

A Critical Analysis of the Concept of No-Fault Liability in a Welfare State in Accordance with the Motor Vehicles Act, 1988

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Abstract

On October 1, 1982, an amending Act 47 of 1982 introduced "No-Fault" liability into the Motor Vehicles Act, 1939. As a result of the "No-Fault" liability premise, many provisions guaranteed immediate payments for victims of accidents that resulted in death or permanent disabilities. After this Act was repealed, the Motor Vehicles Act of 1988 was passed, taking effect on July 1, 1989. The sections 140 to 144 of this Act correspond to the previous "No-Fault" liability sections. It created compensations for "accidents arising out of the use of a motor vehicle." This "no-fault" liability theory was designed and implemented to provide immediate relief to victims of "hit and run" accidents. It was decided to hold the owner or driver of the offending vehicle accountable without considering their "contributory recklessness". Being a welfare state, it was decided that the owner or driver of the offending vehicle would be held accountable without considering their "contributory carelessness" and responsibility. It was agreed that withholding compensation to victims of "hit and run" incidents because the driver's or vehicle owner's negligence and guilt could not be proved was contradictory to any "welfare state's" and social justice goals. According to Section 140 of the Motor Vehicles Act, 1988, No-Fault Liability applies when a victim dies or becomes permanently disabled after an accident caused by the use of a motor vehicle. The claimant does not need to prove fault or negligence. This research paper will examine the notion of "No Fault" responsibility as defined under Sections 140 to 144 and Section 163 A of the Motor Vehicles Act, 1988, and provide recommendations for additions or modifications that would expand the scope of the "No-Fault" liability principle. Its goal is to critically investigate the concept and determine its applicability in a welfare state.

Keywords: "No-Fault" Liability, Death, Permanent Disablement, Welfare State, Social Justice

INTRODUCTION

The world is getting more civilized and is advancing day by day. With the effects of globalization and the introduction of technology, people have shifted from fast to faster vehicles. It is good progress, but it also proves to be a misfortune for many. Nowadays, with negligent and rash driving, accidents have risen and have cost many precious lives from the country. Though some people have better-off lives, many still need the basic amenities of life and being a welfare state; this is against its objection of securing social justice and equality. The cases where the results are death and permanent disablement, which equals death, need utmost diligence and care concerning the poverty situation of the people and the protection of innocent lives and promotion of the objectives of any welfare state.

It's also vital to provide social welfare and the "right to life" that Article 21 of the Indian Constitution guarantees. When the "right to life" is guaranteed, this does not entail that people cannot be killed or die. "Claims of an individual enshrined and protected in the Indian Constitution" are what fundamental rights are.

However, this does not rule out the possibility of individuals being killed on the ground due to a lack of caution and attentiveness. They have always had and will always have a right to life. People who die inadvertently on the ground should be reimbursed as stated under the Motor Vehicles Act of 1988's no-fault liability premise. As a result, the notion of no-fault liability was developed without considering contributory negligence into account. However, this does not rule out the possibility of a person being held liable without wrongdoing, as is the case here. It's critical to know and grasp both sides of a coin to make the best option possible. Giving preference and assistance to one party over another goes against any welfare state's goals to ensure social equality.

LITERATURE REVIEW

The current research is case-specific, and hence the literature review enunciates that there are no direct sources on this research topic. The researcher has performed the intensive study and found the relevance of "no-fault" liability in a welfare state. The journals and articles referred

to by the researcher are not directly on the given topic and had to be analysed thoroughly to reach a proper conclusion.

The researcher mainly depended on the legislation, and the conclusions have their basis. The researcher has examined the concept of no-fault responsibility, premised on the **Motor Vehicles Act of 1988**, and evaluated its application in a welfare state. The study's main goal was to examine the notion of "no-fault" liability in a welfare state as defined under section 140 of the Motor Vehicles Act.

The researcher has tried to analyse the concept of a welfare state from a journal authored by **Geraint Parry titled Welfare State and Welfare Societyⁱ**. It defined a welfare state as a society that organizes itself to take shared responsibility for providing services to alleviate the impacts of illness, poverty, unemployment, etc. The need to be unquenchable was stated in the article.

It went on to say that the significant welfare state industries are determining the exact number of needy people and quantifying their demands. After performing a background check on the concept of the welfare state, the researcher has concluded that there is no exact definition for a welfare state. Still, it has its basis on the ideology of taking care of the welfare of everyone.

To obtain a broader view on no-fault liability, the researcher has referenced an article authored by **Yu-Ping Liao and Michelle J. Whiteⁱⁱ**.

This article mainly compares the efficiency and benefit under the tort procedure, applying the comparative negligence rule to those entirely under no-fault systems.

The researcher has also analyzed and reviewed the concept from a report by the **Law Commission of India, Government of Indiaⁱⁱⁱ**.

This paper presented a unique perspective on "no-fault" responsibility. It established the various disparities in the Motor Vehicles Act, 1988, which further aided the researcher in locating and analyzing the variances in the principle of "no-fault" liability as reflected by the Motor Vehicles Act, 1988, according to the "Law Commission of India."

CRITICAL ANALYSIS

The Motor Vehicles Act of 1939 only offered compensation based on "fault." In the case of "Haji Zakaria v Naoshir Cama"^{iv}," the apex court had ruled that when there is no carelessness or wrongdoing on the part of the owner or the driver of the vehicle, there is no culpability.

In the case of "Manushri Raha vs. B.L. Gupta,"^v the supreme court has observed that people have changed from fast to faster vehicular traffic due to globalization and the rise of the ultra-modern age, which may be a blessing for some but misery for others. Such are the examples of victims of motor vehicle accidents caused by reckless or careless driving, resulting in the loss of many lives in our country. It was also decided that cases should be construed with latitude or knowledge of the poor people's inadequate legal literacy rather than formalistic rigour. The apex court suggested that the Motor Vehicles Act, 1939 be amended to include No-Fault liability, based on the above case and the "Law Commission of India" recommendations.

The Motor Vehicles (Amendment) Act, 1982, revised the Act, including numerous parts, to offer instant compensations based on the "No-Fault Liability" premise. The Act, as amended by the 1982 Amendment Act, was later abolished, and on October 14, 1988, a new Motor Vehicles Act 1988 was adopted, which went into effect on July 1, 1989. As a result, this Act added sections 140 to 144 and section 163 A, corresponding to the parts contained in the earlier Motor Vehicles (Amendment) Act, 1982.

The concept of No-Fault liability according to Motor Vehicles Act, 1988:

- Section 140: When an individual dies or becomes permanently disabled as a direct consequence of an "accident arising out of the use of the motor vehicle or motor vehicles," the owner or driver of the vehicle, or, as the case may be, the owners or drivers of the vehicles, are collectively and individually liable to pay compensation to the claimant under Section 140 of the Motor Vehicles Act of 1988.
- The amount of compensation has been fixed to Rs 50000 in case of death and Rs 25000 in permanent disablement as stated by section 140(2) of the Motor Vehicles Act, 1988. But observing the poverty situation of India and the needs of the people, it is evident that many people, even now in India, sleep without food every day.

- Section 163 A is in pari-materia with section 140 of the Motor Vehicles Act, 1988. But it consists of special provisions for the payment of compensations based on the principle of No-Fault liability but a structured formula basis. As a “welfare state,” ensuring social justice is one of its most important objectives. Hence, the denial of compensation on the ground that the fault and negligence of the defendant are not established or proved in times of such grievous incidents is against the objectives of a welfare state.
- The notion of "no-fault" liability was devised to provide "instant relief" to victims of "hit and run" accidents, particularly when the plaintiff has died or has been permanently disabled, which is the same as death. As previously stated, the driver or the motor vehicle owner was to be held guilty without regard to their carelessness or guilt for the sake of social justice. In the event of an unfortunate accident, the apex court decided that section 140 of the Act seeks to provide "prompt relief" to the claimant or the victim's heirs and legal representatives.
- As a result, the claim under section 140 is paid at the "threshold of the case proceedings," and compensation is to be paid through an interim tribunal award, which may be altered before payment to the claimant if the claimants are found to be entitled to any significant additional amounts in the final settlement.^{vi}
- It was also concluded that if any other provision or scheme applies in addition to the claim under the Motor Vehicle Act of 1988, that is, if the right to claim compensation under section 140 or section 163A in respect of any person's death or permanent disablement is in addition to any other right to claim compensation in respect of such death or permanent disablement under any other provision of this Act or any other legislation currently in force then the defendant should be liable to pay more compensation.
- If the first compensation is greater than the second, the defendant is accountable for paying the amount up to the second compensation, however, if the first compensation is equal to or greater than the second compensation, the defendant is solely responsible for paying the first compensation as per section 141 of the Motor Vehicles Act, 1988.

- No one can claim damages under these sections 140 and 163A together, but they can sue for damages under any other legislation in effect at the time. This payment will reduce the amount owed under sections 140 or 163A as mentioned under section 163(B) of the same Act.
- The Act intended that any claim brought under section 163A of the Act need to be examined based on any proof or pleading of negligence or fault, and remedial compensation is provided under section 140 of the Act^{vii}. When the offending vehicle is not identified, there is no claim under sections 140 and 163A.^{viii} The courts have also held that the claims under these Act sections cannot be paid retrospectively.^{ix} The claim tribunal was also formed to make the procedure more cost-effective and provide claimants with faster and more efficient remedies.
- Section 142 states that the victim will be regarded as permanently disabled only if they have “lost either their eye sights or hearing” or there has been a “forfeiture of any member or joint or destruction” or “permanent impairing of the powers of any member” or “injuries in head or face” which can't be recovered quickly, effectively and efficiently. According to Section 143 of the Motor Vehicles Act of 1988, no-fault culpability applies to any claim under the Workmen Compensation Act for death or permanent disability. This provision has an overriding effect, according to Section 144 of the same Motor Vehicles Act, 1988.
- The phrase “accident arising out of the use of a vehicle” was used instead of an “accident caused by the use of a motor vehicle.” This was known as welfare legislation because it allowed the injured party to make more effective, efficient, and practical claims in court. The phrase's scope was expanded by including the term "use" rather than "cause." The test's purpose was to see if the accident was close to the motor vehicle or not, regardless of whether the motor vehicle was stationary. The phrase broadened and increased the scope of these sections of the Motor Vehicles Act of 1988.
- In the case of “Shivaji Dayanu Patil & Anr vs. Smt. Vatschala Uttam More^x”, the supreme court ruled that there was no causal link between the collision and the explosion based on the facts of the case. A "casual connection" does not have to be direct and immediate, but it is sufficient even if it is less immediate. The "collision" and

"explosion" that occurred were discovered to be related events, and no other proper inference could be drawn because there was no "causal link" between them. The phrase could be expanded to include the time when the vehicle is immobile or immobilized due to a fault.^{xi}

- The scope was broadened solely to ensure that victims of traffic accidents received the maximum amount of compensation feasible. There was a provision in the legislation for payment under Section 163(A), which would be permanent if the total surpassed the amount stated in Section 140 and went beyond the interim dividend. The no-fault obligation is imposed on the vehicle owner or driver rather than the insurer directly. If the owner or driver of the stated vehicle is deemed liable under section 140 of the Motor Vehicles Act, 1988, the insurers' liability will increase as well.
- The court or tribunal will not uphold a claim for compensation under section 140 by the guilty motor vehicle owner against their vehicle's insurer. According to section 140(4), a claim for compensation under clause 1 of section 140 cannot be dismissed because the victim's wrongful act, neglect, or default caused his death or permanent disability. A claim for compensation under clause 2 of section 140 cannot be reduced based on the victim's share of death or permanent disability responsibility.

Limitations and discrepancies in the concept of “No- Fault” liability are:

- Section 140 does not cover the “serious injuries” that occur due to road accidents not resulting in death or permanent disablement, which is one of its drawbacks. Suppose relief is to be given to the victims of “hit-and-run” cases, then, in that case, the law commission should consider even these injuries that do not cause death or permanent disablement but are severe enough to be not recovered efficiently and effectively.
- With the development and integration of the world’s various economies, the cost and price of every good and service have increased, making it difficult for many people even to sustain and fulfil their basic needs of life. When the sole earning member innocently dies or is permanently disabled due to road accidents, their families’ situation worsens. Hence, the amount mentioned under the “no-fault liability principle” is very meagre that it may not even meet the basic needs of the victim’s family and

relatives. As a welfare state, the lawmakers established this principle to ensure social justice to victims of "hit and run" accidents. However, providing economic security and promoting social welfare are also objectives that were not met with the meagre amount suggested by the Motor Vehicles Act of 1988 for victims of hit-and-run accidents.

- Also, because the majority of the victims are poor or illiterate, insurance companies try to take unfair advantage of them by delaying the process through various technicalities in the tribunals and courts, and these poor people unable to hire an excellent lawyer, try harder to obtain the required compensation based on the no-fault liability principle⁶. This is also opposed to the ideals of a “welfare state” seeking social and economic security for all and ensuring proper maintenance of law and order. Since there are many poor people, the state has failed to achieve even the idea of eradicating poverty of a welfare state.
- The principle of “no-fault” liability is claimant-centric and based upon the claimant as the claimant needs not to prove the negligence or fault of the motor vehicle’s drive owner. To ensure social justice to the victims of road accidents, not acknowledging or hearing the defendant’s side is against the laws of the land, which provides equality and freedom of speech and expression for everyone. Even to seek an interim award under section 140 of the Motor Vehicles Act, 1988, a document from a medical professional stating permanent disability is considered adequate.
- A coin cannot be complete without both sides, and a proper judgment cannot be delivered without hearing and acknowledging both parties to the case. This is also against the principles of a welfare state that ensures social equality for everyone. The policymakers only considered that innocent lives cannot be taken away through road accidents but never thought there could be one more side to the same story.
- There were other ways to compensate the victim’s families and relatives and not only through making the driver or the motor vehicle owner liable even when they were not having any fault or were negligent. If the policymakers wanted to live up to the objectives of a welfare state, they would have taken care of all its goals and not only one. Even though a section of society benefitted from this, most were held liable without fault or negligence.

- This renounced the way for some people to criticize the vehicle's owner or driver without cause, which went against the welfare state's principles of allowing everyone to prove their innocence and guilt-free. Because death and permanent disability are the most severe types of grievous harm, claimants of such victims are entitled to specific relief. If the motor vehicle owner was negligent and guilty, it must be considered appropriate to hold them liable to pay the requisite compensation to the claimants; however, other reimbursements should be adopted if this was not the case.
- "No culpability should be imposed on a person who is not at fault or negligent." Nonetheless, under the "no-fault" liability principle, the defendants' side was never given priority in a court of law. Rather than offering instant assistance, lawmakers should focus on delivering long-term relief to road accident victims. However, suppose the claimant's claim exceeds the amount of compensation specified by section 140(2), in that case, they must establish or prove the guilt or negligence of the owner or driver of the motor vehicle. But this is insufficient since if the guilt or carelessness of the owner or the driver of the motor vehicle is not proven, they are obligated to pay compensation to the claimant as specified in section 140(2).
- When a vehicle is not covered by insurance against "third-party risks," the claimant can seek reimbursement from the driver or the vehicle owner, and they can pay the balance out of their own pockets. As a result, a claim under section 140 or 163 A cannot be waived in any way. However, if the offending vehicle is not recognized in the manner described above, no claim can be made against it under these sections of the Motor Vehicles Act, 1988.
- Section 140(4) also goes against the concepts of a "welfare state" because it ignores the plaintiff's culpability and focuses on what the law considers to be the defendant's liability even if the defendant is not at fault. This may appear to be a temporary reprieve for victims of car accidents that result in death or severe disability, but it is not permanent.
- Suppose the defect or the negligence of the owner is not established. In that case, the claimant cannot file any other lawsuit against the defendant and hence has to be

satisfied with the meagre amount they are entitled to get under the Motor Vehicles Act, 1988, which may get completed within a limited period.

- If the earning member of the family dies or is permanently disabled, his entire family would suffer after the completion of this award as the fault, and the negligence of the owner or driver's driver was not established. Hence, through this, the lawmakers fail to achieve the objectives of a welfare state which ensures social and economic security and promotes the public welfare.
- Both sides need to be heard. Otherwise, the claimants can take advantage of the defendants claiming compensation under this section 140 without their fault or negligence. The lawmakers made this rule as per section 140(1). If two or more owners or drivers of the identified offending motor vehicles are liable under this section 140, they would be jointly or severally liable to pay the compensation to the claimant. But they overlooked the point that if the defendant and the plaintiff are at fault for causing such an accident, they both should be severally and jointly liable for the case and not singly the defendant. This does not promote the ideals of a welfare state, nor is it deemed ethically and morally correct.

Laws are generally based on the morals and ethics of society. Everybody has the right to take up a stand for themselves and the right of freedom of speech and expression as per Article 19(1) of the Indian Constitution. But here, the defendants are not even allowed to speak up for themselves. This not only violates the defendant's fundamental right of freedom of speech and expression as mentioned above and the right of equality as per Article 14 of the Indian Constitution, that every person is equal before the law, which is not the case herein. This is opposed to the intent of a welfare state that ensures social justice and equality for everyone.

CONCLUSION

Based on the thorough analysis of the various factors and issues involved in the research topic, the researcher summarizes and concludes it with the following findings and suggestions.

➤ ***Findings:***

After a thorough analysis of the principle of “no-fault” liability, the researcher found that it does not promote a welfare state’s ideals. However, it was made to live up to the standards of welfare only, that is, to ensure social justice to the victims of unfortunate accidents resulting in “death” or “permanent disablement” of them.

It overlooked the idea of social equality, economic security, and promoting the social welfare of a “welfare state.” With that meagre amount, a person can sustain only for some days in this industrialized and advancing world. The policymakers considered only one ideal of a “welfare state” that ensures social justice, stating how biased and claimant-centric they were while making the law. Not hearing both sides of the case infringe the defendant’s fundamental right of freedom of speech and expression¹⁹ and the fundamental right of equality²⁰. The plaintiff’s right to claim compensation even when there was no guilt and laxity of the driver or the owner of the offending vehicle and the defendant’s liability to compensate the plaintiff at any cost is as opposed to the intent of a welfare state.

The “no-fault” liability principle stated is not valid in a welfare state and is not needed to protect the interests of the claimants of “hit and run” accident cases as it helps provide only an “immediate relief” and not a “permanent relief.” Initially, it was thought that the “no-fault” liability principle would give the victims of “hit-and-run” cases a quick replacement. Still, it’s better to provide a “permanent relief” that lasts longer, which was or is not received from this principle.

➤ ***Suggestions:***

There is a dire need for a proper mechanism for the victims of “hit and run” cases resulting in deaths and permanent disablement. This can be achieved by conducting various awareness programs on driving safely and behaving on the road.

Rather than this “no-fault” liability principle, if the fault is not established, the claimants should be given security and protection under various schemes and policies formulated by the government so that rather than this meagre amount, they can get permanent relief and need not think about the future if the earning member of the family dies. The government’s funds should be utilized appropriately by keeping a certain amount of funds for such victims.

Whenever such a claim arises on the owner or the driver of the offending motor vehicle, and it is proved that the driver or the owner is not responsible for this accident, i.e., without any guilt and laxity, they can get immediate funds from the government that would ensure both direct and “permanent relief.” But if the responsibility is established, they should be given a chance to claim compensation from the defendants.

Nevertheless, one should look forward to developing laws and executing them in a manner that does not conflict with the interests of another provision by the parental provision, the Constitution of India. For a welfare state, the rights of both the defendants’ and the plaintiff’s matter. So, thinking about only one side of the story is against its principles and ideals.

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