
EFFICACY OF LAW AS A TOOL TO PROVIDE RELIEF TO ACCIDENT VICTIMS

FINAL REPORT

AUGUST 2012



Under the Mentoring of
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Project ID # 68

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Preface

I am Abhilasha Kak, a student of Vth year BBA LLB at Symbiosis Law School Pune. It was through the placement cell of our college that I first heard of Rakshak Foundation and applied for an internship. Most problems in our country exist today due to the lack of awareness about them. Rakshak Foundation performs the task of creating awareness by providing information with regard to rights and resources available and responsibilities involved. Importantly, Rakshak foundation encourages people to actively involve themselves in the governance of the country. Rakshak foundation, owing to its status is truly an organization capable of bringing about an urgently required change. I feel proud to be associated with this organization and have learnt a lot in my brief stint here.

Acknowledgements

I am greatly thankful to Rakshak foundation for having taken me as an intern in their esteemed organization and giving me a research project which will help me learn a lot on the area of law involved in my project. I am thankful to Mr Sachin Bansal, Mr Rohit Agarwal, Mr Kunal Sharma, Ms Tulika Jalan and Mr Brij Kishore for their constant inputs on my project and their worthy suggestions. I express my extreme gratitude to my mentor, Miss Preeti Goel, Lead Researcher at RF for having guided me with my project meticulously and directing me methodologically on how to go about the whole process of research and giving me her valuable time.

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Executive Summary:

Every day in newspaper reports we read about road accidents all over the country. Such accidents often involve teenagers, leaving their families shattered. These reports are so frequent and common in newspapers now that most of us now ignore them. Rash driving has won India the distinction of the land with the highest recorded deaths in road accidents.

To be able to come up with strategies to prevent the menace of road accidents, it is important that we analyze and understand their causes. It is imperative to study the causes because of the high socio economic causes of accidents.

Key findings

- In India, 1,20,000 people die and 12,70,000 sustain serious injuries every year in Road Traffic Accidents.
- As per the statistics, there is one death on the Indian road every six minutes and this is expected to escalate to one death every three minutes by 2020
- India accounts for about 10% of road accident fatalities worldwide
- Although India accounts for only 1% of the registered motor vehicles, it accounts for nearly 9 % of RTA deaths.
- World Health Organization has revealed in its first ever Global Status Report on Road Safety (2009) that more people die in road accidents in India than anywhere else in the world, including the more populous China.
- 85 % of the victims of these fatalities are men in the age group 20-50 years. Majority of these men are the bread- winners for their families.

1. Introduction

1.1. Background Information:

Prevention of motor vehicular accidents has a long history dating back to the British Rule. In order to provide relief to a person injured in an accident, the Fatal Accidents Act 1885 was introduced. The Act provided for claiming of compensation from a person committing negligence. Owing to the advent of urbanization and motorization and the massive expansion of road networks, there was a surge in the number of road accidents and a need was felt to introduce an effective Act to provide relief to victims of road accidents.

The Motor Vehicles Act 1939 and the Indian Penal Code 1860 were some of the pioneering efforts made for the abatement of road accidents. The aim through the legislation was to obtain regulation based on Law of Tort. Before the advent of industrial revolution, the concept of tortious liability was rather unimportant. With the emergence of modern technology and increase in traffic, the number and severity of accidents has increased exponentially. With this change emerged the modern concepts of tortious liability including the fault and negligence doctrines. The objective of imposing liability is to compensate the victims for losses incurred due to accidents and not to punish the wrongdoer. Motor vehicular accidents constitute a major portion of tort cases in India.

The common law in England which rested on the fundamental principle that wherever there is a right there is a remedy did not provide any remedy to the dependants or the heirs of the deceased person whose death was caused by a torturous act of another person, because the cause of action to sue died with the deceased person. On the other hand, a person who was slightly or seriously injured could maintain an action in damages against the tortfeasor. The same principle was applied to India. This resulted in the peculiar position that a wrongdoer could very well say that it was cheaper to kill than to maim or cripple a person. Naturally such an unsatisfactory state of law could not be allowed to

be continued. The Indian Fatal Accidents Act 1885 rendered the maxim “Actio personalis moritur cum persona” (a personal right of action dies with the person) obsolete and ineffective and the persons mentioned in the Act could recover damages for the tortuous action notwithstanding the death of the person injured. Section 2 of the Act provides that in any such action for damages the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by the tortuous act complained of and which sum when recovered shall be deemed a part of the assets of the estate of the deceased. Realising the difficulty of legal representatives of persons killed in motor vehicle accidents and of the injured persons in such accidents in obtaining compensation within the shortest period without going through the tortuous course of a regular civil suit.

The Motor Vehicles Act 1939 consolidates and amends the law relating to motor vehicles. This has been amended several times to keep it up-to-date. The need was, however, felt that this Act should take into account changes in road transport technology, pattern of passenger and freight movements, development of road network in the country and particularly the improved techniques in the motor vehicles management.

Various committees like National Transport Policy committee, National Police commission, Road Safety committee, Low powered two wheeler committee, as also the Law commission have gone into different aspects of road transport. They have recommended updating, simplification and rationalization of this law. Several members of the parliament have also urged for comprehensive review of the Motor Vehicles Act 1939 to make it relevant to the modern day requirements. For a review of the existing legislation, a Working Group was constituted. This Working Group suggested modifications in the following areas:-

- a. Fast increasing number of both commercial vehicles and personal vehicles in the country

- b. Need for encouraging adoption of higher technology in automotive sector
- c. Greater flow of passenger and freight
- d. Concern for road safety standards and pollution control measures standards for transportation of hazardous and explosive materials.
- e. Simplification of procedure and policy liberations for private sector operations in the road transport field.
- f. Need for effective ways of tracking down traffic offenders

The Supreme court in M.K.Kunhimohammed case has made certain suggestions to raise the limit of compensation payable as a result of motor accidents in respect of death and permanent disablement in the event of there being no proof of fault on the part of the person involved in the accident and also in hit and run motor accidents and also to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of motor vehicle involved in the accident.

The legislation has been prepared in the light of the above background. Some of the more important provisions of the legislation provide for the following matters namely:-

- a. Rationalization of certain definitions with addition of certain definitions of new types of vehicles;
- b. Stricter provisions relating to grant of driving licenses and the period of validity thereof;
- c. Laying down of standards for the components and parts of motor vehicles;
- d. Standards of anti pollution control devices;
- e. Provisions for issuing fitness certificates of vehicles also by the authorized testing stations;
- f. Enabling provision for updating the system of registration marks;

- g. Liberalized scheme for grant of stage carrier permits on non nationalized routes, all-India tourist permits and national permits for goods carriages;
- h. Administration of the Solatium scheme by the General Insurance Corporation;
- i. Provision for enhanced compensation in cases of “no fault liability” and hit and run cases;
- j. Provision for payment of compensation by the insurer to the extent of actual liability to the victims of motor accidents irrespective of the class of vehicles;
- k. Maintenance of state registers for driving licenses and vehicle registration;
- l. Constitution of road safety councils

The provisions of Section 110 to 110-F of the Motor Vehicles Act 1939 as to compensation in respect of accidents can be availed of only in cases of accidents which can be proved to have taken place as a result of wrongful act or negligence on the part of the owners or the drivers of the motor vehicle concerned. Having regard to the nature of circumstances in which the road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what is known as hit and run cases, by result of the identity of the vehicle involved in the accident being unknown, the person affected cannot prefer any claim for compensation. The parliament therefore, considered it necessary to further amend the Motor vehicles Act 1939 suitably to make provisions for the compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and for compensation by way of solatium in cases in which the identity of the vehicle causing the accident is unknown. By the Motor Vehicles Amendment Act, a new chapter was inserted making provisions for liability to pay compensation in certain cases on the principle of no fault.

The right to claim compensation under Section 140 in respect of death or permanent disablement of any person shall be in addition to any other right to claim compensation in respect thereof under any other provision of Motor Vehicles Act 1988 or any other

law for the time being in force. Where in respect of death or permanent disablement of any person, the person liable to pay compensation is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation and

- a. If the amount of the first mentioned compensation is less than the amount of the second mentioned compensation, he shall be liable to pay only so much of the second mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation
- b. If the amount of the first mentioned compensation is equal to or more than the amount of the second mentioned compensation, he shall not be liable to pay the second mentioned compensation

Organization of the Motor Vehicles Act 1988

CHAPTER I (Sec 1-2)

This chapter gives a preliminary overview of the Act and gives definitions of various terms used in the sections.

CHAPTER II (Sec 3-28)

This Chapter deals with the licensing of drivers of motor vehicles. There is a necessity to hold an effective driving license to be authorized to drive. An age limit of 18 years has been prescribed in relation with driving of motor vehicles. Under this chapter, any person who isn't disqualified can apply to licensing authority for a license. If an applicant passes a test as may be prescribed by the Central government, he shall be issued the driving license. Any licensing authority may revoke the driving license if such authority has reason to believe that holder of driving license is unfit to drive as a result of disease or infirmity.

CHAPTER III (Sec 29-38)

This Chapter deals with the licensing of conductors of Stage carriers. An effective conductor's license is required to authorize a person from acting as a conductor of a stage carrier. No person under the age of 18 years shall hold a conductor's license and the licensing authority can revoke such license on the ground of disease or infirmity.

CHAPTER IV (Sec 39-65)

This chapter deals with registration of motor vehicles. Compulsory registration of motor vehicles has been prescribed. The certificate of registration so obtained shall be effective throughout India. There is a provision for cancellation of registration certificate of vehicle destroyed or rendered permanently incapable of use or it will constitute a danger to public safety.

CHAPTER V (Sec 66-96)

According to this Chapter, no transport vehicle shall be used in a public place without permit issued by transport authorities.

CHAPTER VI (Sec 97-108)

This Chapter deals with special provisions relating to state transport undertakings. The State government is to prepare a proposal to nationalize road transport services to be operated by State Transport undertakings and publication of such proposals in the official gazettes and newspapers.

CHAPTER VII (Sec 109-111)

This chapter deals with the construction , equipment and maintenance of motor vehicles.

CHAPTER VIII (Sec 112-138)

This chapter deals with the provisions of control of traffic. There is a prescribed maximum speed at which each class or type of motor vehicle can be driven. Power is conferred on the State government to erect traffic signals on public

roads for the information of road users. There is a duty imposed on every driver of a motor vehicle to drive the motor vehicle in conformity with the indication given in mandatory traffic signs. The State Government is also empowered to prescribe protective headgear to be worn by drivers or pillion riders of motor cycles. A duty is cast on the driver involved in an accident- such as rendering medical aid to the injured. It is also the duty of every medical practitioner to immediately attend to an injured person and render treatment without waiting for procedural formalities.

CHAPTER IX (Sec 139)

This chapter deals with provisions relating to motor vehicles temporarily leaving or visiting India.

CHAPTER X (Sec 140-145)

This chapter prescribes liability to pay compensation in certain cases on the principle of no fault. There is also a provision to claim compensation for death or permanent disability.

CHAPTER XI (Sec 146- 164)

This Chapter deals with the provision for insurance of motor vehicles against third party risks. Section 161 provides a special provision for framing of a scheme by the Central Government for compensation in hit and run cases.

CHAPTER XII (Sec 165-176)

This chapter deals with the establishment of Motor Accident Claims Tribunals for adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to persons using motor vehicles.

CHAPTER XIII (Sec 177-210)

This Chapter prescribes the various offences and penalties without respect to contravention of the provisions of the Act

OFFENCES AND PENALTIES UNDER MOTOR VEHICLES ACT 1988

**OFFENCES AND PUNISHMENT/FINE UNDER THE MOTOR VEHICLES ACT, 1988
& THE CENTRAL MOTOR VEHICLES RULES, 1989- AT A GLANCE**

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Sl. No.	Description of offence	Section/Rule	Maximum of punishment Term of Imprisonment/Fine
1.	Driving without holding an effective driving licence	S.3r/wS. 181 of MV Act	3months or Rs. 500 or both
2.	Driving by an under-aged person (Minor driving vehicle)	S.4r/wS. 181 of MV Act	3months or Rs. 500 or both
3.	Owner or person in-charge of a vehicle permitting an unlicensed person or an under-aged person to drive it (Parents/guardians/ friends permitting minor to drive vehicle)	S.5r/wS. 180 of MV Act	3months or Rs. 1000 or both
4.	Holding of a driving licence permitting it to be used by other person.	S. 6(2)r/wS. 177 of MV.Act	Rs. 100 for first offence
5.	(i) Disqualified person driving a vehicle or (ii) applying for or obtaining a driving licence or (iii) seeking a licence without disclosing endorsements made on driving licence preciously held	S. 23r/wS. 182(1) of MV.Act	3 month or Rs. 500
6.	(i) Disqualified conductor acting as conductor or (ii) applying for or obtaining a conductors licence or (iii) seeking a licence without disclosing endorsements made on licence previously held.	S. 36r/wS. 182 of MV.Act	One month or Rs. 100 or both
7.	Running driving school without a licence	R. 24 C.MV. Rules r/w S. 177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
8.	Driving a vehicle at an excessive speed	S. 112r / wS. 183(1) of MV.Act	Rs.400 for first offence Rs. 1,000 for second or subsequent offence
9.	Any person permitting his employee or a person subject to his control to drive a vehicle at an excessive speed	S. 112r / wS. 183(2) of MV.Act	Rs. 300 for first offence Rs. 500 for second or subsequent offence
10.	Driving or permitting to drive a vehicle carrying excess load	Ss. 113(3), 114,115 r/w S.194(1) of MV Act	Minimum Rs. 2,000 and additional Rs. 1,000 per ton of excess load together with charges for off-loading the excess load

11.	Driver refusing to stop and submit his vehicle to weighing or removing the load prior to weighing	S. 114 r/w S.194(2) of MV Act	Rs. 3,000
12.	Any person driving or permitting to drive and vehicle with a left-hand steering control unless equipped with a device of a prescribed nature	S. 120 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
13.	Driving dangerously / its Abetment	S. 184/S.188 of MV Act	6 months or Rs. 1,000 for first offence or both 2 years or Rs.2,000 for second or subsequent offence within 3 years of previous commission or both
14.	Driving by a drunken person or by a person under influence or drugs / its Abetment	S. 185/S.188 of MV Act	6 months or Rs. 2,000 for first offence or both 2 years or Rs.3,000 for second or subsequent offence within 3 years of previous commission or both
15.	Driving when mentally or physically unfit to drive / its Abetment	S. 186/S.188 of MV Act	Rs. 200 for first offence Rs. 500 for second or subsequent offence
16.	Driving an uninsured vehicle	S. 146 r/w S.196 of MV Act	3 months or Rs. 1,000 or both
17.	Driver's failure to obey traffic sign (Red light jumping, violation of yellow line, changing lane without indication, etc.)	S. 119 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
18.	Driver's failure to obeyscribed signals on prescribed occasions	S. 121 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
19.	Violation of restriction of time on HTVs on specified roads/ areas	S. 115 r/w S.194 of MV Act	Rs. 2,000

Sl. No.	Description of offence	Section/Rule	Maximum of punishment Term of Imprisonment/Fine
20.	Driver allowing any person to obstruct his control of the vehicle (Sitting at a place so as to hamper driving etc.)	S. 125 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
21.	Driver of a two-wheeler / motor cycle carrying more than one person in addition to himself (Triple riding)	S. 128(1) r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
22.	Driver and pillion rider failing to wear protective head gear (Helmet)	S. 129 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
23.	Any person in-charge of a vehicle or a trailer abandoning or permitting to abandon, etc., in a public place (improper and obstructive parking)	S. 122, 127 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence (owner shall also be liable for towing costs)
24.	Any person in-charge of a vehicle carrying or permitting to carry any person on the running board, etc.	S. 123(1) r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
25.	Any person in-charge of a vehicle keeping or permitting to keep a vehicle stationary without the required precautions	S. 126 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
26.	Failure to take precautions at unguarded Railway level crossing	S. 131 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
27.	Failure of driver to stop in certain cases	S. 132 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
28.	Using mobile phone while driving a vehicle	R.21(25) of C.MV. Rules r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence

29.	Carrying persons in excess of seating capacity in goods carriage	R.21(10) of CMV Rules r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
30.	Demanding excess fare by Auto rickshaw / Taxi	R.21(23) of CMV Rules r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
31.	Driving motor vehicle without number plates (Not displaying number plate)	R. 50 of CMV Rules r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
32.	Carrying of explosive and highly inflammable substance in transport vehicle	S. 177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
33.	Any person traveling on the running board or on the top or on the bonnet of a motor vehicle	S. 123(2) r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
34.	Any person keeping a disabled vehicle in any public place so as to cause impediment to the free flow of traffic	S. 201 of MV Act	Rs. 50 per hour besides towing charges
35.	Failure to intimate change of residence or place of business by owner of a vehicle within time prescribed	S. 49 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence (However, State Government may prescribe different amounts having regard to period of delay)
36.	Failure to report to Registering Authority fact of transfer of vehicle within time prescribed	S. 50 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence (However, State Government may prescribe different amounts having regard to period of delay)

37.	Unauthorised alteration in vehicle (Including those facilitating its operation by a different type of fuel)	S. 52 r/w S.191 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence (However, State Government may prescribe different amounts having regard to period of delay)
38.	Driver, in a public place, failing to produce his licence, on demand, to any police officer in uniform	S. 130(1) r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
39.	Conductor, in any public place, failing to produce his licence, on demand, by any officer of the Motor Vehicles Department	S. 130(2) r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
40.	Owner or driver or person in-charge of a motor vehicle, on demand by a registering authority, or any other officer of the Motor Vehicles Department failing to produce (i) the certificate of insurance of the vehicle; and where the vehicle is a transport vehicle (ii) certificate of fitness, and (iii) permit	S. 130(3) r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
41.	Any person driving a motor vehicle in any public place, on demand by a police officer in uniform or officers of Motor Vehicles Department, failing to produce (a) the certificate of insurance; (b) the certificate of registration; (c) the driving licence; and in case of a transport vehicle (d) certificate of fitness, and (e) the permit	S. 158 r/w S.177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
42.	When the driver or conductor of a motor vehicle is accused of any offence under the MV Act, the owner of such vehicle failing, on demand, by a police officer authorized to give information regarding the name and address of and the licence held by the driver or conductor	S. 133 r/w S.187 of MV Act	3 months or Rs.500 for the first offence or both 6 months or Rs. 1,000 for subsequent offence or both

43.	When any person is injured or any property of a third party is damaged in a motor vehicle accident, the driver or person in-charge of the vehicle: (a) not providing medical aid to the victim of the accident. (b) Not giving the information regarding accident, etc., on demand by a police officer or at the nearest police station (c) Not giving the information regarding accident to the insurer	S. 134 r/w S.187 of MV Act	3 months or Rs.500 for the first offence or both 6 months or Rs. 1,000 for subsequent offence or both
44.	Any person driving or owner permitting to drive vehicle without effective registration or displaying false registration marks in any public or in any other place (Using "unregistered vehicle" or displaying "Applied For")	S. 39(1) r/w S.192(1) of MV Act	Upto Rs. 5,000 for first offence but not less than Rs. 2,000 One year or upto Rs. 10,000 for second or subsequent offence but not less than Rs.5,000 or both
45.	Plying a vehicle with registration mark of other State for more than 12 months	S. 47 r/w S. 177 of MV Act	Rs. 100 for first offence Rs. 300 for second or subsequent offence
46.	Any person driving or permitting to drive a vehicle without the necessary permit for the route or area in which or for the purpose for which it is being used	S. 66(1) r/w S.192-A of MV Act	Upto Rs. 5,000 for first offence but not less than Rs. 2,000 Upto one year but not being less than 3 months, upto Rs.10,000 for second or subsequent offence but not less than Rs.5,000
47.	Any manufacturer using sub-standard articles or process	S. 109(3) r/w S.182-A of MV Act	Rs.1,000 for first offence Rs. 5,000 for second or subsequent offence
48.	Any person driving or permitting to drive in any public place a defective motor vehicle or trailer, if such defect results in an accident causing bodily injury or damage to property	S. 190(1) of MV Act	Rs. 250 for first offence. Imprisonment of three month or fine upto Rs. 1000 for 2nd offence.

Sl. No.	Description of offence	Section/Rule	Maximum of punishment Term of Imprisonment/Fine
49.	Any person driving or permitting to drive in any public place any motor vehicle which violates the standards prescribed in relation to road safety, control of noise and air pollution. (Using vehicle with defective or without silencer, etc.)	S. 190(2) of MV Act	Rs.1,000 for first offence Rs. 2,000 for second or subsequent offence
50.	Any person driving or permitting to drive in any public place a motor vehicle which violates the provisions of MV Act or Rules relating to dangerous or hazardous goods	S. 190(3) of MV Act	One year or Rs. 3,000 for first offence or both 3 years or Rs. 5,000 for second or subsequent offence or both
51.	Any importer or dealer selling, delivering or offering to sell or deliver a motor vehicle or trailer in such a condition or altered condition that its use in a public place would contravene Chapter VII of MV Act	S. 191 of MV Act	Rs.500
52.	Any person traveling in a stage carriage without ticket or pass, or not producing ticket or pass on requisition	S. 124 r/w S. 178(1) of MV Act	Rs.500
53.	Conductor of a stage carriage willfully or negligently failing to accept fare or issue ticket or supplied a ticket of a lesser value or Check in Inspector willfully or negligently failing or refusing to check pass or ticket	S. 178(2) of MV Act	Rs.500
54.	Permit holder of contract carriage refusing to ply or to carry passengers: (a) in the case of two-wheelers or three-wheelers (b) in the case of others	S. 178(3) of MV Act	Rs.50 Rs.200
55.	Any person disobeying directions given by any person or authority empowered, or obstruction any person or authority in the discharge of his functions under the MV Act	S. 179(1) of MV Act	Rs.500
56.	Any passenger withholding the required information or giving false information	S. 179(2) of MV Act	One month or Rs. 500 or both
57.	Racing and trials of speed	S. 189 of MV Act	One month or Rs. 500 or both

58.	Any person engaging himself as an agent or canvasser in contravention of S. 93 or Rules made there under	S. 93 r/w S. 193 of MV Act	Rs. 1,000 for first offence 6 months or Rs.2,000 for second or subsequent offence or both
59.	Taking vehicle without authority	S. 197 of MV Act	3 months or Rs. 500 or both
60.	Unauthorized interference with vehicle	S. 198 of MV Act	Rs. 100

1.2. Main Problems, their scope and impact on the society:

Motor vehicle population has grown at a compound annual growth rate (CAGR) of 10 percent 2000-2009, during fuelled by a rising tide of motorization. Concomitantly, traffic risk and exposure have grown. During the year 2010, there were around 5 lakh road accidents, which resulted in deaths of 134,513 people and injured more than 5 lakh persons in India. These numbers translate into 1 road accident every minute and 1 road accident death every four minutes.

India has one of the largest road networks in the world, of 3.314 million kilometres, consisting of National Highways, Expressways, State Highways, Major District Roads, Other District Roads and Village Roads. . The total road length of India is about 12 per cent of the total world road network, but India's percentage in road injury is 5.4 per cent of the world total. About 65 per cent of freight and 86.7 per cent passenger traffic is carried by the roads. Roads are used not only by the motorized transport, but also by the non-motorized transport as well as pedestrians. More than 100,000 Indians are dying every year in road accidents. More than a million are injured or maimed. So far, China topped the list of most number of fatal road accidents and India finished a close second. However, the latest statistics show that while China has managed to decrease its fatalities but there seems to be no change in India.[1]

The chaotic conditions prevailing on Indian roads were best described by Hon'ble Mr. Justice V. R. Krishna Iyer in the case of Rattan Singh v. State of Punjab:[2]

“More people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country.... Parking of heavy vehicles on the wrong side, hurrying past traffic signals on the sly, neglecting to keep to the left of the road, driving vehicles criss-cross, riding scooters without helmets and with whole families on pillions, thoughtless cycling and pedestrian gay walking with lawless ease, suffocating jam-packing of stage carriages and hell-

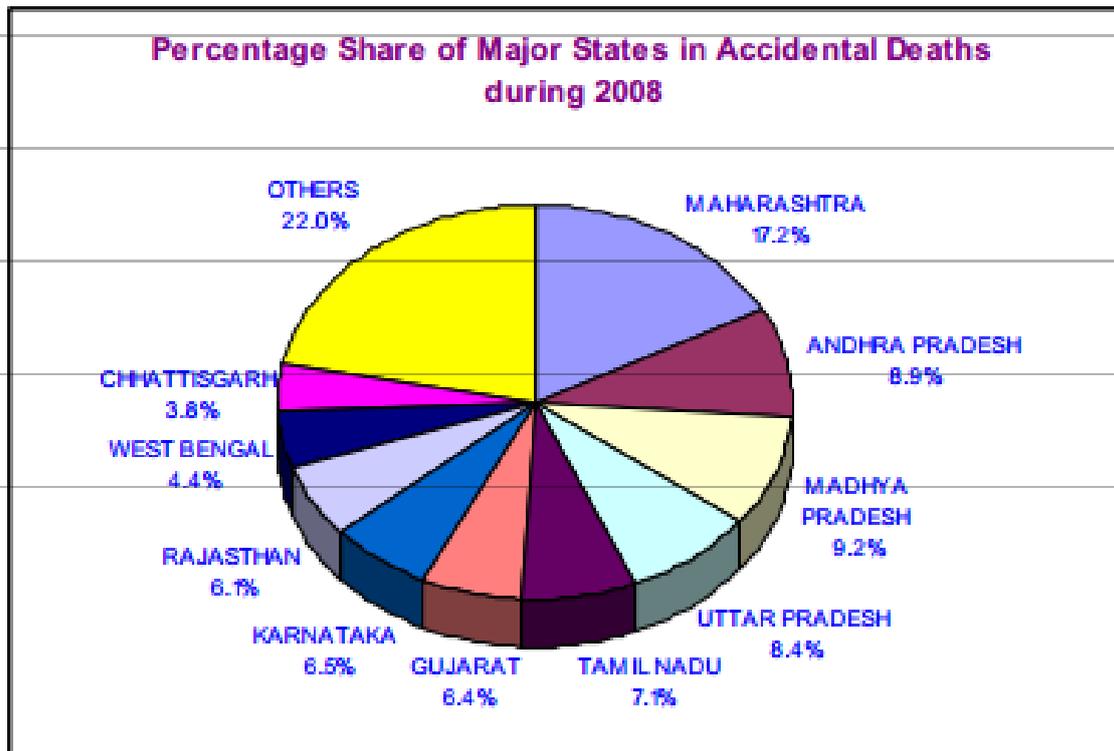
driving of mini-buses, overloading of trucks with perilous projections and, above all, policemen, if any, proving by helpless presence that law is dead in this milieu charged with melee – such is the daily, hourly scene of summons by Death to innocent persons who take to the roads, believing in the bona fides of the traffic laws.”

The fatality rate in India per 10,000 vehicles is 15% to 20% higher than those of developed countries. The economic loss from road accidents has been estimated at 1.5 to 2% of the GDP. According to a Planning Commission study, the socio-economic loss due to road accidents was to the tune of 55,000 crore in 2000-2001. This would translate into a current loss of more than 1 lakh crore. In India, the government is engaged in developing a comprehensive action plan with the goal of reducing road fatalities by 50% by 2020. In reality however, the situation is just getting worse. Strict implementation of existing laws has to be ensured, along with incorporation of road safety in road design, construction and maintenance and widespread dissemination of road safety messages and education of road users. Road users must be made to realise that their own lives depend on sticking to the rules. They must be made aware that helping accident victims can save lives. More importantly, they must know that if they help an accident victim they stand no risk of harassment by the authorities. The Supreme Court has clarified that no one rushing an accident victim to hospital would be harassed by the police. Nor could a hospital refuse to admit such a victim. Unfortunately, this ruling is not widely known and road accident victims often lie unattended. Addressing road safety in a comprehensive manner calls for the involvement of multiple sectors like health, education, transport and highways, and the police. The scale of the task, in physical and financial terms, is such that it calls for the active participation and contribution of the private sector.

Incidence and Rate of Accidental Deaths during the Decade (1998-2008) [3]

The incidence of accidental deaths has shown a mixed trend during the decade 1998-2008 with an increase of 32.5% in the year 2008 as compared to 1998. The population growth during the corresponding period was 18.8% whereas the increase in the rate of accidental deaths during the same period was 11.6%. A total of 3,42,309 accidental deaths were reported in the country during 2008 showing an increase of 0.4% as compared to previous year. Correspondingly, 1.4% increase in the population and 1.0% decrease in the rate of Accidental Deaths were reported during this year as compared to previous year.

Maharashtra has reported 58,755 accidental deaths out of 3,42,309 such deaths in the country during the year and remained at the top with nearly one fifth (17.2%) of total accidental deaths reported in the country. Uttar Pradesh, the most populous State in the country with population share of 16.6%, on the other hand, has accounted for 8.4% of accidental deaths and stood at 4th position after Maharashtra (17.2%), Madhya Pradesh (9.2%) and Andhra Pradesh (8.9%). The States of Tamil Nadu (7.1%), Karnataka (6.5%), Gujarat (6.4%) and Rajasthan (6.1%) have also reported significant shares of deaths due to accidents during 2008. 'Accidental Deaths' was highest in Pune (100.2) followed by Meerut (92.4) as compared to average rate for the cities (43.5). Mumbai's share (18.5%) of accidental deaths among cities was marginally higher than that of Maharashtra (17.2%) at the national level.



*source-National crime records bureau- Accidental deaths in India

Some alarming statistics for India: [4]

- In India, 1,20,000 people die and 12,70,000 sustain serious injuries every year in Road Traffic Accidents.
- As per the statistics, there is one death on the Indian road every six minutes and this is expected to escalate to one death every three minutes by 2020
- Even this may be an underestimation, as according to the Institute of Road Traffic Education (2006) Institute of road education, New Delhi, out of the estimated 1.4 million serious road accidents/ collisions occurring annually in India, hardly 0.4 million are recorded. Many road traffic deaths in rural areas are

not recorded. Similarly, accidents which result in late deaths after the discharge from hospital due to the effects of morbidity also are not recorded. (Indian Journal of Neurotrauma (IJNT) 2008, Vol. 5, No. 2, pp. 63-67)

- India accounts for about 10% of road accident fatalities worldwide
- Although India accounts for only 1% of the registered motor vehicles, it accounts for nearly 9 % of RTA deaths.

Table 2 Vehicle sales in India

Year	Motorised two-wheelers	Three-wheelers	Cars	Commercial vehicles	Total
1997	2,885,004 (79)	216,729 (06)	396,450 (11)	169,937 (5)	3,668,120 (100)
2007	7,416,191 (78)	380,663 (04)	1,273,893 (13)	479,593 (5)	9,550,340 (100)
Growth/year (%)	10	6	12	11	10

Source: Society of Indian Automobile Manufacturers, Delhi

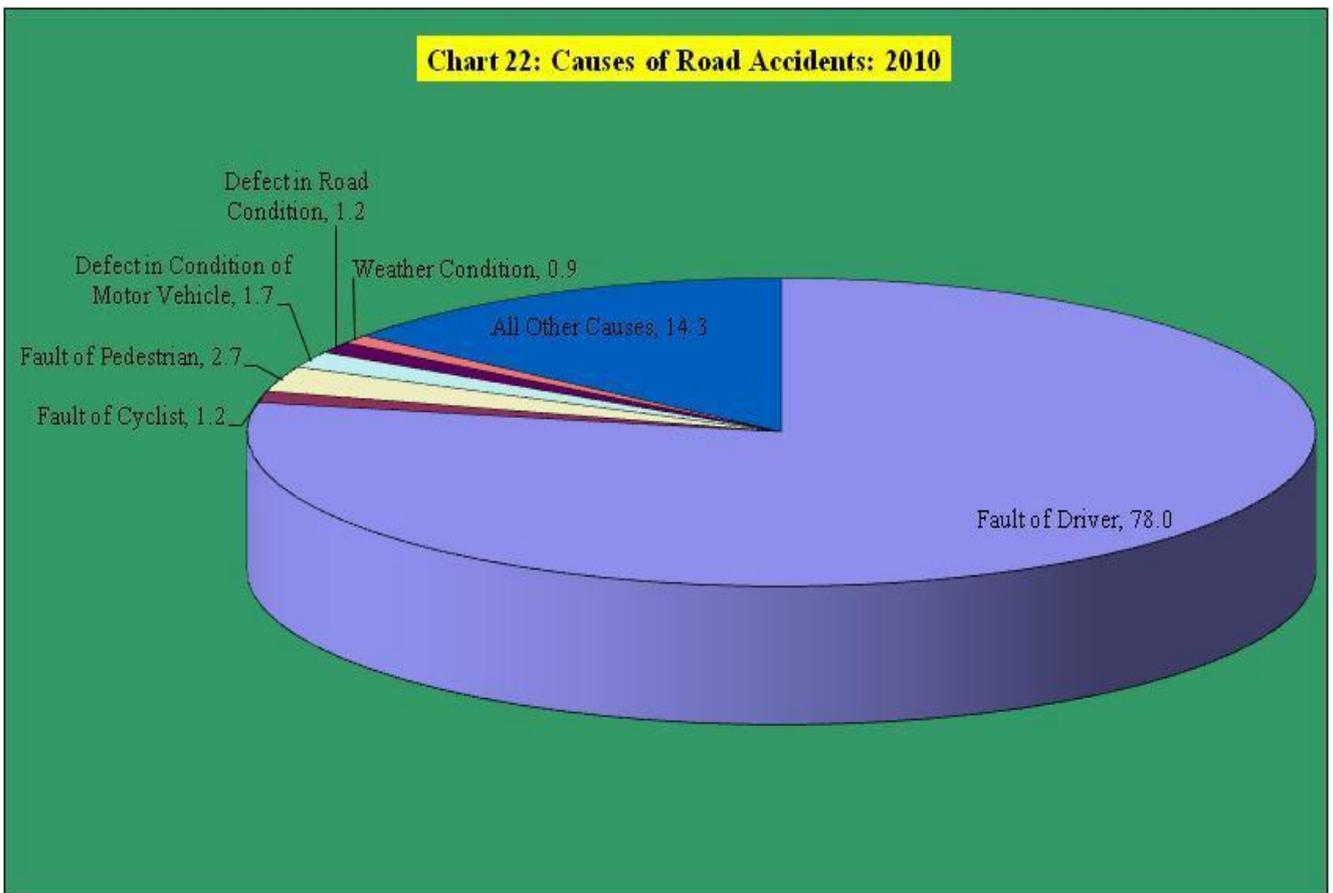
- According to the experts at the National Transportation Planning and Research Centre (NTPRC) the number of road accidents in India is 3 times higher than that prevailing in developed countries.
- The number of accidents for 1000 vehicles in India is as high as 35 while the figure ranges from 4 to 10 in developed countries
- World Health Organization has revealed in its first ever Global Status Report on Road Safety (2009) that more people die in road accidents in India than anywhere else in the world, including the more populous China.
- 85 % of the victims of these fatalities are men in the age group 20-50 years. Majority of these men are the bread- winners for their families.
- Accident fatalities and serious injuries place a huge strain on the economic and social fabric of the family and the society at large. The larger ramifications of

this include children dropping out from the school for employment and elderly being forced to work.

Causes of road accidents

Causes of road accidents can be broadly subdivided into the following three categories:-

1. Driver related
2. Vehicle related
3. Road related



*Source- Ministry of road transport and highway report on “road accidents in India 2010”

Some causative factors of road accidents are:-

- Rapid motorization

- Over speeding
- Alcohol
- Drugs
- Driver's fault
- Use of mobile phones
- Inadequate visibility
- Lack of road audit
- Non use of protective headgear by two wheeler users
- Non use of seat belts
- Young drivers
- Vehicle defects

Driver's fault is the single most important factor responsible for accidents, fatalities and injuries. Driver's fault accounted for 78% of the total accidents. Fault of cyclists and pedestrians were marginal. Within the category of driver's fault, accidents caused due to exceeding lawful speed accounted for 58% of the accidents. Intake of alcohol or drugs by drivers resulted in 27,152 accidents and 9,307 fatalities. [5]

How can we overcome the Problem? [6]

- Global status report on road safety (2009) published by WHO compiled data from 178 countries. The report shows that developed nations have been able to significantly reduce the number of accidental deaths in the past decade. This has been mainly achieved by proactive measures from the Government and strict enforcement of laws. In any country, where the Government is a simple bystander to the problem, no improvement has been possible.

- The report shows that although basic laws for road safety exist in India, their enforcement is extremely weak. India occupies 86th rank in healthcare spending among the nations with the government spending just 6.1% of GDP on healthcare. Hence it is imperative on the part of the government to take measures to increase safety on Indian roads.

What we expect from the Government? [7]

- It is obvious that road traffic accidents are evolving into a biggest threat for human survival in India. At present the death on the roads account for twice more than the death in India by the combination of all serious diseases like HIV, Malaria, Cholera etc all put together. For example, the deaths due to Malaria every year in India is only around 15,000. It is time we wake up to this fact.
- A developing country like India can scarcely afford the financial and social burden of road traffic accidents of this proportion
- A person who does not follow road rules often kills or disables another innocent person on the road. Many law-abiding citizens are killed for no fault of theirs. It is the Government's responsibility to safeguard its citizens and make our roads safer for them.
- If a drunken person kills another person, it is considered murder but if a drunken driver kills a whole family on the road due to negligent driving, he can get away with a minimal fine. This is a serious lapse of law in our country. We all know how easy it is to get a driving license in India. We also know how easy it is to escape after a road offence in India. RTO Offices are traditionally considered to be one of the biggest centres of corruption and bribe in India.

Road traffic enforcement should develop a culture of responsible road use which demonstrates concern and respect for other road users. Enforcement should lead to a smooth flow of road traffic without compromising on safety, saving of time, protection of environment and fuel conservation. Effective enforcement is one where the behaviour of the road user is within the defined legal, engineering and ethical framework - where the right of way is truly respected. It is not about the

quantity of fines collected but how fines and other punitive measures reduce traffic violations leading to a positive road culture. Enforcement of road traffic in India is a unique challenge primarily because the subject has not been adequately defined or deliberated upon. The major challenges are:[8]

- Mixed traffic conditions: there are a variety of modes of transport being used
- The Motor Vehicles Act defines the responsibility of motorized vehicles only, leaving out the non-motorized user in the absence of a Road Traffic Act;
- Enforcement is not linked to engineering, driver training or road education;
- The role and responsibility of enforcers are not defined, nor are they adequately trained;
- Enforcement agencies do not work in coordination;
- Tools and systems of training are lacking;
- Enforcers are willing to compromise;
- Lack of political will;
- Absence of driver training and negligent driver-testing;
- Poor road awareness;
- No standardization of traffic control devices;
- Absence of traffic engineering as a science;
- Unprecedented growth of motorized/ non-motorized vehicles in the absence of a basic public transport system;
- Accident investigation - no qualitative information of causes and consequences of crashes- without which remedial measures are only hypothetical;
- Without scientific investigation, punitive measures are enforced arbitrarily.
- Enforcement in rural areas or on the highways hardly exists, whereas in the urban metropolitan areas it is treated as a means of revenue collection

- Vehicle maintenance is a neglected area and vehicle safety enforcement is almost non-existent;
- Right of way is not defined by the road maker, road maintainer, or the road user; enforcers are also ignorant, and
- Road encroachments are common and parking management is neglected.

Measures to prevent the problem of road accidents [8]

Preventive methods:

- (1) Control and direct the non motorized traffic to ensure their safe movement;
- (2) Guide and help the road users unfamiliar with the specific rules and regulations;
- (3) Make sure that pedestrians/cyclists use such facilities like pedestrian crossings, subways etc. and that they do not become potential hazards to safety;
- (4) Help the disabled road users without compromising their safety, and
- (5) Ensure the provision of standardized control devices.

Persuasive methods:

- (1) Issuing verbal warnings for offences;
- (2) Use methods like deflating tyres of bikes/rickshaws of those who violate basic safety laws;
- (3) Holding the erring road users in custody for a short duration. Police training schools, colleges and academies must have a planned curriculum on all aspects of traffic management. Before being posted with the traffic police, all police personnel must undergo specialized training.

Compensation to road accident victims [9]

In *Polavarapu Somarajyam v. A.P.S.R.T.C*, the question arose as to what was the meaning of the word 'compensation' in the context of the claims in question. A distinction was being drawn between the scope and ambit of the words damage and compensation. The word compensation was interpreted to have a larger scope. The learned judges of the Supreme court have made every effort to explain the meaning of

the word ‘compensation’ from time to time. In *State of Gujarat v. Shantilal*, they observed, “The word ‘compensation’ means anything given to make things convenient things equivalent, things given to or make amends for loss, recompense, remuneration or pay.”

In *Corpus Juris Secundum*, the meaning of the word ‘compensation’ with reference to the injury or loss has been defined “In the sense of an act, the word has been defined as meaning an act which court orders to be done or money which a court orders to be paid by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person demnified may receive equal value for his loss, or be made whole in respect of his injury; giving back an equivalent in either money, which is but the measure of value or in actual value otherwise conferred in demnification, making amends, payment of damages, or rendering any equivalent in value of amount, a recompense or reward for some loss, injury, or services, especially when it is given by the statute that return which is for something else. More specifically with reference to injury or loss, ‘compensation’ has been defined as meaning amends an equivalent given to property taken or for an injury done to another or an equivalent in money or loss sustained. In *M. Ayyapan v. Maktar Singh*, the learned judges of the Mysore High court stated “Thus, it is clear that ‘compensation’ is a more comprehensive term and the claim for compensation includes a claim for damages and hence, the petitioners could have put forward their suit claim before the Motor Accidents Tribunal.”

The word damages mean the pecuniary compensation recoverable by a person, who has sustained an injury through the wrongful act or omission of another. The word compensation is used in relation to a wrongful act which caused the injury. The word compensation is not ordinarily used as an equivalent for damages. But it goes without saying that the words damages and compensation have a very close relationship. If we go through the Motor Vehicles Act , Fatal Accidents Act and Workmen’s compensation Act, the word ‘compensation’ and not damages is found. This clearly shows that though the words compensation and damages are inter-related, there is a distinction between the two. In *Shrimati Amarjit Kaur v. M/s Vanguard Insurance Co. Ltd*, the court held that the Act speaks of an application being moved for the grant of compensation arising out of an accident and thus the Act does not speak of damages.

Object of Compensation [9]

The object of providing compensation to the victims of road accidents and their legal representatives/ dependants is to mitigate the hardship that has been caused to them, in view of the accident, fatal or otherwise. Highlighting the purpose of an award for damages under the Fatal Accidents Act, Lord Diplock in his speech in *Mallet v. Mc Mongole*, said: “The purpose of an award for damages under the Fatal Accidents Act is to provide the widow and others with prudent management will be sufficient to supply them with material benefits of the same standards and duration as would have been provided for them out of earnings if the deceased had not been killed by the torturous act of the defendant, credit being given for the value of any material benefits which will accrue to them as a result of death.”

The compensation to victims, their dependants and their legal representatives has to be granted through various social legislations eg the Motor Vehicles Act, the Workmen’s Compensation Act, Payment of wages Act and the Factories Act. And if the social legislation has any meaning in the welfare state, the compensation shall be granted expeditiously and at the doorsteps of the victims, without any discrimination between poor and rich. But the reality is that the state and public sector undertakings contest these cases vehemently and try to defeat the very purpose of the social legislation by raising frivolous and technical objections and drag on compensation cases for a number of years with the result that the poor victims and their dependants fade away unknown, unheard and unsung. The courts have, in a number of judgements, shown their serious concern on this pitiable condition, when the public sector undertakings try to raise technical objections simply to harass the poor victims who are in all respects unequal to such undertakings. The compensation in cases of vehicles under the Motor vehicles Act, Fatal Accidents Act and other relevant related laws belong to the branch of social welfare legislation which is based on the consideration that the society under the constitution wedded to socialism or social justice is bound to provide for victims of the accidents and their dependants. It is primarily the duty of the State to take care of them and it is surprising and shocking that a public undertaking like a corporation which is also to some extent funded by the State, contests such claims.

In *New India Insurance Co. V. Zor Kanwar*, the hon'ble court expressed its shock and surprise at the difference in approach to human life by the state, violating equality of law and equal protection of law clause. The court observed: "By contesting even bonafide and genuine claim of the dependants of the deceased who are overwhelmed with grief and misery and also spends a good deal of time, energy and money which can be avoided. This also shakes the utility of insurance...." The court held in an earlier judgement that when airlines and railways give compensation of Rs 1 lakh and Rs 50000 (now enhanced to Rs 5 lakh to 2 lakh respectively) for loss of human life by pure accidents, the scale of compensation is very meagre under the Workmen's compensation Act and other laws." "The life of a truck driver who dies in harness is in no way less valuable than a person going for a pleasure trip to enjoy a honeymoon in Kashmir in an aeroplane or train.."

Heads of Damages [9]

The damages under Motor Vehicles Act are granted under two heads:

1. **Non pecuniary (General damages)-** damages are awarded for non pecuniary losses such as mental and physical distress including pain and suffering, shock, loss of amenities of life, loss of expectation of life, disfigurement discomfort, inconvenience etc. Damages are also awarded for pecuniary losses such as loss of earning capacity, other specific harm relating to property or business and reasonable expenses for employing attendants and other expenses. Cases relating to injuries have been classified into four categories
 - a. Total wrecks
 - b. Partial wrecks
 - c. Where limbs and eyes and other specific parts of the body are lost
 - d. Smaller injuries which cannot be specifically grouped but for which compensation can be assessed by comparison with injuries of loss of limbs e.g. comparing permanent wrist injury with loss of hand or comparing temporary broken arm with loss of arm

In the case of DTC v. Lalita, the accident occurred on 6-12-1961 to a young girl aged 8 years and she was permanently crippled due to a fracture in her right femur, right leg, right humerus, right scapula and became totally dependant on others. After an exhaustive discussion of the law, Rs 50,000 was awarded towards pain and suffering and loss of amenities of life. In another case, A.S. Rajarav. Joitaram Rawabai Patel, the accident occurred on 7.9.1977. the claimants abdomen was crushed, urethra ruptured, there was fracture of hip joints and pelvis and skin grafting was done. The person was 26 years of age. It was treated as a case of extraordinary damages and a figure of 75,000 was awarded towards pain and suffering and loss of amenities. In yet another case, National Insurance Co. Ltd v. Ramanbai Bhoii, where the accident took place on 10.9.1977 and a boy 15 years of age fractured his pelvis and ruptured his urethra and the natural passage was closed and a catheter was put for life, the court awarded 75,000 towards pain and suffering and loss of amenities.

2. **Pecuniary damages (Special damages)**- these losses have to be estimated not only on the basis of what the plaintiff has lost in the past and future on account of the injury, but also the extra expenses incurred or to be incurred i.e. the past and future which the victim has come to bear on account of the disability. Under the head of other expenses some items such as medical expenses, conveyance, special diet etc are also covered. The future loss in earnings or medical expenses may either go up or go down. The court has to estimate the future losses by considering various important and rational factors. In Bhagwandas v. Mohd Arif, the court held that the future and past loss of earnings have to be estimated on a full compensation basis. Loss of future net earnings are to be arrived at by computing the difference between
 - a. What would have been earned if there had been no injury
 - b. What if at all will be earned after the injury
 - c. Duration of disability

The condition of motor accident victims before 1956 was pitiable, shocking and horrifying. First of all, such victims who could hardly make both ends meet, had no money whatsoever for knocking at the doors of justice by filing cases in the courts of

law. Secondly, in case somehow or the other, they could manage to reach the doors of justice by way of filing cases in the courts of law, they were in no way a match against their adversaries, who could engage a battery of lawyers to defend their totally unjustified cases and drag the claimants for years together by raising untenable pleas. So, Article 39-A and Article 14 of the constitution of India had no worth for such cases. In the case of Bishan Devi v. Sirbaksh Singh, the observations of the Supreme Court were an eye opener for all including the law makers of the country. In this case, a claim by a widow for compensation for the death of her husband who had been run over by a truck, the Supreme court observed that the case had brought out all defects in the present law under the Motor Vehicles Act.

- a. The law as it stands today requires the claimant of compensation to prove that the driver of the vehicle was guilty of rash and negligent driving. This becomes impossible, as records of police investigation are not made available to the Accident Claims Tribunal and officers who give evidence are seldom available to give evidence.
- b. The company which has insured the vehicle and hence is liable to pay the compensation raises untenable pleas and drag the claimants for years.
- c. The Supreme Court observed that the principle of “no fault liability” must be incorporated in the law against the insurers and owners of vehicles. The dependants of victims can then claim an absolute minimum compensation without having to prove rash and negligent driving on the part of the driver.

Who may apply for compensation [10]

An application for compensation may be made:-

- a. By the person who has sustained the injury
- b. By the owner of the property
- c. Where the death has resulted from accident, by all or any of the representatives of the deceased

- d. By an agent duly authorized by the person injured or any of the legal representatives of the deceased, as the case may be

In any case, the claimant can succeed only by proving that the injury or the death was due to the tortuous act on the part of the owner of the vehicle either directly or vicariously.

1.3 Goals and Objectives:

- To study, research and analyze the efficacy of law as a tool to provide relief to accident victims including a special study of the Motor Accident Act/ Rules in India
- To identify gaps existing in the present Motor vehicles Act/ Rules and their implementation which prevent the legal and judicial framework to be victim friendly
- To make appropriate legal and judicial framework to bridge these gaps
- Research on the duties of an investigating officer(POLICE) when a complaint of road accident is received
- Research on duties of a medical officer when an accident victim is brought in for treatment
- Research on duties of legal counsel of an accident victim
- Research on duties of Insurance company from whom claim is sought by an accident victim
- Procedure to be followed by the Motor Accident Claims Tribunal

- To study and enumerate best practices followed by three developed nations for giving just relief to road accident victims.

2. Methodology: In conducting the research, I have utilized the following research methodologies:-

2.1. Literature Survey- I have gone through a number of research papers, reports of the Ministry of Road Transport and Highways, reports of the Law Commission of India and the Report on World Traffic Injury Prevention.

2.2. Surveys- I haven't conducted a survey as of now, but I intend to conduct a "School Bus Survey" and a "Share your experience" survey to know more about motor vehicular accident in India.

2.3. Meeting with mentor- I haven't had the opportunity to meet my mentor personally but I have contacted her through telephonic conversation and through the exchange of e-mails.

Legal procedure for road accident victims

All Motor Vehicle accidents where any person is injured or any property is damaged, the driver of the vehicle or other person in charge of the vehicle should report about the occurrence of the accident at the nearest Police Station as soon as possible and in any case within 24 hours of the occurrence.



It is the duty of the drivers of the vehicle involved in an accident to take all reasonable steps to secure medical attention for the injured persons.



It is the duty of all the Registered Medical Practitioners to give medical assistance to any injured person involved in a road accident brought to him or her by any Police personnel or citizen.



The police Officer who first arrives on the scene of an accident should render such first aid as possible in respect of the injured person in the road accident and take immediate necessary steps to procure medical aid or send the injured person without loss of time to the nearest hospital or any registered medical practitioner for treatment.



In case of accidents, property on the person of the injured / deceased should be handed over to the blood relatives or the acquaintance of the deceased who establishes his proper identity by the Police Officer under proper acknowledgement.



The victim of road accident shall lodge a first information report at the nearest police station giving details of the accident and how it occurred.



In all cases of road accidents, apart from a free copy of FIR as in all other, cases, the complainant is entitled free of cost the following information in the prescribed Performa Name of the Police Station, FIR Number, Name of the accused; Name of the victim; Date and time of occurrence; place of occurrence; Registration Number, model and type of vehicle involved; Driver's name and address; Driving License particulars; Owner's name and address; Name of Insurance Company with which the vehicle is insured; and Name of the dependents in case of death of the victim. A field copy in prescribed Performa is also sent to the district motor accident claim tribunal which decides about the compensation to be paid in the case.



The complainant or victim of a road accident or his or her representative can obtain the copies of the following documents from the Investigating Officer;

- i) Inquest Report (In case of death)
- ii) Rough Sketch of the spot;
- iii) Report of inspector of Motor Vehicles ;
- iv) Final report of the investigation ;
- v) Post Mortem Report in case of death ;
- vi) Inquest proceedings ;
- vii) Wound Certificate .



The Police Officer can detain the vehicle involved in an accident till it is subjected to inspection by the motor Vehicles Inspector. If the vehicle is seized by the Police Officer for the purpose of inspection, the vehicle should be got released through Court after obtaining an Indemnity Bond.



Application for the claim can be made either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claim Tribunal within the local

limits where the claimant or defendant resides. The Claims Tribunal have all the powers of a Civil Court.



The investigating officer of police then investigates into the accident to determine the cause of the accident.



The report of this investigation is then submitted to the Claims Tribunal which then decides on the compensation to be awarded in each case



Also depending on the nature of the offence committed by the offender, the concerned court shall give punishment according to the punishment prescribed in the Motor Vehicles Act 1988

Investigation of accident by concerned police officer

A reckless driver may harm any number of people depending upon the size of the incident. An aggressive driver can cause great havoc at any moment and the results can be unpredictable. The role of Police in road safety is inevitable because strict enforcement and surveillance combined with strong awareness campaign will only change the aggressive driving behaviour. In order to strengthen the role of Police in Road Safety, it will be worth developing some concrete plans and strategies on the following points:

1. Improvement of Resource Management
2. Institutional Strengthening Action Plans at various level
3. Strict Traffic Enforcement and Surveillance
4. Introduction of Scientific Accident Investigation Methods such as: Forensic Engineering and Accident Reconstruction etc.
5. Effective Accident Data Collection and Management System

6. Effective Crash Recovery and Emergency Management System
7. Specialized Training in Road Safety and Emergency Management to be included as a special subject in Police Training Curriculum
8. Legal Support for the Crash Victims
9. Road Safety Research
10. Provision for Road safety Campaigns and Publicity Programmes

Any citizen who has knowledge of preparation or commission of any crime or who has any complaint to make can approach the Police Station and give such information available with him or her. When such information is furnished to the police, it shall be reduced in writing in the form of First Information Report and a copy of the same shall be given forthwith to complainant who gave the information leading to the registration of FIR free of cost. According to the Code of Criminal Procedure, any officer and above of the rank of Head constable can function as the Station House Officer in-charge of the Police Station in the absence of Police Sub-Inspector, the senior most Asst Sub-Inspector present at the Police Station or the senior most Head constable present functions as the Station House Officer. If the complainant is not satisfied by the refusal of the Police to register a case on his or her complaint, he or she can approach the court and if directed by the court in writing, the concerned Police Officer shall register the case and investigate as per orders of the court. If the Officer incharge is satisfied that there are no sufficient grounds to investigate the case, he can record his reason in the F.I.R. and inform the complainant to that effect and send a copy of the F.I.R. to the Court and also issue an endorsement to the complainant to this effect. After completion of investigation the investigating, officer should send written information under acknowledgement to the complainant informing him of the exact nature of the final report of the investigation in the case. A Police Officer investigating the case has the power to secure the attendance of any person who appears to be acquainted with the facts and circumstances of the case and examine such person. No woman or male person under the age of 15 years shall be required to attend at any place other than the

place in which such male person or woman resides. A Police officer may without an order from a Magistrate and without warrant, arrest any person under section 41 & 42 of the Cr. P.C.

For the purpose of road accident investigation, the following steps have to be taken at every police station after the filing of First Information Report by the complainant:-

1. Registers to be maintained at police station level indicating the details such as FIR Number, date of dispatch of Form 54 to the learned MACT, etc. A column containing details of information not included in Form 54 along with reasons for its non availability shall also be maintained in the register.
2. Delivery of FIR to the Claims Tribunals on the date of registration.
3. Entries in red ink in FIR index about date of dispatch of Accident Information Report.
4. Checking of AIR (Form 54) dispatch records mandatorily during six monthly inspections by Gazetted Officer.
5. SHOs shall forward final reports to the Magistrate only on production of dispatch of AIR (Form 54) to the learned MACT, owner and insurer of the offending vehicle and the victim/his or her family.
6. MACT Monitoring Cell headed by Inspector to be set up in each District to monitor delivery of AIR (Form 54) in time.
7. Monthly meeting of Additional commissioner of police and In-charge of MACT Monitoring Cells with the Claims Tribunals.
8. Appointment of Naib Court (a police officer) by District Commissioner of Police with the Claims Tribunals.
9. Placement of AIR (Form 54) on the website so that it can be downloaded by the Claims Tribunals, Insurance Companies and claimants.
10. The Accident Information Report (Form 54) should be

submitted with the concerned Motor Vehicles Tribunal within 30 days of the registration of FIR of accident. The Accident Information Report shall contain the following additional information:-

- a. In case of death: Names and address of the next of kin of the deceased.
 - b. In case of injury: Nature of injuries suffered, Names and addresses of the eye-witnesses.
 - c. In case of transport vehicles:
 - (i) Particulars of the permit.
 - (ii) Particulars of the fitness certificate.
11. The Accident Information Report shall be accompanied by the attested copies of the FIR, site plan, photographs, registration cover, driving licence, insurance policy, permit and fitness certificate of the offending vehicle. Post -mortem report shall be submitted as soon as it is received. If any of the aforesaid information or document is not available at the time of submitting the AIR, the same may be submitted as soon as the same is received.
12. Simultaneously upon filing of AIR by the SHO with the Claims Tribunal, the copy of the AIR be furnished to the Insurance Company along with the aforesaid documents.

Section 166 (4) of the Motor Vehicles Act was also incorporated in 1994 and it provides that the Claims Tribunal shall treat the Accident Information Report (AIR) under Section 158(6) as a claim petition. The object of Section 166(4) of the Motor Vehicles Act is that poor and helpless victims of the road accident may be ignorant of their rights and, therefore, the cognizance of the claim for compensation be taken by the Claims Tribunal directly on the basis of the Accident Information Report of the police without the requirement of a separate claim petition to be filed by the claimant.

However, this provision was not being enforced properly as the police in most cases was unable not filing the Accident Information Report with the Claims Tribunal. With the undertaking of the police and the directions of the High Court to the police to strictly enforce Section 158(6) of the Motor Vehicles Act, the Delhi High Court gave

following directions to the Motor Accident Claim Tribunals for enforcement of Section 166(4) of the Motor Vehicles Act:-

1. Maintenance of a register for recording of the FIR which shall be received daily from the police stations. The Accident Information Report and private claim petition filed in respect of an FIR be marked in this register.
2. Maintenance of a separate institution register for registering the AIR as miscellaneous application.
3. Listing of AIR on the judicial side and issuance of notice to the claimant, owner, driver and Insurance Company.
4. Notice to the claimant, owner and driver be served through the Investigating Officer.
5. Notice of Insurance Company be served through the nominated counsel of each company.
6. AIR be listed as a separate category in the cause list as miscellaneous application.
7. After appearance of the claimant, the AIR be registered as a claim petition.
8. If the claimant has filed a separate claim petition, the AIR be tagged with the claim petition.

Duties of medical officer when accident victim is brought to hospital

Post Crash Management is the area where the Health Department has a major role to play. One of the most common causes of a road accident fatality is the casualty suffering from anoxia - loss of oxygen supply caused by a blocked airway. On average, it takes less than four minutes for a blocked airway to cause death. There will always be a delay between the time an accident occurs and the arrival of the emergency services. Almost in all traffic accident cases, the nearby taxi and auto drivers are the ones who come for the immediate rescue. Therefore, if they are given proper training in first aid and handling of accident victims; rescue operations and response time can be improved

with great results. Very simple first aid skills can be learnt in as little as 10 minutes, skills which could possibly save lives and lessen the severity of injuries received.

An important question that arose in a number of cases was whether doctors can insist and wait for money when death is knocking the doors of the patient. The obvious answer is recovery of fee can wait but not the death nor the treatment for trying to save the life.

Though a physician is not bound to treat each and every one asking his services except in emergencies for the sake of humanity and the noble traditions of the profession, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he incurs in the discharge of his ministrations, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention.

Every injured citizen brought for medical treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. There is no legal impediment for a medical professional when he is called upon or requested to attend to an injured person needing his medical assistance immediately. The effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with that matter or who happens to notice such an incident or a situation”

There are no provisions in the Indian Penal Code, Criminal Procedure Code, Motor Vehicles Act, which prevents doctors from promptly attending to serious injured persons and accident cases before arrival of the police and their taking into cognizance of such cases, preparation of FIR and other formalities by Police.

Duties of legal counsel of accident victim

Collisions can and do happen. If a driver’s negligence or carelessness leads to the injury or death of another party, that driver must be held accountable. Injuries suffered by victims of motor vehicle collisions can have a devastating and lasting impact upon their

lives and the lives of their families and hence lawyers play a very important role in delivering justice to such people who have been victims of motor vehicle accidents.

Accident investigation requires an immediate investigative response to collect and preserve evidence and to identify and interview witnesses. Car accident litigation is a unique and complex area of personal injury law. A person or family injured as a result of an accident involving a car or other vehicle needs to be represented by a lawyer knowledgeable and experienced in vehicle accident litigation. It is extremely important that an experienced lawyer deal with insurance companies and ensure maximum compensation for loss caused due to accidents.

Duties of insurance companies

With the increase in the use of motor vehicles as a means of private and public transport on road, and its potentiality to endanger life and property, a complex form of insurance known as motor vehicle insurance evolved. Initially, motor vehicle insurance was a kind of property insurance for the purpose of indemnifying the owner of the vehicle against the loss or damage to it and its accessories through accident. Then arose the necessity of relief against the personal injuries to the owner of the vehicle against loss of three kinds:

- a. Against loss or damage to the vehicle and its accessories
- b. Against personal injury to the owner
- c. Against loss arising from liability for death or injury caused to third parties or for damage to their property

At the very threshold, the true nature of contract of insurance deserves highlighting. In this aspect, the concept of indemnity deserves special mention. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a contract of indemnity. A plain reading of Sec 149 of the Motor Vehicles Act 1988 would indicate that the pre condition for liability of the insurer arises when a judgement or award is obtained against the insured person who has taken up the policy of insurance. It is then and then alone that the insurer is obliged to pay the amount due under such award. When read with Sec 146 and 147, it would appear that the patent intent of the legislature was to

compel insurance against third party risk in cases of motor vehicles and in order to avoid the multiplicity of proceedings it was made possible to execute the judgement against the insurer directly as if he were the judgement debtor for the satisfaction of the claim against the insured. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured, any liability arising on account of third party risk will have to be borne by the owner of the vehicle. The question arises as to why then the legislature has insisted upon a person using a motor vehicle in a public place to insure against third party risk by enacting Sec 146? This provision has been inserted to protect the members of the community travelling in vehicles and using roads from the risk attendant upon the user of motor vehicles on roads.

The Insurance Companies have not been settling the claims of the victims of the road accident on the ground that they have no notice/intimation of the road accident until the receipt of the notice from the Claims Tribunal. With the enforcement of Section 158(6) of the Motor Vehicles Act, the SHO of the Police Station is serving the copy of the Accident Information Report along with all the relevant documents on the Insurance Company at the time of filing of the Accident Information Report with the Claims Tribunal. The Insurance Companies now have sufficient notice of the claim and they can verify the same and settle the claim.

The Insurance companies have been directed to investigate the claim upon receipt of the AIR in terms of their Third Party Claim Procedure Manual and to submit their reply along with the copy of the investigation report and the computation of compensation according to them before the Claims Tribunals within 60 days. In order to streamline the system, it is now directed that henceforth immediately upon receipt of intimation of the claim, the Insurance Companies shall first appoint a competent designated officer who shall be responsible for processing and taking a decision in respect of that claim and the name of such officer shall be disclosed in the reply/written statement to be filed before the Claims Tribunal. The designated officer so appointed shall appoint an Investigator and after receipt of report of the Investigator, the designated officer shall take the reasoned decision in writing as to the amount payable to the claimants in accordance with law. The decision of the designated officer on the claim shall be filed along with

the reply/written statement before the Claims Tribunal. If the learned Tribunal comes to the conclusion at the time of deciding the claim that the designated officer had delayed or defeated the claim, appropriate order shall be passed by the learned Tribunal in respect of the designated officer at the time of passing the award.

Best practices followed by other countries with respect to prevention of motor vehicular accidents [11]

1. SWEDEN: VISION ZERO

Vision Zero is a traffic safety policy, developed in Sweden in the late 1990s and based on four elements: ethics, responsibility, a philosophy of safety, and creating mechanisms for change. The Swedish parliament voted in October 1997 to adopt this policy and since then several other countries have followed suit.

Ethics

Human life and health are paramount. According to Vision Zero, life and health should not be allowed in the long run to be traded off against the benefits of the road transport system, such as mobility. Mobility and accessibility are therefore functions of the inherent safety of the system, not vice versa as it is generally today and also prevalent in India.

Responsibility

Until recently, responsibility for crashes and injuries was placed principally on the individual road user. In Vision Zero, responsibility is shared between the providers of the system and the road users. The system designers and enforcers – such as those providing the road infrastructure, the car-making industry and the police – are responsible for the functioning of the system. At the same time, the road user is responsible for following basic rules, such as obeying speed limits and not driving while under the influence of alcohol. If the road users fail to follow such rules, the responsibility falls on the system designers to redesign the system, including rules and regulations. Such a system would be extremely beneficial in India where road users flout rules and law enforcers fail to perform their function. A combined effort from both ends would definitely resolve the problem of road accidents.

Safety philosophy

In the past, the approach to road safety was generally to put the onus on the road user. In Vision Zero, this is replaced by an outlook that has been used with success in other fields. Its two premises are that:

- human beings make errors;
- there is a critical limit beyond which survival and recovery aren't possible

It is clear that a system that combines human beings with fast-moving, heavy machines will be very unstable. It is sufficient for a driver of a vehicle to lose control for just a fraction of a second for a human tragedy to occur. The road transport system should therefore be able to take account of human failings and absorb errors in such a way as to avoid deaths and serious injuries. Crashes and even minor injuries, on the other hand, need to be accepted. The important point is that the chain of events that leads to a death or disability must be broken, and in a way that is sustainable, so that over the longer time period loss of health is eliminated.

The limiting factor of this system is the human tolerance to mechanical force. The chain of events leading to a death or serious injury can be broken at any point. However, the inherent safety of the system and that of the road user is determined by people not being exposed to forces that go beyond human tolerance. The components of the road transport system including road infrastructure, vehicles and systems of restraint must therefore be designed in such a way that they are linked to each other. The amount of energy in the system must be kept below critical limits by ensuring that speed is restricted.

Driving mechanisms for change

To change the system involves following the first three elements of the policy. While society as a whole benefits from a safe road transport system in economic terms, Vision Zero relates to the citizen as an individual and his or her right to survive in a complex system. It is therefore the demand from the citizen for survival and health that is the main driving force. In Vision Zero, the providers and enforcers of the road transport system are responsible to citizens and must guarantee their safety in the long term. In so

doing, they are necessarily required to cooperate with each other, for simply looking after their own individual components will not produce a safe system. At the same time, the road user has an obligation to comply with the basic rules of road safety.

In Sweden, the main measures undertaken to date include:

- setting safety performance goals for various parts of the road traffic system;
- a focus on vehicle crash protection, and support for the consumer information programme
- securing higher levels of seat-belt use and fitting smart, audible seat-belt reminders in new cars;
- installing crash-protective central barriers on single-carriageway rural roads;
- encouraging local authorities to implement 30 km/h zones;
- wider use of speed camera technology;
- an increase in the number of random breath tests;
- the promotion of safety as a competitive variable in road transport contracts.

Vision Zero is relevant to any country that aims to create a sustainable road transport system, and not just for the excessively ambitious or wealthy ones. Its basic principles can be applied to any type of road transport system, at any stage of development. Adopting Vision Zero means avoiding the usual costly process of trial and error, and using from the start a proven and effective method, especially in the case of a country like India.

2. NETHERLANDS: SUTAINABLE SAFETY

The increasing demands for mobility have unwanted and adverse consequences. Future generations, though, should not have to bear the heavy burden resulting from the demands of the present generation. This means exist now to reduce significantly the costly and largely avoidable tragedy of road casualties.

What is a safe and sustainable traffic system?

A road traffic system that is safe and sustainable will have the following features:

- its infrastructure will have been adapted to take into account human limitations, using proper road design;

- its vehicles will be equipped to make the task of driving easier and to provide a high standard of protection in crashes;
- its road users will be provided with adequate information and education and, where appropriate, will be deterred from undesirable or dangerous behaviour.

Strategic principles

There are three guiding principles in the strategy for a safe and sustainable road system.

These are as follows:

- The road network should be reclassified according to road function, with a single and unambiguous function established for as many roads as possible.
The three types of road function are:
 - the flow function- enabling high speeds for long-distance traffic, frequently also involving large volumes of traffic;
 - the distributor function- helping to distribute traffic to scattered destinations and serving regions and districts;
 - the access function- enabling direct access to properties alongside a road.
- Speed limits should be set according to road function.
- Using appropriate design, the function of roads, their layout and their use should be made compatible, by:
 - preventing the unintended use of roads;
 - preventing large discrepancies in speed, direction and volume at moderate and high speeds;
 - preventing confusion among road users by making the nature of road more predictable.

Necessary actions

The actions needed to achieve the safe and sustainable road systems include:

- the creation of partnerships at national, regional and local levels to re-engineer the road network, with a greater emphasis on safety;
- a programme to be implemented in two phases, with a start-up period of two years, to reclassify the road network;
- a 30 km/h speed limit introduced as a general rule for all built-up areas, with powers given to local authorities to make exceptions.

3. AUSTRALIA

The Australian state of Victoria has developed a strong partnership between traffic law enforcement and traffic injury compensation schemes, underpinned by the use of research to provide evidence for new policies and practices. In this scheme, the Transport Accidents Commission (TAC), set up in 1986, compensates victims of road crashes through a no-fault system (in which the insurer pays for any damages incurred in a crash, regardless of which party was considered at fault), funded by premiums that are levied as part of the annual vehicle registration charge.

The TAC determined that a substantial investment in road injury prevention would be more than offset by reduced payments in compensation. It invested heavily in the road agency's remedial programme for high-risk crash sites. It also helped the police purchase enforcement technology so as to raise levels of enforcement, and it embarked on an intense series of public education campaigns. The three separate ministries of the state government – those of transport, insurance and justice jointly set policy and coordinated the programme.

A series of controlled enforcement and education programmes was undertaken, each subject to scientific evaluation. Victoria has a tradition of scientific evaluation of road safety interventions and enforcement practice, in particular, has in the past been shaped by research findings. An example is Victoria's approach to the enforcement of speed limits using speed cameras. In most other places, speed cameras are generally sited at crash "black spots", with signs and other overt signals maximizing the focus on the specific site. In Victoria, the objective, at least in urban areas, is to cover the whole road network. The strategy is thus covert and random – and, to the motorist, unpredictable. The link here between research and road safety policy-making is strong – making the intervention more effective. Since the potential benefits of the programme are scientifically researched and publicized, there is public support for the programme. This support may not otherwise have been forthcoming, as the seemingly draconian levels of enforcement might have led to public opposition.

3. Current NGO and Govt. Efforts:

A number of non-governmental organizations have taken up the task of tackling the problem of road accidents in India. “Headlight” was established in July 2009 for the purpose of promoting road safety in Delhi. The mission of Headlight is to promote road safety via awareness activities. The initial efforts of the NGO were centred around spreading awareness about the risks of drunken driving. The NGO is currently working on two new projects, “Hari Batti”, which aims at bringing awareness of basic road safety to street children by the medium of film; and “Watch Out”, which involves the production and broadcast of short movies on road safety. “Arrive Safe” is another NGO working as a pressure group to give a wake-up call to all authorities concerned and shake the bad driving habits off people.

Road Safety initiatives by government of India [12]

The main thrust of accident prevention and control across the world has been on 4 Es,

- (i) Education,
- (ii) Enforcement
- (iii) Engineering and
- (iv) Environment and Emergency care of road accident victims.

The Government of India has been focusing on all these four approaches in its policies and programmes. The safety of road users is primarily the responsibility of the State Government concerned. However, the Ministry has taken several steps to improve road safety for road users which are as under:

- It is ensured that road safety is the integral part of road design at planning stage.
- Various steps to enhance road safety such as road furniture, road markings/road signs, introduction of Highway Traffic Management System using Intelligent Transport System, enhancement of discipline among contractors during construction, road safety audit on selected stretches, have been undertaken by National Highways Authority of India.
- Refresher training to Heavy Motor Vehicle drivers in the unorganized sectors being implemented by the Ministry since 1997-98 under plan activities.

- Setting up of Model Driving Training School in the States by Ministry of Road Transport and Highways.
- Publicity campaign on road safety awareness both through the audio-visual and print media by Ministry of Road Transport and Highways.
- National Awards for voluntary organizations/individual for outstanding work in the field of road safety.
- Tightening of safety standards of vehicles like Seat Belts, Power-steering, rear view mirror
- Providing cranes and ambulances to various State Governments/NGOs under National Highway Accident Relief Service Scheme. National Highways Authority of India also provides ambulances at a distance of 50 Km. on each of
- its completed stretches of National Highways under its Operation & Maintenance contracts.
- Widening and improvements of National Highways from 2 lanes to 4 lanes and 4 lanes to 6 lanes

4. Results and Discussions

- More than one million people are killed worldwide every year as a result of road traffic crashes.
- Road traffic injuries are the 11th leading cause of death and the 9th leading cause of disability
- The “vulnerable” road users – pedestrians, cyclists and motorcyclists – bear the greatest brunt of road accidents
- With massive expansion of road networks along with urbanization and motorization, there has been a surge in motor vehicular accidents which have a great socio economic impact on the society at large.
- Without new or improved interventions, road traffic injuries will be the third leading cause of death by the year 2020.
- Millions of people are temporarily or permanently disabled as a result of road traffic crashes
- Many people suffer significant psychological consequences for years following a motor vehicle crash.
- The social costs which are difficult to quantify have a heavy toll on victims, their families, friends and communities.
- The death of a breadwinner often pushes a family into poverty

5. Conclusion & Recommendations:

The number of people who get killed or maimed in motor vehicular accidents is growing by the day. The main source of relief that is available to these people is compensation that they are entitled to receive under the law.

- Recommendation: To be able to curb the menace of road accidents, the law should be self sufficient in itself to deal with the problem, the problem of implementation of law is something secondary, when the law itself lacks the deterrent factor, there can be no way in which there'll be proper implementation

Scope: The success of the law relating to Motor Vehicles depends hugely on how self sufficient the Act is. The biggest role in this aspect can be played by the Law commission and its reports. The implementation of the recommendations put forth in these reports after a lot of deliberations can be of great help in resolving the problems in the existing Act.

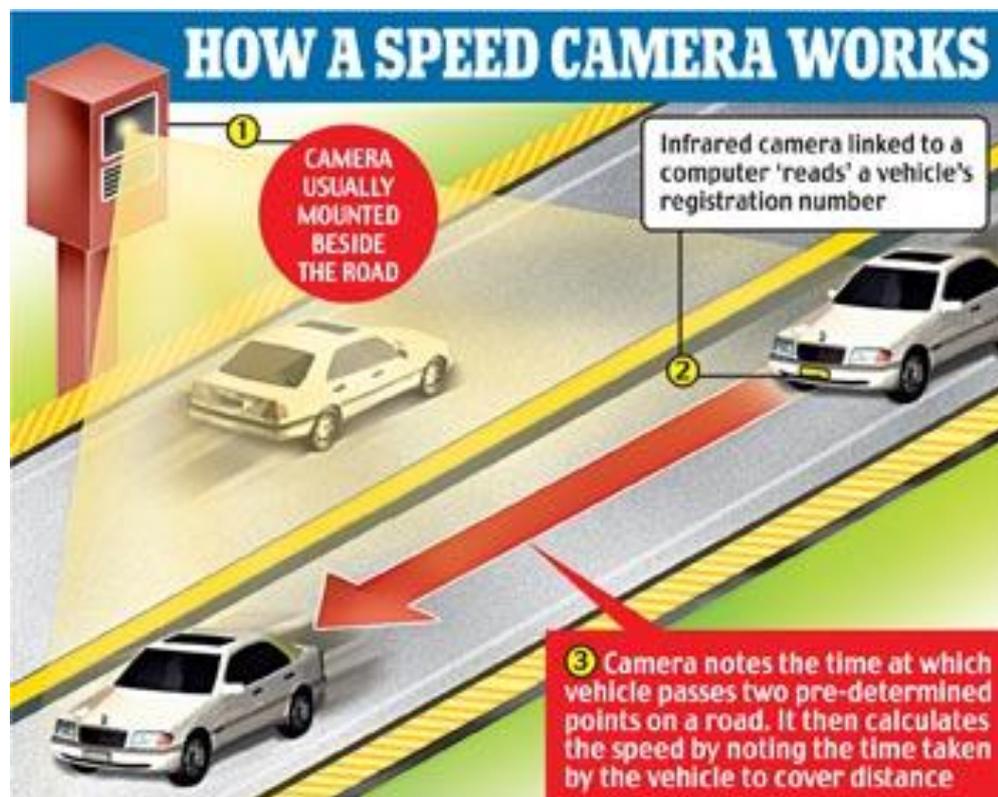
- Recommendation: There is an urgent need to increase the punishment that has been prescribed for violation of the Motor Vehicles Act, a meagre fine or imprisonment is highly unlikely to deter a person from committing the crime or stopping him from committing the crime again

Scope: if the fine for a violation of the provisions of the Act is not deterrent, the wrongdoer will not hesitate in committing the same offence again

- As was also recommended by the Law Commission in its 234th report, a Central legislation dealing with regulation of road transport should cover not only motorized transport but non- motorized transport as well. There is a need for a comprehensive all inclusive legislation to effectively regulate all types of traffic on the roads

- Another important suggestion in the Law Commission's Report was the installation of CCTV cameras at places of traffic congestion to curb traffic offenders

Speed cameras can send out infrared beams that capture the registration number of a vehicle. It then notes the time at which the vehicle crosses two predetermined points on a road. From the time taken by the vehicle to cover the distance, the camera calculates the vehicle's speed. The camera works both during the day and night.



For example, In an effort to improve the traffic systems, the Kerala Road Safety Authority (KSRA) has completed the first phase of installation of high-tech automatic traffic enforcement systems on the 98km Cherthala-Mannuthy stretch of NH 47. As part of the Rs 8.5 crore project, 65 automatic traffic enforcement systems will be installed at 23 points on the stretch. The same kind of surveillance systems need to be ensured at other stretches to prevent motor vehicular accidents.

- There is a need to create massive awareness among the general public about the importance of following of traffic rules and adhering to the prescribed speed limits and educate them on how rash and negligent driving is not only unsafe for them, but is a threat to lives of others
- For the best type of traffic management, the focus should be not only on drivers and motor vehicles alone, but on all kinds of road users

The regime of issue of driving licence in India is quite lax. Applicants are not required to undergo any rigorous driving test; no tests are given to judge knowledge about traffic rules, safety regulations, road etiquettes and physical or psychological fitness. MV Act 1988 provides for suspension and cancellation of driving licenses for certain offences by enforcement agencies and courts. But these provisions which will have more deterrence than the nominal fines on the potential violators are hardly invoked. In the absence of any data on previous violations and convictions, it is also not possible to impose greater penalties on repetition of offences. Even in a rare eventuality of driving licence being suspended or confiscated, the offender can easily obtain another license from some other licensing authority. In the prevailing circumstances, many bad driving habits - lack of lane discipline and no consideration for pedestrians and other vulnerable road users, violation of traffic rules and regulations and absence of road etiquette have developed among many drivers. Section 26 of the MV Act 1988 provides for Maintenance of State Register of Driving Licences. But many licensing authorities cannot ever confirm whether a licence was issued by them or not. If the database as mandated by the Act is maintained, it can be used profitably by licensing authorities, police and courts in matters of issue of fresh license, renewal of license, imposition of stiffer penalty and revocation of the license etc. There is thus an urgent need to strengthen the existing regime of issue of driving licenses. To enhance the competence and capability of the existing holders of driving licenses, refresher training courses in certified driving schools must be made compulsory for renewal of driving licenses for transport vehicles.

The perception that traffic enforcement agencies book offenders for statistical purposes is often correct. Proper statistics is the focus of enforcement activities rather than ensuring safety on roads for which minor offences are penalized more often. Serious traffic offences which can jeopardize the safety of other road users like stopping buses at unauthorized places and thereby endangering safety of passengers and obstructing traffic, overloading of goods carriages, driving in inebriated state, driving dangerously, over speeding, using vehicles in unsafe condition and use of trucks and tractors for transport of passengers are allowed to go unnoticed. It is correct that the phenomenal increase in the number of vehicles and road networks is not matched by a proportionate increase in the infrastructure of enforcement agencies, but even the existing infrastructure is not being used optimally to enhance road safety.

Those who endanger the safety of others by wilful violation of traffic rules must be the focus of enforcement activities. Technology must be exploited to increase the effectiveness of law enforcement personnel. Driving Licenses and permits of transport vehicles must be suspended or revoked, if the penalties fail to have deterrence on country. Often the causatory factors such as poor maintenance of roads, poor road design and absence of traffic sign posts, unsafe design of vehicles, poor maintenance of vehicle, incorrigible offenders. Unsafe driving has to be made a high risk activity by strict enforcement of traffic rules and regulations.

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[10] Karkara's- Assessment of compensation in accidents under Motor Vehicles Act 1988, Law Publishers (India) Pvt Ltd.

[11] World report on road traffic injury prevention- collaborated effort of WHO and World Bank

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Appendix A (Minutes of meeting with mentor)

➤ **Date:** May 22, 2012, May 23, 2012

Duration of Discussion: 45 minutes

Discussion:

- Discussion on what law is, what the purpose of law is, and what would be the consequences of not having law
- Discussion on bill analysis and how the whole process works and the various stages through which a bill is passed before it becomes an Act
- Ma'am asked me to get familiarized with the provisions of the Motor Vehicles Act 1988

Action Items before next discussion

1. Read through the provisions of the Motor Vehicles Act 1988
2. Created a summary of the objective of the Act and organization of the Act into different chapters

➤ **Date:** June 2, 2012, June 5, 2012

Duration of discussion: 43 minutes

Discussion:

- Ma'am asked me to find out the different reasons for road accidents in India, and ask others about their experiences as regards accidents
- Newspaper reports on various accidents that take place
- Compile data received by asking people and work our percentages
- Discussion on why there is violation of fundamental traffic rules in our country, how such violation reflects on a country's poor culture

- To find out reasons for defiance and non compliance of traffic rules in our country
- The immediate need to spread awareness among the people about the importance of following traffic rules
- The gap in the existing legislation and the need to bridge such gaps
- How the penalties prescribed for violators are too meagre to deter anyone from committing the same crime again
- To go through models of traffic law enforcement in foreign countries and to analyze whether these models would work in India
- How it is important for police to have a tool to strengthen them and this tool is derived from the law

