

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. OF 2016

In the matter of :-

Tsunami on Roads [NGO]

Through its president,

Dr. Sanjay Kulshresthra

Senior Consultant Pediatric Surgeon,

1/171, Delhi Gate, Gulab Rai Marg, AGRA -2

drsankul2008@gmail.com,09897078456 ..... Petitioner

VERSUS

Union of India & another ... Respondents

*PAPER – BOOK*

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*ADVOCATE FOR THE PETITIONER : Mridula Ray Bharadwaj*  
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Filed On : 05 .12. 2016

## **SYNOPSIS**

The main objective of filing this petition is to share with Hon'ble Supreme Court about a very high death rate in road accidents due to drunken driving. A safe environment on roads is a fundamental right of all citizens however, in recent time, this is being observed that weaker sections on roads like non motorized vehicle owners, pedestrians and those living on footpaths are losing their rights of safety on roads as there is tremendous rise in road accidental deaths due to drunken driving in India. This petition is being filed under Article 21 and 32 read with Article 14 and 12 of the Constitution of India to seek a direction from this Hon'ble Court to the respondents so that a very high death rate in Road accident due to drunken driving can be controlled.

The petitioner is constrained to file the instant petition as PIL in view of harmful impacts of section 185 of Motor Vehicle Act 1988 permitting alcohol in blood of a driver of a motor vehicle up to 30 mg per 100 ml based on the report of the year 1937. The report of the year 1937 does not make it relevant to be modern day's requirements. It requires updating, Simplifications, rationalization of the law and urges for comprehensive review of section 185 of motor vehicle act 1988. For this purpose the petitioner prays that this aspect may be referred to the law commission and also to a committee to go in to different aspects including prohibition of alcohol while driving i.e. zero BAC [blood alcohol concentration] limit as has been done in various countries like e.g. Indonesia, Japan, UAE, Nepal, Nigeria, Saudi Arabia, Slovakia, Hungary, Czech Republic, Bangladesh, Pakistan, Russia, Romania etc.

This PIL is being filed by an NGO 'Tsunami on Roads' through its president Dr Sanjay Kulshrestha, who is a Senior

Consultant Pediatric Surgeon and also studying road traffic hazards for last 7-8 years. On 14<sup>th</sup> November, 2014, he was allowed to make suggestions through power point presentation on road accidents in India before hon'ble committee on road safety constituted by Supreme Court of India under Hon'ble Justice K S Radhakrishnan. Besides this, he has also appeared before parliamentary committee on road safety bill 2010 and raised the issues related with road safety in India both orally and in writing. Petitioner has worked out facts on drunken driving and has found that there is an alarming rise in "hit & run" cases and needs some urgent measures to curb this epidemic. Under article 21 it is also a statutory duty of government to protect right to live or safety on roads for its citizens.

Just a few very recent examples of tragic accidents of drunken driving would explain the gravity of this problem: (1) On 3<sup>rd</sup> July, 2016, three people were killed and four policemen injured when a speeding BMW car, allegedly driven by a MLA's son in an inebriated condition, rammed into an auto-rickshaw and a police van at midnight. (2) On 1st July, 2016, in Hyderabad, 20 years old drunken driver killed two persons including a 9 year old girl who was going to attend 1<sup>st</sup> day of her school and seriously injured her mother. (3) On 14<sup>th</sup> June, 2016 after partying all night at a friend's house, a heavily drunk youth made 3 hit-and-runs in 5 minutes with car killing two and injured one in Delhi. When a constable finally forced him to stop, he remorselessly then told the police to get compensation for the victims from his rich father. Alcohol level of accused was found to be 5 times permissible limit.

These are few examples within few weeks and that too only from metros. Though such cases are very common in India only a few that occur in the capital or metros get attention. Nobody knows how many poor pedestrians or poor

laborers sleeping on the pavements are run over like insects or stray animals in India by drunken drivers. It is also not uncommon in India that a bus carrying fifty odd people falls into a river or a ravine causing death of most passengers just due to an intoxicated driver.

According to research report of road safety in India [2015] by IIT Delhi, driving under the influence of alcohol is the second most important factor [after over speed] for fatalities on Indian roads and responsible for 30-40% of fatal crashes in India. As per the most recent data of ministry of road transport for the year 2015 in India, 1,46,133 people died in road accidents in the year 2015. Therefore, considering report of IIT approx. 44000 to 58,000 deaths per year [or 50,000 as an average] in road accidents is related with drunken driving.

Out of total deaths in relation to drunken driving can be divided in to two groups: one group of fatalities belongs to drivers themselves who are driving under influence of alcohol and met with an accident; while second group comprises of other INNOCENT PEOPLE ON ROADS [i.e. vulnerable road users like pedestrians, cyclists, poor people sleeping on footpaths, etc] who are killed on roads by drunken drivers. It is true that deaths of both drivers and non-drivers on roads due to alcohol intoxication are unfortunate; however, this petition is mainly for the benefit of innocent vulnerable road users dying due to intoxicated drivers. Though the prayer made in this petition would benefit both drivers and non drivers, here we are concerned more for the fundamental rights of innocent people on roads. 'Hit and Run' cases are constantly increasing in India. In 2015 the number of persons killed due to hit and run cases were reported as 20,709 which are 14.2% of total persons killed in road accidents in 2015. Such incidents are much more in metro cities, at nights

especially weekends. As per report of 2014 in Delhi alone drunk drivers are killing 300 persons every year that is 42% of the total year's road fatalities of the city.

Alcohol affects our body systems in many ways, however, in relation to driving some of the important effects are: 1. interpretation and judgment power of brain is affected and reaction time during a sudden or unusual situation on road is delayed by 20-30%. Besides, the risk taking tendency increases under the influence of alcohol like over speeding and dangerous overtaking. Petitioner feels it is important to mention that in India over speeding and dangerous overtaking are the two most important causes of road accident. This effect is much more enhanced in young people as for similar blood levels of alcohol, risk of accidents among teenagers is 5 times more as compared to drivers who are above 30. The most worrying fact today is that during last 20 years the average age at which people start drinking has come down from 28 years to 19.

Any level above zero is associated with a higher risk for an accident. The risk of crash increases significantly at a BAC [blood alcohol concentration] level of 0.04g/dl. A two-fold increase above legal limit increases the chances of accidents by 30 times. In simple words, just one drink or one peg of alcohol (30ml at 42.8% by volume) is enough to impair our driving performance. Driving with blood alcohol contents of 0.20 g/dl carries hundred times greater risk than those with only 0.02g/dl. The Legal BAC Limit for driving in India is 0.03g/dl or below however, it is quite common in India that police has found people had BAC 5-6 times above permissible limit. Therefore, in other words, if we stick to zero BAC level, we can save 40-50 thousands casualties on roads and fate of their families. Is this a small reward? Certainly this figure is much more as compared to casualties in India due to terrorist

activities [600/year] or deaths in communal violence [150/year]. Petitioner believes this is enough justification implementation of zero BAC limit for drivers.

At many occasions while hearing such cases, various lower and higher courts have expressed serious concerns on drunken drivers like: on 31<sup>st</sup> March, 2015, Supreme Court asked Parliament to enhance the punishment for drunken driving by amending existing laws. A bench of Justices Dipak Misra and P C Pant said non deterrent punishment provided under Section 304A, coupled with leniency shown by courts in awarding jail terms, had eroded the deterrence of law and made many behave as if they are “emperors of roads” contributing to India's dubious road accident record. “In such circumstances, we are bound to observe that the lawmakers should scrutinize, relook and revisit the sentencing policy in Section 304A of the IPC. On 5<sup>th</sup> June, 2015, one additional session judge of Delhi court commented ‘a drunk driver is like a “suicidal human bomb” who can take the lives of many others. Despite all possible steps being taken by the state government as well as traffic-regulating authorities, there is no sign of decrease in incidents of drunk driving the court said.

In the past various committees like National Transport Policy Committee, National Road Safety Committee, Law Powered Two Wheeler Committee and also the law commission have gone into different aspects of road transport. That is why the Motor Vehicle Act 1939 was amended several times to keep it up to date after taking into accounts of changes in the road transport technology, pattern of passengers and vehicles and freight movements, development of the road infrastructure and safety of pedestrians and general public on the roads. Because the effects of alcohol on human body varies from person to person depending upon age, sex, weight of an individual concerned so the permissible limit cannot be the same for

everyone. Secondly, the accident pattern has shown that even the people with the permissible limit or below permissible limit have caused number of fatal accidents as per the study conducted in various countries which forced the above nations just mentioned to follow a zero BAC limit.

Therefore this honourable court may direct the government to form a working group to review the provisions of section 185 of the motor vehicle act 1988 and to submit a draft proposal for comprehensive legislation to replace the existing provisions of section 185 of the motor vehicle act 1988. The working group such formed may take in to account of the suggestions and recommendations made by various bodies and institutions including petitioner for the purpose of obtaining the comments and important modifications for taking care of the fatal accidents caused by the consumption of alcohol that is becoming very popular in modern society including the women and youngsters and need for tracking down and toning down such unfortunate accidents causing deaths and permanent disabilities. The working group may also be asked to provide rationalization of permissible limit or prohibition of alcohol while driving and it should also provide stricter procedures related to grant or renewal of driving license to alcoholic or drug addict persons and fitness certificates to drivers should be issued after authorized testing by the competent medical board or constituted road safety councils.

In the past the law commission has submitted its 199<sup>th</sup> report with regards to the accidents occurring in different areas and remedies thereof to motor vehicle claims tribunal and the parliament passed the bill to make the necessary provisions to implement recommendations of the said law commission. In the past a review committee was also constituted by the government in March 1990 to examine and

review the MV Act of 1988 and this MV Act of 1988 was amended in 1994. Therefore, petitioner makes a humble prayer that in the same way a review committee may also be constituted for this purpose to review measures against deaths due to drunken driving including prohibition of alcohol while driving i.e. zero BAC [blood alcohol concentration] limit as has been done in various other countries.

### **LIST OF DATES.**

- . . . . on 13<sup>th</sup> January, 2012, While giving a decision in one such case the Supreme Court commented that no benefit of doubt should be given to drunk drivers. No amount of compensation could relieve the families from constant agony. It is high time that lawmakers revisit sentencing policy reflected in Section 304 A of IPC [Annexure P/1 , page ].
- . . . . . 16<sup>th</sup> July, 2012: Reports showing high indulgence of drinking in young population with increases tendency of reckless driving. 53% Of Drunk Drivers Under 30 Years Only. They are young, educated and reckless. And many of them have been jailed for the same offence drunk driving [Annexure P/2, page ].
- . . . . on 23<sup>rd</sup> January, 2014 through RTI applications to Ministry of Surface Transport, petitioner tried to know some facts about BAC limit in India. [Annexure P/3, page ]

- . . . . on 12<sup>th</sup> March 2014 regarding BAC limit, a further clarification was sought through RTI applications from Ministry of Surface Transport. [Annexure P/4, page ]
- . . . . on 3<sup>rd</sup> May, 2014: On the menace of drunk driving cases a court in New Delhi asked for drunk driving cases to be dealt with sternly as the menace has plagued the capital for long [Annexure P/5, page ].
- . . . . Aug 19, 2014: in Delhi alone drunk drivers are killing 300 persons every year that is 42% of the total year's road fatalities of the city [Annexure P/6, page ]
- . . . . on 14<sup>th</sup> November, 2014 petitioner was allowed to make suggestion through power point presentation on road accidents in India before hon'ble committee on road safety constituted by Supreme Court of India under Hon'ble Justice K S Radhakrishnan.
- . . . . on 3<sup>rd</sup> March, 2015: Considering very high fatalities due to drunken driving, Honourable Supreme Court Committee on road safety has recommended to ban liquor shops along all state and national highways in order to curb it [annexure P/7, page ].
- . . . . On 31<sup>st</sup> March, 2015: Supreme Court asked Parliament to enhance punishment for drunken driving by amending existing laws. A bench of Justices Dipak Misra and P C Pant said non deterrent punishment provided under Section 304A, coupled with leniency shown by courts in awarding jail terms, had eroded deterrence of law and made many behave as if they are 'emperors of

roads’, contributing to India's dubious road accident record.[Annexure P/8,page    ].

- . . . . April 01 2015: analysis of BAC data from other countries shows that countries with higher per capita consumption of alcohol have much stricter laws. Five of the top ten alcohol consuming countries have zero tolerance policy, where any level of alcohol intoxication is not allowed for driving [Annexure P/9, page    ].
- . . . . On 5<sup>th</sup> June, 2015, one additional sessions judge of Delhi court commented ‘a drunk driver is like a “suicidal human bomb “who can take the lives of many others. [Annexure P/10, page    ].
- . . . . as per status report of road safety in India [2015] by transportation research and injury prevention programme [TRIPP] of IIT Delhi, driving under influence of alcohol is the second most important factor [after over speed] for fatalities on Indian roads and responsible for 30-40% of fatal crashes in India [annexure P/11, page    ].
- . . . . other report by TRIPP [2015] says 25% pedestrian deaths are hit and run as impacting vehicle is not known [annexure P/12, page    ].
- . . . . On April 6, 2016 a young student in speeding Mercedes mowed down a 32-year-old business consultant as he was crossing road in Delhi. An eyewitness said car jumped a traffic signal at high speed and hit victim. The impact was such he was flung 10 feet into the air and landed on his neck. [Annexure P/13, page    ]

- . . . . 23<sup>rd</sup> May, 2016: as per the most recent data of Ministry of Road Transport for the year 2015 in India, 1,46,133 people died in road accidents in 2015 [annexure P/14, page ]
- . . . . 23<sup>rd</sup> May, 2016, in 2015 number of persons killed due to hit and run cases were reported as 20,709 which is 14.2% of total persons killed in total road accidents in 2015 [Annexure P/15, page ].
- . . . .on 14<sup>th</sup> June, 2016, in Delhi a heavily drunk 21 years old student in speeding car mows down two old aged person on morning walk and injured one. Alcohol level of accused was found to be 5 times permissible limit[Annexure P/16, page ]
- . . . . On 1st July, 2016 in Hyderabad, a 20 years old drunken driver killed two person including a 9 year old girl who was going to attend 1<sup>st</sup> day of her school and seriously injured her mother[annexure P/17, page ]
- . . . . On 3<sup>rd</sup> July, 2016, three people were killed and four policemen injured when a speeding BMW car, allegedly driven by a MLA's son in an inebriated condition, rammed into an auto rickshaw and a police van at midnight [Annexure P/18, page ]

05.12.2016 . Hence the Writ Petition is being filed.

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. OF 2016  
Under Article 21 & 32 of the Constitution of India  
with Article 14 and 12

In the matter of :-

Tsunami on Roads [NGO]  
through its President,  
Dr. Sanjay Kulshresthra  
Senior Consultant Pediatric Surgeon,  
1/171, Delhi Gate, Gulab Rai Marg, AGRA -2 ,  
drsankul2008@gmail.com,09897078456 ..... Petitioner

VERSUS

Union of India & another

1.Ministry of Road Transport and Highways  
Through Secretary  
Trasnport Bhawan,  
1, Sansad Marg  
New Delhi-110001

2. Ministry of Home Affairs,  
Through Secretary,  
North Block, Central Secretariate  
New Delhi 110001

...Respondents.

WRIT PETITION (CIVIL) NO.        OF 2016  
Under Article 21 & 32 of the Constitution of India  
with Article 14 and 12

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA  
THE HUMBLE PETITION OF THE  
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHEWETH:

[1] That this is a Public Interest Litigation under Article 21 and 32 read with Article 14 and 12 of the Constitution of India is to seek a direction from this Hon'ble Court to the respondents so that a very high death rate in Road accidents due to drunken driving can be controlled. In most of such hit and run cases offender deliberately flee the scene of the accident leaving victim solely at the mercy of god as during late night there are very few people to help the victims. Failing to get a timely medical help is responsible for a very high death rate in such cases.

[2] This PIL is being filed by an NGO 'Tsunami on Roads' through its President, Dr Sanjay Kulshrestha. This NGO is working for the management of road traffic hazards in India for last 7-8 years. Dr Sanjay Kulshrestha is a Senior Consultant Pediatric Surgeon working at Agra and also studying road traffic hazards for last 7-8 years and has written a book and many articles on road safety. Besides this, on 14<sup>th</sup> November, 2014, he was allowed to make suggestion through power point presentation on road accidents in India before

hon'ble committee on road safety constituted by Supreme Court of India under Hon'ble Justice K S Radhakrishnan. He has also appeared before parliamentary committee on road safety bill 2010 and raised the issues related with road safety in India both orally and in writing.

[3] Before coming to Supreme Court, through two RTI applications [23<sup>rd</sup> January, 2014 and 12<sup>th</sup> March 2014] to Ministry of Surface Transport, petitioner tried to know some facts about Blood Alcohol Concentration [BAC] limit in India. like [1] Who is the authority/ committee to decide this permissive BAC level for drivers in India and also about professional background of members of this policy makers. [2] information about the date or year when this BAC level in India was revised/decided last. Though petitioner received two replies from Ministry of Surface transport [21<sup>st</sup> Feb., 2014 and 10<sup>th</sup> July, 2014], however, there was no satisfactory answer to information sought in RTI application.

#### ALARMING FACTS ON DRUNKEN DRIVING:

[4] At the outset petitioner would like to share some recent tragic hit & run accidents with hon'ble court that occurred in Delhi or other metro cities:

[a]. On 3<sup>rd</sup> July, 2016, three people were killed and four policemen injured when a speeding BMW car, allegedly driven by a MLA's son in an inebriated condition, rammed into an auto rickshaw and a police van at midnight. All passengers and auto driver were thrown almost 100 feet away and three persons died on the spot.

[b]. On 1<sup>st</sup> July, 2016 in Hyderabad, a 20 years old drunken driver killed two person including a 9 year old girl who was going to attend 1<sup>st</sup> day of her school and seriously injured her mother.

[c]. On 14<sup>th</sup> June, 2016 After partying all night at a friend's house, a heavily drunk youth made three hit-and-runs in 5 minutes with car killing two and injured one in Delhi. The impact of slaughtered bodies smashed his car's windscreen in two places, leaving a gaping hole on the driver's side, but he kept going. When a constable finally forced him to stop, he staggered out of the car and demanded a cigarette lighter. He remorselessly then told the police to get compensation for the victims from his rich father.

[d]. On April 6, 2016 a young student in speeding Mercedes mowed down a 32-year-old business consultant as he was crossing road in Delhi. An eyewitness said car jumped a traffic signal at high speed and hit victim. The impact was such he was flung 10 feet into the air and landed on his neck.

These are few examples within few weeks and that too only from metro. Though such cases are very common in India only a few that occur in the capital or metro cities get attention.

[5]. According to status report of road safety in India [2015] by transportation research and injury prevention programme [TRIPP] of IIT Delhi, driving under the influence of alcohol is the second most important factor [after over speed] for fatalities on Indian roads and responsible for 30 - 40% of fatal crashes in India. As per the most recent data of Ministry of Road Transport for the year 2015 in India, 1,46,133 people died in road accidents in the year 201. Considering above report of TRIPP that claims alcohol being responsible in 30-40% of these fatalities, approx. 44000 to 58,000 deaths/per year [or 50,000 as an average] in road accidents are related with drunken driving.

[6]. Total deaths in road accidents in relation to drunken driving can be divided into two groups: one group belongs to drivers themselves who are driving under influence of alcohol and met with an accident; while second group comprises of other INNOCENT PEOPLE ON ROADS [i.e. Vulnerable Road Users like pedestrians, cyclists, poor people sleeping on footpaths, etc] who are killed on roads by drunken drivers. Recent road accident data of 2015 by Ministry shows that out of total alcohol related deaths, 6,755 people died as driver due to alcohol involvement. There is no Indian data to show that besides drivers, how many deaths occur among other road users or fellow passengers. Data available at the international level show that about equal or more number of casualties occurs among people other than drunken drivers themselves. Here it is important to note that this above mentioned international fact is from developed countries where the majority of people [more than 90%] commute in four wheelers that is considered to be much safer on the road. In developed countries out of total motorized vehicles, 80% belongs to four wheelers while in India the driving conditions are just the opposite and out of total motorized vehicles only 15-17% belongs to four wheelers and rest of the people commute by motorized two wheelers, cycle, and rickshaw or as pedestrians. Therefore, this mortality rate to non-drivers in India could be much higher. Petitioner has tried to work out this fact with the help report of IIT Delhi and Ministry of Road Transport and have found that approx 43,000 fatalities [50,000–6755] on roads should belong to the category of innocent people of VRUs.

[7]. It is true that deaths of both drivers and non-drivers on roads due to alcohol intoxication is unfortunate, however, this

petition is mainly for the benefit of innocent vulnerable road users dying due to intoxicated drivers. Though the prayer made in this petition would benefit both drivers and non drivers, here we are concerned more for the fundamental rights of innocent people on roads. Nobody knows how many poor pedestrians or poor laborers sleeping on the pavements are run over by drunken drivers like insects or stray animals. It is also not uncommon in India that a bus carrying fifty odd people falls into a river or a ravine causing death of most passengers just due to an intoxicated driver.

[8]. HIT AND RUN CASES: If a driver who is involved in an accident causes injury or death of a person or damage to the property and leaves the accident scene without informing the police or providing assistance to injured person, it is considered a hit-and-run case. Though such cases are very common in India only a few that occur in the capital or metros get attention. In most of these cases drivers have been found heavily drunken, belonging to a very rich and powerful class. These occur mostly late at night when very few people are on the road so the driver is able to flee the scene easily and the victim may not get timely help. This is very serious yet neglected issue of road safety. These are *More at nights* especially Weekends.

‘Hit and Run’ cases are constantly increasing in India. In 2015 the number of persons killed due to hit and run cases were reported as 20,709 which is 14.2 per cent of total persons killed in total road accidents in 2015. Another report by TRIPP says 25% pedestrian deaths are hit and run as impacting vehicle is not known. Such incidents are much more in metro cities and as per report of 2014 in Delhi alone drunk drivers are killing 300 persons every year that is 42% of the total year’s road fatalities of the city.

[9] EFFECT OF ALCOHOL ON DRIVING: Although alcohol affect our body system in many way, however in relation to driving some of the important effects are: 1. After drinking, the interpretation and judgment power of the brain is affected. Usually the brain-eye co-ordination ensures an immediate and appropriate response. This reaction time during a sudden or unusual situation on the road is delayed by 20-30%. While driving, if some emergency comes, we have to take 4 to 5 decisions or action simultaneously [e.g. clutch, brakes, gear, etc] while after alcohol one is able to deal only one thing at a time. 2. It causes blurred vision or reduces vision up to 25%. 3. The risk taking tendency increases under the influence of alcohol like over speeding and dangerous overtaking. Petitioner feels it is important to mention that in india over speeding and dangerous overtaking are the two most important causes of road accident and during last year [2015], persons killed due to exceeding lawful speed by drivers and accounted for 61.0% (64,633 out of 1,06,021) of total deaths out of total drivers faults.

[10] This effect is much more enhanced in young people as for similar blood levels of alcohol, risk of accidents among teenagers is 5 times more as compared to drivers who are above 30 years [as per Delhi traffic police: <https://delhitrafficpolice.nic.in/>]. There are some reasons why teenagers have more risk: 1. They are relatively inexperienced consumers of alcohol. 2. They are beginners having less driving experience. 3. Young people are under peer pressure to drink and brag about their alcohol tolerance. 4. More chances of taking drugs along with alcohol. The most worrying fact today is that during last 20 years the average age at which people start drinking has come down from 28 years to 19.

Petitioner is submitting some reports that show how dangerously the culture of drinking is rapidly increasing in our Indian society. It is a dangerous and alarming sign and need attention

[11] JUSTIFICATION OF ZERO BAC: If we consider dose vs accident risk, we see that any level above zero is associated with a higher risk for an accident. The risk of crash increases significantly at a BAC [blood alcohol concentration] level of 0.04g/dl. A two-fold increase above legal limit increases the chances of accidents by 30 times. In simple words, just one drink or one peg of alcohol (30ml at 42.8% by volume) is enough to impair our driving performance. Drivers with blood alcohol content of 0.20 g/dl carry hundred times greater risk than those with only 0.02. The Legal BAC Limit for driving in India is 0.03g/dl or below, however, It is quite common in India that police has found people had BAC 5-6 times above permissible limit. *Therefore* In other words, if we stick to zero BAC level, we can save 40-50 thousands casualties on roads and the fate of their families. Is this a small reward? Certainly this figure is much more as compared to casualties in India due to terrorist activities [600/year] or deaths in communal violence [150/year] only.

[12] The petitioner is constrained to file this petition in view of harmful impacts of section 185 of Motor Vehicle Act 1988 permitting alcohol in blood of a driver of a motor vehicle up to 30 mg per 100 ml based on the report of the year 1937. The report of the year 1937 does not make it relevant to be modern days requirements. It requires updating, Simplifications, rationalization of the law and urges for comprehensive review of section 185 of motor vehicle act 1988. For this purpose the petitioner prays that this aspect may be referred to the law

commission and also to a committee to go in to different aspects including prohibition of alcohol while driving i.e. zero BAC [blood alcohol concentration] limit as has been done in various countries like e.g. Indonesia, Japan, UAE, Nepal, Nigeria, Saudi Arabia, Slovakia, Hungary, Czech Republic, Bangladesh, Pakistan, Russia, Romania etc. As per one report of Apr 01 2015, analysis of BAC data from other countries shows that countries with higher per capita consumption of alcohol have much stricter laws. Five of the top ten alcohol consuming countries have zero tolerance policy. This includes Russia, Romania, Hungary, Czech Republic and Slovakia, where any level of alcohol intoxication is not allowed for driving. If other countries can find it necessary for the safety of their citizens on roads then we should also come forward to implement it. Therefore concept of Zero BAC is not a new or uncommom one as there are many countries in the world that take this fact seriously and prohibit alcohol before driving or follow a zero BAC limit.

[13] At many occasions while hearing such cases various lower and higher courts have expressed serious concerns on drunken drivers. Petitioner would like to share some of such concerns from judiciary persons:

[a]. On 31<sup>st</sup> March, 2015, Supreme Court asked Parliament to enhance punishment for drunken driving by amending existing laws. A bench of Justices Dipak Misra and P C Pant said non deterrent punishment provided under Section 304A, coupled with leniency shown by courts in awarding jail terms, had eroded the deterrence of law and made many behave as if they are “emperors of roads“, contributing to India's dubious road accident record. “In such circumstances, we are bound to observe that the

lawmakers should scrutinize, relook and revisit the sentencing policy in Section 304A of the IPC. We say so with immense anguish, “said Justice Misra, who authored the judgment.

- [b]. On 5<sup>th</sup> June, 2015, one sessions judge of Delhi court commented ‘a drunk driver is like a “suicidal human bomb “who can take the lives of many others. A trial court has said while upholding a three-day sentence handed down to a man convicted of riding a scooter in an inebriated state.
- [c]. Apr 01 2015: Drunk driver is like a suicide bomber out to kill, says court Stressing on the need of more stringent punishments for drunk drivers, a trial court has said that a drunk driver is like a suicide bomber who has set out to kill himself and other road users. “A stern sentence to these offenders would go a long way in making roads safer, thereby saving precious human lives,“additional sessions judge Virender Bhatt said.
- [d]. On the menace of drunk driving cases a court in New Delhi on 3<sup>rd</sup> May, 2014 asked for drunk driving cases to be dealt with sternly as the menace has plagued the capital for long. Despite all possible steps being taken by the state government as well as traffic-regulating authorities, there is no sign of decrease in incidents of drunk driving, the court said.
- [e]. While giving a decision in one such case on 13<sup>th</sup> January, 2012, the Supreme Court commented that no benefit of doubt should be given to drunk drivers. The Supreme Court said an inebriated Alistair Anthony Pereira, who mowed to death seven persons sleeping on a Mumbai pavement in 2006, may have paid Rs 8.5 lakh compensation to the victims kin but no amount of compensation could relieve the families from constant

agony. Supreme Court also commented “as a matter of fact the High Court had been quite lenient in awarding to the appellant sentence of three years for an offence under Section 304-II where seven persons were killed, the court said. The bench, in its 69-page judgment, said, our country has the dubious distinction of registering maximum number of deaths in road accidents. It is high time that lawmakers revisit the sentencing policy reflected in Section 304 A of the IPC.

[14]. Considering very high fatalities due to drunken driving, on 3<sup>rd</sup> March, 2015, Honourable Supreme Court Committee on road safety has recommended to ban liquor shops along all state and national highways in order to curb it. This clearly shows that availability of alcohol on roads promotes drunken driving. However, petitioner would like to submit that state and national highways cover only 6% of road network and secondly an equal number of fatalities are occurring on urban roads where it is impossible to implement such ban. Therefore in the true spirit of implementation or achievement of desired goal of committee it would be a much better and practical approach to order zero BAC. That would be more effective to achieve goals of committee.

[15] In the past various committees like National Transport Policy Committee, National Road Safety Committee, Law Powered Two Wheeler Committee and also the law commission have gone into different aspects of road transport. That is why the Motor Vehicle Act 1939 was amended several times to keep it up to date after taking into accounts of changes in the road transport technology, pattern of passengers and vehicles and freight movements, development of the road infrastructure and safety of pedestrians and general public on the roads. Because

the effects of alcohol on human body varies from person to person depending upon age, sex, weight of an individual concerned so the permissible limit cannot be the same for everyone. Secondly, the accident pattern has shown that even the people with the permissible limit or below permissible limit have caused number of fatal accidents as per the study conducted in various countries which forced the above nations just mentioned to follow a zero BAC limit.

Therefore this honourable court may direct the government to form a working group to review the provisions of section 185 of the motor vehicle act 1988 and to submit a draft proposal for comprehensive legislation to replace the existing provisions of section 185 of the motor vehicle act 1988. The working group such formed may take in to account of the suggestions and recommendations made by various bodies and institutions including petitioner for the purpose of obtaining the comments and important modifications for taking care of the fatal accidents caused by the consumption of alcohol that is becoming very popular in modern society including the women and youngsters and need for tracking down and toning down such unfortunate accidents causing deaths and permanent disabilities. The working group may also be asked to provide rationalization of permissible limit or prohibition of alcohol while driving and it should also provide stricter procedures related to grant or renewal of driving license to alcoholic or drug addict persons and fitness certificates to drivers should be issued after authorized testing by the competent medical board or constituted road safety councils.

[16] In the past the law commission has submitted its 199<sup>th</sup> report with regards to the accidents occurring in different

areas and remedies thereof to motor vehicle claims tribunal and the parliament passed the bill to make the necessary provisions to implement recommendations of the said law commission. In the past a review committee was also constituted by the government in March 1990 to examine and review the MV Act of 1988 and this MV Act of 1988 was amended in 1994. Therefore, petitioner makes a humble prayer that in the same way a review committee may also be constituted for this purpose to review measures against deaths due to drunken driving including prohibition of alcohol while driving i.e. zero BAC [blood alcohol concentration] limit as has been done in various other countries.

[17]. Through two RTI application [23<sup>rd</sup> January, 2014 and 12<sup>th</sup> March, 2014] to Ministry of Surface Transport, petitioner tried to know some facts about decisions related with deciding BAC limit in India like [1] Who is the authority committee to decide this permissive BAC level in India and also about professional background of members of this policy makers. The purpose of this RTI was to know that do the policy-makers include intellectual people from all sections of society or just a few officials and influential politicians. Do we have enough female representatives while deciding such policy matters. Since males are involved in more than 85% cases of drunken driving, it is women who suffer most after the death of breadwinner of the family. Petitioner strongly feels that there should be a proper representation of not only from women but also from doctors amongst policy makers. As a doctor petitioner feels it is extremely difficult to treat alcohol-related diseases. Terminal liver disease is incurable and unlike renal transplant, liver transplant is a dream for the majority in India. Accidents after alcohol have a high fatality and permanent disability rate. There is also a very high rate of

neurotrauma [60-70%] leaving thousands permanently crippled mentally. Though petitioner received two replies from Ministry of Surface transport [21<sup>st</sup> Feb., 2014 and 10<sup>th</sup> July, 2014], however, there was no satisfactory answer to information sought in RTI application.

[18] There is a need for designated drivers in our society: If people wish to travel after drinking they should not be allowed to drive instead they should use a driver for it. Or alternatively if there is a group attending a party, one person from the group should be encouraged to remain sober, so that he may drive everyone home. This trend is getting popular in many developed countries. This person who agrees to abstain himself from alcohol and be responsible for driving others home is called a designated driver. The others are free to drink. In USA, it is claimed that more than 50,000 lives are saved by designated drivers. Similarly in India also we can save 40-50 thousands of lives if implement zero BAC with making it mandatory to hire designated drivers after drinking. In India, people can never resist a free drink and gulp it down as if there will be no tomorrow. Therefore with designated driver, their erratic drinking habit is not going to affect other commuters on roads.

[19] There is one practical aspects of alcohol intake that needs to be considered by this Hon'ble Court. Everywhere limits of alcohol consumption are mentioned in the form of BAC levels. For a lay man or a drinker it does not explain clearly about 'how much amount of a particular drink with a particular alcohol concentration will roughly correspond to legal BAC level. So the law-abiding people who want to adhere to this safe limit, should have a rough idea. This should be printed on liquor bottles as statutory warnings. This is a practical problem

that calls for attention of the authorities. Therefore, there is a need for proper information on packing about relationship of volume of this particular drink consumed with that of BAC level achieved in blood. With that one can know how much volume of this particular brand one can drink safely. To help this, petitioner is submitting a simple formula [Widmark formula] that may help the individual to calculate his/her BAC level after consuming alcohol [annexure P/19, page     ].

[20] JUSTIFICATION FOR IMPOSING SECTION 304 A: The offenders of hit and run are potential killers on roads. As regards as punishment, is concerned, most offenders face only a case of negligent driving if the victim dies. This is a bailable offence where he can get bail at the police station level without any need for the accused to be produced in a court. In India, once offender is out on bail, the case is almost half decided as one can prolong the proceedings for decades or even lifelong. On the other side is the family of victim which has lost its only source of income. The family can't think beyond making two ends meet, let alone fighting a lengthy and expensive court case. Even if it persist, the time taken, hostility of the witnesses, and the so-called legal help by some of the top intelligent lawyers of the country for the offender virtually eliminate all chances of justice. Many times it has been seen that the lower courts or the police were so lenient in these cases that it needs an outcry from the media, public or some social organization to book the offenders under the correct sections of IPC. In most cases, it is seen that drivers get bail and go home without care in the world, while victim's kin are either desperately running to the police station or authorities for postmortem [if death occurs] or hospital in case of injuries, thus undergo great mental trauma, torture and harassment.

Present measures are not working and no amount of penalty seems to have had an impact on drunk driving in the country. There is a strong feeling that these cases should be dealt with more strictly and offenders should be booked under 304 A for being guilty of 'culpable homicide not amounting to murder' instead of rash and negligent driving. If the driver or owner of the vehicle neither ensures medical help nor reports to the police within few hours, there should be provision to automatically convert cases of rash and negligent driving in to 304A IPC.

### **PRAYER**

In order to control very high death rate in road accidents due to drunken driving, this honorable court may please to pass:

(1) Direct the government to form a working group or committee to review the provisions of section 185 of the motor vehicle act 1988 and to submit suggestions regarding rationalization of permissible limit of alcohol while driving including prohibition of alcohol while driving i.e. zero BAC [blood alcohol concentration] limit as has been done in many other countries.

(2) The working group/committee may also be asked to provide stricter procedures related to grant or renewal of driving license to alcoholic or drug addict persons and fitness certificates to drivers should be issued after authorized testing by the competent medical board or constituted road safety councils.

[3] pass an order making use of designated drivers mandatory for all who wish to travel after drinking.

[4] pass an order to book all drunk drivers involved in fatal accidents or hit and run cases under Section 304 A IPC (culpable homicide not amounting to murder)

[5] Liquor manufacturing companies, besides mentioning concentration of alcohol, should also print on bottle about information on relationship of volume consumed with that of BAC level achieved or in other words 'how much volume of a particular brand liquor one can consume safely to remain below the permissible limit of BAC'.

[6] PASS such order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL  
EVER PRAY AS DUTY-BOUND

Deponent

Dated: 05.12.2016

[Dr Sanjay Kulshrestha]  
MBBS, MS, MCh, FIAPS  
Petitioner