

**Working Paper series**

**The Pedestrian and the Road**

**By**

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# Contents

## Chapter I

**Introduction** : 3

## Chapter II –Review of Literature

**Existing Legal Frame Work** : 6

**Model Share of Waling in Key Cities of India** : 9

**Efforts by the UN and the Specialized Agencies** : 13

**United States of America** : 15

**United Kingdom** : 17

**Indian Judiciary and the Pedestrian** : 18

## Chapter III

**Chapter of Duties and Rights of Pedestrian** : 30

**Conclusion** : 33

## CHAPTER I

### INTRODUCTION

Thomas Harris McDonald, the father of the American interstate road system, once noted, "*next to the education of the child, road building is the greatest public responsibility*" [Lewis Tom 1999:8]. If the nation is equated to the human body then roads are the arteries pumping life into it. India has one of the largest road networks in the world. These roads are used not only by the motorized forms of transport but also non-motorized forms of transport like pedestrians<sup>1</sup>.

As per the report 'Make Roads Safe: A Decade of Action' by the Commission for Global Road Safety, road accidents lead to the death of about 1.3 million people in the world each year. According to statistics mentioned in the above report, road accidents lead to more deaths than malaria. It has been observed by different organisations like the World Health Organisation, World Bank etc that the number of deaths due to road accidents is higher in the developing countries than the developed countries.

The Indian Law Commission in its report on 'Legal Reforms to Combat Road Accidents' observed that more than one lakh people die every year due to road accidents. India accounts for about 5.4% of the road injuries in the world [The Pioneer, New Delhi, 24.03.2008]. About 53% of the people who die in these road accidents are pedestrians [Navbharat Times, New Delhi, 03.01.2008]. According to the survey held by the Central Road Research Institute nearly 90% of the pedestrians feel unsafe to travel on the roads [The Times of India, New Delhi, 27.06.2008].

The natural conclusion which flows from this data is that the Pedestrian is the most vulnerable road user in India. When it is known that a particular segment of the population is suffering or the interests of a certain groups are being attacked, a need arises to safeguard these people. In order to safeguard people the first attempt is always to protect their rights; in case of pedestrians this becomes very hazy. This is because in India one cannot substantially answer the question, "*What are the Rights which a Pedestrian has with respect to the Road?*"

Even though it is universally accepted that the Pedestrian is a Vulnerable Road User<sup>2</sup>, there is

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<sup>1</sup> Also observed in the 18<sup>th</sup> Law Commission of India, Report No. 234, *Legal Reforms to Combat Road Accidents*, 2009

<sup>2</sup> A road user belonging to a category most at risk in traffic and generating little risk to other road users.

no legislation in India governing the rights and duties of the pedestrian exclusively.<sup>3</sup> Hence, at this juncture of the paper it is pertinent to point out the objectives of this Research Paper.

### **OBJECTIVES**

1. Determine the Rights of a Pedestrian with respect to the Road
2. Determine the Nature of this Right: Fundamental Right or not?
3. Propose a Charter of rights and duties for the Pedestrian in India

### **IMPORTANCE OF THE STUDY**

On reading the introduction itself the need to undertake this research becomes clear. When a nation is faced with a problem, (death of pedestrians in this case) it is not only important but also essential for everyone in the nation to solve it. As pointed out in the report 'Footfalls: Obstacle Course to Livable Cities' by the Centre for Science and Environment even today the number of people who commute by walking outnumber those who use vehicles. In spite of this, the environment in which the Pedestrian walks is extremely unfriendly. Most of the cities in India do not have proper pavements; even in cities where pavements are present they are either too narrow or too high. Furthermore, the pavements are usually uneven and strewn with obstructions; making it mandatory for the pedestrian to walk on the road rather than the pavement. In such an environment where a person without any disabilities faces problems imagine the plight of the disabled? The risk undertaken by a pedestrian can no longer be ignored. The need of the hour is to ascertain the rights of the Indian Pedestrian and safeguard them. This research paper hopes to answer this need and help the pedestrian to walk in a safer environment.

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<sup>3</sup> Same has been observed by the 18<sup>th</sup> Law Commission Report and the Report of the Centre for Science and environment.

## **METHODOLOGY**

The data which is to be analyzed under this study may be classified as follows.

**PRIMARY DATA:** It shall comprise of the following:

- Existing Legislations which govern Road Safety
- Appropriate judgments
- Conventions and Resolutions in the said field.

**SECONDARY DATA:** It shall comprise of the following:

- Relevant research papers by both public and private bodies
- Articles published in the field
- News Paper Articles and Reports

## **CHAPTER II**

This Chapter of the paper may be divided into three parts. The first part shall critically evaluate the existent legislations and policies of India regarding roadways from the perspective of the pedestrian. This analysis shall aim at assessing the effectiveness of these documents and the safeguards present. The second part of the chapter shall aim at the analysis of the United Nation Conventions and Resolutions along with the legislations present in other countries. As mentioned earlier the problem faced by the pedestrian is not isolated to India; it is a global phenomena. Thus this part also aims at undertaking a comparative analysis of the legislations and regulations enumerating the rights of the pedestrian, present in other countries. The final part of this chapter shall analyse the response of the Indian Judiciary with reference to the rights of the pedestrian.

### **i. EXISTING LEGAL FRAMEWORK**

#### **(A) LEGISLATIONS AND RULES**

Starting with the Indian Penal Code, 1860 to the Motor Vehicle Act, 1988 to the recent National Urban Transport Policy, 2006; India has a rich variety of road legislations and policies. Though, in spite of the quantum of legislations the rights of the pedestrian have always remained hazy. This is primarily due to the fact that most of the legislations cater for the motorized road user [Roychowdhury A., *Footfalls: Obstacle Course to Livable Cities*, Centre for Science and Environment, 2009].

For instance the Indian Penal Code punishes; acts of rash or negligent driving (S. 279), causing of death due to negligence (S. 304), an act either endangering life or personal safety of others (S. 336) or causing hurt (S. 337) or grievous hurt (S. 338) by endangering the life and personal safety of others,

Similarly on a perusal of the Motor Vehicles Act and the Rules framed under it; one will observe that the provisions aim at regulating motorized traffic. Even the penalties present under the Act are with reference to the acts on part of the Motor vehicle. This though does not imply that the Acts completely disregard the pedestrian. Both the legislations recognise the need to safeguard the interest of the pedestrian but in an indirect manner.

The provisions of the IPC aim at protecting the public from getting hurt or being injured.

This term *public* will naturally include the pedestrian who is also part of this main sect. The Motor Vehicles Act recognizes the interests of the pedestrian by providing penalties for exceeding the speed limits, licensing regulations etc [S. 7 to 38 and S.112]. Furthermore, the Act under S. 138 cl. (h) and (i) empowers the State Government to make Rules prohibiting the motor vehicles from using foot paths and pavements and the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic. The voice of the pedestrian often goes unheard.

Apart, from these two legislations the Municipal Corporation Acts also provide a degree of protection by making obstructions on a public street illegal unless created with the prior approval of the Collector.

The only legislation in which the term pedestrian is found is the Rules of the Road Regulation, 1989. Under these rules certain obligations are imposed on the driver of a Motorized vehicle with respect to the pedestrian; they include:

- (a) the duty of the driver to slow down when approaching a pedestrian crossing (Rule 8).
- (b) Not to drive on the footpath or the cycle lane (Rule 11)
- (c) No driver shall park a motor vehicle near a traffic light or on a pedestrian crossing or a footpath (Rule 15)

Though, the most important aspect of the Rules of the Road Regulation, 1989, with reference to the present research paper, is the fact that the regulations actually recognize a right of the pedestrian. Regulation 11 states:

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

This is clearly a marked departure from the implicit recognition of the pedestrian in the other legislations. At the same time it is imperative to point out the fact that this is the only provision in the Regulation which addresses the pedestrian directly; the remainder of the regulation refrains from making any mention of the Pedestrian as a person.

The pedestrian who use the road include a wide range of people. Thus it is very important that the roads are accessible to everyone. Under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 the government must provide for<sup>4</sup>:

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<sup>4</sup> 2005 | [www.hrln.org](http://www.hrln.org) | Equal Opportunity Rights For Disabled Peons, and S. 45 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

- Auditory traffic signals, engravings on the surface of zebra crossings and on the edges of railway platforms to assist visually impaired persons
- Slopes in pavements for easy access of wheel – chair users
- Appropriate symbols of disability
- Warning signals at appropriate places

The above mentioned legislations recognize the pedestrian and his interests in a very fragmented and disjointed manner. Moreover, most of these provisions are not implemented [Roychowdhury A., *Footfalls: Obstacle Course to Livable Cities*, Centre for Science and Environment, 2009]. This failure in implementation in turn makes the provisions ineffective and redundant. In addition, there is an urgent need to update these legislations. The penalties, especially the fines must have a deterrent effect to serve their purpose. Herein, the initiative of the Ministry of Road Transport and Highways, to revamp the Motor Vehicles Act, 1988 must be appreciated. As observed by the Law Commission in its consultation paper on “Legal Reforms to combat Road accidents” in 2008, ‘there is no appropriate legislation to govern the behaviour of pedestrians and non-motorized traffic on the roads.’

At this juncture it is interesting to note that the pedestrian even though, a minor player in the legislative framework is by no means a minority road user. According to the Study on traffic and transportation policies and strategies in urban areas in India by Wilbur Smith Associates, for Union Ministry of Urban Development the number of pedestrians in India is quite high. The Survey found that the size of the city influenced the percentage of pedestrian i.e. smaller cities tend to have a greater percentage of pedestrians. As per the findings of the survey 28 percent of the population in India walks (Table 1) i.e. about 28,00,00,000 people. This means about one-third of India’s population (constituting nearly half the fatalities in road accidents) does not have a comprehensive legislation catering to its needs. The law is supposed to cater to the needs of the society; a society without a law is chaos.



<b>TABLE 1 :MODEL SHARE OF WALKING IN KEY CITIES OF INDIA</b>	
<b>Cities Classified according to Population</b>	<b>Percentage walking</b>
<5 Lakhs (hill terrain)	34
<5 Lakhs (plain terrain)	57
5-10 Lakhs	32
10-20 Lakhs	24
20-40 Lakhs	25
40-80 Lakhs	25
>80 Lakhs	22
<b>National</b>	<b>28</b>

**Source:** Anon, 2008, Study on traffic and transportation policies and strategies in urban areas in India, Wilbur Smith Associates, for Union Ministry of Urban Development, May, New Delhi

## **POLICIES**

Apart from legislations, there are several policies which regulate roadways in India. Though the problem remains the same none of these policies clearly spell out the rights of a pedestrian. This though doesn't mean that the policies are redundant. For instance the National Urban Transport Policy of 2006, states that the planning of a city should be with respect to the people. One of the biggest advantages of the policy is the fact that it clearly brings into the limelight the plight of the pedestrian. While it is indeed necessary to recognise the problems of the pedestrian, mere recognition is not enough. Though the policy does suggest the creation of segregated lanes and better pavement facilities it does not make it mandatory. It either encourages cities to develop the above mentioned facilities or suggests them. The policy talks in a very general manner about the pedestrian without ever mentioning his/her rights.

Furthermore, it is important to note that the policy was brought out in 2006 and till date very little has been done with respect to implementing it<sup>5</sup>.

The recent Jawaharlal Nehru National Urban Renewal Mission, in itself does not specify any guidelines or criteria for pedestrians. But the City Development Plans which are submitted by the selected cities seem to include provisions for the pedestrian [Roychowdhury A., *Footfalls: Obstacle Course to Livable Cities*, Centre for Science and Environment, 2009]. This again leads to more confusion due to the fragmented structure of the bodies in the cities. For instance in the same city certain roads fall within the jurisdiction of the PWD and certain roads fall within the ambit of the Municipal Corporation, while others fall under the jurisdiction of the National Highway Authorities and each authority has different standards; making it near impossible to co-ordinate between all these authorities[The Hindu, Kochi,17.11.09].

The Sundar Committee in its Report on Road Safety and Traffic Management in 2007 recommended the creation of a National Road Safety and Traffic Management Act. The proposed Act as recommended by the Committee calls for a Road Safety and Traffic Management Board at both the National and State level. Out of the many functions enumerated for the board the proposed Act mentions that it shall be the function of the Board to provide or promote provision of special requirements for the senior citizen, children, disabled and the pedestrian in matters relating to road safety and traffic management. This again makes the plight of the pedestrian a bit ambiguous as with respect to what exactly can be termed as a 'special requirement'.

Though, it is important at this juncture to appreciate the creation of these boards especially with respect to the penalties imposed under the Act. Under the proposed Act the State Board can punish any person who fails to comply with the standards of design, construction and maintenance of the roads, (except for offences on the National Highway) shall be punishable with a fine of Rupees Ten Lakh and where the offence is of a continuing nature the fine may increased by an amount equal to one lakh for every month for which the offence continues or part thereof during which such failure or contravention continues after lapse of 60 (sixty) days from the date of convection for such contravention or failure. In span of about 2 yrs since the recommendations have been made the government has come up with a draft policy on Road Safety. This policy does have quite a few positive steps; for instance the policy in its preamble

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<sup>5</sup> Also observed by the World Bank (Fang Ke, *India Sustainable Urban Transport Program, Proposed GEF Program, 2007*)

recognizes the need for a holistic approach as far as road safety is concerned and furthermore the policy aims at the setting up of the National Road Safety Board. Though the problem still lies in the use of vague terms as far as the vulnerable road user is concerned: the policy calls for the implementation of ‘best practices’ as far as town planners are concerned without mentioning the standard to gauge these best practices. Additionally, the policy is very general in nature wherein it just mentions a very broad framework without bothering to elaborate on the finer nuances. Though it is generally believed that all a policy is supposed to do is provide a framework for its implementation, too vague a policy is also a bane.

The construction of pavements in India is governed by the guidelines of the Indian Road Congress. These guidelines are not only outdated but inadequate. For instance the guidelines remain completely silent with reference to the height of the pavements. Thus often the pedestrian finds that the pavement itself is too high to be accessible. Moreover it provides no guidelines with respect to the width of the pavement around street furniture for e.g. dust bins benches etc.

CAPACITY		REQUIRED WIDTH OF THE FOOTPATH (mtrs)
All in one direction	In both directions	
1220	800	1.5
2400	1600	2.0
3600	2400	2.5
4800	3600	3.0
6000	4800	4.0

**Source:** Urban Development Plans Formulation & Implementation Guidelines (UDPFI).

Along, with the Indian Road Congress, the Urban Development Plans Formulation and Implementation (UDPFI) also laid down certain guidelines with respect to the footpath in 1996. The above table contains the guidelines of the UDPFI. As per the guidelines the minimum width of a footpath must be 1.5 metres but this width could be increased by 1 metre near shops and businesses as dead width. With respect to shop frontages (minimum width of which was to be 4.5 mtrs) the footpaths adjacent to them are to be at least 3,5 mtrs in width. In the arterial (50 – 60 meters), sub arterial (30 –40 meters), collector streets (20 –30 meters) urban residential/local streets (10 – 20 meters), the recommended width of footpath in a cross section is 3 meters and in case of urban cul–de-sac, it is 1.5 meters.

Though, once again the guidelines fail to provide any standard for the height of the footpath. As one may conclude from the above data India does not lack policies or laws but the problem lies in the nature of these documents and their implementation. Hence, by giving a policy which again ignores the question of implementation the government fails to improve on its mistakes. Before, concluding this chapter it might be interesting to note the gravity of the problem with the help of the below table.

Diseases	Number of deaths	Centrally Sponsored Schemes	Outlay Xth Plan (2002-2007) (Crores Rs.)
Tuberculosis	37,639 (2004)	National TB Control Programme	680
Malaria	638 (2005)	National Vector Borne Diseases Control Programme (including Malaria, Kala-Azar, Filariasis, Dengue and J.E.)	1370
AIDS	1094 (8286 cumulative till 2005)	National AIDS Control Programme including Blood Safety Measures and National S.T.D. Control Programme	1270
Road crashes	92618(2004)	"	187

\* No significant and major scheme.

**Sources:**

india-stat.com/<http://www.india-stat.com/india-stat/india-stat.asp?section=1&id=0&id=0>  
 m), Ministry of Shipping Road Transport and Highways (2006) & Tenth Plan Document  
 ([http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2\\_app.pdf](http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2_app.pdf))

The said table has also been referred to by the Sundar Committee report. This clearly shows that in spite of the magnitude of the problem the government has still failed to take any concrete initiative.

Traffic related injuries are projected to become the fifth leading cause of deaths by 2030, surpassing even cancer and malaria [The Hindu, *Where the pedestrian is a third class citizen*,29.11.09].

ii. **UN AND THE INTERNATIONAL PERSPECTIVE**

The pedestrian is not some exotic species who is found in India alone, he/she is omnipresent. Hence, to find the solution it will be useful to see how the world community, in general and the different countries specifically have dealt with the pedestrian.

**EFFORTS BY THE UN AND THE SPECIALIZED AGENCIES**

The Geneva Convention on Road Traffic in 1949 was one of the earliest attempts made by the United Nations in the field of Road Traffic. This Convention has been signed and ratified by India.<sup>6</sup> The Convention though refers to the pedestrian only in two articles [Articles 7 and 11]: even in these articles the Convention mentions the pedestrian in a very cursory manner without drawing any particular attention to him as a road user.

The Geneva Convention was replaced by the Vienna Convention on Road Traffic and Road Signals and Sounds. This Convention primarily aimed at the creation of uniform road traffic laws to aid international transportation and ensure road safety. Though, a perusal of the convention will enable one to realize that the Convention is primarily aimed at safeguarding the rights of a motorized road user rather than the pedestrian. For the Convention undertakes several presumptions with reference to the pedestrian: firstly, the convention fails to keep in mind the population explosion for it relegates a very secondary status to the pedestrian (in spite of the fact that the number of people walking is usually too high to be relegated to a corner of the carriage way). Furthermore, it provides a pedestrian with the right to walk on the carriageway in the absence of a pavement or on the satisfaction of certain other conditions [Article 20, para 2 and 3], instead of making it mandatory on the contracting parties to construct pavements or relegate certain portions of the carriageway only to the pedestrian. Such a provision not only makes it optional for the State to create pavements but makes it easy for the governments to ignore to work.

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<sup>6</sup> [www.unece.org/trans/main/wp1/newdocs/wp12000-36e.doc](http://www.unece.org/trans/main/wp1/newdocs/wp12000-36e.doc) visited on 25th November 2009, at 1:54 PM

Additionally, the Convention takes it for granted that a pedestrian crossing is present in all countries. It imposes onerous obligations on the pedestrian without catering to his needs. For instance under Article 20 para 6 ( c ) and (d), the Convention states that the pedestrian while crossing the road must make sure he does not impede the road traffic or take a very circuitous route: not once does it recognize the right of way of the pedestrian. If in today's world the pedestrian waits to ensure he does not impede the traffic he will never cross the road.

The Convention in addition to this indirectly encourages the contracting countries to impose stricter rules on the pedestrian while crossing.

The Convention fails to understand the need to recognize the rights of the pedestrian rather than the rights of the motorized transport.

Other than this convention the General Assembly has passed several resolutions on road safety [G A Res.57/303, 58/289]. These resolutions recognize the need to take steps to make the roads safe for everyone. There is increased support in the General Assembly to include road safety as part of a Millennium Development Goal.

A landmark document in this field is the *World Report on Road Traffic Injury Prevention*<sup>7</sup> co-authored by the World Bank and World Health Organisation. The report provides a basic framework for countries to make roads safer. The report makes several recommendations, some of them with reference to the pedestrian:

- *incorporating as a long-term goal, safety features into land-use and transport planning – such as the provision of shorter and safer pedestrian and bicycle routes and convenient, safe and affordable public transport – and road design, including controlled crossings for pedestrians, rumble strips and street lighting;*
- *requiring that motor vehicles be designed for crashworthiness to protect the occupants, with efforts to expand this concept to the design of the fronts of motor vehicles, so as to protect pedestrians and cyclists;*
- *managing existing road infrastructure to promote safety, through the provision of safer routes for pedestrians and cyclists, traffic-calming measures, low-cost remedial measures and crash-protective roadsides;*
- *Construction of Central refuges: areas in the middle of the carriageway, where pedestrians can stop and wait until the road is clear before crossing.*

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<sup>7</sup> <http://whqlibdoc.who.int/publications/2004/9241562609.pdf> on 25th November 25, 2009, at 1:50 PM

Apart from the above documents, several reports have also been published by the World Bank, WWF etc.

In Europe, the European Union has undertaken several steps in the field of recognition of the rights of the pedestrian. One of the most significant step, being the recognition by the EU of the rights of the pedestrian in the form of a charter. The European Parliament in 1988 adopted the European Charter of Pedestrian Rights. This charter acknowledges the right of a pedestrian to be able to live in a healthy environment and be provided with various necessary amenities. Recently, the EU in a bid to save more pedestrian lives has proposed a Regulation asking for a change in the design of the vehicles<sup>8</sup>.

Among the countries it shall be useful to note the steps taken by the United States of America, and the United Kingdom.

#### **UNITED STATES OF AMERICA**

In the United States the Department of transportation is the primary department which aims at protecting the rights of the pedestrian. Under the Department the National Highway Traffic Safety Administration (NHTSA) is the central body regulating road traffic. The NHSTA is aided by the Federal Highway Administration (FHA) which is responsible for the safety and technological advancement of the American Roads.

The FHA also conducts research in several areas related to road safety. In the year 2002, the FHA initiated the Pedestrian and Bicycle Safety Research Program. The Bicycle & Pedestrian Program of the Federal Highway Administration's Office of Human and Natural Environment promotes bicycle and pedestrian transportation use, safety, and accessibility.<sup>9</sup>

Each State has a Bicycle and Pedestrian Coordinator in its State Department of Transportation to promote and facilitate the increased use of non-motorized transportation, including developing facilities for the use of pedestrians and bicyclists and public educational, promotional, and safety programs for using such facilities.<sup>10</sup>

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<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0560:FIN:EN:PDF> visited on 27<sup>th</sup> November 2009, at 1:52 AM

<sup>9</sup> <http://www.fhwa.dot.gov/environment/bikeped/> visited on 25<sup>th</sup> November, 2009, at 10:48 PM

<sup>10</sup> *ibid*

The FHWA Bicycle & Pedestrian Program issues guidance and is responsible for overseeing that requirements in legislation are understood and met by the States and other implementing agencies.<sup>11</sup>

Along with the program the country also has legislations which respect the rights of the pedestrian.<sup>12</sup>

One of the most important facts of this program was the fact that it recognized the pedestrian as a legitimate road user.<sup>13</sup> In the United States the pedestrian is included at the stage of designing itself<sup>14</sup>. Furthermore, unlike in India the height of the curb (152 mm or 6 inches is the standard height) is provided for along with the essentials of good design.<sup>15</sup>

Additionally the judiciary has also recognized the rights of a pedestrian to an extent. For e.g.:

- A pedestrian having committed himself to the crossing has the right of way as against an automobile coming up later. [*Twinn v. Noble*, 270 Pa. 500, 113 Atl. 686 (1921)]
- Where there are signal lights the courts hold that if the pedestrian begins to cross while protected by a favorable signal, he has the right of way until he reaches the opposite side [*Riddel v. Lynn*, 124 Wash. 146, 213 Pac. 487, 37 A. L. R. 486 (1923); *Quaker Cab Co. v. Fixter*, 4 Fed. (2d) 327 (C. C. A. 3d, 1925); *Gilles v. Lea*, 282 Fa. 318, 127 Atl. 774 (1925).]
- The pedestrian on having started across the intersection while protected by the signal light, had the right of way until she reached the opposite side of the street and that the defendant was negligent in proceeding while his view was obstructed. [*Griffith v. Slaybaugh*, 29 Fed. (2d) 347 (Court of Appeals, District of Columbia, 1928).]

Considering the federal nature of United States different States also have special pedestrian policies; for instance the Wisconsin Pedestrian Master Policy 2020, given by the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Planning in 2002.

Thus it is clear that the right of a pedestrian has been recognized to greater degree in the United States than in India.

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<sup>11</sup> ibid

<sup>12</sup> <http://www.fhwa.dot.gov/environment/bikeped/sec217.htm> visited on 25th November, 2009 at 10:50 PM

<sup>13</sup> <http://www.fhwa.dot.gov/environment/bikeped/sec217.htm> visited on 25th November, 2009 at 10:50 PM

<sup>14</sup> <http://www.fhwa.dot.gov/environment/sidewalk2/sidewalks206.htm> visited on 25th November 2009, at 10:58 PM

<sup>15</sup> <http://www.fhwa.dot.gov/environment/sidewalk2/sidewalks207.htm> visited on 25th November 2009, at 11:00 PM



## **UNITED KINGDOM**

The United Kingdom has a number of legislations related to roads: the Road Traffic Regulation Act 1984, Road Traffic Act, 1988 and the Road Traffic Offenders Act 1988 being the prominent. It is important to note that the legislations in the United Kingdom have been constantly amended to ensure that they are in tune with today.

The latest addition is the Traffic Management Act of 2004. At this juncture it is imperative to note the fact that this Act includes the pedestrian within the ambit of the definition of traffic. Hence, widening the very concept of traffic by giving due acknowledgement to the pedestrian.

The Road Traffic Regulation Act 1984 is divided into provisions applicable to Greater London and those applicable outside Greater London. Though, both the provisions provide certain rights for the pedestrian. Some of the provisions are:

- The power given to the Traffic Authority to facilitate a passage on the road or an adjacent road for the pedestrian (S. 1(c))
- No traffic regulation order shall be made with respect to a road, which has the effect of preventing at anytime access to the pedestrian to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians, or (as the case may be) for vehicles of that class, from, and only from, the road (S. 3(1)(a) and 14(4))
- Power given to local traffic authority to establish pedestrian crossings within their jurisdictions (S. 23). In this manner the Act caters for flexible decision making.
- Furthermore, the Act includes the pedestrian as part of traffic and addresses him also.

It is interesting to note at this point that the Road Traffic Act of 1988 recognizes the need of a horn to ensure the safety of the pedestrian: at the same time though the Act restricts a person from using the device to make unreasonable noise (S. 43). Hence, the Act safeguards a pedestrian's right to be cautioned and at the same time it prevents any nuisance which might be caused by the horn.

The Quiet Lanes and Home Zones (England) Regulation, 2006 further cements the right of the pedestrian. The regulation is a guide which helps a traffic authority while designating a specific area as Quiet Lane or a Home Zone. The regulation defines Quiet Lane as:

“... minor rural roads or networks of minor rural roads appropriate for shared use by walkers, cyclists, horse riders and other vehicles. The aim of Quiet Lanes is to maintain the character of minor rural roads by seeking to contain rising traffic growth that is widespread in rural areas. There are three key elements to a Quiet Lanes scheme: community involvement to encourage a change in user behaviour; area-wide direction

signing to discourage through traffic; and Quiet Lane entry and exit signs to remind drivers that they are entering or leaving a Quiet Lane, a place where they may expect people to be using the whole of the road space for a range of activities.”

Similarly a Homing Zone aims to:

“...improve the quality of life in residential roads by making them places for people, instead of just being thoroughfares for vehicles. The key elements to a Home Zone are: community involvement to encourage a change in user behaviour; and for the road to be designed in such a way as to allow it to be used for a range of activities and to encourage very slow vehicle speeds (usually involving sensitively designed traffic calming).”

Thus, both Quiet Lane and Home Zones discourage the presence of motorized traffic. It safeguards the people and their interest, rather than the vehicles. These areas are meant for people to enjoy and undertake the permitted activities in a safe environment.

Recently, Transport for London issued a Walking Plan aimed at making London a more walkable city by 2015<sup>16</sup>. The plan includes six objectives<sup>17</sup>:

- Improving co-ordination & inclusiveness in the Walking Plan development
- Promoting walking
- Improving street conditions
- Improving development proposals and interchanges
- Improving safety and security
- Plan delivery and monitoring

The Plan then goes on to highlight the necessary actions which have to be taken to achieve each objective along with a rough time estimate.

Therefore, the pedestrian is not only recognized as a legitimate road user but his interests are also catered for.

### **iii. THE INDIAN JUDICIARY AND THE PEDESTRIAN**

The observations of the Madhya Pradesh High Court<sup>18</sup> may be the best introduction for this segment of the chapter:

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<sup>16</sup> <http://www.tfl.gov.uk/corporate/projectsandschemes/2895.aspx> visited on 26th November 2009, at 7:51 PM

<sup>17</sup> <http://www.tfl.gov.uk/assets/downloads/corporate/walking-plan-2004.pdf>, visited on 26th November 2009, at 7:51 PM

<sup>18</sup> *Madhya Pradesh State Road Transport Corp. v. Kanti Devi and Two others*, 1(1986)ACC7

*“All persons have right to walk on the road and are entitled to the exercise of reasonable care on the part of the person driving the vehicle. Therefore it cannot be said that the persons who are using the road for walking etc., they use the road at their own risk.*

The Indian Judiciary is often the only savior an individual has. In cases of legislative and executive inaction the Judiciary has stepped in to fill the gap. Even in the field of traffic regulation, safety and pollution control the Courts have been quite active. In this segment of the chapter the researcher aims to mention the significance of these judgments with reference to the pedestrian. The judgments may be divided into

1. **Pedestrian and the Hawker**
2. **Pedestrian injury or fatality and compensation.**
3. **Some important guidelines**

### **1. Pedestrian and the Hawker**

One finds a plethora of judgments balancing the rights of the pedestrian and the hawker.

The landmark judgment in this regard is the case of Olga Tellis v. Bombay Municipal Corporation and Anr<sup>19</sup>The Court herein observed that:

*“...pedestrians deserve consideration in the matter of their physical safety, which cannot be sacrificed in order to accommodate persons who use public properties for a private purpose, in an unauthorized manner.”*

Though, the judgment is known for the recognition of the *right to livelihood* it did try to achieve a fine balance between the pedestrian and the hawker.

The next important judgment is the Sodan Singh case<sup>20</sup>. Herein the Supreme Court recognised the need to regulate hawker trade. The court stated:

*“...there cannot be a fundamental right vested in a citizen to occupy any place on the pavement where he can engage in trading business... If the circumstances are appropriate and a small trader can do some business for the personal gain on the pavement to the advantage of the general public and without any discomfort or annoyance to others, there can be no objection. Hawkers cannot be permitted to squat on every road. Factors like the width of the road, security etc. has to be considered.”*

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<sup>19</sup> [1985]Supp2SCR51

<sup>20</sup> Sodan Singh v. NDMC (1989) 4 SCC 155

Therefore, from the above judgments it can be concluded that the court has always strived to achieve a balance between the rights of the pedestrian and the hawker. Through these judgments one may also conclude that the Court has recognized the Right of a Pedestrian to walk on the pavements without unreasonable obstructions; this is implicit in nature.

## **2. Pedestrian injury or fatality and compensation.**

Considering the fact that most of the legislations in India are motorized vehicle centred, it is not surprising that one finds a number of judgments relating to pedestrian injuries and fatalities. The researcher shall not burden you with the huge numbers but shall mention only few judgments which elucidate the general principle which is followed in these cases.

In Madhya Pradesh State Road Transport Corp. v. Kanti Devi and Two others,<sup>21</sup> the High Court clearly mentions the duties of a motorist with respect to the pedestrian. The Court states

*“... it is the duty of the driver to keep a proper look out for pedestrian and other users of the road. It is his duty, whenever he feels expedient to give warning to the pedestrian and other road users by mechanical or electric horn.”*

Thus the Court observed that it is for the driver to take notice of the pedestrian and avoid an accident. Though, this onerous duty was mitigated to a certain extent by the following Supreme Court judgment.

The Supreme Court in the case Gujarat State Transportation Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Anr<sup>22</sup> established the basic principle for claiming the right of compensation as:

*“Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all.”*

This judgment has been followed by several High Courts<sup>23</sup> across the country.

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<sup>21</sup> 1(1986)ACC7

<sup>22</sup> [1987]3SCR404

<sup>23</sup> Adhikarala Jagadeeswara Rao vs. Gopala Krishna Transport and Ors., 2005(1)ALD111, Appaji vs. M. Krishna, 2004ACJ1289, Veena Kumari and Ors. vs. Jasbir Singh and Ors., 2004ACJ1289, Kashibai Laxman Kamble v. Rajaram Gomatik and Ors., 2007ACJ647

The Supreme Court in the case of *Prabhakaran v. State of Kerala*<sup>24</sup> acknowledged the fact that road accidents were proving to be one of the biggest killers in India. The Court in the said judgment discussed in detail the General Assembly Resolution and its recommendations along with the economic impact of the accidents in detail.

It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.<sup>25</sup>

The Courts agitated the need for the creation of no fault liability in certain accident claims even before the legislature introduced the amendment.<sup>26</sup>

### **3. Some important guidelines**

The Supreme Court has been active in the field of road safety. The guidelines given by the Court in the case of *M C Mehta v. Union of India*<sup>27</sup> are an indicator of the same. In the said judgment the Court observed that the control and regulation of traffic in NCR and NCT, Delhi, is a matter of paramount public safety and, therefore, within the ambit of Article 21 of the Constitution. Hence the Court under Article 32 of the Constitution invoked with the aid of Article 142 to give the necessary directions. The directions included:

- (a) No heavy and medium transport vehicles and light goods vehicles being four wheelers would be permitted to operate on the roads of the NCR and NCTT, Delhi, unless they are fitted with suitable speed control devices to ensure that they do not exceed the speed limit of 40 KMPH.
- (b) the scheme of the Act necessarily implies an obligation to use the vehicle in a manner which does not imperil public safety. The authorities should, therefore, ensure that the transport vehicles are not permitted to overtake any other four-wheel motorized vehicle.
- (c) Transport vehicles not permitted to overtake any four wheel motorized vehicle
- (d) Separate bus lanes and bus bays to be demarcated on the roads
- (e) School buses to be driven by person having a minimum of 10 yr experience.
- (f) All hoardings hazardous to the movement of traffic were to be removed.

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<sup>24</sup> AIR 2007 SC 2376

<sup>25</sup> *State of Karnataka v. Muralidhar*, (2009)4SCC463

<sup>26</sup> *Manjusri Raha and Ors. v. B.L. Gupta and Ors. etc.*: [1977]2SCR944 ; *State of Haryana v. Darshana Devi and Ors.*: [1979]3SCR184 ; *Bishan Devi and Ors. v. Sirbaksh Singh and Anr.* : [1980]1SCR300 and *N.K.V. Bros. Ltd. v. M. Karumai Ammal and Ors. etc.* : [1980]3SCR101

<sup>27</sup> (1997)8SCC770

The above mentioned directions primarily aimed at putting an end to the recklessness of the Blue Line buses in Delhi. It is important to emphasize on the fact that the directions were issued to ensure the safety of the road user (which also includes the pedestrian). Furthermore, the direction with respect to hoardings was made applicable even to the pavements, thus yet again recognizing the right of the Pedestrian to walk on the pavement without any obstruction.

The direction with respect to the hoardings was challenged in the Delhi High Court in *Outdoors Communication v. PWD and Municipal Corporation of Delhi*<sup>28</sup>. In the said case a contract had been granted to the Petitioner by the Municipal Corporation to display hoardings on the roadside. This contract was challenged by the PWD as being against public policy. The Court in this case held the contract to be illegal on the ground that it was against public policy. While coming to this conclusion the court observed:

“The pavement by its very definition is meant for the use of pedestrians. The pedestrian is as much a user of the road or the circulation system of the city as a bus, a truck or a luxurious car.... Pedestrians include the healthy citizens and also the unhealthy. It includes physically handicapped people and may also include the visually impaired.”

The Court voiced its concern for the pedestrian when a driver is distracted by an advertisement on the road side. Furthermore, the court rightly observed that the advertisements are often obstruction in the path of the pedestrian.

Sadly, this trend of judicial activism seems to be on the wane.

Recently the Supreme Court refused to issue guidelines to improve the licensing requirements, road infrastructure etc in a Public Interest Litigation<sup>29</sup>. The Court stated that issuing guidelines on such an issue might lead to judicial legislation which would lead to a violation of separation of powers.

It will be very interesting to find out the outcome of the recent petition filed in the Andhra Pradesh High Court by well known activist Ms. Kanthimathi Kannan to determine the right of a pedestrian to walk and the obligations of the local authorities with respect to the pedestrian.<sup>30</sup>

Apart from the few judgments mentioned above, there are several other judgments. Though, it is important to point out that the binding power of judgment is not the same as a statute. The persuasiveness of the judgment depends on a lot of factors like the Court giving the judgment, the bench which gives the judgment etc. Moreover, a judgment suffers from other problems also;

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<sup>28</sup> 2007(2)CTLJ179(Del)

<sup>29</sup> *Common Cause (A Regd. Society) v. Union of India (UOI) and Ors.*, (2008)5SCC511

<sup>30</sup> <http://www.right2walk.com/inside/Campaign.html> viewed on 27th November 2009, at 8:22 PM

for instance the judgment often depends on interpretations and is not as publically known as a statute [Fitzzgeral P.J, *Salmond on Jurisprudence*, London, Sweet and Maxwell, 12<sup>th</sup> Edition, 1966]. Agreed, judicial activism has filled the gaps in several fields but the effect of the guidelines or directions is not the same as a, legislation. A person failing to follow a judgment attracts the punishment of contempt of court and nothing else.

### CHAPTER III

The primary aim of this chapter is to make an attempt in the determining the right of the pedestrian and the nature of this right (Fundamental Right or not).

A perusal of the previous chapter leads to the conclusion that the right to walk of pedestrian is acknowledged albeit in a fragmented manner in India. The different Municipal Corporations in the country are given the duty to ensure that the pavements do not have obstructions which hinder the movement of the pedestrian. The Municipal Corporations are also vested with the duty to safeguard the pedestrian. Though it is here that the fragmentation begins; the Municipal Corporation is responsible only for the roads which fall within their jurisdiction. Thus they claim no responsibility for the areas where the Highways enter the State<sup>31</sup>. The need of the hour is a clear recognition of the rights of the pedestrian irrespective of the jurisdiction of the authority.

It has been globally acknowledged that the pedestrian is also as important a road user as the motorized traffic. Hence, roads are not meant for the vehicles alone but also the pedestrian. The very definition of the term pedestrian includes walking. Thus the very recognition of the pedestrian implies the recognition of the right to walk.

A pedestrian without the right to walk is equivalent to a registered company without its separate legal entity. The act of registration of a company in itself recognizes the separate legal personality of the company. A pedestrian by his very existence personifies the right to walk.

The next question which needs to be answered is the nature of this right. In India the Fundamental Rights can be categorized as the supreme rights; any law in violation with these fundamental rights is void [Article 13, Constitution of India, 1950]. The question that follows is whether the right to walk of a pedestrian is Fundamental Right?

Article 19(1)(d) of the Constitution of India states:

*All citizens shall have the right... to move freely throughout the territory of India;*

Naturally, no right can be an absolute right; every right is subject to reasonable restrictions. Hence, Article 19(1)(d) can be curtailed on the ground of *interests of the general public* or the *protection of the interests of any Scheduled Tribe*[Article 19(5), Constitution of India, 1950].

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<sup>31</sup> This was one of the major problems faced by Ms. Kanthimati Kannan in Hyderabad, <http://www.right2walk.com/inside/LegalFrameworks.html> viewed on 27th November 2009, at 8:28 PM



At this juncture, it may be helpful to observe the judgment of the Hon'ble Supreme Court of India in the case of Dr. P. Nalla Thampy Thera v. Union of India<sup>32</sup>. In the said case, a writ petition had been filed with respect to the safety and security provided by the railways. The court while granting the petition stated:

*“...every citizen of this country ... is entitled to demand that the State shall provide adequate facilities and create and maintain an environment in which the right to move freely and carry on any business or profession would both be practical and feasible. It is of paramount importance that the services should be . prompt, efficient and dignified. The quality of the service should improve. Travel comforts should be ensured.”*

Even though the above mentioned case dealt with the railways, the principle of the State providing adequate facilities to the citizen to make his movement feasible and practicable was recognized by the Court. Considering roadways are used more often by the Indian than railways, the State should ensure that they are usable. Thus if one may interpret this judgment keeping the pedestrian in mind, it imposes a duty on the State to ensure that the pedestrian has a right to move freely on the roads.

The Andhra Pradesh High Court<sup>33</sup> went a step further while making an observation about the traffic congestion in the Hyderabad. The court in very clear terms noted that the right to the citizen to move freely was being trampled by the presence of buffaloes on the road. Furthermore the court did not restrict this observation to the right to movement of the vehicle but also included the pedestrian

Another interesting case was the case of Rajneesh Kapoor v. Union of India and Anr<sup>34</sup>: in this case the petitioner challenged S.129 of the Motor Vehicle Act which mandated the use of helmets. The petitioner contended that the said provision imposed an unreasonable restriction on his fundamental right to move freely and violated Article 21. Though the court rubbished the petitioners claim it is important to note that the court did not deny the fact the right to free movement was applicable to a road user. The court held that the restriction was reasonable hence the fundamental right of free movement had not been violated.

The above mentioned judgments highlight the fact that the right to move freely also includes the right to walk for the pedestrian.

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<sup>32</sup> (1983)4SCC598

<sup>33</sup> T Damodar Rao and Ors v. The Special Officer, Municipal Corporation of Hyderabad and Others., AIR1987AP171

<sup>34</sup> AIR2007MP204

Even a literal interpretation of the article leads to the same conclusion. The term move refers to motion. The article does not specify any particular kind of motion; hence a presumption may be drawn that it includes all forms. Therefore walking also falls within the ambit of article 19(1) (d). It must be pointed out at the same time that this right to move freely does not give the pedestrian the right to walk anywhere on the road. In the interest of the general public this right is regulated to provide the pedestrian the right to walk on the pavement or the right side margin of the road.

Based on the above interpretation, the right to walk of the pedestrian, falls within the ambit of the right to move freely, under Article 19(1) (d) of the Constitution of India. Though, the application of article 19 is applicable only to citizens. Hence people who are not citizens cannot claim this right.

It is because of this limitation that rights of the pedestrian need to be recognized under Article 21 of the Indian Constitution. Article 21 of the Constitution states:

*“No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

The main purpose of Article 21 is to provide a positive right to life to a person. The concept of like has been interpreted time and again by the judiciary to include various other rights like the right to livelihood<sup>35</sup>, right to a healthy environment<sup>36</sup>, right to education<sup>37</sup>, right to free legal aid<sup>38</sup> and several others<sup>39</sup>.

How can the pedestrian fall within the ambit of Article 21?

The pedestrian may claim the protection of Article 21 in the following cases:

- As part of the right to life.
- As part of the right to livelihood
- As part of the right to a clean environment and health

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<sup>35</sup> *Olga Tellis v. Bombay Municipal Corporation and Anr.*, [1985]Supp2SCR51

<sup>36</sup> *M.C. Mehta v. Union of India* (1996) 4 SCC 750

<sup>37</sup> *J.P. Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645

<sup>38</sup> *Hussainara Khatoon(I) v. State of Bihar*, (1980) 1 SCC 81;

<sup>39</sup> [http://www.supremecourtfindia.nic.in/speeches/speeches\\_2009/Judicial\\_Activism\\_TCD\\_Dublin\\_14-10-09.pdf](http://www.supremecourtfindia.nic.in/speeches/speeches_2009/Judicial_Activism_TCD_Dublin_14-10-09.pdf)

## AS PART OF THE RIGHT TO LIFE

The pedestrian today faces a threat to his life everyday by merely stepping outside his house. The scant regard to the rights of the pedestrian by authorities, improper pavements or no pavements etc have made walking virtually impossible in India.

According to the Study on traffic and transportation policies and strategies in urban areas in India by Wilbur Smith Associates, for Union Ministry of Urban Development the walking conditions for the Indian pedestrian are very poor. The study calculated the walkability index for 30 urban cities in India. The assessment is based on factors like availability of pavements on arterial roads, obstructions present in the path of the pedestrian, overall facility rating by the pedestrian etc. The result of this assessment indicated that the national walkability index of India was only 0.52. The highest walkability index was recorded in the city of Chandigarh which was 0.91 this is quite low compared to the walkability index in London which varies from 1.5 to 1.7<sup>40</sup>.

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<sup>40</sup> <http://www.cseindia.org/campaign/apc/pdf/Walkability.pdf> visited on 11 November 2009, at 11:40 AM

Table 4: Walkability of 30 cities in India

Higher index score indicates better walkability

Cities	Walkability index score
Shimla	0.22
Bhubaneswar	0.28
Gangtok	0.30
Panaji	0.32
Pondicherry	0.37
Hubli Dharwad	0.39
Gwalhati	0.39
Amritsar	0.31
Thiruvananthapuram	0.34
Agra	0.38
Varanasi	0.33
Bikaner	0.43
Raipur	0.41
Madurai	0.40
Bhopal	0.47
Kochi	0.57
Kanpur	0.59
Patna	0.65
Bangalore	0.63
Nagpur	0.66
Jaipur	0.64
Hyderabad	0.68
Surat	0.62
Chennai	0.77
Kolkata	0.81
Pune	0.81
Mumbai	0.85
Ahmedabad	0.85
Delhi	0.87
Chandigarh	0.91
National	0.52

Source: Anon, 2008, Study on traffic and transportation policies and strategies in urban areas in India, Wilbur Smith Associates, for Union Ministry of Urban Development, May, New Delhi

The Supreme Court in *Kiran v. Government of Andhra Pradesh*<sup>41</sup> stated that the term deprived in Article 21 does not mean that the court is powerless to interfere when there is an imminent threat

<sup>41</sup> 1990 (1) SCC 328

to the right to life and personal liberty. If one applies this principle then the present environment in the cities is an imminent threat to the life of the pedestrian. As has been cited before the pedestrian constitutes nearly 50% of the road fatalities.

Thus the pedestrian also being a person has the right to life which needs to be secured by the State. The state can no longer continue to ignore the safety of the pedestrian; such continued ignorance amounts to a violation of Article 21.

#### **AS PART OF THE RIGHT TO LIVELIHOOD**

The right to livelihood was read into article 21 by the Supreme Court in the landmark judgment of *Olga Tellis and others v. Union of India*<sup>42</sup>. In the said judgment the court stated that the right to life under Article 21 included the right to livelihood and the State could not restrict this right except for procedure established by law. According to the survey by RITES Ltd of Delhi in 2001 31.5% of the people who were walking, were people who were walking with the purpose of business or service.

Thus when the roads of the city become hostile for a walker it at times may lead to him being deprived of a means to reach his source of livelihood thus violating Article 21. Moreover, the general observation has been that it is the people of the lower economic group who resort to walking; hence when the person from this group is deprived of his right to livelihood it is not him alone but the entire family which suffers.

#### **AS PART OF THE RIGHT TO A CLEAN ENVIRONMENT AND HEALTH**

The right to a clean environment has been read into Article 21 in a catena of cases. The effect of this right is twofold:

- (a) It gives the pedestrian the right to clean pavements and roads. Often the pavements are used as garbage bins making the very act of walking on them unpleasant and unhygienic.
- (b) Secondly, it provides the pedestrian with the right to have the pollution levels (both air and noise pollution) under check.

Right to health is a fundamental right under Article 21, Protection of this is inextricably linked with the clean environment.<sup>43</sup>The health benefits of walking are a universal truth. Walking is

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<sup>42</sup> (1985)3SCC545

<sup>43</sup> *N.D.Jayal and Others v. Union of India*, (2004)9SCC362

often considered a panacea to all diseases. Thus the pedestrian can also claim the right to walk as part of his right to health.

Therefore, one may conclude that the pedestrian does indeed have a right to walk and this right is a fundamental right by virtue of Article 19 (1) (d). Under Article 21 a person may claim the right to walk provided it is a necessary concomitant to the right to life.

### **CHARTER OF RIGHTS AND DUTIES OF THE PEDESTRIAN**

This is the final segment of the chapter. Herein, the researcher proposes a Charter of Rights and duties of the pedestrian. The primary aim of this charter is to recognize the rights and duties of the pedestrian in a unified and conjoined manner; instead of the fragmented state in which it is present. By no means are we suggesting that this charter is the only possible document crystallizing the rights and duties of the pedestrian. This is but an attempt on part of the researcher to try and remove the ambiguity with respect to the Indian pedestrian.

*Recognizing, the pedestrian as a pivotal road user in the framework of Indian roadways,  
Reaffirming, the need to safeguard the pedestrian keeping in view the high percentage of pedestrian deaths in India,*

*Acknowledging, the ambiguity with respect to the rights and duties of the pedestrian,  
Hence we propose the following rights and duties for the Indian Pedestrian*

#### Article 1

*Every pedestrian has the fundamental right to walk on the pavements. In areas having no pavements the pedestrian shall have the right to walk on the right most margin of the road.*

#### Article 2

*All the local authorities are under an obligation to provide proper pavements for all the arterial roads, sub-arterial roads and collector roads in a city. Every local authority shall undertake efforts to demarcate the local roads as minimum motorized vehicle traffic zones.*

#### Article 3

*A proper pavement refers to a pavement which satisfies the following criteria:*

- (i) Has a minimum width of 2 metres and maximum height of .15 metres. The dimensions of the pavement may be increased based on the volume of pedestrian traffic. In pavements*

*where the road furniture (benches, bus stops etc.) are present, the width of the pavement should be increased to cater for pedestrian movement around the furniture, based on the volume of the pedestrians.*

- (ii) The surface of the pavement must be even to ease walking. The grade or slope of the pavement must be gradual to ensure the pavement is accessible to the pedestrian.*
- (iii) The material used to construct the pavement must prevent the slipping of the pedestrian and be chosen on basis of the weather of the region.*
- (iv) The pavement must be clean and maintain the basic standard for hygiene.*
- (v) The pavement should be free of obstructions which impede the movement of the pedestrian.*
- (vi) The pavement must be safe and secure. It should have sufficient street lights to ensure visibility even during the evening.*
- (vii) The pavement should be convenient and attractive to the pedestrian. This includes variables such as maintenance of the pavement, presence of amenities in the form of public toilets, dustbins, drinking water etc.*
- (viii) The pavement must be constructed in consonance with S. 45 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*

#### Article 4

*In areas where hawkers are present the local authority should clearly demarcate areas in the city as hawking zones. The activity of hawkers should not obstruct the movement of pedestrian traffic.*

#### Article 5

*The pedestrian must cross the roads only at a pedestrian crossing if available.*

#### Article 6

*Wherever the road has a median or a pedestrian refuge island<sup>44</sup> the pedestrian must cross the road in parts.*

*Where there are barriers on the road the pedestrian should not climb over the barriers.*

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<sup>44</sup> The width of the pedestrian refuge island and median should not be too narrow making it inconvenient for the pedestrian to stand.

Article 7

- (i) *In areas not controlled by a pedestrian crossing, the pedestrian has the right of way.*
- (ii) *Where a pedestrian has started crossing the road while protected by the signal, in case the signal changes before the pedestrian has crossed the right, he has the right of way.*

Article 8

*Every pedestrian while walking in the night must make every attempt to make himself/herself visible. The pedestrian may wear retro-reflective outdoor clothing for this purpose.*

Article 9

*It shall be a punishable offence for any person to either drive or park a vehicle including a cycle on the pavement.*

DUTIES OF THE AUTHORITIES

Article 10

*The local authorities must undertake efforts to construct pedestrian refuge islands.*

Article 11

*The local authorities must undertake steps to create manned pedestrian crossing at all roads with heavy traffic.*

Article 12

*The local authorities must ensure that all City Development plans should provide for the pedestrian.*

Article 13

*Transport Infrastructure Designs should give the priority to pedestrian at the stage of inception itself.*

Article 14

*A separate fund should be demarcated for the purpose of maintenance of the pavements.*

Article 15

*A minimum of 10% of the cost of construction of road should be earmarked for the safety of the road.*



## CONCLUSION

In today's world where global warming and the pollution crisis threaten our very existence walking proves to be an easy solution. Road transport consumes around 50 % of the world's petroleum (The Hindu, *Where the pedestrian is a third class citizen*, 29<sup>th</sup> November 2009). Nearly one-third of the petroleum consumption in India is linked with the roadways; this amount has tripled in the last two decades, hence increasing imports also (The Hindu, *Where the pedestrian is a third class citizen*, 29<sup>th</sup> November 2009).

Based on the findings of this study one may conclude that at present the right of the pedestrian is in a state of confusion. Even though legislations and policies recognize certain rights of the pedestrian, they create a very fragmented framework. Furthermore, the existent provisions are outdated and very rarely implemented.

The need of the hour is a legislation clearly elucidating the right of the pedestrian along with the duties of the local authorities. India has the opportunity to create history by enacting a concrete Act regarding the rights of the pedestrian. The ambiguity surrounding the pedestrian rights needs to be cleared once and for all.