Bombay High Court
Ravi Shekhar Bhardwaj And Ors. vs Director General Of Police, State ... on 16 July, 2003
Equivalent citations: I (2004) ACC 320, 2003 (6) BomCR 493, 2004 (2) MhLj 213
Author: C Thakker
Bench: C Thakker, V Tahilramani
JUDGMENT C.K. Thakker, C.J.

1. Public Interest Litigation No. 87 of 2001 was filed in this Court on August 29, 2001 by eight petitioners. A prayer in the said petition is to issue a writ of mandamus or any other appropriate writ, directing the State of Maharashtra and its Officers to implement and enforce Section 128 and 129 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

2. Petitioner No. 1, as stated in the petition, is a law student. He was studying in the First Year of Master Degree in Labour Law and Labour Welfare Course at Symbiosis Law College, Pune when he approached this court. Petitioner No. 2 is Honorary Director of an institution which organised health awareness programme and engaged in imparting medico-legal education. Petitioner Nos. 3 to 8 are students of the College studying in Five Years' Degree Course.

3. The cause of filing the Public Interest Litigation Petition, according to the petitioners, was an incident which they witnessed on 15th August, 2001. The petitioner No. 4 was returning to her hostel, after attending flag hoisting ceremony, where she saw an accident in which a youth of about 23 years of age was seriously injured in a road mishap on the busy Law College Road. Petitioner No. 4 was moved by the said incident and felt that serious injury sustained by the boy could have been avoided or at least minimised, had he used helmet. She then narrated the incident to her colleagues and seniors. All of them felt that some measures ought to be taken by the authorities to make wearing of helmet mandatory and compulsory for two-wheeler drivers as well as pillion riders. By use of such method, harm and damage to national health and wealth could be prevented. Some students, therefore, approached petitioner No. 2, Honorary Director of the Institute, and discussed the issued with her. Petitioner No. 2 in turn informed the students about the efforts made by her so that use of helmet be made compulsory. All of them felt that it was inaction on the part of the authorities in not making such provision and/or enforcing it despite several representations by different organisations and individuals and issuance of several notifications by the authorities. The petitioners then conducted intensive research, collected data of accidental deaths that had occurred us to non-wearing of helmets and proportion of head injuries caused in all such accidents to give a base to public interest litigation. They also found that a detailed report was prepared by Dr. S.N. Sarin in 1995 wherein he had considered at length the issue of importance of helmet in reducing head injuries to the riders. It has been annexed to the petition at Exhibit-A. The petitioners also came to know that some High Courts had issued directions making use of helmet compulsory and ordering the authorities to take appropriate action in enforcing them. Information was also collected regarding increase in number of deaths especially when two-wheeler riders did not use helmet. It was stated by the petitioners that in past few years, two-wheelers have merged as a convenient, dependable and relatively inexpensive mode of conveyance, more because the public transport system was not able to keep pace with demand of growing population and need of society. It was stated that Pune, which is called the "Oxford of the East", had attracted a large number of students

not only from Maharashtra but from other States as well as from abroad. The student population is around two lakhs. Because of several two-wheelers, there are many accidents. According to the petitioners, Pune is having vehicle population of 9 lakhs, out of which 70 per cent are two-wheelers. It was stated: "There has been 500 per cent increase in accident on two-wheelers since 1986 and registration of two-wheelers has increased by 600 per cent since 1991".

4. The petitioners have also given details of increase in road length and vehicle population as also number of two-wheelers. As per the statistical data, 15 to 18 per cent people were seriously injured out of total injured persons. They have given figures of vehicle registration and accidents and deaths. They are as under:

"a) Everyday on an average 210 accidents occur.

b) Everyday 25 people die in road accidents.

c) Everyday on an average 146 persons are injured in road accidents.

d) On 1st April, 1999 about 91 lacs valid licences were in force.

e) During 1998-99 (1st April, 1998 to 31st March, 1999) - One year period, 6,34,000 licences and 11,07,000 learning licences were issued.

f) Everyday 2500 regular licences and 4300 learning licences are issued.

g) During the year 1998-99, a total number of 4,94,000 vehicles were registered out of which 59% were two-wheelers.

Details of vehicles in the country during the year 1998, as stated by the petitioners, are as follows:

Year Total Vehicles (in lacs) Two- wheelers 3.00 27.000 18.65 5.76 lacs 328.00 232.00 "

381.00
264.00 "

540.00 (estimated)

It was, therefore, expected of the respondent-authorities to take immediate and necessary steps

5. According to the petitioners, on an average, in Maharashtra, there are 134 road accidents every day leading to 81 persons being injured and 15 persons losing their lives. Two-third of the accidents in the State, according to the petitioners, are due to negligent or rash driving and lack of adequately trained drivers. Two-wheeler drivers are more vulnerable to injuries and fatalities compared to four-wheeler drivers. The figures also disclosed that out of 1200 cases of head injuries due to road accidents coming to Neuro-Surgery Department of the Civil Hospital every year, more than 70 per cent are two-wheeler accidents. The said figure was of accidents recorded only in Ahmedabad (Gujarat). The data analysis of accidents showed that compared to cars, motorcycles are more vulnerable. Number of deaths on motorcycles are about 14 times the number of accidents in cars. The date also revealed that helmets reduced the risk of death in motorcycle crash by 29 per cent and the risk of fatal head injury by 40 per cent. Helmets were proved more effective in preventing brain injuries which often require extensive treatment and may result in life long disability. According to the petitioners, the study showed that in case of an accident, the two-wheeler comes to a stop faster than the rider which would mean that the rider flies over the handlebars and hits the surface and injuries and pain sustained is non-resisting and impact absorbing. The petitioners have highlighted certain illustrative tragic accident cases wherein two-wheeler riders had sustained serious injuries resulting in death of some of them.

6. The petitioners have stated that the head is for absorbing knowledge and not for receiving blows and injuries. The head houses the command centre of our central nervous system which controls all movements, senses and basic body functions. An injury to the head, therefore, can pose a serious threat to the brain. The complex mechanism of the brain would have grave consequences for the body. Since brain is housed in the head, it is of utmost importance to protect the head against all injuries and accidents. A single head injury may turn the victim into a lifeless body or even rob him of life. Intelligent heads of young generation should not be lost as they are future architects of India. They are going to lead India in this Millennium. Such mishaps represent an enormous loss of productive human resources, financial burden to nation and suffering to their families, besides loss to the society. No nation can afford to loose such enormous amount of human wealth just because of negligence or carelessness of the authorities in not taking preventive and precautionary measures.

7. The petitioners have conceded that helmet does not prevent accidents but it indeed mitigates or minimises the chance of head injury and its severe consequences. Helmet will certainly help them to keep their head and brain safe and their family happy. The petitioners have made study on general perception against use of helmet and he stated that in many articles people have opposed to use of helmet, inter alia, on the grounds that there would be reduction in hearing capacity, peripheral vision, risk of neck injuries and other diseases and also discomfort and inconvenience. According to the petitioners, apart from the fact that there was no supporting material available, the study

showed that full coverage helmets would result only minor reduction in horizontal peripheral vision but such marginal reduction is negligible in comparison to helmet being a lifesaver. According to the petitioners, the peripheral vision of normal human eye ranges between 200-220 degrees. The standard for helmet requires it to provide at least 210 degrees angle of vision for the wearer. Helmets thus would not obstruct critical or potential vision. Wearing of helmet also does not substantially restrict ability to hear. Noise generated by a motorcycle is such that any reduction in hearing capability that may result from wearing a helmet is almost inconsequential. Second loud enough to be heard above the engine can be heard within a helmet. Studies in U.S. revealed that helmets do not lead to a failure to detect significant traffic sounds. Thus, the complaints regarding impaired vision and/or hearing of fatigue are neither correct nor well founded.

8. Regarding problem of carrying a helmet when the rider is not wearing it, the petitioners have stated that in rural areas still people wear heavy and thick turbans to protect themselves from summer heat. Carrying out helmets, therefore, is not such a serious problem for which wearing of helmet should be given up. People using helmet may feel little discomfort but they would be accustomed to wear it by passage of time. The argument that helmets cause heat-stroke in summer is highly exaggerated one. No person has ever been reported to have suffered or died of heat-stroke as a result of wearing helmet.

9. It is stated in the petition that wearing of helmet by motor-cyclists have been made compulsory in many countries. Among them are Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan Luxembourg, Malaysia, Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand and the United Kingdom.

10. The petitioners then referred to the provisions of Sections 128 and 129 of the Act which require wearing of protective headgear. According to the petitioners, the legislature must have taken into consideration all relevant aspects at the time of enacting a statute. Once an Act has been enacted and brought into force, authorities cannot ignore the provisions of the Act on the ground of so-called inconvenience or difficulties implementation. There is no fundamental right to disobey the law which is made in public interest. Such provision is also not violative of Article 19(1)(d) of the Constitution as the same must be held reasonable restriction and is in larger public interest. It is also in consonance with Articles 38 and 47 in Part IV of the Constitution (Directive Principles of State Policy). Article 21 of the Constitution confers on every person right to life. It is a fundamental right. Protecting life of a citizen is very important and it is the duty and obligation of State to perform it. It would not be an exaggregation, therefore, to say that non-wearing helmet can be equated with an attempt to commit suicide, which is an offence under the Indian Penal Code.

11. The petitioners have referred to several cases decided by the Supreme Court as also by High Court issuing necessary directions to implement the provisions of the Act.

12. The petitioners then narrated certain measures taken by petitioner No. 2 to make the helmet compulsory by creating awareness about the importance of helmet for two-wheeler riders in Pune. She had written letters to all heads of the educational institutions in Pune. She had organised a

"helmet rally" which received mass support. She had made wearing of helmet mandatory for the students - two wheeler drivers - in the campus of Symbiosis College from 31st July, 2001. She, however, could not make the rule mandatory for the whole city and, therefore, was constrained to approach this Court by filing public interest litigation.

13. The petitioners have also prepared a scheme for phasewise implementation of the Rules, the consequences of violation or disobedience thereof. It was, therefore, prayed that appropriate directions are required to be issued by this Court to the State Authorities to take appropriate actions in the said direction.

14. As observed above, the petition was filed on August 29, 2001. On 5th September, 2001, an order was passed by the Division Bench (Coram: B.P. Singh, C.J. [as His Lordship then was] and Dr. D.Y. Chandrachud, J.) and the matter was ordered to be posted on 26th September, 2001 so that in the meantime, the State could file affidavit in reply dealing with the steps it would take including setting up of Mobile Courts to check violation of traffic laws. On 10th October, 2001, again the Bench passed an order observing therein that the petitioners had made some research on the subject and had placed a proposed scheme for implementation of Compulsory Helmet Rule in the State of Maharashtra. The said research could be to some help in formulating its policy by the State Government. The Court, therefore, asked the petitioners to forward a copy of the scheme to the authorities for their consideration.

15. An affidavit was field by the Principal Secretary, Home Department of the State of Maharashtra, on 5th December, 2001. We will refer to the said affidavit at a later stage. On January 16, 2002, an additional affidavit was also filed. On that day, the matter was placed before a Division Bench to which one of us was a party (C.K. Thakker, C.J. with S. Radhakrishnan, J.). It was stated that a Committee had been constituted to look into the matter and it would consider representations made in favour of and against wearing of helmet. The learned Advocate General, therefore, prayed for three months time to enable the Committee to consider rival view points and to take appropriate decision. Affidavits and further affidavits were also filed thereafter.

16. In the first affidavit dated 5th December, 2001 filed by Principal Secretary to the Government, Home Department (Transport and Excise), it was stated; "The State is not opposed to the suggestions made by the Petitioners in the P.I.L. and the State has gone through the suggestions and after applying its mind have issued Notification in this regard applicable to the various districts in the State of Maharashtra". It was admitted that wearing of headgear was made compulsory under Section 129 of the Act. The State of Maharashtra also issued a notification on 1st October, 2001, amending the existing Rule 250 of the Motor Vehicles Rules, 1989 (hereinafter referred to as "the Rules") by which wearing of protective headgear had been exempted in certain cases. It was stated that the State Government had selected two District, Pune and Dhule, for making use of helmets compulsory in the first stage. It was also because of the fact that helmet manufacturers were able to supply about 7.5 lakhs helmets to various districts in Maharashtra State during three months period. It was then stated that "other Districts in the State will be covered subsequently in a phased manner". A press note to that effect had also been issued. Under the Scheme, in every phase extension of further three months time limit was suggested for the purpose of making wearing of

protective headgear compulsory for pillion riders.

17. In paragraph 6, the deponent stated:

"The State Government is very much aware about the accelerating figures of road accidents and loss of life accused due to such accidents. The Respondents have in fact set up road safety committees and these Committees monitor all the policies framed by the State in this regard to curb road accidents. The Transport Commissionerate under the instructions of Home Department of the State of Maharashtra undertakes special drives to raise public awareness about the cause of road accidents and the necessary precaution to be taken for preventing such accidents. Committee was also set up under a senior officer on road safety. Committee has made detailed recommendation in this regard".

It was asserted that necessary steps would be taken to implement the provisions of the Act and the Rules by imposing penalty for non-observance of the rule. In paragraph 12, it was reiterated:

"I humbly say and submit that the State of Maharashtra is keen on implementing the scheme framed with regard to compulsory use of Helmets. I say and submit that the scheme of compulsory use of helmet is already been implemented in the Cities of Pune and Dhule covering these cities in the first phase for compulsory use of Helmets. As already stated by me, the entire State of Maharashtra will be covered in a phased manner." (emphasis supplied) Finally, the deponent stated that in the circumstances, this Hon'ble Court be pleased to pass necessary orders to meet the interest of justice and dispose of PIL.

18. An additional affidavit was filed by the Deputy Secretary to the Government of Maharashtra, Home Department (Transport), on 16th January, 2002. It was stated that a detailed affidavit in reply was filed in the petition on 5th December, 2001 by the Principal Secretary (Transport). In the said affidavit, the Government had conveyed its "concern" about traffic safety and decision to make use of helmet compulsory in Pune and Dhule Districts from 1st December, 2001, vide notification dated 1st October, 2001 along with the proposed programme of implementation in phased manner in the remaining districts of the State. Thereafter also the Government issued instructions for its implementation and such implementation had already stated.

19. In paragraph 2, however, the deponent stated that after the implementation started, various difficulties had been experienced. One of them related to "limited availability of helmets in a short period". The Government also received "very large number of representations from representatives of the public, Members of Parliament (MPs), Members of Legislative Assembly (MLAs), various associations of people and general public wherein numerous difficulties had been highlighted in the implementation of the Rule. The issue was discussed in both the Houses of the Legislature during the Winter Session in Nagpur. A group of legislators also called on the Hon'ble Chief Minister. In view of the said development, the Government made a statement on the floor of both the Houses on 8th December, 2001 that "considering the feelings and difficulties expressed by the Members in both the Houses, the Government would take an appropriate decision on implementation of the scheme with approval of the Hon'ble High Court."

20. The deponent stated:

"I further say and submit that this State has a two wheeler population of 45,19,351 and considering the average 2 persons per family, who may be using helmets as pillion riders, population concerned with the issue, comes to nearly 1.3 crores. I submit that the effective implementation of this important programme requires that various concerns expressed through various representations are examined and suitably addressed in the scheme.

Paragraph 5 reflected the actions to be taken. It reads as under;

"I further say and submit that in view of the above, Govt. proposes the following:-

(a) Use of helmets was made compulsory on the recommendations of the State Level Traffic Management Committee. It is proposed that this committee should consider the various representations and give its recommendations to the Govt. It is also proposed to include the director General of Health, Director of Central Institute of Road Transport, Director of Bureau of Indian Standard and Commissioner of Police, Pune, as additional members of the Committee (copy of the existing committee members is enclosed as Exhibit "B"). The committee shall consult other experts and give its recommendations to Govt. for effective implementation of the scheme after considering various concerns expressed in this respect. This shall facilitate smoother implementation with willing public co-operation.

(b) To postpone the compulsory implementation of the use of helmets upto 15.5.2002"

21. From the above facts, it appears to be amply clear that one of the factors weighed with the respondent-authorities in not implementing Section 129 of the Act was representations from public, MPs, MLAs, and various associations of people putting forward difficulties in implementation of the Rule. Exhibit-A to the said affidavit conveys strong feelings of public which were also expressed continuously in the media. It is further clear that a statement was made on the floor of both the houses by the Government in December, 2001, that keeping in mind the feelings expressed by the members in both the houses, the Government would take an appropriate decision regarding implementation of the scheme with the approval of the High Court. The deponent noted that use of helmet was made compulsory on recommendation of the State Level Traffic Management Committee. It was, therefore, proposed to include Director General of Health, Director of Central Institute of Road Transport, Director of Bureau of Indian Standard and Commissioner of Police, Pune, as additional members of the Committee to consider representations and make recommendations to the Government.

22. An affidavit in rejoinder to the above affidavit was filed by the petitioners on 13th August, 20020. The deponent stated in the said reply that many aspects were required to be considered over and above legal and constitutional questions, such as, convenience, practical problems, etc. The deponent, therefore, considered several aspects, keeping in view legislations, Committee Reports relating to use of helmets, practical issues, datas and statistics of injuries and death caused due to accident, decisions by various Courts, including the Apex Court and prepared a scheme. Considering

totality of facts and circumstances, the petitioners felt that, according to them, appropriate actions ought to be taken by the authorities by making rule relating to use of helmet compulsory.

23. We may at this stage observe that an Intervention Application (St.) No. 35744 of 2001 was filed by two applicants. The intervenors had objected the prayer made by the petitioners in PIL No. 87 of 2001 contending that it would create several complications. They also relied upon ISI booklet wherein it was mentioned that "wearing of the helmet may not prevent injury and/or death in severe accidents." It was stated that experts had opined that such compulsion would not be in the larger public interest. Apprehensions were also voiced that use of helmet on roads full of pot-holes and speed breakers would lead to spondylitis with severe back and neck pains. Persons suffering from spondylitis were advised by doctors not to wear helmet while driving two-wheelers. If it would be made compulsory, the situation would be worsened. Moreover, leading Ophthalmologists in Pune conducted a research on the number of blind spots developed by persons using helmets. Such research had shown that there was substantial increase in blind spots resulting in reduction of vision after wearing a helmet. Research paper by retired Professor and Head of the Department, Experimental Psychology, Pune University, had categorically stated that loss of sound localisation accuracy after wearing helmet is to the extent of 25 per cent. There was also possibility of fungal and skin diseases, dandruff and hair loss. It was further stated that such a step may not be desirable for social as well as security reasons. A helmet shields identity of a person wearing it. Terrorists and anti-social elements can take undue advantage of such a situation. Reference was made to an attack on American Centre in Kolkata. All the four terrorists who attacked American Centre had covered their faces with helmets, as reported by India Today. It would also create difficulties for Police Officers in identifying under-aged drivers as their faces would be hidden by helmets. It was experienced by the police officers that motor-cyclists wearing helmets simply ignore their whistles/shouts/indications under the pretext that they could not hear such whistles/shouts because of helmets. It was, therefore, prayed by the intervenors that they should be allowed to intervene in the main matter and prayed for dismissal of the petition.

24. The Petitioners have dealt with even the above problems raised by the intervenors. According to them, the difficulties were imaginary rather than real. Experience does not subscribe to the apprehension of intervenors. Two wheeler riders in Delhi over years confirm that helmets do not interfere in critical hearing. The problem of carrying a helmet when the rider is not wearing it or may cause discomfort to some extent are not serious problems. Moreover, helmet locks are available which can be used. It is, therefore, not correct to say that wearing of helmet should not be made compulsory on the ground of practical difficulties.

25. We may also refer to a substantive petition being Public Interest Litigation No. 2 of 2002 filed by Akhil Bharatiya Grahak Panchayat and others. They had approached this Court for an appropriate direction to the State Authorities not to make use of helmet compulsory. The grounds put forward by the petitioners are similar to applicants in intervention Application (St.) No. 35744 of 2001. It was stated by the Petitioners that keeping in view the facts and circumstances in their entirety and situation of Pune, if the State Government has not made wearing of helmet compulsory, this Court may not interfere with such policy decision particularly when the petitioners have not challenged validity of the rule excluding operation of Section 129 of the Act.

26. We have heard petitioner No. 1 in person in Public Interest Litigation No. 87 of 2001, Mr. Tejas Dande, learned counsel for the intervenors in Intervention Application (St.) No. 35744 of 2001, Smt. Kiran Bagalia, learned counsel for petitioners in Public Interest Litigation No. 2 of 2002 and Smt. J.S. Pawar, learned Additional Government Pleader, for the State.

27. Before going to the respective contentions, we may consider the relevant provisions of the present Act of 1988. Before this Act came into force, there was Motor Vehicles Act, 1939. By Section 217 of the Act of 1988, Act of 1939 was repealed. In the Act of 1988, provisions have been made for control of traffic in Chapter VII. Two sections are relevant and material for considering the controversy raised in the present petitions. They are Sections 128 and 129. Both of them may be quoted in extenso for ready reference:

"128. Safety measures for drivers and pillion riders.-(1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat security fixed to the motor cycle behind the drivers' seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in Sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon".

"129. Wearing of protective headgear.-Every person driving or riding (otherwise than in aside car, on a motor cycle 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 this section shall not apply to a person who is a Sikh, if he is, while driving on riding on the motor cycle, 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, could reasonably be expected to afford to the person driving or riding on a motor cycle 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."

Whereas Section 137 empowers Central Government to make Rules, Section 138 enables the State Government to frame such Rules.

28. In exercise of the powers conferred under the Act, the State of Maharashtra framed Rules known as the Maharashtra Motor Vehicles Rules, 1989 (hereinafter referred to as "the Rules"). Rule 250, as originally enacted, read as under;

"250. Wearing of protective head gear (1) Every person while driving or riding a motor cycle of any type that is to say motor cycle of any type that is to say motor cycles, scooters and Mopeds shall wear protective head gear of such quality which will reduce head injuries to riders of two wheeler resulting from head impacts.

(2) A protective head fear referred to in Sub-rule (1) should be one which has been approved by the Bureau of Indian Standards : Standard No. IS 4151-1976.

(3) Each protective headgear shall be permanently and legibly labelled, in a manner such that the label or labels can be easily read without removing padding or any other permanent part with the following:-

(a) manufacturers Name of identification.

(b) Size.

(c) Month and year of manufacture.

(d) The mark of Indian Standard Institute.

(4) The head gear shall have minimum 3 adhesive type retro-reflective red colour strips on the back of the head gear which will illuminate during the night. The strips should be of the size of 2 centimetres x 15 centimetres and affixed horizontally to the head gear."

By the Maharashtra Motor Vehicles (First amendment) Rules, 1996, Rule 250 was amended by a notification dated June 28, 1996. The amended Rule read thus:

"250. Wearing of protective headgear.-(1) The following persons are exempted from the provisions of Section 129 of the Motor Vehicles Act, 1998 (59 of 1988), namely;

(i) persons driving or riding all motor cycles in municipal areas;

(ii) persons driving or riding all motor cycles on roads, other than the State Highways and National Highways, in areas other than the municipal areas; and

(iii) persons driving or riding two-wheeled mopeds fitted with engine capacity of less than 50 cubic centimetres on the State Highways and National Highways in areas other than the municipal areas."

The amendment was brought into force by a notification dated 26th February, 1997.

29. Again, by a notification issued by the Home Department, Mantralaya, Mumbai, on 1st October, 2001, Rule 250 was amended by the Maharashtra Motor Vehicles (First amendment) Rules, 2001. The substituted Rule 250 now reads thus:

"250 Exceptions to wearing of protective headgear:- Every persons driving or riding two wheeled mopeds fitted with engine capacity less than 50 cubic centimetres throughout the State of Maharashtra: and every other person in area excluding such local area specified by the State Government, by notification in the Official Gazette, from time to time, under Section 129 of the Motor Vehicles Act, 1988".

The Government also specified local area as the area to be excluded for the purpose of Rule 250. They are Pune and Dhule Districts. The said amendment was to be made effective from 1st December, 2001.

30. It is thus clear that the Act enacted by Parliament made use of helmet for a two wheeled driver compulsory and obligatory. Section 129 in no uncertain terms mandates everyperson driving a two wheeled motor cycle while in a public place to wear protective headgear conforming to the standards of Bureau of Indian Standards.

31. It is, no doubt, true that the proviso to the said section carves out an exception and declares that the section would not apply to a person who is a Sikh wear a turban. It is also true that it saves power in the State Government by such Rules making such exceptions "as it may think fit".

32. The question for our consideration, therefore, is: whether in exercise of the power conferred by the second proviso to Section 129 of the Act, is it open to the State Government to ignore and virtually dispense with the mandate of the legislature reflected in Section 129 by making the provision of the Act nugatory, ineffective and otiose?

33. In this connection, we may refer to few decisions. In Ajay Canu v. Union of India and Ors. , validity and vires of Rule 498A of the Andhra Pradesh Motor Vehicles Rules was challenged, being violative of Articles 19(1)(d) and 21 of the Constitution. The State Government by enacting the said Rules made wearing of helmet compulsory for a person driving a motor cycle or a scooter in a public place. It was contended that the rule interfered with the right of a citizen to move freely and, hence, was ultra vires Article 19 as also Article 21. The Supreme Court, however, negatived the contention and observed that even if it was assumed that there was some restriction on a person driving a two wheeler, the restrictions must be held reasonable restrictions in the interest of general public. The provision, therefore, cannot be held ultra vires or unconstitutional.

34. The leaned counsel appearing for the intervenors (Intervention Application (st.) No. 35744 of 2001) and the Petitioners (P.I.L. No. 2 of 2002), no doubt, submitted that in Ajay Canu, the Court was called upon to decide validity of the statutory rule. It was not a petition for a writ of mandamus directing the State Government to make use of helmet for two wheelers compulsory. The learned counsel are right in making the above submission. But its pertinent to note that while dealing with the question and considering the vires of Rule 498A, the Court considered the circumstances which

would justify such an action by the State Authorities.

35. The Court stated:

"It is urged on behalf of the petitioner that Rule 498-A does and cannot come within the rule making power of the State under Clause (i) of Sub-section (2) of Section 91 of the Act, for it does not refer to the driver of a motor-cycle or scooter. It is true that Clause (i) does not refer to the driver of a motor cycle or a scooter, but it is much wider inasmuch as it provides, inter alia, for the prevention of danger, injury or annoyance to the public or any person. It is not disputed that Rule 498-A has been framed for the purpose of protecting the head from being injured in case of an accident. It is common knowledge that head of the driver of a two wheeler vehicle is the main target of an accident and often it is fatal to the driver. By insisting on the wearing of a helmet by the driver driving a two-wheeler vehicle. Rule 498A intends to protect the head from being fatally injured in case of an accident. Clause (i) is wide enough to include the driver of a motor cycle or a scooter. The expression "any person" in Clause (i) also includes within it a driver of a two-wheeler vehicle. We are unable to accept the contention of the learned counsel for the petitioner that the words "any person" do not include the driver of a two-wheeler vehicle and the rule is intended to prevent the danger the danger, injury or annoyance to the public or any person other than the driver of a two-wheeler vehicle. In our view, Clause (i) is also intended for the prevention of danger, injury or annoyance to the public or any person including the driver of a two-wheeler vehicle. Rule 498-A is, therefore, quite legal and valid in spite of the absence of any provision like Section 85-A."

The Court then proceeded to state:

"The next attack to Rule 498-A and to the impugned notification is based on the fundamental right of a citizen. It is submitted that the compulsion for the wearing of a helmet by the driver of a two-wheeler vehicle is an infringement of the freedom of movement of such a driver, as guaranteed by Article 19(1)(d) of the Constitution, and that such compulsion by Rule 498-A interfering with the freedom of movement not having been made in accordance with the procedure established by law is also violative of Article 21 of the Constitution. The contention does not at all commend to us. Rule 498-A ensures protection and safety to the head of the driver of a two-wheeler vehicle in case of an accident. There can be no doubt that Rule 498-A is framed for the benefit, welfare and the safe journey by a person in a two-wheeler vehicle. It aims at prevention of any accident being fatal to the driver of a two-wheeler vehicle causing annoyance to the public and obstruction to the free flow of traffic for the time being. It is difficult to accept the contention of the petitioner that the compulsion for putting on a headgear or helmet by the driver, as provided by Rule 498A, restricts or curtails the freedom of movement. On the contrary, in our opinion, it helps the driver of a two-wheeler vehicle to drive the vehicle in exercise of his freedom of movement without being subjected to a constant apprehension of a fatal head injury, if any accident takes place. We do not think that there is any fundamental right against any act aimed at doing some public goods. Even assuming that the impugned rule has put a restriction on the exercise of a fundamental right under Article 19(1)(d), such restriction being in the interest of the general public, is a reasonable restriction protected by Article 19(5) of the Constitution. As Rule 498-A has been framed in accordance with the procedure established by law, that is, in exercise of the rule making power conferred on the State Government

under Section 91 of the Act, as discussed above, the question of infringement of Article 21 of the Constitution does not arise. The contention of the petitioner that Rule 498-A and the impugned notification dated July 8, 1986 issued by the Commissioner of Police in exercise of his powers under Section 21(1) of the Hyderabad City Police Act infringe the fundamental right of the petitioner under Article 19(1)(d) and Article 21 of the Constitution is devoid of merit and is rejected."

36. In that case also, it was argued that wearing of helmet would cause some ailments. The contention, however, was negatived by the Supreme Court. The Court observed: "we do not think that there is any merit in the contention, particularly in view of the medical opinions of some Neuro Surgeons of repute..."

37. In S.R. Bhat v. State of Karnataka and Ors., AIR 1988 Kant 153, a contention similar to one raised before us was raised before the High Court of Karnataka. In exercise of power under the second proviso to Section 129, the State Government framed Rules. Rule 230 made wearing a protective headgear compulsory. The said Rule 230(1) as originally framed in 1989 read as under:

"(1) Every person while driving or riding a motor cycle of any type that is to say motor cycles, scooters and mopeds shall wear protective headgear of such quality which will reduce head injuries to riders of two wheeler resulting from head impacts.

Subsequently., however, the applicability of the Rule was diluted and a proviso was introduced which read thus:

"Provided that Sub-rule (1) shall not apply to a person driving motor cycle with not more than three metric brake horse power."

38. The question before the High Court was whether such a power could be exercised and would fall within the authority of the State Government under the second proviso to Section 129. The Court held that the language of Section 129 was clear and unambiguous. The court observed that any rule that could be made in exercise of the power derived under the Act "must as of necessity be for purposes of carrying out the objectives of the Act and cannot be ultra vires the parent Act or contain a provision that defeats the express requirements of the Act."

39. It was also argued on behalf of the State that Parliament had granted power of specific exclusion from the operation of the Act by enacting second proviso. In exercise of such power, therefore, it was open to the State Government to make an exclusion. The Court, however, ruled that the limited power conferred by Parliament on the State Government was to make an exception in respect of similar categories of persons (referred to in the first proviso) who, for reasons of religion or custom, normally wear turban and in whose case, therefore, wearing of a helmet would not be feasible. It would be a misconception of the law if such proviso were to be understood to empower the State Government to dilute the compulsory and mandatory requirements of Section 129 by exempting the whole or wider class of motorised two wheelers. "This would be doing violence to the law and which is something that is wholly impermissible. It would be wholly outside the legislative competence of the State Government".

40. Incidentally, in that case also, the validity of the rule was not challenged since only at the time of hearing, it was stated on behalf of the State Government that the rule was amended and exemption was granted to persons driving motorcycle with not more than three metric brake horse power. Time was, therefore, sought by the leaned counsel for the petition that he should be permitted to formally amend the petition by including a prayer for quashing of proviso. The Court, however, dispensed with formal amendment as it was a pure question of law and competence of the rule making power of the State Government. In the opinion of the Court, the proviso to Rule 230 (child legislation) was ultra vires Section 129 of the Act (parent Act). The rule was, therefore, liable to be struck down.

41. We may also refer to a decision of the High Court of Delhi in Pt. Parmanand Katara v. Union of India and Anr., . There a human rights activist and a practising lawyer approached the High Court in the larger public interest directing the respondents to implement Sections 128 and 129 of the Act. Allowing the petition and issuing directions, the Court observed that the framers of the Act have incorporated Sections 128 and 129 in public interest. The predominant purpose behind incorporating those provisions was to avoid fatal and serious accidents. It was noted that implementation of Sections 128 and 129 might cause slight inconvenience but such inconvenience had to be suffered in the larger interest of the drivers and pillion riders of the two wheeled motor cycles. The Court also stated that as per settled principles of interpretation of statutes it must be presumed that the framers of the Act had taken into account all relevant aspects at the time of enacting the Act. Once the Act had come into force, no one could be permitted to bypass or ignore the provisions thereof on the ground of inconvenience or difficulties in implementation. Appreciating the prayer of the petitioner, the Court said: "The anxiety and concern of the petitioner is also the anxiety and concern of all of us. As the provisions had been enacted in larger public interest, the respondents were duty bound to implement them meticulously." Necessary directions were, therefore, issued by the Court.

42. Now, so far as the facts of the present case are concerned, it is not in dispute that the law enacted by Parliament requires wearing of protective headgear by every person driving or riding a two-wheeler on a public place. Admittedly, first proviso does not apply as its application is limited to a person who is a Sikh, and that too, if he is wearing a turban. True it is, that the language of second proviso to Section 129 is very wide an enables a State Government to make rules providing for such exceptions "as it may think fit". In our considered opinion. however, it cannot be urged that such power can be exercised for any and every purpose. It is settled law that whenever power had been conferred on an authority which can be exercised by such authority 'as it thinks fit' or 'as it deems fit', such power has to be exercised legally, properly and reasonable.

43. In the leading case of Roberts v. Hopwooed, 1925 AC 578, the local authority was empowered to fix "sch wages as it may think fit." In exercise of the said power, the authority fixed wages at 4 per week to the lowest grade worker in 1921-22. When the action was challenged, it was contended by the authority that the discretion was conferred on it and in exercise of the said discretion, the decision was taken which could not be held illegal or invalid. The Court, however, negatived the contention and observed that though discretion was conferred on the authority to fix amount of wages 'as it may think fit', the discretion ought to have been exercised reasonably. As the same was not exercised in a reasonable and rational manner, the action was bad.

44. Lord Wrenbury construed the phrase "amy think fit" to mean "may reasonably think fit". His Lordship propounded:

"Is the verb "think" equivalent to "reasonably think"? My Lords, to my mind there is no difference in the meaning, whether the word "reasonably" or "reasonable" is in or court... I rest my opinion upon higher grounds. A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so-he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably." (emphasis supplied)

45. In another leading decision in Associated Provisional Picture Houses Ltd. v. Wednesbury Corporation (1947) 2 All ER 680, Lord Greene, M.R. made the following oft-quoted observations.

"It is true that the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretion often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and if frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person cold ever dream that it lay within the powers of the authority. Warrington, L.J. in Short v. Poole Corporation, gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another,"

The above principles have been accepted in India. In several cases, it has been held by the Apex Court that whenever discretion is conferred on a person or an authority, such discretion must be exercised reasonably and on well settled principles. If power is not exercised on relevant, germane and valid considerations, the exercise of power would be bad and the decision vulnerable.

46. 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. In our considered opinion, therefore, discretionary power conferred under the second proviso has to be exercised, keeping in view and mindful of the legislative mandate of the section. The first proviso doe snot 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, in our view, must be exercised mindful of the intention of the Legislature. The rule making authority must be circumspect in excluding the operation of the section. The expression "as it may think fit", therefore, cannot totally make the principal provision (Section 129) nugatory and redundant. The discretion has to be exercised by the State Government reasonably and keeping in view public interest. It cannot be forgotten that the Rule is a child legislation. It cannot travel

beyond the provisions of the main statute nor be repugnant to or inconsistent with the parent Act. In such cases, the rule must be held ultra vires. It is, therefore, not open to the State Government to make such a rule which has no nexus with the principal provision in the Act and would result in making such provision totally useless, unworkable and non-functional. In our opinion, therefore, such provision cannot be allowed to be implemented and an appropriate direction can be issued by this court in exercise of extraordinary jurisdiction under Article 226 of the Constitution to the respondent-authorities to enforce the parent Act i.e. Section 129 of the Act.

47. The intervenors have also urged, referring to celebrated personality and great author John Stewart Mill, champion of personal liberty that "the only purpose for which the power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others". According to the intervenors, the author identified things which are to be excluded from the ambit of criminal law by saying that "his own good, either moral or not is a sufficient warrant and he cannot rightfully be compelled to do or forbear from doing, because it will be better from him to do so or will make him happier, because in the opinion of others to do so would be wise or right."

48. Relying on a warning by Central Government on I.V. as well as on other media saying "marji hai aapki, aakhir sar hai aapka" (It is your choice, after all it is your head) with a small script displaying two coconuts, one covered with helmet and other open and showing that the coconut not covered with helmet had been broken by a hammer, it was urged by the intervenors that whether to use helmet or not should better be left to individual concerned. This is the correct approach, submitted interveners.

49. We must frankly admit that we are not impressed by the above submission and argument. Almost a similar contention was advanced before the Supreme Court and a Bench of two Judges upheld it in P. Rathinam v. Union of India and Anr., . In P. Rathinam, the constitutional validity of Section 309 of the Indian Penal Code was challenged, inter alia, on the ground that right to life enshrined by Article 21 of the Constitution would include right to live as also right not to live or to die. The contention was upheld by the Court observing that one may rightly think that having achieved all worldly pleasures and happiness, he has something to achieve beyond life. That desire for communion with God may very rightly lead even a healthy mind to think that he would forego his right to live and would rather choose not to live. A person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking.

50. The Court concluded:

"Keeping in view all the above, we state that right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life."

51. It may, however, be stated that in a subsequent decision, the Constitution Bench of five Judges in Gian Kaur (Smt.) v. State of Punjab, specifically and expressly overruled P. Rathinam. Speaking for the Court, Verma, J. (as his Lordship then was) observed:

"When a man commits suicide he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the "right to life" under Article 21. The significant aspect of "sanctity of life" is also not to be over looked. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can "extinction of life" be read to be included in "protection of life". Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe Article 21 to include within it the "right to die" as a part of the fundamental right guaranteed therein. "Right to life" is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of "right to life". With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to "freedom of speech" etc. to provide a comparable basis to hold that the "right to life" also includes the "right to die". With respect, the comparison in inapposite, for the reason indicated in the context of Article 21. The decisions relating to other fundamental rights wherein the absence of compulsion to exercise a right was held to be included within the exercise of the right, are not available to support the view taken in P. Rathinam qua Article 21.

To give meaning and content to the word 'life' in Article 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but no that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The "right to die", if any, is inherently inconsistent with the "right to life" as is 'death' with 'life'." (emphasis supplied)

52. In view of the above final declaration of law by the Apex Court of the country, the argument of the intervenors that it is for an individual to take action for his safety or security and State authorities have no power to take any step in that direction has no force and cannot be upheld.

53. It may also be appropriate to refer to the report of All India Road Safety Programme Implementation Committee set up by the Ministry of Road Transport and Highways, Government of India on Road Safety Programme. The Committee noted that the studies revealed that a two wheeler rider is five times more likely to be killed in an accident than a car or a bus traveller. The Committee, therefore, made several recommendations. Over and above engineering measures, driving licence system, institution building, traffic education, enforcement, etc., legal amendments were also suggested. One of the recommendations by the Committee reads as under:

"The use of helmets by all motorcycle riders should be made compulsory throughout the country."

A Committee constituted by the State of Maharashtra to make recommendations for effective implementation of road safety and management submitted its report on 3rd April, 2002 (as per the affidavit of State dated 31st July, 2002). The Committee consisted of high ranking officials of various departments.

54. The Committee observed:

"The provision for making use of helmets has been made compulsory taking into consideration the safety of the concerned driver of a two wheeler and pillion rider under the Motor Vehicles Act. Even though the use of helmet cannot prevent an accident from taking place, it can certainly reduce the intensity of the impact to the head in case of one.

After hearing the representatives of the people about use of helmets by drivers of the two wheelers at Pune, it was observed that there is tremendous resistance to making it compulsory as provided under the Act.

During discussions with manufacturers of helmets it was observed that thee are no difficulties to manufacture and supply helmets conforming to the specifications of the Bureau of Indian Standards. Also, the cost of the same should be affordable to common people, taking into consideration its necessity from the point of view of safety of the user.

It is necessary to conduct a publicity campaign for making people aware about the importance of personal safety by use of helmets and change their mind set. Till such time as people are not convinced about making use of helmets compulsory, implementation of the same will be felt by people only as harassment."

The Committee also considered the representations received in connection with use of helmet and its remarks on those issues. Finally, the Committee made following recommendations:

"1. As the use of helmet by the driver and pillion rider of two wheeler is in their own interest, the committee is in favour of making its use compulsory and recommended accordingly.

2. The scheme of making use of helmets compulsory be implemented in a phased manner as shown below:

(a) Use of helmet by driver of a two wheeler should be made compulsory on all National and State Highways with effect from the 1st May, 2002. However, it will not be compulsory for the two wheeler driver to use helmet in the limited areas of Municipal Corporations or Municipal Councils through which the said National and State Highways pass. Further, use of helmet will not be compulsory for ladies and pillion riders of two wheelers.

(b) It will be compulsory for all two wheeler drivers (with the exception of ladies and pillion rider) to use helmets in all the Municipal Corporation areas along with the above referred highways with effect from the 1st August, 2002.

(c) It will be compulsory for all the drivers and pillion riders of two wheelers (with the exception of ladies) to wear helmets in the above referred areas with effect from the 1st November, 2002.

(d) It will be compulsory for all the persons referred to above and ladies to use helmets in all the areas in the State referred to above with effect from the 1st Jan. 2003.

(e) It will be compulsory for all the persons (with the exception of Sikh persons wearing turbans) who are driving two wheelers to compulsorily wear helmet in all the Municipal Council areas and other areas of the State, along with the areas mentioned at a, b, c and d above.

3. Active participation of two wheeler manufactures is expected for successful implementation of the scheme. The manufacturers should supply at least one duly approved helmet free of cost at the time of sale of a new two wheeler. The approved dealers of such manufacturers should also be made to compulsorily keep approved helmets for sale at concessional rates.

4. People should be made aware of the benefits of using helmets during the time when the scheme is being implemented in a phased manner as referred to above. The interim period be used for making public opinion in favour of use of helmets. The Information and Public Relations Department for this purpose may arrange for discussions on this issue through newspapers and television and thereby create public awareness in this regard. A publicity campaign should also be arranged int his regard with the help of voluntary organisations. A message in this regard may also be telecast on television through a few famous film actors like Amitabh Bachchan, Amir Khan etc. by inviting them on the Doordarshan. Even slides on the benefits of use of helmets can be exhibited in the cinema theatres. The two wheeler manufactures may bear the expenditure on account of advertising campaigns in this regard.

5. The Ministry of Road Transport & Highways, Government of India be requested for making a provision for supply of helmet by two wheeler manufacturer while selling each two wheeler for new registration.

6. The Government may either waive 15.3% sales-tax on the helmets or reduce the same in order to encourage its use taking into consideration importance of the same.

The Committee is confident that it the scheme is enforced as above, it will be possible to implement it effectively."

(emphasis supplied)

55. Petitioner Nos. 1 and 2, vide their letter dated October 19, 2001 addressed to Road Transport Officer, pune, made certain suggestions which would prove effective in implementing compulsory helmet rule in Pune.

56. Regarding implementation of compulsory helmet rule in the State of Maharashtra, according to the petitioners, the same can be enforced in a phased manner by issuing notifications. It is open to the respondent-authorities to consider recommendations and suggestions of the Committee appointed by the State as also suggestions made by the petitioners.

57. For the foregoing reasons, PIL 87 of 2001 deserves to be allowed and is accordingly allowed by granting prayer made int he petition by directing respondents to implement provisions of Section 129 of the Motor Vehicles Act, 1988 in the State of Maharashtra by making use of protective head

gear compulsory for every person driving or riding (otherwise than in a side car) on a motor cycle of any class or description. Rule is made absolute accordingly to the extent indicated above. It would be appropriate if we direct respondent No. 4, the State of Maharashtra, to pay costs to the petitioners which is quantified at Rs. 5,000/-.

58. In view of the order passed in PIL 87 of 2001, no further order is necessary in Intervention Application (St.) No. 35744 of 2001.

59. PIL 2 of 2002 is ordered to be dismissed, however, with no order as to costs.

Parties be given copies of this order duly authenticated by the Sheristedar/Private Secretary.