

Legislation and Dangers in Road Usage

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I. Introduction

India has a second largest network of roads in the world. The total road length in India is 5897671 KM. This comprises of 132500 of National Highways/ Expressways, 156694 of state highways and 5897671 Km of other road like major district roads, village roads etc.⁴ According to World Statistics, 2018, India ranks 1st among 199 countries in road fatalities.⁵ In Ministry of Road Transport & Highways yearly, Road Accidents in India (2018) it is mentioned that out of 467044 road accidents, 151417 persons died (2317 juveniles) and 469418 were injured. Wrong side driving took toll of 15 lives daily. Over 15000 passengers including 9349 drivers were killed on account of not using seat belt.⁶ Thus to travel on road in India is fraught with danger of getting accident or suffering with injuries. Seeing the data of causalities and injuries of road traffic accidents on account of various factors the probability of meeting with accident in road traffic is very high on Indian roads.

Dangers in road usage are multi-sectoral and multilayered. The danger may be on account of bad engineering of roads, absence of proper maintenance of roads, faulty traffic management, lack of proper enforcement of rules and regulations related to road traffic, behavior of drivers on the road etc. In terms of rules and regulations in India the main legal instrument to regulate road traffic safety is

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⁴ Government of India, Annual Report, Ministry of Road Transport (2018-19).

⁵ International Transport Forum, Road Safety Report/OECD 2019.

⁶ Government of India, Road Accidents in India, Ministry of Road Transport and Highways, (2018).

Motor Vehicles Act. However police authorities also invoke certain sections of Indian penal Code for penalizing the offenders of traffic violations. Rash driving is covered under Section 279 of IPC⁷. This section takes into consideration only the wrongs of driver and other factors are not taken in to account. The wrong committed by a driver may also be interpreted by policemen on the duty subjectively. Other sections such as 336⁸, 337⁹, 338¹⁰ and 304-A¹¹ of the Indian penal Code are also some times invoked. These sections are generic in nature and invoked on the whims and fancies of policemen present on duty at the time of committing offence. These section do not comprehensively define offence related to driving and do not take other contributing factors those may have been responsible for the traffic violations even when there might not been any

⁷Indian Penal Code, No. 45 of 1860, PEN. CODE (2019). Section 279 states as follows: Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

⁸Indian Penal Code, No. 45 of 1860, PEN. CODE (2019). Section 336 states as follows: Act endangering life or personal safety of others.—whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

⁹Indian Penal Code, No. 45 of 1860, PEN. CODE (2019). Section 337 states as follows: Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

¹⁰Indian Penal Code, No. 45 of 1860, PEN. CODE (2019). Section 338 states as follows: Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

¹¹Indian Penal Code, No. 45 of 1860, PEN. CODE (2019). Section 304A states as follows:

Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

mistake on the part of driver. Section 184¹² of the Motor Vehicles Act also defines dangerous driving and this also relates to behavior of the driver. Here also other contributing factors are not taken into account. Subjectivity creeps in while defining offence by the policemen on duty. In amended Motor Vehicle (Amendment) Act, 2019 a new Section 198A¹³ has been inserted. As per this section if accident occurs on account of faulty maintenance of road then concerned authorities may be penalized if found guilty.

¹²The Motor Vehicles Act, (1988) Section 184 states as follows:

Driving dangerously.—Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

¹³The Motor Vehicles (Amendment) Act, (2019) Section 198A states as follows: (1) Any designated authority, contractor, consultant or concessionaire responsible for the design or construction or maintenance of the safety standards of the road shall follow such design, construction and maintenance standards, as may be prescribed by the Central Government from time to time. (2) Where failure on the part of the designated authority, contractor, consultant or concessionaire responsible under sub-section (1) to comply with standards for road design, construction and maintenance, results in death or disability, such authority or contractor or concessionaire shall be punishable with a fine which may extend to one lakh rupees and the same shall be paid to the Fund constituted under section 164B. (3) For the purposes of sub-section (2), the court shall in particular have regard to the following matters, namely:— (a) the characteristics of the road, and the nature and type of traffic which was reasonably expected to use it as per the design of road; (b) the standard of maintenance norms applicable for a road of that character and use by such traffic (c) the state of repair in which road users would have expected to find the road; (d) whether the designated authority responsible for the maintenance of the road knew, or could reasonably have been expected to know, that the condition of the part of the road to which the action relates was likely to cause danger to the road users; (e) whether the designated authority responsible for the maintenance of the road could not reasonably have been expected to repair that part of the road before the cause of action arose; (f) whether adequate warning notices through road signs, of its condition had been displayed; and (g) such other matters as may be prescribed by the Central Government. Explanation.—for the purposes of this section, the term “contractor” shall include sub-contractors and all such persons who are responsible for any stage in the design, construction and maintenance of a stretch of road.’

II. Factors Responsible for Causing Dangers for Road Usages

It is a fact that while driving on the road drivers, besides his or her own error, come across of so many other factors that directly or indirectly contribute dangers in usage of road. In following paragraphs some dangers of road usage to the road users are being described in brief:

i. Engineering of Roads

Engineering of roads with faulty design is one of the major danger in usage of road. The engineering design of roads like sharp turns, slopes, presence of black spots (accidents prone spots on the roads) etc. are considered hazards to road safety. Even national highways in India are full of black spots. Ministry of Road Transport & Highways has identified 789 black spots based on fatalities during the year 2011-12, 2012-13 and 2013-14 calendar years and a comprehensive rectification plan has been initiated¹⁴. The absence of crash barriers on the roads is also a danger on account of faulty engineering design. In India, Ministry of Road Transport & Highways has started installing crash barriers in hilly terrain on national highways as roads in hilly areas in absence of crash barriers are prone to accidents. Ministry of Road Transport & Highways has identified a length of 280 kms in hilly areas for installing crash barriers.¹⁵ In order to have a good road engineering European Community started the European Road Assessment Program (EuroRAP). The aim of this program was to give safety ratings to roads of Europe. Roads were rated according to the presence of crash risks with reference to engineering of the roads. This program was successful in giving road engineers vital information and for benchmarking and planning in construction of roads for performance with reference to the road safety.¹⁶ Road infrastructure safety is really important in rural India as during the year 2018 over 65 per cent of total accidents occurred on rural roads in India.¹⁷ Safety on rural roads in European Union Funded Project RIPCORDER-ISERST

¹⁴Government of India , Road Accidents in India, Ministry of Road Transport and Highways, (2018).

¹⁵Government of India, Annual Report, Ministry of Road Transport & Highways, (2018-19).

¹⁶<http://www.eurorap.org>.

¹⁷Government of India, Road Accident in India, Ministry of Road Transport & Highways, 2018.

was launched in 2005 emphasizing on improvement of road designing of rural roads.

ii. Lack of Proper Traffic Management

On the roads is also a major danger on usage of roads. There is no homogeneity of traffic. On Indian roads, all types of traffic like cars, motor cycles, busses, cycle rickshaws, e-rickshaws etc. run on the same road. This becomes a hazard on road as the vehicles on high speed are likely to collide with the vehicles running at low speed. Therefore, homogeneity of traffic is extremely desirable. In India no such homogeneity of traffic has been done. Further this strategy also emphasized functionality of roads in order to avoid danger of using road. As per this strategy roads are categorized on the basis of functionality like thorough roads, distributor roads, access road etc. In India such categorization has been started in recent years by constructing expressways, economic corridors etc. The Dutch Sustainable Safety based on this concept of functionality of roads, homogeneity of masses for speed and directions was resorted and it resulted reducing fatalities in Netherland by 47 per cent during the period 2000-2017¹⁸.

iii. Lack of proper Enforcement of Laws

Lack of proper enforcement of rules and regulations by enforcement agencies is also one of the factors that imparts in enhancing danger of usage of roads. The magnitude of lack of enforcement of road traffic safety rules may be judged by the fact that during the year 2018 on police controlled traffic there occurred 12793 accidents and in these accidents 4090 persons were killed and 11519 were injured.¹⁹ Enforcement of traffic safety laws also need automation and will of the authorities to enforce traffic laws in proper spirit. The French Success Story is an excellent example in this regard. In France at the instance of highest political authority drivers' feeling of impunity was taken seriously. The fully automated system was introduced in order to catch all major violations of traffic laws on the roads. This was implemented in a time bound manner within strict adherence of time limits set. The concept of zero tolerance was introduced and cameras were fixed. This resulted in reducing fatalities in road accidents during

¹⁸<http://www.sustainablesafetuy.nl>

¹⁹Ibid.

the period 2001-2015 by more than 35 percent from 8160 to 5318 respectively.²⁰ The road fatalities during the year 2016 in France stood at 3477.²¹

iv. Lack of Good Technology and Innovation for Safer Cars

Lack of good technology and innovation for safer cars is also one of the dangers for the road users. In this direction, in Europe a program EuroNCAP(European New Car Assessment Program) was started. The cars were developed by performing crash test in frontal impact, side impact etc. There were also fitted in the cars reminders for bearing seat belts. The cars were rated at a scale of 1-5 stars taking into consideration the basis of the result, the protection of occupant of the car received, protection of pedestrians in case of accidents. This resulted in 30% lower risk to the passengers of the car that rated 4 stars in comparison to the car that rated 2 stars.

v. Driving & Drinking

Drunken driving really has become menace on the roads especially during night. The driver under the influence of drug and alcohol lose control over the speed of car and this result in accident causing fatal injuries and even deaths. This can be gauged by the fact that during 2018 on account of drunken driving or driving under the influence of drugs total of 1208 accidents occurred. In these accidents 4188 persons died and 9944 person injured.²²

vi. Over speeding

Over speeding is one of the lethal danger to road users. The saying goes well that speed thrills but it kills. Drivers who drive at very high speed beyond the speed prescribed by statutes are danger to the safety of themselves and to the safety of other road users also as at high speed the probability of meeting with accidents increases. During the year 2018 on account of high speed total of 310612 accidents took place. In these accidents, 97588 persons were killed and 316421 persons were injured.²³ Thus it can be seen from the data of accidents

²⁰<http://www.securiteroutinere.equipement.gov.fr/>.

²¹Global status report on road safety report 2018.

²²Government of India, Road Accidents in India, Ministry of Road Transport and Highways, (2018).

²³Ibid.

on account of high speed that over speeding is a great danger over road for road users and also for drivers.

vii. Behavior and Conduct of Drivers

The behavior of drivers not adhering to the lane driving is also one of the danger to the road users. On account of wrong side driving or lane indiscipline during 2018, there occurred 24781 accidents. In these accidents 8764 persons were killed and 24100 were injured.²⁴ If driving behavior of the drivers on the wheels is monitored or controlled by the enforcement agencies or self-training of the drivers than these type of fatalities and injuries can be avoided. Driving when driver is tired is also as dangerous as drunken driving. A tired driver tend to sleep while driving. The drivers asleep are likely to meet accidents on high speed road and their reflex actions do not work properly. On account of tiredness, their reflex action becomes impaired and result in accidents. Therefore, there should be compulsory rest for drivers who drive heavy vehicle for long distances specially carrying inter-state goods

viii. Violating Traffic Rules

Jumping red lights by the vehicle drivers is again a danger to the road users. On account of jumping of red lights by the motor vehicle drivers during 2018 there occurred 4418 accidents. In these accidents 1545 persons were killed and 4126 persons were injured.²⁵ If the behavior of the driver is tamed by the enforcement agencies or by self-discipline of the driver i.e. not to jump the red lights than undesirable accidents could have been avoided.

ix. Distracted Driving

Distracted driving has also become a danger on road users. The driving while texting on mobile phone, eating or other activities results in accidents. On account of using mobile while driving, during 2018 there occurred 9039 accidents. In these accidents, 3077 persons were killed and 7878 persons were injured.²⁶ The behavior of the driver is not desirable on the wheels to use mobile

²⁴Ibid.

²⁵Ibid.

²⁶Government of India, Road Accidents in India, Ministry of Road Transport and Highways,(2018).

phone or engage in other activities. This behavior would become lethal to other road users also.

x. Non-use of Safety Devices

Non-use of safety devices like seat belts and helmets has been lethal to drivers of two wheelers and motor vehicles. The use of these devices is critical for averting fatalities and grievous injuries to the driver on the wheel. On account of non-use of helmet 43614 persons were killed. Similarly on account of non-use of seat belts 24435 persons were killed. These figures include both drivers and passengers.²⁷

xi. Bad Weather

Bad weather conditions also become dangerous for driving on the roads. Therefore, whenever, weather conditions go worse, drivers should slow down the speed or avoid driving in order to avoid accidents. On account of rainy conditions there were 44011 accidents on the roads. In these accidents 14590 persons were killed and 45010 persons were injured. These fatalities and injuries could have been avoided if drivers on the wheels would have taken right decision not to drive in rainy condition or would have driven slowly and carefully. Similarly, during foggy and misty weather conditions, there occurred 28026 accidents during 2018 in these accidents 11841 persons were killed and 25265 persons were injured. The wise decision of the drivers in foggy and misty weather conditions would have resulted in avoiding these fatalities and injuries.²⁸

xii. Over-loading

Over-loading of heavy vehicles is also a danger to road users. Over loaded vehicles are having goods protruded latterly, over the roof and sometimes on front also. Over loaded trucks sometime result in accidents due to bursting of tyres from excess weight, failing of breaks, collapsing on the road, loss of control of drivers over the speed. In substance, over loaded trucks become hazard to other road users on the road like cyclist and pedestrians. During the year 2018 on account of over loading there occurred 47092 accidents. In these

²⁷ Ibid.

²⁸ Ibid.

accidents 17981 persons were killed and 48343 persons were injured.²⁹ However over loading has suitably been taken care of in Motor Vehicle (Amendment) Act, 2019. The penalties for driving over loaded vehicles have been increased many folds. The over loaded vehicles can only be allowed to go on the road by enforcement agencies only when over weight is off-loaded.

III. International Scenario

Danger in road usage has been a major concern at international level also. So many countries have taken care of while making policies with reference to road traffic safety. Swedish parliament in 1997 adopted Vision Zero. It was based on principal of ethics, responsibility change, safety philosophy and driving mechanism for change. This resulted in reduction of road traffic fatalities by 45% during the year 2002-2018.³⁰

Government of India has also taken into consideration the recommendations of Group of State Transport Ministers constituted by Ministry of Road Transport & Highways and has included these recommendations in the Motor Vehicle Amendment Act, 2019. More than 100 sections have been amended or newly inserted. These amendment have emphasized strengthening of enforcement of road safety laws thus improving road safety. Penalties for violation of various provisions of road safety laws have been increased many folds in order to deter the vehicle drivers to violate rules and regulation of the road safety while driving on the road.

IV. Conclusion

In conclusion danger in road usages are manifolds. Concerted efforts are to be made in order to have long lasting impact on safety of road users in order to reduce economic and social loss by way of large scale deaths and injuries. These efforts are to be at all fronts like legislative, enforcement of traffic laws, engineering of roads, engineering of automobiles, education & training of drivers imparting them better skills for driving on the roads etc.

²⁹Ibid.

³⁰International Transport Forum, Road Safety Report/OECD 2019.