

Supreme Court of India

S.Rajaseekaran vs Union Of India & Ors on 22 April, 1947

Author: R Gogoi

Bench: P Sathasivam, Ranjan Gogoi, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 295 OF 2012

S. RAJASEEKARAN

... PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

... RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. The petitioner is a leading orthopaedic surgeon of the country and the Chairman and Head of the Department of Orthopaedic Surgery in the Ganga Hospital at Coimbatore. He was/is also the President of the Indian Orthopaedic Association, the largest professional body of orthopaedic surgeons in the country. In the course of his professional duties spanning over several decades the petitioner, while rendering professional service to victims of road accidents, has come to realise that the large number of accidents that occur every day on the Indian roads, causing loss of human lives besides loss of limbs and other injuries resulting in human tragedies, are wholly avoidable. In the light of the experience gained and propelled by a desire to render service beyond the call of duty, the petitioner has filed this writ petition under Article 32 of the Constitution seeking the Court's intervention, primarily, in the matter of enforcement of the prevailing laws and also seeking directions for enactment of what the petitioner considers to be more appropriate legislative measures and for more affirmative administrative action. The petitioner also seeks directions from the Court for upliftment of the existing infrastructure and facilities with regard to post-accident care and management to minimize loss of life and physical injuries to victims of road accidents.

2. In the context of the aforesaid effort, the petitioner has set out detailed statistics published by the Ministry of Road Transport and Highways (MoRTH) in the volume "Road Accidents in India 2010" highlighting the extent of increase of road accidents and fatal cases between 1970-2010. In the aforesaid publication in which the relevant figures are pegged to the year 2010 it is reported that road traffic accidents in the said year i.e. 2010 numbered nearly 5,00,000 resulting in approximately 1,30,000 deaths and serious injuries including amputation of limbs to over 5,00,000 persons. One serious road accident in the country occurs every minute; and one person dies in a

road traffic accident every 4 minutes. Road traffic accidents, therefore, have the potential of being one of the largest challenges to orderly human existence necessitating immediate and urgent intervention. Not only the existing laws, which by themselves are inadequate, are not being implemented in the right earnest; the need for changes in such laws and upgradation thereof, though admitted, are yet to see the light of the day. Besides, victims of road traffic accidents die in large numbers due to lack of timely and proper medical attention which, inter alia, is caused by avoidable disputes with regard to jurisdiction of the administrative authorities including the police who are to deal with the matter instead of rendering immediate medical aid to the victim. Failure to provide immediate medical attention resulting in death and irreversible injuries is also due to inadequate facilities for early removal of the victims of road accident to the nearest hospitals/medical centres. Inadequate number of ambulances and other suitable modes of transport to transport the victims of road accidents; the absence of trauma centres in different hospitals, and lack of even basic health care facilities are additional features that contribute to the unimpeded growth of the imminent menace to human life. Such unabated growth, it may be mentioned, is reflected in the figures beyond 2010 also. In fact, the corresponding figures of the year 2012 available in “Accidental Deaths and Suicides in 2012” a publication of the National Crime Records Bureau show a uniform graph for all the relevant figures i.e. number of road accidents; fatal cases as well as serious injury cases.

3. The petitioner has not visualized the magnitude of the problem that he seeks to highlight on the basis of his individual perceptions. He seeks to base his contentions on reports submitted by the Working Groups constituted by the MoRTH to survey the different facets of the problem as well as research and authoritative articles published on the subject by persons of eminence. It will, therefore, be necessary to briefly outline what has been dealt with and indicated in the said reports and publications.

4. At the outset, there are the reports of four Working Groups set up by the first respondent to submit recommendations and suggestions on short term and long term measures to curb road accidents in the country. The said four Working Groups were required to go into four ‘Es’ of road safety, namely, Engineering, Enforcement, Education and Emergency Care.

5. According to the Working Group on Enforcement, as on date, India has the distinction of having one of the highest number of accidents and fatalities on roads. After a detailed study the Working Group has recommended, in the main, the following measures for road safety :

(a) Amendment of Motor Vehicles Act to increase fines and to provide for revision of fines every 3 years based on the Consumer Price Index.

(b) Overloading of commercial vehicles should be prosecuted under the Damage to Public Property Act. Liability should be imposed on the transporter, consignor and consignee.

(c) Use of Road Safety devices – there should be no exemption for wearing helmets (such as the exemptions in favour of women in some States). Seatbelts should be

compulsory for driver and front-seat passenger. On national highways, seatbelts should be compulsory for back-seat passengers, too.

(d) In case of drunken driving (Section 20/185, MV Act), the norm should be suspension of the driving license and should be strictly enforced by traffic police and courts.

(e) Traffic Violations Database should be maintained to record data of violating vehicles, drivers and offences committed. This would help identify habitual offenders who could be awarded enhanced punishment.

(f) Checking of overcrowded passenger vehicles, and cancellation of permit.

(g) Improvement of road engineering: Concerned departments must inspect roads where frequent accidents occur.

(h) Digitization of driving licenses in the country, so that defaulters cannot obtain other licenses (upon cancellation or suspension of their license).

(i) Issue of Fitness certificate for commercial vehicles should be based on stringent inspection.

6. The Working Group on Emergency Care took note of the fact that a large number of potentially salvageable patients die needlessly due to delay in retrieval and inadequate or ineffective treatment. In its report the Working Group had enumerated the following problems in accident and emergency care delivery in India :

(i) The general public does not possess basic first aid skills.

(ii) There is no standardized toll free access number to call emergency medical help.

(iii) Non availability of appropriate and safe transport for injured patient in the form of road ambulances, air ambulances etc.

(iv) The ambulances are inappropriately/ inadequately equipped.

(v) There is lack of awareness regarding Hon'ble Supreme Court of India's directives regarding the right to emergency care for RTA victims and the legal protection available to good Samaritans who offer help to a victim of a road accident.

(vi) There is no provision to ensure adequate compensation to an RTA victim in case the accident causing vehicle does not have a third party insurance.

(vii) Majority of the drivers do not have a personal mediclaim policy to cater to their emergency medical needs in case of an accident.

7. Insofar as the report of the Working Group on Engineering is concerned it was observed that the road network in the country is historically developed with a view to providing accessibility rather than mobility. In the said report it was also noted that the available funding for maintenance and repairs of National Highways Network is only 35-40% of the estimated fund requirement.

8. Insofar as road safety education is concerned the following extract from the report of the Working Group on Road Safety Education would highlight the dimensions of the issue :

“On an average, 20 percent of all people killed in road accidents in developing countries are under the age of fifteen. This is twice as high as in the developed world. In India, there is one road accident every minute, and one fatal accident every fourth minute. There are as many as thirty five accidents per thousand vehicles, and the drivers involved in road crashes are in the age group 20-40 years. Two wheelers and cars contribute to 50 percent of the total accidents. Road crashes cost approximately one to three percent of a country’s GDP. Other than road engineering issues, most of the accidents are caused by the drivers fault. While some experts say it is around 50 percent, the MoRTH said that it was around 80 percent. Whatever be the exact figure, we do need to focus on education and enforcement for improving driver performance.” “Road Safety Education should not remain a matter of words. Students must be educated in a way that brings them alive to the issues of road safety.

The report further states that, “Enforcement has a key role in encouraging improved road users behavior. The general deterrence provided by enforcement authorities will promote public perception that “compliance everywhere all the time” is the best way of avoiding penalties and improving safety. Often fear of the stick works better than the stick itself.”

9. A detailed reference has been made by the petitioner to the report submitted by Shri S. Sundar [Former Secretary in the Ministry of Surface Transport and Distinguished Fellow of The Energy and Resources Institute (TERI)] under whom a Committee was constituted in the year 2005 to deliberate and make recommendations for creation of a dedicated body on road safety and traffic management. The Committee was also requested to draft the National Road Safety Policy for consideration of the Government. While submitting its report in February, 2007 the Committee, inter alia, recommended a draft National Road Safety Policy which was approved by the Cabinet in its meeting held on 15.3.2010. The said Policy outlines the initiatives that are to be taken by the Government at all levels to improve road safety in the country. The major initiatives under the Policy are :

(a) To promote awareness about road safety issues.

- (b) To ensure safer road infrastructure by way of designing safer road, encouraging application of Intelligent Transport System etc.
- (c) To ensure fitment of safety features at the stage of designing, manufacture, usage, operation and maintenance.
- (d) To strengthen the system of driving licensing and training to improve the competence of drivers.
- (e) To take measures to ensure safety of vulnerable road users.
- (f) To take appropriate measures for enforcement of safety laws,
- (g) To ensure medical attention for road accident victims.
- (h) To encourage human resource development and R&D for road safety.
- (i) To strengthen the enabling legal, institutional and financial environment for promoting road safety culture in the Country.

10. In an article authored by Justice A.R. Lakshmanan, erstwhile Chairman of the Law Commission, which appeared in the newspaper “The Hindu” on 10th July, 2011 a number of suggestions have been offered for road safety. The most significant of the aforesaid suggestions and relied upon by the petitioner may be usefully extracted below.

“a) For ensuring the safer use of roads it has been suggested that all State Governments notify rules in their respective states for the following:

- . The removal and the safe custody of the vehicles including their loads which have broken down or which have been left standing or have been abandoned on a highway;
- . the determination, maintenance and management of parking places for the use of vehicles and animals and the fees, if any, which may be charged for their use;
- . prohibiting the use of footpaths or pavements by vehicles or animals;
- . prohibiting or restricting the use of audible signals at certain times or in certain places;
- . regulating the loading of vehicles and in particular, limiting the loads carried in relation to the size and nature of the tyres fitted;
- . a right of way for ambulances and fire brigade vehicles;
- . the control of animals likely to frighten other animals or pedestrians;

- . the control of children on highways;
- . prohibiting the riding by more than two persons at the same time on cycles other than cycles designed for the purpose;
- . prohibiting the riding of more than two cycles abreast;
- . limiting the age of drivers of vehicles;
- . regulating the driving of vehicles of vehicles and animals at night; and
- . regulating the use of highways by pedestrians."

b) For ensuring safer public vehicles it has been suggested that the State Governments of all States notify the following rules.

- a) The width, height and length of vehicles;
- b) The size, nature and condition of wheels and tyres;
- c) Brakes;
- d) Lamps and reflectors;
- e) Warning devices;
- f) The inspection of vehicles by prescribed authorities;
- g) Regulating the particulars exhibited on vehicles and the manner in which such particulars shall be exhibited.

c) It has been suggested that the State Governments notify rules for regulating the use of public vehicles in the following manner:

- . the documents, plates and marks to be carried by public vehicles, the manner in which they are to be carried and the language in which such documents is to be expressed;
- . the badges and uniforms to be worn by drivers;
- . the fees to be paid for permits, driving licences,

duplicate copies of permits or driving licences, plates, badges, and appeals preferred before statutory authorities;

. the limiting of the number of public vehicles or public vehicles of any specified class or description, for which permits may be granted in any specified area, or on any specified route or routes;

. the fixing of maximum or minimum fares or freights;

. the maximum number of passengers or the maximum quantity of goods that may be carried in a public vehicles;

. the conditions subject to which passengers, luggage or goods may be carried in a public vehicle;

. the construction and fittings or and the equipment to be carried by public vehicles, whether generally or in specified areas or on specified routes; and . the safe custody and disposal of property left behind in public vehicles;

d) It has been suggested that the State Governments notify the following Regulations for Traffic Personnel to enforce discipline in regard to :

- . Non-observance of traffic rules;
- . Jumping the red light;
- . Crossing the red light;
- . Driving without valid licence;
- . Driving under the influence of liquor/drugs;
- . Driving while talking on the mobile;
- . Driving without helmet;
- . Overloading of passengers in autos. In shared auto-

rickshaws, the driver's seat is often occupied by three persons.

. An entire family (minimum four persons) riding a scooter/motorcycle without realizing that this is a traffic offence and such travel is at the risk of their lives;

- . Haphazard parking of auto-rickshaws, vehicles and government buses.
- . Over-speeding, crossing the yellow line or violating traffic rules by scooter/motorcycle;
- . Violation of traffic signals on a one-way road or complete violation of the traffic signal;
- . “Jam-packed” or extremely crowded stage carriages;
- . Confiscation of Vehicles fitted with LPG cylinders which are meant for home kitchen, and arrest and prosecution the owners/drivers of such vehicles;
- . Installation of weigh bridges at all entry and exist points to and from a city as well as toll collection centres to keep overloading of vehicles under check;
- . Round-the-clock mobile court/mobile policing of roads, not limited to peak hours.
- . Digging of roads by various public utility agencies, like Telephone or Electricity Corporations, causing inconvenience to road-users.
- . Common traffic violations such as driving in the wrong direction, breaching speed limits, and jumping traffic lights.”

11. Apart from seeking appropriate directions in the light of the above suggestions, the petitioner also seeks the constitution of a monitoring agency to ensure that the said suggestions are notified by the State Governments within a time frame.

12. Apart from the above suggestions the erstwhile Chairman of the Law Commission had also suggested an amendment in the Seventh Schedule of the Constitution to enable enactment of a central legislation with regard not only to national highways but also in respect of roads and traffic thereon in addition to vehicles other than mechanically propelled which as of today falls under Entry 13 of the State List.

13. Taking into account the recommendations and suggestions contained in the above reports of the Working Groups and the other publications and views referred to, the petitioner has contended that in the larger interest of the members of the public using the national highways, the State highways and all other arterial roads that connect the different places and centres of the country the suggestions offered by the petitioner would be worthy of consideration for incorporation in the firm directions of this Court under Article 142 pending the necessary enactment thereof by means of appropriate legislation by the Union and the States wherever required. The core of the said suggestions are as follows:

- (a) Owing to the severity of the problem and the fragmented nature of responsibility of the concerned Ministries/departments, the PMO should have direct responsibility. There should be a central coordinating body under the PM’s direct leadership with

order it and powers and definite targets.

(b) Directions to ensure:

(i) Liability of IRDA in case person is denied treatment due to delay in sanction of insurance money.

(ii) Equal, if not higher, compensation to those persons injured as is given to those who have died as a result of the RTA.

(iii) All vehicles must have compulsory third-party insurance. Currently, 22% vehicles are uninsured.

(iv) Liability for emergency expenditures of injured, so that the injured/their family do not have to take recourse to courts.

(c) Directions to R-2 for strict enforcement of traffic violations, since every traffic violation is a potential RTA. R-2 should maintain a minimum number of traffic policemen – as per the road conditions and population – in a region. It must ensure that such personnel are not diverted for any other reason (such as ‘bandobust’).

(d) Annual vehicular inspection should be made compulsory by R-1.

Such inspection should involve the manufacturers of the vehicles also as they possess the requisite knowhow of the particular vehicle. R-1 should be directed to ensure that roads are used for transportation alone and not other purposes such as hawking, religious processions, marriages etc.

(e) Road safety education should be incorporated in school curricula and inculcated in every citizen.

(f) Directions to R-1 regarding licensing:

(i) There should be a cap on the number of licenses that can be issued by the concerned official in one day, so that every application for a license is strictly checked and evaluated. Petitioner suggests a cap of four licenses issuable per official per day.

(ii) Prescribe minimum education and qualification standards for drivers.

(iii) Test the knowledge of safety standards, roads rules, signboards, road markings etc. in addition to mere ability to drive. Licenses ought not to be issued, as presently done, on the basis of the criteria of ability to drive alone.

(iv) Licensing should be based on biometrics to prevent multiple licenses issued to one person.

(v) Computerized licensing to track offences and introduce a point-based penalty system for offenders.

(vi) Bar coding of vehicles and licenses to link to the penalty system, the annual fitness certificate of the vehicle, and insurance forms for instant information.

(vii) Restrictions on the number of new vehicles registered and number of vehicles a family/person can own, methods to ensure road-worthiness of vehicle, periodic license renewal etc.

13. The Respondent No. 1, namely Ministry of Road Transport & Highways (MoRTH) has filed a detailed counter affidavit in the case highlighting the steps undertaken by the Ministry as well as other associated Ministries/Departments of the Union to combat the challenge posed by the huge number of road accidents that occur throughout the length and breath of the road network in the country. The contents of the said affidavit will have to be noted in some detail to comprehend the steps that have been undertaken and also the plans and schemes that have been evolved or are in the process of being evolved as possible answers to the problem.

(a) According to Respondent No. 1, on 15.03.2010 the Government of India has approved the National Road Safety Policy. The salient features of the said Policy are:

“..... promoting awareness, establishing road safety information data base, encouraging safer road infrastructure including application of intelligent transport, enforcement of safety laws etc.”

(b) The National Road Safety Council as contemplated under Section 215 of the Motor Vehicles Act, 1988 (hereinafter for short ‘the Act’) has been constituted by the Respondent No. 1 and advisories have been issued to the States to set up Safety Councils at the State and District levels. The functions of the National Council set up under the Act are:

“The Councils and Committees referred to in this section shall discharge such functions relating to the road safety programmes as the Central Government or the State Government, as the case may be, may, having regard to the objects of the Act, specify.”

(c) An amendment to the Act to provide enhanced penalties for different offences has been passed by the Upper House on 8.5.2012 and the Bill is presently pending before the Lok Sabha. So far as overloading of vehicles, a major cause of road accidents, is concerned, according to the Union, the enforcement of the law in this regard is the

responsibility of the State Governments. 27 States, according to Respondent No. 1, have taken necessary action for enforcement of the provisions of Section 114 of the Act. Similarly, enforcement of the provisions contained in Section 129 of the Act regarding wearing of helmets and Rule 125(1) of the Central Motor Vehicles Rules, 1989 (hereinafter for short 'the Rules') with regard to seat belts etc. is the responsibility of the State Governments. According to the respondent No. 1, in collaboration with NIC, a national register as well as State registers have been created to act as a centralized database for driving licenses and registration certificates.

Furthermore, it is stated that "out of 993 RTOs, 992 RTOs have been connected with State registers/national register through VPNoBB/LL connectivity and RTOs/DTOs data is being replicated at State Register/National Register in Asynchronous Mode. The National and State Registers are customized with portal VAHAN & SARATHI software for compiling/ digitizing the data on DLs and RCs respectively. State Transport Departments and Enforcement agencies have been provided access to the data on National Register and State Registers."

(d) Insofar as fitness certificates for commercial vehicles under Section 56 of the Act is concerned, according to the Respondent No. 1, it is the States who are responsible for issuing fitness certificates to commercial vehicles. However the Ministry (MoRTH) has designed model inspection and certification centres for effective inspection and certification of motor vehicles from the point view of safety and emissions. Furthermore, according to the Ministry, the installation of model Centres in 10 States has been planned and 9 centres have been sanctioned till date which are at different stages of implementation.

(e) Insofar as road engineering is concerned, according to the Ministry, road safety has been made an integral part of the road design and road safety audit of the selected stretches of national highways and expressways are being regularly conducted. Further more, according to the Ministry, a Committee has been constituted for formulating a National Ambulance Code which has since been finalized. Incorporation of the said Code within the framework of the Central Motor Vehicles Rules is under consideration. In its counter affidavit, the Ministry has also stated that a Committee has been set up to make recommendations for a National Helpline for road accident victims based on a common toll free number (1033) with dedicated round the clock call centres. At the said centres, calls from the State Highways will also be accepted and will be forwarded to the concerned agency for providing relief.

(f) So far as road safety education is concerned, it has been stated in the counter affidavit of the respondent No. 1 that a syllabus in first aid has been made compulsory in driving schools; plan are underway for incorporating a chapter for road safety for school children and a book called "Sign Language" containing a chapter on helping road accident victims has been published and circulated in adequate number to all State Government schools as well as schools affiliated to the CBSE.

(g) Dealing with the issue of compulsory insurance the Ministry has stated that under Section 146 of the Act there is a prohibition on use of a motor vehicle which has not been insured. According to the Ministry it has issued a Circular dated 20.6.2013 to all State Governments to enforce the aforesaid provision of the Act.

(h) Insofar as licensing and prescription of minimum education and qualification for drivers is concerned, according to the Ministry, adequate provisions exist under the Act as well as the Rules. So far as enforcement thereof is concerned, according to the Ministry, a Committee has been set up to recommend staffing norms for the office of Motor Licensing Officers. Further more, according to the first respondent, setting up of adequate number of Institute of Driving Training & Research (IDTR) and Regional Driving Training Schools (RDTs) is contemplated and plans are also afoot to link these centres with the jurisdictional RTO for conducting necessary tests before issuing driving licenses.

(i) Refresher training course for heavy vehicle drivers are being organized to inculcate safe driving habits and to acquaint the drivers with the rules to be followed while using the roads.

(j) Publicity measures and awareness campaign of road safety is carried out through DAVP, Doordarshan, All India Radio and newspapers and a suitably designed system throughout the country for rigorous inspection of motor vehicles and to remove the defects before they are allowed to ply on roads is under contemplation; necessary amendments in the Central Motor Vehicles Rules would be carried out prescribing these tests which will replace the presently visual inspection of vehicles which is in force.

(k) Insofar as post-accident medical response is concerned, it is stated that the Ministry of Health and Family Welfare (MoHFW) has established trauma centres in State Government hospitals to the extent possible and during the 11th Plan the MoHFW had identified 140 government hospitals in 16 States along the golden quadrilateral highway for establishing trauma care facilities. The scheme is proposed to be extended to another 85 government hospitals during the 12th Plan and such facilities will be located near or on the national highways.

(l) A pilot project has been introduced along a stretch of NH-8 between Delhi and Jaipur wherein 11 ambulances had been deployed at intervals of 20 kilometers and the government has undertaken to bear the treatment cost upto Rs. 30,000/- for the initial 48 hours. A National Highway Accident Relief Service Scheme (NHARSS) has also been launched to provide immediate eviction of injured victims to the nearest medical aid centre and adequate number of cranes of different capacities, ambulances and life-support ambulances to carry the victims to 140 identified hospitals had been provided in different States. 24 interceptors have been sanctioned to the States and Union Territories to detect violations under the Act. In the counter affidavit filed by the first respondent it is also stated that following the decision of the Supreme Court in Pt. Parmanand Katara vs. Union of India^[1] instructions have been issued by the Ministry to all the State Governments emphasising the need for providing medical aid to road accident victims without waiting for the police for completion of the legal formalities. Reference is made to a circular dated 19.02.2004 issued to all State Governments regarding the necessity of building confidence in the public for helping road accident

victims. In the said circular it is emphasized that the members of the public, who render voluntary help to persons injured in accidents, should not be unnecessarily questioned and detained in the police stations and further that they should not be harassed or forced to give their particulars.

14. There are several other significant aspects connected with the present matter that have been highlighted by the Ministry (MoRTH). The National Road Safety and Traffic Management Board Bill 2010 for creation of a National Road Safety and Traffic Management Board (NRSTMB) has been emphasised. The said Board is intended to act as a lead agency to oversee road safety and traffic management activities in the country. The functions of the Board as stipulated in the Bill include specification of standards for construction and maintenance of national highways; specifying the safety standards for mechanically propelled vehicles; to maintain a comprehensive database on road safety; to issue guidelines for training and testing of drivers; establishment and upgradation of trauma centres in consultation with the Directorate General of Health Services. At present, the Bill is pending before the Lok Sabha though the Parliamentary Standing Committee has recommended scrapping of the same on the ground that the Board is merely a recommendatory body and is a further addition to the several other existing bodies acting in an advisory and recommendatory capacity.

15. The proposed substitution of Section 163A and the Second Schedule to the Act which has been approved by the Rajya Sabha on 8.5.2012 has also been highlighted in the affidavit as a move to ensure payment of higher/substantial compensation to victims of road accidents.

The Bill amends sub-section (3) of Section 163A permitting the Government to revise the amount or multiplier specified in the Second Schedule every three years, based on the cost of living and rise in price index. The corresponding sub-section in the principal Act permitted the Government to do so "from time to time".

The Bill replaces the Second Schedule to lay down a new scheme for calculating the compensation amount payable to a victim or his/her kin. The formula for working out compensation is as follows:

- a) The proven annual income of the victim is to be worked out.
- b) Appropriate multiplier (higher of the multiplier based on the age of the victim and the age of the surviving/dependent parents/spouse/children) to be applied.
- c) Multiply the proven annual income by the appropriate multiplier to arrive at compensation amount, subject to following namely:-
 - i) The amount of compensation payable for Permanent Total Disablement as defined in Schedule I of the Workmen's Compensation Act, 1923 (8 of 1923) shall be determined by application of appropriate multiplier to proved income, subject to maximum of Rs.10 lakhs.

- (ii) The amount of compensation so arrived shall be reduced by 1/3rd in respect of fatal accidents (reduction of 1/3rd represents living expenses for deceased person, had he been alive).

The maximum annual income for calculation of compensation is proposed to be fixed at Rs.1 lakh as against the present amount of Rs.40,000/-. The minimum compensation amount payable is increased to Rs.1 lakh from the erstwhile Rs.50,000/-. In case of death of non-earning person, the Schedule fixes the compensation at Rs.1 lakh for children upto 5 years of age, and at Rs.1.5 lakh for persons more than 5 years of age. Where such a person is grievously injured in an accident, the maximum compensation that may be awarded is Rs.50,000/-. In case of non-grievous injuries, the non-earning person may be awarded a maximum compensation of Rs.20,000/-. The Bill also seeks to enhance the general damages payable in case of death and disability.

16. Finally, in its counter affidavit, the Ministry (MoRTH) has stated that the enforcement of the core provisions of the Act comes within the purview of the States/Union Territories and though the first respondent has been impressing upon all States/Union Territories for strict enforcement of the provisions of the Act by issuing advisories from time to time, eventually, it is upto the States to respond appropriately in the matter.

17. The narration above indicates the enormity of the problem; the issues connected therewith; the suggestions made in different quarters for resolution and the attempts to provide a solution. The mosaic of facts, information and suggestions have been laid only to serve as a basis to undertake the exercise imminently necessary to resolve the issue, to the extent possible, so far as the present is concerned and to visualise what could be the requirements of the future. We wish to make it clear that the exercise attempted cannot be considered to be either infallible or to be a one time attempt at a permanent solution. Different facets of the issue with new complexities are bound to recur from time to time requiring renewed attempts at resolution. It is keeping in mind the above features that the course that we intend to charter, as laid out in the paragraphs hereinafter, has been visualized and conceptualized.

18. The total network of roads in India is approximately 47 lakhs kilometers which is possibly the second largest network in the world after the U.S.A. While Express Highways count for only 200 kilometers in length, National Highways measure 70,934 kilometers; State Highways 1,63,896 kilometers; other PWD Roads 10,05,327 kilometers and rural and other roads 27,49,805 kilometers. The statistics mentioned below would indicate the relative position with regard to the extent of road network; the vehicular population and the number of deaths that had occurred in the past years in road accidents in India and other countries like U.S.A., U.K., China etc. While the statistics available in respect of the USA may reflect a higher rate of accidents though a lower number of deaths (possibly due to more advanced after trauma facilities) the figures in respect of the U.K. and China highlights the magnitude of the problem in so far as India is concerned. In this regard it would require a specific mention that while the death rate in China, which had stood at par with India at a certain point of time, has shown a significant downward trend in case of India the said figures has shown a disturbing increase.

Country	Road network (km)	Number of vehicles	Number of Accidents	Deaths	Series
India	46,89,842	11,49,53,000	4,30,654	1,26,896	4,66,600
Source: "Accidental Deaths & Suicides in India, 2010", National Crime Records Bureau. Year: 2009					
USA	65,86,610	25,41,66,000	1,08,00,000	33,808	22,17,000
Source: US Census Bureau Year: 2009					
UK	3,94,428	3,42,00,000	1,64,000	2,222	2,20,000
Source: Department for Transport Year: 2009					
China	41,06,387	20,70,61,286	--	70,134	--
Source: "Global Status Report on road safety, 2013", WHO. Year: 2010					
Brazil	15,80,964	6,48,17,974	--	37,594	--
Source: "Global Status Report on road safety, 2013", WHO. Year: 2010					

B – Data of relative figures in respect of China & India²

Year	China	India
2004	5,17,889	4,29,910
2005	4,50,254	4,39,255
2006	3,78,781	4,60,920
2007	3,27,209	4,79,216
2008	2,65,204	4,84,704
2009	2,38,351	4,86,384

Number of Persons Killed

Year	China	India
2004	1,07,077	92,618
2005	98,738	94,968
2006	89,455	1,05,749
2007	81,649	1,14,444
2008	73,484	1,19,860
2009	67,759	1,25,660

19. The facts mentioned above would leave no room for doubt that Indian roads have proved to be giant killers demanding immediate attention and remedial action. Such attention and necessary intervention, in the first instance, is required to be made by the concerned governmental agencies. While there is no reason for any skepticism over the abundant concern shown by all concerned to

the issues highlighted and also the attempted solutions both in the field of law enforcement as well as amendments in the law, besides limited experiments in providing better after trauma care, for reasons that need not detain the court, the results so far have not been very encouraging. The accident and casualty graphs continue to run on an even keel over the last several years.

20. An accident is an incident that happens unexpectedly and unintentionally. It is occasioned either by human failure or human negligence. Viewed from the above perspective and also thorough hindsight every road accident is an avoidable happening. The history of humankind has been one of conquests over the inevitable. The resignation to fate has never been the accepted philosophy of human life. Challenges have to be met to make human life more meaningful. This is how the constitutional philosophy behind Article 21 has been evolved by the Indian courts over a long period of time. It is this process of development and the absence of significant and meaningful results from the governmental action till date that impels us to delve into the realms of the issues highlighted by Dr. Rajaseekaran in the present writ petition under Article 32 of the Constitution.

21. Having considered all the relevant facts and also the suggestions that have come from the different quarters it appears to us that the four- dimensional approach that the Government had earlier attempted by setting up four different working groups to go into the four issues of road safety, namely, enforcement, engineering, education and emergency care would be the best manner to approach the issues arising. We, therefore, intend to adopt the same in the exercise proposed to be undertaken.

Enforcement

22. Enforcement of the existing laws, regulations and norms having a bearing on road safety can be conveniently sub-divided into different categories like-

- (i) licensing;
- (ii) certification of fitness of vehicles;
- (iii) limits of use of vehicles i.e. passenger carrying capacity, weight carrying capacity etc.;
- (iv) use of road safety devices;
- v) adherence to norms including user of roads, and;
- (vi) deployment of adequate manpower for enforcement of the existing provisions of law.

23. The provisions of the law i.e. Motor Vehicles Act, 1988 governing the aforesaid features of the matter can now be taken note of.

A. Licensing

24. (I) Section 3 of the Motor Vehicles Act, 1988 states that no person shall drive a motor vehicle in a public place without holding a valid driving license. As per the mandate of Section 6, a person cannot hold more than one such license. Further, Section 4 sets the age limits for driving of motor vehicles: 18 years for cars, 16 years for motorcycles, and 20 years for transport vehicles. Section 5 prohibits the owner to permit any person to drive the vehicle without satisfying Sections 3 & 4. If an owner permits any person to drive the vehicle without a driving licence, the owner is liable for imprisonment upto 3 months or fine upto Rs. 1,000 or both, under Section 180.

(II) Under Section 19, the licensing authority may disqualify a person from holding a driving license for certain reasons, such as if the person (i) is a habitual criminal or habitual drunkard, (ii) is a habitual addict to any narcotic drug or psychotropic substance within the meaning of the NDPS Act, 1985, (iii) is using or has used a motor vehicle in the commission of a cognizable offence, (iv) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public, (v) has committed any such act which is likely to cause nuisance or danger to the public, etc. (III) The Court may also disqualify a person from holding a driving license, apart from imposing any other punishment. In the following cases, disqualification by the Court is mandatory under Section 20(2):

- not stopping the vehicle when required to do so by any Police Officer (not below the rank of Police Sub-Inspector in uniform) if the vehicle is involved in a road accident (Section 132)
- not shifting the victim of the accident in which his or her vehicle is involved to the nearest hospital/ medical practitioner (Section 134)
- not giving, on demand by a Police Officer, any information required by him (Section 134)
- not reporting the occurrence of accident to insurer (Section 134)
- driving by a drunken person or by a person under the influence of drugs (Section 185)
- driving dangerously (Section 184)
- racing and trials of speed (Section 189)
- using a vehicle without registration (Section 192)

B. Vehicular Fitness

25. (I) Under Section 39, a person cannot drive a motor vehicle or cause or permit his vehicle to be driven without proper registration and display of the registration mark. If a vehicle is not in a fit condition to be used on the public road or is being used for hire without valid permit, the

appropriate authority under Section 53 can suspend the registration certificate.

(II) Using a vehicle without registration can result in fine, the minimum amount of which is Rs. 2,000 and maximum is Rs. 5,000, under Section 192. For a subsequent offence, the maximum amount of fine may extend to Rs. 10,000, subject to a minimum of Rs. 5,000. The punishment is not applicable for vehicles used in an emergency for the conveyance of persons suffering from sickness or injuries or for the transportation of food or material to relieve distress or of medical supplies for a like purpose, per sub-Section (2).

(III) A vehicle cannot be used on the road without proper insurance certificate, as under Section 146. The owner is responsible for obtaining insurance. Driving an uninsured vehicle can result in punishment in imprisonment upto 3 months or fine upto Rs. 1000/- or both, under Section

196. (IV) In cases of vehicles involved in road accidents, the driver or owner must report such involvement to the concerned police officer. Failure to do so would attract punishment under Section 187, viz. imprisonment upto 3 months or fine upto Rs. 500, or both (in addition to the punishment for the accident). For the subsequent offence under this section, the imprisonment can be upto 6 months and fine amount upto Rs. 1,000. Moreover, such a vehicle has to be inspected by the authorized officer of the Motor Vehicles Department (Section 136).

(V) Chapter V of the Central Motor Vehicles Rules, 1989 contains exhaustive provisions on the construction, maintenance and equipment of motor vehicles, dealing the dimensions of the vehicle, tyres, brakes, steering gears, safety glass, windscreen wipers, emission standards, noise reduction measures, and speed governors. The Rules also provide for the installation of devices such as helmets, safety belts, padded dashboards etc. for the safety of drivers, passengers and road users. Violation of the standards prescribed in relation to road safety, control of noise and air pollution is fine amount upto Rs.1,000/- for the first offence and Rs. 2,000/- for the subsequent offence, under Section 190 of the MV Act.

C. Use of Roads

26. (I) The MV Act contains several provisions regulating the use of roads by motor vehicles.

(II) Section 119 mandates every driver to drive the vehicle in conformity with traffic signs and prescribed driving regulations and to comply with all the directions given to him by any Police Officer engaged in the regulation of traffic. Under Section 121, the driver must signal his intention to stop or take a left or right turn.

(III) Leaving a vehicle at rest on any public place in such a way as to cause or likely to cause danger, obstruction or undue inconvenience to other road users is an offence under Section 122. Such vehicles may be towed away by Police and the owner may be charged for towing in addition to the penalty for offence. A vehicle may also be towed away by the police (in uniform) if it is left attended in a public place for more than 10 hours, or parked at a 'No Parking Zone', or parked in a manner that creates a traffic hazard (Section 127).

(IV) Carrying more than one pillion rider on a two-wheeler is an offence under Section 128. Wearing a helmet of ISI standard, while riding a motor cycle in a public place, is mandatory under Section 129.

(V) Under Section 183, if a driver of a motor vehicle contravenes the speed limit, he/she shall be punishable with fine upto Rs. 400/- for the first offence and Rs. 500/- for the subsequent offence, and if the owner causes the driver to contravene the speed limit, he/she shall be punishable with fine upto Rs. 300/- for the first offence and Rs. 500/- for subsequent offence. Under Section 184, whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees. In case of repeated offence committed within three years of the first offence, he may be punished with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both. The driver can be arrested on the spot. Taking part in a race or trial of speed of any kind without the Government's written permission is punishable under Section 189, with imprisonment for a term which may extend to one month or with a fine upto Rs 500 or with both.

(VI) Under Section 185, punishment for drunken driving is imprisonment upto 2 years or fine upto Rs. 3,000/- or both, and the driver can be arrested on the spot. Further, Section 186 makes a person who is mentally or physically unfit to drive, punishable for the first offence of driving in such a situation with fine upto Rs. 200/- and Rs. 500/- for subsequent offence.

(VII) Driving a vehicle exceeding permissible weight can result in a punishment of Rs. 2,000/- and an additional amount of Rs. 1,000/- per ton of excess load together with the liability to pay charges of off-loading the excess load, per Section 194.

(VIII) Using vehicle in contravention of permit condition can result in fine upto Rs. 5,000/- but not less than Rs. 2,000/- for the first offence and imprisonment upto 1 year but not less than 3 months or with fine amount upto Rs. 10,000/- but not less than Rs. 5,000/- or both for the subsequent offence (Section 192(a)).

27. While improvements in different spheres of law are imminent with passage of time, any change of law has to be preceded by serious debate and consideration of a wide variety of factors all of which takes time. The legislative procedure is also time consuming. In fact several amendments in the Motor Vehicles Act as indicated in the earlier part of this order are under consideration. While such changes or amendments can be brought in only upon completion of the necessary exercise, the enforcement of the existing laws would stand on an entirely different footing. Strict and faithful enforcement of all existing laws and norms must be insisted upon not only as an absolute principle of law but also for the huge beneficial effects thereof. As noted earlier, out of the total road network in the country which is about 47 lakhs kilometers in length, national highways account for only 70,934 kilometers only. It is over these national highways that the executive power of the Union

extends whereas in respect of the State highways and other State roads the Executive power of the State runs. That apart, roads, traffic thereon and vehicles other than those mechanically driven are covered by relevant entries in List II of the Seventh Schedule giving jurisdiction to the States both in matters of legislation and exercise of executive power. None of the States are parties to the present writ petition. Though we are inclined to accept that directions to the States to enforce the existing laws can be issued even in their absence, we cannot help observing that the matter cannot be allowed to rest merely by issuance of directions by this Court. Observance and implementation of the directions to be issued by this Court in exercise of power under Article 142 of the Constitution would require a continuing scrutiny and we intend to monitor such implementation and to make the States accountable for any inaction or lapse in this regard. We, therefore, implead all the States as party respondents and direct the Registry to issue notice to them. For the present we direct the Government of each State to effectively implement and enforce all the provisions of the Act in respect of which the States have the authority and obligation to so act under the Constitution in addition to the tasks specifically alluded to in the subsequent paragraphs of the present order.

Engineering

28. In so far as road engineering is concerned, the concerned departments in the Central Government as well as the State Governments must make road safety an integral part of road design at the planning stage and conduct regular road safety audit of selected stretches of expressways, national highways, state highways and other state roads to identify what can be reasonably termed as 'black spots' i.e. problem spots where a large number of accidents occur. Regular maintenance of all highways and roads both by the Central and the State Governments, in order to make the same traffic worthy, is the minimum that the citizens of this country can expect and are entitled to. We hardly need to emphasize that it is the duty of the Central and the State Governments to ensure the availability of safe roads worthy of traffic, though we must hasten to add that our observations in this regard must necessarily be understood in the context of the resources available to the Central and the State Governments. We accordingly direct the respective Governments to act accordingly.

Education

29. The importance of education on road safety cannot be gainsaid. Such consciousness needs to be developed amongst all citizens and should be inculcated from a young age. The importance of informing and educating the citizens of the virtues of road safety lies in the fact that, in the last resort, it is such realization alone that can lead to better and safer use of roads and vehicles. It is heartening to note that serious consideration on this aspect of road safety has been expended by the Union Government details of which measure have been noted earlier. We direct the Union Government to continue to expend its efforts and all such measures shall also be implemented by the State Governments.

Emergency

30. In so far as emergency is concerned there is perhaps no denial of the fact that many deaths and loss of limbs and serious disfiguration of victims can be saved by timely medical attention. Lack of

adequate number of good samaritans; squabbles between police stations and administrative authorities over jurisdiction; lack of quick response in removing the victims to hospitals and centres of medical care due to lack of necessary infrastructure like ambulances; absence of adequate and well spread out number of hospitals and medical centres; the poor condition and lack of adequate infrastructure in government run hospitals and health centres and the prohibitive costs of health care facilities in the more advanced centres of medical care besides insistence of large deposit of money by such advanced health care centres in the private sectors are some of the problems that have seriously plagued post trauma/accident care in the country. As already noted, limited attempts have been made on experimental basis and that too on national highways alone to provide better amenities and also to take care of the fund requirements for the first 48 hours following the accident. The experiment needs to be extended by the Central Government to more stretches of the National Highways besides introduction and implementation of such measures by the States in the roads under their control and jurisdiction.

31. The sum total of the discussions above is that all existing laws and norms including the provisions of the Motor Vehicles Act, as in force, are required to be implemented in the right earnest and with all vigour by the authorities of the Union and the State Governments who are responsible for such implementation. In so far as suitable amendments to the laws are concerned, this Court can only hope and trust that all such changes or amendments which are presently under legislative consideration would be expedited and measures as may be considered necessary by legislature in its collective wisdom will be brought in the statute book in due course. At the same time, what has been admitted to be necessary and, therefore, has been initiated by the Central Government in so far as engineering and road education is concerned shall be implemented and directions to so act may be construed to have been issued by this Court by the present order. Similarly, in so far as emergency care is concerned, what has been initiated by the Central Government, as stated in its affidavit, shall be suitably implemented and extended subject to the limits of its financial ability. The States also shall act accordingly and initiate similar measures if required, in a phased manner.

32. We are aware that the journey that has been undertaken would be long and arduous. It is difficult to visualise when the same would end, if at all. To ensure the success of the process undertaken, constant supervision of this Court of the measures undertaken by the Central Government and the State Governments and the extent of affirmative action on part of the Union and the States will have to be measured and monitored by the Court from time to time. Keeping in mind that the time available to this Court is limited we deem it proper to constitute a Committee to undertake the process of monitoring on behalf of the Court. The Committee will have the following composition and shall function in the manner indicated below:

Composition of Committee | Sl.No. | Name | | 1. | Hon'ble Mr. Justice K.S. Radhakrishnan | Chairperson | | Judge, Supreme Court of India | | | (Effective from 15th May, 2014) | | 2. | Mr. S. Sundar | Member | | Distinguished Fellow, TERI | | | Former Secretary, Ministry of Surface | | | Transport, Government of India | | 3. | Dr. (Mrs.) Nishi Mittal | Member | | Ex. Chief Scientist, CRRI, | | | Formerly HoD, Traffic Engineering and | | | Safety (TES), | | | Central Road Research Institute | |

33. (I) The composition of the above Committee will be notified by the Ministry of Road Transport and Highways, Government of India forthwith.

(II) The Committee will have its office in the national capital and requisite infrastructure including manpower will be provided by the Central Government.

(III) The remuneration and perquisites of the Chairman of the Committee and its members will be fixed by the Union Government in consultation with the individual concerned and in accordance with prevailing norms.

IV) All State Governments as well as different Ministries/Departments/Wings of the Central Government who are currently looking after the multi-dimensional issues pertaining to road safety will submit their first report to the Committee within three months from today indicating the state of implementation and enforcement of all laws pertaining to (i) licensing; (ii) certification of fitness of vehicles; (iii) limits of use of vehicles i.e. passenger carrying capacity, weight carrying capacity etc.; (iv) use of road safety devices;

(v) adherence to norms including user of roads, and (vi) deployment of adequate manpower for enforcement of the existing provisions of law.

V) The Union Government as well as the State Government shall also indicate their views on the necessity of further change in the law, if any.

VI) The Union Government as well as the Government of the States shall also offer their views on the suggestions/recommendations of the different bodies/persons noticed and mentioned in the present order which are presently not under implementation.

VII) The Committee shall undertake a detailed scrutiny and examination of the Report(s) that may be submitted and the views of the Central and State Governments with regard to necessity of further legislation or changes in the existing laws.

VIII) The Committee will submit its report to this Court within three months after receipt of report from the Union and the State Governments indicating and expressing its views on each of the matters referred to in the present order including the deficiencies and the defaults on the part of any of the stakeholders, as may be found.

34. The matter be posted for further consideration before this Court on the expiry of six months from today along with the report (s) as may be submitted pursuant to the present order.

35. A copy of this order be furnished to the petitioner and each of the Respondents as well as to the Chief Secretaries of all the States/Union Territories.

.....CJI.

[P. SATHASIVAM]J.

[RANJAN GOGOI]J.

[N.V. RAMANA] NEW DELHI, APRIL 22, 2014.

[1] (1989) 4 SCC 286

2 Source: "Statistical Year Book of India – 2014" published by the

Ministry of Statistics and Programme Implementation.
