

Some Important Dimensions of The Motor Vehicles Amendments Act 2019 : India's New Road Safety and Motor Claims Environment

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During the months of September and October 2019, India witnessed rampant protest and stiff resistance against the implementation of the penalty provisions of the amended Motor Vehicle Act. Citizens apart, even some state governments were against the revised penalties. The resistance reflects the intransigent attitude of the citizens and lack of peoples' trust in the regulatory system and the implementing authorities. While the cases of erroneous and bizarre challans reflect stray incidents and the initial problems of implementation, instances of seemingly unrealistic penalties arising from multiple violations, are more a reflection of road users' utter disregard for rules. The fact that Delhi has reported¹ substantial reduction in the number of challans after the enforcement of revised penalties, unequivocally confirms the appropriateness of the amendments. It is also confirmed by the response of the Union Transport Minister (to a starred question No. 80 of 21/11/2019) informing Lok Sabha that there was reduction of 9% in road accident deaths during two months after amended M. V. Act was implemented. Disciplined road behaviour is the need of the hour, particularly in a country where resources are over-stretched. Force may be necessary, till new habits are formed. It took some time for this controversy to die down. There could be some tweaking here and there, but the biting penalties are here to stay and cannot be wished away. 'Stinging penalties' is only one aspect of the amendments. More significant changes are introduced in matters relating to mandatory insurance provisions of the law. These changes will have lasting ramifications for all stakeholders, which will unfold gradually over a period as the amendments get implemented. The outcomes and the magnitude of improvements will also depend on the response of different stakeholders. Though better assessment, based on actual experience of implementation of the changes is possible at a later date, yet a closer look at the changes can provide a peep into the future of security mechanism for road accident victims in India.

Keywords: Sunset clause, Pay and Recover, Statutory Defences, Grievous Hurt, Sum Assured, Property.

(The Effective date of relevant amendments is yet to be notified)

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¹ <http://www.ndtv.com-01,October2019>

Introduction

It is trite to say that change is the law of life. We all know things never remain constant in the life of a society, nor do they remain the same for any segment of it. At times the changes are planned and induced. Indians are witnessing some such changes crafted by the Indian legislature, which are sweeping the road safety and motor accident claims' landscape of the country. Earlier in an article titled "Insurance and The Motor Vehicle Amendment Act 2019 - Initial Thoughts" published in the September 2019 issue of this journal, I made an attempt to present some dimensions of the general framework of road safety conditions and the security mechanism for victims of road accidents, under the regime of amended law. A leisurely and careful examination of the amendments reveals many other new features with material implications for all stakeholders. A few of these amendments may have rough sailing. This article, focuses on additional features of the amendments, while briefly touching upon the additional dimensions of changes covered in the earlier article. An attempt is made to give a bird's eye view of the picture emerging from those changes.

Amendments Altering the Narrative

1. (a) Harbinger of hope for accident victims, their dependents and road safety activists:

For a sufficiently long period, a kind of a climate change was happening in the Indian road safety environment and had assumed disastrous proportions. Reports of the human suffering and ordeal, emanating from road accidents were very common, and had become routine events. One of the prominent deficiencies contributing to this pathetic situation was non-availability of instant medical and non-medical help to the victims of road accidents. 'A stitch in time saves nine' is an old adage, the relevance of which was ultimately realized, though a little too late. Realizing the gravity, and, responding to the clarion call from the enlightened segments of the society, many significant steps have been included under the Motor Vehicles Amendment Act, 2019. The critical missing elements in the safety and security mechanism for road accident victims in India, if addressed, had the potential to save several invaluable lives. The scheme of "golden hour" providing cashless medical help, and, the concept of "Good Samaritan", encouraging people to render medical and non-medical assistance, and triggering life saving forces during the crucial moments, will go a long way, not only in saving lives, but also in smoothening the working of the designed security mechanism. Definitely it is a much-needed progressive remedy to address a problem which was eating into the vitals of our economy and society.

(b) The stupid economics cannot avoid assigning value even to some invaluable things like human life and a humanitarian help. It is some of the forces of the same economics, keep eroding the assigned value. It becomes necessary to reset again and again these values at regular intervals. Amendments have reset some such value propositions reflected in some of the schemes meant for road accident victims. Accordingly, the road accident victims will be entitled henceforth for higher amounts of benefits under solatium and no-fault liability

schemes. In addition, the scope of the term “grievous hurt”, used in the amended law as against the term “permanent disablement” which was found in the pre-amended law, is much wider, thereby benefiting more number of claimants.

(c) Wider scope of mandatory insurance/coverage: Specified passengers are one category of third-parties who are entitled to the benefit of mandatory insurance cover available under the Motor Vehicles Act. Whereas this cover was earlier available to the passengers of a public service vehicle, now it is made available to passengers of any transport vehicle. The term ‘transport vehicle’ includes, apart from public service vehicles, educational institution buses and private service vehicles. Thus the cover extends to the passengers of these vehicles too, thereby spreading the security net to cover more number of citizens.

2. Life's struggles are often made more difficult and miserable by the bureaucratized processes designed to regulate them. At times a small tweaking of a process can make a huge difference for ease of living. Three such small changes in the processes designed by the Motor Vehicles Act are likely to make the life easy for the stakeholders.

a) Simplified process of registration of new vehicles (LMV):

The amendments now permit the dealer to make an application for registration of a new vehicle (LMV). The amendments also dispense with the need for production of a new vehicle for physical inspection before the registering authority. A good step, simplifying the process of registration by removing the avoidable redundancy, and making life easy for the stakeholders. But it needs some fool-proof built-in controls against possible misuse. Apparently, benefits of this new process of registration seem to far outweigh the negatives.

b) Improvised procedure for renewal of driving licences:

Absence of an effective driving license of the driver, who drives the vehicle, at the time of accident, was one of the defences available to the insurers under the statutory provisions. This issue of effectiveness of driving license, has been one of the greatest irritants in the process of smooth operation of statutory/tort remedy meant for the benefit of accident victims. Though it cannot be wished away totally, in the changed licensing regime, there is a hope for substantial reduction in the severity of this irritant - for two reasons stated below. It will be a great relief for all the stakeholders.

- The erstwhile provisions of the pre-amended Act, permitted renewal of license with retrospective effect, if the application was made within 30 days of expiry of the license. It was implied that, any renewal, sought after 30 days, was to be granted prospectively. The amended provisions of the law, apart from allowing one year for retrospective renewal, also provide for one year advance renewal. It is a more reasonable and logical/rational time period for renewal of licence. This extended time line (one year prior to and one year post expiry) for renewal of licences should bring down the number of cases of non-renewals due to the short renewal period (30 days) of the pre-amended law.

- Another welcome amendment relating to driving license, with positive consequences, is the creation of "Central Register of Licenses". This step apart from ironing out the issues arising from diversity of practices, should lead to reduction in the number of frauds relating to licenses, which were rampant in the earlier licensing regime.

c) Reducing state-wise variations:

The regulation of road transport figures in the Concurrent List of the Constitution of India. It primarily falls in the domain of the State Governments. In the past, since the rules and schemes framed by different states were not uniform, the variations led to many issues, particularly, when the place of an accident and/or litigation was in a state, other than the state of registration of the vehicle or the state which had issued the license/permit. With greater standardization and uniformity expected from the creation of "Central Registers of Vehicles and Licenses" under the amended law, we can expect some respite in such issues. Yet, in few areas where state governments are authorized to make their own rules, state-wise variations and its implications will continue to bother.

3. Balance and equilibrium are two ubiquitous conditions/situations, ever relevant in all walks of human endeavours. In a dynamic environment, the equilibrium keeps on swinging. However, at times, in a regulated environment, equilibrium can be the result of conscious balancing. Such balancing/re-balancing attempted by the Motor Vehicles Amendment Act, 2019, will pan out some positives for the insurers.

a) Insurers will have the benefit of two additional defences, in addition to the existing ones: The idea and concept of insurer's defences was a creation of the law (MV Act). The recent amendments have expanded the grounds for/defences available for insurers to contest their liability. The two new additions to the existing defences are:

- Driving under the influence of alcohol or drugs as laid down in Section 185 of the Motor Vehicles Act, 1988.
- That there is no receipt of premium as required under Section 64 VB of Insurance Act, 1938.

b) Insurers are free from the pay and recover concept: As stated in one of the previous points above, insurers are permitted to defend themselves only on the grounds listed by the law, popularly known as insurer's defences (Mainly arising from breach of policy, conditions). Even when they succeed in establishing their defence, insurers were not able to avoid the payment because of a concept called "**pay and recover**". In all such cases, they had to pay first to the claimants and then recover the amount from the insured (owner of the vehicle).

Under the changes introduced by the recent amendments, the pay and recover concept has been abolished, and now insurers, the moment they successfully establish their defences, are freed from the liability. Pay and recover concept was a great dis-incentive for ensuring

responsible conduct amongst drivers and vehicle owners. This concept had been a great demoralising factor for the insurers. This change should usher in a new era of responsible conduct from owners and drivers as well. Of course, the onus of proving that the alleged breach is with the knowledge and consent of the owner of the vehicle and also the materiality of the breach, will continue to rest with the insurers.

4. Every change throws up challenges and sometimes changes are painful, particularly during the transitional period. So are some of the changes introduced by the Motor Vehicle Amendment Act, 2019. Stake holders can expect troublesome transition with regard to the following:

a) Parallel system/process of adjudication of Motor Accident Claims Tribunal(MACT) cases for several years to come, one system/process for claims on “in-force” policies and another system for claims on new policies: “**Sunset clause**” has been an important and necessary feature of all previous amendments to the Motor Vehicles Act. The Sunset Clause permits, existing contracts to continue on terms, conditions and provisions of the pre-amended law, only for a specified time period (three to four months) and thereafter, the provisions of the amended law will automatically be effective and applicable to such contracts. The latest amendments to the Motor Vehicles Act have given a go-by to this traditional legislative practice. The law, this time, does not provide for any Sunset Clause for policies in force. It allows the continuance of in-force policies on terms applicable to them under the pre-amended regime. Thus, the dual system of adjudication is a reality: one system for claims on policies in-force and another system for claims on new policies. Long-term policies issued in the past few years and the long-life cycle of the MACT cases will ensure that the problem of dual process does not evaporate soon, but it will continue for a sufficiently long period.

b) Primacy of the coverage clause over exclusion clause: There appears to be a contradiction in the wordings of Section 150, defining the insurer's defences and Section 164, dealing with no fault liability. (The word ‘insurer’ should not have been included in Section 164 – in a manner similar to the earlier wordings of Section 140, which now stands repealed). The accepted principle of interpretation applicable to cases of contradiction is “the exclusion clause to be read down to lend primacy to the clause of coverage”. This will lead to a situation where insurers will have no defence for claims on “no fault liability”. Was it the intention of the legislature? Will it go against the grains of public policy?

c) Option of limit on sum assured/indemnity limits: The scope of mandatory insurance has two dimensions. Firstly, the range of coverage, defining expressly or by implication, the persons covered as well as persons excluded. Secondly, the amount of relief available to the persons so covered. Though the limited-liability concept was practised earlier, by and large, for last three decades the concept of unlimited liability ruled the quantum dimension. The amendments have introduced a concept of option of limited liability. Now the wheel of liability limit has come full circle, albeit in a new optional look. Law has authorised the

Central Government to introduce a limit on the liability of insurers. In view of this, the emerging liability landscape can have several scenarios. A new set of policy covers with different options will be introduced by the insurers.

The limited liability option however opens the door to two issues:

- Risk of uncovered risk: Vehicle owners, driven by their natural desire to save some money/expense, exercising their option, in favour of limited liability, is an Indian reality. Where the owner chooses the limited liability insurance cover, and unfortunately, the actual liability adjudicated turns out to be more than the limit so opted by him, then the excess has to be borne by him. This very situation he intended to avoid by taking an insurance cover. A parallel can be seen in the Indian insurance history, in what happened with regard to option of Flood, Storm, and Tempest (FST) covers under the fire policy. Even beneficiaries (victims) may stand to suffer, if the owner turns out to be a person of meagre resources, not capable of fully compensating them – the very situation mandatory insurance provision of Motor Vehicles Act intended to avoid.
- Apportionment of costs and expenses associated with it: Another issue arising in such situations is with respect to sharing of expenses and costs of litigation. Logically it has to be in proportion to the liability of the insurer and that of the owner. There could also be other justifiable methods of apportionment.

The section authorizing the Central Government to introduce the limited liability, refers to “death and grievous hurt”. Is it a drafting error? The correct wording should have been “death and bodily injury”. Grievous hurt being a major subset of bodily injury, how can there be a limit on this major subset and no limit either for other subsets or the set itself as a whole?

5. No doubt, human life is a priority, but property too cannot be ignored. Relevant changes rolled out and the issues arising therefrom are no less important.

Changes in the definition of word “property”

We all know that vehicle accidents cause harm to human beings. Accidents also cause other damages/harm, known as property damage, a little less perceived fact. The vehicle owner is expected to take proper insurance, not only for his liability towards injury to human beings, but also towards damage to property. A grey area, relating to property damage is with regard to the items which get included in the word property. Notion of property may vary from person to person. For a common man or an animal lover, it maybe difficult to digest, if he is told that the livestock is a property. Similarly, some may feel odd to hear that baggage and personal effects were not covered in the term property. Such was the case in the pre-amended Motor Vehicles Act. The amended definition includes baggage in its scope. Since justice and equity demand certainty and predictability, including certainty in the meaning and understanding of words/terms, the law defines them to ensure that everybody is on the same page. Does the definition offer this certainty?

The new definition of the term “property” leaves us with some issues:

- Are the items worn on the body by a passenger outside the scope of baggage? Do they represent personal effects? (Personal effects include everyday items of personal use like clothes, cosmetics, items of adornment, jewellery, appliances, tools, furniture, silver coin, works of art, etc.). Personal baggage is included in the definition of property but not the personal effects. Are personal effects carried in the baggage covered? Personal baggage and personal effects are an exclusion in the definition of the related term “goods”.
 - Similarly, does the law intend to cover only the damage? What happens, when a vehicle falls into an overflowing river and the baggage is washed away or lost otherwise or stolen/robbed in the melee and confusion created following an accident. The Act talks of damage and not of loss. Whether this issue can adopt the same logic of “just a need for causal connection” rather than “the direct and immediate loss” generally adopted in personal injury cases arising from a vehicle accident?
 - Also, high value items, like laptop, designer dresses carried in the baggage could very well be the subjects of genuine disputes.
6. The scope of mandatory insurance cover has a bruised past and a turbulent history. A comment from the full bench of a High Court: “The proviso has not been happily worded” (*ILR 1991 KAR 2045 - Full Bench - Rama Jois, Mirdhe & Jagannatha Shetty JJ - National Insurance Company Limited Vs Dundamma*), is a testimony to the prevailing ambiguity. It appears, the way the amendments have tinkered with the coverage provisions relating to owner of the goods or his authorized representative, the driver and the co-worker and the extension of cover to the passengers of educational institution’s bus and private service vehicles, instead of introducing clarity, seem to compound the existing confusion. The owner and his representative being a specie of passengers and the driver and co-worker being a specie of employee, the amendments should have better dealt with these groups in the respective categories of provisions dealing with passengers and employees. Recasting of the wordings relating to coverage was overdue to ensure complete clarity.

A long pause for clarity: From the above analyses, though very brief, it is abundantly clear that, while the amendments attempt to broaden and strengthen the security mechanism, the implementation of some of the changes introduced by the amendments are likely to be currently contentious and the implications/ramifications of the same appear quite hazy, particularly the following.

1. Elusive clarity in certain aspects of scope of mandatory cover.
2. The right approach to applicability of the law in the absence of the sunset clause.
3. The Insurer's liability for passengers/employees carried in excess of the capacity permitted by law/rule (a legacy issue not addressed by amendments) particularly with the appearance of limited liability concept.

4. Contradiction between Section 150 and Section 164.
5. The approach of judiciary towards amendments which appear to have compromised the interests of claimants (Those enjoyed by them in the recent past).

For the mist to disappear and clarity to emerge, we have to patiently wait till the rays of judicial wisdom illuminate the outcomes of the long-drawn litigations, in which the tenacious litigants, fiercely fight for their rights and justice.

References:

- Motor Vehicles Act, 1988 (India)
- Motor Vehicles Act, 1939 (India)
- Motor Vehicle Amendment Bill, 2019 (India) and Parliamentary Discussions thereon.

