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# HIT-AND-RUN ACCIDENTS UNDER THE BHARATIYA NYAYA SANHITA, 2023: LEGAL REFORMS, COMPENSATION SCHEME, AND ENFORCEMENT CHALLENGES

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## ABSTRACT

The enactment of Section 106 of the Bharatiya Nyaya Sanhita, 2023 marks a transformative shift in India's approach to vehicular offences, particularly hit-and-run cases resulting in death. Unlike its predecessor under Section 304A of the Indian Penal Code, this provision introduces a dual-layered criminal offence: causing death by rash and negligent driving, followed by fleeing the scene without informing law enforcement. By incorporating this aggravating element, the legislature aims to impose greater accountability, ensure timely medical intervention for victims, and address the moral and legal failure associated with abandoning accident sites.

This article undertakes a comprehensive analysis of Section 106 BNS, exploring its legislative intent, interpretative challenges, and alignment with broader principles of criminal justice. It also examines the legal framework of victim compensation through the no-fault Solatium Fund under the Motor Vehicles Act, focusing on its implementation, accessibility, and potential for reform.

Further, the article investigates constitutional concerns and the role of the judiciary in shaping the future trajectory of Section 106, alongside suggestions for legal clarity, improved institutional coordination, and civil society engagement.

Ultimately, the paper advocates for a victim-centric, fair, and enforceable road safety regime that balances deterrence with procedural safeguards. It argues that while Section 106 is a significant legal innovation, its efficacy will depend on robust implementation, judicial guidance, and systemic reforms in law enforcement and public awareness.

**Keywords:** Hit-and-Run Liability, Section 106 BNS, Victim Compensation

## INTRODUCTION

India has long struggled with road safety, and one of the most tragic manifestations of this failure is the prevalence of hit-and-run accidents. These incidents not only highlight a disregard for human life but also expose critical gaps in our legal, administrative, and infrastructural frameworks. As per the Ministry of Road Transport and Highways (MoRTH), nearly **44,000 hit-and-run cases** were reported in 2022 alone, contributing to over 20% of fatal road accidents.<sup>1</sup> These staggering statistics underscore the urgent need for a legal response that emphasizes deterrence, accountability, and victim compensation.

In an effort to revamp India's outdated criminal law framework, the Parliament enacted the **Bharatiya Nyaya Sanhita, 2023 (BNS)**, replacing the colonial-era Indian Penal Code, 1860. Among the most discussed provisions of the BNS is **Section 106**, which specifically deals with fatal hit-and-run cases. The provision introduces stringent punishment of up to **10 years imprisonment**, creating a clear shift from earlier jurisprudence under **Section 304A IPC**, which allowed for a maximum of **2 years**. This article aims to offer a comprehensive examination of Section 106 BNS, its legal foundations, objectives, implementation challenges, and broader implications for Indian criminal jurisprudence and road safety policy.<sup>2</sup>

## I. HISTORICAL AND LEGAL CONTEXT

The Indian Penal Code, 1860, treated rash and negligent driving under **Section 304A**, which criminalized causing death by negligence.<sup>3</sup> However, the provision failed to distinguish between cases where the driver remained at the scene and those where they fled. This deficiency was partly addressed by incorporating Section 134 of the **Motor Vehicles Act, 1988**, which made it mandatory for drivers involved in an accident to provide medical aid and report the incident.<sup>4</sup>

Despite these provisions, enforcement was poor. The IPC provision offered weak deterrence, and the Motor Vehicles Act lacked penal strength. Courts and enforcement agencies often struggled to prosecute offenders, especially in the absence of direct witnesses or CCTV

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<sup>1</sup> Ministry of Road Transport and Highways, Government of India, Road Accidents in India – 2022 (Oct. 2023), available at <https://morth.nic.in>.

<sup>2</sup> Bharatiya Nyaya Sanhita, 2023, Gazette of India, Ministry of Law and Justice.

<sup>3</sup> Indian Penal Code, 1860, Sec. 304A.

<sup>4</sup> Motor Vehicles Act, 1988, Sec. 134.

footage. Meanwhile, the **Motor Vehicles (Amendment) Act, 2019**, laid the groundwork for stronger penalties and introduced a structured compensation scheme under **Section 161**, offering financial relief to victims and their families.<sup>5</sup>

The **need for a more targeted legal approach** became evident as data consistently showed a high proportion of hit-and-run fatalities. Thus, the BNS sought to plug this gap with a specific punitive provision that criminalizes both the act of negligent driving and the subsequent act of escaping from the scene.<sup>6</sup>

## II. SECTION 106 BNS: ANALYSIS AND INTERPRETATION

Section 106 reads:

“Whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide and escapes without reporting it to a police officer or Magistrate soon after the incident, shall be punished with imprisonment up to ten years and with fine.”<sup>7</sup>

This provision brings together two key elements:

1. Causing death by rash and negligent driving.
2. Failure to report or fleeing the scene.

By creating this compound offence, the law aims to isolate and penalize the added culpability of abandoning the victim. It recognizes that the act of fleeing aggravates the offence by denying the injured person timely medical assistance and complicating investigation efforts.<sup>8</sup>

### Distinction from Section 304A IPC:

- Section 304A punished death caused by negligence but did not separately consider the post-accident behavior of the driver.<sup>9</sup>

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<sup>5</sup> Motor Vehicles (Amendment) Act, 2019, Sec. 161.

<sup>6</sup> Statement of Objects and Reasons, Bharatiya Nyaya Sanhita Bill, 2023.

<sup>7</sup> BNS, Sec. 106.

<sup>8</sup> See P.S. Asha v. State of Kerala, AIR 2004 Ker. 321.

<sup>9</sup> See S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591.

- Section 106 BNS increases the punishment from **2 years to 10 years**, introducing a clear policy of deterrence.

### **Intent and Legislative Purpose:**

The legislature clearly aims to:

- Deter reckless driving.
- Discourage abandonment of victims.
- Ensure timely medical intervention.
- Enable better enforcement and investigation.<sup>10</sup>

### **III. COMPENSATION SCHEME FOR VICTIMS: A CRITICAL LIFELINE**

Parallel to criminal sanctions, the **Motor Vehicles (Amendment) Act, 2019** mandates compensation through the **hit-and-run compensation scheme**, operationalized via the **Solatium Fund**. This is a no-fault scheme ensuring fixed financial aid to victims of hit-and-run accidents:

- ₹2,00,000 for death.
- ₹50,000 for grievous injury.<sup>11</sup>

### **Implementation Framework:**

- Managed by the **General Insurance Council** and implemented through designated authorities at the state level.
- Victims' families are required to submit FIRs, medical certificates, and death/injury proof.

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<sup>10</sup> Law Commission of India, 243rd Report on Section 304A IPC (2012).

<sup>11</sup> Rule 20, Hit-and-Run Compensation Scheme, 2022.

**Challenges in Execution:**

- **Delayed disbursements** due to procedural bottlenecks.
- **Lack of awareness** among rural populations.
- **Inefficient coordination** between police, insurance companies, and healthcare institutions.<sup>12</sup>

This compensation, while critical, should ideally complement—not substitute—criminal liability. Moreover, effective delivery mechanisms must be institutionalized to ensure timely justice and relief.<sup>13</sup>

**Suggestions for Strengthening the Scheme:**

- Fast-track claim processing timelines to within 30 days.
- Create digital platforms for filing claims with automated document validation.
- Use Aadhaar-linked bank accounts for direct and traceable disbursement.
- Ensure language-friendly formats and legal aid at police stations and hospitals.<sup>14</sup>

**IV. COMPARATIVE JURISPRUDENCE: INTERNATIONAL APPROACHES TO HIT-AND-RUN**

Globally, jurisdictions have adopted varying approaches to penalizing hit-and-run offences:

- **United States:** Laws vary by state, but fleeing an accident involving injury or death is typically treated as a felony, punishable by 5–15 years imprisonment.<sup>15</sup>
- **UK:** Under the Road Traffic Act, failure to stop/report is a criminal offence, with up to 6 months imprisonment. More serious consequences follow if death or injury occurs.<sup>16</sup>

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<sup>12</sup> General Insurance Council Circular No. GIC/HRS/2022.

<sup>13</sup> NITI Aayog, “Road Safety Policy Framework” (2021).

<sup>14</sup> Ministry of Road Transport and Highways, Circular No. RT-11028/20/2020-MVL.

<sup>15</sup> California Vehicle Code Sec. 20001.

<sup>16</sup> Road Traffic Act 1988, Sec. 170 (UK).

- **Germany:** Hit-and-run is considered a criminal offence under Section 142 of the German Penal Code.<sup>17</sup>

India's approach under BNS aligns with global trends toward **harsher sentencing and combined liability**, recognizing the moral failure in fleeing accident scenes.<sup>18</sup>

### Key Takeaways for Indian Context:

- Introduce community service as part of sentencing for first-time offenders.
- Use probation and conditional bail provisions to differentiate between deliberate escape and panic-driven behavior.
- Apply restorative justice principles in minor injury cases with no intent to flee.<sup>19</sup>

## V. CONSTITUTIONAL AND LEGAL CONCERNS

Despite its deterrent intention, Section 106 BNS has raised several legal and constitutional concerns:

### 1. Strict Liability Concerns

- Critics argue that the provision presumes guilt in cases of non-reporting, potentially punishing even those who may have panicked or were physically incapable of responding.<sup>20</sup>

### 2. Proportionality and Article 21

- The **doctrine of proportionality**, as upheld in *Modern Dental College and Research Centre v. State of M.P.* (2016) 7 SCC 353, requires that penalties should not be excessive.<sup>21</sup> A 10-year term may be argued as disproportionate in certain circumstances.

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<sup>17</sup> Strafgesetzbuch (StGB) Sec. 142 (Germany).

<sup>18</sup> United Nations, Global Status Report on Road Safety 2023.

<sup>19</sup> Restorative Justice Council, UK – Policy Brief on Minor Traffic Offences.

<sup>20</sup> National Crime Records Bureau (NCRB), Crime in India 2022.

<sup>21</sup> *Modern Dental College v. State of M.P.*, (2016) 7 SCC 353.

### 3. Due Process and Article 14

- The provision's vague standard ("soon after the incident") could invite arbitrary police action, violating the right to equality under Article 14.<sup>22</sup>

### 4. Presumption of Innocence

- Penalizing escape without acknowledging context or intent may undermine the principle of **mens rea**, especially where the act is driven by fear or trauma.<sup>23</sup>

## VI. ENFORCEMENT AND PRACTICAL DIFFICULTIES

While Section 106 is progressive on paper, implementation depends on the capacity of law enforcement:

- **Lack of surveillance infrastructure:** Many areas lack CCTV or speed-tracking technology.
- **Undertrained police:** Officers are often not sensitized to road accident protocols.
- **False implication risks:** In absence of clear timelines or evidence, individuals may be falsely accused of "fleeing" when they in fact sought help.<sup>24</sup>

### Institutional Reforms Needed:

- Set up district-level Road Accident Response Units with trained legal-medical staff.
- Create mandatory reporting kiosks at hospitals and toll booths.
- Include Section 106 BNS training in all police academies.
- Link police reports with e-challan and FASTag data for real-time tracking.<sup>25</sup>

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<sup>22</sup> Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

<sup>23</sup> Avtar Singh, Law of Motor Vehicles (EBC, 2023).

<sup>24</sup> Human Rights Watch, "Police Reforms in India: Challenges Ahead" (2021).

<sup>25</sup> Press Information Bureau, Government of India, Jan 2023 Brief on FASTag Integration.

## VII. JUDICIAL PERSPECTIVE AND ANTICIPATED LITIGATION

The judiciary will play a pivotal role in interpreting Section 106. It may need to:

- Define standards for "escaping" and "failure to report."
- Clarify what constitutes reasonable delay.
- Examine cases involving panic, trauma, or unintentional non-compliance.<sup>26</sup>

In *Alister Anthony Pareira v. State of Maharashtra*, (2012) 2 SCC 648, the Supreme Court emphasized that reckless driving resulting in death required firm penal response but also cautioned against overlooking intent.<sup>27</sup> Courts will likely use this and similar precedents to interpret Section 106 in a manner that balances deterrence with fairness.

### Future Judicial Tests:

- Whether panic or trauma can be a valid legal defense under Section 106.
- Whether courts will recommend guidelines for proportional sentencing.
- Whether FIR delay due to police non-cooperation may shield drivers from false Section 106 charges.<sup>28</sup>

## VIII. RECOMMENDATIONS AND WAY FORWARD

To make Section 106 effective, the following reforms are suggested:

- **Clarify the provision** through guidelines or subordinate rules defining "escape" and "reporting timeline."
- **Create a central accident response portal** to allow real-time FIR registration and victim updates.

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<sup>26</sup> Supreme Court Legal Services Committee, "Access to Justice in Road Accident Cases" Report (2020).

<sup>27</sup> *Alister Anthony Pareira v. State of Maharashtra*, (2012) 2 SCC 648.

<sup>28</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.



- **Launch public awareness drives** to educate citizens on accident-related legal duties.
- **Incentivize reporting** by providing legal protection to those who self-report within a reasonable time.
- **Increase budgetary allocation** to strengthen forensic and surveillance capabilities.<sup>29</sup>

#### **Role of Civil Society:**

- NGOs can play a critical role in bridging awareness and access.
- Community-based paralegal services should be expanded.
- Citizen volunteers can be trained in first aid and legal duties under Good Samaritan guidelines.<sup>30</sup>

#### **CONCLUSION**

Section 106 of the Bharatiya Nyaya Sanhita, 2023 represents a critical evolution in India's approach to road traffic offences, particularly in addressing the rising incidents of hit-and-run cases that claim thousands of lives annually. By criminalizing not only the act of negligent driving resulting in death but also the subsequent failure to report the incident, the provision seeks to bring about a culture of responsibility and legal accountability on Indian roads. The shift from the older framework under Section 304A IPC to a more rigorous standard under the BNS signals the legislature's intent to enhance deterrence and victim protection.

However, for this provision to translate into real-world impact, its implementation must be both efficient and just. Law enforcement agencies need infrastructural and procedural support to accurately identify violators, protect due process, and prevent misuse. Parallely, the integration of this provision with existing schemes like the Solatium Fund for victim compensation needs to be seamless, ensuring that legal punishment is accompanied by swift and meaningful victim support.

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<sup>29</sup> Niti Aayog, "Forensic Infrastructure in India" (2022).

<sup>30</sup> SaveLIFE Foundation, Good Samaritan Law Guidelines Handbook (2022).

Moreover, this legal reform must not be viewed in isolation. It needs to be part of a larger ecosystem of road safety reforms, including better road infrastructure, enhanced driver training programs, public awareness campaigns, and robust first-responder networks. International best practices such as community sentencing, automated reporting, and restorative justice options could offer valuable blueprints.

The judiciary's interpretive role will be central in navigating ambiguities, ensuring proportionality in sentencing, and upholding constitutional safeguards. Courts will likely serve as a balancing force between the urgent need for deterrence and the foundational principles of criminal justice such as mens rea and fair trial.

Ultimately, Section 106 BNS should be seen as both a legal and moral statement that fleeing from a dying person is unacceptable in a just society. If backed by institutional reform and civic education, it has the potential to transform how India views traffic offences from mere regulatory violations to matters of life, death, and justice. A holistic, victim-centric, and constitutionally compliant application of this provision can make Indian roads not just safer, but also more humane.