

Legislative Brief

Motor Vehicles (Amendment) Bill, 2007

The Bill was introduced in the Rajya Sabha on May 15, 2007.

The Standing Committee on Transport, Tourism and Culture (Chairman: Shri Sitaram Yechury) submitted its report on April 28, 2008.

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Highlights of the Bill

- ◆ The Motor Vehicles (Amendment) Bill, 2008 aims to amend the Motor Vehicles Act, 1988.
- ◆ The Bill enhances penalties for offences, and provides different penalties for first and subsequent violations.
- ◆ The Bill gives increased powers to state governments in matters such as regulating stage and contract carriages, in regulating service operators, and creation of authorised testing stations.
- ◆ Automobile associations recognised by state governments shall be allowed to issue driving certificates. Those holding driving certificates may be exempted from a driving test for the issue of a license.
- ◆ The Bill changes the method of awarding compensation for motor accident claims. If the fault of the driver is sought to be established, the claim shall be decided by the civil court or Motor Accident Claims Tribunal. If the claimant does not seek to establish the fault of the driver, compensation shall be based on the victim's income and age.

Key Issues and Analysis

- ◆ Any authority empowered to check a driver's license can suspend it on the spot if the driver fails a breath analyser test. The Bill does not specify either the process by which a driver can defend himself or that of appeal.
- ◆ The courts have the power to estimate and award compensation for motor accident cases where the driver's fault is established. However, the Bill does not specify guidelines for computing compensation. This can lead to a wide divergence in amounts awarded by different courts. Also, the Bill does not specify any limit on compensation if the driver is not at fault, unlike in the provisions of the Principal Act.
- ◆ The Bill introduces a fine for rash and negligent driving. The Standing Committee recommended an additional increase in the term of imprisonment provided under the Indian Penal Code, 1860.
- ◆ The Bill seeks to make a consignor liable for over-loading of goods. Several countries seek to make only the driver or the owner liable.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Motor Vehicles Act, 1988 is the principal legislation by which road transport is regulated in the country. The Act was amended thrice, in 1994, 2000, and 2001 in response to technological changes.

The Motor Vehicles (Amendment) Bill, 2007 seeks to amend the Principal Act by (i) enhancing fines, (ii) devolving greater powers to state governments to regulate road transport, (iii) streamlining provisions dealing with the payment of compensation to road accident victims, and (iv) prescribing a time bound process for disposal of appeals.

Key Features

The key changes proposed by the Bill are compared with the existing provisions of Motor Vehicles Act, 1988 in Table 1.

Table 1. Comparison of The Motor Vehicles (Amendment) Bill, 2007 and The Motor Vehicles Act

| | Motor Vehicles Act, 1988 | Motor Vehicles (Amendment) Bill, 2007 |
|---|--|--|
| Offences where fine has been stipulated | Fines range from Rs 100 to Rs 5,000. | Fines have been enhanced to range between Rs 500 to Rs 20,000. |
| Other violations of the Act | Maximum fine of Rs 300. | Fine has been increased to Rs 1,000 (for initial offences) and Rs 5,000 (for subsequent offences). |
| Licensing authority | The sole licensing authority is the Regional Transport Office, which conducts driving tests and then issues licenses. | The state government may authorize automobile associations and institutions to issue driving certificates which may exempt a person from a driving test for getting a driving license. |
| Time-line for disposal of appeals | No time limit specified for disposing of appeals. | Appeals have to be disposed of within a period of 45 to 60 days. In the event of not doing so, reasons have to be recorded in writing. |
| Powers of state governments | The state government has the power to <ul style="list-style-type: none"> ▪ Regulate the plying of carriages under directions from the central government. ▪ Issue licenses as per rules prescribed by the central government. ▪ Set up licensing and registering authorities as per the framework mandated by the central government. | Powers have been enhanced to <ul style="list-style-type: none"> ▪ Regulate the plying of stage and contract carriages independently. ▪ Lay down quality of service rules for operators. ▪ Enter into agreements for inter-state road transport services without the approval of the central government. ▪ Allow the Transport Authority to grant special permits for plying of stage carriages outside the jurisdiction of that Transport Authority. |
| Compensation for Motor vehicle accidents | <u>Without establishing the fault of the driver</u> – Fixed compensation of Rs 25,000 (death), Rs 12,000 (permanent disablement). <u>Establishing the fault of the driver</u> – Calculated according to the Second Schedule, based on victim's age and income. <u>Interest</u> – Not specified in the Act. | <u>Without establishing the fault of the driver</u> – Calculated according to the amended Second Schedule, based on victim's age and income. <u>Establishing the fault of the driver</u> – Awarded by the court or the Motor Vehicles Tribunal. <u>Interest</u> – Simple interest up to two percent per annum from the date of the claim. |
| Rash and Negligent driving | Penalty under Section 279 and 304A of the IPC applies. Offence is not recognized under the Motor Vehicles Act. | Recognizes this offences and imposes a fine, as well as payment of compensation to victims. |
| Solatium Fund | A Solatium Scheme of 1989 existed under Section 163 of the Act, to disburse compensation to victims of motor accident cases. | Section 163 has been deleted, and provisions for establishing a Solatium Scheme have been introduced, under the supervision of the central government and the Insurance Regulatory and Development Authority. |
| Insurance companies | Could not be parties to claims in motor vehicle accidents. | Can become parties to motor accident claims, but only with the permission of the Tribunal/Court. Some additional defences have also been provided. |
| Road Tax | There was no provision for refund of road tax in case of change of address to another state. | Allows for the refund of unutilized road-tax taken at the time of registration in case of change of address. |

Sources: The Motor Vehicles (Amendment) Bill, 2007; The Motor Vehicles Act, 1988; PRS.

PART B: KEY ISSUES AND ANALYSIS

Suspension of license for drunken driving

Clause 9 Any authority authorised to check the driving license of a driver shall be empowered to suspend the driving license of a person on the spot for a period up to three months, if the driver fails a breath-analyser test.

This amendment raises three main issues: (a) There is no provision for due process by which the driver gets an opportunity to defend himself. (b) The Bill does not provide for a process of appeal. (c) There is no requirement stating that only an officer above a certain rank shall be allowed to exercise this power.²

Under the existing provisions of the Act, the power to suspend the licenses are with the licensing authority and the court (see Table 2).

Table 2: Authorities empowered under the Act

| Reason for suspension/revocation | Empowered Authority | Appeal goes to |
|--|-----------------------|----------------------|
| Disease/ disability | Licensing authority | Prescribed authority |
| Dangerous previous conduct, fraud, etc. | Licensing authority | Prescribed authority |
| Suspension of Registration | Registering authority | Prescribed authority |
| Offences under the Act e.g. driving dangerously etc. | Court | Appellate court |

Sources: Motor Vehicles Act; PRS.

Fines and Penalties

Compensation for motor accidents

Clause 41 Currently, if the fault or negligence of the driver is established, the court or Tribunal awards compensation by using the Second Schedule (based on average annual income, age and life expectancy). The Bill replaces this mechanism, and proposes that where the fault or negligence of the driver is established, the compensation shall be estimated by the court or the Tribunal. However, no guidelines or framework for calculating compensation have been provided. This could lead to a wide divergence across courts in compensation paid for similar cases. The Supreme Court had given certain guidelines while pointing out some anomalies in the existing Schedule.³ However, since those sections of the Act are being replaced, the applicability of the judgment to the proposed provision is unclear.

In cases where the driver's fault is not established, the Principal Act specifies the amount of compensation. The Bill changes this method, and proposes to use a formula based on the income of the victim multiplied by a factor (which is specified according to his age). This implies that there is no upper limit on the quantum of compensation which may be awarded, even if the driver can prove that he was not at fault.

Alternatives to proposed penalties

Clauses 53 and 55 The Standing Committee and the Law Commission of India have recommended that for exceeding the speed limit or drunken driving, the penalty should be based on incremental slabs.⁴ Tables 3 and 4 show the slabs as suggested:

Table 3. Suggested slabs for over-speeding

| Speed of the Vehicle | Penalty |
|---------------------------------------|--|
| 20% more than speed limit | Rs 500 |
| 50% more than speed limit | Rs 1,000 |
| 100% more than speed limit and beyond | Cancellation of the License and held under Section 184 of the Act. |

Sources: Standing Committee Report; Law Commission; PRS.

Table 4. Suggested slabs for drunken-driving

| Quantity of alcohol in the body | Penalty |
|---------------------------------|---|
| 30-60 mg per 100 ml of blood | Rs 2,000 |
| 60-150 mg per 100 ml of blood | Rs 4,000 and/or imprisonment |
| 150 mg and above | Rs 5,000 and imprisonment with a provision for cancellation of license. |

Sources: Standing Committee Report; Law Commission; PRS.

Other countries⁵ follow a system of awarding de-merit points in addition to fines/other penalties. Accumulation of a certain number of de-merit points within a certain period of time leads to the cancellation of the driving license.

Provisions related to rash and negligent driving

Clause 58 The Bill introduces a penalty for rash and negligent driving, along with a compensation mechanism for victims of road accidents. Currently, the penalty prescribed under Section 279 of the Indian Penal Code, 1860 is a fine of up to Rs 1,000 and/or imprisonment up to six months. The Bill proposes a further fine of up to Rs 5,000 which will be deposited in the Solatium Fund. Some countries prescribe penalties ranging from heavy fines to revocation of the license in addition to prosecution for any injury or destruction to property.⁵ The Standing Committee recommended that existing legislation should also be amended to treat deaths caused by drunken driving as culpable homicide not amounting to murder.

Consignor liability for exceeding weight limits

Clause 28 Presently, the driver or the owner of a vehicle exceeding the stipulated weight limit is deemed to have committed an offence. The Bill seeks to impose additional liability on the consignors of the goods in some cases. Many countries impose liability only on the driver or the owner of the vehicle for exceeding the prescribed weight limit (See Table 5).

Table 5: Practice of other countries with regard to imposing liability for exceeding weight limit

| Country and Legal Provision | Penalty imposed on |
|-----------------------------|--|
| United Kingdom | A person who fails to comply with regulations regarding size and weight and the load to be carried by them is held guilty. |
| United States | Several states make the driver and/or the owner liable for the vehicle exceeding the weight-limit. ⁶ |
| New Zealand | Hold a person operating a motor vehicle or a combination of vehicles guilty for exceeding weight limits. |
| Canada | Both the driver and the owner of the vehicle (if the two are different) shall be held liable. |
| Philippines | No specific person is mentioned. Any vehicle with excess load is fined. |

Sources: Various legislations⁶; PRS.

Notes

1. This Brief has been written on the basis of the Motor Vehicles (Amendment) Bill, 2007, which was introduced in the Rajya Sabha on May 15, 2007 and referred to the Standing Committee on Transport, Tourism and Culture, (Chairperson: Shri Sitaram Yechury). The Report of the Standing Committee was tabled in Parliament on April 28, 2008.
2. Some other Acts specify the minimum rank of the officer who can take certain actions. For example, see Sections 129 and 167 of the Code of Criminal Procedure, 1973 which state that the empowered officer shall not be below a certain rank.
3. General Manager, Kerala State Transport Corporation v. Susamma Thomas & Ors. (1994) 2 SCC 176; U.P. State Road Transport Corpn. v. Trilok Chand, (1996) 4 SCALE 22
4. The Eighteenth Law Commission of India's Consultation Paper on Legal Reforms to Combat Road Accidents, July 2008.
5. See for Ireland - Ireland Road Traffic Act, 2002. Also see http://www.penaltypoints.ie/about_penalty_points.php; For UK - the Road Traffic Act, 1988. Also see, http://www.direct.gov.uk/en/Motoring/LearnerAndNewDrivers/NewlyQualifiedDrivers/DG_4022566; See for EU Countries, Annex to the Public Consultation Document on 'Better Road safety Enforcement in the European Union', prepared by the Directorate General for Energy and Transport of the European Commission, November 6, 2006, at http://ec.europa.eu/transport/road_safety/consultations/doc/2007_01_19_roadsafety_enforcement_consultation_paper.pdf; For Australia, see http://www.rta.nsw.gov.au/licensing/downloads/road_users_handbook.pdf.
6. United Kingdom Road Traffic Act, 1988; Florida state Uniform Traffic Control – Chapter 316; Kansas Article 19 - Uniform Act Regulating Traffic, Size, Weight And Load Of Vehicles; Delaware Title 21, Chapter 45 – Size and Weight of Vehicles and Loads; New Zealand Land Transport Act, 1998; Canada Motor Vehicles Act, 1955; Philippines - <http://www.lto.gov.ph/fines2.html>.

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