

RGICS



RAJIV GANDHI INSTITUTE FOR CONTEMPORARY STUDIES
JAWAHAR BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI-110001

RGICS LEGISLATIVE BRIEF (April 07, 2017)

The Motor Vehicles (Amendment) Bill, 2016

Prepared by Abhishek Jain
Under the Guidance of
Ms. Barkha Deva

PART I. INTRODUCTION

The Legislative Brief is based on the earlier version of the proposed Bill and the Parliamentary Standing Committee report with inputs from the news reporting on the latest amendments that have been approved by the Cabinet on March 31, 2017. The Official amended clauses are awaited to be incorporated in the Brief as the Official amended Bill is not yet available.

Road accidents are a leading cause of death in India. In 2015 alone, 5,01,423 road accidents occurred and 1,46,133 people had died. These numbers have been rising over the years and there has been a call from several quarters for the government to adopt a more comprehensive legislative framework. In response to this, the government has drafted the Motor Vehicles (Amendment) Bill 2016, which proposes 68 amendments to 233 sections of the existing 1988 Act as well as the insertion of 28 new sections. This Bill was approved by the cabinet and introduced in the Lok Sabha by Minister of Road Transport and Highways Nitin Gadkari in August 2016.ⁱ Some of the provisions that are covered include increased penalties for traffic violations, trial for juveniles under the Juvenile Justice Act, integrated national registries for permits and licences, and increased compensation for road accident victims and their families.ⁱⁱ

Prior to the Motor Vehicles (Amendment) Bill 2016, the Road Transport and Safety Bill 2015 had been drafted. The draft was prepared after looking at the ‘good practices’ followed across the world - USA, Canada, Singapore and UK. The Bill had proposed for the ‘setting up of a Motor Vehicle Regulation and Road Safety Authority of India and a National Road Transport and Multi-modal Coordination Authority. The Regulation and Road Safety Authority was meant to set safety regulations, finance road, and vehicle safety programs and was only accountable to the Parliament while the Coordination Authority was meant to develop integrated transport systems and multi-modal hubs.’ Since, the Bill fell into the concurrent list, the state governments felt that the Bill was encroaching on their authority. Hence, the Bill could not be introduced in the Parliament.ⁱⁱⁱ

The changes to the Motor Vehicle Bill had been pending review with the Parliamentary Standing Committee (PSC) on Transport, Tourism and Culture for about six months. The Committee presented their report to both the houses of the Parliament on the 8th February, 2017.^{iv} The report was reviewed by the Ministry of Road Transport and Highways. The proposed Bill has accepted 16 amendments and rejected 3 suggestions made by the PSC. The amended Bill received the Cabinet approval on March 31, 2017.^v The Bill will now be considered and taken up for approval in the Lok Sabha.

Some of the latest provisions in the Bill:^{vi}

- Aadhaar Number will be required to apply for Driving Licences, vehicle registrations and online services. This is to ensure the integrity of the online services, to stop duplication and registration of stolen vehicles.
- The suggestion regarding the registration and inspection of vehicles only by the Regional Transport Office has been rejected. Hence, Vehicle dealers will be authorised to issue vehicle numbers and register them through an all-India electronic register.

Comparison between the Motor Vehicle Act 1988 and the Proposed Bill 2016:

Provision	1988	2016
Hit and run ^{vii}	<ul style="list-style-type: none"> Grievous injury: Rs 12,000 Death: Rs 25,000 	<ul style="list-style-type: none"> Grievous injury: Rs 50,000 Death: Rs two lakh or more, as prescribed by central government
All accidents	Insurance company has to cover the entire amount of liability incurred as decided by the courts.	<ul style="list-style-type: none"> Insurance company will be liable for a payment of up to Rs 10 lakh in case of death and up to Rs five lakh in case of grievous injury. Cashless treatment for road accident victims during golden hour Motor Vehicle Accident Fund – compulsory insurance cover Defines and protects a good samaritan as a person who renders emergency medical or non-medical assistance to a victim at the scene of an accident Deaths due to drunken driving as culpable homicide not amounting to murder.
Licence	<ul style="list-style-type: none"> only the Regional Transport Office could inspect and issue vehicle registration 	<ul style="list-style-type: none"> Licence shall be granted to differently-abled Vehicle dealers shall also issue vehicle registration number. Aadhaar number required. National Register for Driving Licence National Register for Vehicle registration
Offences by Juveniles		Guardian / owner shall be deemed to be guilty. Rs 25,000 with 3 yrs imprisonment. For Juvenile to be tried under JJ Act. Registration of Motor Vehicle to be cancelled

PART II: PROVISIONS IN THE PROPOSED BILL

- To facilitate grant of **online learning license**.^{viii}
- Time limit for **renewal of driving license** has been increased from one month to six months before and after the expiry date.
- The period for renewal of **transport license** has been increased from three years to five years.
- The licensing authority shall grant **license to the differently-abled persons**.
- The State Governments shall **promote public transport, rural transport and last mile connectivity** by relaxing any of the provisions of the Act pertaining to permits.
- To provide for automated testing facilities at authorized testing stations for grant of **certificates of fitness to motor vehicles** and to ensure that no certificate of fitness shall be granted after October 1 2018 unless the motor vehicle is tested at such automated testing facilities.
- The Central Government shall make rules for the **electronic monitoring and enforcement of road safety** including speed cameras, closed-circuit television cameras, speed guns, body wearable cameras and such other technology.
- Provision for the **protection of children** by making it mandatory for every child to be protected by a safety belt, helmet or a child-restraint system.
- **State Governments** have the power to **increase fines** in their jurisdiction by up to ten times the amount specified in the Act.
- Central Government shall prescribe a base premium and the **liability** of an insurer in consultation with the Insurance Regulatory and Development Authority. The payment to a person by an insurer, under the **third party insurance policy**, shall be a sum of **not exceeding ten lakh rupees in case of death and not exceeding five lakh rupees in case of grievous hurt**. This may change from time to time based on recommendations of the Centre.
- **National Transportation Policy** shall be developed by the Central Government in consultation with the states, which should include: (i) establish a planning framework for road transport, (ii) develop a framework for grant of permits and schemes, and (iii) identify and specify priorities for the road transport system.^{ix}
- The Central government shall **recall motor vehicles** if a defect in the vehicle may cause damage to the **environment, or the driver, or other road users**. Provisions whereby the manufacturer will have to (i) reimburse the buyers for the full cost of the vehicle, or (ii) replace the defective vehicle with another vehicle with similar or better specifications.

RGICS Legislative Brief

THE MOTOR VEHICLES (AMENDMENT) BILL, 2016

5

- The **Motor Vehicle Accident Fund** shall be constituted by the Central Government which shall provide **compulsory insurance cover** to all road users in India. The Fund will be credited with: (i) a cess or tax as approved by the central government, (ii) a grant or loan made by the central government, or (iii) any other source as prescribed the central government. It will be managed by an authority specified by the central government.
- Central government shall develop a scheme for **cashless treatment of road accident victims during the golden hour** (time period of up to an hour following a traumatic injury, during which the likelihood of preventing death through timely medical care is the highest).
- **Compensation for death in a hit and run case has been increased** from Rs 25,000 to **Rs two lakh** or more, as prescribed by the central government.
- The Bill has provision for **protection, and defines a good samaritan** as a person who renders emergency medical or non-medical assistance to a victim at the scene of an accident. The assistance must have been (i) in good faith, (ii) voluntary, and (iii) without the expectation of any reward. Such a person will **not be liable for any civil or criminal action** for any injury to or death of an accident victim. The central government may, through rules, provide for procedures related to their questioning or disclosure of personal information.
- **Computerisation of certain services** such as: (i) issue or grant of licenses or permits, (ii) filing of forms or applications (such as for licenses and registration), (iii) receipt of money (such as fines), and (iv) change of address.
- An **aggregator** is defined as a digital intermediary or market place, whose services may be used by a passenger to connect with a driver for transportation purposes. They have to **obtain licenses and comply with the Information Technology Act, 2000**. While issuing licences the State Government shall follow such guidelines as may be issued by the Central Government in this regard.
- The state may also make rules for regulating activities in public places, and for **non-motorised transport** (bicycles, cycle rickshaws).
- **National Register for Driving Licence** and **National Register for Vehicle registration** shall be created through “Vahan” & “Sarathi” platforms. This shall facilitate uniformity of the process across the country.^x

Proposed Amendments in Various Penalties in the Bill to act as deterrent against traffic violations:^{xi}

Section		Old Provision / Penalty	New Proposed Provision / Minimum Penalties
177	General	Rs 100	Rs 500
New 177A	Rules of road regulation violation	Rs 100	Rs 500
178	Travel without ticket	RS 200	Rs 500

RGICS Legislative Brief

THE MOTOR VEHICLES (AMENDMENT) BILL, 2016

6

179	Disobedience of orders of authorities	Rs 500	Rs 2000
180	Unauthorized use of vehicles without licence	Rs 1000	Rs 5000
181	Driving without licence	Rs 500	Rs 5000
182	Driving despite disqualification	Rs 500	Rs 10,000
182 B	Oversize vehicles	New	Rs 5000
183	Over speeding	Rs 400	Rs 1000 for LMV Rs 2000 for Medium passenger vehicle
184	Dangerous driving penalty	Rs 1000	Upto Rs 5000
185	Drunken driving	Rs 2000	Rs 10,000
189	Speeding / Racing	Rs 500	Rs 5,000
192 A	Vehicle without permit	upto Rs 5000	Upto Rs 10,000
193	Aggregators (violations of licencing conditions)	New	Rs 25,000 to Rs 1,00,000
194	Overloading	Rs 2000 and Rs 1000 per extra tonne	Rs 20,000 and Rs 2000 per extra tonne
194 A	Overloading of passengers		Rs 1000 per extra passenger
194 B	Seat belt	Rs 100	Rs 1000
194 C	Overloading of two wheelers	Rs 100	Rs 2000, Disqualification for 3 months for licence
194 D	Helmets	Rs 100	Rs 1000 Disqualification for 3 months for licence
194 E	Not providing way for emergency vehicles	New	Rs 10,000
196	Driving Without Insurance	RS 1000	Rs 2000
199	Offences by Juveniles	New	Guardian / owner shall be deemed to be guilty. Rs 25,000 with 3 yrs imprisonment. For Juvenile to be tried under JJ Act. Registration of Motor Vehicle to be cancelled
206	Power of Officers to impound documents		Suspension of driving licenses u/s 183, 184, 185, 189, 190, 194C, 194D, 194E
210 B	Offences committed by enforcing authorities		Twice the penalty under the relevant section

PART III: PARLIAMENTARY STANDING COMMITTEE RECOMMENDATIONS

- **Wearing of headgear/helmet may be made mandatory for a two-wheeler rider**, whether it is a 50 c.c. or 100 c.c. vehicle.^{xiii}
- **Mandatory test of competence** must be fixed for driver.
- States may be delegated some **powers to punish dealers**, if they indulge in malpractices.
- **Government vehicles may be exempted from getting insurance cover**. The money saved from non-coverage should be spent on giving claims to accident victims through making a road safety fund.
- Indian roads are currently not suitable for vehicles which can run on 200 km or 250 km/hour speed and hence **vehicles** may be made which can **better suit Indian road conditions**.
- The Committee is afraid that **online procedure of obtaining learning license will be misused** and people may get learner's driving license filling up the **wrong information online**. Therefore, this section may be modified further to **get rid of such possibilities** if any, of misusing this facility by the miscreants.
- States are asking for **more time i.e., 2-3 years for equipping their offices adequately**. Therefore, the **Ministry should extend help** viz. financial, logistics and trained manpower to various States (if the States ask for it) to implement this section effectively.
- The **vehicle dealer is an agent of the manufacturer** and **shall not** be made an instrument of the Government to perform statutory functions and quasi judicial **powers of registering authority**. At the same time the Committee notes that RTOs throughout the country are overburdened and understaffed. Therefore, **strict guidelines** may be prescribed for the functioning of the vehicle dealers. The **registration of vehicle by dealers may be made optional to the States** depending on the State's specific requirements.
- The **cut off date** for implementing the testing for vehicles from **authorized testing stations** w.e.f. 1st October, 2018 is **not acceptable to many States**. Many of the States may not be ready with the testing stations by October, 2018. Therefore, the Ministry may take States into confidence to **implement this procedure when they get automated stations installed** in sufficient number in each of the RTOs in their respective States in a fixed time-frame.

- **Recycling of outdated and obsolete vehicle** material by scientific method is the need of the hour. Therefore, the Central Government may formulate a **comprehensive policy** for recycling of outdated Motor vehicles keeping in mind the protection of environment and public safety.
- With regard to **issuing of licences to Aggregators**, the Committee feels that the control of transport vehicles is the **exclusive domain of the State Governments**. Therefore, every State Government should have its **own powers and guidelines** to control the operations of aggregators within the State.
- National Highway Authority of India may **create parking for the public's vehicle along the highways** at regular intervals. At the same time States should also construct and maintain parking spaces along State Highways.
- The **non-motorized vehicles should not be allowed on National Highways and main roads** of metro cities.
- The **capping of liability of the insurance companies** under third party insurance policy is patently **incorrect and against the interest of the millions of road users**. Therefore, this provision should be **omitted**.
- In the proposed amendment Bill the statutory coverage of the **driver, cleaner and employee engaged in the vehicle** are omitted from the **liability of the Insurance Company**. Therefore, they **should be specifically mentioned** in the clause.
- The Committee also notes that the present **Bill failed to address the issue of accidents caused by faulty road designs and non-maintenance of roads** and the accountability of the same. Therefore, a **penalty provision** (Section 198A) may be inserted in the Bill to hold **road contractors and concessionaires accountable for faulty design, construction and maintenance of roads**.
- The **proposed Road Traffic Regulation** by virtue of powers conferred by the Section 118 of the Motor Vehicle Act 1988 **should be notified along with the present Amendment Bill**.
- The Government may amend the necessary legislations to include the **deaths due to drunken driving as culpable homicide not amounting to murder**. Further, it recommends that accidents caused due to drunk driving **should not be considered as an act of negligence** but as a premeditated commitment to crime and that individuals found guilty of this must be **tried under the relevant sections of the Indian Penal Code**.

RGICS Legislative Brief

THE MOTOR VEHICLES (AMENDMENT) BILL, 2016

9

- A new **Section 213 A may be inserted** to authorise Central Government to prescribe the form and manner of **scientific investigation on the causes of road accidents**. It should also give powers to the State Governments to carry out road safety audits.
- Government should formulate the necessary **legislation to limit the acceleration capability of vehicles** manufactured for use in India to speed limit as per the infrastructure availability of the country.
- A Clause should be added in this Bill to give effect to **increase of fine @10% every year** through executive orders.
- There should be a **proper training** by the Government for those **drivers who are involved in driving heavy vehicles** (Mega Vehicles) and also carrying goods of hazardous and dangerous nature.
- **No guns be allowed in personal vehicles**: licenses to fire arms may be restricted in such a way that it should not be carried while travelling in personal Motor Vehicles in Metropolitan cities and urban areas where traffic jam is the order of the day.
- **Inclusion of Traffic and road safety education in school curricula.**
- **Restriction of Heavy vehicles during early morning**: Government should strictly implement the duty hours for the drivers of commercial vehicles and also prohibit the driving of commercial vehicles from 3.00 AM to 5.00 AM in the morning, in a way that movement of vegetables, milk and perishable food products are not affected.
- Clear cut policies for **segregation of different type of vehicles on specific lanes** on the roads. Enforcement of lane driving should be given priority by the enforcement agencies.
- **Insurance manual and a concise traffic rule book** may be supplied along with the Service manual, so that a driver can learn about the traffic rules and the fines and punishment associated with its violation.
- **National Road Safety Board**: There is a need to constitute a high powered road safety board and to ensure the availability of adequate funds for technologically upgrading and updating the standards. National road safety fund can be constituted with an additional cess on first time sales of new motor vehicles which could fund all these activities. The National Road Safety Board may contain representatives of both Central & State Governments. It should have adequate authority to guide the Government.

PART IV. KEY CONCERNS

- **Scientific Investigation of the road accidents:** Presently there is no vigorous, scientific and standardized accident investigation and data collection system in India. The Parliamentary Standing Committee (PSC) has noted that the reasons for the large number of accidents are never studied or investigated to incorporate remedial measures. Therefore, a framework to simply conduct road safety audit is not a sufficient mechanism for scientific investigation. They have recommended that a new Section 213 A may be inserted to authorise Central Government to prescribe the form and manner of scientific investigation on the causes of road accidents. It should also give powers to the State Governments to carry out road safety audits.^{xiii}
- **Faulty road designs and accountability:** Faulty road design and non-maintenance of roads are major reasons leading to accidents. Presently there are no provisions which hold road contractors and civic agencies accountable for these faults. Moreover, the proposed Bill also lacks these provisions. However, the PSC has recommended that a penalty provision (Section 198A) may be inserted in the Bill to hold road contractors and concessionaires accountable for faulty design, construction and maintenance of roads. The Bill needs to specify who will be held responsible for the faulty designs. Moreover, the Bill also needs to specify the various faulty designs that will qualify under this clause to avoid any misinterpretation.
- **Cap on Insurance Liability:** The proposed Bill had capped the liability of general insurance companies to Rs. 5 lakh in case of injury and Rs. 10 lakh in case of death compensating the third party claims in case of road accident. If a Tribunal or court awards compensation above 5 lakhs in case of injury and Rs.10 lakhs in case of death, the owner of the vehicle has to bear the burden of paying over and above to the third party. “The Committee is of the view that the basic aim of insurance is to defray individual risk collectively over a vast group of premium contributors especially when the risk apprehended is likely to be beyond all the means of the individual. If this main purpose to save the individual is defeated there seems to be no necessity for insurance policy to mitigate the risk which an individual could not meet by himself. There is no *mens rea* in accidents and very purpose of insurance is to underwrite the cost of unforeseen contingencies. FDI was liberalized in insurance to strengthen the concept of insurance in a country in which life essentially is exposed to all sorts of unforeseen contingencies and calamities. Insurance Companies cannot run away from their basic responsibilities after collecting hefty amount of no claim insurance premium”.^{xiv}
- **Enforcement:** One of the major concerns in the existing legislative framework is in regard with the uniform and adequate enforcement. For example, in cities like Chandigarh, the drink driving law based on the provisions of the 1988 Act is quite strictly enforced and that acts as a deterrent. However, this is not the case in other major cities like Delhi.^{xv} The proposed Bill has provisions for the establishment of robust electronic enforcement for traffic violations through speed cameras, closed-circuit televisions cameras, speed guns and such other technology. This is supposed to result in reduction in human intervention and the associated corruption.

PART V. CONCLUSION

The proposed Bill makes a major move in the direction of implementing hefty penalties in case of violation of the road safety regulations and the Act. However, the extent to which these heavy fines will indeed act as deterrent against violations needs to be established. In addition, the adequate and effective implementation of the Act on the ground has also been covered in the Bill, at least in theory, by making provisions through electronic enforcement. However, the Bill has failed to include some necessary provisions which make the Bill a merely amended legislation rather than a strong enforcer. Hence, some of these gaps have been filled by the recommendations made by the Parliamentary Standing Committee on the Bill. Some recommendations the Government needs to incorporate in the Bill are to legislate the already existing guidelines of the Supreme Court with regard to the safeguards and protection of the children, rather than just providing for the conducting of road safety audits provisions needs to be made for the scientific investigation of the road accidents to understand and provide remedies to avert and reduce the future road mishaps. Government should enforce penalty provisions in the Bill to hold road contractors and concessionaires accountable for faulty design, construction and maintenance of roads as that would address a major cause of road accidents and help minimize the same in future.

Additionally, by capping the amount of insurance liability to be paid by third party insurers the Government seems to be favouring the Insurance Companies rather than the citizens. This provision has been criticised by the PSC. They have noted that the whole purpose of insurance is to reduce the burden or unforeseeable liabilities in case of accidents from the people. With the inclusion of this provision the above purpose will be defeated, therefore, they have recommended for the omission of the cap on the insurance liability from the Bill.

RGICS Legislative Brief

THE MOTOR VEHICLES (AMENDMENT) BILL, 2016

12

PART VI. BACKGROUND/REFERENCE DOCUMENTS

- ⁱ <http://sites.ndtv.com/roadsafety/effective-will-motor-vehicles-amendment-bill-making-indian-roads-safer-2138/>
- ⁱⁱ <http://sites.ndtv.com/roadsafety/the-motor-vehicles-amendment-bill-makes-headway-gets-clearance-from-standing-committee-2809/>
- ⁱⁱⁱ <http://sites.ndtv.com/roadsafety/why-india-needed-the-road-transport-and-safety-bill-2619/>
- ^{iv} <http://sites.ndtv.com/roadsafety/the-motor-vehicles-amendment-bill-makes-headway-gets-clearance-from-standing-committee-2809/>
- ^v <http://indiatoday.intoday.in/story/cabinet-approves-amendments-in-motor-vehicle-act/1/917892.html>
- ^{vi} <http://indiatoday.intoday.in/story/cabinet-approves-amendments-in-motor-vehicle-act/1/917892.html>
- ^{vii} <http://www.prsindia.org/uploads/media/Motor%20Vehicles,%202016/Motor%20Vehicle%20Brief.pdf>
- ^{viii} <http://www.prsindia.org/uploads/media/Motor%20Vehicles,%202016/Motor%20Vehicles%20%28Amendment%29%20Bill,%202016-.pdf>
- ^{ix} <http://www.prsindia.org/uploads/media/Motor%20Vehicles,%202016/Motor%20vehicles%20amendment%202016%20bill%20summary.pdf>
- ^x <http://pib.nic.in/newsite/PrintRelease.aspx?relid=148308>
- ^{xi} <http://pib.nic.in/newsite/PrintRelease.aspx?relid=148308>
- ^{xii} <http://www.prsindia.org/uploads/media/Motor%20Vehicles,%202016/SCR-%20Motor%20Vehicles%20Bill,%202016.pdf>
- ^{xiii} <http://www.prsindia.org/uploads/media/Motor%20Vehicles,%202016/SCR-%20Motor%20Vehicles%20Bill,%202016.pdf>
- ^{xiv} <http://www.prsindia.org/uploads/media/Motor%20Vehicles,%202016/SCR-%20Motor%20Vehicles%20Bill,%202016.pdf>
- ^{xv} <http://sites.ndtv.com/roadsafety/effective-will-motor-vehicles-amendment-bill-making-indian-roads-safer-2138/>