USA it is. 7% and UK is having around 1.23%.There are several factors responsible for controlling fatalities in developed countries such as better infrastructure, awareness, laws, policies and strict implementations besides higher punishments. Thus if we see proposed punishments under BNS Act 2023, which is extendable 5 to 10 years and fine, is lesser than those countries.

### **Special Police station and Courts for Traffic Offences:**

Loss of lives in huge number (1,71,000-2022), around 4 lakhs **reported** accidents (a large number are unreported) cases, massive expenses in treatments of the injured at their individual cost besides compensation from M .V Tribunals and Insurance companies poses a great threat to the commuters on the roads . No doubt transport is a big industry and engages highest number of employment especially ordinary persons such as drivers, cleaners, mechanics, passengers, travelers, industries etc. which make a huge rotation and velocity in economy (Gati shakti). Thus this sector is very sensitive and vibrant. It requires quick response from all sectors and stakeholders such as road engineering, security, regulation, Banks, policies and laws reviews timely, hospitals availability with trauma facilities and judicial system. Disposal of cases with compensation should be time bound like few other enactments (POCSO)where in 6 months is

the upper limit of disposals, same way it can be made in MV Laws / IPC/BNS. Once disposals will be fast, vehicles will be released immediate, compensations will be paid timely, injured from road accidents may be treated cashless and people should also be rewarded if shifting injured from roads etc.

Pondicherry is one of the example where separate Traffic Police stations are for traffic offences only. They are having all functions of traffic such as training, education, regulation, prevention, punitive / chalan as well as investigating etc. Here in such type of system, police response will be much better and disposals will be fast.

There is also need of special traffic magistrate for trial purposes. In few places JMFCs are notified only for chalan settling purposes, which is also a great concerned due to its huge pendency's. Here trial judge is required separately like NDPS, POC, PMLA etc so that cases can be disposed within 6 months. Thus, a vibrant law is required.

Technology has a very big role to play. Few States are charge sheeting cases under CCTNS to the court ie paperless and on the spot investigation, submitting charge sheet online to the court. MV cases investigation does not take time because scene of occurrence, witnesses, sketch, accused, all are available. Thus, IO to collect proper evidences within a day and may file charge sheet next day and Court can dispose of within a week. It will boost economy and reduced harassments of the parties. It has been noticed that Vehicles remain at Police stations or in RTOs parked without any legal needs. Once inspection is over by RTO/authorized expert, release of vehicles will be useful to the owner and drivers.

Traffic police stations are much friendly than law and police stations. Public, students, traffic wardens are visiting regularly. It has very good co-ordination networks among all sections of the society. Thus, building a good image of the police. Few police organizations of bigger cities like Mumbai known from its traffic police functioning first than other police activities.

Better convincing technology in traffic is also need of hour as to build a trust among the public. It can be enhanced through better capturing of electronically evidences such as photos of the no parking vehicles, cctv footage of violations, breath testing through alcometer and readings, dopplers for speed and its photocopies and proper signages on the roads etc. It will reduces confrontation with the public.

**Drone & Helicopters utilization:** Police is the first responder of the accidents. In golden hours if injured person got better medical facilities, will survive. As per data study there are certain peak hours say evening and morning, when rush on roads are more. Drones can be used during this period as to know accidents. Helicopters facilities are advised as to lift immediate injured and reach at the Hospital. Thus in golden hour, if hemorrhage is controlled, person will not loose their lives. This practice is very much successful in developed countries and that is reason that their death rates are very less than us ( 1500-1700 for UK ).

#### **Recommendations/suggestions:**

1. New law may be implemented keeping in view the speedy justice as a fundamental right. Lingering of cases years to years will defeat the very purpose of new law.
2. No doubt present days highways especially NH are becoming excellent. State govts are also doing well on their roads. As far as local body roads are concerned, although they cannot be like NH and SH Highways but can be made better at least by way of widening , proper dividers , and lightening as well as removing black spots and blind curves from roads .
3. Training and educations to the drivers and enforcement agencies are essential.
4. There is need of Special traffic police stations and Court, as to secure zero deaths on the roads.
5. Drivers should be given app based devices, where just on pressing a button, police station control room of a particular district can be logged about fatal/ accidents . It needs to be developed and synchronized with the local PCR.
6. Majority of drivers may be provided legal assistance from legal service authorities as they cannot afford court expanses atall.
7. Suitable monetary scheme for victim's compensation on the pattern of acid attacks can be provided immediate besides MV Tribunals.
8. Vehicle owners may be advised to install CCTVs and GPS into their vehicles as to have better evidences in deciding rash and negligent driving etc. when matter is reported for investigation.
9. Since 106(1) BNS Act is providing punishments extendable up to 5 years and fines, if information is passed timely to the concerned Police or Magistrate. In case drivers report in reasonable time or Police serves 41 -A Cr.P.C notices **which is mandatory** before arrest in offences less than 7 years, the drivers may not be arrested and put behind bars. Here drivers have to co-operate as and when called for investigation.
10. 106 (2) BNS Act 2023, if drivers are running away and not informing fatal accidents to police /Magistrate in a reasonable time, punishments are extendable up to 10 years and fines . In such situation absconding is not solution rather than to approach to local police station will always be better and co-operate in the investigation. The police station will decide whether to arrest or otherwise. If arrested, bail can be applied in court. Since its not

a matter of custodial interrogation, chances are better to get bail. Owners of the vehicles may engage suitable lawyers also. There are few advocates who are pro-vono and list are available at police station as well as with Districts legal service authorities. It would be better to inform such advocates, in case of arrest of the drivers are effected and *rojnamacha* ( *general diary* ) entry should also be effected .

11. Most of the time vehicle involved in accidents are attached by police. These vehicles are carrying either perishable goods or costly goods, hence inspections may be conducted by authorized mechanics /Inspectors at the earliest and vehicles may be released under surety etc. Police may also advice party to approach court for getting released. One thing may be noted that in India majority of vehicles are under loans from Banks and more so over accidents accused are , vehicles are not at fault . Thus, detaining of accidents vehicles beyond reasonable time causes great loss to the economy of the Nation.
12. Generally RTO/MV Inspectors are providing inspection reports upon the request of the police stations. Now days vehicles are highly technical and computerized, thus finding out mechanical faults in such vehicle's, authorized experts are needed whose reports are admissible under Evidence Act. RTOs/MV Inspectors /authorized mechanics may be notified based upon certain strong policies and test, otherwise it will affect justice delivery system.
13. Punishment as prescribes under section 106, BNS Act 2023 needs to be rationalized and quantified as to avoid misuse of discretionary powers. Punishments may vary from few days to few years up to 10 years.
14. Victim's compensation in accidents cases is a need of hour. It should be a uniform policy throughout the country. At present it is only covered under Insurance and MV Tribunals. Under victimology may be properly planned.<sup>12</sup>SC of India has also tried to bring out better solution towards compensation but on the ground, things are not yet friendly. Restorative Justice module of UK criminal law may be studied where in both parties are getting compromised legally under criminal statutes. It is necessary to minimize incarcerations, and promote social reintegration otherwise arrests in the country are already very high.<sup>11a</sup>Approximate 54 lakhs person are arrested under IPC /SLL Acts in the year 2022 besides 1,10,000 person under <sup>11aa</sup>preventive measures (151 cr.p.c) and <sup>11b</sup>Railways cases(10-11 lakhs arrest) under Railways Act . These two preventive measures and Railways crimes are also major contributory in total arrest. It will cross beyond 60 lakhs in a year, thus a huge incarceration of active and potential person. Thus there is need of quick proper relief to the victim and immediate families. No doubt it is a state case as to provide deterrent effect but welfare aspects is much more and hence a balance approach is required. Technology help can be taken as to minimize paper and court work.
15. Since punishments are very high, it needs scientific investigation, equipment's and highest quality of arguments in courts, which can be provided by smart manpower in police, motor vehicle inspectors and advocates etc.. Highly trained manpower to be posted otherwise cases will be acquitted.
16. Few occasions have reported about coercive method of investigation, it needs to be discarded if it exist. Investigating agencies are not court, so no need to adopt foul languages rather than one has to make foolproof case.
17. Entire investigation to be done as per Hon'ble S.C guidelines issued time to time for fair investigation such as arrest, cctv evidences and use of technologies etc..
18. Prisons needs upgradation as to accommodate additional arrest at least around a lakh. Of people.
19. A sizable number of vulnerable groups such as senior citizens, women, girls, transgenders are also driving vehicles , need better classification of jails otherwise social stigma will damage more to the peaceful society .At present classifications are not satisfactory due to overcrowding .

## CONCLUSION

Accidents on road is preventable if people follow traffic discipline. Whatever better infrastructure, best drivers and good quality vehicles, all will be failed once traffic is indiscipline .It can be enforced by internally a self-disciplined driving along with supported by external parameters. As far as self-discipline is concerned, it is inculcated in every human beings such as maintained suitable distance, using deeper ,allowing respectful crossing by pedestrians , sensible driving such as lane driving, not jumping red lights, obeying traffic rules, considering every one life is precious and driving with due respect etc. This attitude of a human being will bring automatic a sense of human touch on road resulting which a better road culture will develop. In short best practices of road driving, will make safe journey of everyone. As far as external factors are concerned, they includes better road engineering, signages, electronic devices , traffic police to regulate at potential points, speed limitations, challans in case of violations and other punitive measures under various laws, training and education, sensitization programs to the people through community services, creating awareness among children and commuters of all groups, rewarding people and NGOs for doing their good works by State etc. are certainly going to save lives on the roads. The category of rewards ,if can be considered on the line of bravery award where people can be given some substantive benefits such as in jobs or recognizing their commitments officially, will help in saving more lives on roads.

In view of all above as discussed effect of the higher punishments such as extendable up to 10 years and fines, although data are not available as BNS Act has not been implemented, hence saying something concrete over the reduction in road accidents, cannot be said but higher punishments certainly will have a deterrent effect over the driving community in two ways one is jail and other is huge fines. Here is no scope from jail and fines .Both quantity of



punishments and fines are discretionary of courts i.e. extendable up to 5 years or 10 years . Similarly fines are kept in open brackets and no quantity is fixed, it may be very less or very high. It all depends upon the court and advocates. This is very confusing and vague, certainly going to create problems and harassment to the people who have been found guilty. It would be better to quantify punishments and under section 106 BNS Act 2023 and fines like in developed countries as well as in our few Acts are already having such quantified punishments where court is bound to award like NDPS and POCSO etc. It will reduced ambiguity and bargaining in the criminal justice system and allow a fair trial. As opined that higher punishments will have salutary effect but at the same time it is going to have its cascading effects also in slowing economy as people who can afford the vehicle and driver ,will only purchase. Pressure will come on public transport, which is not up to the mark. An individual middle class family, who is bread winner for his family neither will like to drive his own car nor having a capacity of hiring a driver. It all will happened because of imprisonment and fines. In accidents cases, most of the time on road a person is taking all precautions but due to fault of others, he get punished. Here neither mens-rea nor preparation is there, thus it is kept under negligent driving. Therefore people will be discouraged in driving or in purchasing vehicles. Yes, in developed countries where more so over similar punishments or even more than that are there, but at the same time their all other external parameters of road worthiness are better than us. Nowadays Central Govt as well as states govts have given much priority on the roads and quality roads are being made like National Expressways, Highways. In-fact few local roads are also quality roads. Life of each person is no doubt very precious, nothing can equate it. Thus awarded punishment although appears higher side and having it's cascading effect over economy, pressure over criminal justice system and over populating prisons but all are nowhere when matter of loss of innocent lives around 1.7 lakhs are there in a year. However it would be better to have a balance view considering the negative effects without compromising deterrent effect and punishments and that can be achieved by implementing new Act. In India maximum number of drivers (28 cr. vehicles approximately) are either from downtrodden or middle income group. Effluent class having good quality of vehicles, driving occasionally Thus an affordable justice is needed. Large number of incarcerations will result into overcrowding of prisoners where as prisons are already overcrowded disproportionately. On and average at the last day of the year ending as per NCRB ,generally 4.5 to 5 lakhs total prisoners including 1.5 lakhs inmates are lodged in the jail/ Correctional homes (1300). Since 1,71,000(2022 ) people died due to accidents on roads , these all cases are registered under section 304 A IPC, where as punishments are 2 years or fine or both .Being cognizable and bailable , accused got bail from police station itself. Now under new BNS Act, accused will be arrested, if not informed to police and magistrate. It will increase existing prison population. As far as convictions are concerned in 1.7 lakhs cases, maximum will be convicted due to its strong circumstantial evidences as death has reported from the spot. These cases are mostly circumstantial based which speaks true facts involume, thus convictions are inevitable. Under such condition more than 1.5 lakhs entries of inmates /under trials into jails, will certainly increase the existing prison population. Here it is going to affect adversely reformation and rehabilitation, which is our legislative intent and most popular accepted method of the theory of punishments. Since concrete data on rehabilitation of inmates are not available, is another grey areas, needs strong policy, otherwise increasing incarcerations may defeat very purpose of the legislative intents. Thus new prisons are needed in good numbers associated with modern rehabilitation techniques so that social reintegration of these inmates can be achieved. Nowadays police verifications are mostly mandatory in all kind of jobs. An arrested person and in this case drivers/ owners, may not get jobs as employers will be hesitant in providing jobs to them. So far Statutes are unfriendly in providing jobs to the arrested person, needs to be looked into especially where drivers are involved in accident cases. It may be looked into by considering mens-rea of the act. Accident cases may be treated differently than any other body /property offences. Better quality of affordable public transportation system, which is at present not up to the mark in majority of states, needs improvements otherwise people will keep on purchasing vehicles. Therefore, new law BNS Act under section 106 ,may be implemented as to save the innocent lives but at the same time provision of better public transportation and speedy justice should also be given importance .

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The law states that: 'A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.'

The definition of dangerous driving is that: the way a person drove fell far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous.

It is also dangerous driving if it would have been obvious to a competent and careful driver that driving a vehicle in its current state (for example, with defective brakes or other defective safety-critical components) would be dangerous.

If a jury decides that an accused person is not guilty of this charge, they may instead convict them of 'causing death by careless or inconsiderate driving', 'dangerous driving' or 'careless or inconsiderate driving'.

Penalties

In England & Wales: This offence is tried in the Crown Court. The maximum penalty is a prison sentence of 14 years and/or an unlimited fine. Anyone convicted of this offence must be disqualified from driving for a minimum of two years, unless there are special reasons to impose a shorter disqualification or no disqualification. They must pass an extended driving test before they can regain a full driving licence.

For offences committed on or after 28 June 2022 the maximum sentence is life imprisonment. Anyone convicted of this offence must be disqualified from driving for a minimum of five years, and must pass an extended driving test before they can regain a full driving licence.

In Scotland: This offence is usually tried in the High Court but in some circumstances may be heard in a Sheriff Court with a jury. The maximum prison sentence is 14 years at the High Court or five years at a Sheriff Court. Both courts may impose an unlimited fine. Anyone convicted must be disqualified from driving for a minimum period of two years. The offender must take an extended driving test before they can regain their licence.

For offences committed on or after 28 June 2022 the maximum sentence is life imprisonment. Anyone convicted of this offence must be disqualified from driving for a minimum of five years, and must pass an extended driving test before they can regain a full driving licence.

[11]. NCRB, Crime in India 2022 ,

A total of 53,90,233 persons were arrested under IPC & SLL cases combined, as follows:

A total of 32,28,322 persons were arrested under 35,61,379 cases **of IPC crimes**. A total of 43,67,588 persons were charge-sheeted, 10,55,181 persons were convicted, 9,81,194 persons were acquitted and 1,52,787 persons were discharged. [Table – 19A.6]

A total of 21,61,911 persons were arrested under 22,63,567 cases **of SLL crimes**. A total of 27,04,985 persons were charge-sheeted, 14,16,858 persons were convicted, 3,69,789 persons were acquitted and 57,187 persons were discharged. [Table – 19A.8]

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