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# *Insurance and The Motor Vehicles (Amendment) Act, 2019 : Initial Thoughts*

*Road Transport sector plays a crucial role in the socio-economic development of a nation. Sea changes that the sector has seen over the years was a developmental necessity. At the same time the number of road accidents and road fatalities have gone up exponentially, imposing huge socio-economic burden. Many of the existing provisions of Motor Vehicle Act were outdated and some provisions had become irrelevant. With this legislative development in the form of amendments, India should catch-up with the rest of the world in making Indian roads safer and also strengthen the security mechanism designed to help road accident victims.*

*Key Words: Pre-adjudication Settlement, Third Party, Hit and Run, Golden Hour, Good Samaritan*

## **Introduction**

Vehicles, roads and road transport are matters of interest to everyone, including, the economist, the administrator, the scientist, the planner, the insurer and the man on the street. Roads have been rightly described as arteries of a nation, so vital to its health. Motor Vehicle Act is an important legislation regulating this multi-dimensional system, so that the arteries always remain free and functions smoothly. The transport sector in the country has seen dramatic changes since the passing of the Motor Vehicle Act of 1988. Tremendous increase in number of vehicles and hence the vehicle density, technological improvements in the auto-manufacturing industry and developments in road infrastructure, negative environmental impact of increased pollution, increase in number of vehicular accidents and severity of these accidents, all of them directly and indirectly contribute to and reflect the deteriorating conditions of road safety. Loss of lives and major injuries from road accidents are a global concern. Many countries have been successful in controlling incidents of accidents and its fatal consequences. So far India has not measured up to the expectations. Amendments to Motor Vehicle Act is an attempt to reform and transform the ailing system.

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## **The Regulatory Framework**

Motor Vehicle Act in India was first enacted in 1914 (Indian Motor Vehicle Act, 1914). It was replaced by The Motor Vehicle Act, 1939. In 1982 some major provisions were introduced into the Act of 1939. The 1939 Act was replaced by The Motor Vehicle Act, 1988. This Motor Vehicle Act saw further amendments - the major ones being in 1994, 2000 and 2001.

The prevailing regulatory framework was found wanting on several counts and needed suitable improvements. Therefore, it was time for a major overhaul of the related legislation and such an overhaul has been under discussion since 2007 (may be even earlier). As part of these developments, an Idea of a New Law called “Road Safety and Transport Bill” to replace the Motor Vehicle Act, 1988, emerged.

The Idea of a New Law (Instead of amending existing law) was only an indication of the extent and significance of the changes deemed to be absolutely necessary. Several versions of these bills were proposed and examined over a period. The long-time taken in giving a final shape to the bill was really creating an impression of flawed prioritisation of a national issue of such a great importance. It was creating an atmosphere of uncertainty. In view of the urgency of the issue, the idea of a new law was given up and amending the existing law was proposed. The proposal of amendments finally received parliamentary approval in August 2019, thus ending a long period of uncertainty.

## **Amendments: Focus Areas**

The amendments not only incorporate the statutory response to the new challenges of the ever changing transport scenario but also attempt to address the inadequacies of the prevailing law. The amended provisions attempt to eliminate/correct the behavioural deficiencies which are the predominant causes of accidents. Safer roads, need for simplification of processes, speedy and smooth delivery of relief are at the core of these amendments. Good number of changes relate to the mandatory insurance provisions of the Motor Vehicle Act. The Motor Vehicle Amendment Act, 2019, envisages the formulation of certain schemes / rules by the government. Unless these schemes and rules are finalised and made public, a complete understanding of the changes introduced by the amendments will be deficient to that extent.

The following paragraphs are an attempt in an initial understanding of the changes affecting insurance and related provisions of the Motor Vehicle Amendment Act.

### **A. Road Safety: The Primary Concern**

Many brands / models of vehicles manufactured and used in India have failed to measure up to the standards of Global NCAP (New Car Assessment Programme) crash test. Such quality deficiencies are true of all other dimensions (such as road infrastructure, traffic policing, etc.) in Indian road safety standards. Currently India finds herself prominently in the list of countries with the worst accident scenario (Number of ‘reported’ road accidents exceeding 5 lacs per 20

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annum, and the number of 'reported' annual vehicle accident deaths exceeding 1.5 lakh per annum). India averages one road accident every minute and one road accident death every four minutes. So, for the parliament members examining the amendments, safety was the primary concern, particularly when the country had committed (under Brasilia Declaration) herself to the world community,<sup>1</sup> to drastically reduce Indian road accidents and consequent deaths by 2020.

The Motor Vehicle Amendment Act, 2019, has introduced several changes which aim to address such concern. Some of them are:

- a) **Stringent Penalties to promote Road Discipline and Recognition for Good Conduct:** "Nobody is afraid of penalties of Rs 100 to 500", said the honourable Transport Minister, Shri. Nitin Gadkari, on the occasion of the introduction of the bill in the parliament. Hence, as a measure of deterrence, the amendments provide for hefty increase in penalties monetary as well as non-monetary (imprisonment, cancellation / suspension of registration and license, refresher training and community service). Repeat offences warrant enhanced penalties. The law also makes provision for regular increase in the amounts of such penalties. In addition powers are given to State Governments for further hike in penalties.
- b) Amendments introduce a new concept of **Community Service** as a mode of penalty for offenders.
- c) **Offences by juveniles** - The Act makes parents / guardians liable for offences by juveniles. Parents are made accountable for the actions of their wards. Amendments provide for cancellation of vehicle registration where ever warranted.
- d) Amendments provide for compulsory "**Refresher Training**" to drivers found lacking in required skills. Licence remains suspended till the refresher training is successfully completed.
- e) Power to **cancel registration** (for certain periods) and the power to deny license would strengthen the deterrence value of punishments and penalties.
- f) A new provision introduced by the amendment provides for **fixing responsibility** for "Poor Road Infrastructure".
- g) Provision is made for creating a Central Register of Vehicles, and a Central Register of Driving Licenses. These centralized registers supported by electronic monitoring of vehicles would address the problems of multiplicity of licenses and facilitate effective control over the vehicles.
- h) The introduction of the "**Golden Hour**" concept (Free medical help in the initial few hours of an accident) for timely medical assistance is an attempt to saving lives.
- i) Timely help to the victims is important in saving lives. Amendments introduce the concept of "**Good Samaritan**" to encourage citizens to come forward to help road accident victims

<sup>1</sup> *Brasilia Declaration, Second Global High-Level Conference on Road Safety: Time for Results Brasilia, November 18-19, 2015.*

without any fear of harassment at the hands of police.

The outcomes of these changes depend on effective implementation of these provisions. Strict/sincere enforcement of these provisions is the key for realizing the intended benefits.

## **B. Insurance: Improved Relief Mechanism**

### **I. Preferred Mode of Settlement**

In the past, relief to the accident victims had to go through the judicial or semi-judicial process. Over the years, these processes have thrown up several deficiencies. Many of the current amendments seek to redress such deficiencies. Amendments reflect the judicial thoughts evolved over the years while giving judgements in road accident cases, particularly, the time-consuming procedural obstacles, delaying tactics of litigants, and indifference of other stakeholders. A few of such provisions seen in the amendments were tested earlier on experimental basis in a limited way and have now been regularized by incorporating them in the statute book. For example, “**Pre Adjudication Settlement**” and “**The Golden Hour Scheme**”

All these years the primary remedy for road accident relief was settlement through Motor Accident Claims Tribunals, supported by Lok-Adalat settlements and also by an almost-unused conciliation settlement process. The new provisions attempt to change the above by making “Pre-adjudication Settlement” (though to be routed through Motor Accident Claims Tribunal) the primary and default settlement process, and adjudication as a secondary process only for cases where pre-adjudication has failed. The latest amendments set specific time-frames for pre-adjudication process, with a defined investigative / administrative role for police officials and insurers.

### **II. Simplification and Restructuring of Existing Benefits**

#### **• Certain employees as Third Party:**

As per the existing mandatory insurance provisions of Section 147, certain employees – Driver, Conductor, Helpers(one category of third party) are required to be covered only to the extent of requirements of Workmen’s Compensation Act. However, the owner of the vehicle, by paying an additional premium, can voluntarily cover such employees to bring them on par with that of other third parties for insurance coverage. The amended provisions have removed this differentiation of employees from other third parties with respect to the scope of the cover available, and, now the said employees are on par with other third parties.

#### **• Restructuring of ‘No Fault Liability’ and Structured Compensation Schemes:**

The existing provisions, apart from the core ‘fault liability’ benefit, had two additional benefits, viz. no fault liability and structured compensation benefits. In both these schemes, driver’s/owner’s negligence was of no consequence and the victims were entitled for

compensation. No fault liability offered an interim relief of Rs. 50,000 in case of death and Rs. 25,000 for disablement. The concept of structured compensation, despite several limitations observed, did serve a useful purpose. After the revised notification of the Second Schedule in May 2018, the basic benefit under the structured compensation concept ranged from Rs. 50,000 to Rs. 5,00,000. This was further increased by 5% from January 1, 2019. In the amended provisions of Motor Vehicle Act, these benefits seem to have been revised to Rs. 2,50,000 and Rs. 5,00,000 respectively. It appears that No Fault Liability and Structured Compensation benefits are merged with a further provision for an interim relief. It may be of particular interest to know that as per the amended provisions, the acceptance of this relief by the beneficiary, automatically amounts to withdrawal/lapse of fault liability petition. We need to wait for the publication of the relevant scheme and the rules for interim relief, for a complete understanding of the implications of this provision.

- **Property Damage:**

As per the current provisions, mandatory insurance is required to cover damages to third party property up to a limit of Rs. 6000. This limit has been removed in the amended Law. Interestingly, the power of the Central Government to determine the base premium and corresponding sum assured refers only to death and injury cases. There is no mention of property damage in the said provision.

### **III. Benefits/Relief: Additions and Improvements**

- **Golden Hour Scheme:**

It has been a global experience that, the kind of medical and even non-medical help a victim gets in the first hour of the accident, called “the Golden Hour” makes a crucial difference between death and survival of the victim. Introduction of the “Golden Hour Concept” and benefit of cashless treatment, till the victim’s condition is stabilised, is a recognition of this incontrovertible fact. The concept of golden hour was experimented on a limited scale, and now, with these provisions having been incorporated in the statute, it should be available as a formal and regular benefit to all road accident victims.

- **Enhanced Benefits:**

Relief to the accident victims and their dependents always comes in the form of monetary compensation. A relief which is defined in terms of fixed financial benefit, gradually with the passage of time, erodes and depreciates in value. Some of the amendments are an attempt to address this issue of depreciation or erosion in the value of the (monetary) benefits, arising primarily from inflation and consequent loss in the value of money. For example :

- **Hit and Run Cases:** The amounts of benefits are increased from Rs. 25,000 for death and Rs. 12,500 for grievous hurt to Rs. 2,00,000 for death and Rs 50,000 for grievous hurt.

- **No Fault Liability:** Benefits under no fault liability concept are revised from Rs. 50,000 for death and Rs. 25,000 for permanent disablement to Rs. 5,00,000 for death and Rs. 2,50,000 for permanent disablement.

These amendments have not only addressed the current needs of revision in the quantum of relief, but have also made necessary provisions for future changes in such amounts easier. As per the existing provisions, change in the amounts of benefit/relief was not possible without parliamentary approval. Now with the amended provisions, the Central Government can change the amounts of almost all the reliefs available under the purview of the law. Thus, this new delegation of power obviates the need for seeking parliamentary approval as and when changes are felt necessary. This change appears to be a more balanced and measured response than the option of automatic indexation of benefits which some stake holders were demanding.

#### **IV. Insurers' Interests**

Some of the genuine demands of insurers have found place in the amendments.

- **Insurers' Liability:**

Though there were demands from some quarters for limit on the compensation payable to the victims of road accidents, the amendments retain the concept of unlimited owner's liability. But now statutory liability of insurers can be limited. The Central Government is now entrusted with the power of deciding the limit of liability for mandatory insurance. Voluntarily, insurers can ignore such liability cap and assume additional/unlimited liability for an additional premium. Insurers have always been at the receiving end of this game. The government, in the past seemed to have always sided with the vehicle owners, particularly transporters, and, the judiciary has always given the benefit of doubt and benefit of interpretation either to the beneficiaries or to the vehicle owners (viz. as seen in case of pay and recovery principles). Under these circumstances the provisions of the amended law imposing a cap on the limit of liability of insurers is a major change addressing the needs of the insurers as well. As per the amended Act, the Central Government in consultation with the IRDAI can prescribe a minimum premium and the maximum liability for such premiums. Having derived / gained this advantage, now it is the responsibility of the insurers to come out with sensible policy covers at affordable premiums to meet the need of unlimited liability without which it may, practically amount to denial of real insurance cover both to a good number of vehicle owners and to the road accident victims.

- **Time Limit for Filing Claim:**

The amendment, by reintroducing the time limit (of six months from the date of the accident), for filing cases has acceded to a long-standing demand of the insurers. Earlier, courts considered the provision pertaining to limitation to be harsh and inequitable leading to injustice. Keeping in mind the trauma of the victims and difficulties faced by the dependents, such provisions prescribing time limit had been removed from the statute in 1994. There appearance of the

provision, imposing time limit to file the claim, considered along with other provisions in the amendments, it seems, does not put the victims or beneficiaries to any real disadvantage. Hence this needs to be welcomed.

- The **security gap** arising from uninsured vehicles should narrow substantially by the deterrence of enhanced penalty for non-insurance.

## **V. Limit for Appeal**

Another existing provision which was defined in monetary terms was the minimum amount in dispute for preferring an appeal in the high court. The limit was Rs 10,000 Now, as per amended provisions the minimum amount in dispute has to be Rs 1,00,000 for preferring an appeal in a high court. This enhanced monetary limit on the amount in dispute almost bars appeals in most of the small cases. (A liberal judicial approach towards large number of minor injuries, may have adverse financial implications on the Balance Sheets of insurers, with consequent effect on risk rating).

## **Conclusion :**

The incremental improvements emanating from the several amendments add up to a quantum jump and are definitely a welcome step. Some changes, which are perceived to lead towards corporatisation of some functions of public officials and some changes perceived to be centre's encroachment on State Government powers, generated fierce debate in the parliament. Other amendments were approved with overwhelming support. There is enough for all, in these amendments to hope for a substantial and real improvement in a nation of people on wheels.

- Victims of road accidents can hope to benefit from the significantly improved relief (amount as well as the mechanism of implementation).
- Policy holders can hope to compensate the additional burden of premium likely to result from enhanced relief to the victims from the improvement in claims ratio expected to flow from the improved conditions and consequent reduction in the number of accidents.
- Focus on the pre-litigation settlement mode should ease the judicial burden.

A discernible reader, though will not find it difficult to recognize and understand the need and rationale for the changes brought in, yet the following questions will keep him/her nagging for some more time.

Will these amendments:

- Bring down the number of road accidents and road accident deaths?
- Speed up the settlement machinery?
- Reduce the number of pending cases?

- Improve the financial metrics involved and really improve the efficiency of insurance service available to vehicle owners and road accident victims?

While true assessment of the impact of these amendments can only be made in retrospect, for now, it can only be presumed that, answers to the above questions depend, to a great extent, on the following two factors: (a) effective enforcement of provisions relating to road safety, and (b) preparing all stakeholders, psychologically for a pre-adjudication settlement.

### **References:**

- The Motor Vehicles Act, 1988 (Ind.)
- The Motor Vehicles (Amendment) Act, 2019 (Ind.)
- The Motor Vehicles Amendment Bill, 2019 (Ind.) and Parliamentary Discussions thereon.

