

Road Safety via the Motor Vehicles (Amendment) Bill, 2016

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The Motor Vehicle Act, 1988 was proving to be inadequate in light of a phenomenal increase in traffic, road accidents and resultant loss of lives and property. In 2014, all across the country 139671 people lost their lives in road accidents, which increased by 4.6% to 146133 lives lost in 2015. In August 2016, Ministry of Road Transport and Highways introduced the Motor Vehicle (Amendment) Bill, 2016 in Lok Sabha. The Statement of Objects and Reasons appended to the Bill declare India's commitment to reducing road fatalities by 50% by the year 2020. Road Safety is multi-dimensional, requiring simultaneous and coordinated steps towards ensuring better compliance of traffic rules, safer road construction, safer vehicle engineering, and ensuring access to emergency medical needs in case of accidents. While addressing many of these concerns as for instance increasing fines for major violations, making stringent rules for safe vehicle construction, streamlining licensing regime etc., the Bill misses out on certain crucial elements like liability for faulty road construction, providing for an overarching body managing and supervising all the diverse but correlated factors etc. As the Bill undergoes a review by a Parliamentary Standing Committee, it is hoped that these concerns are addressed and a holistic approach towards road safety is adopted.

Introduction

Road safety is a major 'global public health problem' according to the World Health Organization, which launched World Health Day in April 2004 with the slogan 'Road safety is no accident.' The erstwhile Planning Commission of India had estimated the annual cost of road accidents in India at 3% of the GDP annually, which would amount to around Rs.3.8 lakh crores in 2014, a serious setback for a developing country. Further, the human cost, of lost potential and dreams, is immeasurable. As per a response given in Rajya Sabha in May 2016 by the Ministry for Road Transport and Highways, 489400 road accidents happened all over the country in 2014, resulting in the loss of 139671 lives. In 2015, this increased by 4.6% to 146133 lives lost in 501423 road accidents. The Supreme Court called this situation of road accidents a national emergency in August 2013, lamenting that the existing Motor Vehicles Act, 1988 is inadequate in solving the systemic challenges facing road transport

and ensuring road safety for people. Yet, rather than causing an uproar, these statistics are met with apathy and an almost fatalistic acceptance by the Indian public.

Overview of the Existing Policy

In the initial years following independence, the focus was on developing railways as an efficient and well developed transport system, which would aid industrial development. Roads were considered a necessary supporting infrastructure for railways, and developed only from that perspective. At the time, road transport corporations were sought to be set up in every state under the Road Transport Corporation Act, 1950. As per Section 18 of the Act, they were mandated to provide 'an efficient, adequate, economical and properly coordinated system of road transport services.' Providing safe roads was not a mandate then. The Motor Vehicles Act, 1988 came almost 70 years after the Motor Vehicles Act, 1939, which had outlived its

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purpose and utility in light of the increase in use of commercial and public vehicles, availability and use of newer technology, increase in the number of traffic offences and road accident injuries, inadequate compensation for victims etc.

Motor Vehicles Act, 1988 is the nodal Act regulating a whole range of road safety and traffic management related measures, like the issue of driving licenses and permits for vehicles, setting up Claims Tribunals, delineating traffic offences and their penalties, providing compensation to victims, prescribing safety standards for vehicles among others. The Act also provided for the setting up of Road Safety Councils at the Central and State level as apex advisory bodies on road safety issues. In 2005, the Ministry of Road Transport and Highways constituted an Expert Committee to assess the need for establishing a Central Authority on road safety issues. The Committee noted that there was no 'organized programme to combat morbidity and mortality on Indian roads', the responsibilities were diffused among various authorities, with no efficient coordination between them, and existing institutions like Road Safety Councils did not have the required statutory backing, budgetary resources, or mandate to perform their functions effectively.

The Committee recommended the establishment of a National Road Safety and Traffic Management Board, through an act of Parliament - to prescribe standards for road design and conducting audits, proposing safety features for vehicles, undertaking comprehensive road safety research and data collection, ensuring proper implementation of traffic laws and management, increasing public awareness, and establishing guidelines for timely medical care and rehabilitation of victims. The Committee also proposed the establishment of a Road Safety Fund comprising of the taxes collected from National Highways, the sale of petrol and diesel etc. Following this, the Ministry came out with a three page National Road Safety Policy in 2010, and a Bill to set up a Road Safety Board and a Fund, which saw no progress after its introduction.

In 2009, the government set up another expert committee to undertake a review of the Motor Vehicle Act, 1988. Its report, submitted in 2011, recommends a complete overhaul of the Act to make it resonate more with best practices across the world. But no action was taken on the report, until the death of the Cabinet Minister Gopinath Munde in a minor road accident in 2014 shook the new BJP government into drafting a Road Transport and Safety Bill to replace the Motor Vehicles Act, 1988.

The first draft of the Bill had comprehensive provisions on road safety and even proposed establishing a National Authority on road safety. But it faced stiff opposition from state road transport corporations, trade unions, automobile manufacturers, and transporters. In the later drafts, road safety issues got diluted. Unable to bring all the stakeholders on board, the Cabinet finally approved amendments to the Motor Vehicles Act, 1988 and the Motor Vehicles (Amendment) Bill, 2016 was introduced in Lok Sabha on 9th August, 2016.

Motor Vehicle (Amendment) Bill, 2016 – An Analysis

The Statement of Objects and Reasons appended to the Bill declare India's commitment to reducing road fatalities by 50% by the year 2020. As per the Statement, the Bill is aimed at addressing road safety concerns, citizen facilitation, strengthening public transportation, among other goals. Road safety, however, requires concerted efforts on many fronts. It is multi-dimensional, requiring simultaneous and coordinated steps towards ensuring better compliance of traffic rules, safer road construction, safer vehicle engineering, and ensuring access to emergency medical needs in case of accidents. Broadly, there needs to be a behavioural shift, towards a more aware, alert, compliant and safe commute on the road every time. From that perspective, the Bill has many hits and misses. One of the biggest misses is that, unlike the draft Road Transport and Safety Bill, and ignoring the recommendations of the Expert Committee report, there is no provision to set up an overarching body, either at the Central or State level, which will bring together all the diverse stakeholders in road safety under one management. Another big miss is, that while the Bill empowers the Central Government to frame a National Transportation Policy (Clause 28) aimed at strategically utilizing road sector for effective, economic and competitive transportation, there is no corresponding provision enabling the government to come up with a National Road Safety Policy, to replace the highly inadequate policy document which exists at present.

The Bill does well by streamlining the licensing process, for instance, by enabling a license applicant to apply for a license at any registered authority within the state by removing area restriction (clause 5); removing the discretion of registering authority in granting a license (Clause 4(v)) etc. It also creates a National Register for License which will provide for unique license number for every license holder in the country to prevent duplication and fake licenses (Clause 12). The Bill, however, doesn't change the underlying conditions for getting a driving license. The aim could be to facilitate the drivers and curb corruption.

But care should be taken to ensure that acquiring a driving license is not seen as a right, but as a privilege with a corresponding duty. To this end, the Bill could have gained by incorporating the recommendations of the Expert Committee which in its review of the Motor Vehicles Act, 1988 suggested that some basic conditions be laid down in the Act itself for licenses to drive different kinds of vehicles. The Committee further recommended additional authorization on fulfillment of additional conditions in case the vehicles were adapted for other use, for instance where a four wheeler meant for personal consumption is being used as a taxi to ferry children to and from school. Another recommendation of the Committee was to increase the eligibility age for driving transport vehicles to 21, as opposed to 18, as such vehicles are heavier, mostly plied over long distances, and can cause greater harm if mismanaged. The Bill makes no such changes. All these recommendations would have gone a long way in making our roads safer.

From the perspective of traffic management, several safety standards have been prescribed in the Bill. For instance it empowers government to frame special rules for safety of children and also makes wearing of protective headgear mandatory (Clause 42). It also provides for electronic monitoring of road safety, and defines driving that is 'dangerous to the public' (Clause 45) more specifically, to include jumping red light, using handheld devices while driving, driving against the flow of traffic etc. (Clause 65). In the case of certain traffic offences, not only can the license of the driver be disqualified for the first offence, but also revoked in the case of subsequent offences. To get a suspended license back, the driver is required to undergo a refresher course (Clause 11). Another timely inclusion in the Bill is the liability of guardian or owner of the vehicle where a juvenile commits an offence under the Act. Such a juvenile will also not be granted her own license till the age of 25 (Clause 82). This is especially important in light of the recent cases of dangerous driving by minors that have resulted in accidents, and can act as a deterrent to underage driving, if enforced stringently.

For driving which is 'dangerous to the public' the fine can now be as high as Rs.5,000, as opposed to the earlier Rs.1,000 (Clause 65). Drunk driving, which has proved to be a menace beyond control, can be penalized with a fine extending upto Rs.10,000 up from Rs.2,000 fine earlier (Clause 66). Similarly fines for other traffic offences have been increased as for instance, the fine for allowing an unauthorized person to drive a vehicle has been increased from Rs.1,000 to Rs.5,000 (Clause 60), for under-age driving or for driving without a license, the fine can now extend upto Rs.5,000, a ten times increase from the present Rs.500 (Clause 61) etc.

All these changes are steps in the right direction, but the Bill could also have incorporated the system of 'Penalty Points' which was also a recommendation made by the Expert Committee in its report. Penalty points are endorsed on one's driving license upon violation of a traffic offence, over and above the liability of a fine or imprisonment. Upon accumulation of several points, which happens in the case of repeat offenders, the violator is liable for further punishment and even disqualification or revocation of license in certain extreme cases. This is a practice followed in many other countries like the United Kingdom, France, Hong Kong etc. and could prove valuable in India, too also. The road safety architecture prescribed in the Bill will be at a loss for not having included this recommendation of the Expert Committee.

In a developing country like India, inadequate infrastructure and resources like ambulances make timely medical aid difficult to obtain for the victims of road accidents, who often have to rely on the benevolence of passersby to come to their rescue. But such 'good Samaritans' often face harassment and victimization at the hands of hospital and police authorities. Due to a legislative void in this space, the Supreme Court in 2012, exercising its extraordinary powers, directed the Ministry of Home Affairs to issue guidelines in this regard in a Civil Writ Petition (No.235 of 2012). The Court held that the right to be safe while travelling on roads and getting immediate medical assistance is a corollary to the right to life enshrined in Article 21. In consonance with this, the Bill defines a 'good Samaritan' as a person, who in good faith, voluntarily and without expectation of any reward or compensation renders emergency medical or non-medical care or assistance at the scene of an accident to the victim or transports such victim to the hospital. It provides that such person would not have any civil or criminal liability in the case, empowering the government to frame rules to provide for their examination, questioning etc. (Clause 43). Further, to pay for emergency treatment during the 'golden hour', the most crucial first hour after the accident, or in hit and run cases, where the vehicle is not identifiable, the Bill prescribes a Motor Vehicle Fund.

As regards safe vehicle construction, the Bill specifies that no registering authority would register and no testing station would grant a certificate of fitness to a vehicle that doesn't meet the prescribed safety standards laid down by the central government (clause 24). The central government can also require a manufacturer to 'alter or retrofit safety equipment' (Clause 20).

The Bill also provides for the mandatory recall of vehicles, where the manufacturer would also be liable to pay a fine, if the motor vehicle or its components pose a danger to environment, occupants of the vehicle or other road users (Clause 38). The liability of a manufacturer, importer or dealer of motor vehicles for violation of any provisions laid down in the Act or Rules regarding construction of vehicles has been increased from Rs.1000 for first offence and Rs.5000 for subsequent offence to Rs.1,00,000 for each such motor vehicle. This provision seems to have been inserted in light of the recent incidents of recall of cars by major car manufacturers like Toyota, Honda, Maruti etc. due to lapses and defects in safety features. The Bill, however, doesn't do much to augment existing infrastructure in India for the testing of vehicles, which will be a pre-requisite for compliance with these provisions. There are only 7 testing centers in the country, which have been developed under National Automotive Testing & R&D Infrastructure Development Project (NATRIP), and even then not all facilities are operational yet.

The bill does away with Chapter X of the Motor Vehicles Act, 1988, which dealt with no-fault liability and rather merges it with the chapter on 'Insurance of Motor Vehicles Against Third Party Risks' (Clause 49). Earlier, the compensation was limited to Rs.25,000 for permanent disablement and Rs. 50,000 for death. This has now been increased to a maximum limit of Rs.5,00,000 in case of grievous hurt and Rs.10,00,000 in case of death. The claimant of compensation need not prove that the death or grievous hurt was due to the wrongful act, neglect or fault of the owner of the vehicle. This is laudatory, but it is not clear why a maximum limit rather than a minimum limit of insurance cover is prescribed here. Further such a provision might not be an apt substitute for no-fault liability, especially in circumstances where a vehicle is not covered by third party insurance (though it has been made mandatory in the Bill), and especially where the Bill itself prescribes conditions under which an insurance provider can escape liability; for instance, in cases where some 'material fact or particular' was not disclosed. There is no provision in the Bill for safer road engineering. At present, the Road Safety Audit is to be carried out on every road construction right from the feasibility stage to the implementation stage. This, however, requires multiple agencies to act in tandem, which is never easy. To site an example, in the Office Memorandum issued by Ministry of Road Traffic and Highways on 18.01.2016, authorities like NHAI (National Highway Authority of India), PWDs (Public Works Department) were made aware of black spots on National Highways on the basis of 'fatalities' in 2014, and were asked to undertake

rectification, but surprisingly, after they have already covered black spots identified in 2011, 2012 and 2013. It is incredulous to note that despite there being a mandate to carry out Safety Audits right from feasibility stage, the Ministry relies on 'fatalities' to identify black spots, and takes years to rectify those spots, while the fatalities keep mounting. In light of this, the Bill could have provided for liability of contractors and government agencies responsible for construction and maintenance of roads, where it is found that faulty road engineering is a cause of accidents.

Conclusion

While the Bill does provide for some radical changes, it needs to cover the last mile, which it must do in order to ensure road safety in India. Since there is no clarity on the Road Transport and Safety Bill, one hopes that the deficiencies in the present policies and their mismanagement with regards to road safety are addressed in a comprehensive manner in the Motor Vehicle (Amendment) Bill, 2016 itself.

This policy paper is dedicated to Junaid Dalwai, a young brilliant friend, who died on 24th May 2016 on the Mumbai Pune Express Highway at the age of 22 before the world could know him.

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