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Drink and Drive in Check-Post Nakas: A Detailed Analysis of the Loopholes in the Present Laws and its Consequences

DR. JAYKUMAR BHONGALE¹ AND OISHIK BHATTACHARYA²

ABSTRACT

As mentioned in a Times of India Report, more than 70% of the road accidents in India is due to drinking and driving. The device used at the drink and drive checkpoints are called Breathalyzers. The legal limit of being drunk while driving in India, as specified by the Transport Ministry is 0.3 % per 100ml blood. This technology mechanically detects the blood alcohol concentration (BAC) by means of two techniques a breath based sensor and touch based sensor. The breath based system will measure the alcohol concentration in the blood through the driver's exhaled air. Touch based sensor will read the alcohol level below the skin surface. We will be dealing with the breath based sensors in this paper. Here, we will be discussing about the unhygienic factors of a breath based alcohol test. The probable diseases that can be spread by the continuous use of the said device. If there are any laws in India governing the checkpoints? Comparison of the drunk and drive implications in India with that of the other common law countries like United Kingdom, Canada, and Australia. This paper also introduces measures to secure the use of same. What are the probable bars on using an alcohol breath tester during the widespread of the global pandemic - Covid 19?

Keywords: Drinking, Disease control, Check post, Corruption.

I. INTRODUCTION

It has been known that alcohol use impairs driving skills and increases accident risk. It has been found that while driving under the influence of alcohol, the risk of having an accident causing injury or death increases exponentially. Drunk driving has a high probability to lead to serious accidents. Even with a small amount of alcohol assumption, drivers are twice likely to be involved in traffic accidents than sober drivers. Therefore, many countries have been working on solutions to drunk driving for a long period of time, including publicity and education and tough drunk-driving laws. The laws have been enacted to prohibit driving after drinking and have imposed severe penalties on violators. The legal limits for BAC are between 0.01% and

¹ Author is an Assistant Professor at Bharati Vidyapeeth Deemed to be University, New Law College Pune, India.

² Author is a student at Bharati Vidyapeeth Deemed to be University, New Law College Pune, India.

0.08%. The limit, for example, is 0.02% in Sweden; 0.05% in Israel, Korea, and Australia; and 0.08% in Canada, England, Mexico, and the United States. In China, driving with a BAC higher than 0.02% is defined as drink-driving and the driver will be penalized. Moreover, driving with a BAC higher than 0.08% is considered drunken-driving and it belongs to unlawful act.

Even so, drinking driving is still difficult to be completely eliminated. It is also needed to analyze the signatures of alcohol's impairment on drivers to pave the foundation for the study on the countermeasure of drinking driving. Alcohol can affect drivers' cognition, vigilance, attention, judgment, and reaction, which were related to driving ability closely. It was concluded that alcohol consumption, even at low doses, significantly affected driving-related skills such as vision, braking behaviour, and vigilance. At the same time, drivers' information process and attention were heavily affected by alcohol. Nash demonstrated that drivers would be distracted by alcohol when they were asked to complete some tasks. It has been indicated that alcohol would negatively affect drivers' ability on judgment of following distance and depth perception. Alcohol's effects on visual performance are most obvious when it comes to the judgment of moving objects and the process of different information at the same time found that alcohol affected many parameters for a long time, including simple reaction times, vigilance, visual searches, and logical reasoning.

According to research 13000 people are killed from alcohol impaired driving. To be more focused the statistics comes to 35 people per day. To curb this statistics down educational institutions should convey messages to their students on the consequences drunk driving because teenagers are more likely to get into a car crash which leads to death. Teachers must imbibe the thoughts about the legal ramification which will consecutives lead to fall of drunk driving. If the teens get to know about the death rate and he peer pressure then it will decrease the fatal car crashes.

Study says that teenagers in India are 17 times more likely to involve in fatal car crashes than any sober driver.

(A) Scope

Different- different strategies are used by police officials to keep a check on drunken drivers. Usually police from local stations set up road blocks on the roads forcing passing vehicles to slow down and pass the roadblock in a one to one pattern enabling police officials to stop each vehicle to test for the alcohol levels.

II. CHECK-POSTS/ ROAD BLOCKS

Police check-post also called “Nakas” are set up on the road to check drunk and driving or DUI or DWI (Driving while intoxicated). The idea and motive behind setting up of check-posts is to keep in check the offenders so that public safety as well as public order is maintained. However a question of harassment is raised for the people who aren't offenders or the people who didn't break any rules. For instance, in the scenario of drink and drive barricades/ check post, there usually is checking of each and every vehicle and moreover the passage is narrow which leads up long queues and traffic jams resulting in inconvenience for people. Moreover rather than becoming a check on offenders it becomes a hurdle in emergency situations like for Ambulances etc.

III. BREATHALYSER

To test breath alcohol content police official use a device called “**breathalyzer**”.

It gives an estimate of alcohol content in the blood stream of the person. To check the person has to breathe into the device, Then after the breathe air has circulated in the device, the alcohol level gets picked up by the device, by detection of alcohol molecules present in the breathe which has come from lungs

A breathalyzer estimates an individual's blood alcohol levels. When a person breathes into the device, it picks up on the molecular content of alcohol in the breath from the lungs and converts it into the approximate blood alcohol level.

India doesn't have a proper framework or set standards for the use of equipment's like breathalysers. It doesn't have proper framework to comply with in case of the Breathalyzer or even for its use. There are no set standards for technology as well as the basic requirement pertaining to the mechanical structure to be termed as breath alcohol analyser.

Breath analyzer/alcohol meter falls within the definition of "weight or measure" as it is used to measure the Blood Alcohol Content (BAC) and hence, specification and calibration is required to be done as per the provisions of the Legal Metrology Act of 2009 and the supporting rules. Breath analyzers vary from one to another. And they are built in a way which requires calibration after certain period of time to make it work again or it plays defect information. Some are to be necessarily calibrated every six months. In Dharmendra Yashovardhan vs State N.C.T. Of Delhi & Anr³, court stated that if nothing has been put forward to validate the requirement of calibration every six months, the same, be taken as twelve months as per the

³ MANU/DEOR/209420/2022

Legal Metrology Rules. Thus it cannot be denied that it is important to calibrate the breath analyzer periodically to maintain accuracy and reliability of the test.

Breathalyzers also gets defeated on the purpose of checking people driving under the influence as it only checks drunk and driving but not who are driving under the influence of substance abuse like who are under the influence of narcotics. Since just like alcohol abuse, narcotics or use of drugs also impair the basic decision making power of the body and making driving dangerous.

IV. LAWS GOVERNING DRINKING AND DRIVING IN INDIA

A. ⁴Road Transport And Safety Bill, 2015

Under Chapter I - Section 3 (13) of this act, the term “driver” is defined as any person who drives or steers a motor vehicle.

Section (300) of Chapter XIV - Offences and Penalties - **Driving under the influence of alcohol or drugs:**

1. A person shall be punishable in accordance with sub-section (2) if, while driving, or attempting to drive a motor vehicle, such person is deemed to have alcohol in his breath or blood on an impairment test, on a test by a breath analyser, or any other test including clinical test.

2. The punishment for driving, or attempting to drive, a motor vehicle under sub-section (1) shall be, in addition to the awarding of penalty points in accordance with Schedule II, punishable in accordance with Schedule III.

3. A person who, while driving, or attempting to drive a motor vehicle, is under the influence of a narcotic, or a psychotropic substance or a drug or a prescription drug as prescribed by the Central Government in this behalf, by notification, shall be punishable in accordance with Schedule III, if:

(a) the person does not complete a compulsory impairment test in a manner satisfactory to a police officer under section (324), provided that any such police officer should be trained to give such test in the manner specified by the National Authority; and

(b) the person’s blood or urine, as ascertained from an analysis through a clinical test subsequently taken under section (327) contains evidence of the use of a drug or drugs as

⁴Road Transport and Safety Bill, 2015 available online at <http://www.indiaenvironmentportal.org.in/files/file/ROAD%20TRANSPORT%20AND%20SAFETY%20BILL%202015.pdf>

specified by the National Authority.

4. A police officer may arrest a person without warrant if the person refuses or fails to comply with provisions of sections (326) and (327).

5. Any driver of a motor vehicle, carrying a child or children in the vehicle, who violates sub-section (1) or sub-section (3) of this section, shall be punishable in accordance with Schedule III, and subjected to an immediate cancellation of license for a period of three years.

6. Any person who drives a transport vehicle or a heavy motor vehicle and violates sub-section (1) or sub-section (3) of this section shall be punishable in accordance with Schedule III, and subjected to an immediate cancellation of license for a period of five years.

7. Any person who has committed an offense under sub-section (3) of this section will have a valid defence, if the court is satisfied that the person had consumed the relevant qualifying drug: (a) in accordance with: (i) a current and valid prescription written for that person by a registered medical practitioner; and 270 (ii) any instructions from a registered medical practitioner or from the manufacturer of the qualifying drug; or a. because it was administered by a registered medical practitioner, provided that the person complied with the instructions (if any) that the registered medical practitioner has given.

8. It is no defence to proceedings for an offense that a provision forming part of sections (324), (326) and (327) has not been strictly complied with or has not been complied with at all, provided there has been reasonable compliance with such of those provisions as apply.

V. MOTOR VEHICLES ACT, 1988

Section 185 of the Motor Vehicles Act, 1988 depicts the punishment to be handed down to motor vehicle drivers who are found to have consumed more alcohol than the prescribed limit. No action is often taken against a driver whose blood alcohol content (BAC) is less than this limit. However, if the blood alcohol content is found to be greater than 30 mg, he is often imprisoned for a period which can extend up to six months or a fine not exceeding Rs. 2,000 or both for the first offence. If the same offence is repeated within a period of 3 years, the offender can be imprisoned for a term not exceeding 2 years or asked to pay a fine not exceeding Rs. 3,000 or both.

(A) The Amendment –

From 1st September 2019, the fines for road safety have been increased heavily. The fine for a **drink and drive** under the Motor Vehicle (Amendment) Bill 2016 has been risen from 2000/- to 10,000/-

In the case of drunken driving, these are the new amended fines:

- For the first offence, there is imprisonment up to a period of 6 months and/or a penalty of INR 10,000, which has gone up from the erstwhile fine of INR 2,000

However, for the second offence, the imprisonment clause is 2 years and/or a penalty of INR 15,000, which has gone up from the erstwhile fine of INR 3,000/- Section 203 of the MV Act deals with Breath Tests. The relevant portion for our purpose is given below:

“203. Breath tests.-(1) A police officer in uniform or an officer of the Motor Vehicles Department, as may be authorized in this behalf by that Department, may require any person driving or attempting to drive a automobile during a public place to supply one or more specimens of breath for breathtest there or nearby, if such policeman or officer has any reasonable cause to suspect him of getting committed an offence under section 185:

If a person, required by a police officer under sub-section (1) or sub-section (2) to provide a specimen of breath for a breath test, refuses or fails to do so and the policeman has reasonable cause to suspect him of getting alcohol in his blood, the policeman may arrest him without warrant except while he's at a hospital as an indoor patient.

VI. SECTION 279 OF INDIAN PENAL CODE

Rash driving or riding on 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 six months, or with fine which may extend to one thousand rupees, or with both.

VII. ROAD ISSUES IN INDIA

A study on drivers killed in road crashes has revealed that teenage drivers have quite 5 times the danger of a crash compared with drivers aged 30 and above, at all level of BAC. A Road Accident Statistics in India showed by the NDTV gives a rough age of drivers who face road accident. 22 to 29 years old males were estimated to possess 3 times the danger compared with drivers aged 30 years and above, in the least BAC levels. Alcohol consumption by drivers puts pedestrians and riders of motorized two wheelers in danger.

In *Sanjeev Nanda v The State* Case⁵ discussed below the Hon'ble Court highlights an equivalent well. In the case, *State Transport Police Station Lodhi Road vs. Sanjeev Nanda*⁶ important

⁵ *Sanjeev Nanda v The State*, (2012) 8 SCC 450.

⁶ *Sanjeev Nanda v The State*, (2012) 8 SCC 450.

judgment from perspective of road safety emerged. The Respondent during this case was charged under Section 201⁷, 304 (I)⁸, 308⁹ r/w section 34¹⁰ IPC for driving his car rashly and negligently and hitting 7 persons. It was further observed by court that it's different.

VIII. PROCEDURE

In India, highway safety laws of all kinds are generally enforced by fixed sobriety checkpoints manned by personnel from the local police station. Barriers are arranged on the roadway so that passing vehicles are forced to slow down, and the officers on duty signal selected vehicles to pull over as they pass through the barriers. If the roadblock is intended to target drunken driving, police personnel then ask the driver a few questions on his or her identity, destination, etc., while observing the driver's demeanor and smelling his or her breath. If the police feel the driver may be drunk, then according to the official procedure they will order him or her to blow into the breathalyzer, following the results of which the driver is either charged or released. The printed results of a handheld breathalyzer are considered sufficient proof of drunkenness in court.

Once caught, drunken drivers' vehicles are confiscated by the police, and the driver must appear in court to pay a fine or potentially face jail time, although imprisonment is never observed in our data. The fine amount depends largely on the judgment of the local magistrate, with a maximum fine of Rs. 2000 4 (roughly \$50) for the first offence 1. The driver must then return to the police station to recover the vehicle from the police lot.

Even this official procedure leaves many factors undetermined and up to the discretion of the police manning the roadblock. The choice of how many, and which, vehicles to pull over for questioning and potential testing is the most important. Ideally the police should target vehicles with the highest probability of drunkenness, and in conversations the police often noted that if they saw a vehicle with a family, or driven by elderly people they assumed that the driver would be unlikely to be drunk and let it pass. Other considerations may also enter the decision: police may be less likely to stop vehicles with many passengers who would be difficult to deal with at an isolated police station if the vehicle were impounded. Similarly, the police might be hesitant to stop luxury vehicles whose owners might be well connected and cause problems if subjected to breath testing.

Unscrupulous police officers are faced with another decision: whether to follow the official

⁷Causing disappearance of Evidence of Offence, or giving False Information to Screen Offenders.

⁸Punishment for Culpable Homicide not Amount to Murder.

⁹Attempt To Commit Culpable Homicide.

¹⁰Section 34 Indian penal Code

ticketing procedure or instead to solicit (or accept) a bribe from the accused drunken driver. There are several stages in the encounter when this exchange could take place. Police may either demand (or take) a side payment prior to the breathalyzer test, if it is clear the driver is drunk, or only after the driver has proven his or her drunkenness via the official test. Corruption may also occur that the final stage when once-drunken drivers return to the police station to recover their impounded vehicles, when police may demand excess payments to release the vehicles.

IX. STATEMENT OF PROBLEMS

The topic drunk driving plays a vital role in the Indian legal structure consisting of a lot of loopholes in it.

(A) Section 279

The Act (Sec 279) may be called the IPC (Amendment) Act, 2007. The section deals with rash and negligent driving thus giving a imprisonment of a six months of imprisonment or a fine of Rs 1000 or both.

When a vehicle mows down a person, the police starts the case with sec 279 of IPC and 304A, which pertains to rash and negligent driving causing death due to same. Although the offences are bailable within some certain hours of accident. Recently, the Supreme court while considering the increasing number of vehicular accidents resulting in death of large number of innocent people has favoured the punishment under 304A for two years is grossly inadequate.

Therefore, it is high time that amendment be made in sec 279 and 304A of IPC by prescribing stringent punishment besides making offence under 304A. thus it cannot be said as a good deterrence.

It is horrible but true not a single day goes without a report in the newspaper about a mother or school child or a poor man crushed by a bus or some vehicle. Rash and negligent driving causes more than 60,000 deaths per year. The incident of drunken driving in the urban areas are rising menacingly. Drunken bus drivers and youngsters with the steering in their hand acts insane on road, as if there are no laws to check them rightly so in view of weak provision of law which hardly act as a deterrent and the present position of law does not act as deterrent for the offenders. Thus it is high time to amend the sec 185 of the MV Act.

(B) Section 295

Section 295A in the Indian Penal Code

Deliberate and malicious acts, intended to outrage reli-gious feelings of any class by insulting its religion or reli-gious beliefs.—Whoever, with deliberate and malicious intention of outraging

the religious feelings of any class of 273 [citizens of India], 274 [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 4[three years], or with fine, or with both.]

In a pronouncement that reiterates the constitutional protection to freedom of speech and expression, the Supreme Court has said that unwitting or careless “insults” to religion should not be prosecuted as this would amount to misuse of law.

Concerned by the misuse of Section 295A of IPC, which provides up to three years' jail term for hurting religious sentiments, the Supreme Court limited the applicability of the penal provision to deliberate and malicious acts rather than casual observations that are not driven by malicious intent.

It is clear as crystal that Section 295A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalises only those acts of insults or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings.

X. BREATH ANALYZER RESULT DISCREPANCY

Breathalyzers have had a long history of controversy over their effectiveness and validity when used as evidence in a court of law.

Breath Testing has become a tool frequently used by police officers throughout India.

1. Just how accurate are these machines?
2. How important are they to a prosecutor in a prosecution for operating a motor vehicle, or other motorized device, under the influence of alcohol (DWI/DUI)?
3. Where can their reliability as accurate predictors of true blood alcohol content be attacked?

Where does breath testing fit within a DWI/DUI investigation? The breath test is relied upon by jurors as the God of evidence. Most citizens believe if an officer received a reading of 30mg or greater from his administered breath test the defendant was surely impaired by alcohol. A result of 30mg or more may be a legal inference but the publicity has done its job, you're guilty now prove you're not guilty. Many jurors upon hearing the Breath Alcohol Content (BAC) is 30mg or greater, at the beginning of trial, conclude improperly that the case is over and the defendant has lost his case As will be seen below, reliance by the general public is seriously misplaced and the validity of this blind conclusion cannot be justified.

To properly address breath testing and how it fits within the framework of a DUI investigation the reliance upon field sobriety testing must also be briefly considered because what is observed by an officer must by definition fit the picture of impairment.

Field sobriety testing is completely subjective. A trained officer is looking for errors within a myriad of possibilities while the test taker is performing as well as is possible under the rigors of a stressful and fearful event, performing foreign tests described and demonstrated by less than perfect biased test giver. The giver is only interested in the errors he has been trained to focus upon while the performer only cares about how well he can perform. (Many of the questions asked by officers before any testing are designed to discover unique problems that may affect a person's performance on the pending test. The degree to which an officer considers the answers he receives from his subject is variable to each officer) The true performance is not always reported, The same can be said of breath testing results.

(A) Are Breathalyzers A Violation Of Civil Rights?

The uses of breathalyzers are becoming increasingly popular among police officers in India. In recent years, more and more people are going to jail due to a breathalyzer result. The question is whether or not breathalyzers are even entirely accurate. If they aren't, can they truly be admissible in court? For example, let's say a college student of drinking age meets up with a friend for dinner. The student shares a small pitcher of margaritas with her friend over the course of three hours.

When she decides to head home, she is stopped by a DUI checkpoint. The police officer who stops her claims he saw her car swerve into another lane. Unfortunately, the officer can legally lie to her and say he saw her swerving, even if he didn't. He then administers a breathalyzer after asking how much she had to drink. Being the honest student she is, she tells the officer she had two margaritas. Although her BAC was below the legal limit of 30mg, she is still arrested for possibly being above the limit. This particular student is attending college on a scholarship and is now facing possible termination of said scholarship after word of her arrest gets out.

Believe it or not, this exact scenario occurs more often than you might think. Even being arrested for suspected drunk driving can ruin any chances of a perfect record. One faulty breathalyzer test can interfere with future scholarships or other important life events. So why are breathalyzers still a way of testing how intoxicated a person is? According to the Centers for Disease Control, more than 30 percent of vehicle-related deaths occur every year due to drunk drivers. Breathalyzers are routinely administered by police officers to ensure impaired drivers stay off the road. There is, however, a growing concern that the most significant tool utilized to

identify drunk drivers is flawed. As a result, breathalyzers could possibly violate a driver's civil rights.

(B) The Issue of Implied Consent

In the majority of cases, police do give drivers an option, depending on a state law called implied consent. But some states, punish drivers who refuse to take alcohol tests. Drivers can either take the test or risk the same jail time as a DUI conviction, suspension of their license and/or a major fine. According to the NHTSA, 22 percent of suspected drunk drivers refused breath tests in 2015.

Since then, refusal rates have dropped in 11 states and increased in 12 others, with refusals averaging between 19 and 25 percent.

(C) Is the Legal Limit a Concrete Number?

Breath tests are used to assess whether a driver has too much alcohol in his or her system, but as we know, that level varies from state to state. States now all use a .08 percent blood alcohol content reading as the legal intoxication limit, but there have been cases where drivers are arrested for blowing much lower than the legal limit. There is even a push to lower the limit to .05, a number causing much controversy.

This is an issue in itself regarding civil rights because it essentially suggests people not drink while they are out. Fifty to 75 percent of convicted drunk drivers, however, decide to drive again even after their license has been suspended, cites Mothers Against Drunk Driving (MADD). It is also expressed that drivers have been intoxicated behind the wheel at least 80 times before they are arrested for the first time. This could be fuel for a lower legal limit. The push for this new limit is still in its infancy, of course, so there is no need to follow this "new" rule right now.

XI. RECOMMENDATION

There should be an anti-driving programme which should follow a straightforward randomized control trial (RCT) setup, consisting of three overlapping experiments, each varying a different aspect of how the campaign was implemented:

- 1) The frequency of the roadblocks. Roadblocks should be carried out in the police station jurisdiction either 1, 2, or 3 nights per week.
- 2) The personnel carrying out the roadblock. Roadblocks should be staffed by either, a. Police officers from the local police station (the status quo outside the intervention). b. A dedicated team selected from the police reserve force at the district level. These special teams will monitor

by GPS devices installed in their vehicles.

3) The location of the roadblocks. Roadblocks occurred at either,

a. The same spot on every occasion, selected by the local chief of police as the location best suited to preventing accidents due to drunken driving.

b. One of a group of three locations, with each night's location chosen at random. The three spots were chosen by the chief of police as the best three suited to catching drunken drivers.

Roadblock locations

There is a common although certainly not universal hypothesis within the Police and the antidrunken driving literature that surprise checkpoints are more effective than fixed checkpoints always held at the same location and time. To test this hypothesis, and the implicit assumptions of learning by potential and actual drunken drivers, randomly assigned police stations to hold their checkpoints at either a single location, or a rotating set of three locations. In the single location group, the police station chief identifies the best location in the station's jurisdiction for catching drunken drivers, and the checkpoints should be carried out by either local staff or dedicated police lines teams at that location.

Roadblock frequency and timing

The variation in roadblock frequency was designed to identify the shape of the relationship between police enforcement and criminal behavior. In particular, to determine whether this relationship is concave or convex requires at least three points of variation. Discussions with the police determined that it was not feasible to carry out more than 3 roadblocks per week per police station, thus giving us the final randomization categories of 1, 2, or 3 roadblocks per week (and, of course, 0 in the control group). These frequencies were at the police station level, not the road level; for example in a surprise group police station with a frequency of 2 checkpoints per week each of the three roads would have a roadblock twice every three weeks. Checkpoints were always held at 7:00pm-10:00pm in the evening.

Technology to detect driver alcohol content by car

Since 2008, a government-funded research and development program has been designing a universal ignition interlock for all vehicles to prevent drunken driving. The built-in device would measure a driver's blood alcohol level (BAC) to determine whether the person can legally operate a motor vehicle. If not, it would effectively take away the keys by preventing the vehicle from starting.

Such devices are already in widespread use for those charged or convicted of drunken driving.

What's different — perhaps even revolutionary — is that the built-in ignition interlock would make an instantaneous and precise reading of every driver's BAC level when the driver attempts to start the vehicle. Eventually, the device could become standard equipment, just like air bags. The device would take BAC samples in one of two ways. A breath-based system would gather a whiff of a driver's ambient breath. A touch-based system would analyze the touch of a driver's finger, perhaps from a vehicle's starter button or the steering wheel. To win over consumers — and avoid the sort of outcry that occurred in the 1970s over an ill-fated ignition interlock intended to promote seat belt use — project officials say the built-in interlock has to be fast, precise and just about perfectly reliable in many different driving conditions. It also has to have safeguards against drivers who might cheat.

Section 202 of the MV Act, which gives a police officer in uniform to arrest a person in connection to violation of section 185 MV Act talks about the immediate arrest of the person who is found suspicious of drunk driving. However, section 185 and section 203 of the MV Act make it imperative that a person can only be arrested if they have been tested for the amount of alcohol present in their body. The logical inconsistency that the author is trying to point at is that section 202 allows for testing under section 203 after the arrest, whereas, section 203 emphasizes on the point that no arrest can happen without a breath test.

Although, the proviso to section 202 specifies that a person can be tested under section 203 or 204 MV Act within two hours of the arrest but that will be logically inconsistent with sections 185,203,204. The main point that arises here is on what basis shall the arrest be held. MV Act talks about “reasonable suspicion” created in the mind of the officer in charge at the crime scene. The problem with a vaguely phrased term such as that is that different people have different tolerance level.¹¹ People with high tolerance for alcohol might not appear suspicious but if they are brought to take a breath test, their alcohol level might be well above the permissible limit. Hence, the statute needs to be amended to get rid of the discrepancy.

Another problem with the limit imposed is that some since people have varying tolerance level for alcohol, in some, even a small amount can make them lose complete control of their sense. Someone who is a light weight can be in complete absence of his senses but might only have 15 mg per 100 ml blood alcohol level. Thus, the author advocates for a complete ban on drinking and driving.¹²The effect alcohol has on people depend on a multitude of factors. The weight of a person, prior experience of a person , genetics, amount of food taken before drinking; all these

¹¹ K. Shanmugam v. V. Krishnamurthy and Ors. MANU/TN/7713/2019.

¹² *Ibid.*

play a vital role in determining how drunk a person might get.¹³ The setting up of this limit of 30mg alcohol per 100 ml of blood is purely fictional with no factual backing. If this is not possible, then the least that could be done is increasing the limit for professional drivers.

The MV Act nowhere prescribes any rules as to how the breath test or the lab test are to be conducted. The lack of procedural guidelines leads to inconsistencies across regions and adoption of unhygienic methods. There is an absence of a time limit within which results from lab tests are to be given to the accused. This paves way for delays and tampering with evidence. Hence, the need of the hour is to incorporate such laws for a uniform practice to be followed.

In order to encourage the police officers to take their jobs seriously and reduce the chances of accepting bribes, police officers on duty at sobriety checkpoints should be paid extra.¹⁴ Moreover, there needs to be better co-ordination between the License Authority and Officers maintaining the database of drinking and driving offenders. This is to ensure that the license of the offenders are suspended on time.

The state motor vehicle department of every state needs to have a list of alcometers or breath analysers that it distributes in the state. The devices need to be checked and serviced frequently to make sure that they give accurate readings. There needs to be a proper database for the cases registered under section 185 of MV Act. Proper lights on the streets and better maintenance of roads so as to reduce occurrence of any kind of accidents.

Improvement in the methods of investigation so as to make it more scientific. To introduce and implement the system of Native Citizen Cards to maintain complete data of citizens as the country which will facilitate checking of persons and their records.¹⁵ Installation of CCTV cameras on major roads Random checking by the police to prevent the menace of drunken driving specially near pubs, five star hostels, discos etc.

XII. CASES

This section of the paper will deal with cases that have been decided upon by various high courts and the Supreme Court of the country related to drinking and driving. Alcohol, being a neurological depressant, lowers the functioning of the brain.¹⁶ It reaches the nervous system and adsorbs into the body after mixing with the blood stream. Ideally, in order to check the level

¹³Criminal Law Review, The North Review of drink-driving: some sobering proposal, Sally Cunningham, 2011.

¹⁴JAMES C. FELL , JOHN H. LACEY & ROBERT B. VOAS (2004) Sobriety Checkpoints: Evidence of Effectiveness Is Strong, but Use Is Limited, Traffic Injury Prevention

¹⁵ Sanjeev Nanda v. The State, (2012) 8 SCC 450.

¹⁶S. A. Grant, K. Millar, G. N. C. Kenny, Blood alcohol concentration and psychomotor effects, *BJA: British Journal of Anaesthesia*, Volume 85, Issue 3, 1 September 2000, Pages 401–406

up to which alcohol has effected the body, one should diagnose the functioning of the brain.¹⁷ However, the same is not possible or practical. Hence, an alternative was evolved which allowed alcohol content in the blood to be checked. The determination of alcohol content in blood closely resembles the level up to which it has affected the nervous system.¹⁸

The offence of drinking and driving is a cognizable offence.¹⁹ One comes to this conclusion after a conjoint reading of section 2(c) CrPC, section 41 CrPC and section 185, 202 MV Act. Section 185 of MV Act states that any person, when driving a motor vehicle has alcohol in their blood above the limit of 30 mg per 100 ml, that person shall be held liable for the offence of drinking and driving.²⁰ This testing of the alcohol level in the blood is done through blood test²¹ or lab test²² by the officer in uniform present at the time of offence.

It is often seen that sections of the MV Act are clubbed with IPC provisions. This is solely done because sections 183 to 188 of the MV Act which deal with penalties for drunken or dangerous driving, are silent on the outcome of the accidents.²³ For instance, the MV Act is not sufficient in itself to punish a person who killed someone in the drunken state while driving his vehicle. This is because the maximum punishment that can be given to a person caught under the said section is 3 years. This will defeat the purpose of law and murderers would use this loophole to kill people in a drunken state. The court's reasoning behind such a stance was that both the statutes work independently in their own spheres and cannot be said to lead to incompatible offences.

Drinking and driving is a criminal offence. Hence, the principle of proportionality between crime and punishment²⁴ becomes of utmost importance in even drunken driving. The MV Act differentiates between first offenders and subsequent offenders. The idea behind doing was perhaps to treat first offenders with leniency. However, this has led to violation of the statutes not being taken seriously. Moreover, the discrepancy between the punishment imposed on first time offenders under both IPC and MV Act is stark. The punishment imposed under the IPC is stricter and more proportionate to the offences relating to motor vehicle accidents in comparison to the MV Act.²⁵

¹⁷ [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(17\)30003-8/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(17)30003-8/fulltext)

¹⁸ State Tr. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda (03.08.2012 - SC) : MANU/SC/0621/2012.

¹⁹ Rani Shashank Doshi v State of Maharashtra.

²⁰ Section 185, MV Act.

²¹ Section 203, MV Act.

²² Section, 204, MV Act.

²³ The State of Arunachal Pradesh and Ors. vs. Ramchandra Rabidas and Ors. (04.10.2019 - SC) : MANU/SC/1383/2019.

²⁴ Supra at 3; page no. 9.

²⁵ Supra at 8; page no. 9.

The simultaneous application of IPC and MV Act makes one question whether it defeats the purpose of section 26 of General Clauses Act. Section 26 of the General Clauses Act, 1897 provides, “Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.” However, concurrent application of IPC and MV Act shall not be considered a violation of section 26 of general clauses act. It only prohibits the punishment of an offender twice for the same offence but does not bar the trial and or conviction of the offender under both or either enactments.²⁶

Courts have often resorted to letting an offender off under the Probation of Offender Act (POA), 1958. The researcher, however, questions the legitimacy and objective of such decisions. The reason why laws are not taken seriously in India is because people always manage to find a loophole in it. The decision to let an offender take the benefit of Section 4 of the POA in drunken driving cases only makes the deterrent component of punishment lose its potency.²⁷ A person driving on the road owes it to the others to carry it out with utmost care and cautiousness. Negligence in driving results not only in the breach of that duty but also endangers the lives of others.²⁸

Courts have however not been consistent in their decisions to not give probation in drunken driving cases or cases involving section 304-A IPC. In the case of Yudhbir Singh²⁹, the high court was of the opinion that the offender should be given the benefit of POA considering he mitigating factors. However, this brings us back to the premise that decisions allowing the probation of offenders only leads to people avoiding compliance with the law, thinking that there is always a way to circumvent its violating. Hence, no leniency should be shown.³⁰ The statute needs to amend itself to incorporate that no probation should be given under section 304-A IPC. The very reason why IPC is clubbed together with MV Act is because MV Act does not have the means to impose severe punishment on people. If in spite of clubbing IPC with MV Act, the offender is set off easily, it will be a miscarriage of justice.³¹

²⁶T.S. Baliah v. T.S. Rangachari(1969) 3 SCR 65 : AIR 1969 SC 701 : (1969) 72 ITR 787, State of Maharashtra v. Sayyed Hassan Criminal Appeal No. 1195-1207 of 2018, Decided on September 20, 2018.

²⁷Subhash v state, MANU/OT/0010/2007. Subhash Chander and Ors. v. State of Haryana and Ors. (20.09.2007 - Other) : MANU/OT/0010/2007

²⁸Bonny D'souza v State of Goa MANU/MH/3183/2018. Bonny D'Souza v. The State of Goa (22.11.2018 - BOMHC) : MANU/MH/3183/2018.

²⁹Yudhbir Singh v State of Himachal Pradesh. MANU/SCOR/38909/2019. Yudhbir Singh and Anr. v. The State of Himachal Pradesh and Ors. (18.10.2019 - SC Order) : MANU/SCOR/38909/2019.

³⁰Vinod Kumar v State of Himachal Pradesh, Dalbir Singh versus State of Haryana 2000 (5) SCC 822000 Indlaw SC 255, State of Punjab versus Saurabh Bakshi 2015 (5) SCC182 2015 Indlaw SC 223.

³¹Sanjeev Nanda and Ors. V. State 2009 V AD (Delhi) 785 , Rattan Singh v. State of Punjab (1979) 4 SCC 719 , Ram Singh Vs. State of NCT of Delhi , Shri Shanmugasundaram V. State of Maharashtra , Siddharam

In the case of Nikhil Wagle³², the Bombay High Court emphasized on the menace that drinking and driving causes. It's one of the main reasons behind road accidents caused by loss of coordination, poor judgment, slowing down of reflexes and distortion of vision because of the alcohol. The equipment used to check the alcohol content is called a breath analyser or alcometer.³³ The question at the back of the mind is if there is a limit or minimum amount of blood which should be withdrawn for a blood test. The court answered in the negative in the case of Bonny D'Souza³⁴ by saying that there is no minimum amount that needs to be withdrawn for a test. The plain reading of section 185 sets the artificial limit of alcohol at 30 mg per 100 ml of blood. Interpreting this in a way to say that the minimum amount of blood to be withdrawn is 100 ml would be wrong.

A person cannot be booked under section 185 of the MV Act without a breath or a lab test.³⁵ In the case of Abhay Anand³⁶, the accused smelled of alcohol and under this assumption, he was arrested under section 185 of MV Act clubbed with Section 279 of IPC (rash driving). However, he was not subjected to a breath test under section 203 MV Act or a lab test under section 204 MV Act. The pre-requisite to arresting a person under section 185 MV Act is the proving of alcohol content in the blood to be over the allowed 30 mg per 100 ml. Since, the officers present at the scene forgot this sine quo non step, the accused was set free.

XIII. CONCLUSION

This paper remains in draft form, and hence any broad conclusions would be premature. The results show a moderate effect of the anti-drunken driving campaign on deaths and accidents, and changes in the incidence of drunken driving broadly consistent with a simple model of utility of potential drunken drivers. Some results—in particular the substantial spillovers from drunken driving enforcement both across and within police stations—are not well captured by the model and suggest that more complex dynamics are at work. The results presented in this draft are the main, but not the only outcomes of the drunken driving study. In particular, changes in accidents and drunken driving incidence over time during the course of the program await further analysis. The fact that decreases in accidents and deaths are strongest after the program suggests that these dynamics, driven by delayed adaptations in public and/or police behavior may be of substantial importance. Police graft and corruption is another element of the project

Satlingappa Mhetre V. State of Maharashtra and Ors, (2011) 1 SCC 694).

³² Nikhil Wagle and Ors. v. The State of Maharashtra and Ors. (07.01.2016 - BOMHC) : MANU/MH/0010/2016.

³³ Supra at 3; Page no 9.

³⁴ Supra at 13; Page no 19.

³⁵ MANU/KA/0551/1998. M. Rajavalse v. State (23.07.1998 - KARHC) : MANU/KA/0551/1998 1999.

³⁶ Abhayand Mishra v. The State of Bihar (23.09.1958 - PATNAHC): MANU/BH/0088/1959.

for which further analysis might be particularly rewarding. A careful examination of surveyor reports, breathalyzer memory records, and court registers may yield some insight into what fraction of drunken drivers actually pay the official penalty and how many make a side payment to the police.
