
(2007) 03 MP CK 0049
In the Madhya Pradesh High Court

Rajneesh Kapoor

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 25
Motor Vehicles Act, 1988 — Section 129, 2, 85

Citation : AIR 2007 MP 204

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.—The cardinal and centripetal issue that emanates for consideration in this writ petition is whether a provision providing wearing of protective headgear which is principally meant to protect one from injury, a resultant factor of hazardous happenstance and a chance casualty, should be regarded as an elevated primrose path in a legitimate body polity governed by Rule of Law that forms the bedrock of real welfare society which effectively encompasses and engulfs the constitutional frame-work of should be viewed as a provision inviting the wrath of Article 14 being arbitrary, unreasonable and discriminatory, a transgression and infringement of freedom of movement as enshrined under Article 19 and also destructive of essential conception of Article 21 of the Constitution of India. The challenge, quintessentially put, is to the constitutional validity of Section 129 of the Motor Vehicles Act, 1988 (for brevity The Act") on the bedrock of the aforesaid three Articles and prayer is to declare the said provision of the Act as unconstitutional in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution.

2. The facts which are imperative to be expounded are that the petitioner is a citizen of India and is grieved by requirement that has been provided u/s 129 of the Act. It is contended that Section 129 has been brought into the statute book on an assumption that helmet protects from head injury in a case of accident but

the research clearly discloses disturbing facts about the helmet inasmuch as wearing helmet is more injurious in comparison to a person being bare headed. It is urged that it is the Government and certain private companies which are engaged in manufacturing helmets that have made a propaganda that wearing helmet is useful and protective and such a view has been calculatively propagated to usher in the idea that helmet may be useful. But, in such propagation others facets have been totally neglected that is how the use of helmet may cause danger to life and how a person becomes more prone to lose his life. It is the stand in the petition that only use of helmet has been taken note of but scientific validity, efficacy and disadvantages of the use of helmet have been totally ignored and a provision has been incorporated by employing mandatory language which makes the provision one without guidance arbitrary and unreasonable.

3. A reference has been made to an Article "why helmet increase the danger!" by Tony Pan Sanfelipo, former six year member of Wisconsin Motorcycle Safety Advisory Board wherein the learned member has opined that trauma is a type of injury which affects the body by external force being applied in a violent and sudden manner. While dealing with motorcycle accident it is also important to understand the types of forces which a rider is subjected to and how the body reacts to certain inertia of G-forces. The learned author has defined different types of trauma. In the petition a reference has been made to G-forces having effects over helmet. The said paragraph as reproduced in the petition reads as under:

"G-Forces" are what determines the extent of injury to the head or neck in many motorcycle accidents. When a body is stopped (due to crashing into a stationary object) or is hurled into space with a three pound helmet flexing the neck, the force of gravity causes the body to weigh many times its actual weight. For example, a male human head, without helmet, weighs about 10 pounds. If subjected to 10 "Gs", that head briefly weighs about 100 pounds, passing that stress and load into neck. Consider adding a 3 pound helmet, and you begin to appreciate the forces your neck has to contend with.

Going a little further, using a full form human dummy, developers of the Head and Neck Support (HANS) device found that the head briefly experiences 25 "Gs" and weighs about 250 pounds in 35 mile-per-hour impact. With those forces in play, the delicate human brain bounces around in side skull (coup/contrecoup) with a force equal to weighing 75 pounds. A normal brain weighs about 3 pounds. Combined with this is the fact that rotation of the head and neck during one of these crashes severe tearing and stretching of the tissues of the brain and brain stem. No helmet can prevent this collision of the brain within the skull.

4. It has been asseverated that there are three types of collision occurring in a crash, namely, vehicle V. whatever it contacts with, body V. whatever it contacts with and body tissues and organs V. body tissues and organs. After describing

details of various kinds of collisions and its impact learned author has proceeded to describe G Force effects on helmet wearer which we proceed to quote:

It is believed that the head can withstand 300 "G-forces" which is higher than other body parts. The declaration of "G-forces" movement of the head and duration of the incident all determine the amount of injury the head will sustain. It is common to have skull fracture and no brain injury, and brain injury and no skull fracture. Helmets are designed to distribute the force of the impact over a wide surface in order to reduce the amount of "G-forces" reaching the brain. The force of inertia in a crash can cause brain injury even without an impact to head, thus a helmet cannot protect against this event. Brain tissue and blood vessels can be torn by inertia when the brain rotates, common occurrence amplified with helmet use. The weight of the head and helmet pulling at the neck can be sufficient to fracture the skull. Known as basal fracture (hangman's noose analogy), these injuries can often be fatal.

He mentioned in his article that tests using human cadavers found that the neck can tolerate about 42 foot-pounds of backward whiplash force before injuries began to occur. The muscles in the rear of the neck are stronger than those in the front thus a forward rotating head will allow the neck to withstand about 140 foot-pounds of force. Of course, these are ideal positions, direct forward or backward movement, in a real crash, the head is bounced in all sorts of directions, and the neck is less tolerant of sideways acceleration/declaration. In these instances, the neck can handle about 33 foot-pounds of force.

5. The conclusion that has been arrived at by the learned author is that the helmet cannot save the concussions. A paragraph has been produced to show how strong is the unhelmeted head. The same reads as under:

The amount of force a head can withstand depends on several factors, including the location of the impact, the size of the object striking the head and the density of the individuals bone tissue. The frontal bone (forehead) can withstand on average 1,000 to 1600 pounds of force. The temporoparietal (sides of average, 1,000 to 1,00 pounds of force. The temporoparietal 9 sides of head) bones can tolerate around 700 to 1,900 pounds of force. The back of the skull can handle around 1,440 pounds of force. The bones of the face and the cheek are less tolerant, standing forces of 280 to 520 pounds. According to Tony the brain cannot withstand the same force the skull can, and even a helmet can not prevent dangerous forces from reaching the brain or the brain moving within the skull cavity.

6. Apart from the research made by Tony Flopingo, opinion of another researcher Colin Clarke, Mechanical Engineer, a member of Institute of Engineer Australia has been referred to. There is reference of a diagram by another researcher. In paragraph 5.9 of the petition reference has been made to motorcyclists craniofacial injury pattern which were studied in the Australian Craniofacial Unit. Adelaide Children's Hospital and Royal Adelaide Hospital in which it was found

that full face helmets may be dangerous because of skull base fracturing just like it happens in fracturing. The same has been produced in the petition which we quote:

Craniofacial fracture patterns were investigated in hospitalized patients and fatally injured subjects to determine the influence of helmets spectacles, and dentures. According to this study, hospitalized motorcyclists who had worn open face helmets, or full face helmets with flexible face-bars, had sustained facial fracturing but minimal brain injury. In contrast, motorcyclists killed from anterior craniofacial impact whilst wearing full face helmets with rigid facebars has sustained fatal skull base fracturing in the absence of significant facial trauma.

It was therefore postulated that impacts to the face bar of a full face helmet may be transmitted through the mandibular rami and mandibular condyles to the skull base with subsequent fracturing of the middle cranial fossa, the integrity of the mid-facial skeleton being preserved.

Helmet deformation patterns, as delineated by computed tomography, provided support for the proposed mechanism of energy transfer to the skull base, independent neuropathological examinations of the brains of the fatally injured motorcyclists revealed a high incidence of pontomedullary disruption. He further strengthened the postulate because separation of the robust pons from the slender medulla may result from axial traction imparted to the brainstem by an upward fracturing middle cranial fossa shelf. Further more the skull base fractures traversed the midline through, or near to, the spheno-occipital synchondross, which has anheterogenous morphology and is part of a potential "fault line" across the skull base. That such a skull base fracture can occur from upward impaction of the skull base by column loading of the mandibular ramus has been noted in reports of judicial hangings in which the knot was placed beneath the mandibular angle. From this study it was concluded that objects worn at impact on the craniofacial region may influence significantly the final craniofacial fracture pattern and this may be detrimental for some motorcyclists wearing full face helmets.

The labyrinthine architecture of human facial bones provides a propensity for their collapse at impact and they may thereby act as an effective energy absorber by preventing injury to brain. This concept is frequently reinforced by clinical observation of patients who have severe facial fracturing but only minimal overt brain injury. From this study it was concluded that objects worn at impact on the craniofacial region may influence significantly the final craniofacial fracture pattern and this may be detrimental for some motorcyclists wearing full face helmets.

7. In an article "Analysis of Fatal Injuries to Motorcyclists by Helmet Type" published in peer reviewed "the Americal Journal of Forensic Medicine and Pathology" it has been stated thus:

To clarify the characteristics of injuries of motorcyclists dying in accidents to

helmet type we retrospectively analyzed forensic autopsies of 36 helmeted motorcycle riders. The presence of major injuries and injury severity score and the 1990 revision of the abbreviated Injury Scale. Persons with open-face helmets (19 cases) were significantly more likely to have sustained severe head and neck injuries, especially brain contusions, than were persons with full face helmets (17 cases). Furthermore, major injuries of the chest and abdomen, rib fractures, lung injuries, and liver injuries were each present in more than one quarter of all cases (26.3 to 70.6%) but their prevalences did not significantly differ between riders with different types of helmet. Because many types of head and neck injuries can not be prevented and fatal chest and abdominal injuries occur despite the use of full-face helmets this report clears the helmet inefficacy.

8. Thus, on the basis of the aforesaid research It is asserted by the petitioner that he feels uncomfortable in wearing helmet and his alertness reduces due to wearing of helmet, It is also put forth that such wearing of helmets galvanises the danger to life. It is contended wearing helmet somehow creates some discomfort and the most common problem is that the helmets are too hot as the body radiates most of its heat through the head which leads to many holes in the helmet and weakens it.

9. In this backdrop it is urged that instead of protecting life there is a risk to life and hence, such a command is totally in contravention of Article 21 of the Constitution.

10. It is also contended in the petition that the provision is discriminatory and unreasonable and thereby offends Article 14 of the Constitution of India. It is also the stance that by use of helmet the movement is restricted and the same runs counter to the right conferred under Article 19 of the Constitution.

11. A counter affidavit has been filed by the respondent No. 1 contending, inter alia, that it is universally acknowledged world over that two wheeler drivers and pillion riders are the most vulnerable road users. Helmet is a protective device that has been found very effective in saving lives of several victims of road accidents by saving them from head injury which in most cases proved fatal. Keeping the aforesaid facet in view Section 129 of the Act makes wearing of protective headgear conforming to the standards laid down by BIS Mandatory except for exemptions made thereunder for certain categories of persons who cannot wear such headgear because of religion or custom. Section 129 also permits the State Government to make certain exemption by notifying the same in the official gazettes. It is put forth that the petitioner has referred to certain research material to prove that use of helmet is unnecessary and in any case does not save the victim from death. It is put forth that the respondent has consulted the leading road safety experts of the country namely Prof, Dinesh Mohan and Prof. Geetam Tiwari of Indian Institute of Technology Delhi and the Institute of Road Traffic Education (IRTE), Delhi, an NGO working in the field of road safety, who have opined that studies relied upon by the petitioner are not scientific studies and there is no basis even remotely for the claim made by the

petitioner. It is further put forth that there is significant bodies of studies and evidence supporting the promotion and enforcement on use of helmets for two wheelers drivers and pillion riders. It is urged that the forces on neck during an impact are largely caused by the forces transmitted between the head and the chest after the head hits an object. When a helmet is used, the padding in the helmet cushions the head and reduced the forces transmitted to the head in impact, and thereby transmitted forces between the head are reduced proportionality on the neck also. The assertion is that the allegations in the petition are without any scientific base and cannot be regarded as authentic. The respondent No. 1 has, brought on record a study report with regard to the use of helmets as per Annexure R-1.

12. We have heard Mr. A.M. Trivedi, learned Senior Counsel along with Mr, Aseern Trivedi. learned Counsel for the petitioners and Mr. Jayant Neekhara, learned Standing counsel for the respondent No. 1 and Mr. P.N. Dubey, learned Dy. Advocate General for the respondent No. 2.

13. Mr. A.M. Trivedi, learned senior counsel has raised the following contentions:

(i) The provision is based on erroneous data and the compulsory wearing of helmet affects the life source inasmuch as it endangers the life on various ways and thereby offends Article 21 of the Constitution.

(ii) The provision engrafted u/s 129 of the Act challenged as discrimination ground that it creates discrimination amongst the road users namely motor cyclists or any class of vehicles of that description and others inasmuch as the said provision is not applicable to the pedestrians or vehicles of other categories, thereby inviting the frown of Article 14 of the Constitution.

(iii) A provision making wearing helmet creates the obstruction and impediment in movement which has been conferred on a citizen under Article 19 of the Constitution and hence, there is breach of the fundamental right.

(iv) The category that has been granted exemption is without any guidance and without any rhyme and reason and thereby discrimination has been created which is fundamentally arbitrary in nature.

14. Mr. Jayant Neekhara, learned Counsel for the respondent No. 1 resisting the aforesaid submissions has contended as under:

(i) The submission of the petitioner that the provision offends Article 21 of the Constitution of India is sans substratum inasmuch as the legislature in its wisdom has provided such a safety measure making it compulsory and the same is in consonance with Article 21 of the Constitution as it saves people from suffering various injuries including the fatal ones and such a provision cannot be regarded as unconstitutional on the basis of some data collected from certain sources, for the Simon pure reason, the Legislature has enacted the provision by collecting various authentic data based on statistic and the provision has come into existence after intense scrutiny.

(ii) Submission put forth by learned Counsel for the petitioner is bereft of substance since Article 21 of the Constitution basically endeavors to protect life from all spectrums in a case of accident and by no stretch of imagination it can be said that the said provision defeats the tenet of the said fundamental right.

(iii) The spacious plea that there has been discrimination between the motor cyclists or users of the vehicle of the said class and other kind of vehicles and pedestrians is without any substance since the classification is based on a rational criteria and there is no arbitrariness in such classification. On the contrary such classification has reason-ability and guidance.

(iv) The proponent that Sikhs have been excluded as a class makes the provision discriminatory inviting the wrath of Article 14 of the Constitution is devoid of any merit, for the Sikh religion mandates them to wear turbans which are of protective value and, therefore, their exclusion does not offend Article 14 of the Constitution.

(v) The plea that the provision affects or impairs free movement and thereby destroys the right conferred under Article 19 of the Constitution of India is not worth scrutiny because the freedom of movement as is understood in the backdrop of Article 19 of the Constitution is no way attracted in a case of this nature and in any case Article 19 does not have the rigidity in absolute terms.

15. To appreciate the rivalised submissions raised at the bar, it is necessitous to reproduce Section 129 of the Act.:

129. Wearing of protective headgear.- Every person driving or riding (otherwise than in a side care, on a Motorcycle of any class or description) shall, while in a public place, wear protective headgear conforming to the standards of Bureau of Indian Standards:

Provided that the provision of the section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motorcycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explanation.--"Protective headgear" means a helmet which,-

(a) by virtue of its shape, material and construction, would reasonably be expected to afford to the person driving or riding on a motorcycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear.

16. On a scanning of the anatomy of the aforesaid provisions four facets are perceivable : (i) a person driving or riding a motorcycle of any class or description should wear a protective headgear of Bureau of Indian Standards; (ii)

such compulsory requirement is not applicable to a person who is a Sikh while riding or driving a motorcycle in a public place wearing a turban; (iii) the State Government by rules has been enabled to provide exceptions; and (iv) the protective headgear means a helmet which by virtue of its shape, material and construction would reasonably be expected to afford to the person driving or riding on a motorcycle a degree of protection from injury in the event of an accident.

17. Before we advert to the contentions raised by the learned Counsel for the parties it is thought apposite to notice the general principles relating to the role of the Court while dealing with an assail to a statutory provision under the Constitutional backdrop.

18. In the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, it has been held as under (para 10)

...it is the accepted doctrine of American Courts, which I considered to be well founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

19. In Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, the Apex Court ruled the following effect (para 11):

(b) that there is always are presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

(c) that in order to sustain the presumption of constitutionality of the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived and existing at that time of legislation ; and....

20. In the case of R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, Krishna Iyer, J., in his inimitable style expressed thus:

2. A prefatory caveat.-When examining a legislation from the angle of its vires, the Court has to be resilient, not rigid, forward-looking, not static, liberal, not verbal --in interpreting the organic law of the nation. We must also remember the constitutional proposition enunciated by the U. S. Supreme Court in *Munn v. Illinois* viz., "that Courts do not substitute their social and economic beliefs for the judgment of legislative bodies". Moreover, while trespasses will not be forgiven, a presumption of constitutionality must colour judicial construction. These factors, recognized by our Court, are essential to be *modus vivendi* between the judicial and legislative branches of the State, both working beneath the canopy of the Constitution.

21. In the case of State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., it has been held as under

17...the approach of the Court, while examining the challenge to the constitutionality of an enactment is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be likely interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application.

22. In the case of *Chiman Lal Vs. State of M.P. and Others*, the Division Bench of this Court has expressed that in determining the constitutional validity of a provision alleged to be violative of the fundamental right, the Court must weigh the substance, the real effect and impact thereof on the fundamental right.

23. Keeping the aforesaid parameters in view now we shall advert to the challenge that has been put forth before us. Submission of Mr. A.M. Trivedi, learned senior counsel for the petitioner is that rider of a motorcycle of any class or description has been put in a different class and other categories of vehicles and pedestrian have been excluded. Section 2(27) defines the motorcycle. It reads as under:

2(27). "Motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable sidecar having an extra wheel, attached to the motor vehicle.

24. Learned senior counsel would submit that by exclusion of other vehicles the equality clause has been affected. On a reading of the dictionary clause it is clear as noon day that it is an embracing provision and has a inclusive definition. The classification has a rational basis inasmuch as a person who is driving a motorcycle stands on a different footing than the person travelling in a side car or any other vehicle. A motorcyclist of any class or description is more prone to get injured in an accident because his head is open, whereas the person travelling in other kind of vehicle which is covered, is protected. A pedestrian and a person who is driving or riding motorcycle cannot be equated. It does not require Solomon's wisdom to appreciate that the motorcyclist is required to wear protective headgear to avoid injuries in an accident. A pedestrian, who walks on the road cannot be conceived to stand on equal footing of that class of motorcyclist. Hence, he is excluded from wearing a helmet. Article 14 of the Constitution of India does not create a distinction between two equals but there cannot be equality between two unequals. Thus, the classification made is on rational basis and has a nexus for the purpose of which legislation has made and no fault can be found with it.

25. Another submission which is propounded by Mr. Trivedi is that the provision does not apply to a "Sikh" but cover persons of other categories and hence, it is discriminatory. On a studied scrutiny of the provision it is clear that a Sikh has been absolved from wearing the helmet while wearing a turban. Thus it is perceivable that a Sikh is kept out of the net of the provision but there is a qualifier. The qualifier, in our considered view, serves the purpose of the provision as the provision is to provide protection from injury. Therefore, it cannot be said that the provision is discriminatory on this ground. Further, it is in tune with Article 25 and 26 of the Constitution.

26. In this context another facet can be taken note of to show that the provision does not offend Article 14 of the Constitution. Explanation to Section 129 explains what "protective headgear" means. Explanation (a) categorically and unequivocally states the shape, material and construction reasonably be expected to afford to the person driving a motorcycle. Hence, the provision is not without guidance. In this context it is apposite to refer to the decision rendered in the case of Dr. C.S. Subba Rao and Another Vs. The Secretary to Government of Andhra Pradesh, Transport Department, Secretariat and Others, wherein it has been held as under:

The proviso to Section 129 of the Act does not authorize the State Government to make rules providing for total exemption from the requirement of wearing of protective headgears. The said proviso merely authorizes the State Government to make rules providing for such exceptions as it may think fit. But under no circumstances, the State Government can grant a total exemption or exception from the operation of provisions of Section 129 of the Act. The proviso does not confer any such power to grant wholesale exemption from the operation of the Section itself. Power conferred upon the State Government to provide exceptions in its discretion does not include the power to grant total exemption from the operation of provisions of the Act. Any such interpretation may result in defeating the very object of the Act.

(Quote from the placitum)

27. In Ravi Shekhar Bhardwaj v. Director General of Police 2004 (1) TAC 733 it has been held as under:

In the present case, language of Section 129 of the Act is clear, express and explicit. It lays down, as a rule, that every person driving or riding a two-wheeler shall wear protective headgear. Discretionary power conferred under the Second proviso has to be exercised, keeping in view the mindful of the legislative mandate of the Section. The first proviso does not confer any discretion on the State Government inasmuch as it applies to a special class of persons viz. Sikhs wearing turbans. Discretionary power, conferred on the State Government under second proviso, must be exercised mindful of the intention of the legislature.

28. In view of the aforesaid, we are of the considered opinion that Section 129 does not invite the wrath of Article 14 of the Constitution of India.

29. The second ground of attack by the learned senior counsel for the petitioner is that the said provision restricts movement of a citizen. It is well settled in law whenever a statute is challenged as violative of fundamental rights, the real effect on operation of the fundamental right is of primary importance, for it is the duty of the Court to act as the sentinel on the quivive. Article 19(1)(d) stipulates that all citizen shall have the right to move freely throughout the territory of India. Clause (5) of Article 19 provides as under:

19 (5). Nothing in Sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on a exercise of any of the rights conferred by the said Sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe.

If both these provisions or Article 19(1)(d) and Article 19(5) are read together, in our considered opinion, submission of Mr. Trivedi is absolutely sans substratum as there is no restriction as such to move freely throughout the territory of India and even if it is stretched then also there is no restriction of movement to move with a protective headgear. If the anatomy of the said provision is scanned in proper perspective there cannot be any shadow of doubt that there is no restriction per se on movement in the provision and conditions prescribed therein meet the requirement of reasonableness as envisaged under Article 19 of the Constitution. Ergo we repeal the aforesaid submission of Mr. Trivedi,

30. Now we shall proceed to deal with the challenge made under Article 21 of the Constitution of India. Learned senior counsel for the petitioner has commended us to various articles and dates and research works done by the authorities to show that wearing helmet is dangerous to health and it has adverse effects. Per contra, Mr. Jayant Neekhara, learned Counsel for the respondents filed documents to show how it is essential and how the Parliament has taken note of it. It is urged by Mr. Trivedi that the petitioner is facing difficulties while wearing helmet. He has given certain examples in the petition. It is to be borne in the mind that while dealing with the validity of a provision the Court is required to maintain a delicate balance between public interest in the provision under challenge and infringement of the individual rights. The Court is also required to see what evil is required to be remedied. It is also the duty of the Court to see restrictions imposed and surrounding circumstances.

31. In *Bijayalaxmi Tripathy and Others Vs. The Managing Committee of Working Women's Hostel and Others*, Division Bench of the High Court of Orissa speaking through Hansaria, C.J., opined thus:

The word "life" in Article 21 has, however, not been understood only in the sense of protection of limbs. In the aforesaid case, Bhagwati, J. himself stated in paragraph 7 that right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life, such as, adequate nutrition, clothing and shelter over the head among some other named things. In

paragraph 5 it had been earlier stated that right to life, being the arc of all other rights, must be interpreted in a broad and expansive spirit so as to invest it with significance and vitality, which may endure for years and enhance the dignity of the individual and the worth of the human person. Article 21 protects not only every limb, but every faculty through which life is enjoyed. So, it is obvious that the right to life enshrined in Article 21 cannot be restricted to mere animal existence. This was so stated by a Constitution Bench in *Kharak Singh Vs. The State of U.P. and Others*, , after referring to *Sunil Batra Vs. Delhi Administration and Others etc.*, , another Constitution Bench accepted this position. Reference may also be made in this connection to some observations of Desai, J. in *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, , in paragraph 13 of which it is stated that the expression "life" used in Article 21 has a wider connotation than animal existence or a continued drudgery of life. In that case the right of an employee to be represented by a lawyer was being examined, and it was stated that where "the outcome of a departmental enquiry is likely to adversely affect the reputation or livelihood of a person, some of the finer graces of human civilization, which makes life worth living, would be jeopardized and the same could be put in jeopardy only by law which inheres fair procedures. Sabyasachi Mukherji, J. (as he then was) stated in *Ramsharan Autyanuprasi and another Vs. Union of India and others*, , that "life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure could certainly come within the encompass of an expanded concept of Article 21 of the Constitution.

32. In *K. Veeresh Babu and etc. Vs. Union of India and others*, it has been held as under:

Wearing of Helmet is made compulsory for the purpose of protection from injury, and heat and pollution, Rules and Regulations alone cannot be panacea since human error is considered as the major cause for road accidents. Accusations regarding the causes of the accident as being due to carelessness, drunkenness, rashness, negligence, over-speeding arrogance, incompetence etc., are of secondary line of thinking since often riders might not be there as a living witness to explain the causes. In this modern society one should not speak through, rules and regulations but must visualize their moral commitment to the society at large. Rider must realize that woman who is widowed because of the road accident may be his own wife or vice versa. Thus Rule 230 of the Rules in making wearing of helmet compulsory to two wheeler riders is based on rational basis taking into consideration the alarming proportion of the road accidents involving two wheeler riders, such policy is not only rational but is also in the interest of larger public interest, since statistics revealed that more number of two wheelers are on the road having in view of transport problems and economics of the cost. The rule making authority has merely given effect to the intention of the legislature whereby separate treatment to two wheeler has been provided to have riders, from accidents resulting in fatal injuries. If the rules

could be validly framed then there is no reasons as to why rule making authority could not be held to have the power to frame a rule which is in consonance with the legislative intent as envisaged under the Act.

(Quoted from placitum)

33. In Chandigarh Administration and Ors. v. Namit Kumar and Ors. AIR 2005 SC 1386 a two Judge Bench of the Apex Court while dealing with the directions issued by the Punjab and Haryana High Court in paragraphs 14 to 16 has held as under:

One of the directions which has been assailed by several appellants relates to direction No. 14 regarding use of helmets. The exemption has only been extended to Sikh women while driving. All others including women are required to wear helmets. Stand of the appellants is that such direction is contrary to several statutory prescriptions. Particular reference has been made to Section 85A of the Motor Vehicles Act, 1939 (in short the "Old Act") and Section 129 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "New Act"). It appears that Clause 3 of the Motor Vehicles (Protective Headgears) Rules, 1980 exempts Sikh women from wearing helmets. Reliance is also placed on Rule 193 of the Punjab Motor Vehicles Rules, 1989 and Rule 193 of the Chandigarh Motor Vehicles Rules, 1990 to contend that Sikh women are exempt from wearing the helmets, and, therefore, the High Court could not have given direction contrary to the suggestion.

15. It appears that the Rules Were not brought to the notice of the High Court. We, therefore, direct that if any exemption is granted to any person including Sikh women from any of the Motor Vehicles Rules relating to different States or areas or under any Statutory Rule the same shall operate notwithstanding the directions of the High Court that all persons including women shall wear helmets.

16. One other direction which has been assailed relates to the use of black films on the glasses. It is submitted that Central Motor Vehicles Rules, 1989 (in short Central Rules") provide for the measure to be taken in such cases. We find that Sub-rule (2) of Rule 100 of the said Rules deals with the issue. We, therefore, modify the direction of the High Court to the extent that while carrying out the directions, the mandate of Sub-rule (2) of Rule 100 shall be kept in view. This shall be in addition to any security requirement as may be laid down by the law and order enforcing agencies.

34. We have referred to the aforesaid decision rendered in the case of Namit Kumar (supra) only to show how their Lordships dealt with the directions issued by the High Court and how their Lordships viewed Section 129 of the Act.

35. From the aforesaid pronouncement of law which have dealt with Section 129 it is quite vivid that the provision has been enacted to avoid the accidents and disasters on the road. It is noticeable that two-wheelers are mostly involved in the accident and life-sparks of the person driving or riding the said vehicle gets

extinguished because of impact of accident. The gruesome accidents sometime sends chill down the spine and their sight on the road creates a shudder. It is always to be kept in mind that Article 21 is the most Organic and progressive provision in our living Constitution, the fountain head of our laws. In this context, we may refer with profit to the decision rendered in the case of Mr "X" Vs. Hospital "Z", wherein the two Judge Bench of the Apex Court after placing reliance on the decisions rendered in the cases of Kharak Singh Vs. The State of U.P. and Others, , Gobind Vs. State of Madhya Pradesh and Another, , Munn v. Illinois 94 US 113, Woll v. Colorado 338 US 25. Malak Singh and Others Vs. State of P and H and Others, , R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, and Jane Roe v. Henry Wade 410 US 113 expressed the opinion in paragraph 28 as under:

28. Disclosure of even true private facts has the tendency to disturb a person's tranquility. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this Court in its various decisions referred to above, the right of privacy is an essential component of the right to life envisaged by Article 21. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

From the aforesaid pronouncements of law it is quite clear that under certain circumstances the aforesaid Article is not to be treated in absolute terms and can be lawfully restricted for the protection of the health. No citizen can claim the protection of Article 21 on the ground that he is discomforted or flummoxed by wearing a helmet while driving or riding a motorcycle. The individual discomfort has to succumb to the paramount objective of saving life. As has been indicated earlier the impact of the provision on the fundamental rights has to be seen. Hence, the petitioner on his personal discomfort cannot say that the provision is unconstitutional when it has been engrafted with the object of protection of health and life of the individual as well as that of all motorcycle users which in a way forms the in-severable part of the health and safety of the collective. The data produced may be scientific or may not be. The articles that have been authored and which have been produced by the petitioner may have some relevance or may not. A stand has been taken in the counter-affidavit that the said articles are not scientific. We are not inclined to dwell in the said debate as we are disposed to think that the same is not within the domain of scrutiny of the Courts and the Legislature in its own expertise and data has engrafted the provision. The Legislature in its own wisdom may look at the same. As advised at present the said provision, as it appears to us, is wholesome and beneficial. We do not really find that it offends any of the fundamental rights as has been pyramided by Mr. A. M. Triversi, learned senior counsel for the petitioner. On the contrary, we are of the considered opinion that it does not infringe or create any concavity in the golden triangle, namely, Articles 14 19 and 21 of the Constitution of India, for such a provision saves life, the precious gift of nature

and the prized benefiction of creative intelligence.

36. Consequently, we do not find any merit in the writ petition and the same stands dismissed. There shall be no order as to costs.