

JOURNAL SECTION

ENHANCED PENALTIES UNDER THE MOTOR VEHICLES (AMENDMENT) ACT, 2019 WILL WORK ONLY IF ENFORCED HONESTLY**By : Dinesh Singh Chauhan, Advocate**

J&K High Court of Judicature, Jammu.

The remarkable growth in the vehicle population has resulted in traffic congestion, pollution, longer journey time and increased the number of fatalities and injuries in road accidents. This is due to rapid urbanization and growth of industry, commerce and employment in urban areas, especially cities. Thousands of vehicles have been added to our roads every day without a proportionate improvement infrastructure. This unprecedented growth in traffic without corresponding improvement in road infrastructure has resulted in severe problems such as pollution, congestion, accidents, encroachments, traffic bottlenecks etc. To add to the problem, the civic agencies involved in traffic management are finding it extremely difficult to cope with such huge traffic problem due to inadequate physical and financial resources.

Every year in India, around 1,50,000 lives are lost in road accidents alone according to Ministry of Road Transport and Highways. Annually, almost 5, 00, 000 road accidents take place in the country. Despite there being stringent rules and regulations, there are innumerable cases of traffic rule violations everyday across India. The Indian roads are the most dangerous in the world going by the number of road traffic accidents and the ever increasing number of fatalities resulting out of them. The existing Motor Vehicles Act, 1988 was archaic and in dire need of amendment to address improvement in road safety, strengthen public transport and improve transport related services available to the public.

The urgency of the same was brought to light and the Motor Vehicles (Amendment) Bill was framed and passed by the Lok Sabha in 2017. The same could not be passed by the Rajya Sabha and lapsed with the dissolution of the 16th Lok Sabha. In 2019, the Motor Vehicles (Amendment) Bill, 2019 was passed by Lok Sabha on 23rd. July and tabled before the Rajya Sabha by the Union Minister for Road Transport & Highways, Nitin Gadkari. It has been passed by the Rajya Sabha on July 31 and received the assent of the President of India on the 09th August, 2019 and is known as The Motor Vehicles (Amendment) Act, 2019 [NO. 32 of 2019] and came into effect from September 01, 2019. The recent changes in the motor vehicles law could not

have come at a more opportune time, with India being signatory to the Brasilia Declaration on Road Safety and committing to halve the number of fatal road accidents by 2020.

The amendments in the 30 year old Motor Vehicles Act, 1988 were much needed as India needs to keep up with innovation in technology and the automobile sector, amid rapid urbanization that is leading to road congestion in the cities. The Motor Vehicles (Amendment) Act, 2019 aims to instil a sense of discipline in the road users and make Indian roads safer. Among other provisions, the new Act proposes cashless treatment for victims in the 'golden hour' or the first hour of fatal accidents when victims are most likely to be saved by medical treatment. Besides, citizens who come forward and rescue accident victims will not be harassed.

From the accident victim's perspective, Section 2 '(12A) of the Act "golden hour" means the time period lasting one hour following a traumatic injury during which there is highest likelihood of preventing death by providing prompt medical care;'

The Motor Vehicles (Amendment) Act, 2019 also requires the Central Government to constitute a Motor Vehicle Accident Fund, which increases the ambit of protection for treatment of persons injured in hit and run accidents, pay compensation to the legal heirs of deceased person and to a person grievously hurt in a hit and run accident. The compensation in hit and run cases stands enhanced from Rs. 25,000/- to Rs. 2 lakh in case of death and from Rs. 12,500/- to Rs. 50,000/- in case of grievous injury.

The enhanced compensation will help in more accident victims and/or their families filing claims under the hit and run scheme. The new Act has increased penalty for offences such as driving without a valid license, speeding, dangerous driving, drunk driving and vehicles plying without a permit, which will act as deterrent against traffic violations.

The definition of 'Third Party' under Section 145 (i) of the Motor Vehicles (Amendment) Act, 2019, which was an inclusive definition, has been given a wider connotation and is now defined to include the Government, the driver and any other co-worker on a transport vehicle.

Now, the victims of an accident claim won't be required to wait for a long time for disposal of cases by the Motor Accidents Claims Tribunal. Under Section 149 (1) of the new Act, Insurance Company shall, upon receiving information of the accident, either from claimant or through 'Accident Information Report' or otherwise, make an offer to the claimant for settlement before the Claims Tribunal giving such details, within thirty days, the payment shall be made by the Insurance Company within a

maximum period of thirty days from the date of receipt of such record of settlement within thirty days. In case of rejection of such offer, a date of hearing shall be fixed by the Claims Tribunal to adjudicate such claim on merits. This will benefit the 'Claimants' by simplifying the claims process and reducing litigation period, which currently runs into years.

Although insuring any automobile plying on the road is mandatory, many people violate the Rule. A study by New India Assurance Limited, a State-run General Insurer, has shown that nearly 70% of motorcycles and scooters on the road are not insured. About a third of the cars and trucks are uninsured as well. The new Act has increased the penalty for not having a vehicle insurance from Rs. 1,000/- to Rs. 2,000/-. This may lead to more people buying insurance especially two-wheeler owners where the premium rates are comparatively low and they would rather opt for insurance than pay fine.

The Section 166 (3) of new Act fixes a limitation period of six months from the date of accident for filing an application for compensation before the Claims Tribunal. This will bring down chances of forged claims that are made years after the accident and relieve Insurance Companies from receiving belated claims where it becomes difficult to properly investigate genuineness of accident and beneficiaries.

As per the Motor Vehicles Act, 1988, an Insurance Company has 'Unlimited liability' under 'Third Party Motor Insurance'. This means that, if a person is hit by a Motor Vehicle and dies, the victim's family can claim any amount from the Insurance Company. The Insurance Companies have time and again justified the need for a 'Limited Liability' i. e 'Third-Party Motor Cover', as is the case of a fixed compensation for air and train accident victims. It is observed that there is an annual inflation of 18 - 20%, in the average compensation awarded by the Courts.

However, the annual premium hikes are not in proportion to the inflation in Court Awards. The Motor Vehicles (Amendment) Act, 2019 now empowers the Central Government to prescribe Rules for providing minimum premium and maximum liability of an insurer in consultation with the regulator.

Another point The Motor Vehicles (Amendment) Act, 2019 has addressed is the mis-interpretation of the wordings of the Act, making Insurance Companies liable to pay the compensation irrespective of the statutory defenses available to them under the existing Act and later recovering the same from the insured. The scope for any confusion has been done away with in the new amendment. The insurers can now deny 'Third Party Liability

Claims' if the person behind the wheels or riding a motorcycle does not have valid driving license or permit or if the policy holder has not paid insurance premium. This will instil discipline among the vehicle owners to follow law of the land.

In view of the rising litigation costs and high pendency of motor accident claims before the Courts, the amendments have attempted to reduce the pendency by increasing the limit of the amount in dispute. Under Section 173 of the principal Act, in sub-section (2), for the words "Ten Thousand", the words "One lakh" stands substituted, for filing an appeal to be made against the award of the MACT

The new amendments reposes faith of the citizens of India in its legislative system, which strives to benefit and safeguard their interest. At the same time Insurance Companies will also benefit, who can in turn work towards strengthening country's economy along with providing justifiable compensation wherever liable. The driving errors are going to make a huge dent in monthly budget of violators of traffic laws and some of them may cost the same or more than monthly fuel bill of the violators.

Enhancement of Penalties

The Motor Vehicles (Amendment) Act, 2019 has enhanced the penalties for driving errors. It has enhanced "penalty for offences where no penalty is specifically provided for - first offence from up to Rs. 100/- to Rs. 500/- and second/subsequent offence from up to Rs. 300/- to Rs. 1,500/-."

Public Transport/State/Contract Carriage

- The fine imposed on those travelling without the right ticket or not producing the valid ticket/pass during inspection in public transport is Rs. 500.
- The driver or conductor of the 'Public Transport' who refuses to give valid ticket can be punished and be liable to pay a fine up to Rs. 500.
- Those drivers/conductors of a 'Contract Carriage' who fail to fulfil their duty to carry passengers are liable to pay a fine up to Rs. 50 in case of two/three wheelers and up to Rs. 500 for others.
- Those who disobey any order of concerned authorities is liable to pay Rs. 2000 and if anyone refuses to provide information or provides false information to the authorities is liable to pay a fine up to Rs. 2000 and/or imprisonment up to one month.

Unauthorized Driving & Driving License

- Permitting an unauthorised person to drive is an offence and the person in charge/owner of the vehicle will have to pay a fine up to Rs. 5000 or/and face imprisonment up to 3 months.
- Driving without holding a 'Driver's License' will end up in imprisonment up to 3 months and/or fine up to Rs. 5000.
- He/she who has been disqualified for holding or obtaining a 'Driver's License' and yet, is found to be driving in public places will be treated as an offender and is legally bound to pay a fine up to Rs. 10,000 and/or face imprisonment up to 3 months. The license then obtained will also not have any effect.
- Those who do not possess a valid conductor license but works as conductor in 'Public Transport'/Stage Carriage', will have to face imprisonment extending up to one month and/or pay fine of Rs. 10,000. His/ Her license will also remain ineffective.

Modification of a Motor Vehicle

- Modification of one's motor vehicle that doesn't comply with the rules set by the Government under this act is an offence and the offender will be liable to imprisonment of up to 6 months and/or fine of Rs. 5000 per alteration.

Violating Speed Limits

In order to control traffic, the Government has maximum and minimum speed limits which are determined by the Central Government and the relevant State Governments. Not complying with these speed limits will result in the driver / employer of the driver, whoever is responsible for the speed to pay a fine as follows

- For 'Light Motor Vehicle' Rs. 1000 to Rs. 2000
- 'Medium Goods Vehicle' / 'Medium Passenger Vehicle' / 'Heavy Goods Vehicle' / 'Heavy Passenger Vehicle' Rs. 2000 to Rs. 4000
- If found guilty for the second time or subsequently, the Police Officer or the authorised personal can confiscate the 'Driver's License' and forward it to the concerned officials for disqualification/revocation.

Drunken Driving

- If the 'Driver' of a motor vehicle is found to have consumed alcohol and has alcohol more than 30 mg per 100 ml in his/her blood sample or has consumed drugs (any intoxicant which falls under the list as per the Central Government Notification) is legally bound to pay a fine of Rs. 10,000 and/or face imprisonment up to

six months for the first offence. If found guilty again, the punishment will be up to 2 years imprisonment and/or fine of Rs. 15,000.

Dangerous Driving — Jumping Red light, Wrong Direction driving, using mobile phones etc.

- If someone drives the vehicle in a dangerous manner which causes alarm/distress to those in the vehicle, other road users and those near the roads, the public, depending on the nature, condition and the kind of place is liable to be imprisoned for a term of 6 months to one year and/or fine varying from Rs. 10,000 to Rs. 50,000. Examples of dangerous manner include jumping red lights, not following stop sign, overtaking in wrong direction, using mobile phones, driving in wrong direction, etc.

Accidents & Penalty for not stopping a Vehicle

- It is the driver's duty to stop the vehicle when asked to do so by an authorized Police Officer or by someone in charge of an animal. In case of an accident, he is also responsible for any damage inflicted upon 'Third Party' or 'Third Party's Property' due to his driving. He/she has to take the injured person to the nearest hospital and report the same to the Police. Failing to do so will result in an imprisonment which can extend up to six months and/or Rs. 5000 fine. Repeating this offence will result in one year imprisonment and/or Rs. 10,000 fine. This is in addition to the other criminal liabilities.

Vehicle in Unsafe condition

- Driving or knowingly allowing someone else to drive a vehicle which is in an unsafe condition and has a defect which can be detected beforehand and avoided is a legal offence with Rs. 1500 fine. If this results in damage to property or person, then the punishment may extend to imprisonment up to three months and/or a fine of Rs. 5000. Subsequent offence will result in imprisonment that can extend to six months or with a fine of Rs. 10,000 for bodily injury or damage to property.

Air & Noise Pollution

- Violation of road safety rules, air and noise pollution is punishable with imprisonment of up to three months and/or fine up to Rs. 10,000 and license disqualification for three months. Subsequent offence will result in imprisonment up to six months and/or fine up to Rs. 10,000.

Vehicle without Registration & Insurance

- Driving vehicle without registration is a severe offence that will result in imprisonment of six months and a penalty of Rs. 10,000 fine.
- If a person is driving a vehicle that is not insured, he/she is liable to pay a fine up to Rs. 2000 and/or imprisonment up to 3 months. On repetition of this offence, the fine will go up to Rs. 4000.

Driving without Helmet

- Penalty for driving a two wheeler without helmet is Rs. 1000 and up to three months suspension of license. Same is the amount for not wearing seat belts while driving four wheelers.

Offence committed by a Juvenile

- If any of the offence is committed by a juvenile, the guardian of the juvenile or the owner of the motor vehicle will be held guilty and action will be taken against him/her unless and until he/she is unaware of the offence or tried to stop it. The punishment will be fine of Rs. 25,000 and imprisonment up to 3 years in addition to the cancellation of vehicle registration for one year. If the juvenile holds a learner's license, he/she will not be eligible for driving license until he/she attains 25 years of age. Further, action as per Juvenile Justice Act will also be initiated.

Obstructing the Traffic by leaving Vehicle unattended

- For those who obstruct the traffic on the road by leaving their vehicle, an hourly fine of Rs. 500 has to be paid. When the vehicle is removed, he/she also has to bear the expenses of moving/towing of the vehicle by a government authorised agency. This is not applicable for a vehicle that has been involved in an accident until the inspection is complete.

Power to arrest for certain offences

- Police officers in uniform have the power to arrest without warrant, those who commit punishable offences like drunken driving, dangerous driving and driving without authority. The person under arrest has to be subject to medical examination within two hours of custody. The presence of a female official is mandatory during medical examination if the person under custody is female.
- If the Police Officer seizes anybody's 'Driving License', he/she must provide a temporary acknowledgement. This acknowledgement shall not authorise the holder to drive unless he/she receives their 'Driving License'.

- No one who is prosecuted for driving dangerously and over speeding shall be convicted unless he/she was given a warning at the time of committing the offence. Also, within two weeks of committing the offence, a registered post has to be sent to the offender or the registered owner of the vehicle about the offence and time and location at which it took place.

States can increase these penalties

The objective of these amendments is to bring down the number of road accidents and loss of lives that take place as a result of it. The increasing number of vehicles and hence, the vehicle density on roads only increase possibilities of accidents. In 2017, there have been reports of India having topped the list of countries in fatalities due to road accidents. In order to curb this, the penalties to be paid for various offences have been increased 5 to 10 times compared to the existing provisions as per the 1988 Act. In addition, the State Governments have been authorized to increase the prescribed penalties with a multiplier, not less than one and not greater than ten, to be applied to each fine. Different multipliers may be applied to different classes of motor vehicles.

As far as road safety is concerned, discipline is imperative. Violating traffic rules must act as a deterrent. So, the frequency of getting caught (for violating traffic rules) has to increase. The Motor Vehicles (Amendment) Act, 2019 if implemented in letter and spirit, can change road habits of all by not imposing stiffer penalties for breaking the Rules, but also trying to inculcate a sense of responsibility among the citizens to abide by them.

(Feedback at: chauhanjmu@gmail.com
dschau08@yahoo.com)
