**SELF-DRIVING CARS AND SOME (UNINTENDED) REGULATORY BARRIERS IN INDIA: A ROAD LESS TRAVELLED?**

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**Abstract**

The deployment of self-driving cars seems to be the recent focus in several parts of the world. The operation of Robotaxis, shuttles and other forms of public transport in the United States [the US], China and France are illustrative of these trends. Some other parts of the world, such as Germany and Japan, have simultaneously been gearing up to open public roads to such cars. The recent trends indicate that the implementation of such modern technologies has no longer remained a moot point. Instead, current questions have increasingly focused on how technological developments such as these may safely be adapted into public life.

Being a relatively new facet, the introduction of self-driving cars has by no means been free of complexities. It has, among other things, necessitated an urgent overhaul of the regulatory environment to address the unique challenges that modern technologies such as these are likely to pose. On the legislative front, the formulation of clear, coherent rules to ascertain the rights and liabilities of the various stakeholders, such as users *vis-à-vis* the owners and manufacturers, for harm caused by such vehicles has remained not merely crucial but indispensable considering the peculiarities of the circumstances in which they are likely to be inflicted. On several occasions, the determination of liability for such harm would involve an interplay between domestic rules on the subject and conflict of laws, especially in cases where the damage has allegedly been caused by a car that has been manufactured overseas. In the absence of a treaty or Convention, the legal principles on the subject in several major jurisdictions such as Germany, France, the UK and China have been developed in tandem with the introduction of self-driving cars.

In contrast, India has been unmoved by these global developments. As the world progresses towards initiating a legal discourse to revamp the regulatory framework to address these challenges, India has stood firm in banning the operation of self-driving cars. On the other hand, consumer anxieties concerning the operation of such vehicles on public roads in India have consistently risen – depicting the lack of trust in the ability of the current legislative framework to safeguard the rights and interests of the potential users. The paper attempts to identify the source of these concerns and critically evaluates the predicaments that adjudicators and claimants are prone to encounter if the legal principles on the determination of liability for injuries caused by motor vehicles are extended to self-driving cars. It demonstrates the uncertainties in Indian law on the subject that are characterized by the lopsided nature of the current legislative framework. The present principles merely stipulate the mechanism to ascertain the liability for fatal or grave injuries caused by motor vehicles without concurrently prescribing the consequences of other forms of damage. Consequently, the paper recognizes the need for special rules on the subject and, accordingly, examines some workable solutions that Indian lawmakers may consider adopting if the ban on self-driving cars is eventually lifted.

**Keywords**: self-driving cars; motor vehicles; civil liability; damage; product liability; India

**1. Introduction**

Across the globe, legal systems have steadily been warming up to the operation of autonomous cars in various forms[[1]](#footnote-1) on public roads – among which those that are driverless[[2]](#footnote-2) seem to be a popular choice for their ability to considerably reduce human involvement by eliminating the requirement of a driver inside the vehicle.[[3]](#footnote-3) The United States [the US],[[4]](#footnote-4) France,[[5]](#footnote-5) Germany,[[6]](#footnote-6) China[[7]](#footnote-7) and Japan[[8]](#footnote-8) are some jurisdictions that are exploring the deployment of such driverless cars in the form of ‘Robotaxis’, shuttles or other forms of public transport.

Of their many benefits, driverless or self-driving cars have been hailed for their potential to reduce accidents and resultant fatalities due to intoxication dramatically, lack of focus, or poor judgment insofar as these are primarily attributable to human involvement.[[9]](#footnote-9) Their introduction would similarly benefit the vulnerable sections of society by enabling such persons to remain mobile without a driver.[[10]](#footnote-10)

However, like most other inventions, the operation of driverless cars is not impeccable. The failure of the hardware or software to perform accurately may harm any person in a manner that is similar to that inflicted by non-autonomous vehicles involving a human driver. Indeed, although such cars endeavour to reduce accidents, fatalities caused by the failure of the system in these vehicles to detect objects around them have been well-documented. The fatal crash of the driver in March 2018 caused by the failure of Tesla’s Autopilot to locate a barrier[[11]](#footnote-11) for the second time in a row since 2016[[12]](#footnote-12) or the death of a pedestrian during the test run of the Volvo SUV in March 2019[[13]](#footnote-13) is illustrative of the safety hazards involved in the use of such vehicles.

Apart from the adaptation of the existing infrastructure to accommodate their operation on public roads, the deployment of such vehicles has necessitated an overhaul of the legal regulations in countries desirous of introducing their operation. Determining the rights and liabilities of the users and third parties such as the pedestrians and non-autonomous vehicles *vis-à-vis* other stakeholders such as the owners, manufacturers and system developers for harm caused by such vehicles has remained crucial in the regulatory reformations of several countries.[[14]](#footnote-14) The nuances involved in disputes arising from their use are likely to be manifold, especially if the claim in question comprises a foreign element, for instance, when they arise in relation to self-driving cars that are being operated in a country other than their place of production. The operation of autonomous vehicles has consequently been aptly described as a ‘problem of “many hands”’[[15]](#footnote-15) and ’a future that won’t materialize…unless legislators around the world create a new legal framework’.[[16]](#footnote-16)

To date, there is no treaty or convention that harmonizes the rules concerning the operation of self-driving cars in the territories of the Contracting Parties. Thus, several jurisdictions have attempted to develop the legal regulations on the subject, particularly those concerning the determination of liability for injuries, in tandem with the introduction of such vehicles on public roads. France,[[17]](#footnote-17) Germany,[[18]](#footnote-18) the UK[[19]](#footnote-19) and China[[20]](#footnote-20) are some examples. Therefore, it is not surprising that consumer acceptance in favour of such cars has generally been escalating steadily in such jurisdictions.[[21]](#footnote-21) Although some Asian countries such as China,[[22]](#footnote-22) South Korea[[23]](#footnote-23) and Japan[[24]](#footnote-24) have demonstrated the highest consumer acceptance in favour of such vehicles, others such as Germany[[25]](#footnote-25) and the US[[26]](#footnote-26) have exhibited a similar trend. Attempts to stipulate predictable, clear rules on the adjudication of claims arising from the operation of such vehicles may have been a significant contributor to increasing consumer acceptance in these jurisdictions.

In contrast, autonomous cars have generally not found favour in India, and the operation of such vehicles has been banned on public roads in the country.[[27]](#footnote-27) The Republic is considered among the worst-performing countries globally in terms of preparedness for the operation of such vehicles.[[28]](#footnote-28) Consumer acceptance in favour of such vehicles has not merely demonstrated a declining trend over the years compared to other countries such as China, Japan or Germany - but has also been the lowest.[[29]](#footnote-29) Research indicates that consumer concerns questioning the safety of such vehicles have increased. Injuries attributable to their use have particularly had a significant impact in shaping the consumer acceptance of autonomous cars in India[[30]](#footnote-30) – causing the population to be (very) concerned about the testing of such vehicles on public roads.[[31]](#footnote-31) As such, merely 42 per cent of consumers have considered the operation of such cars as safe in the last report of 2020, compared to 52 and 53 per cent in the preceding two years.

The present legal framework on the ascertainment of liability for harm caused by motor vehicles appears to have directly influenced how potential users perceive self-driving cars in India. Predictable rules on the determination of liability could, thus, potentially play a crucial role in influencing consumer attitudes if India, akin to some other jurisdictions, decides to authorize the commercial operation of such vehicles in the future.

Against this backdrop, the paper examines the extent to which the current liability laws in India have been detrimental in facilitating the introduction of self-driving cars. The paper is divided into four parts. Part Two of the paper (Part One being the Introduction) provides an overview of the complexities involved in adjudicating such claims - particularly when they involve a foreign element. In doing so, this part demonstrates the role of conflict of laws in determining liabilities for injuries sustained by the operation of such vehicles and how some major legal systems across the globe have addressed these challenges. Part Three critically evaluates the general principles of Indian law *vis-à-vis* the determination of liability for damage caused by motor vehicles and assesses the predicaments that are likely to arise if these are extended to disputes involving self-driving cars. Accordingly, this part examines the circumstances in which courts in India may adjudicate claims in such matters in the first place and the rules that would be applicable to determine the rights and liabilities of the parties in domestic and transnational matters. Part Four provides the concluding remarks and identifies the need for special principles to determine the liability in disputes involving driverless cars in India. Accordingly, it devises some workable solutions that Indian lawmakers may consider adopting if the ban on such cars is eventually lifted.

**2. The Adjudication of Claims Arising from the Operation of Autonomous Cars and the Determination of Liability for Injuries**

**2.1 Issues Involved and Challenges Faced**

As indicated previously, the rules on which disputes involving self-driving cars may be adjudicated have not been harmonized. Apart from the fact that such vehicles are a relatively new facet of public life, the complex nature of such disputes may have compelled such claims to be regulated in a piecemeal manner. Most legal systems are likely to hold the owners of such vehicles primarily responsible in the interest of a speedier dispensation of justice to the victims. Owners may then be required to sue the manufacturer in separate legal proceedings upon demonstrating that the damage was attributable to inevitable technical failures in the ADS that caused the software, hardware or the infrastructure of the vehicle to malfunction.[[32]](#footnote-32) Claims against manufacturers are additionally likely to comprise a plethora of nuances, especially in situations where they involve a foreign element, thus, necessitating the application of the relevant conflict of law rules of the forum. How is the tortfeasor identified, and where is the aggrieved party expected to initiate the proceedings against such persons? To what extent will adjudicators be expected to apply foreign law to disputes arising from harm caused by the use of such vehicles? These are some facets whose consideration is indispensable to ensure the successful deployment of such (driverless) cars on public roads.

**2.1.1. The Initiation of Claims and the Determination of the Court’s Jurisdiction**

Akin to all other domestic or transnational disputes, the establishment of the court’s jurisdiction remains at the forefront while adjudicating claims involving self-driving cars. However, unlike the principles to ascertain the governing law and the determination of the liability for harm caused by the use of such vehicles, state practices on the grounds on which the courts situated within its territorial limits may assume jurisdiction over such matters have more or less been uniform. Accordingly, courts in several parts of the world have, as a general rule, been empowered to adjudicate such matters if the defendant was residing, domiciled or carrying on business within its territorial limits at the time of the initiation of proceedings or when the damage occurred in its jurisdiction.[[33]](#footnote-33)

**2.1.2. The Determination of Liability for Injuries caused by Self-Driving Cars and the Role of Conflict of Laws: What Law Governs such Disputes?**

The principles on which the governing law in disputes involving self-driving cars would be identified have not been subject to any uniform (or standard) practice. Unlike comparatively straightforward transnational disputes arising from road accidents concerning non-autonomous vehicles, the determination of the applicable law in claims involving self-driving cars is likely to involve several complexities. Such disputes are most likely to be a product of a multilocal or double tort due to the ‘separation in time and place between the behaviour of one person and the resultant damage to another’.[[34]](#footnote-34) The event giving rise to the harmful behaviour and the place where the actual damage occurred may not coincide, especially if the resultant injury is attributable to the failure in an imported software to detect an object around it or sufficiently prevent the user’s data from being misused.[[35]](#footnote-35)

To date, the need to develop special rules to identify the applicable law in transnational disputes involving self-driving cars has not been felt. However, as a general rule, such claims are likely to be subject to the scission principle – where the liability of the owner and the producer may necessitate the application of different laws if the car has been produced overseas. The owner’s liability may, thus, be determined according to domestic law, while that of the producer may be subject to foreign law – unless the dispute involves a domestically produced car. Therefore, the court must determine the liabilities of the owner and the manufacturer in the first place under the law of the forum – before ascertaining whether the claim necessitates the application of foreign law to determine the liability of the producer.

**2.1.3. Prescribing the Liability for Injuries**

In the absence of any treaty or Convention, the principles on which liability for accidents caused by self-driving cars have not been harmonized. The provisions of the Geneva Convention on Road Traffic, 1949 [the Geneva Convention][[36]](#footnote-36) and the Vienna Convention on Road Traffic, 1968 [Vienna Convention][[37]](#footnote-37) mandate the presence of a driver to control the vehicle at all times.[[38]](#footnote-38) The Conventions are the two significant international conventions that endeavour to facilitate international road traffic by defining the circumstances in which cars from other signatories will be legal. However, the proposed amendment to the Vienna Convention on Road Traffic, 1968 [Vienna Convention][[39]](#footnote-39) in the form of Article 34bis, which is likely to come into effect in 2022, legalizes the operation of self-driving cars (namely, those operating at Levels 4 and 5) by obliviating the need of a human driver.[[40]](#footnote-40) The Contracting States will, thus, be construed to have ‘deemed to have satisfied’ the requirement of a driver in an autonomous car – including those that are self-driving – if such vehicles ‘comply with the domestic technical regulations and the legal requirements of the country in which they are being operated’.[[41]](#footnote-41) In doing so, the proposed amendment leaves how the liability for injuries in road accidents caused by such vehicles is determined to the discretion of each Contracting State. In comparison, the existing provisions of the Geneva Convention continue to (officially) mandate the presence of a driver in every vehicle – and impose no obligation on other signatories to recognize self-driving cars from the other Contracting States – regardless of whether such vehicles comply with the domestic requirements of that country.[[42]](#footnote-42) An Informal Group of Experts on Automated Driving has endorsed the extension of the provisions of Article 34bis to the Geneva Convention, pending similar amendments.[[43]](#footnote-43)

Several countries such as Germany, France, China and the US already authorize self-driving cars within defined operational areas on public roads.[[44]](#footnote-44) Most,[[45]](#footnote-45) if not all,[[46]](#footnote-46) of these legal systems, have prescribed some rules to clarify the mechanism to determine the liability for the harm caused by such vehicles. Others, such as the UK, have initiated the development of their legal principles to facilitate the operation of autonomous vehicles, including self-driving ones, in the near future.[[47]](#footnote-47)

**2.1.3.1 Determining the Primary and Secondary Liability: General Trends**

*a. An Owner’s Primary Liability*

The general principle under the laws of most[[48]](#footnote-48) of these legal systems is to hold owners and, consequently, insurers of self-driving cars strictly liable under civil law for all road accidents caused by the use of self-driving cars on public roads.[[49]](#footnote-49) The fault or the negligence of the owner is, thus, irrelevant in determining its liability towards third parties for any harm in the form of bodily injuries or damage to property. The liability of the producers of such vehicles is, in most circumstances,[[50]](#footnote-50) secondary. Owners may, thus, initiate (separate) proceedings against producers once they have fulfilled their liability towards aggrieved parties.[[51]](#footnote-51) The approach is intended to facilitate prompt redress to victims without compelling them to deal with technicalities involved in proving the existence of defects in the vehicle.

In this respect, the recent developments in Germany and China that endeavour to regulate the operation of self-driving cars deserves mention for succinctly elaborating the rights and obligations of owners and producers for any harm caused by such vehicles in a holistic manner. Unlike the laws of other legal systems such as France and the UK that necessitate the application of the general principles of data protection and/or product liability to ascertain the liability and consequences of the harm that any person may have sustained due to improper processing of the data or a defect in the car, the legal principles of Germany[[52]](#footnote-52) and some states in China[[53]](#footnote-53) clarify the nuances of such injuries in a (comparatively) comprehensive manner.

The recent amendments to Germany’s Road Traffic Act or the Straßenverkehrsgesetz (StVG) hold the producer responsible for injuries that are attributable to a failure on their part to train the owner regarding the appropriate functioning of the vehicle and the manner in which the latter may perform the necessary driving manoeuvres when needed.[[54]](#footnote-54) Producers must correspondingly ensure that the electronic architecture of the car and its technical system have been secured from potential threats to the privacy of its users.[[55]](#footnote-55) There apart, producers of such vehicles would also be liable under German law under the provisions of the Product Liability Directive for all bodily injuries or damage to property caused by a defect in the self-driving car or its design.[[56]](#footnote-56) Owners are generally liable for all other harm outside these parameters. Therefore, owners are responsible for any harm as a result of a failure on their part to: a) monitor the general roadworthiness of the vehicle through the regular maintenance of the autonomous driving systems [ADS];[[57]](#footnote-57) b) ensure that the data stored in the technical system is appropriately processed to protect the information stored therein from being misused, lost or stolen;[[58]](#footnote-58) and c) conduct the necessary technical manoeuvres that may be necessary to safeguard third parties from any risk.[[59]](#footnote-59)

In a related vein, in the absence of a coherent national regulation on the subject,[[60]](#footnote-60) the local standards of some states in China, such as Shanghai, hold the owners of ‘intelligently networked vehicles’ as primarily liable under the no-fault liability regime for most harm attributable to their use – including that which may have been caused as a result of a data security breach.[[61]](#footnote-61) However, manufacturers of such vehicles would be directly liable for any damage caused by a defect in the vehicle.[[62]](#footnote-62)

French law similarly holds owners and, consequently, insurers of self-driving cars as strictly liable for all harm caused by the use of such vehicles.[[63]](#footnote-63) However, there are no special principles to determine the civil liability of any person in such matters. The civil liability for harm caused by the use of motor vehicles continues to be governed by general principles of *Badinter* Law, which apply to all traffic accidents.[[64]](#footnote-64) However, the injured party’s fault may reduce or eliminate the owner’s liability for such accidents.[[65]](#footnote-65) The consequences of injuries sustained due to an infringement of privacy due to the loss, misuse or theft of inadequately processed data are regulated by the Global Data Protection Regulation [GDPR].[[66]](#footnote-66) Owners are similarly for such injuries.[[67]](#footnote-67) At the same time, whether owners would similarly be liable under civil law for injuries due to an infringement of any person’s privacy attributable to the failure of the manufacturer to conduct the necessary risk assessments to prevent the same remains unknown.

In contrast, the provisions of the recently amended French Highway Code[[68]](#footnote-68) stipulate special rules to determine the criminal liability for injuries caused by such vehicles. An operator[[69]](#footnote-69) of a self-driving car is, consequently, criminally liable for all injuries caused to any person due to the failure to ensure compliance with the conditions of use of the ADS and the maintenance of the general safety of the users, operating personnel and third parties.[[70]](#footnote-70) The liability of the manufacturer, which French law refers to as the ‘designer of the technical system’,[[71]](#footnote-71) is generally limited to injuries that are attributable to the failure to: a) conduct the appropriate risk assessments concerning the potential hazards involved in the use of such vehicles and the means to address these effectively, or b) provide the appropriate training concerning the operation of the vehicle, its maintenance and the manner in which owners may conduct the necessary manoeuvres.[[72]](#footnote-72) Defects that have been discovered subsequently but have not been conveyed to the operator for appropriate action would similarly remain the responsibility of the designer of the technical system.[[73]](#footnote-73)

On the other hand, the provisions of English law, as stipulated under the Automated and Electrical Vehicles Act 2018 [AEVA], hold insurers of self-driving cars directly liable for damage resulting from road accidents involving such vehicles.[[74]](#footnote-74) Damage includes death and other forms of personal injuries as well as damage to the property, but not to the (automated) vehicle itself.[[75]](#footnote-75) However, insurers are authorized to exclude or limit their liability if the damage has been caused by an unauthorized software alteration in the ADS or a failure to install a ‘safety-critical software update’ that the owner knew or should have known to be ‘safety critical’.[[76]](#footnote-76) The owner is liable if the vehicle was not insured at the time of the incident.[[77]](#footnote-77) Neither the insurer nor the owner will be liable if the accident results from the injured person’s fault.[[78]](#footnote-78) Similarly, insurers or owners may be exonerated of their liability if the accident was entirely the result of the negligence of any person in charge of the vehicle.[[79]](#footnote-79) That said, akin to French law, the provisions of the AEVA are silent regarding the determination of liability for the infringement of the user’s privacy as a result of data breaches that may be caused if the ADS in such vehicles has been hacked. In such circumstances, it is likely that the owner may directly be liable under the Data Protection Act 2018 for subsequent privacy violations due to the improper processing of data.[[80]](#footnote-80) The owner’s responsibility to properly process the data extends to ensuring that it has been appropriately protected against unauthorized or unlawful processing, accidental loss, destruction and damage by employing adequate technical measures.[[81]](#footnote-81) A close examination of the provisions of the DPA, thus, indicates that the owner’s liability would extend to circumstances where the security of the data has been threatened primarily because the electronic architecture in the ADS has not been secured against potential hackers.

*b. Ascertaining the Manufacturer’s Liability*

*i. Claims against Local Producers*

In these jurisdictions, the liability of manufacturers of domestically produced self-driving cars for any harm, including those arising from an infringement of privacy if the data in the ADS is hacked, is ascertained according to the domestic principles of product liability.[[82]](#footnote-82) Consequently, producers would be strictly liable for any harm caused to any person (but not to the vehicle itself) due to a product or design defect when it was put into circulation in the market.[[83]](#footnote-83) The fault or negligence of the producer in the manufacturing process is irrelevant in establishing its liability.[[84]](#footnote-84) Any person who has produced the component or raw material or put their name, trademark or distinguishing feature on the vehicle would be jointly and severally liable for such harm.[[85]](#footnote-85) However, manufacturers may avoid their liability by demonstrating *inter alia* that it was not responsible for putting the vehicle in circulation or that the state of scientific technology at the time of its introduction into the market was not such that it would enable it to discover the defect.[[86]](#footnote-86)

*ii. Claims against Foreign Producers*

Claims against foreign manufacturers would be determined according to the principles of foreign law that have been identified according to the conflict of law rules on the applicable law in the forum. In Germany and France, the law that would govern such claims would be identified according to the provisions of the Rome II Regulation, which prescribes the mechanism to identify the governing law in non-contractual obligations in all the EU Member States (except Denmark).[[87]](#footnote-87) The law that would be applicable to determine the extent of the manufacturer’s liability would depend on the express and, in its absence, the implied choice of the parties.[[88]](#footnote-88) In the absence of such a choice, the manufacturer’s liability and the damages payable will be determined according to the law of the habitual residence of the parties – provided that it is common.[[89]](#footnote-89) Thus, in circumstances where the victim resides in the same place as the principal place of the business of the manufacturer, the liability of the producer for the damage caused by the self-driving car would be determined according to the law of that place – even if the accident giving rise to the injury occurred in another place. Consider the following example. The owner and the manufacturer reside in France, but the accident occurred in Germany, where the victim was a tourist at the time of the incident. The accident occurs due to the manufacturer’s failure to provide the owner with the relevant training concerning the driving manoeuvres that the ADS may need to perform. The owner may prefer to initiate the dispute before German courts, which is the place where the injury occurred,[[90]](#footnote-90) on the ground that it would not be liable under the provisions of the StVG. Upon ascertaining the manufacturer’s liability, the (German) court would apply French law to ascertain the consequences of the injuries caused by the vehicle.

In the absence of such commonality, the producer’s liability would be ascertained according to the law of the place where a) the person suffering the damage has its habitual residence or b) the vehicle was acquired or c) the damage occurred – provided the self-driving car was marketed in these jurisdictions[[91]](#footnote-91) - unless the claim is ‘manifestly more closely connected’ with the law of another country – in which case such a law would apply.[[92]](#footnote-92) As a last resort, the law of the habitual residence of the manufacturer would govern the claim if the self-driving car was not marketed in any of the jurisdictions mentioned above.[[93]](#footnote-93) At the same time, it is unlikely for any court in an EU Member State to find an opportunity to invoke the manufacturer’s law in practice considering that EU law mandates such vehicles to be type-approved before their operation on public roads.[[94]](#footnote-94)

The UK imbibes a similar approach to determine the applicable law in claims against foreign manufacturers through the provisions of the Law Applicable to Contractual Obligations and Non- Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019, which accommodates the provisions of the Rome II Regulation into English law as a result of the latter’s past membership to the EU.[[95]](#footnote-95) China similarly prescribes the application of the law chosen by the parties to govern such disputes.[[96]](#footnote-96) Nonetheless, the choice must be made after the dispute arises (ex-post).[[97]](#footnote-97) In the absence of choice, the law of the residence of the aggrieved party would govern claims against foreign manufacturers unless such entities had not engaged in any business in that country at the time of the injury.[[98]](#footnote-98) In such circumstances, the law of the principal place of business of the manufacturer or the place of damage (*lex loci damni*) would govern the claim.[[99]](#footnote-99)

**3. Self-Driving Cars and the Determination of Liability under Indian law**

**3.1 Understanding India’s Stance at a Glance**

Unlike the legal systems indicated above, India has been severely resistant to developments in the field of autonomous cars in general. The operation of such vehicles has, in fact, been banned on public roads given the lack of infrastructure and the ability of such vehicles to create a surge in the unemployment rate among the country’s 2.2 million commercial drivers.[[100]](#footnote-100) As the world progresses towards commercializing autonomous cars that enable the driver to delegate some or even all the driving tasks to the system, India has only begun to consider the authorization of vehicles equipped with ‘driving support systems’ at Level 2.[[101]](#footnote-101) Vehicles operating at this level enable the system to have some control in the form of acceleration, braking or steering – but continue to mandate the presence of a driver to control the vehicle at all times.[[102]](#footnote-102) Considering that India is not a signatory to the Vienna Convention, it is not obligated to recognize self-driving cars from other countries such as Germany or France. Nonetheless, despite being one of the founding signatories of the Geneva Convention, India has not, unlike some other Contracting States such as China, considered it necessary to explore the possibility of initiating a legal discourse on the introduction of self-driving cars in the country. In such circumstances, the present principles of Indian law continue to mandate the presence of a human driver in every car, and the need to formulate special rules to regulate the operation of autonomous cars and, in particular, those that are self-driving, has not been debated to date.

The provisions of the Motor Vehicles Act, 1988 [MVA][[103]](#footnote-103) generally regulate the operation of motor vehicles in India. The expression ‘motor vehicle’ is broad and could potentially govern the operation of autonomous cars, including self-driving ones, upon their introduction.[[104]](#footnote-104) The provisions of the statute extend to

*any* mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels…[[105]](#footnote-105)

In such circumstances, it is plausible that the current legal framework on the determination of civil liability in disputes arising from the use of motor vehicles may be extended to self-driving cars; thus, rendering India’s position akin to legal systems such as France that have similarly not devised special principles in this regard.

**3.2. The Initiation of Civil Claims and the Jurisdiction of Indian Courts**

The circumstances in which Indian courts may adjudicate claims in civil matters such as those involving injuries caused by motor vehicles – including those with a foreign element - generally resonate with the practice in some major jurisdictions such as France, Germany and China, to name a few.[[106]](#footnote-106) Accordingly, the provisions of the Code of Civil Procedure, 1908 [CPC] empower the courts in India to adjudicate disputes in civil matters if the defendant was ‘actually and voluntarily’ residing, personally working for gain or was carrying on business within the local limits of its jurisdiction at the time of the initiation of the proceedings.[[107]](#footnote-107) At other times, the court may base its jurisdiction on the fact that the cause of action occurred within its territorial limits. Disputes arising from the use of motor vehicles such as self-driving cars may, therefore, be initiated within the local limits of the court within whose jurisdiction the harmful act occurred.[[108]](#footnote-108) The occurrence of the harmful act or a part of it would, thus, suffice in conferring the court with jurisdiction in such matters.[[109]](#footnote-109) Judicial dicta indicate that the separation in time between one person’s behaviour and the consequent injury is irrelevant in establishing the court’s jurisdiction[[110]](#footnote-110) - as long as a part of the harmful act occurred within its territorial limits.[[111]](#footnote-111) By this principle, disputes concerning injuries allegedly attributable to the defect in the self-driving car may be initiated within the jurisdiction of the court where the vehicle was produced, or the technical system was designed.

**3.3. The Determination of Civil Liability and the Overarching Application of the *Lex Fori***

In contrast to other legal systems discussed above, the principles of Indian conflict of law on the applicable law in matters of tort are underdeveloped. The Republic lacks coherent rules on the subject. As a general rule, all civil disputes arising in such claims are governed by the *lex fori* or the law of the forum. Unlike some other legal systems such as Germany, France, the UK or China,[[112]](#footnote-112) parties to such disputes would not be authorized to choose the governing law.[[113]](#footnote-113) Therefore, the principles of domestic law would govern all claims arising from the use of motor vehicles - irrespective of whether they are domestic or transnational.

Although there is no decision of the Supreme Court on the subject, judicial dicta indicate the application of the principle of double actionability to identify the governing law in all disputes in matters of tort that contain a foreign element.[[114]](#footnote-114) However, the principle is limited to ‘claims occurring overseas’.[[115]](#footnote-115) Disputes involving the determination of liabilities for any injury to one’s person or property arising from the operation of domestically manufactured autonomous cars could, thus, necessitate the application of the double actionability rule if the damage occurred overseas. Claims of such a nature would be actionable in India if and only if the injured party can prove that the act of the tortfeasor was actionable as a) a ‘wrong’ – ‘though not necessarily a tort’ – under the law of the place where the alleged tort occurred (*locus delictii*) and b) a tort under the principles of Indian law on the subject.[[116]](#footnote-116) Therefore, the aggrieved party must demonstrate the *concurrent* liability of the tortfeasor under the legal principles of two jurisdictions – India and the foreign country where the accident occurred – upon which the *lex fori* or, in other words, the principles of national law would govern the dispute.[[117]](#footnote-117) Unlike the principles of English common law that form the genesis of the double actionability doctrine,[[118]](#footnote-118) Indian law does not require the concurrent application of two laws once the claimant has fulfilled the requirement of demonstrating the validity of the claims under the two legal systems – the *lex fori* and the *lex loci delictii*.[[119]](#footnote-119)

The court may, however, in certain circumstances, decide to test the validity of the claim under the law of one – as opposed to two legal systems. This will be the position when

the connection between the case and the country whose law is to be denied application [is] weak that the law has no interest in being applied to the particular dispute, and no other law should be applied instead.[[120]](#footnote-120)

There is a dearth of judicial dicta to indicate the circumstances in which the court may exercise such discretion and disregard the concurrent application of two laws. An examination of a 2011 dictum of the Punjab and Haryana High Court in *Sona Devi v Anil Kumar,*[[121]](#footnote-121) which is one of the two decisions involving the application of the (controversial) double actionability rule,[[122]](#footnote-122) indicates that the courts are more likely to disregard the application of the *lex loci delicti* in circumstances where they are satisfied that the claim is more closely connected to the *lex fori* – i.e. India.[[123]](#footnote-123) The court in the present case was seized of a dispute arising from a road accident in Nepal caused by the use of a (non-autonomous) vehicle registered in India that resulted in the death of certain pilgrims of Indian nationality.[[124]](#footnote-124) Referring to the principles of English[[125]](#footnote-125) and American[[126]](#footnote-126) law, the court decided to displace the application of the Nepalese law – which was the place where the tort occurred and, instead, test the actionability of the claim under Indian law on the ground that it bore a significantly closer connection with the parties and the incident.[[127]](#footnote-127) In such scenarios, the principles of Indian law of tort would (once again) exclusively be applicable to ascertain the validity of the injured party’s claim and, consequently, determine the tortfeasor’s liability. There is no indication on whether the courts would similarly be willing to exclusively invoke the *lex loci delictii* to determine the rights and liabilities of the parties if the claim has a significantly closer connection to the place where the tort was committed – rendering the application of the ‘flexible exception rule’ as it is called, fortuitous.

At other times, the principles of domestic law would similarly govern claims arising from the damage caused to any person or its property in India – regardless of whether the dispute contains a foreign element – insofar as it has not occurred overseas. Claims concerning the determination of liability of producers of imported self-driving cars would, thus, be subject to the rules of domestic law if the injury occurred within India. However, in such disputes, the injured party would not be required to demonstrate the concurrent actionability of the claim under the *lex fori* and the *lex loci delictii*. Instead, it would suffice if the claimant can prove the tortfeasor’s liability under the domestic principles of the law of tort as applicable in India.

**3.4. Who may be Liable and under what Circumstance?**

**3.4.1. An Overview of the Regulatory Landscape**

The provisions of the MVA are confined to the determination of rights and obligations of persons for injuries or damage in road accidents caused by the use of motor vehicles. Therefore, the statute does not govern disputes arising from the harm that a motor vehicle may inflict in any other manner – such as by infringing any person’s privacy if the data stored in relation to the operation of any car has been misused, lost or stolen. The determination of civil liability in such matters may, thus, be regulated under the general principles of the Information Technology Act, 2000[[128]](#footnote-128) [ITA] and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information Rules) 2011 [SPDI Rules].

**3.4.2. Ascertaining the Liability for Injuries caused in Road Accidents**

In general, the mechanism to ascertain the consequences for damage occurring through accidents caused by the use of motor vehicles is exceedingly complex and unnecessarily confusing. As such, the principles of Indian law imbibe a two-pronged approach in this respect - involving the concurrent application of the provision of the MVA[[129]](#footnote-129) and the principles of English common law on the subject[[130]](#footnote-130) - depending on the severity of the injury. On the one hand, the provisions of the MVA that govern the determination of liabilities for serious or grave injuries resulting from the use of motor vehicles impose liability on owners of such vehicles.[[131]](#footnote-131) On the other hand, the general principles of the law of tort that regulate the mechanism to determine the liability for any other harm in the form of bodily injuries or damage to property[[132]](#footnote-132) *seem to* additionally hold drivers of such vehicles responsible.[[133]](#footnote-133) However, as a general rule, the liability for any harm extends to all consequences that are ‘reasonably proximate to the use’ of any motor vehicle.[[134]](#footnote-134) Therefore, owners and/or drivers would be liable for all harm caused by the motor vehicle while being loaded or unloaded.[[135]](#footnote-135) Similarly, owners and/or drivers would be liable for all damage caused by a fire or an explosion of a motor vehicle when it was lying stationary on the road after being involved in an accident is irrelevant in establishing the liability of such persons.[[136]](#footnote-136)

**3.4.2.1. Fatal or Grave Injuries and the Unconditional Liability of the Owner**

*a. When is an Injury Fatal or Grave?*

As a general rule, injuries resulting from the use of a motor vehicle are considered ‘grave’ if they result in death or when they permanently disable any person.[[137]](#footnote-137) A motor vehicle such as an autonomous car - including one that is self-driving – would be considered to have permanently disabled any person if its use has resulted in the ‘permanent privation’ of the victim’s sight or hearing; permanently destroys any member or joint; permanently disfigures the head or the face.[[138]](#footnote-138)

*b. The Extent of the Owner’s Liability*

Owners of self-driving cars would be liable for all injuries of the nature indicated above. It is irrelevant whether the harm has been caused to the owner, the driver, or another person.[[139]](#footnote-139) Drivers are not liable for any accident occurring from the use of any motor vehicle. The owner’s liability for such injuries is absolute and is based on the principle of no-fault liability as prescribed under Section 140 of the MVA.[[140]](#footnote-140) Being unconditional by nature, owners are prohibited from extinguishing or diminishing their liability for such injuries on any ground whatsoever – including in circumstances where the accident was attributable to an act of God. The fault, neglect or default on the part of the injured or the deceased is similarly irrelevant in determining the extent of the owner’s liability[[141]](#footnote-141) – who continues to be responsible at all times unless they can demonstrate that the vehicle was stolen by any person – who is not an employee - at the time of the accident.[[142]](#footnote-142) Thus, owners of two or more vehicles may jointly and severally if the injury is attributable to the use of two or more vehicles.[[143]](#footnote-143) At other times, companies or corporations that have rented or leased such cars may be jointly and severally liable for such damage to the person to whom the car has been rented or leased.[[144]](#footnote-144)

*c. Grievous Hurt: A Form of Grave Injuries?*

A close examination of Section 164, which was added by an amendment to the MVA in 2019, further indicates that injuries that grievously hurt[[145]](#footnote-145) any person would similarly be considered ‘grave’.[[146]](#footnote-146) Although the provisions of the MVA do not provide any clarification to this effect, it is likely that the no-fault liability rule could additionally govern such injuries.[[147]](#footnote-147) However, it is interesting to note that the criteria to ascertain the circumstances in which a person would be considered to have been grievously hurt by a motor vehicle are identical to those employed to determine the occurrence of permanent disablement. Nonetheless, the expressions’ permanent disablement’ and ‘grievous hurt’ are not used interchangeably since they are each governed by distinct compensation regimes.[[148]](#footnote-148)

*d. The Determination of Compensation: A form of Remedy or a Source of Major Hurdle?*

The MVA entitles victims of such injuries to damages in the form of compensation. The owner’s liability to compensate the victim is ultimately borne by the latter’s insurer, who will, as a general rule, be obligated to indemnify the former for the loss incurred through the payment of damages.[[149]](#footnote-149) However, insurers are permitted to avoid their liability towards owners if the motor vehicle caused any damage to the latter’s employee(s).[[150]](#footnote-150) As a general rule, Indian law does not obligate insurers to cover the liability for any injury sustained by employees of the owner who are engaged as drivers or conductors who are responsible for examining the tickets of a vehicle that was being used for public purposes at the time of the incident.[[151]](#footnote-151) The liability for the injuries would exclusively rest on the owner in such circumstances.

Legal representatives of the deceased in case of death or victims who have been permanently disabled are entitled to an interim and, subsequently, final compensation as calculated under Sections 140 and 163A of the MVA.[[152]](#footnote-152) As such, the mechanism to ascertain the compensation payable by the owner for such injuries has a history of being misinterpreted by courts,[[153]](#footnote-153) given the lack of any clear indicia concerning the precise circumstances in which the legal representatives or the injured party, as the case may be, may avail compensation under each of the provisions mentioned above.[[154]](#footnote-154) It has not been uncommon for the courts to be misguided regarding the determination of damages in such matters.[[155]](#footnote-155) A combined analysis of Sections 141 and 163B that were added by an amendment to the MVA in 1994 indicates that the compensation regimes under Section 140 and 163A preclude the deceased or the injured party from claiming damages under both the provisions simultaneously.[[156]](#footnote-156) Nonetheless, although the provisions of the MVA continue to remain silent on this aspect, the decision of the Supreme Court in *Oriental Insurance Co Ltd v Hansrajbhai v Kodala[[157]](#footnote-157)* and *Girishbhai Soni v United India Insurance Co. Ltd, Baroda*[[158]](#footnote-158) clarifies the remedies available under Sections 140 and 163A are, in fact, intended to govern the mechanism to determine the interim and, subsequently, the final compensation that may be available to the survivors of the deceased or to persons who have been permanently disabled.

Therefore, the remedies are two-pronged and are designed to provide expeditious relief to the permanently disabled or the survivors of the deceased by minimizing recourse to the courts. Persons who are permanently disabled are, therefore, promptly eligible for an interim compensation of INR 25,000 under Section 140[[159]](#footnote-159) as soon as the Claims Tribunal[[160]](#footnote-160) has ascertained that a) the motor vehicle was used; b) it was involved in an accident, and c) that it caused the death or permanently disabled the victim.[[161]](#footnote-161) Survivors of the deceased are similarly entitled to an interim compensation of INR 50,000.[[162]](#footnote-162) At this stage, insurers are prohibited from avoiding their liability to indemnify the owner on any ground.[[163]](#footnote-163) Thus, it is irrelevant whether the insurer is able to subsequently demonstrate that it was not liable because the motor vehicle was being used in contravention to the terms of the policy[[164]](#footnote-164) or that it resulted in an injury to an employee of the owner who was engaged as a driver or a conductor.[[165]](#footnote-165) In such circumstances, the owner may be liable to reimburse the insurer for the loss that the latter was compelled to incur through the payment of the interim compensation.[[166]](#footnote-166)

Victims who have been permanently disabled or the survivors of the deceased are subsequently entitled to a final compensation of INR 5,75,000 million,[[167]](#footnote-167) which is payable by the owner and, consequently, the insurer[[168]](#footnote-168) after deducting the amount that was initially awarded on an interim basis.[[169]](#footnote-169) However, the amount is subject to increase by five per cent each year, according to the Central Government’s notification in 2018.[[170]](#footnote-170) Persons who have been permanently disabled are, thus, entitled to additional compensation depending on the percentage of disabilities they have suffered. Consequently, the final compensation amount is calculated by multiplying the percentage of disabilities that the victim has suffered with the minimum amount.[[171]](#footnote-171) By this principle, victims suffering 25 per cent disabilities – for instance, in the form of broken limbs by being thrown before a truck during a quarrel – will be entitled to a compensation of INR 30 million (INR 5,75,000 million \* 25).

Persons who have been grievously hurt are not similarly entitled to an interim and final compensation. Instead, they provided a one-time compensation of INR 25000 million under Section 164. The MVA fails to offer any guidance as to the circumstances in which the Claims Tribunal may regard a permanent disablement as a grievous hurt and vice versa while determining the damages that would be awarded to the victim – considering that the criterion to ascertain the existence of each of these forms of damage is more or less identical. Persons who have been grievously hurt by self-driving cars are, thus, susceptible to being awarded compensation that is substantially less that than which is made available to victims who have been permanently disabled. On the other hand, victims who have suffered such injuries in hit and run cases where the identity of the vehicle is unknown are entitled to damages of INR 50,000[[172]](#footnote-172) that will be borne by the General Insurance Industry under a ‘Solatium Fund’ maintained for this purpose.[[173]](#footnote-173)

*e. The Extent of the Manufacturer’s Liability*

Unlike the principles of criminal law that impose a primary liability on producers for selling or delivering a motor vehicle when it is not constructed or maintained to be in the ‘effective control of the use’,[[174]](#footnote-174) a manufacturer’s liability for such injuries under civil law is secondary. Manufacturers could, thus, be liable to indemnify the owner or the insurer, as the case may be, for product liability under the provisions of the Consumer Protection (Amendment) Act 2019 [CPAA].[[175]](#footnote-175) Producers will, thus, be liable for any harm[[176]](#footnote-176) that any person may have sustained due to any manufacturing defect[[177]](#footnote-177) in the self-driving car or its design,[[178]](#footnote-178) but not for the damage that was caused to the vehicle itself.[[179]](#footnote-179) The vehicle will be considered defective if any raw material or component, such as the software,[[180]](#footnote-180) contains any fault or shortcoming in its quality or when it otherwise fails to meet the standards that it is required to maintain under any Indian law.[[181]](#footnote-181) Whether the liability is restricted to defects that existed when the product was put into circulation remains unknown.[[182]](#footnote-182) Therefore, it is likely that manufacturers could potentially be held liable for all defects in the vehicle or its design throughout the product’s life. Any person, including the seller, who was responsible for the making, assembling, designing, labelling, packaging, marketing, repairing or remanufacturing of the product before its sale would be considered the manufacturer of the vehicle[[183]](#footnote-183) and could, consequently, be held liable for such harm. It is unclear whether the liability of the various persons who may be regarded as ‘manufacturers’ is joined and several in the absence of an express indication to this effect.[[184]](#footnote-184) At other times, manufacturers may similarly be liable for any harm caused to any person through the improper or incorrect usage of the vehicle due to a failure on their part to provide adequate instructions concerning its use or operation.[[185]](#footnote-185) When the producer cannot be identified or served with the summons, each seller of such vehicle could be treated as a manufacturer and be liable for indemnifying the owner for such product liability.[[186]](#footnote-186)

**3.4.2.2. Other Bodily Injuries or Damage to Property and the Conditional Liability of the ‘Non-Natural User’**

*a. The Extent of the ‘Keeper’s’ Liability*

The application of Sections 140 and 163A is limited to accidents resulting in the death or permanent disablement (and, perhaps, those that grievously hurt)[[187]](#footnote-187) any person. Thus, the mechanism stipulated therein would not be applicable while determining the civil liability for damages of any other nature. In such circumstances, the liability for all other forms of bodily injuries that do not result in death or permanent disablement from the use of motor vehicles is determined according to the general principles of the law of tort in India.[[188]](#footnote-188) The principles are equally applicable to determine the civil liability for damage caused to the property of any person from the use of the motor vehicle.[[189]](#footnote-189) Predicated on English common law, the mechanism to determine the (extent of) liability in accidents causing such (relatively) minor injuries or damage is uncodified. However, the decision of the Supreme Court in *Kaushnuma Begum and Ors v The New India Assurance Co. Ltd*[[190]](#footnote-190)confirms the extension of the principle of strict liability as propounded by the English courts in *Rylands v Fletcher,*[[191]](#footnote-191) whose application is confined to injuries occurring from the ‘non-natural use of land’, to motor vehicles on the ground that their use is construed to be of a similar nature in India. Accordingly, *any person* who brings on their land keeps or collects such a motor vehicle would’ *prima facie* [be] answerable for all the damage, which is the natural consequence’ of its ‘escape’.[[192]](#footnote-192) The decision does not pinpoint the person on whom the liability for accidents would fall. However, the court’s remarks indicate that any person in possession of the motor vehicle, such as the driver, could be liable to compensate the victims with damages ‘which appears to it to be just’ for such accidents arising from its use.[[193]](#footnote-193) There is no clarity on whether owners would be jointly and severally liable with such other custodians in circumstances where the motor vehicle was in the latter’s possession at the time of the accident. The liability of the ‘custodian’, which is ultimately borne by the insurer,[[194]](#footnote-194) will similarly be strict and independent of the fault or negligence on its part.

*b. Permitted Exclusions: An Overambitious Form of Contributory Negligence?*

Unlike in the case of fatal or grave injuries, the liability for other forms of damage is not unconditional. Therefore, owners or custodians of self-driving cars would be able to exonerate themselves from liability for such damage by relying on any of the general defenses (to the principle of strict liability) as applicable under common law.[[195]](#footnote-195) When extended to self-driving cars, the principle has the ability to create peculiar problems by leaving the aggrieved parties remediless in a vast number of situations by precluding such persons from claiming compensation from owners (or custodians) in the damage is a result of any of the following reasons:

i. an act of God or *vis major.*[[196]](#footnote-196)As a general rule, owners or drivers would not be liable for any bodily injury that is not fatal or grave or any damage to property that was caused by any motor vehicle due to a storm, tempest or any other unforeseeable event that could not be prevented any amount of human care and skill.[[197]](#footnote-197) Victims of road accidents caused by self-driving cars could, therefore, potentially be left remediless in circumstances where the harm caused by the vehicle was solely the result of negligence on the part of the owner to conduct the necessary maneuverers to prevent or mitigate the damage.

ii. an inevitable accident or wrongful act of any third party.[[198]](#footnote-198) Victims are disentitled from claiming compensation from keepers of motor vehicles for any injury or damage that was chiefly attributable to a wrongful act of a third party. However, the custodian’s negligence in being able to foresee and prevent the consequences of the third party’s act would not exonerate it from its liability.[[199]](#footnote-199) Therefore, owners cannot be held liable (in any manner) for any harm that the victim may have sustained due to a defect in the self-driving car[[200]](#footnote-200) or any error whose occurrence was a result of the manufacturer’s failure to provide adequate instructions concerning the operation of the vehicle[[201]](#footnote-201) considering that such injuries are caused by the wrongful act of a third party. Such harm, being attributable to producers of such vehicles, would, in turn, be regulated under the principles of product liability under the CPAA, thus, obligating victims to initiate proceedings against such wrongdoers directly.[[202]](#footnote-202)

iii. the aggrieved party’s own default or breach of obligations imposed by law.[[203]](#footnote-203) As a general rule, aggrieved parties are disentitled from claiming compensation for any bodily injury or damage to their property if it resulted from their own fault - save in circumstances where the accident was caused by the owner or driver’s failure to fulfil a duty on its part simultaneously.[[204]](#footnote-204) Therefore, owners of self-driving cars could be exempted from their liability under Indian law in situations such as those where the victim has sustained bodily injuries by walking across a freeway when prohibited. It would be irrelevant if the incident resulted from ADS’ failure to automatically bring the vehicle to a minimal risk state to ensure the safety of the pedestrian.

iv. the use of the motor vehicle was for the common benefit of the owner or the driver and the aggrieved party.[[205]](#footnote-205) The use of any motor vehicle as public transport, rent or hire is construed to be for the common benefit of the parties insofar as it confers an economic advantage on the ‘keeper’ and correspondingly enables the user to remain mobile. Owners and drivers are generally exempt from their liability towards third parties for accidents caused by motor vehicles used for such purposes unless the damage was due to the negligence of the person in possession of the vehicle at the time of the incident. The extension of the principle in the determination of liability for accidents caused by self-driving cars would exempt the owners of such vehicles in practically every circumstance where the vehicle is being used for commercial purposes insofar as it will be construed to be for the ‘common benefit of the parties’.

v. the injured party had consented to the damage.[[206]](#footnote-206) The principle of *volenti non-fit injuria* generally disentitles victims of tortious acts from claiming compensation for any injuries that they may have sustained after they have consented to its occurrence.[[207]](#footnote-207) Therefore, owners of motor vehicles such as self-driving cars could be exempted from their liability towards drivers for any injury that is not fatal at racing events such as the Grand Prix insofar as the latter would be construed to have consented to the same.

vi. the motor vehicle was being operated under a statutory duty.[[208]](#footnote-208) Any use of a self-driving car in the discharge of public duty, such as in the form of public transport or an ambulance, is sufficient to discharge owners or their liability towards any person for any harm – provided that it was not being driven negligently at the time of the accident.[[209]](#footnote-209)

**3.4.3. Liability for Other Injuries that are not Sustained through Road Accidents**

Being designed to traditionally regulate conventional motor vehicles, the provisions of the MVA, as indicated above, do not prescribe the mechanism to determine the liability for injuries that are not a result of a road accident but are, nonetheless, attributable to the use of a motor vehicle. The infringement of any person’s privacy is an example of such damage. The operation of self-driving cars involves the collection of significant amounts of personal data from passengers or even other road traffic participants such as pedestrians, thus, imposing considerable threats to the privacy of such persons. Therefore, data protection forms a pivotal part of the successful induction of autonomous cars. Research demonstrates Indians to be among the most skeptical about the concept of autonomous cars capturing and sharing personal information such as biometric data with external participants such as manufacturers, dealers, owners, insurance companies and other third parties.[[210]](#footnote-210) In comparison, other jurisdictions such as Germany, the US, the Republic of Korea, Japan and China have expressed greater confidence in this regard.[[211]](#footnote-211) Much of the skepticism may be attributable to the issues relating to the underdeveloped enforcement mechanisms concerning the protection of data in India.

India lacks a coherent mechanism to regulate concerns and claims on such matters. The Personal Data Protection Bill 2019 [PDP Bill],[[212]](#footnote-212) which is predicated on the European Commission’s General Data Protection Regulation [GDPR], has not yet come into force. The Bill envisages stipulating coherent rules for the protection of privacy of individuals and the remedies that may be available to such persons when the data has been processed in an unauthorized or harmful manner. In the meantime, disputes concerning an infringement of any person’s privacy due to the misappropriation of data are governed by the general principles of the ITA[[213]](#footnote-213) insofar as they constitute a means of electronic communication and data interchange.[[214]](#footnote-214)

Under the principles of civil law, the general duty to protect any sensitive personal data such as passwords, financial information, health condition, medical records, sexual orientation or biometric data[[215]](#footnote-215) rests with the ‘body corporate’ who owns, controls or operates the computer system in which such information is stored.[[216]](#footnote-216) Consequently, body corporates are obligated to maintain and implement ‘reasonable security practices and procedures’ as agreed between the parties or any law in India to protect the unauthorized access, damage, use, modification, disclosure or impairment of the data.[[217]](#footnote-217) However, the responsibility is limited to body corporates, who, in their position as companies, firms, sole proprietorships or any other association of individuals engaged in commercial or professional activities,[[218]](#footnote-218) have access to the sensitive personal data. Therefore, natural persons are under no obligation to protect any such data that may be stored in a computer system that they may own or operate. Owners of autonomous cars could be held liable under civil law for data transgressions if the operation of such vehicles is commercialized and managed by a body corporate.

Although such entities (owners) would be mandated to appoint a Grievance Officer to address discrepancies and violations of the obligations[[219]](#footnote-219) and redress the grievance within one month of the date of receipt of the complaint from the aggrieved party,[[220]](#footnote-220) there is no penalty for any failure on its part in this respect. Nonetheless, owners of commercial vehicles would have to compensate the aggrieved party with damages for such data breaches.[[221]](#footnote-221) The amount of compensation would be based on the wrongful advantage that it may have earned as a result of the default, the amount of loss the aggrieved party may have suffered and the repetitive nature of the default for the wrongful loss that they have incurred as a result of the data breach.[[222]](#footnote-222)

Individuals such as private owners and intermediaries such as dealers may solely be liable under the principles of criminal law for any unauthorized disclosure of personal (but not necessarily sensitive) information of any person, provided that such persons acquired the data in their positions as service providers.[[223]](#footnote-223) Such individuals and/or intermediaries may, in such circumstances, be punished with imprisonment of up to three years and/or a fine that may extend up to INR 0.5 million.[[224]](#footnote-224)

The coming into force of the PDP would, on the other hand, render all owners[[225]](#footnote-225) and manufacturers of self-driving cars liable under civil law in their capacity as data fiduciaries insofar as such entities are responsible for determining the purpose and means of processing the personal data[[226]](#footnote-226) of the users.[[227]](#footnote-227) Manufacturers of such vehicles would, in their capacity as significant data fiduciaries,[[228]](#footnote-228) be liable for any data breach[[229]](#footnote-229) from its failure to conduct a ‘data protection impact assessment’ to assess a) the potential physical, economic or mental harm[[230]](#footnote-230) that the users were likely to suffer when their personal information is processed in the technical system, and b) the measures that may be taken for managing, minimizing, mitigating and removing the risk of such damage.[[231]](#footnote-231) In such circumstances, manufacturers will be liable to pay a minimum INR 50 million penalty.[[232]](#footnote-232) Owners of the vehicle would be liable for all other data breaches, such as those that occur due to their failure to: a) process the personal information transparently[[233]](#footnote-233) or b) delete the same once the purpose for which it was obtained has been fulfilled.[[234]](#footnote-234) In such circumstances, owners would be liable to pay a minimum INR 150 million penalty for such infringements.[[235]](#footnote-235)

**4. Concluding Remarks**

Recent developments across the globe have by no means prompted India to reconsider its decision to ban self-driving cars. Further, in the absence of membership to the Vienna Convention, the Republic is under no obligation to recognize autonomous vehicles such as self-driving cars from other jurisdictions. However, even as a founding signatory to the Geneva Convention, unlike some of its neighbors and BRICS[[236]](#footnote-236) partners such as China, India has not been prompted to initiate the reformulation of its regulatory regime to accommodate technological advancements in the field of motor vehicles.

Like every other jurisdiction, any eventual decision to authorize the operation of autonomous vehicles and, in particular, those that are self-driving would have to be backed by a thorough assessment of the extent to which the current regulatory framework is conducive to disputes that may arise from their use. In this context, studies have relentlessly depicted the Republic’s lack of readiness and poor consumer acceptance towards the introduction of autonomous cars in general, regardless of whether they are driverless or not, without demonstrating the reasons that may have contributed to this dismal performance. Nonetheless, it is not inconceivable that much of the consumer anxieties would have to do with the underdeveloped state of regulations concerning the ascertainment of the rights and liabilities of parties affected by self-driving cars.

The discussion above demonstrates that the regime on which the determination of liabilities is based suffers from several defects and can severely debilitate justice when applied to conventional cars – let alone those that are autonomous. Despite being amended several times since its promulgation, the provisions of the MVA fail to address the existing inconsistencies, thus, exposing litigants to a structural disadvantage when involved in a road accident caused by a motor vehicle. Of the many discrepancies, the fact that the legislative framework is far from holistic seems to lie at the core of consumer anxieties about the potential harm that autonomous vehicles such as self-driving cars may cause upon their introduction on public roads in India. The provisions of the MVA merely devise the rules for the determination of liability in accidents of a fatal or grave nature but fail to clarify the repercussions for other types of harm correspondingly. Therefore, interested parties would be constantly compelled to peruse a jungle of case law to ascertain their rights and liabilities for injuries that are not subject to the no-fault liability rule.

As such, the Supreme Court has, in the exercise of its constitutional power under Article 141,[[237]](#footnote-237) prescribed the application of the strict liability rule to govern such disputes.[[238]](#footnote-238) The principle has been based on the assumption that motor vehicles should be construed as a non-natural use of land and should be dealt with accordingly.[[239]](#footnote-239) Since then, there has been no statutory clarification or reported dictum to justify or reconsider a) how and why the use of any motor vehicle should be perceived as a non-natural use of land in modern times; and b) how the principle is intended to operate when it comes to the determination of liability in disputes specifically relating to road accidents caused by motor vehicles.

Owners, in their capacity as users, cannot be expected to be willing to pay for advanced technologies such as self-driving cars regardless of whether it has the potential to confer increased safety unless they are well aware of the precise circumstances in which they would or would not be liable for any misfortune – grave or minor – especially if they are expected to bear the primary liability. When seen from the perspective of a third party such as a consumer or pedestrian, imposing a primary liability on owners for all harm has its advantage of offering speedy relief to victims. Third parties would otherwise be exposed to unnecessary financial difficulties on being compelled to (themselves) sue producers due to lengthy investigations that may be necessary for proving the existence of defects in vehicles such as self-driving cars that imbibe sophisticated technology. At the same time, the fact that owners may be compelled to bear the primary liability does not, in any manner, reduce or eliminate the need for fairly apportioning the risks inherent in the use of modern technological innovations such as these. Owners ought to be clearly apprised of the extent of the manufacturer’s liability and the law according to which such claims may be adjudicated. There is some indication in Indian law regarding the likelihood of the applicability of the domestic principles of product liability under the *lex fori* rule to ascertain the rights and obligations of producers of such vehicles. Although the provisions of the CPAA indicate the circumstances in which producers of such cars may be held responsible for any harm caused to any person as a result of the defects in the car, they fail to prescribe the extent of the liability concurrently. Considering that technological advancements such as self-driving cars rely heavily on software to operate, owners should be well informed of the ramifications of any harm caused to any person by a malfunction in the technical system in the car from a faulty update that was added subsequently and, therefore, did not exist when the vehicle(s) were put into circulation in the market. The provisions of the CPAA are lacking in aspects such as these, thus, contributing to the uncertainties in Indian law.

Likewise, users, in their capacity as consumers, cannot be expected to consent to the testing of such self-driving cars on public roads in their vicinity unless the law clearly apprises them of their rights and remedies for any harm that they may be exposed to, through the operation of such vehicles. The MVA, while postulating the mechanism on which the owner’s liability will be ascertained, fail to correspondingly stipulate the remedies that third parties such as users may be entitled to in case of fatal or grave injuries transparently and predictably. At other times, the strict liability rule that determines the liability for other forms of damage renders the current principles of Indian law most unsuitable for regulating self-driving cars, given the wide range of defences under which owners mat exonerate themselves from liability; thus, exposing victims to unexpected financial difficulties and mental distress.[[240]](#footnote-240)

The current state of the regulatory framework, thus, seems to have played a pivotal role in persuading consumers against the deployment of autonomous vehicles such as driverless cars. Unlike France, which subjects self-driving cars to the general rules on the determination of liability under civil law applicable to other motor vehicles, the principles of Indian law are not equipped to regulate the operation of such vehicles. Therefore, the formulation of special rules to regulate vehicles such as these is indispensable, having regard to the challenges that adjudicators are prone to confront upon their introduction. In doing so, lawmakers in India should consider imbibing the principles of German law on the subject for its ability to succinctly demarcate the rights and obligations of owners and producers of such vehicles.[[241]](#footnote-241) In doing so, it is suggested that Indian law should continue to impose the primary liability on owners – albeit after clearly stipulating their obligations in the manner indicated above. Thus, manufacturers' liability should remain secondary to alleviate the plausible injustice that third parties such as users, pedestrians, or drivers of conventional vehicles may face on being compelled to conduct lengthy investigations while establishing a causal link between the defect and the harm. The law according to which such claims against manufacturers would be adjudicated should, therefore, be clearly stipulated and should preferably be determined according to a special, as opposed to a general rule that applies to all kinds of torts. Therefore, the lawmakers should abandon the ‘chauvinist and parochial’[[242]](#footnote-242) double actionability and the corresponding *lex fori* rule that unnecessarily necessitates the application of Indian law to every cross-border claim in a tortious matter. Claims against foreign manufacturers should, instead, be adjudicated according to conflict of law rules that are akin to those that are applicable in the EU jurisdictions such as Germany and France for their ability to contribute to enhanced certainty and predictability in the regulatory framework on the subject while providing the most balanced solution in protecting the interests of all users and producers of such vehicles.

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   See in this respect, the international standards prescribed by the Society of Automotive Engineers [SAE], Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles, J3016\_202104, 20 April 2021, available at sae.org/standards/content/j3016\_202104/. The standards identity the different levels of automation. They clarify that vehicles operating below Level 3 would not be considered as ‘autonomous’. Instead, such vehicles should be construed as ‘Driving Support Systems’ that aid the driver. [↑](#footnote-ref-1)
2. Ibid, which clarifies that autonomous cars functioning at Levels 4 and 5 are construed as ‘self-driving’. [↑](#footnote-ref-2)
3. See, Glancy, Dorothy, “Privacy in Autonomous Vehicles”, 52 *Santa Clara Law Review* (2012) 1171, 1174. [↑](#footnote-ref-3)
4. See, Bellan, Rebecca, “Waymo Launches Robotaxi Service in San Francisco” 24 August 2021 *Techcrunch*, available at <https://techcrunch.com/2021/08/24/waymo-launches-robotaxi-service-in-san-francisco/> (accessed 12 April 2022); Bellan, Rebecca, “Waymo to Begin Charging for Robotaxi Rides in San Francisco” 1 March 2022, *Techcrunch*, available at: <https://techcrunch.com/2022/02/28/waymo-to-begin-charging-for-robotaxi-rides-in-san-francisco/> (accessed 12 April 2022); and Cusack, Jenny, “Self-Driving Vehicles are Steadily Becoming a Reality Despite the Many Hurdles Still to be Overcome – and they could Change our World in Some Unexpected Ways”, 30 November 2021, available at <https://www.bbc.com/future/article/20211126-how-driverless-cars-will-change-our-world> (accessed 12 April 2022) [↑](#footnote-ref-4)
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   See, Hongpei, Zhang, “China’s Autonomous Driving Enters Fast Lane, Boosted by NEV Growth and Favourable Policies”, Global Times, dated 18 January 2022, available at: <https://www.globaltimes.cn/page/202201/1246248.shtml> (accessed 12 April 2022). [↑](#footnote-ref-7)
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9. See, Griggs, Lynden, “A Radical Solution for Solving the Liability Conundrum of autonomous Vehicles”, 25 *Competition and Consumer Law Journal* (2017), 151, 152-153. [↑](#footnote-ref-9)
10. See, Germany’s Draft of an Act Amending the Road Traffic Act and the Compulsory Insurance Act – the Autonomous Driving Act, Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 Laying Down a Procedure for the Provision of Information in the Field of Technical Regulations and of Rules on Information Society Services (OJ L 241, 17.9.2015, p. 1) (8 February 2021), at 18. [↑](#footnote-ref-10)
11. Korosec, Kirsten, “Tesla Sued in Wrongful Death Lawsuit that Alleges Autopilot caused Crash”, *Techcrunch*, available at: <https://techcrunch.com/2019/05/01/tesla-sued-in-wrongful-death-lawsuit-that-alleges-autopilot-caused-crash/> (accessed 15 March 2022); and Templeton, Brad, “Tesla Autopilot Repeats Fatal Crash; Do They Learn From Past Mistakes?” Forbes, dated 21 May 2019, available at:<https://www.forbes.com/sites/bradtempleton/2019/05/21/tesla-autopilot-repeats-fatal-crash-do-they-learn-from-past-mistakes/#66323e642f2e> (accessed 15 March 2022). [↑](#footnote-ref-11)
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19. See, Part 1 of the Automated and Electrical Vehicles Act 2018 [AEVA]. [↑](#footnote-ref-19)
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22. Ibid. The report indicates that indicates that 65 per cent of the population in China considers such vehicles as safe in 2020 when compared to 75, 74 and 38 per cent in the preceding three years respectively. [↑](#footnote-ref-22)
23. Ibid, which indicates that 54 per cent of the population in South Korea have considered such vehicles as safe in 2020 when compared to 51, 46 and 19 per cent in the preceding three years, respectively. [↑](#footnote-ref-23)
24. Ibid, which indicates that 53 per cent of the population in Japan have considered such vehicles as safe in 2020 when compared to 50, 43 and 21 per cent in the preceding three years, respectively. [↑](#footnote-ref-24)
25. Ibid, which indicates that 55 per cent of the population in Germany have considered such vehicles as safe in 2020 when compared to 53, 55 and 28 per cent in the preceding three years, respectively [↑](#footnote-ref-25)
26. Ibid, which indicates that 52 per cent of the population in the US have considered such vehicles as safe in 2020 when compared to 50, 53 and 26 per cent in the preceding three years respectively. [↑](#footnote-ref-26)
27. See, Speech by Union Minister Gadkari, Nitin, “Driverless Cars must not be allowed in India”, *Economic Times*, dated 25 July 2017, available at: <https://economictimes.indiatimes.com/industry/driverless-cars-wont-be-allowed-in-india-nitin-gadkari/articleshow/59744519.cms> (accessed on 13 March 2022). [↑](#footnote-ref-27)
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29. Deloitte (n 21) 9. [↑](#footnote-ref-29)
30. Ibid, which indicates that 70 per cent of the consumers have expressed reluctance in the operation of such vehicles due to media reports of accidents involving autonomous cars. [↑](#footnote-ref-30)
31. Ibid, 10. The report indicates that 57 per cent of consumers in India have expressed concerns about autonomous vehicles being tested on public roads upon their introduction. [↑](#footnote-ref-31)
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33. See for instance, Rules 42, 43 and 46 of the French Code of Civil Procedure, 1981; Secs. 20, 21 and 32 of the German Civil Procedure Code, 205; Arts. 4, 7, 62 and 63 of the Regulation (EU) No 1215/2012 of The European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters [the Brussels I *bis* Regulation] that stipulates the grounds on which courts in the EU may assume jurisdiction; and Art 22 of the Interpretations of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China, (CPL) Fa Shi [2015]. No. 5.

    and 272 of The Civil Procedure Law of the People’s Republic of China (2020 Amendment). [↑](#footnote-ref-33)
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35. Ibid. [↑](#footnote-ref-35)
36. The list of signatories to the Geneva Convention on Road Traffic, 1949 is may be accessed at <https://treaties.un.org/doc/Treaties/1952/03/19520326%2003-36%20PM/Ch_XI_B_1_2_3.pdf>. India ratified the Geneva Convention on 9 March 1962. [↑](#footnote-ref-36)
37. The list of signatories to the Vienna Convention on Road Traffic is available at: <https://treaties.un.org/doc/Treaties/1977/05/19770524%2000-13%20AM/Ch_XI_B_19.pdf>. [↑](#footnote-ref-37)
38. See, Sec. 8.5 of the Geneva and the Vienna Conventions, respectively. [↑](#footnote-ref-38)
39. The list of signatories to the Vienna Convention on Road Traffic is available at: https://treaties.un.org/doc/Treaties/1977/05/19770524%2000-13%20AM/Ch\_XI\_B\_19.pdf. [↑](#footnote-ref-39)
40. See in this respect, Sec. 34bis of the WP.1 of the United Nations Economic and Social Council, Amendment Proposal to the 1968 Convention on Road Traffic, Submitted by Belgium, Finland, France, Luxembourg, Portugal, Russian Federation, Sweden and Switzerland, dated 19 Dec. 2019. [↑](#footnote-ref-40)
41. Ibid. [↑](#footnote-ref-41)
42. Art. 8.1 of the Geneva Convention. [↑](#footnote-ref-42)
43. See, United Nations Economic Commission for Europe Inland Transport Committee [UNECE ITC], WP1, Informal document No.2, 14 March 2017, https://www.unece.org/fileadmin/DAM/trans/doc/2017/wp1/ECETRANS-WP1-2017-Informal-2e.pdf, [21]; and UNECE ITC WP1, ECE/TRANS/WP.1/157, 2017, <https://www.unece.org/fileadmin/DAM/trans/doc/2017/wp1/ECE-TRANS-WP1-157e.pdf>, [18]. [↑](#footnote-ref-43)
44. See, text accompanying notes 3-8. [↑](#footnote-ref-44)
45. See in this respect, recent amendments to Germany’s StVG; the French Highway Code; and Shanghai Regulations. [↑](#footnote-ref-45)
46. Although the US permits the commercial operation of driverless cars in some states, it lacks a coherent legislative framework to ascertain the liability for injuries that may arise from their use. [↑](#footnote-ref-46)
47. See, Sec. 1(4) of Part 1 of the AEVA, which obligates the Secretary of State to maintain a list of automated vehicles that are ‘capable, in at least some situations or circumstances, of safely driving themselves and may lawfully be used…on public spaces in Great Britain’. However, no automated vehicle has been listed for such use, to date. For a detailed discussion, see, Marson, James, Ferris, Katy, Dickinson, Jill, “The Automated and Electric Vehicles Act 2018 Part 1 and Beyond: A Critical Review” 41(3) *Statute Law Review*, October 2020, 395–416. [↑](#footnote-ref-47)
48. Note that the AEVA in the UK holds the insurers of such vehicles directly liable for road accidents caused by their use. [↑](#footnote-ref-48)
49. See text accompanying notes 52-69. [↑](#footnote-ref-49)
50. But see, text accompanying notes 62-63 referring to the local regulations in the Shanghai that hold manufacturers directly liable for product liability. [↑](#footnote-ref-50)
51. See, Section 2.1.3.1.b below. [↑](#footnote-ref-51)
52. See, Secs. 1(f) and (g) of the StVG. [↑](#footnote-ref-52)
53. See for instance, Measures of Shanghai Municipality on the administration of testing and application of intelligent networked vehicles; and Management specification for road test and demonstration application of intelligent networked vehicles of the Ministry of industry and information technology (for Trial Implementation). In the absence of a coherent national regulation on the subject in China, the Regulation that came into effect on 15 Feb 2021 prescribe the local standards for the operation of autonomous vehicles in Shanghai. [↑](#footnote-ref-53)
54. Sec. 1(f)(3) of the StVG. [↑](#footnote-ref-54)
55. Sec. 1(f)(3)(1) and (2) of the StVG. [↑](#footnote-ref-55)
56. See, Arts. 4 and 7 of the Council Directive of 25 July 1985 on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning Liability for Defective Products (85/374/EEC) [hereinafter PLD] that is applicable in the EU Members States including Germany. [↑](#footnote-ref-56)
57. Sec. (1)(f)(1) of the StVG. [↑](#footnote-ref-57)
58. Ibid, Sec. 1(g). [↑](#footnote-ref-58)
59. Ibid, Sec. 1(f)(1) and (2). [↑](#footnote-ref-59)
60. The Draft Proposed Amendments of the Road Traffic Safety Law issued by the Ministry of Public Security of China [MPS] stipulates general rules concerning the operation of autonomous vehicles, but leaves the determination of liability for injuries to the respective State Councils. [↑](#footnote-ref-60)
61. Arts. 42-50 of the Shanghai Regulations. [↑](#footnote-ref-61)
62. Ibid, Art. 49. [↑](#footnote-ref-62)
63. Secs 1-27 of the Law No. 85-677 of July 5, 1985 Aimed at Improving the Situation of Victims of Traffic Accidents and Accelerating Compensation Procedures (popularly referred to as Badinter Law). [↑](#footnote-ref-63)
64. Ibid. [↑](#footnote-ref-64)
65. Ibid, Secs. 4 and 5. [↑](#footnote-ref-65)
66. See, Arts. 24-43 of the Global Data Protection Regulation [GDPR], available at https://gdpr-info.eu/art-32-gdpr/ [↑](#footnote-ref-66)
67. Ibid. [↑](#footnote-ref-67)
68. (n 17). [↑](#footnote-ref-68)
69. Ibid, Art 3151.1.13 which defines the expression ‘operator’ as a

    natural or legal person ensuring directly or at the request of the organizer of the service the operation of the transport system as well as its management and maintenance. The operator can be the same entity as the service organizer or the designer of the technical system. In the event of multiple operators, the term operator designates the leader. [↑](#footnote-ref-69)
70. Ibid, Art. R. 3152-2.I. [↑](#footnote-ref-70)
71. Ibid, Art 3151.1.13 which interprets a ‘designer of the technical system’ as

    natural or legal person responsible for the overall design of the technical system and defining in particular its functionalities and their conditions of use [↑](#footnote-ref-71)
72. Ibid, Arts. R. 3152-2.III and IV and Arts. R. 3152-6. I. [↑](#footnote-ref-72)
73. Ibid, Art 3152-2.II.3. [↑](#footnote-ref-73)
74. Sec. 2(1) and (2) read along with Sec. 4 of the AEVA. [↑](#footnote-ref-74)
75. Ibid. Sec. 2(3)(a). [↑](#footnote-ref-75)
76. Ibid, Sec. 4. [↑](#footnote-ref-76)
77. Ibid. Sec. 2(2). [↑](#footnote-ref-77)
78. Ibid. Sec. 3(1). [↑](#footnote-ref-78)
79. Ibid, sec. 3(2). [↑](#footnote-ref-79)
80. Secs. 32, 34, 35(1), 36(1), 38(1) and 40 of the Data Protection Act, 2018 [DPA]. [↑](#footnote-ref-80)
81. Ibid, Sec. 40. [↑](#footnote-ref-81)
82. See, Arts. 4 and 7 of the PLD as applicable in the EU Members States of Germany and France; Sec. 4(d) and (e) of the Consumer Protection Act, 1987 [CPA], which is based on the PLD as a result of the UK’s past membership to the EU; and Secs. 41- 44 and 46 of the Product Quality Law of the People’s Republic of China, adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress on February 22, 1993, promulgated by Order No. 71 of the President of the People's Republic of China on February 22, 1993, and effective as of September 1, 1993 [PQL]. But see, the Regulations on the Administration of Recall of Defective Automotive Products by the State Council of 22 October 2012, which exists in the form of a special legislation in China does not make a similar provision. [↑](#footnote-ref-82)
83. Ibid. [↑](#footnote-ref-83)
84. Ibid. [↑](#footnote-ref-84)
85. Art. 3(1) of the PLD; and Sec. 2 of the PQL. But see, Chatzipanagiotis, Michael, “Product Liability Directive and Software Updates of Automated Vehicles”, Proceedings of SETN 2020, 11th Hellenic Conference on Artificial Intelligence, (2020). The article examines the extent to which manufacturers may be liable for product liability in case of harm caused by defects in the software updates to the technical systems of such vehicles. [↑](#footnote-ref-85)
86. See, Arts. 4 and 7 of the PLD; Sec. 4(d) and (e) of UK’s CPA; and Sec. 29A of the PQL. [↑](#footnote-ref-86)
87. Recital 40 of the Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations, [2007] OJ L/199/40 [Rome II Regulation]. [↑](#footnote-ref-87)
88. Ibid, Art. 14. Also see, Graziano, Thomas Kadner, Freedom to Choose the Applicable Law in Tort – Articles 14 and 4(3) of the Rome II Regulation in John Ahern & William Binchy (eds), *The Rome II Regulation on the Law Applicable to Non-Contractual Obligations: A New Litigation Regime* (Martinus Nijhoff Publishers 2009) 118-120. [↑](#footnote-ref-88)
89. Ibid, Art. 4(2). [↑](#footnote-ref-89)
90. See, Section 2.1.1 above. [↑](#footnote-ref-90)
91. Art. 5(1) of the Rome II Regulation. [↑](#footnote-ref-91)
92. Ibid, Art. 5(2). [↑](#footnote-ref-92)
93. Ibid. [↑](#footnote-ref-93)
94. See in this respect, Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the Approval and Market Surveillance of Motor Vehicles and their Trailers, and of Systems, Components and Separate Technical Units Intended for such Vehicles, Amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and Repealing Directive 2007/46/EC. [↑](#footnote-ref-94)
95. See, Secs. 4 and 5 of the Law Applicable to Contractual Obligations and Non- Contractual Obligations (Amendment etc.) (E.U. Exit) Regulations 2019. Also see, Briggs, Adrian, *The Conflict of Laws*. (4th edn, OUP, 2019) 244. [↑](#footnote-ref-95)
96. Art. 44(3) of the Law of the People’s Republic of China on the Laws Applicable to Foreign-Related Civil Relations, 2010 [Law on the Laws]. [↑](#footnote-ref-96)
97. Ibid. [↑](#footnote-ref-97)
98. Ibid, Art 45. [↑](#footnote-ref-98)
99. Ibid. [↑](#footnote-ref-99)
100. See, Speech by Union Minister Nitin Gadkari, (n 27); and AVRI, (n 27) 40. [↑](#footnote-ref-100)
101. See in this respect, Barooah, Sumantra Bibhuti, “In India, Level 2 Autonomy will be Widespread in the Next Two to Four Years”, *Economic Times*, dated 6 December 2021, available at: https://auto.economictimes.indiatimes.com/news/auto-technology/in-india-level-2-autonomy-will-be-widespread-in-the-next-two-to-four-years/88116266. [↑](#footnote-ref-101)
102. Ibid. [↑](#footnote-ref-102)
103. Act No. 59 of 1988. [↑](#footnote-ref-103)
104. Sec. 2(28) of the MVA. [↑](#footnote-ref-104)
105. Ibid. [↑](#footnote-ref-105)
106. See, Section 2.1.1 above. [↑](#footnote-ref-106)
107. See, Sec. 20(a) and (b) of the CPC. [↑](#footnote-ref-107)
108. Ibid, Secs. 19 and 20(c). [↑](#footnote-ref-108)
109. Takwani, CK, *Civil Procedure with Limitation Act 1963,* 8th edn, Eastern Book Company, 2017, 143. [↑](#footnote-ref-109)
110. See, *Globe Transport Corpn v Triveni Engineering Works*, [1983] 4 SCC 707 [3]. [↑](#footnote-ref-110)
111. Takwani, (n 109) 143. [↑](#footnote-ref-111)
112. See Section 2.1.3.1.b above. [↑](#footnote-ref-112)
113. See, Khanderia, Saloni, “The Question of the Applicable Law in Cross-Border Claims on Product Liability: Reflections from India”, Global Jurist, (2021) <https://doi.org/10.1515/gj-2021-0025>; and Jolly, Stellina and Khanderia, Saloni, Indian Private International Law, Bloomsbury Publications: Asia Private International Law Series (2021), 231-236. [↑](#footnote-ref-113)
114. See, the decisions of the High Courts of Rajasthan in *Kotah Transport Ltd v Jhalawar Transport Services Ltd*, AIR 1960 Raj 224;and Punjab and Haryana in *Sona Devi v Anil Kumar,* [2011] 3 TAC 552. [↑](#footnote-ref-114)
115. Ibid. [↑](#footnote-ref-115)
116. See, *Kotah* (n 114);and *Sona* (n 114). [↑](#footnote-ref-116)
117. *Sona Devi,* ibid*,* [6]. [↑](#footnote-ref-117)
118. See, the decision of the Queen’s Bench in *Phillips v Eyre,* [1870] LR 6 QB 1. [↑](#footnote-ref-118)
119. See in this respect, Mills, Alex ‘The Application of Multiple Laws under the Rome II Regulation’ in John Ahern & William Binchy (eds), *The Rome II Regulation on the Law Applicable to Non-Contractual Obligations: A New Litigation Regime*, Martinus Nijhoff Publishers, 2009, p. 140, referring to the decision of the Queen’s Bench in *Phillips v Eyre,* [1870] LR 6 QB 1. [↑](#footnote-ref-119)
120. Sona Devi, (n 114) [8]. [↑](#footnote-ref-120)
121. (n 114). [↑](#footnote-ref-121)
122. The other decision being *Kotah* (n 114). [↑](#footnote-ref-122)
123. Sona Devi (n 114) [8]. [↑](#footnote-ref-123)
124. Ibid. [↑](#footnote-ref-124)
125. Ibid, referring to the decision of the House of Lords in *Harding v Wealands,* [2006] UK HL 32. [↑](#footnote-ref-125)
126. Ibid, referring to the decision of the American court in *Babcock v Jackson,* [1963] 2 Ll.R 286. [↑](#footnote-ref-126)
127. Ibid. [↑](#footnote-ref-127)
128. Act No 21 of 2000. [↑](#footnote-ref-128)
129. See, Secs 140 and 163A of the MVA. [↑](#footnote-ref-129)
130. See, the decision of the Supreme Court in *Kaushnuma Begum and Ors v The New India Assurance Co. Ltd,* AIR 2001 SC 485. [↑](#footnote-ref-130)
131. See, Secs. 140 and 163 of the MVA. [↑](#footnote-ref-131)
132. See, *Kaushnuma* (n 130). [↑](#footnote-ref-132)
133. See, Section 3.4.2.2 below. [↑](#footnote-ref-133)
134. See, the decision of the Madhya Pradesh High Court in *Runabai v Mannala*, 2003 ACJ 1493 (MP). Also see, Kannan and Vijayaraghavan, *Motor Vehicles Laws,* 16th edn LexisNexis Publication, Chapter X, [140.3(b)]. [↑](#footnote-ref-134)
135. See, Kannan and Vijayaraghavan, ibid, [140.3(a)], referring to the decisions of *Kanhel Rana v Gangadhar Swain*, 1997 AIHC 207 (Ori); *RSRTC v Chandi Bai*, [1989] 2 RajLW 427; *Maqbul Hussain Kitabullah v Kulvinder*, 1995 AIHC 24 (Bom); and *Babu v Remesan*, AIR 1996 Ker 95. [↑](#footnote-ref-135)
136. See, the decision of the Bombay High Court in *Shivani Dayanu Patil v Vatschala Uttam More*, AIR 1991 Bom 436. [↑](#footnote-ref-136)
137. See, Sec. 140 of the MVA. Cf Sec. 161 of the MVA. [↑](#footnote-ref-137)
138. Ibid, Sec. 142 of the MVA. [↑](#footnote-ref-138)
139. See in this respect, Kannan and Vijayaraghavan, (n 135) [140.4], referring to the decision of the Madhya Pradesh High Court in *Sardar Ishwar Singh v Himachal Puri*, AIR 1990 MP 282. [↑](#footnote-ref-139)
140. See, Sec. 140 of the MVA. [↑](#footnote-ref-140)
141. Ibid, Sec. 140(4). [↑](#footnote-ref-141)
142. See, the decision of the Madras High Court in *Mariamal v M Ramasubramaniam*, [1998] 2 Mad LJ 199; and Kannan and Vijayaraghavan (n 135) [140.10.e]. [↑](#footnote-ref-142)
143. Sec. 140(1) of the MVA. Also see the decision of the Madras High Court in *Iffco Tokio General Insurance Co Ltd v Joes Anthony,* C.M.A.(MD)Nos.1110 of 2015 and 45 of 2016 and C.M.P.(MD) Nos.1 & 2 of 2015 and C.M.P.(MD).Nos.10114 to 10116 of 2017. [↑](#footnote-ref-143)
144. See, Kannan and Vijayaraghavan, (n 135) [140.10(g)]. [↑](#footnote-ref-144)
145. See, Sec. 145(c) of the MVAA, 2019 which clarifies that the expression ‘shall have the same meaning as assigned to it in Sec. 320 of the Indian Penal Code’. [↑](#footnote-ref-145)
146. See in this respect, the Motor Vehicles (Amendment) Act, 2019 (Act 32 of 2019) [MVAA 2019]. [↑](#footnote-ref-146)
147. Ibid, Sec. 164(2) and (3). [↑](#footnote-ref-147)
148. The compensation for permanent disablement is calculated under Secs. 140 and 163B of the MVA, while that for grievous hurt is calculated under Sec. 164 of the MVA. [↑](#footnote-ref-148)
149. Sec. 146 of the MVA read along with Explanation to Sec. 147 of the MVAA, 2019 and Secs. 124 and 125 of the Indian Contract Act, 1872. [↑](#footnote-ref-149)
150. Sec. 147(1) of the MVA. [↑](#footnote-ref-150)
151. Ibid. But also see, Sec. 149(2) read along with Explanation (d) to Sec. 150 of the MVAA, 2019, which additionally enables insurers to avoid their liability in circumstances where the accident was caused by a motor vehicle that was being driven in contravention to the terms of the policy at the time of the incident or when the policy was obtained through the non-disclosure of material information. [↑](#footnote-ref-151)
152. But see, Secs. 161 of the MVAA 2019, which clarifies that the mechanism to determine compensation under Sections 140 and 163A is inapplicable in ‘hit and run’ cases where the identity of the vehicle is unknown. In such circumstances, the heirs of the deceased will be entitled to a (one-time) compensation of INR 0.2 million that will be borne by the General Insurance Industry under a ‘Solatium Fund’ maintained for this purpose. [↑](#footnote-ref-152)
153. See for instance, the decision of the Gujarat High Court in *Ramdevsingh V Chudasma v Hansrajbhai v Kodala*, 1999 ACJ 1129, (1999) 1 GLR 631, in which the court indicated that victims are prohibited from claiming compensation under Secs. 140 and 163A simultaneously considering that the mechanism to determine compensation under Sec. 163A was another interim measure existing alongside Sec. 140 of the MVA. [↑](#footnote-ref-153)
154. Ibid, Secs. 140(2) and 163A(1). [↑](#footnote-ref-154)
155. See *Ramdevsingh* (n 153). [↑](#footnote-ref-155)
156. See in this respect Section 141(1) of the MVA which states:

     The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to 1 [any other right, except the right to claim under the scheme referred to in section 163A (such other right hereafter] in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force. [↑](#footnote-ref-156)
157. 2001 ACJ 827. [↑](#footnote-ref-157)
158. AIR 2004 SC 2107. [↑](#footnote-ref-158)
159. Sec. 140(2) of the Motor Vehicles Amendment Act, 1994, Act No. 54 of 1994 [MVAA, 1994]. [↑](#footnote-ref-159)
160. See, Sec. 165 of the MVA. [↑](#footnote-ref-160)
161. See, *K Ramulu v Shaik Khaja*, 1991 ACJ 359 (AP). [↑](#footnote-ref-161)
162. Sec. 140(2) of the MVAA, 1994. [↑](#footnote-ref-162)
163. See, *Shabir Hussain v Abdul Rehman Driver*, [1991] 1 ACC 286; *New India Assurance Co Ltd v Minguel Lourenco Correia*, [1987] 1 ACC 524; and *Joao Carbal v Mira Namdev Naik*, [1991] 70 Com Cas 471; and text accompanying notes 150-152 referring to Secs. 147(1) and 149(2) of the MVA. [↑](#footnote-ref-163)
164. See, Sec. 149(2)(a) of the MVA. [↑](#footnote-ref-164)
165. Ibid, Sec. 147(1). [↑](#footnote-ref-165)
166. Kannan and Vijayaraghavan (n 135) [140.10.e]. [↑](#footnote-ref-166)
167. See, Para. 1(a) of the Notification by the Central Government of India, F. No. RT-11021/65/2017-MVL, dated 22 May 2018, available at: https://morth.nic.in/sites/default/files/notifications\_document/Notification\_no\_S\_O\_2022E\_dated\_22\_05\_2018\_regarding\_Revision\_of\_Second\_Schedule\_0.pdf. [Notification of the Central Government, 2018]. [↑](#footnote-ref-167)
168. But see, Secs. 147 and 149(2) of the MVA read along with text accompanying notes 148-150. [↑](#footnote-ref-168)
169. See, Kannan and Vijayaraghavan (n 135) 141.1. [↑](#footnote-ref-169)
170. See, Para. 1(a) of the Notification of the Central Government, 2018 (n 167) [↑](#footnote-ref-170)
171. Ibid. [↑](#footnote-ref-171)
172. Sec. 161(2)(b) of the MVAA, 2019. [↑](#footnote-ref-172)
173. Sec. 163 of the MVA. [↑](#footnote-ref-173)
174. See, Sec. 182A inserted by the MVAA 2019 read along with Sec. 109 of the MVA. Importers and dealers of such vehicles would also be criminally liable with the manufacturer. [↑](#footnote-ref-174)
175. See, Secs 2(34) and 84 of the Consumer Protection Amendment Act, 2019, Act No. 35 of 2019 [CPAA]. The expression is defined as

     the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by a deficiency in services relating thereto. [↑](#footnote-ref-175)
176. Ibid, 2(22) and 82. [↑](#footnote-ref-176)
177. Ibid, Secs 2(10) and 84. [↑](#footnote-ref-177)
178. Ibid, Secs. 2(12) and 84. [↑](#footnote-ref-178)
179. Ibid, Sec. 2(22). [↑](#footnote-ref-179)
180. Ibid, Sec. 2(33), defines the term ‘product’. [↑](#footnote-ref-180)
181. Ibid, Sec. 2(10). [↑](#footnote-ref-181)
182. Ibid, Secs. 83 and 84 of the CPAA, which do not indicate if the defect should have existed in the product at the time when it was put into circulation. Cf, Art. 7(b) of the PLD, which clarifies that the manufacturer’s liability is limited to injuries caused by a defect in the goods or its design that existed at the time when the product was put into circulation. [↑](#footnote-ref-182)
183. Ibid, Sec. 2(36) read along with Sec. 86. [↑](#footnote-ref-183)
184. Cf, Art. 5 of the PLD, which holds all persons that are involved in the manufacturing process as jointly and severally liable for injuries. [↑](#footnote-ref-184)
185. See, Sec. 84 of the CPAA. [↑](#footnote-ref-185)
186. Ibid, Sec. 86(d). [↑](#footnote-ref-186)
187. See text accompanying notes 144-147. [↑](#footnote-ref-187)
188. See, the decision of the Supreme Court in *Kaushnuma* (n 130). [↑](#footnote-ref-188)
189. Ibid. [↑](#footnote-ref-189)
190. Ibid. [↑](#footnote-ref-190)
191. (1868) LR 3 HL 330, 339, 340. Also see, Sapre, Akshay, *Ratanlal & Dhirajlal: The Law of Torts,* 28th edn, LexisNexis 2018, 498 *et seq*. [↑](#footnote-ref-191)
192. *Kaushnuma* (n 130) [14]. [↑](#footnote-ref-192)
193. Ibid, read along with Sec. 168 of the MVA which authorizes the Claims Tribunal to obligate the owners and drivers to compensate the victims for such damage. [↑](#footnote-ref-193)
194. See, Sec. 146 of the MVA. But see, Secs. 147(1) and 149(2) of the MVA that similarly exonerate the insurer from its eventual liability to indemnify the ‘wrongdoer’ for such damage. [↑](#footnote-ref-194)
195. *Kaushnuma* (n 130) [14]. [↑](#footnote-ref-195)
196. Ibid. [↑](#footnote-ref-196)
197. *Kaushnuma* (n 130) [14]. [↑](#footnote-ref-197)
198. Ibid. [↑](#footnote-ref-198)
199. Sapre, Akshay, *Ratanlal & Dhirajlal: The Law of Torts,* 28th edn, LexisNexis 2018, Chapter XIX, [19.2.1.2]. [↑](#footnote-ref-199)
200. See, text accompanying notes 177-179referring to Sec. 84 of the CPA. [↑](#footnote-ref-200)
201. Ibid. [↑](#footnote-ref-201)
202. See text accompanying notes 176-187 referring to Secs. 83-86 of the CPAA. [↑](#footnote-ref-202)
203. *Kaushnuma* (n 130) [14]. [↑](#footnote-ref-203)
204. Sapre (n 199) [19.2.1.2]. [↑](#footnote-ref-204)
205. *Kaushnuma* (n 130) [14]. [↑](#footnote-ref-205)
206. Ibid. [↑](#footnote-ref-206)
207. Ibid. [↑](#footnote-ref-207)
208. Ibid. [↑](#footnote-ref-208)
209. Sapre (n 199) [19.2.1.2]. [↑](#footnote-ref-209)
210. Deloitte (n 22) at 9, which indicates that 69 per cent of Indians are very concerned about biometric data being captured by autonomous cars. [↑](#footnote-ref-210)
211. Ibid, which indicates that 62, 59, 42, 40 and 40 per cent of consumers have expressed some scepticism about biometric data being captured by autonomous cars in Germany, the US, Republic of Korea, Japan and China (respectively). [↑](#footnote-ref-211)
212. The text of the PDB Bill may be accessed at: http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/373\_2019\_LS\_Eng.pdf. [↑](#footnote-ref-212)
213. See, Secs. 43A and 72A of the ITA. [↑](#footnote-ref-213)
214. See, Preamble to the ITA. [↑](#footnote-ref-214)
215. See in this respect, Sec. 3 of the SDPI Rules. [↑](#footnote-ref-215)
216. Sec. 43A of the ITA. [↑](#footnote-ref-216)
217. Sec. 43A of the ITA. [↑](#footnote-ref-217)
218. Ibid, Explanation (i) to Sec. 43A. [↑](#footnote-ref-218)
219. Ibid, Section 5(9). [↑](#footnote-ref-219)
220. Ibid. [↑](#footnote-ref-220)
221. Ibid, Sec. 47 [↑](#footnote-ref-221)
222. Ibid. [↑](#footnote-ref-222)
223. Ibid, Sec. 72A. [↑](#footnote-ref-223)
224. Ibid. [↑](#footnote-ref-224)
225. See, Sec. 3(13) of the PDP Bill that does not limit the liability to body corporates. [↑](#footnote-ref-225)
226. Ibid. [↑](#footnote-ref-226)
227. Ibid, Sec. 3(14) of the PDP Bill. [↑](#footnote-ref-227)
228. Ibid, Sec. 26 of the PDP Bill. [↑](#footnote-ref-228)
229. Ibid, Sec. 3(29) read along with Secs. 4-6, 9 and 11-14. [↑](#footnote-ref-229)
230. Ibid, Sec. 3(20). [↑](#footnote-ref-230)
231. Ibid, Sec. 27 read along with Sec. 30. [↑](#footnote-ref-231)
232. Ibid, Sec. 57(1)(c), which empowers the adjudicating authority to impose a penalty of INR 50 million or two per cent of the total worldwide turnover of the preceding year, whichever is higher, for such contraventions. [↑](#footnote-ref-232)
233. Ibid, Sec. 9. [↑](#footnote-ref-233)
234. Ibid, Secs. 22 and 23. [↑](#footnote-ref-234)
235. Ibid, Sec. 57(2) which empowers the adjudicating authority to impose a penalty of INR 150 million or four per cent of the total worldwide turnover of the preceding year, whichever is higher, for such contraventions. [↑](#footnote-ref-235)
236. BRICS is an acronym for Brazil, Russia, India, China and South Africa. [↑](#footnote-ref-236)
237. Article 141 of the Indian Constitution, 1950 stipulates that ‘the law declared by Supreme Court to be binding on all courts’. [↑](#footnote-ref-237)
238. *Kaushnuma* (n 130) [↑](#footnote-ref-238)
239. Ibid. [↑](#footnote-ref-239)
240. See, Section 3.4.2.2 above. [↑](#footnote-ref-240)
241. See text accompanying notes 55-60 referring to Sec. 1(f) of the StVG. [↑](#footnote-ref-241)
242. See, Mills, Alex, *Party Autonomy in Private International Law*, Cambridge University Press, 2018, 395, referring to the application of the rule under English law. [↑](#footnote-ref-242)