



GOVERNMENT OF INDIA
LAW COMMISSION OF INDIA

LEGAL REFORMS TO COMBAT
ROAD ACCIDENTS

Report No. 234

August 2009



**LAW COMMISSION OF INDIA
(REPORT NO. 234)**

**LEGAL REFORMS TO COMBAT
ROAD ACCIDENTS**

**Submitted to the Union Minister of Law and Justice,
Ministry of Law and Justice, Government of India by
Dr. Justice AR. Lakshmanan, Chairman, Law
Commission of India, on the 22nd day of August, 2009.**

The 18th Law Commission was constituted for a period of three years from 1st September, 2006 by Order No. A.45012/1/2006-Admn.III (LA) dated the 16th October, 2006, issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi.

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D.O. No. 6(3)133/2008-LC (LS)

August 22, 2009

Dear Dr Veerappa Moily ji,

Subject: Legal Reforms to Combat Road Accidents

I am forwarding herewith the 234th Report of the Law Commission of India on the above subject.

2. India has one of the largest road networks in the world, of 3.314 million kilometers, consisting of National Highways, Expressways, State Highways, Major District Roads, Other District Roads and Village Roads. 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.

3. More than 100,000 Indians are dying every year in road accidents. More than a million are injured or maimed. Many years ago, a study found that road accidents cost the country some Rs. 550 billion every year. India's share in world fatalities is increasing. 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, India has not learnt much. 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.

4. Is it due to lack of apt provisions in our law that travel through Indian roads is a tryst with Death? This crucial question has been engaging the attention of the Law Commission of India for quite some time.

5. Driving recklessly/dangerously, non-observance of traffic rules, like crossing speed limit, jumping red light, driving without driving licence, driving by untrained/disqualified driver, driving by minor, driving under the influence of liquor, driving while talking on mobile,

driving without helmet, ill-health of vehicle and bad road infrastructure are amongst the causes of road accidents.

6. In view of the above, the Law Commission prepared a Consultation Paper on this important subject taken up *suo motu*, with a view to elicit views/suggestions/comments from all those concerned. It was earlier thought that the Commission would hold a seminar on the subject, but this idea could not materialize owing to paucity of funds. However, the recommendations in this Report have been made after taking into consideration the responses received.

7. The Law Commission has recommended amendment in section 304A of the Indian Penal Code to make the offence of rash and negligent driving punishable with the maximum term of imprisonment of ten years, instead of two years as at present provided. It has also been recommended that causing death of any person through driving under the influence of drink or drugs should be punishable with the minimum term of imprisonment of two years. We have also recommended various other legal measures to combat road accidents.

8. This Report is the last of the 33 Reports submitted by the 18th Law Commission, which is an unprecedented contribution on its part. I would also like to place on record an equally unparalleled outstanding contribution made by Dr Brahm Avtar Agrawal, Member-Secretary, in preparation of these Reports.

With warm regards,

Yours sincerely,

(Dr AR. Lakshmanan)

Dr M. Veerappa Moily,
Union Minister of Law and Justice,
Government of India,
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LAW COMMISSION OF INDIA

LEGAL REFORMS TO COMBAT ROAD ACCIDENTS

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1. Perspective

1.1 India has one of the largest road networks in the world, of 3.314 million kilometers, consisting of National Highways, Expressways, State Highways, Major District Roads, Other District Roads and Village Roads. About 65 per cent of freight and 86.7 per cent passenger traffic is carried by the roads.¹ Motor vehicle population has recorded significant growth over the years. India had 72.718 million registered motor vehicles at the end of the fiscal year 2003-04. Compound annual growth rate of the vehicle population between 1951 and 2004 was close to 11 per cent. Two-wheelers and cars (personalized mode of transport) constitute more than four-fifth of the motor vehicles in the country.² Roads are used not only by the motorized transport, but also by the non-motorized transport as well as pedestrians.

1.2 According to Maruti Suzuki weblog, more than 100,000 Indians are dying every year in road accidents. More than a million are injured or maimed. Many years ago, a study found that road accidents cost the country some Rs. 550 billion every year.³

1.3 According to 'Down To Earth' (Science and Environment Online), ill-planned motorization kills one person every six minutes on India's roads. Road accidents in 1999-2000 cost India about 3 per cent of its GDP. During 1970-2005, registered motor vehicles increased 50 times, but road networks grew less than three times. Accidents increased fourfold; injuries and fatalities also shot up more than six times. Severity of accidents – persons killed per 100 accidents – increased due to lack of

¹ Department of Road Transport and Highway's Annual Report 2007-08

² National Road Transport Policy recommended by Thangaraj Committee

³ <http://www.marutisuzuki.com>, visited 07.04.2008

footpaths, cycle tracks and traffic measures to check speed where motorized merges with non-motorized. In 2005, there were 439,255 road accidents – 1,205 accidents daily – which killed about 95,000 people; injuring more than 465,282. National and State Highways account for 5.8 per cent of the total road length, but account for 50 per cent of the total accidents. Other roads, with 94.2 per cent of the total road length, witnessed 46.8 per cent of the total accidents. Bulk transport vehicles (buses, trucks) make up 7.5 per cent of all registered vehicles, but caused 30 per cent of the accidents; about 38 per cent of deaths.⁴

1.4 The Pioneer has reported that the number of fatalities on Indian roads in 2006-07 increased to 1,05,749. India's share in world fatalities is increasing. 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, India has not learnt much. 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.⁵

1.5 According to the Indian Express, road accidents increased in the country by 4.9 per cent from 2005 to 2006 and 20 per cent of the road accidents were fatal – there was one fatality per 4.4 road accidents.⁶

1.6 A recent survey by the Central Road Research Institute reveals that more than 90% pedestrians feel unsafe while crossing roads, while they comprise more than 50% of road victims.⁷

⁴ <http://www.downtoearth.org.in>, visited 23.05.2008

⁵ The Pioneer, New Delhi, 24.03.2008

⁶ The Indian Express, New Delhi, 24.04.2008

⁷ The Times of India, New Delhi, 27.06.2008

1.7 Is it due to lack of apt provisions in our law that travel through Indian roads is a tryst with Death? This crucial question has been engaging the attention of the Law Commission of India for quite some time.

1.8 All the more so because despite the directions of the Supreme Court given to the Police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act, 1988 and generally with the control of the traffic⁸ and the Delhi High Court's Order dated 10.07.07 in WP (CrI) 878/2007 (to be numbered by the Registry) in regard to traffic safety, reckless driving by the blue line buses on Delhi roads has not diminished.

1.9 The *Navbharat Times* has reported that in the Annual Press Conference of Delhi Police, it was revealed that 8,270 road accidents were recorded in 2007, in which 2,050 persons died. There were 376 road accidents involving blue line buses in which 118 persons died. The notable feature was that 38 per cent were hit and run cases wherein the vehicles involved could not be traced. Another notable feature was that 53 per cent of the persons who died in road accidents were pedestrians and 28 per cent were two-wheeler drivers. 3.98 million *challans* were issued for various traffic violations, for which Rs. 980 million were recovered.⁹

1.10 Driving recklessly/dangerously, non-observance of traffic rules, like crossing speed limit, jumping red light, driving without driving licence, driving by untrained/disqualified driver, driving by minor, driving under the influence of liquor, driving while talking on mobile,

⁸ *M.C. Mehta v. Union of India* AIR 1998 SC 190

⁹ *Navbharat Times*, New Delhi, 03.01.2008

driving without helmet, ill-health of vehicle and bad road infrastructure are amongst the causes of road accidents. We may also note the following description of the chaotic conditions prevailing on Indian roads, in the words of Hon'ble Mr. Justice V. R. Krishna Iyer:

“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.”¹⁰

1.11 In view of the above, the Law Commission prepared a Consultation Paper on this important subject taken up *suo motu*, with a view to elicit views/suggestions/comments from all those concerned. The recommendations in this Report have been made after taking into consideration the responses received.

2. Present law in India

(i) Indian Penal Code, 1860

2.1 The Indian Penal Code (IPC) provides the general penal code of India, impliedly assuming the possibility of existence of special statutes defining offences and prescribing punishments therefor, for example, the Motor Vehicles Act, 1988 in the present context.

¹⁰ *Rattan Singh v. State of Punjab* (1979) 4 SCC 719

2.2 Sections 279, 304A, 336, 337, 338, IPC are relevant and reproduced below:

Section 279. *Rash driving or riding on a public way.* “Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

Section 304A. *Causing death by negligence.* “Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Section 336. *Act endangering life or personal safety of others.* “Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.”

Section 337. *Causing hurt by act endangering life or personal safety of others.* “Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.”

Section 338. *Causing grievous hurt by act endangering life or personal safety of others.* “Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.”

2.3 Rash or negligent act is an ingredient in all the above sections. A rash act is primarily an overhasty act, opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate, is yet done without due deliberation and caution. In rashness, the criminality lies in running the risk of doing an act with recklessness or indifference to consequences. Negligence means breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate conduct of human affairs would do or doing something which a prudent or reasonable man would not do. Culpable negligence is acting without consciousness that illegal or mischievous effects will follow, but in circumstances which show that the actor has not exercised the caution incumbent on him, and that if he had, he would have had the consciousness. Generally, in the case of rashness, the guilty person does an act and breaks a positive duty; in the case of negligence, he does not do an act which he was bound to do, because he adverts not to it. 'Rashness' conveys the idea of recklessness or the doing of an act without due consideration; 'negligence' connotes want of proper care or the standard of conduct which a reasonably prudent person would exercise in a similar situation.

2.4 To be guilty of an offence under section 279, IPC the accused must drive a vehicle in such a rash or negligent manner as to endanger human life or to be likely to cause hurt or injury to any other person. Driving at a high speed or non-sounding of horn by itself does not mean that the driver is rash or negligent. Place, time, traffic and crowd are important factors to determine rashness or negligence.

2.5 Section 304A, which was inserted in the IPC by Act 25 of 1870, postulates a rash and negligent act entailing death of another. The

provisions of this section apply to cases where there is no intention to cause death, and no knowledge that the act done in all probability would cause death; it should not amount to culpable homicide. Section 304A is directed at offences outside the range of sections 299 and 300, IPC.¹¹ Section 279 covers only those cases which relate to driving on public way endangering human life, while offence under section 304A extends to any rash or negligent act falling short of culpable homicide.

2.6 Rash and negligent acts which endanger human life, or the personal safety of others, are punishable under section 336 even though no harm follows, and are additionally punishable under sections 337 and 338 if they cause hurt, or grievous hurt. Element of volition or intention is foreign to the set of offences under sections 336 to 338, IPC. Offences defined by these sections as well as section 279 are minor offences in comparison with the offence under section 304A where death is caused by a rash or negligent act.

2.7 Recently, the Supreme Court has observed that if a person willfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act would amount to culpable homicide.¹²

2.8 Dealing with sentencing of a convict for offences under sections 279 and 304A, IPC, the Supreme Court in *Dalbir Singh v. State of Haryana*¹³ held:

“When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk

¹¹*Naresh Giri v. State of M.P.* 2007(13) SCALE 7

¹²The Times of India, New Delhi, 14.11.2007

¹³(2000) 5 SCC 82

of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

...

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.”

2.9 In *Rattan Singh v. State of Punjab*¹⁴, the Supreme Court had held:

“5. Nevertheless, sentencing must have a policy of correction. This driver, if he has to become a good driver, must have a better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb.

¹⁴ *Supra* note 10

Punishment in this area must, therefore, be accompanied by these components. The State, we hope, will attach a course for better driving together with a livelier sense of responsibility, when the punishment is for driving offences.”

2.10 Very recently, the Supreme Court upheld the sentence of imprisonment awarded to the driver of a bus convicted for offences under sections 279 and 304A, IPC, following the above dicta.¹⁵

(ii) **Motor Vehicles Act, 1988**

2.11 The Motor Vehicles Act, 1988 (MVAct) is the principal instrument for regulating motor vehicles. Chapter II relates to licensing of drivers of motor vehicles, wherein section 19 confers power on the licensing authority to disqualify any person from holding a driving licence or revoke such licence, if he -

- (a) is a habitual criminal or a habitual drunkard; or
- (b) is a habitual addict to any narcotic drug or psychotropic substance; or
- (c) is using or has used a motor vehicle in the commission of a cognizable offence; or
- (d) has, by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or
- (e) has obtained any driving licence or a licence to drive a particular class or description of motor vehicle by fraud or misrepresentation; or

¹⁵ *B. Nagabhushanam v. State of Karnataka* 2008 (7) SCALE 716

- (f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or
- (g) has failed to submit to, or has not passed, the tests referred to in the proviso to sub-section (3) of Section 22; or
- (h) being a person under the age of eighteen years who has been granted a learner's licence or a driving licence with the consent in writing of the person having the care of the holder of the licence and has ceased to be in such care.

2.12 We may now note the provisions of sections 20 to 23 of the MVAct, extracts whereof are reproduced below:

Section 20. *Power of Court to disqualify.* “(1) Where a person is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this Act, in addition to imposing any other punishment authorized by law, declare the person so convicted to be disqualified, for such period as the Court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence:

Provided that in respect of an offence punishable under section 183 no such order shall be made for the first or second offence.

- (2) Where a person is convicted of an offence under clause (c) of sub-section (1) of section 132, section 134 or section 185, the Court convicting any person of any such offence shall order the disqualification under sub-section (1), and if the offence is relatable to clause (c) of sub-section (1) of section 132 or section 134, such disqualification shall be for a period of not less than one month, and if the offence is relatable to section 185, such disqualification shall be for a period of not less than six months.

- (3) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of a person,-
- (a) who having been convicted of an offence punishable under section 184 is again convicted of an offence punishable under that section;
 - (b) who is convicted of an offence punishable under section 189; or
 - (c) who is convicted of an offence punishable under section 192:

Provided that the period of disqualification shall not exceed, in the case referred to in clause (a), five years, or in the case referred to in clause (b), two years or, in the case referred to in clause (c), one year.

- (4) A Court ordering the disqualification of a person convicted of an offence punishable under section 184 may direct that such person shall, whether he has previously passed the test of competence to drive as referred to in sub-section (3) of section 9 or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

....”

Section 21. *Suspension of driving licence in certain cases.* “(1) Where, in relation to a person who had been previously convicted of an offence punishable under section 184, a case is registered by a police officer on the allegation that such person has, by such dangerous driving as is referred to in the said section 184, of any class or description of motor vehicle caused the death of, or grievous hurt to, one or more persons, the driving licence held by such person shall in relation to such class or description of motor vehicle become suspended,-

- (a) for a period of six months from the date on which the case is registered; or
- (b) if such person is discharged or acquitted before the expiry of the period aforesaid, until such discharge or acquittal, as the case may be.

....”

Section 22. *Suspension or cancellation of driving licence on conviction.* “(1) Without prejudice to the provisions of sub-section

(3) of section 20, where a person, referred to in sub-section (1) of section 21, is convicted of an offence of causing, by such dangerous driving as is referred to in section 184 of any class or description of motor vehicle, the death of, or grievous hurt to, one or more persons, the Court by which such person is convicted may cancel, or suspend, for such period as it may think fit, the driving licence held by such person in so far as it relates to that class or description of motor vehicle.

(2) Without prejudice to the provisions of sub-section (2) of section 20, if a person, having been previously convicted of an offence punishable under section 185, is again convicted of an offence punishable under that section, the Court, making such subsequent conviction, shall, by order, cancel the driving licence held by such person.

....”

Section 23. *Effect of disqualification order.* “(1) A person in respect of whom any disqualification order is made under section 19 or section 20 shall be debarred to the extent and for the period specified in such order from holding or obtaining a driving licence and the driving licence, if any, held by such person at the date of the order shall cease to be effective to such extent and during such period.

....”

2.13 Chapter VIII of the MVAct deals with the control of traffic. Section 112 pertains to limits of speed and prohibits driving of a motor vehicle or it being allowed to be driven in any public place at a speed exceeding the maximum permissible speed. Rule 118 of the Central Motor Vehicles Rules, 1989 provides for notified transport vehicles to be fitted with a speed governor in such a manner that the speed governor can be sealed with an official seal in such a way that it cannot be removed or tampered with without the seal being broken.¹⁶ Section 113

¹⁶ The Karnataka High Court has very recently directed the State Government to ensure that no new public transport vehicles shall be registered in the State unless they are fitted with speed governors and gave three months to owners to fit all old vehicles (which have already been registered) with speed governors (*vide* The Hindu, New Delhi, 01.07.2008).

provides for limits of weight and limitations on use. Section 118 confers power on the Central Government to make regulations for the driving of motor vehicles. Accordingly, the Rules of the Road Regulations, 1989 have been made. Section 119 provides for the duty to obey traffic signs. Section 129 provides for the wearing of helmets. Various other provisions are contained in Chapter VIII for regulation of traffic.

2.14 The Rules of the Road Regulations, 1989 contain detailed provisions regulating driving of motor vehicles, like keeping left, overtaking prohibited, caution at road junction, right of way to pedestrians, signals to be given by drivers, parking, visibility of lamps and registration marks, lane driving, respecting stop sign on road surface, distance from vehicles in front, no abrupt brake except for safety reasons, no projection of loads, non-carriage of dangerous substances on any public service vehicle, restriction on driving backwards, carrying of documents, viz., driving licence, certificate of registration, certificate of insurance of the vehicle and in case of transport vehicle the permit and fitness certificate also.

2.15 Chapter XIII of the MVAct relates to offences, penalties and procedure. Section 177 contains the general provision for punishment of offences, which is available in the absence of any specific provision for punishment applicable in a given case; the punishment is a maximum fine of Rs. 100/- for the first offence and for the subsequent offence it is only Rs. 300/-. Section 183 provides the punishment for contravention of the speed limits referred to in section 112. Section 184 provides for punishment for dangerous driving and section 185 for driving by a drunken person or a person under the influence of drugs. These sections read as under:

Section 184. *Driving dangerously.* “Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence, if committed within three years of the commission of a previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.”

Section 185. *Driving by a drunken person or by a person under the influence of drugs.* “Whoever, while driving, or attempting to drive, a motor vehicle,-

- (a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyzer, or
- (b) is under this influence of drug to such an extent as to be incapable of exercising proper control over the vehicle,

shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation.- For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.”

2.16 Section 184 deals with reckless driving dangerous to the public having regard to all the circumstances of the case. Offence defined under section 184 and the offence under section 279, IPC are essentially the same. No person is supposed to drive a motor vehicle on any public way

in a manner which may endanger human life or is likely to cause hurt or injury to any other person. The law casts a duty on every user of the road or public way to exercise due care and caution while driving a motor vehicle. The amount of care and caution required to be exercised by a driver while driving on a public way would, of course, depend upon the situation and circumstances in which he is driving. The doctrine of contributory negligence has no application in criminal law. Contributory negligence may be a factor for consideration in determining the sentence, but it is not a defence entitling the accused to an acquittal.

2.17 Certain other provisions of Chapter XIII providing punishments are: section 180: allowing unauthorized persons to drive vehicles; section 181: driving vehicles in contravention of section 3 (necessity for driving licence) or section 4 (age limit in connection with driving of motor vehicles); section 182: offences relating to licences; section 182A: offences relating to construction and maintenance of vehicles; section 186: driving when mentally or physically unfit to drive; section 187: offences relating to accident; section 188: abetment of offence under section 184, 185 or 186; section 189: racing and trials of speed; section 190: using vehicle in unsafe condition; section 191: sale of vehicle in, or alteration of vehicle to, a condition contravening the Act; section 192: using vehicle without registration; section 192A: using vehicle without permit; section 193: agents and canvassers acting without proper authority; section 194: driving vehicle exceeding permissible weight; section 196: driving uninsured vehicle; section 197: taking vehicle without authority; section 198: unauthorized interference with vehicle; section 201: causing obstruction to free flow of traffic. Section 207 confers power on any police officer or other person authorized in this behalf to seize and detain a motor vehicle, if he has reason to believe that

it has been or is being used in contravention of the specified provisions, posing a serious threat to the public.

2.18 We may also note section 8B of the National Highways Act, 1956, which provides that whoever commits mischief by doing any act which renders or which he knows to be likely to render a national highway in relation to whose development and maintenance there is an agreement, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with a fine, or with both.

3. Position in UK

3.1 The principal enactments relating to road traffic are the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 (both as amended and extended by the Road Traffic Act 1991), the Road Traffic (Consequential Provisions) Act, 1988 and the Road Safety Act 2006. Nothing in these Acts authorizes a person to use on a road a vehicle so constructed or used as to cause a public or private nuisance, or affects the liability, whether under statute or common law, of the driver or owner so using such a vehicle.¹⁷ Separate enactments govern the taxation, licensing

¹⁷ Halsbury's Laws of England, 4th ed. Reissue (2000), vol. 40(1), Para 2

and registration of all road vehicles and the operation and special licensing of goods vehicles and passenger vehicles. There is also legislation containing powers for controlling traffic, parking, speed limits and other matters (see the Road Traffic Regulation Act 1984).¹⁸

3.2 The following are certain of offences under the Road Traffic Act 1988:

Section 1. *Causing death by dangerous driving.* “A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.”

Section 2. *Dangerous driving.* “A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.”

Section 2A. *Meaning of dangerous driving.* “(1) For the purposes of sections 1 and 2 above a person is to be regarded as driving dangerously if (and, subject to sub-section (2) below, only if)-

- (a) the way he drives falls far below what would be expected of a competent and careful driver, and
- (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(2) A person is also to be regarded as driving dangerously for the purposes of sections 1 and 2 above if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

(3) In subsections (1) and (2) above “dangerous” refers to danger either of injury to any person or of serious damage to

¹⁸ *ibid.*

property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) In determining for the purposes of subsection (2) above the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.”

Section 2B. *Causing death by careless, or inconsiderate, driving.* “A person who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.”

Section 3. *Careless, and inconsiderate, driving.* “If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence.”

Section 3ZA. *Meaning of careless, or inconsiderate, driving.* “(1) This section has effect for the purposes of sections 2B and 3 above and section 3A below.

(2) A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver.

(3) In determining for the purposes of subsection (2) above what would be expected of a careful and competent driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.”

Section 3ZB. *Causing death by driving: unlicensed, disqualified or uninsured drivers.* “A person is guilty of an offence under this section if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under-

- (a) section 87(1) of this Act (driving otherwise than in accordance with a licence),
- (b) section 103(1)(b) of this Act (driving while disqualified), or
- (c) section 143 of this Act (using motor vehicle while uninsured or unsecured against third part risks).”

Section 3A. *Causing death by careless driving when under influence of drink or drugs.* “(1) If a person causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and –

- (a) he is, at the time when he is driving, unfit to drive through drink or drugs, or
- (b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit, or
- (c) he is, within 18 hours after that time, required to provide a specimen in pursuance of section 7 of this Act, but without reasonable excuse fails to provide it, or
- (d) he is required by a constable to give his permission for laboratory test of a specimen of blood taken from him under section 7A of this Act, but without reasonable excuse fails to do so,

he is guilty of an offence.

- (2) For the purposes of this section a person shall be taken to be unfit to drive at any time when his ability to drive properly is impaired.
- (3) Subsection (1)(b), (c) and (d) above shall not apply in relation to a person driving a mechanically propelled vehicle other than a motor vehicle.”

Section 4. *Driving, or being in charge, when under influence of drink or drugs.* “(1) A person who, when driving or attempting to drive a mechanically propelled vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.

(2) Without prejudice to subsection (1) above, a person who, when in charge of a mechanically propelled vehicle which is on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.

(3) For the purposes of subsection (2) above, a person shall be deemed not to have been in charge of a mechanically propelled vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs.

(4) The court may, in determining whether there was such a likelihood as is mentioned in subsection (3) above, disregard any injury to him and any damage to the vehicle.

(5) For the purposes of this section, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.
....”

Section 5. *Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit.* “(1) If a person –

- (a) drives or attempts to drive a motor vehicle on a road or other public place, or
(b) is in charge of a motor vehicle on a road or other public place,

after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit he is guilty of an offence.

(2) It is a defence for a person charged with an offence under subsection (1)(b) above to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit.

(3) The court may, in determining whether there was such a likelihood as is mentioned in subsection (2) above, disregard any injury to him and any damage to the vehicle.”

3.3 As per Part I of Schedule 2 to the Road Traffic Offenders Act 1988, each of the offences of causing death by dangerous driving, causing death by careless or inconsiderate driving, and causing death by careless driving when under influence of drink or drugs, is punishable with maximum imprisonment of five years. Each of the offences of dangerous driving, and causing death by driving by unlicensed, disqualified or uninsured drivers, is punishable with maximum imprisonment of two years. The offence of careless, and inconsiderate, driving is punishable only with fine, but of the Level 5 on the standard scale¹⁹. Each of the offences of driving or attempting to drive when unfit to drive through drink or drugs, and driving or attempting to drive with excess alcohol in breath, blood or urine, is punishable with maximum imprisonment of six months. Each of the offences of being in charge of a

¹⁹ “standard scale” is a system whereby fines in legislation have maximum levels set against a standard scale; then, when inflation makes it necessary to increase the levels of fines, the legislators need to modify only the scale rather than each individual piece of legislation. The standard scale of fines is only for summary offences, as laid down under section 37 of the Criminal Justice Act 1982; there are 5 Levels on the scale: the amount of fine for Level 1 is pound 200; for Level 2 it is pound 500; for Level 3 it is pound 1,000; for Level 4 it is pound 2,500; for Level 5 it is pound 5,000.

mechanically propelled vehicle when unfit to drive through drink or drugs, and being in charge of a motor vehicle with excess alcohol in breath, blood or urine, is punishable with maximum imprisonment of three months. Some of these offences are also punishable with fine in the alternative or with both.

3.4 Other offences under the Road Traffic Act 1988 and other statutes, include offences of dangerous cycling on a road, careless, and inconsiderate, cycling on a road, cycling on a road when under the influence of drink or drugs, motor racing on public ways, unauthorized cycle races on public ways, parking heavy goods vehicles on the verge of a road, driving or parking on cycle tracks, causing danger to road users, leaving vehicles in dangerous positions on a road, causing or permitting a dog without being held on a lead, wanton or furious racing or driving, riding or driving on roadside footways and tethering animals on a highway, non-observance of the rule of the road, and other offences in relation to road traffic consisting of failure to observe the statutory requirements such as those relating to the wearing of seat belts, unroadworthy vehicles, unauthorized protective helmets for motor cyclists, excise licences, driving licences, insurance, parking, traffic signs, speed limits, public service vehicle licences, goods vehicle licensing and wrongful use of a disabled person's badge.

3.5 Most of the offences concerning road traffic are summary offences, punishable with different Levels on the standard scale, also involving obligatory or discretionary disqualification (to hold or obtain a licence), or obligatory endorsement of penalty points²⁰ attributable to the

²⁰ A penalty point is essentially a formal reprimand; its aim is to influence and improve driver behaviour. Reaching a particular number of penalty points leads to disqualification. Penalty points stay for a particular period only.

offence, attracting the same, on the driving record, to be taken into consideration on subsequent conviction. Certain road traffic offences are dealt with by way of a fixed penalty rather than by way of prosecution.

4. Previous Reports of the Law Commission of India and its recommendations

4.1 The 42nd Report of the Law Commission of India, submitted in June, 1971, examined the provisions of the IPC, and its relevant paragraphs are reproduced below:

Para 14.8. *Section 279 amended.* “Section 279 deals with the offence of rash driving of a vehicle on a public way. We propose to make the fine under this section unlimited by omitting the words ‘which may extend to one thousand rupees’.”

Para 14.9. *New section 279A – Dangerously overloaded vehicles.* There is, however, no provision corresponding to section 282 under which carrying passengers in a boat which is unsafe either because of its condition or because of its load is an offence. A similar provision should, in our opinion, be made for taking on the road an unsafe vehicle, and we suggest the addition of a new section 279A as follows:-

‘279A. *Driving unsafe or overloaded vehicle on a public way.* Whoever knowingly or negligently drives any vehicle on a public way when that vehicle is in such a state or so loaded as to endanger life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.’”

Para 16.21. *Section 304A and quality of negligence.* “Section 304A deals with homicide by a rash or negligent act. That the negligence mentioned in the section is not of the same type as in civil disputes has been made clear by judicial decisions. In civil cases, courts insist on a maximum standard of care, while criminal courts require minimum care. If the minimum care is taken, then the criminal courts would acquit the accused. It was suggested that this judicial interpretation should be embodied in the section, e.g., by adding the words ‘so as to indicate a want of due regard for human life’.”

Para 16.22. *History of section.* “The provision in Macaulay’s Draft Penal Code was as follows:-

‘304. Whoever causes the death of any person by any act or any illegal omission, which act or omission was so rash or negligent as to indicate a want of due regard for human life, shall be punished with imprisonment of either description for a term which may extend to two years, or fine, or both.’

This clause was inadvertently or otherwise, left out in the final draft. The present section 304A was subsequently inserted at the instance of the then Law Minister, Sir James Stephen, by Act 25 of 1870. It was stated in the Statement of Objects and Reasons:-

‘The Code, as it stands, contains no adequate provision for the punishment of what English lawyers call manslaughter

by negligence. This was provided for in the draft Code, section 304, and the present Bill supplies the omission.’.”

Para 16.24. *No clarification necessary.* “... sections 336 and 337 refer to acts done ‘so rashly or negligently as to endanger human life or the personal safety of others’. But obviously these or similar words would not be adequate or appropriate for the purposes of section 304A. We find it difficult to devise a satisfactory form of words which, while giving effect to the concept of ‘criminal negligence’, could be regarded as sufficiently expressive and simple. Judicial decisions have fully explained the scope and content of the section and on the whole, it seems best not to make any change in the wording.”

Para 16.25. *Punishment inadequate.* “We are, however, of the view that the present maximum punishment for the offence is inadequate, and should be increased. This is desirable, in view of the greater importance which this offence has assumed since the section was inserted due to the wide use of fast moving mechanically propelled vehicles and the frequency in the commission of the offence, accompanied by callousness of the offender towards the victim; often there are cases tried under this section which are very near to culpable homicide and deserve a severe sentence.”

Para 16.26. *Opinions received.* “... in the views expressed on our question as to the quantum of punishment under the Code, there has been a strong demand for increase in the punishment under this section. The suggestions vary from three years to seven years. There is also a suggestion to increase the period to seven years if more than one death has been caused.”

Para 16.27. *Maximum punishment to be five years.* “After taking into account our proposal to fix the maximum punishment for culpable homicide not amounting to murder at ten years, we recommend that the maximum punishment for causing death by negligence may be half that period, namely, five years.”

Para 16.71. *Sections 336 to 338 – Recommendation for increase in punishment.* “The punishment under sections 336 to 338 are not adequate, and should be increased as follows:-

- (i) Section 336: Substitute ‘six months’ for ‘three months’, and ‘five hundred rupees’ for ‘two hundred and fifty rupees’.
- (ii) Section 337: Substitute ‘one year’ for ‘six months’ and omit the words ‘which may extend to five hundred rupees’.
- (iii) Section 338: Substitute ‘three years’ for ‘two years’ and omit the words ‘which may extend to one thousand rupees’.”

4.2 Clauses 116, 117, 123, 138, 139 and 140 of the IPC (Amendment) Bill, 1972, as introduced in the Council of States on 11.12.1972, contained the above suggestions of the Law Commission of India.

4.3 Clauses 118, 119, 127, 141, 142 and 143 of the IPC (Amendment) Bill, 1978, as passed by the Council of States on 23.11.1978, correspondingly carried the above changes; there was slight difference in the text of new section 279A in that it not only sought to punish the one driving a vehicle himself but also the one who permitted another person to drive. In addition, clause 128 of the Bill inserted new section 304B (relating to ‘hit and run’ cases) after section 304A in the IPC, which read as under:

“Causing death or injury by rash or negligent driving. ‘304B. Whoever by rash or negligent driving of any vehicle causes the death of any person or causes any injury which is likely to cause the death of such person, the causing of such death not amounting to culpable homicide, and drives or runs away without informing any police station within a reasonable time, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation 1.- Where the act constituting the offence under section 304A or this section is committed while under the

influence of drink or drug shall be deemed to have been committed in a rash or negligent manner.

Explanation 2.- In this section “vehicle” includes “vessel”.’

”

4.4 As the House of the People was dissolved in 1979, the Bill, though passed by the Council of States, lapsed.

4.5 The 156th Report of the Law Commission of India, submitted in August, 1997, examined the IPC (Amendment) Bill, 1978, and affirmed the above amendments, except that new section 304B was recommended to be inserted as sub-section (2) in section 304A because the number could not be ‘304B’ in view of the amendment of the IPC by Act 43 of 1986 inserting section 304B relating to dowry death.

5. Pending Motor Vehicles (Amendment) Bill, 2007

5.1 The Motor Vehicles (Amendment) Bill, 2007 (Bill) was introduced in the Council of States on 15.05.2007 with the objective to, *inter alia*, enhance penalties, wherever considered necessary, for violation of the provisions of the MVAct with a view to ensure road safety and discipline, and provide for civil penalty in addition to the existing criminal liability.

5.2 Clause 9 of the Bill seeks to insert new sub-section (5) in section 21 of the MVAct, which reads as under:

“(5) Where the authority authorized to check the driving licence of any driver, is satisfied after breath analyzer test or any other test as may be prescribed by the State Government that the driver is under the influence of alcohol, may suspend the driving licence on the spot for a period not exceeding three months.”

5.3 Clause 26 of the Bill seeks to amend section 110 of the MVAct with a view to empower the Central Government to also make rules for design of the bodies for goods carriage and medium or heavy passenger vehicles and the material to be used for such bodies, cabin design on a bare chassis, the conditions for the purpose of licensing and regulating the establishments for fabrication of bus or truck bodies on bare chassis, the placement of audio-visual or radio or tape recorder type of device in the transport vehicle, seating arrangement in public service vehicles and the protection of passengers against the weather and any matter relating to construction equipment, maintenance of motor vehicles, trailers and fitness of all categories of motor vehicle; the entry relating to ‘speed governors’ is proposed to be substituted with ‘specifications of speed governors’.

5.4 Clause 27 of the Bill seeks to amend section 111 of the MVAct with a view to empower State Governments to also make rules regarding installation of speed governors in transport vehicles and fog lights in motor vehicles.

5.5 Clause 28 of the Bill seeks to amend section 113 of the MVAct with a view to make the consignor or the common carrier, whosoever has

issued the documents in possession of the person in charge of the motor vehicle, responsible for the overloading; where the goods carried belong to more than one consignor, the responsibility for the overloading shall rest with the common carrier who engaged the motor vehicle; the owner of the motor vehicle or the driver shall be responsible for the overloading, where the motor vehicle with overloaded goods is operating under the charge of such owner or the driver, as the case may be. The expression “common carrier” is sought to be defined by inserting a new clause (4A) in section 2 of the MVAct, *vide* clause 2 of the Bill, as a person engaged in the business of collecting, storing, forwarding or distributing goods to be carried by goods carriages under goods receipt or transporting for hire, of goods from place to place, by motorized transport on road, for all persons indiscriminately and includes a goods booking company, contractor, agent, broker and courier agency, but excluding the Government.

5.6 Clause 37 of the Bill seeks to substitute new section for section 161 of the MVAct and provides, *inter alia*, the definition of the expression “hit and run motor accident” in the context of payment of compensation, out of the Solatium Fund, in respect of death of, or grievous hurt to, persons resulting from hit and run motor accidents. The said expression means “an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained inspite of reasonable efforts”.

5.7 Clause 50 of the Bill seeks to substitute section 177 of the MVAct relating to general provision for punishment of offences, enhancing the quantum of fine for the first offence from the present maximum of Rs. 100/- to a fixed Rs. 500/- and for the subsequent offence from the present

maximum of Rs. 300/- to Rs. 1,500/- subject to the minimum of Rs. 1,000/-.

5.8 Clause 51 of the Bill seeks to amend section 180 of the MVAct providing punishment for allowing unauthorized persons to drive motor vehicles, to enhance the quantum of fine from the present maximum of Rs. 1,000/- to Rs. 2,000/- subject to the minimum of Rs. 1,000/-.

5.9 Clause 52 of the Bill seeks to amend section 181 of the MVAct providing punishment for driving motor vehicles in contravention of section 3 (necessity for driving licence) or section 4 (age limit in connection with driving of motor vehicles), to enhance the quantum of fine from the present maximum of Rs. 500/- to Rs. 2,000/- subject to the minimum of Rs. 500/-.

5.10 Clause 53 of the Bill seeks to amend section 183 of the MVAct providing punishment for contravention of the speed limits referred to in section 112, to enhance the quanta of fines prescribed under sub-section (1) relating to driving at excessive speed and under sub-section (2) relating to causing an employee to drive at excessive speed. Under sub-section (1), the quantum of fine for the first offence is proposed to be enhanced from the present maximum of Rs. 400/- to a fixed Rs. 500/- and for the subsequent offence from the present maximum of Rs. 1,000/- to Rs. 5,000/- subject to the minimum of Rs. 2,000/-. Under sub-section (2), the quantum of fine for the first offence is proposed to be enhanced from the present maximum of Rs. 300/- to a fixed Rs. 500/- and for the subsequent offence from the present maximum of Rs. 500/- to Rs. 3,000/- subject to the minimum of Rs. 1,500/-.

5.11 Clause 54 of the Bill seeks to amend section 184 of the MVAct providing punishment for dangerous driving, to enhance the quantum of fine for the first offence from the present maximum of Rs. 1,000/- to a fixed Rs. 1,000/- and for the subsequent offence from the present maximum of Rs. 2,000/- to Rs. 5,000/- subject to the minimum of Rs. 2,000/-.

5.12 Clause 55 of the Bill seeks to amend section 185 of the MVAct providing punishment for driving by a drunken person or a person under the influence of drugs, to enhance the quantum of fine for the first offence from the present maximum of Rs. 2,000/- to a fixed Rs. 2,000/- and for the subsequent offence from the present maximum of Rs. 3,000/- to a fixed Rs. 3,000/-.

5.13 Clause 56 of the Bill seeks to amend section 186 of the MVAct providing punishment for driving when mentally or physically unfit to drive, to enhance the quantum of fine for the first offence from the present maximum of Rs. 200/- to a fixed Rs. 500/- and for the subsequent offence from the present maximum of Rs. 500/- to a fixed Rs. 1,000/-.

5.14 Clause 58 of the Bill proposes to insert new section 187A in the MVAct, which reads as under:

Section 187A. Liability of a person while driving a motor vehicle in certain cases. “(1) Without prejudice to the provisions contained in the Indian Penal Code, 1860, whoever drives a motor vehicle in rash or negligent manner and causes injury to a person or damages any property shall be liable to penalty which may extend to five thousand rupees.

(2) The penalty realised under sub-section (1) shall be credited to the Solatium Fund established under section 161A in such manner as may be prescribed.”

5.15 Clause 59 of the Bill seeks to amend section 192 of the MVAct providing punishment for using a motor vehicle without registration, to enhance the quantum of fine for the first offence from the present Rs. 5,000/- subject to the minimum of Rs. 2,000/- to Rs. 10,000/- subject to the minimum of Rs. 4,000/- and for the subsequent offence from the present Rs. 10,000/- subject to the minimum of Rs. 5,000/- to Rs. 20,000/- subject to the minimum of Rs. 10,000/-.

5.16 Clause 60 of the Bill seeks to amend section 192A of the MVAct providing punishment for using a motor vehicle without permit or in contravention of any of its conditions, to enhance the quantum of fine for the first offence from the present Rs. 5,000/- subject to the minimum of Rs. 2,000/- to Rs. 10,000/- subject to the minimum of Rs. 4,000/- and for the subsequent offence from the present Rs. 10,000/- subject to the minimum of Rs. 5,000/- to Rs. 20,000/- subject to the minimum of Rs. 10,000/-.

5.17 Clause 61 of the Bill seeks to substitute new section for section 198 of the MVAct providing punishment for unauthorized interference with a motor vehicle, to enhance the quantum of fine from the present maximum of Rs. 100/- to Rs. 1,000/- subject to the minimum of Rs. 500/- for tampering with brake or any other part of the mechanism of a motor vehicle and to Rs. 2,500/- subject to the minimum of Rs. 1,000/- for tampering with emission control device fitted by the manufacturer.

5.18 Clause 62 of the Bill seeks to amend section 200 of the MVAct providing for composition of certain offences, to delete therefrom section 194 providing punishment for driving a motor vehicle exceeding

permissible weight, and to insert therein section 192A providing punishment for using a motor vehicle without permit or in violation of any of its conditions.

5.19 Clause 63 of the Bill proposes to insert new section 213A in the MVAct, which reads as under:

Section 213A. Notification of inspection auditors by State Governments. “(1) The State Government may, by notification in the Official Gazette, notify such experts in the field of road transport as it thinks fit for the purpose of carrying out audit of the authorized testing stations set up under sub-section (2) of section 56.

(2) The State Government may make rules to regulate the qualifications, powers and functions of experts notified under sub-section (1).”

5.20 Significantly, the Bill proposes enhancement in the quanta of fines only and the terms of imprisonment wherever prescribed in the MVAct are not proposed to be increased. Deterrent effect is sought to be achieved through increases in the quanta of fines prescribed for various offences under the MVAct.

5.21 The Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, to which the Bill was referred for examination and report on 17.05.2007, submitted to Parliament its 139th Report on the Bill on 28.04.2008. The following are some of the important observations/ recommendations of the Committee:

Para 13.2. “Clause 9 seeks”

Para 13.3. “The Committee notes that drunken driving is a major cause of road accidents. This malady needs to be dealt with a firm hand. The Committee got suggestions from various quarters to the effect that if a drunken driver commits an accident which results in the death of persons the former should be dealt under the provisions of culpable homicide not amounting to murder under the relevant section of IPC. The Committee, therefore, recommends that the Government may amend the necessary legislations to include the deaths due to drunken driving as culpable homicide not amounting to murder.”

Para 13.4. “The Committee also recommends that if the drunken driver commits an accident his action should not be construed as mere ‘negligence’ rather it should be treated as a premeditated commitment of a crime and the drunken driver should be punishable under relevant provisions of IPC depending on the consequences of the accident.”

Para 20.2. “Clause 27 seeks”

Para 20.3. “The Committee welcomes this amendment as installation of speed governors and fog lights are important safety requirements. The Committee hopes that this Clause once legislated should be implemented systematically and the violators of this provision should be punished heavily as over speeding is one of the main causes for the rising number of accidents on the roads.”

Para 31.2. “Clause 50 seeks”

Para 31.3. “One of the stakeholders has suggested slab rates for over speeding since the danger increases manifold when the vehicle is driven at 90Km/ph or at 120 km/hr. Thus slab may be as follows:

20% more than speed limit	Rs.500
50% more than speed limit	Rs.1000
100% and beyond cancellation of licence and held under section 184 of Motor Vehicle Act.”	

Para 31.4. “The Committee is also of the view that to restrain dangerous driving which causes human and financial loss the above slab may be suitably formulated for every offence prescribed in the Motor Vehicle Act. The Committee also recommends that the slab may be revised annually in proportion to the rate of inflation and the clause may be modified accordingly.”

Para 32.2. “Clause 53 seeks”

Para 32.3. “The recommendations of the Committee against Clause 50 may be applied in this Clause also with necessary modifications.”

Para 33.2. “Clause 54 seeks”

Para 33.3. “The Committee notes that the Motor Vehicles Act, 1988, does not contain any provision or penalty related to the usage of mobile phones by the drivers while driving. However, through an executive order the Government prescribes the penalties for the use of mobile phones while driving. However, the executive order is silent on the following issues:-

- Should the case be booked under section 184 of the MVA?
- What does it mean ‘while driving’ – can one be booked while waiting on a signal?
- Can hands free-phones be used?
- Are two way radio sets allowed by taxi users and other paramilitary and police organizations?”

Para 33.4. “At present, the offence of usage of mobiles will be punishable under the category of dangerous driving vide Section 184 Motor Vehicles Act. The Committee feels that the Motor Vehicles Act being a two decade old legislation could not have envisaged the usage of mobile phones and the gravity of the situation which causes large number of accidents. The Committee,

therefore, recommends that a new Section should be entrusted specifically for the usage of mobile phones while driving.”

Para 34.2. “Clause 55 seeks ... The Committee’s recommendations against Clause 9 may be applied in case of this Clause also with necessary modifications.”

Para 34.3. “It was submitted to the Committee by the representative of the Institute of Road Traffic Education that the breath alcohol tests conducted on drunken drivers proved that they were having alcohol level of 30 mg to 200mg and above in 100ml of blood. The more the quantity of alcohol makes the driver more vulnerable to accidents. The danger increases manifold when he drives at 90 km/hr or 120 km/hr compared to the low speed driving. The probability of accidents increase with the increase of the speed of motor vehicle. Higher the speed would mean higher the risk of accidents and therefore should attract higher penalty. The Committee feels that a singular penalty in such cases will not serve the purpose. The Committee recommends the following slabs:

- (i) 30-60 mg per 100ml of blood- a fine of Rs.2000/-
- (ii) 60-150 mg per 100ml of blood- a fine of Rs.4000/- and/or imprisonment; and
- (iii) 150mg and above per 100ml of blood a fine of Rs.5000/- and minimum imprisonment with a provision to cancel the driving licence.”

Para 34.4. “The Committee’s recommendations against Clause 9 may be applied in case of this Clause also with necessary modifications.”

Para 35.2. “Clause 63 proposes”

Para 35.4. “One of the stakeholders in their memorandum submitted the Committee has stated that the maintenance of vehicles in good condition is a requirement of law. This area is often overlooked as the pollution levels and the numbers of road mishaps would suggest. The cut throat competition, the huge

burden of repayment of loans and the inability of the administration to properly check each vehicle physically at the time of issuance of certificate of fitness are some of the reasons that can be attributed to the above. As a result accidents are on the rise resulting in loss of life and property. Further, the menace of auto pollution is on the upswing. Proper checks and control are the need of the hour.”

Para 35.5. “The M.V. Act, 1988 provides scope for appointment of “Authorized Testing Stations” for proper checking and testing of all vehicles for the purpose of renewal of certificate of fitness. They are supposed to install required machinery for this purpose and also appoint qualified engineers for this purpose. But, the government has failed to implement the same inspite of the adequate manpower available at their disposal for the same job.”

Para 35.6. “The Committee notes that almost all the vehicle manufacturers are having authorized dealerships and authorized workshops in almost all the cities. The Committee therefore recommends that the manufacturers themselves can be asked to set up shops for this purpose after obtaining the required licenses from the concerned authority. This will be a huge step towards safer travel and transportation in this country. This will also provide scope for additional business opportunities and scope for fresh jobs and employment opportunities. Adequate staff may be provided for testing the vehicles and the staff may be given periodical training to test the vehicles. Wherever, the Government are unable to provide adequate staff, entrusting the work to vehicle manufacturer may be thought of. Hence, government must move in this direction immediately. The manufacturers themselves can be asked to set up shops for this purpose after obtaining the required licenses from the concerned authority. This will be a huge step towards safer travel and transportation in this country. This will also provide scope for additional business opportunities and scope for fresh jobs and employment opportunities.”

Para 35.7. “The Committee recommends that the Government may reconsider Clause 63 after carefully scrutinizing the issues involved and addressing the issues raised by the stakeholders since this will authorize the State governments to have a panel of experts in the field of road transport for the purpose of carrying out audit

inspection of authorized testing stations set up under section 56(2) of the Act.”

Para 41. “Another aspect brought before the Committee by one of the stakeholders is the insufficiency of the road signage. They have stated that the road sign has been updated by the Indian Road Congress in 2001 but the First Schedule to the Motor Vehicles Act, 1988 has not been amended to incorporate the changes. This has left a major vacuum in road user education, the driver training as well as installation of signage as per law. The Committee feels that if the signages in the schedule are obsolete or not keeping with the pace of the changing times, naturally there will remain a serious handicap in driver training and education. The Committee also notes that there is no mention of road marking or traffic signals in the first schedule. The Committee feels that this is a major shortcoming and recommends that the first schedule should be amended with comprehensive signs and symbols, road markings and signals as per the recommendations of the Indian Roads Congress.”

6. Proposed Road Safety and Traffic Management Boards and National Road Traffic Policy

6.1 The Committee on Infrastructure (COI) headed by Hon’ble Prime Minister had approved in its third meeting on 13.01.2005, creation of a Directorate of Road Safety and Traffic Regulation. With a view to recommend the scope, functions and nature of this Directorate, a Committee headed by Shri S. Sundar (Sundar Committee) was constituted by the Department of Road Transport and Highways on 23.11.2005. The Sundar Committee submitted its Report in February, 2007, appending therewith a draft of “National Road Safety and Traffic Management Act, 2007”. The long title of the proposed enactment reads as under:

“An Act to provide for the establishment of National and State level Road safety and Traffic Management Boards for the purpose of orderly development, regulation, promotion and optimization of modern and effective road safety and traffic management systems and practices including improved safety standards in road design, construction, operation and maintenance, and production and maintenance of mechanically propelled vehicles and matters connected therewith or incidental thereto.”

6.2 The following clauses of the proposed enactment need to be perused:

Clause 2 (g). “Mechanically Propelled Vehicle” or “Vehicle” means any mechanically propelled vehicle whether motorized or non-motorized, adapted for use upon roads whether the power of propulsion is transmitted thereto from an internal or external source and includes trailers, cycles and cycle rickshaws but excludes vehicles pulled by animals or humans.’

Clause 2(k). “roads” means all roads including National Highways, state highways, district roads, village roads and urban roads which are open as public roads to Mechanically Propelled Vehicles and includes bridges, flyovers, overbridges and underbridges, but excludes all private roads and roads that fall in cantonment areas.’

Clause 2(n). “vehicle other than Mechanically Propelled Vehicle” means all vehicles not being Mechanically Propelled Vehicles and includes carts drawn by animals or humans.’

Clause 6. *Functions of the National Road Safety and Traffic Management Board.* “(1) The National Board shall, in relation to road safety and traffic management, have the following powers and functions, namely:

- (a) specify minimum design, construction, operation and maintenance standards for National Highways;

- (b) specify minimum standards for establishing and operating trauma facilities and para-medical facilities for dealing with traffic related injuries on National Highways;
- (c) conduct or cause to be conducted safety audits to monitor compliance with the standards specified by it;
- (d) make recommendations or issue guidelines relating to design, construction, operation and maintenance standards for roads other than National Highways.

(2) Notwithstanding anything to the contrary contained in any law for the time being in force and effect, the National Board shall, in relation to Mechanically Propelled Vehicles, have the following powers and functions, namely:

- (a) specify the minimum safety requirements and standards for the design and manufacture of Mechanically Propelled Vehicles;
- (b) specify the minimum conditions for safe usage of Mechanically Propelled Vehicles including but not limited to specifying the maximum load bearing and capacity limits;
- (c) conduct or cause to be conducted safety audits to monitor compliance with the standards specified by it;
- (d) specify safety standards for vehicular traffic on various types of roads including but not limited to schemes for segregation of various classes of Vehicles in separate speed lanes and their right of way;
- (e) aid and advise the Central Government in determining the changes, if any, required to any rules and regulations for training, testing and licensing of drivers of Mechanically Propelled Vehicles; and
- (f) aid and advise the Central Government in matters relating to or arising out of traffic management of Mechanically Propelled Vehicles for the purposes of ensuring road safety.

(3) Without prejudice to the provisions of sub-sections (1) and (2) above, the National Board shall have the following additional powers and functions, namely:

- (a) conduct or cause to be conducted research in different spheres of road safety and traffic management and publish the findings thereof;

- (b) establish the procedure and methodology for data collection, transmission and analysis at appropriate levels, and define the role of different agencies within the jurisdiction of National Board involved in the process;
- (c) establish procedures and centres for multi-disciplinary crash investigation;
- (d) make recommendations or issue guidelines relating to safety features for vehicles other than Mechanically Propelled Vehicles and for safe operating conditions for such vehicles;
- (e) make recommendations or issue guidelines for building capacity and skills in the traffic police, hospitals, highway authorities, educational and research organizations and other organizations dealing with road safety and traffic management;
- (f) promote best practices in road safety and traffic management, undertake road safety and traffic education programs, and conduct campaigns to create awareness amongst all sections of road users, children and students on matters relating to road safety;
- (g) recognize non-government organizations working in the area of road safety and traffic management, and assist them in promotion of efficient traffic management and road safety;
- (h) provide for the special requirements of women, children, senior citizens, disabled persons and pedestrians when making regulations or recommendations or when issuing guidelines relating to road safety and traffic management;
- (i) advise the Central Government on administration of the provisions relating to safety as contained in Chapters II, IV, V, VII, VIII and XIII of the Central Motor Vehicles Act 1988 and the rules made thereunder;
- (j) provide technical assistance and guidance to the State Road Safety and Traffic Management Boards with a view to promoting uniform road safety and traffic management systems and practices throughout the country;
- (k) enter into agreements with the state governments and/or State Road Safety and Traffic Management Boards on behalf of the Central Government for the promotion of road safety and efficient traffic management; and
- (l) liaise with other agencies such as education boards and institutions, Director-General of health services and non-

governmental organizations in matters relating to road safety and traffic management.

(4) Nothing contained in sub-sections (1), (2) and (3) of this section 6 shall be construed or interpreted as conferring on the National Board powers, functions and jurisdiction in respect of matters relating to public order, roads other than National Highways and vehicles other than Mechanically Propelled Vehicles.

(5) The National Board may be a special or general resolution delegate to the Chairperson or any other member of the National Board or to any officer of the National Board, subject to such conditions and limitations, if any, as may be stipulated, such of its powers and functions under this Act (except powers under sub-section (3) of this section 6 and section 37 as it may deem necessary.

(6) The National Board shall exercise its powers and discharge its functions in a transparent manner.”

Clause 11. *Functions of the State Road Safety and Traffic Management Board.* “(1) Subject to the provisions of the Act, the State Board shall in relation to road safety and traffic management on roads other than National Highways situate within the relevant State have the following powers and functions, namely:

- (a) aid and advise the State Government, on matters relating to or arising out of road safety and traffic management in the State;
- (b) coordinate road safety and traffic management functions and implementation of measures relating thereto with the State level agencies and departments involved in road safety and traffic management for the purposes of this Act;
- (c) specify minimum design, construction, operation and maintenance standards for roads other than National Highways with due regard to the recommendations or guidelines of the National Board;
- (d) specify minimum standards for establishing and operating trauma facilities and para-medical facilities for dealing with traffic related injuries on all roads other than National Highways;

- (e) conduct or cause to be conducted safety audits to monitor compliance with the standards specified under this Act other than matters relating to National Highways and matters within the jurisdiction of the Central Government;
- (f) specify minimum safety requirements and standards for the design and manufacture of vehicles other than Mechanically Propelled Vehicles with due regard to the recommendations or guidelines of the National Board;
- (g) recommend measures for enquiry into and redressal of complaints and grievances relating to road safety and traffic management;
- (h) upon request of the National Board, conduct or cause to be conducted surveys and audits to monitor compliance with laws relating to road safety and traffic management and the adherence to standards, procedures and guidelines specified or issued by the National Board under this Act, and report the results of such surveys or audits to the National Board;
- (i) identify and promote road user behavior strategies, capacity building measures, public awareness and road safety and traffic management education;
- (j) promote efficient procedures for accident investigation, data collection, reporting and analysis, in relation to matters falling within its jurisdiction; and
- (k) promote the provision of special requirements relating to women, children, senior citizens, disabled persons and pedestrians in matters relating to road safety and traffic management on roads other than National Highways.

(2) The State Board may be a special or general resolution delegate to the Chairperson or any other member of the State Board or to any officer of the State Board, subject to such conditions and limitations, if any, as may be specified in the order such of its powers and functions under this Act as it may deem necessary.

(3) The State Board shall exercise its powers and discharge its functions in a transparent manner.

(4) In exercise of its powers and discharge of its functions, the State Board shall conform to the regulations made by the National Board under this Act and shall have due regard for the guidelines issued by the National Board.”

Clause 28. *Advisory Committee.* “(1) The Appropriate Board shall by notification establish within ninety days from the appointed date, a committee to be known as the National Advisory Committee or the State Advisory Committee, as the case may be.

(2) The National Advisory Committee shall consist of not more than thirty-one members and the State Advisory Committee shall consist of not more than twenty-one members to represent the interests of road users, construction industry, transport industry, automobile manufacturers, and relevant non-governmental organizations and academic and research bodies.

(3) The Chairperson and members of the Appropriate Board shall be the ex-officio Chairperson and ex-officio members of the National Advisory Committee or the State Advisory Committee, as the case may be.

(4) The National Advisory Committee or the State Advisory Committee, as the case may be, shall meet at least four times in a year and its proceedings shall be conducted in accordance with the Regulations to be specified.”

Clause 29. *Objects of Advisory Committee.* “The objects of the National Advisory Committee or the State Advisory Committee, as the case may be, shall be to advise the Appropriate Board on-

- (a) questions of policy;
- (b) matters relating to quality, continuity, reliability and extent of road safety and traffic management; and
- (c) protection of road user interest.”

Clause 30. *Penalties.* “(1) Whoever fails to comply with the regulations specifying the-

- (i) design, construction, operation and maintenance standards for National Highways; or
- (ii) safety standards for the design or manufacture of any Mechanically Propelled Vehicle,

shall be punishable by the National Board with fine which may extend to Rupees ten lakh and where the contravention or failure is a continuing one, with further fine which may extend to Rupees three lakh for every month or part thereof during which such

failure or contravention continues after lapse of 60 (sixty) days from the date of imposition of fine for the first such contravention or failure:

Provided that no such fine shall be imposed on

- (i) the operator or owner of whole or any part of any National Highway for contravention of any such regulation within a period of three years from the date on which such regulation came into effect; and
- (ii) the manufacturer of a Mechanically Propelled Vehicle for contravention of any such regulation within a period of one year from the date on which such regulation came in effect.

(2) Whoever fails to comply with the regulations specifying the-

- (i) standards for design, construction, operation and maintenance of roads other than National Highways, or
- (ii) safety standards for the design or manufacture of any vehicle other than a Mechanically Propelled Vehicle,

shall be punishable by the State Board with fine which may extend to Rupees ten lakh and where the contravention or failure is a continuing one, with further fine which may extend to Rupees one lakh for every month or part thereof during which such failure or contravention continues after lapse of 60 (sixty) days from the date of conviction for such contravention or failure:

Provided that no such fine shall be imposed on

- (i) the operator or owner of whole or any part of any road other than National Highways for contravention of any such regulation within a period of three years from the date on which such regulation came into effect; and
- (ii) the manufacturer of a vehicle other than a Mechanically Propelled Vehicle for contravention of any such regulation within a period of one year from the date on which such regulation came into effect.

(3) Whoever -

- (i) fails to furnish the information required pursuant to Section 7 or Section 12 or fails to grant or impedes any access required to any document, record or information or to any premises where any such document, record or information is believed to be kept pursuant to section 7 or Section 12; or
- (ii) willfully furnishes or causes to be furnished any information or return which he knows to be false or incorrect in material particulars,

shall for each such offence be punishable by the Appropriate Board with fine which may extend to Rupees one thousand and in the case of a continuing offence to a further fine which may extend to Rupees five hundred for each day after the first day during which the offence continues.

(4) Without prejudice to the penalty that may be imposed under sub-sections (1) and (2) above, the Appropriate Board may recommend remedial action to the Appropriate Government.”

Clause 37. *Power of National Board to make regulations.* “(1)The National Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) Before notifying any regulations, the National Board shall publish a draft thereof in such manner as it may deem fit to provide an opportunity to persons affected or likely to be affected by such regulations to make suggestions or objections and upon receiving such suggestions and objections within the period stipulated by the National Board, consider the same before notifying the regulations, with or without modifications.

(3) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (a) any matter which is required to be, or may be, specified by regulations or in respect of which provisions is to be or may be made by regulations for the purposes of the National Board’s exercise of its powers under section 6 of the Act;
- (b) the time and places of meetings of the National Board and the procedure (including quorum necessary for

- the transaction of business) to be followed at such meetings under sub-section (1) of section 16;
- (c) the powers and duties of the Secretary under sub-section (1) of section 18;
 - (d) the terms and conditions of the consultants appointed under sub-section (4) of section 18;
 - (e) the procedure to be followed by the National Board including the places at which it shall conduct its business under sub-section (1) of section 16; and
 - (f) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.”

Clause 43. *Power of the Appropriate Government to suspend application of regulations.* “(1) If, at any time, the Appropriate Government is of the opinion that on account of grave emergency, national security or other like cause it is necessary to keep in abeyance any or all regulation(s) made under this Act by the Appropriate Board, the Appropriate Government, may, by notification in the Official Gazette, direct suspension of application of such regulation(s) for such period, not exceeding six months at a time, as may be specified in the notification.

(2) On the expiration of the period of suspension specified in the notification issued under sub-section (1), the Appropriate Government may for reasons to be recorded in writing extend the period of suspension for such further term, not exceeding six months at a time, as it may consider necessary.

(3) The Appropriate Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action and the reasons for such action to be laid before each House of Parliament or the State Legislature, as the case may be, at the earliest possible opportunity.”

Clause 44. *Act to have overriding effect.* “The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any other instrument having effect by virtue of any other law other than this Act.”

6.3 While the Union Government is still examining the Report of the Sundar Committee, the State of Kerala has taken the lead and brought on its statute Book the Kerala Road Safety Authority Act, 2007 (Kerala Act). The Kerala Act provides for the constitution of a Road Safety Authority for implementation of road safety programmes in the State, for the establishment of a Road safety Fund and for matters connected therewith and incidental thereto. The Transport Commissioner is *ex officio* the Road Safety Commissioner, who is a member and the Chief Executive Officer of the Authority. The following sections of the Kerala Act need to be perused:

Section 4. *Functions of the Authority.* “The Authority shall have the following functions, namely:-

- (a) advising the Government on road safety policies;
- (b) prescribing and enforcing road safety standards and procedures;
- (c) formulate and implement schemes, projects and programmes, relating to road safety;
- (d) co-ordinating the functions of all the agencies and Government departments discharging the duties related to road safety;
- (e) implementing road safety awareness programmes;
- (f) administration of the Fund;
- (g) sanctioning expenditure for the implementation of road safety schemes and programmes;
- (h) sanctioning expenditure for road safety projects and for purchase and installation of equipments and devices connected with road safety;
- (i) sanctioning expenditure for the conduct of studies, projects and research on matters relating to road safety;
- (j) sanctioning expenditure for trauma-care programmes or activities;
- (k) sanctioning administrative expenditure of the Authority;
- (l) sanctioning expenditure on matters connected with road safety measures;

- (m) formation of self help groups, under the leadership of the Authority for the rescue operation in the place of accident;
- (n) discharging such other functions, as may be prescribed, having regard to the objects of this Act.”

Section 14. *Power to order removal of causes of accidents.* “(1) Notwithstanding anything contained in any other law for the time being in force, where the Authority is satisfied on complaint, report by any person or otherwise that –

- (i) the act of any person or persons on a public road; or
- (ii) the placement or positioning of any vehicle, animal, object built without the approval of any recognized administrative authority, structure or materials including arches, banners, display boards, hoardings, awnings, tents, *pandals*, poles, platforms, rostrums, statues, monuments and other similar structures, on a public road; or
- (iii) the movement of animals or vehicles on a public road; or
- (iv) the condition of any tree, structure or building situated in the vicinity of a public road; or
- (v) the entry or exit of any building or premise in the vicinity of a public road,

is likely to cause accidents or causes obstruction to the free flow of traffic or distract the attention or obstruct the vision of the driver of any vehicle, the Road Safety Commissioner may, after recording reasons thereof, direct the person concerned, either by a general or special order, to take such measures within two months as it considers necessary and such person shall be bound to comply with the direction within such time, as may be specified by the Authority.

(2) Notwithstanding anything contained in sub-section (1), in case of urgency, the Road Safety Commissioner may take such action as may be necessary to prevent accident or obstruction, as the case may be, and recover the cost thereof from the person responsible, in such manner as may be prescribed.”

Section 15. *Power to order works.* “(1) Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Authority to order any work or improvement on a public road, as it considers necessary, to secure safety on such roads and each concerned Government department or the local authority or any other authority shall be bound to carry out such works or improvement within such time, as may be specified by the Authority:

Provided that no order under this sub-section shall be issued in respect of any highway declared as such under the Kerala Highway Protection Act, 1999 (6 of 2000) except with the prior consultation of the highway authority of the respective area appointed under the said Act:

Provided further that it shall not be issued in respect of the roads under the control of the Local Self Government Institutions without prior consultation with the respective Local Self Government.

(2) It shall be the duty of every officer of the Government, local authority or any other authority to act in aid of the Authority in enforcing the orders under sub-section (1).”

Section 16. *Power to recover cost.* “If any person on whom a written order is served under section 14 refuses or fails to comply with the order, the Authority may take such action as to prevent danger and ensure safety to the public and may recover the cost with legitimate interest thereof from such person.”

Section 19. *District Road Safety Council.* “(1) The Government may, by notification in the Gazette, constitute a Council to be called “the District Road Safety Council” in every district in the State.

(2)

(3) The District Road Safety Council shall exercise such powers and perform such functions, as the Authority may, from time to time, delegate.”

Section 26. *Punishment for failure to comply with the Authority's order.* “(1) Whoever refuses or fails to comply with any order of the Authority or the Road Safety Commissioner or any District Road Safety Council under this Act, shall be punishable with imprisonment for a term of six months or with fine which may extend to five thousand rupees or with both.

(2) In the case of continuing offence a fine of one thousand rupees shall be imposed for each day for which the offence continues.”

Section 27. *Punishment for obstructing the Authority.* “Whoever obstructs the Authority, the Road Safety Commissioner, District Road Safety Council or any officer of the Authority or of the District Road Safety Council or any person employed or engaged by them in the discharge of the functions under this Act, shall be punishable with imprisonment for a term of maximum three years or with fine which may extend to five thousand rupees or with both.”

Section 28. *Compounding of offences.* “Any offence punishable under section 26 may either before or after the institution of prosecution, be compounded by such officers or authorities and for such amount as the Government may, by notification in the Gazette, specify in this behalf.”

Section 37. *Power to give directions.* “The Government may give directions to the Authority in matters of policy of the Authority and the Authority shall be bound to give effect to such directions.”

6.4 Significantly, section 215 of the MVAct mandates the constitution of Road Safety Councils at the national and State levels and of District Road Safety Committee for each district and there are in place the National Road Safety Council and State Road Safety Councils in some States. This provision reads as under:

Road Safety Councils and Committees. “(1) The Central Government may, by notification in the Official Gazette, constitute for the country a National Road Safety Council consisting of a Chairman and such other members as that Government considers necessary and on such terms and conditions as that Government may determine.

(2) A State Government may, by notification in the Official Gazette, constitute for the State a State Road Safety Council consisting of a Chairman and such other members as that Government considers necessary and on such terms and conditions as that Government may determine.

(3) A State Government may, by notification in the Official Gazette, constitute District Road Safety Committee for each district in the State consisting of a Chairman and such other members as that Government considers necessary and on such terms and conditions as that Government may determine.

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

6.5 The Union Department of Road Transport and Highways has formulated a draft National Road Safety Policy (Policy) in consultation with road safety experts and other departments. The same was placed before the National Road Safety Council and has also been placed on the said Department’s website²¹. The comments/suggestions received thereon are under examination.²²

6.6 The Policy notes that the number of road accidents and fatalities have been growing in recent years, which call for concerted and multi-disciplinary preventive and remedial efforts. As road accidents

²¹ <http://morth.nic.in>, visited 17.06.2008

²² *ibid.*

involve roads, motor vehicles as also the human beings, the Policy needs to address on a holistic basis, issues covering road engineering, signage, vehicle design, education of road users and enforcement of traffic safety measures. Safer road infrastructure, safer vehicles, safer drivers, safety for vulnerable road users, road traffic safety education and training, and traffic enforcement are, accordingly, included in the goals.

6.7 The Policy states that safety conscious planning and design of roads and road networks will be encouraged whilst undertaking new as well as up-gradation and rehabilitation road schemes through application of road safety audits.

6.8 The Policy notes that without vehicle construction regulations governing safety standards for systems such as braking, lightening, signaling there can be little control over the general safety of country's vehicle fleet. Steps will be taken to strengthen the system to ensure that safety aspects are built in at the stage of design, manufacture, usage, operation and maintenance of vehicles in line with prevailing international standards in order to minimize adverse safety and environmental effects of vehicle operation on road users and infrastructure.

6.9 The Policy states that the government will strengthen the system of driver licensing and training to improve the competence and capability of drivers. The manpower, both quantitatively and qualitatively, will be improved to test and evaluate the driving ability of all licence applicants. Setting up of modern driving schools with adequate infrastructure and

tools in partnership with automobile manufacturers, other private sector participants and NGOs will be encouraged.

6.10 The Policy notes that the road users found most vulnerable on Indian roads from a road safety point of view are pedestrians, bicyclists and motorized two-wheelers. Special provisions for people on foot include regulations for pedestrian crossings, which give legal precedence to pedestrians. However, it is the pedestrians seeking to protect their lives, who almost invariably give way to motor vehicles. Another set of vulnerable road users are the non-motorized handcarts, cycle rickshaws, animal-drawn carts, etc. In India, there is high degree of heterogeneity and no segregation of motorized and non-motorized traffic on roads. This often leads to increased conflicts and thus reduced safety. **There is no appropriate legislation to govern the behaviour of pedestrians and non-motorized traffic on the roads.**

6.11 The Policy states that the government will encourage all professionals undertaking road design, road construction, road network management, traffic management and law enforcement to attain adequate knowledge of road safety issues. Inclusion of road safety awareness as part of educational curricula for students of various age groups will be encouraged. Also, training programmes for various specific groups involved in road safety management tasks, e.g., traffic personnel, highway engineers, school teachers, town planners, NGOs, etc. will be planned, designed and implemented.

6.12 The Policy notes that enforcement of traffic legislation is aimed at controlling road user behaviour by preventive, persuasive and punitive methods in order to effect the safe and efficient movement of people and

goods. The primary objective of traffic law enforcement is the creation of a deterrent to violators and potential violators of traffic laws and to raise the level of compliance among all drivers and road users. Appropriate steps to ensure that the enforcement authorities are adequately manned, trained, equipped and empowered to carry out their function ensuring safe road use and orderly traffic flow, will be taken.

7. Pedestrians and Non-motorized Traffic

7.1 We may first refer to the following provisions in the Rules of the Road Regulations, 1989:

Regulation 11. *Right of way.* “The pedestrians have the right of way at uncontrolled pedestrian crossings. When any road is provided with footpath or cycle track specially for other traffic, except with permission of a police officer in uniform, a driver shall not drive on such footpath or track.”

Regulation 19. *Stop sign on road surface.* “(1) When any line is painted on or inlaid into the surface of any road at the approach to the road junction or to a pedestrian crossing or otherwise, no driver shall drive a motor vehicle so that any part thereof projects beyond that line at any time when a signal to stop is being given by a Police Officer or by means of a traffic control light or by the display of any traffic sign.

(2) A line for the purpose of this regulation shall not be less than 50 millimetres in width at any part and may be either in white, black or yellow.”

Regulation 22. *Traffic Sign and Traffic Police.* “A driver of a motor vehicle and every other person using the road shall obey:-

- (a) every direction given, whether by signal or otherwise, by a police officer or any authorized person for the time being in charge of the regulation of traffic;

- (b) any direction applicable to him and indicated on or by notice, traffic sign or signal fixed or operated by an authority, competent to do so:
- (c) any direction indicated by automatic signaling devices fixed at road intersections.” (underlining is ours)

7.2 There is no central legislation comprehensively governing/regulating the use of roads by the pedestrians and non-motorized traffic. It is left to the States to legislate thereon.

7.3 According to the Delhi Municipal Corporation Act, 1957, all roads in Delhi vest in the Corporation and it is the duty of the Commissioner of the Corporation to maintain, control and regulate them, *vide* section 298. The definition of “vehicle” includes a carriage, cart, van, dray, truck, hand-cart, bicycle, tricycle, cycle-rickshaw, auto-rickshaw, motor vehicle and every wheeled conveyance which is used or is capable of being used on a road, *vide* section 2(62), and the Commissioner may, *inter alia*, prohibit vehicular traffic on any road so as to prevent danger, obstruction or inconvenience to the public or to ensure quietness in any locality, *vide* section 303.

7.4 The Delhi Municipal Corporation Cycle-rickshaw Bye-laws, 1960, dealing with licensing of drivers of cycle-rickshaws for hire, puts conditions on a person applying for propelling a cycle-rickshaw, *vide* bye-law 5. The driver of a cycle-rickshaw should, *inter alia*, know the rules of the road and signals used by the drivers of other vehicles or by the traffic police and drive with all care and attention and observe all the rules of the road; he should not disobey any direction of any police officer for the regulation of traffic; he should keep the lamp properly lighted during the hours of lighting time; he should not propel a cycle-

rickshaw while intoxicated or make use of insulting, abusive or obscene language. Bye-law 17 prescribes penalty for contravention of the said provision in terms of paltry fine, i.e., fine which may extend to Rs. 50/- and in the case of a continuing contravention, an additional fine which may extend to Rs. 5/- for every day during which such contravention continues after conviction for the first such contravention.

7.5 The State of Karnataka has on its statute book the Karnataka Traffic Control Act, 1960 (KTCA), enacted for the control of traffic on highways and public places in the said State. The KTCA regulates the use of roads by vehicles, other than motor vehicles, and animals. The following sections of the KTCA need to be perused:

Section 2. *Definitions*. “In this Act, unless the context otherwise requires, -

- (a) ‘animal’ means any elephant, camel, horse, ass, mule, cattle, sheep or goat;
- (b) ‘driver’ means in the case of a vehicle, the person in charge or control of the vehicle for the time being, and in the case of an animal, any person driving, leading, riding or otherwise managing or controlling the animal, and the words “drive”, “driving” and “driven” shall be construed accordingly;
...
- (h) ‘public place’ means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access or over which they have a right to pass, and includes any place or stand at which passengers are picked up or set down by a public vehicle;
- (i) ‘public vehicle’ means any vehicle used or constructed or adapted to be used for the carriage of passengers or goods for hire or reward, other than a motor vehicle;
...

- (k) ‘vehicle’ includes any wheeled conveyance drawn, propelled or driven by any kind of power including human, animal, motor, steam or electric power and includes any barrow, sledge, plough, drag or like vehicle, but does not include a motor vehicle.”

Section 3. *Power to restrict the use of vehicles.* “The State Government or any authority authorized in this behalf by the State Government, if it is satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may, by notification, prohibit or restrict subject to such exceptions and conditions as may be specified in the notification, the driving of vehicles or animals either generally in a specified area or on a specified highway or part of a highway, and when such prohibition or restriction is imposed shall cause appropriate traffic signs to be placed or erected under section 4 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force only for a period of one month or less, notification thereof in the Official Gazette shall not be necessary.”

Section 4. *Traffic signs.* “(1) The State Government or any authority authorized in this behalf by the State Government may cause or permit traffic signs of any size, colour, type or description, to be placed or erected in any highway or public place for the purpose of bringing to public notice any prohibitions or restrictions imposed under section 3, or generally for the purpose of regulating traffic other than motor vehicle traffic.

...

(4) Any authority authorized in this behalf by notification by the State Government may remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which is in his opinion so similar in appearance to a traffic sign as to be misleading.

(5) No person shall wilfully remove, alter, deface, or in any way tamper with any traffic sign placed or erected under this section.

(6) If any person accidentally causes such damage to a traffic sign as renders it useless for the purpose for which it is placed and

erected under this section, he shall report the circumstances of the occurrence at the nearest police station, as soon as possible, and in any case within twenty-four hours of the occurrence.”

Section 6. *Duty to obey traffic signs.* “(1) Every driver of a vehicle or animal shall drive it in conformity with any indication given by a mandatory traffic sign and in conformity with the driving regulations set forth in the Second Schedule and shall comply with all directions given to him by any police officer for the time being engaged in the regulation of traffic in any public place.

(2) In this section, ‘mandatory traffic sign’ means a traffic sign included in Part A of the First Schedule or any traffic sign of similar form (that is to say consisting of or including a circular disc) displaying a device, word or figure and having a red ground or border or any prescribed sign painted or marked on the road or erected or displayed for the purpose of regulating traffic other than motor vehicle traffic under sub-section (1) of section 4.”

Section 7. *Signals.* “The driver of a vehicle shall on the occasions specified in the Third Schedule make the signals specified therein.”

Section 8. *Leaving vehicle or animal in dangerous position.* “No person in charge of a vehicle or animal shall cause or allow the vehicle or animal to remain at rest on any highway in such a position or in such a condition or in such circumstances as to cause or is likely to cause danger, obstruction or undue inconvenience to other users of the highway or public place.”

Section 9. *Towing of person riding cycle.* “No driver of a vehicle shall tow a person riding a cycle and no person riding a cycle shall allow himself to be towed by any other vehicle.”

Section 10. *Leaving vehicle or animal unattended.* “No person in charge of a vehicle or animal shall allow such vehicle or animal to stand or proceed on a highway or public place unless it is under adequate control.”

Section 11. *Duty of driver to stop in certain cases.* “(1) The driver of a vehicle or animal shall cause the vehicle or animal, as the case may be, to stop and to remain stationary so long as may be reasonably necessary,-

- (a) when required to do so by any police officer in uniform, or
- (b) when the vehicle or animal is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether the driving or management of the vehicle or animal was or was not the cause of the accident or damage, and he shall give his name and address and the name and address of the owner of the vehicle or animal to any person affected by such accident or damage who demands it, provided such person also furnishes his name and address.

(2) The driver of a vehicle or animal shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 19, give his name and address to that person.”

Section 12. *Duty of owner of vehicle or animal to give information.* “The owner of a vehicle or animal the driver of which is accused of any offence under this Act shall on demand by any police officer give all information regarding the name and address of the driver which is in his possession or could by reasonable diligence be ascertained by him.”

Section 13. *Duty of driver in case of accident and injury to person.* “When any person is injured, or damage to property to the amount of twenty-five rupees or more is caused as the result of an accident in which a vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall-

- (a) take all reasonable steps to secure medical attention for any person so injured and, if necessary, convey him to the nearest hospital, unless the injured person, or his guardian, in case he is a minor, desires otherwise;
- (b) give on demand by a police officer any information required by him or, if no police officer or other authority is present, report the circumstances of the occurrence as soon as possible, and in any case within twenty-four hours of the occurrence, at the nearest police station, or, if he continues his journey after the accident, at the next police station.”

Section 14. *Power to make rules for control of traffic.* “(1) The State Government may, after previous publication, by notification, make rules for the purpose of carrying into effect the provisions of this Chapter, and different rules may be made for different areas of the State.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the removal and the safe custody of the vehicles including their loads which have broken down or which have been left standing or have been abandoned on a highway;
- (b) the use of weighing devices;
- (c) the determination, maintenance and management of parking places for the use of vehicles and animals and the fees, if any, which may be charged for their use;
- (d) prohibiting the use of foot-paths or pavements by vehicles or animals;
- (e) subject to specified conditions the segregation to any specified part of a highway of specified classes and descriptions of vehicle or animal traffic;
- (f) prohibiting or restricting the use of audible signals at certain times or in certain places;
- (g) regulating the loading of vehicles and in particular limiting the loads carried in relation to the size and nature of the tyres fitted;
- (h) a right of way for ambulances and fire brigade vehicles;
- (i) prohibiting the use of devices designed to prevent the rotation of any wheel of a vehicle;
- (j) the control of animals likely to frighten other animals or pedestrians;
- (k) the control of children on highways;
- (l) prohibiting the riding by more than two persons at the same time on cycles other than cycles designed for the purpose;
- (m) prohibiting the riding of more than two cycles abreast;
- (n) limiting the age of drivers of vehicles;
- (o) the inspection of loads carried on vehicles and animals;
- (p) the use of nose-ropes for animals;
- (q) regulating the driving of vehicles and animals at night;

- (r) regulating the use of highways by pedestrians;
- (s) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic;
- (t) any other matter which is to be or may be prescribed.

(3) The rules made under this section shall take effect on such date as may be specified in such rules and such date shall not be earlier than one month from the date of the publication of such rules in the official Gazette.”

Section 15. *General provision regarding construction and maintenance.* “Every vehicle used on a highway shall be so constructed and maintained as to prevent danger or inconvenience to persons using that vehicle and other road users.”

Section 16. *Power to make rules for construction, equipment and maintenance of vehicles.* “(1) The State Government may, after previous publication, by notification, make rules regulating the construction, equipment and maintenance of vehicles used on highways and public places, and different rules may be made for different areas of the State.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally or in respect of public vehicles of a particular class or description or in particular circumstances, namely:-

- (a) the width, height and length of vehicles;
- (b) the size, nature and condition of wheels and tyres;
- (c) brakes;
- (d) lamps and reflectors;
- (e) warning devices;
- (f) the inspection of vehicles by prescribed authorities;
- (g) regulating the particulars exhibited on vehicles and the manner in which such particulars shall be exhibited.”

Section 17. *Power to make rules for control of public vehicles.* “(1) The State Government may, after previous publication, by notification, make rules for regulation of the use of public vehicles, and different rules may be made for different areas of the State.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally or in respect of public vehicles of a particular class or description or in particular circumstances, namely:-

- (a) the issue, renewal, modification or cancellation of permits and the transfer of permits from one person to another;
- (b) the issue, renewal or cancellation of driving licences;
- (c) the issue of duplicate copies in place of permits and driving licences mutilated, defaced, lost or destroyed;
- (d) ...
- (e) the documents, plates and marks to be carried by public vehicles, the manner in which they are to be carried and the language in which such documents are to be expressed;
- (f) the badges and uniforms to be worn by drivers;
- (g) the fees to be paid in respect of permits, driving licences, duplicate copies of permits or driving licences, plates, badges, and appeals preferred under this Chapter;
- (h) the production of permits and driving licences before specified officers for purposes of inspection;
- (i) the conduct of persons licensed to act as drivers of public vehicles when acting as such and the conduct of passengers in such vehicles;
- (j) the limiting of the number of public vehicles or public vehicles of any specified class or description for which permits may be granted in any specified area, or on any specified route or routes;
- (k) the fixing of maximum or minimum fares or freights;
- (l) the maximum number of passengers or the maximum quantity of goods that may be carried in a public vehicle;
- (m) the conditions subject to which passengers, luggage or goods may be carried in a public vehicle;
- (n) the construction and fittings of and the equipment to be carried by public vehicles, whether generally or in specified areas or on specified routes;
- (o) the safe custody and disposal of property left in public vehicles;

- (p) the conveyance in public vehicles of corpses or persons suffering from infectious or contagious diseases or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such vehicles, if used for such purposes;
- (q) the requirements which shall be complied with in the construction or use of any stand or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof, the fees, if any, which may be charged for the use of such facilities, the records which shall be maintained at such stands or places, the staff to be employed thereat and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition;
- (r) requiring the person in charge of a public vehicle to carry any person tendering the legal or customary fare;
- (s) the inspection of public vehicles including animals used to drive them;
- (t) the records to be maintained and the returns to be furnished by the owners of public vehicles;
- (u) the appointment, terms of appointment, jurisdiction, control and functions of authorities for the purpose of administering the provisions of this Chapter; and
- (v) any other matter which is to be or may be prescribed.

(3) The rules made under this section shall take effect on such date as may be specified in such rules and such date shall not be earlier than one month from the date of the publication of such rules in the Official Gazette.”

Section 18. *General provision regarding punishment of offences.*

“Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, on conviction, be punishable with fine which may extend to ten rupees, or if having been previously convicted of any offence under this Act, he is again convicted of an offence under this Act, with fine which may extend to fifty rupees.”

Section 19. *Driving recklessly or dangerously.* “Whoever drives a vehicle or animal on a highway at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of

the case including the nature, condition and use of the highway or public place where the vehicle or animal is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the highway shall be punishable on a first conviction for the offence with fine which may extend to one hundred rupees and for a subsequent offence with fine which may extend to two hundred rupees.”

Section 20. *Power to arrest without warrant.* “(1) A police officer in uniform may arrest without warrant,-

- (a) any person who being required under the provisions of this Act to give his name and address refuses to do so, or gives a name and address which the police officer has reason to believe to be false, or
- (b) any person concerned in an offence under this Act or reasonably suspected to have been so concerned, if the police officer has reason to believe that he will abscond or otherwise avoid the service of summons.

(2) A police officer or other authority arresting without warrant the driver of a vehicle or animal shall, if the circumstances so require, take or cause to be taken any steps he may consider proper for the temporary custody of the vehicle or animal.”

Section 21. *Summary disposal of cases.* “(1) A court taking cognizance of an offence under this Act may state upon the summons to be served on the accused person that he-

- (a) may appear by a legal practitioner and not in person, or
- (b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the court such sum as the court may specify.

(2) Where an accused person pleads guilty under clause (b) of sub-section (1) and remits the sum specified, no further proceedings in respect of the offence shall be taken against him.”

SECOND SCHEDULE. *DRIVING REGULATIONS.*

- “1. The driver of a vehicle or animal shall drive the vehicle or animal, as the case may be, as close to the left-hand side of the road as may be expedient and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.
2. Except as provided in regulation 3, the driver of a vehicle or animal when passing shall drive to the right of all traffic proceeding in the same direction as himself.
3. The driver of a vehicle or animal when passing may drive to the left of a motor vehicle or a vehicle or an animal the driver of which having indicated an intention to turn to the right has driven to the centre of the road.
4. The driver of a vehicle or animal shall not pass a vehicle travelling in the same direction as himself,-
 - (a) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction;
 - (b) where a point or corner or a hill or an obstruction of any kind renders the road ahead not clearly visible.
5. The driver of a vehicle or animal shall not, when being overtaken or being passed by any class of traffic, do anything in any way to prevent the other traffic from passing him.
6. The driver of a vehicle or animal shall drive slowly when approaching a road intersection, a road junction or a road corner and shall not drive into or cross any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.
7. The driver of a vehicle or animal shall on entering a road intersection, if the road entering is a main road designated as such, give way to traffic proceeding along that road and in any other case give way to all traffic approaching the intersection on right hand.
8. The driver of a vehicle or animal shall, -
 - (a) when turning to the left, drive as close as may be to the left hand side of the road from which he is making the turn and of the road which he is entering;

- (b) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle or animal to move in such a manner that-
 - (i) so far as may be practicable it passes beyond, and so to leave on the driver's right hand a point formed by the intersection of the centre lines of the intersection roads; and
 - (ii) it arrives as near as may be at the left hand side of the road which the driver is entering.”

THIRD SCHEDULE. *SIGNALS.*

“1. When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, the driver of a vehicle shall extend his right arm or a whip if carried, in a horizontal position to his right outside the vehicle or otherwise so as to be visible from behind.

2. When the driver of a vehicle wishes to indicate to the driver of a motor vehicle or a vehicle behind him that he desires that driver to overtake him, he shall extend his right arm, or a whip if carried, horizontally to his right outside the vehicle or otherwise so as to be visible from behind and shall swing the arm or a whip, as the case may be backwards and forwards in a semi-circular motion.”

8. Recommendations

8.1 Clauses 118, 119, 127, 128, 141, 142 and 143 of the IPC (Amendment) Bill, 1978, as passed by the Council of States on 23.11.1978, are reproduced below:

Clause 118. *Amendment of section 279.* ‘In section 279 of the Penal Code, for the words “which may extend to one thousand rupees” shall be omitted.’

Clause 119. *Insertion of new section 279A.* “After section 279 of the Penal Code, the following section shall be inserted, namely:-

‘279A. *Driving unsafe or overloaded vehicle on a public way.* Whoever knowingly or negligently drives or permits any person to drive any vehicle on a public way when that vehicle is in such a state or so loaded as to endanger life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.- In this section –

- (a) “vehicle” includes any vessel; and
- (b) “public way” includes any public water-way.’”

Clause 127. *Amendment of section 304A.* ‘In section 304A of the Penal Code, for the words “two years”, the words “five years” shall be substituted.’

Clause 128. *Insertion of new section 304B.* “After section 304A of the Penal Code, the following section shall be inserted, namely:-

‘304B. *Causing death or injury by rash and negligent driving.* Whoever by rash or negligent driving of any vehicle causes the death of any person or causes any injury which is likely to cause the death of such person, the causing of such death not amounting to culpable homicide, and drives or runs away without informing any police station within a reasonable time, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation 1.- Where the act constituting the offence under section 304A or this section is committed while under the influence of drink or drug shall be deemed to have been committed in a rash or negligent manner.

Explanation 2.- In this section, “vehicle” includes vessel.’.”

Clause 141. *Amendment of section 336.* ‘In section 336 of the Penal Code,-

(a) for the words “three months”, the words “six months” shall be substituted;

(b) for the words “two hundred and fifty rupees”, the words “five hundred rupees” shall be substituted.’

Clause 142. *Amendment of section 337.* ‘In section 337 of the Penal Code,-

(a) for the words “six months”, the words “one year” shall be substituted;

(b) the words “which may extend to five hundred rupees” shall be omitted.’

Clause 143. *Amendment of section 338.* ‘In section 338 of the Penal Code,-

(a) for the words “two years”, the words “three years” shall be substituted;

(b) the words “which may extend to one thousand rupees” shall be omitted.’

8.2 The Law Commission of India in its 156th Report, submitted in 1997, affirmed the above changes in the IPC, except that new section 304B was recommended to be inserted as sub-section (2) in section 304A because the number could not be '304B' in view of the amendment of the IPC by Act 43 of 1986 inserting section 304B relating to dowry death.

8.3 We reaffirm the changes in the IPC as carried out by clauses 118, 119, 127, 128, 141, 142 and 143 of the IPC (Amendment) Bill, 1978, as passed by the Council of States on 23.11.1978, subject to the modifications suggested in the subsequent paragraphs.

8.4 The Law Commission of India now feels that even the maximum term of imprisonment of five years in section 304A, IPC would not be adequate on the touchstone of the theory of deterrence keeping in view the present days' practical reality and the same should be increased to ten years (also for the proposed sub-section (2) thereof). It is also felt that the offence under section 304A, IPC should be non-bailable.

8.5 Causing death of any person through driving under the influence of drink or drugs should be punishable with the minimum term of imprisonment of two years.

8.6 Any second or subsequent offence under section 304A, IPC, if the rash or negligent act involved is the act of driving other than driving under the influence of drink or drugs, should be punishable with the minimum term of imprisonment of one year.

8.7 The maximum term of imprisonment in section 279/ (proposed) section 279A, IPC should be increased to five years and any second or subsequent offence thereunder should be punishable with the minimum term of imprisonment of six months.

8.8 Any second or subsequent offence under section 336, IPC, if committed within three years of the commission of the previous similar offence and the rash or negligent act involved is the act of driving, should be punishable with the maximum term of imprisonment of two years.

8.9 Any second or subsequent offence under section 337, IPC, if committed within three years of the commission of the previous similar offence and the rash or negligent act involved is the act of driving, should be punishable with the maximum term of imprisonment of three years.

8.10 Any second or subsequent offence under section 338, IPC, if the rash or negligent act involved is the act of driving, should be punishable with the maximum term of imprisonment of five years.

8.11 The maximum term of imprisonment in section 184, MVAct should be increased to five years and that any second or subsequent offence thereunder should be punishable with the minimum term of imprisonment of six months.

8.12 Roads are used not only by the motorized transport, but also by the non-motorized transport as well as pedestrians. There is no comprehensive Central legislation to effectively and holistically regulate

all kinds of traffic on the roads. The Motor Vehicles Act, 1988 is relatable to Entry 35 of the Concurrent List and the National Highways Act, 1956 is relatable to Entry 23 of the Union List. The subject-matter of roads, traffic thereon, and vehicles other than mechanically propelled vehicles falls under Entry 13 of the State List, and, therefore, outside the purview of Parliament. The Seventh Schedule of the Constitution will be required to be amended for such a comprehensive Central legislation. The Law Commission feels that there is a need of a comprehensive Central road traffic law.

8.13 There should be legal provisions in the MVAct for confiscation of the vehicles fitted with LPG Cylinders (meant for home kitchen), and arrest and prosecution of owners/drivers of such vehicles.

8.14 As an important part of the enforcement measures, there should be compulsorily installed weighbridges at all points of entry and exit to and from a city as well as toll collection centres to keep in check overloaded vehicles.

8.15 As an important part of the enforcement measures, there should be compulsorily installed CCTV Cameras at all vulnerable points, to be determined by an expert committee, to curb traffic violations.

8.16 As an important part of the enforcement measures, there should be a vigorous campaign on the electronic media, including Doordarshan, All India Radio and private TV channels, through regular programmes and debates so as to create awareness amongst the general public about the imperative necessity to strictly follow traffic rules and regulations as well as highlight the impact and consequences of rash and negligent driving.

8.17 As an important part of the enforcement measures, there should be established, through public-private-partnership, recognized driving training schools in different parts of the country, equipped with simulators, and obliged to follow properly-devised driving training modules and impart training at a nominal fee.

8.18 As an important part of the enforcement measure, rule 118 of the Motor Vehicles Rules 1989 making it mandatory for the notified transport vehicles to be fitted with an irremovable or tamperproof speed governor to be sealed with an official seal of the Transport Authority, should be enforced more vigorously.

8.19 There should be no exemption of government vehicles from policy of insurance against third party risk and section 146, MV Act should be amended for the purpose.

8.20 Measures to prevent road accidents may be preventive, precautionary and punitive. There is no denying the fact that there is a need of improved road-watch, surveillance and detection, effective and holistic regulation of all kinds of traffic on the roads and proper deterrence. For proper road safety and traffic management, focus should not only be on drivers and vehicles, but also on behaviour of all kinds of road-users, road infrastructure development and environmental concerns. In causing road accidents, the cruellest culprit is satanic speed.

8.21 We recommend accordingly.

(Dr Justice AR. Lakshmanan)

Chairman

(Prof. Dr Tahir Mahmood)

Member

(Dr Brahm A. Agrawal)

Member-Secretary