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PETALING JAYA: Any plan to introduce a no-fault payment scheme for motor-vehicle accidents will have to take into account several issues, according to lawyer and former United Nations special rapporteur on the independence of judges and lawyers Datuk Param Cumaraswamy.

Among them are whether the civil service has the competence to handle the task, the problems arising from delays by authorities like the police and medical institutions in preparing reports and whether the Malaysian society has reached a level of social consciousness to accept a system where the wrongdoer could get the same amount of compensation as the innocent.

Param told *theSun* he had raised these issues in a paper presented at the fourth Malaysian law conference in Kuala Lumpur back in 1977.

He said the recent proposal for this scheme is not new.

Param said a Royal Commission, made up of independent parties, should be set up to conduct a study and present a White Paper on the no-fault payment scheme before any decision to

Proposed — White Paper

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on no-fault liability

implement it.
“The proposal to introduce this scheme was brought up some 30 years ago and it was extensively discussed at law conferences. It then died a natural death,” he said.

He was commenting on Attorney-General Tan Sri Abdul Gani Patail’s proposal to introduce a no-fault payment scheme for those involved in motor-vehicle accidents.

According to a news report last month, the proposed scheme was meant to lighten the financial burden of the people.

It said vehicle owners would have to take out a comprehensive insurance

policy, which would cover all parties concerned in the event of an accident, rather than just a third-party insurance policy, which would only cover the person hit by the vehicle.

Under the proposed scheme, injured persons could get prompt compensation, regardless of who caused the accident, after submitting a police report and a medical report.

Gani was quoted as saying that the funding would likely come from motor vehicle insurance companies.

In his paper, titled “No fault liability motor accident cases” presented in 1977, Param said the exercise of proving fault

was attacked as the weakness in the existing common law adversary system by those who advocated the abolition of the fault principle.

He said press reports then showed that those who favoured the abolition of the fault principle thought it would clear the backlog of cases in the courts and relieve the courts of a substantial workload.

He said if this was the main argument, then the judiciary would be accused of turning away the queue from its courts to outside the offices of bureaucratic machinery.

“There are many considerations that have to be weighed, including funding,

as Malaysia is not a full-fledged welfare state, and the higher insurance policies that the public would have to bear for the more comprehensive coverage,” Param told *theSun*.

“The burden of higher insurance premiums will have to be borne by the public.

“Also, 30 years ago, there were not many motorcars and furthermore we have to look at whether we have the necessary medical care facilities and comprehensive systems to support this idea.

“I am also not in favour of the civil service handling this matter as it would be better for an independent commission to handle it.”