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## AN INSIGHT INTO HABITUAL NEGLIGENCE

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Sangeeth Krishna G S, His Highness Maharajas Government Law College Ernakulam

Section 302, 304 and 304 A in The Indian Penal Code deals with Punishment for Murder, Culpable Homicide not amounting to murder and Causing death by negligence respectively.

### **Section 302 in The Indian Penal Code**

Punishment for murder.—Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

### **Section 304 in The Indian Penal Code**

Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

### **Section 304A in The Indian Penal Code**

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 two years, or with fine, or with both.

The meticulous examination of the above sections show a contrasting nature of punishments. The punishment for Murder and Culpable Homicide not amounting to murder have a reasonable proportional punishments. Now, consider a hypothetical situation where death has been caused by any rash or negligent act mentioned under Section 304 A. The maximum imprisonment sentence that can be allotted is 2 years. Thus, there exists a stark contrast in the term of imprisonment between Culpable Homicide and Causing death by negligence.

The act of negligence has reduced punishment when compared with culpable homicide due to lack of Mens Rea. Consequently, there is absence of any intention on the part of the accused to cause death. But, there does exist a knowledge that his act or omission may cause death. For example, A driver when increasing the speed knows that the risk involved too increases. Any reasonable person is thus aware of the consequences of increasing the speed. It wouldn't be a bit far-fetched to state that he is quite able to predict that over speed kills him or other or may damage any property. Thus, it can be inferred that he lacks direct intention to kill, but he has the knowledge that his action can kill.

Now, consider another hypothetical situation where a convict who has been released after completing his sentence for causing death by negligence (under 304 A), got involved for causing another death by rash and negligent driving. This time too, the maximum punishment that can be awarded by the court is 2 years. Consider he repeats this offense again and again. Each time, the court can only award a maximum punishment of two years only. Even if the court is aware that the convict is making a mockery of the judicial system, the court is bound by no Ex post facto law.

After causing death by rash and negligent driving in the first instance, the convict is well aware that his action has caused death and there is a high chance that it can again cause death. So, even though there is lack of intention on the part of the convict, it is very much evident that he is repeatedly breaching the necessary duty to take care.

One of the main purposes of punishment is for deterrence. Even though there exist many viewpoints on why punishment exists, it is undoubtedly crystal clear that the fear of punishment has a great retarding power in matters of an individual planning to commit crime. In all probability, it makes a reasonable man to think twice whether he should commit the crime. Thus he weighs his intention to kill with the consequences to kill. When the intention overpowers the fear of consequences, he kills. Hence there needs to be more stringent punishment to deter the chances to take due care while driving, particularly to deter an habitual negligent driver.

Also there exists a different level of maturity to understand the consequences of the action between the driver who has caused death by negligence for the first time and the driver who has caused death by negligence more than once. So, is n't it fair to award the crimes with different mental maturity with the same punishment?

Children between the ages of 7-12 are presumed to be incapable of committing crimes, but this is a rebuttable presumption. This means that a child between 7-12 can be found to have committed a crime, if it is proved that the child had the maturity to understand the consequences of their actions. This clearly states that, Indian Penal Code had already been treating crimes committed under different levels of mental maturity differently.

Hence, it is undoubtedly a matter of urgent public importance. Consequently, isn't it the responsibility of the state to modify the existing laws to plug the loopholes in the Indian Penal Code to deter habitual negligent drivers and also to ensure deserving punishments for the habitual negligent drivers. In any case, prevention is better than cure.