



A Critique on Sentencing Policy with reference to Vehicular Homicide Cases in India

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ABSTRACT: The importance of the topic is highlighted, from the very fact that culpability is set according to the level of blameworthiness on the part of accused. This blameworthiness is known as guilty mind or to be more precise a blameworthy state of mind. There are many degrees or kinds of *mens rea*, with their corresponding levels of culpability like Intention, knowledge, recklessness, negligence, etc. The punishment decreases as the *mens rea* fall the ladder. The importance of *mens rea* in criminal jurisprudence is again stressed by the maxim "*Actus reus non facit reum, nisi mens sit rea*" which implies that "The act itself does not constitute guilt unless done with a guilty intent". Due to this elusiveness of Mens Rea, there is a disproportionate sentencing by the Courts which gives rise to injustice and violation of basic human rights and dignity of the victim. The paper shall decipher various issues pertaining to mens rea in Vehicular Homicide Cases and shall endeavour to come with suggestions to curb this menace.

KEYWORDS: Vehicular homicide, just deserts, sentencing policy

1. INTRODUCTION

The importance of the topic is highlighted, from the very fact that culpability is set according to the level of blameworthiness on the part of accused. This blameworthiness is known as guilty mind or to be more precise a blameworthy state of mind. There are many degrees or kinds of *mens rea*, with their corresponding levels of culpability like Intention, knowledge, recklessness, negligence, etc. The punishment decreases as the *mens rea* fall the ladder. The importance of *mens rea* in criminal jurisprudence is again stressed by the maxim "*Actus reus non facit reum, nisi mens sit rea*" which implies that "The act itself does not constitute guilt unless done with a guilty intent".

The issue of *mens rea* appears more elusive in cases of vehicular homicide as to whether in cases of homicide due to drunken driving, 'knowledge' shall be imputed or

'rashness' and negligence' shall be imputed. This is a very important issue as it relates to the concept of just deserts¹ and if here the courts commit error, gross miscarriage of justice will occur.² Furthermore, the problem becomes graver, because vehicular homicide has become rampant, as 4.97 lakh accidents occur every year in India, the share of road accidents in causing deaths by unnatural causes is 36.4% as of 2013. Above all, it is submitted that 142485 deaths are caused annually suggesting one death by road accident per minute.³

Whether the accused shall be charged and convicted under section 304 A or 304 (ii) remains controversial as highlighted by the case of *Salman Khan*.⁴ In this case first of all the FIR was filed under sections 304A but later was converted into 304(ii). The accused went in to appeal, and charges were reframed again under section 304 A,

¹ Refers to appropriate punishment with reference to the gravity of the offence

² Alan Norrie, *Crime Reason and History – A Critical Introduction to Criminal Law* 70 (Cambridge, London, 3rd edn. 2014).

³ Government of India, *Report on Accidental Deaths & Suicides in India 2013* (Ministry of Home Affairs, 2014) available at <http://ncrb.gov.in/adsi2013/ADSI-2013.pdf> (last visited December 15, 2021).

⁴ (2004) 1 SCC 1189; MANU/SC/1075/2003

but consequently again section 304 (ii) was pressed against the accused. This shows the utter state of confusion. It is submitted that it is very confusing when, High courts of Bombay and Delhi, on almost similar facts convict the accused in different sections, Delhi High Court, in a single bench Judgment of Gambhir j, convicted the accused under section 304 A, whereas division bench of Bombay high court in case of *State of Maharashtra v. Alister Anthony Pereira*⁵, convicted the accused under section 304(ii). However the Supreme Court has imputed 'knowledge' in case of homicide, due to drunken driving in cases of *Alister Pereira* and *Sanjeev Nanda*⁶, but has held that *Nanda* is not precedent and each case has to be tried as per its own facts. Thus the position with respect to the '*mens rea*' involved is not fully settled.

The second issue in case of vehicular homicide is disproportionate sentencing by the higher courts as, the researcher has mentioned earlier in case of conviction and sentence under section 304(ii). It is stated, even in case of section 304 A, the sentences imposed by the courts are highly inept and disproportionate to the gravity of the offence, in which precious human lives are lost. Recently Punjab High court, affirmed the conviction of an accused under section 304 -A, but reduced the sentence of one year to 24 days. The extreme sympathy of the Supreme Court in road accident cases is unexplained. It is submitted that in case of vehicular homicide due to drunken driving, 'knowledge of Consequence' is invariably present. In such a case when the accused after consuming alcohol or intoxicating himself decides to drive and start peddling the accelerator, he knows that his act is likely to cause death and his act, satisfies the clause (c) of section 299. This view is supported by Radhakrishnan j and Professor Stanley Meng Heong Yeo.⁷

Table - **Depicting *mens rea* and *Actus Reus* in vehicular homicide due to drunken driving**

Facts	<i>Actus reus</i>	<i>Mens rea</i>
Consuming intoxicants voluntarily, driving vehicle rashly in high speed and thereby causing death by accident.	When the accused intoxicates himself voluntarily, and decides to drive back, he knows very well that his senses are weak, and as per conditions in our country or his locality people might be there on road in vulnerable	When he decides after intoxicating himself, he is well aware of the consequences which are very probable or is likely to cause death, by his conduct which signifies he has the 'knowledge of

⁵ (2012) 2 SCC 648; MANU /SC/0015/2012 at Para 45.

⁶ (2012) 8 SCC 450, MANU/SC/0621/2012

⁷ Stanley Meng Heong Yeo "Recklessness under the Indian Penal Code", 30 *JILI* 293-308 (1988).

⁸ Vehicular Manslaughter California Penal Code (Cal CRIM No.590), s.30.

⁹ Criminal Code (RSc1985, cc 46), ss. 249,250,251,252,253,254,255.

	positions, by continuing with this unlawful act, he indulges in a wrongful conduct or conduct harm, which qualifies as ' <i>actus reus</i> '.	consequence' and hence <i>mens rea</i> element present is 'knowledge' of likely causing death by his/her act.
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It is submitted that Indian law on vehicular homicide and homicide by negligence, is highly inept, archaic, vague and disproportionate. This is highlighted by the fact that in 78 % of road accident cases, it is the driver at fault. This implies that, drivers are either ill trained or callous and they are not afraid of the law as it is weak. The researcher analyzed the legal system of various countries namely UK, USA, Germany, Canada, Bangladesh vis-à-vis India and found the Indian law on this point the most ineffective. In USA, almost all the states have specific laws dealing with the issue of vehicular homicide. These laws define the offences in detail and provide for appropriate punishment ranging from 2 - 20 years of imprisonment.⁸

In UK, there are various acts like Road Traffic Act, 1988, Road Safety Act, 2006, specially designed to deal with vehicular homicide cases and the punishment is proportionate and substantial ranging from 2- 14 years. In Canada, there is no specific law, but a set of provisions are there to deal with homicide caused by rash and negligent driving and other allied offences. Even, for general homicide by negligence punishment inflicted can be up to life Sentence.⁹ In Germany also there is no specific law on vehicular homicide, but their general law on homicide due to negligence provides, punishment by way of imprisonment for up to 5 years.

It is also submitted that Bangladesh by 1982 amendment, has increased punishment for different offences concerning negligence. They introduced section 304 B, - death caused by rash and negligent driving punishable with imprisonment up to 3 years. They have specialized provisions like sec 338 A. Apart from it they have same set of laws like India corresponding to IPC such as sections 279, 304A, 337, 338 but the punishment is enhanced in case of homicide due to negligence - the punishment in Bangladesh is up to five years, while in India it is only up to two years.

Even section 279, BPC dealing with rash driving on a public way is punishable with up to three years but in India, it is punishable only with imprisonment up to six months.¹⁰ This highlights that legislatures worldwide have amended their laws to bring it in consonance with modern traffic requirements, but Indian Legislature has

¹⁰ 279. Rash driving or riding in a public way. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to **three years**, or with fine which may, subject to the minimum of **one thousand taka**, extend to five thousand taka or with both.

miserably failed in this regard. Hence, it is submitted that Indian Law is obsolete and requires a comprehensive reform with scientific and legal expertise.

Many Law Commission reports have time and again recommended reforms and amendments in the Indian law of negligence and death caused due to drunken driving, but have felt on empty ears as our legislature is busy in other activities.¹¹ It appears Bangladesh legislature have accepted recommendations of Indian Law Commission and amended their laws on this point, though they are also not fault proof. Even, the 2015, Motor Vehicles amendment bill does not contain any provision to mend these flaws. The hapless, position of Indian law is aptly presented by the learned Dipak Misra, J as follows:¹²

Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a non-challant attitude among the drivers. They feel that they are the “Emperors of all they survey”. Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as “larger than life”. In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinize, re-look and re-visit the sentencing policy in Section 304A, IPC. We say so with immense anguish.

Unfortunately, the sentence of six, months awarded by the honorable apex court is also highly insufficient, as the law empowers them to sentence up to a maximum of two years. Finally, it is submitted that the entire edifice of Indian law comprising of statutes, judgments and implementation mechanism is highly flawed, whether in deciding the state of mind or *mens rea* element of the accused in vehicular homicide due to drunken driving or in awarding justice in a reasonable time or in awarding just and proper sentence and above all in protecting the life of citizens and hence certain recommendations are made, which comprise legal as well as other technical measures to curb this menace and at last certain amendments in the law are proposed.

Suggestions

General Suggestions

- i. Proper and strict implementation of the excise laws for minimum age for consumption of liquor;

- ii. Proper lights on the streets and better maintenance of roads so as to reduce occurrence of any kind of accidents;
- iii. Improvement in the methods of investigation so as to make it more scientific.
- iv. Installation of CCTV cameras on major roads.
- v. Random checking by the police to prevent the menace of drunken driving specially near pubs, five star hostels, discos etc.
- vi. Proper and stringent test before awarding driving License
- vii. Minimum one month mandatory training course before awarding driving license.

Legal Suggestions

- i. To amend section 304 A and to increase the punishment to imprisonment up to five years in case of death due to negligence.
- ii. To make section 304 A, a non bailable offence.
- iii. To insert a new non bailable section 304A (2), specifically dealing with homicide caused to due to rash and negligent driving.
- iv. To amend section 113 Indian Evidence act and introduce a presumption clause.
- v. Benefit of Probation and other reliefs in lieu of imprisonment shall be seldom.
- vi. The cases in which knowledge is present or deemed as per the new proposed section 304A (2), section 304(ii) shall be applicable.

Amendments Proposed

- i. Section 304 A, to be substituted with a new section “Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to **five** years or with fine or both.”
- ii. A new Section **304 A(2)** should be inserted and proposed section is “*Causing death or injury by rash or negligent driving* - Whoever by rash or negligent driving of any vehicle causes the death of any person not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years but not less than two years and shall also be liable to fine

Explanation: 1. - Where the act constituting the offence under Section 304A or this section is committed while under the influence of intoxicants shall be deemed to

¹¹ Law Commission India, 156th Report on Indian Penal Code (August, 1997), available at <http://lawcommissionofindia.nic.in/101-169/Report156Vol2.pdf> (last visited November 15, 2021).

¹² *Saurabh Bakshi v. State of Punjab*; MANU/SC/0362/2015 at Para 18.

have been committed with the **knowledge** of causing death.

Explanation: 2. - In this section “vehicle” includes “vessel”.

Amend Section 113 Indian Evidence Act and Introduce Section 113 C – that’s to presume knowledge in death caused due to drunken driving (above permissible limit) so that directly Sections 299 and 304(ii) is attracted. The **Proposed** Section 113 – C. Presumption as to knowledge that the act is likely to cause death in accident cases when death is caused due to drunken driving.- When the question is whether a person causing death by Road Accident has the required knowledge and it is shown that he was drunk above the permissible limit at the time of Accident, the Court shall presume that he has caused death with knowledge.

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