

**IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA
AT CHANDIGARH**

C.W.P. No _____ of 2008

(Public Interest Litigation)

Hemant Goswami

...Petitioner

Versus

Union of India & Ors.

...Respondents

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Note: - No notice of caveat petition has been received by the petitioner.

Note:-1. The main law points involved in the writ petition are in paragraph no. 19 at page nos. 13 to 15 of the writ petition.

2. Relevant Rules and Statutes:- Constitution of India
Motor Vehicle Act 1988 & Rules
Chandigarh Motor Vehicle Rules
Indian Penal Code

3. Any Other Case:- Nil

(A. P. S. Shergill) (Raina Sabharwal)

Place:- Chandigarh

ADVOCATE

Date:- October 23, 2008

COUNSEL FOR THE PETITIONER

Enrolment No. P-810/1993

**IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH**

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Application under section 151 C.P.C. for grant of
exemption from filing the certified copies of
Annexures P-1 and P-2.

RESPECTFULLY SHOWETH:-

1. That the above mentioned Civil Writ Petition is being filed in this Hon'ble High Court and is likely to succeed on the basis of grounds taken therein.
2. That the certified copies of Annexures P-1 to P-2 are not readily available with the petitioners. However, true copies of Annexures are being filed for the kind perusal of this Hon'ble Court. Hence, this application.

It is, therefore, respectfully prayed that this application may kindly be allowed and filing of the certified copies of Annexures P-1 to P-2 may kindly be dispensed with.

Note: No affidavit is necessary.

Chandigarh

Date:- October 23, 2008

(A.P.S.Shergill) (Raina Sabharwal)

Advocates

Counsel for the Petitioner

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH

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....Respondents

LIST & DATES OF EVENTS

1914	Indian Motor Vehicle Act 1914 enacted
1939	Indian Motor Vehicle Act 1914 replaced by Indian Motor Vehicle Act 1939 (4 of 1939)
1988	Indian Motor Vehicle Act 1988 comes into force replacing the 1939 Act. Section 129 of the Indian Motor Vehicle Act 1988 provides wearing of helmets compulsory for all persons.
1990	Despite being a central government department and despite the Central Government Motor Vehicle Rules 1989 being in existence, the Chandigarh Administration framed parallel rules (in addition to the Central Government Motor Vehicle Rules) and thereby inserted Rule 193 which exempted all females from wearing/using Protective Headgear. It had a provision which read that "a woman shall not be required to wear a headgear." Such an exception was illegally granted with no such

	provision existing in the principal Act.
1988 to till date	Chandigarh Administration and the Government of Punjab and Haryana fails to enforce and implement the provisions contained in Section 129 of the Indian Motor Vehicle Act 1988. Certain officials and police in Chandigarh Administration and the Government of Punjab and Haryana relaxed the implementation and enforcement of the law with respect to females despite there being no such provision in the Motor Vehicle Act. Females not wearing the head-gear are not prosecuted and/or penalized.
1988 to till date	One female died every week (on an average) on account of not wearing of helmet since 1988 till date.
22 nd october 2008	On October 22, another female student died for not wearing a protective head-gear and for the failure of the Central Government, Chandigarh Administration and the State Governments of Punjab and Haryana in implementing and enforcing the provisions of Section 129 and for not following their duty of educating the general public on the issue.

Hence, this civil writ petition is being filed before this Hon'ble Court.

Chandigarh

(A. P. S. Shergill) (Raina Sabharwal)

Date:- October 23, 2008

Advocate

Counsel for the Petitioner

IN THE HON'BLE HIGH COURT OF PANJAB &
HARYANA AT CHANDIGARH

C.W.P. No _____ of 2008
(Public Interest Litigation)

Hemant Goswami, aged 37 years, S/o Sh B. M. Goswami,
Chairperson, Burning Brain Society, #3, Glass office, Shivalikview
Business Arcade, Sector 17-E, Chandigarh 160017

.....Petitioner

Versus

1. Union of India through Secretary – Ministry of Surface Transport, Department of Road Transport & Highways, Parivahan Bhavan, 1, Parliament Street, New Delhi
2. Chandigarh Administration through Administrator, UT Secretariat, Sector 9, Chandigarh 160 009
3. Chandigarh Police through Administrator, Inspector General of Police, Police Headquarters, Sector 9, Chandigarh 160 009
4. State of Punjab through Chief Secretary, Punjab Government, Punjab Civil Secretariat, Sector 1, Chandigarh
5. State of Haryana through Chief Secretary, Haryana Government, Haryana Civil Secretariat, Sector 1, Chandigarh

..... Respondents

Concerned with the death of large number of females due to non-implementation and non-enforcement of Section 129 of the Motor Vehicle Act 1988 with-regard-to female drivers/riders of two wheelers; though otherwise by law Section 129 makes it mandatory on every person to wear a head-gear while driving

two wheeler, and it being the responsibility of the government to enforce and implement the said provisions; whereas the Chandigarh Administration and the State Governments have decided not to implement the law contained in Section 129 with respect to female riders/drivers of two-wheelers;

AND SO THIS

Civil Writ Petition under Articles 226/227 of Constitution of India for issuance of an Order, Writ or direction in the nature of **Writ of Mandamus** or any other appropriate Writ be issued directing the respondents to uniformly enforce and implement all the provisions of the Motor Vehicle Act 1988 including Section 129 of the Motor Vehicle Act 1988.

AND

for issuance of writ of Mandamus for directing the respondents to initiate proceedings under Section 166 of the Indian Penal Code against such officers who did not follow the direction of law contained in Section 129 of the Motor Vehicle Act and the law held by the Hon'ble Supreme Court (having the force of Article 141 of the Constitution) in Special Leave Petition (Civil) No. 1252 of 1988; thereby by their inaction caused injury to many people.

AND

Writ, order or direction in the nature of Writ of Certiorari be issued, quashing the Chandigarh Motor Vehicle Rules and all orders, communications and notification which promulgate rules parallel to those framed by the Central Government or which provide any relaxation/concession to any person based on

gender and/or on any unreasonable and unscientific consideration from wearing helmet.

AND

for issuance of writ of Mandamus for directing the respondents to compensate all females who have lost lives and/or suffered injury in road accidents owing to the illegal relaxation on wearing head-gears granted to females of all class and religion.

AND

Any other appropriate writ, order or direction this Hon'ble Court may deem fit and proper in the circumstances of this present peculiar case be also kindly be made to meet the ends of justice and ensure rule, supremacy of law.

Respectfully showeth;

1. That the Petitioner is a social activist associated with many civil society organizations including many national and international organizations and actively engaged in public welfare. The petitioner is engaged in various social, public interest and civil rights activities concerning the youngsters and the public in general. Petitioner is also heading civil society organizations called "Burning Brain Society" and "Society for Prevention of Crime and Corruption." Many of the petitioners' social work have produced positive results and have been widely recognized nationally and globally. The circumstances of the present case entitles the petitioner to invoke the extraordinary jurisdiction of this Hon'ble Court by way of public interest litigation as the issue involved touches the lives of more than a million people.

2. That the Motor Vehicle Act 1988 was promulgated by the Government of India with the respondent number 1 being the nodal department and Ministry for ensuring the implementation of the act and ensuring the protection of life of all people . According to the website of respondent number 1; the main responsibilities of respondent number 1 includes; “The Department is responsible for: Motor Vehicle legislation, Administration of the Motor Vehicles Act, 1988, To evolves road safety standards in the form of a National Policy on Road Safety and by preparing and implementing the Annual Road Safety Plan. To collects, compiles and analyses road accident statistics and takes steps for developing a Road Safety Culture in the country by involving the members of public and organising various awareness campaigns, etc.”

3. That Section 129 of the Motor Vehicle Act provides that;

Section 129: Wearing of protective headgear. - Every person driving or riding (otherwise than in a side 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 provisions of this sections shall not apply to a person who is a Sikh, if he is, while driving or riding on the motorcycle, in a public place, wearing a turban:

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

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

(a) By virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree or 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.

4. That it is the duty of all the respondents to enforce and implement the law, especially the provisions of Section 129 in its letter and spirit. The only exemption is granted to a "Sikh" of any gender (male or female) when wearing such a turban which makes it impossible to wear a helmet and/or which in itself offers enough protection from any injury.
5. That section 129 does not provide any relaxation and or concession in wearing of the head-gear based on gender of the person. Despite there being no such provisions the Chandigarh Administration and the Governments of Punjab and Haryana have tacitly allowed relaxation of the law for females and do not enforce or implement the law for female riders driving two wheelers.
6. That without having any such authority, the Chandigarh Administration have made an additional illegal rules; parallel to the rules made by the Central Government. The rules made by Chandigarh Administration are called "**Chandigarh Motor Vehicle Rules 1990**" and Rule 193 of the above mentioned rules by Chandigarh reads that;

Rule 193: Use Of Protective Headgear: Every person driving or riding a motor cycle of any class or description shall wear a protective headgear approved by the bureau of Indian standards from time to time provided that in addition to the

persons exempted under the provisions of section 129 (MVA'88), persons who are medically advised by P.M.O. not to wear such a headgear in case exempted by the District Magistrate or a woman shall not be required to wear a headgear.

That the above mentioned rule and notification giving concession/relaxation from wearing helmet to females by Chandigarh Administration is without authority, unscientific, illogical and ultra-virus the provisions of Section 129 of the Motor Vehicle Act 1988. All such notification/order/instructions, are liable to be quashed for being unlawful, illogical, unscientific and against the spirit of the primary act, against public safety and public interest.

7. That under Section 212 of the Act, the scheme of the legislation, i.e. Motor Vehicle Act 1988 provides powers for making rules only to the State Government and the Central Government with a precondition that every rule shall be laid before the parliament (in case of central government) and before the legislative assembly (in case of state government). The intention of the legislation is clear that each and every delegated legislation too has to pass the scrutiny of the democratically elected government in the Centre and/or the State.
8. That it is amply clear that in case of a Union Territory with legislative assembly, any rules made by invoking the powers of Section 212 have to be laid before the legislative assembly of that Union Territory and in the case of a Union Territory without a legislative assemble (like that of Chandigarh) any such rule has to be laid before the "Parliament of India," as in such cases it's the parliament performs all the function of a legislative assembly of the Union Territory without legislation.

9. Union Territory of Chandigarh comes within the definition of Department of the Union according to second schedule as item No. 9 in Part III of B under the Ministry of Home List and as read with Rule 2 and 3 of the "Government of India (Allocation of Business) Rules, 1961." Union Territory also comes within the definition of Central Government, as defined by, and for the purpose of Motor Vehicle Act 1988. There are already central Government rules framed for the purpose of Motor Vehicle Act 1988 and they are called "Central Motor Vehicle Rules, 1989."
10. That the "Chandigarh Motor Vehicle Rules 1999" are also a violation of Article 14 of Constitution of India. It is also otherwise illegal to frame two sets of rules for the same Central Government and for the people living under the same "Appropriate Government," controlled directly by the same Parliament/Legislative Assembly.
11. That mere perusal of the website of Chandigarh Traffic Police shows that they are using both the Central Motor Vehicle Rules 1989 as well as Chandigarh Motor Vehicle Rules 1990. Such an action is totally illegal and against the scheme of things of the Constitution of India and against the spirit of democracy.
12. That due to various considerations and due to pressure by certain political and religious considerations, the Chandigarh Administration, the Punjab Government and the Haryana Government in their own discretion selectively not implementing and enforcing the provisions of Section 129 of the Motor Vehicle Act 1988 and thereby allowing females of all religious leanings to drive without any protective headgear.
13. That the failure to enforce Section 129 of the Motor Vehicle Act 1988 has seen hundreds of people loose their

life and also endangers the life of many persons; not only that of drivers but others traveling on the road too.

14. That the Hon'ble Supreme Court while adjudging on Special Leave Petition (Civil) No. 1252 of 1988 (Decided On: 29.08.1988) titled **Ajay Canu Vs. Union of India (UOI) and Ors.** held on the issue of the necessity and legality of wearing of Helmets had held that,

“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 498-A, 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 good. 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.

14. As to the contention of the petitioner that the wearing of the helmet causes some ailments, 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, as referred to by the High Court in its judgment. The contention has not also been seriously pressed before us. The High Court was, therefore, perfectly justified in rejecting the contention.”

15. That to cite an example, on October 22, 2008 a young girl named Navjot died in a road accident owing to her non-wearing a protective head gear. The related news items are annexed at P-1 and P-2.

16. That there are also a large numbers of non-ISI helmets in circulation which does not protect a person from the possible

fatalities. One of the biggest defaulters are the counterfeit helmets bearing stickers of the tobacco company "Phillip Morris," with the logo of their cigarette brand "Marlboro" and its deceptively similar versions "Morlborn," "Marldord" etc in circulation. All these helmets are non-ISI and do not conform to Section 129. Not only this, such use of a tobacco brand-name is also a violation of Section 5 of the "Cigarette and Other Tobacco Products Act 2003" which prohibit the use and advertisement of tobacco brand name/trade mark.

17. That such selective enforcement of any law, which is not based on any scientific and/or logical reasoning, is incorrect, unlawful and discriminatory. It puts the life of all in danger and also exposes them to unnecessary harassment, lawlessness and increases the burden on the public exchequer as they have to deal with increased number of accidents and emergencies. That it violated the fundamental right of life guaranteed under Article 21, and also that of equality guaranteed under Article 14. The petitioner, who is also a member of the general public, is also directly affected by it.

18. That it is absolutely unlawful for any police official and/or an executive head of the department to decide that any part of the motor vehicle is not to be enforced. The enforcement of any law has to be in totality and not in a piece-meal fashion, whereas only certain sections/provisions are enforced and the rest are ignored. Such action at the executive level or at the level of an enforcement agency exposes the concerned head of the department to appropriate departmental action and also is sufficient to initiate proceedings under Section 166 of the Indian Penal Code.

LAW POINTS

19. That the law points involved in this Writ petition are as follows:-

- i. Whether the executive official of an Administration/ Government decide to selectively enforce only one part/section of a law and ignore the rest of the legal provision, act and/or legislation?
- ii. Whether the exemption granted to a religious section under Section 129 of the Motor Vehicle Act 1988 is lawful?
- iii. Whether two different set of rules under the same legislation for the people living under the same government is a violation of Article 14 of the Constitution.
- iv. Whether proper scientific and rational explanation/ reasoning while granting any exemption under Section 129 a must so as to ensure that the state government must grant proper scientific reasoning and also explain that why exempting the use of head-gear by using the provisions of Section 129 of the Motor Vehicle Act 1988 is required in the interest of the public?
- v. Whether the enforcement officials who negated to perform their duty by implementing and enforcing the direction of law contained in Section 129 of the Motor Vehicle Act 1988 can be prosecuted under Section 166 of the Indian Penal Code and appropriate punishment under the law accorded to them?
- vi. Whether the Administrator of a Union Territory has any power to perform an executive function

independent of the Parliament and the Union Cabinet for items listed in the Seventh Schedule under Article 246 of the Constitution?

- vii. Whether an Administrator of a Union Territory, who is not an elected representative in any way and is not answerable to the Parliament and is also not under the Union Public Service Commission; has any power to perform an executive function without seeking approval of the Parliament, either directly, or indirectly through the Union Cabinet, and/or the Controlling Department i.e. the Ministry of Home Affairs.

20. That the petitioner has not filed any such Writ petition in this Hon'ble Court or Supreme Court of India.

21. That the matter is of vital general importance affecting the general public and requires intervention of this Hon'ble Court.

22. That there is no other alternative remedy of appeal or revision available to the petitioners except to approach this Hon'ble Court by way of filing the present writ petition.

RELIEF SOUGHT

23. It is, therefore, respectfully prayed;

- I. that an Order, Writ or direction in the nature of **Writ of Mandamus** or any other appropriate Writ be issued directing the respondents to uniformly enforce and implement all the provisions of the Motor Vehicle Act 1988 including Section 129 of the Motor Vehicle Act 1988.

- II. for issuance of **writ of Mandamus** for directing the respondents to initiate proceedings under Section 166 of the Indian Penal Code against such officers who did not follow the direction of law contained in Section 129 of the Motor Vehicle Act and the law held by the Hon'ble Supreme Court (having the force of Article 141 of the Constitution) in Special Leave Petition (Civil) No. 1252 of 1988; thereby by their inaction caused injury to many people.
- III. Writ, order or direction in the nature of **Writ of Certiorari** be issued, quashing the Chandigarh Motor Vehicle Rules and all orders, communications and notification which promulgate rules parallel to those framed by the Central Government or which provide any relaxation/concession to any person based on gender and/or on any unreasonable and unscientific consideration from wearing helmet.
- IV. for issuance of **writ of Mandamus** for directing the respondents to compensate all females who have lost lives and/or suffered injury in road accidents owing to the illegal relaxation on wearing head-gears granted to females of all class and religion.
- V. Any other appropriate writ, order or direction this Hon'ble Court may deem fit and proper in the circumstances of this present peculiar case

be also kindly be made to meet the ends of justice and ensure rule, supremacy of law.

VI. Filing of certified and fair typed copies of Annexures **P-1** to **P-2** may kindly be dispensed with, and permission to file true copy of the same be granted.

VII. the present writ petition may kindly be allowed with costs.

Place: Chandigarh

Date:- October 23, 2008

PETITIONER

Through Counsel:-

(A. P. S. Shergill) (Raina Sabharwal)

Advocates for the Petitioner

VERIFICATION:-

Verified that the contents of paras No. 1 to 12 and para No. 14 to 16 are true and correct to my knowledge, whereas, contents in para 13 and 17 are based on legal advice which I believe to be true and correct. No part of it is false and nothing has been concealed therein.

Place: Chandigarh

Date:- October 23, 2008

PETITIONER

Annexure P-1

Times of India

Helmetless college student dies in mishap

23 Oct 2008, 0407 hrs IST, TNN

CHANDIGARH: A woman scooterist, who was not wearing a helmet, lost her life in an accident at the Sector 51-52 roundabout on Tuesday.

The victim, Navjot Kaur, 21, was a student of Government College, Sector 46. Police said she was riding her Honda Activa when a truck hit her causing her to lose control. The truck's rear wheel ran over Navjot's head leading to her death, they added.

Investigating officer sub-inspector Sher Singh told TOI that the accident took place at 9 am when the victim was going to her college from her house in Phase VII, Mohali. Truck driver Bharpur Singh who was coming from Mohali told the police that he did not realize what had happened. "The only thing I remember was trying to save an autorickshaw," he added.

In fact, Bharpur drove the truck some distance when the cops stopped him at the ISBT-43 roundabout. Navjot was a BCom-III student and was going to the college to take part in the zonal youth festival.

The traffic police in a separate report accused the truck driver of driving rashly which led to the accident. **SP (traffic) Hardeep Singh Doon said that Navjot could have survived if she had been wearing a helmet.**

He said police had been trying to spread awareness among women about the absolute necessity of wearing helmets.

Extracted from the website:

http://timesofindia.indiatimes.com/Cities/Helmetless_college_student_dies_in_mishap/articleshown/3630753.cms

True Copy

Advocate

Annexure P-2

The Hindustan Times

Truck crushes girl

21-yr-old was driving a Scooty without a helmet

Chandigarh

A 21-YEAR-OLD student of Government College-46 was crushed to death today while overtaking a truck on the dividing road of Sectors 51 and 52 leading to S.A.S. Nagar. The police said the victim, Navjot Kaur of S.A.S. Nagar of Phase VII, was not wearing a helmet while driving. Truck driver Bharpur Singh of S.A.S. Nagar district has been arrested.

It was around 10:45 a.m. and Navjot of B.Com final year was driving a Scooty (PB65F 5082) to her college to participate in a play. Near the roundabout of Mataur village, when she had almost overtaken a truck (PB65G 5796), a vehicle rushed at her from the opposite direction.

To avert an accident, she swerved to her left but collided with the front bumper of the truck and lost her balance. She fell, and the front wheels of the truck rolled over her head, a police officer said.

The truck driver fled from the spot.

Some passersby informed the police about the accident and the registration number of the truck. Police intercepted the truck near Colony Number 5 and arrested driver Bharpur Singh of S.A.S. Nagar district.

The girl's father, Balvinder Singh, who works at the Yadvindra Public School, S.A.S. Nagar, fainted when he saw his daughter lying in a pool of blood. Police had to rush him to the hospital. The brother of the victim, who stays in Australia, has been informed about the accident.

Extracted from the website:

http://timesofindia.indiatimes.com/Cities/Helmetless_college_student_dies_in_mishap/articleshow/3630753.cms

True Copy

Advocate

Annexure P-3

Source: From the website of Chandigarh Police at <http://www.chandigarhtrafficpolice.org/helmet.htm>

Turban: The proviso to section 129 MVA'88 stipulates that the requirement for wearing protective headgear shall not apply to a person who is a sikh, if he is, while driving or riding on the motorcycle, in a public place, wearing a turban. Thus sikh drivers/riders (male) are exempted from wearing safety helmets only when wearing a proper turban and not when wearing parna, patka etc.



Women drivers/pillion riders: Total exemption is given by rule 193 Chandigarh Motor Vehicle Rules '90 to all women from the requirement of wearing protective headgear while driving/riding two-wheelers.



Judicial Pronouncements On The Issue Of Exemptions

The Hon'ble Punjab & Haryana High Court had restricted the exemption only to 'sikhs wearing turban while driving' in its order dated 9-7-98 in CWP No. 7639 of 1995 titled Namit Kumar Versus UT Chandigarh & others. The Hon'ble Supreme Court of India in its recent order dated 27-9-2004 in civil appeal no. 3700 of 1999 (arising out of CWP 7639 of 1995) has, however, directed that **'if any exemption is granted to any person including sikh women from any of the motor vehicles rules relating to**

different states or areas under any statutory rule the same shall operate notwithstanding the directions of the high court that all persons including women shall wear helmets.'

Pillion rider: section 129 MVA'88/ rule 193 Chandigarh Motor Vehicle Rules '90 stipulate that the driver as well as the pillion rider shall wear protective helmets while driving/riding a motorcycle.

True Copy

Advocate