

VIEWS/OPINION OF THE BIHAR STATE LAW COMMISSION ON THE 234th REPORT OF THE LAW COMMISSION OF INDIA IN RESPECT OF LEGAL REFORMS TO COMBAT ROAD ACCIDENTS.

The 234th Report of the Law Commission of India recommending large scale legal reforms to combat road accidents has been referred to this Commission by the Government of Bihar in the Department of Law soliciting its views/opinion thereupon.

Unarguably, road accidents have earned India a dubious distinction. It is, no doubt, beyond any cavil that the unprecedented annual growth in incidence of road accidents in our country is one of the most perturbing menace which calls for urgent attention. Thankfully, taking cognizance of the phenomenal explosion in motor vehicles population in the country over the past few years and the consequential quantitative graph of motor vehicles accidents indicative of an unilateral ascending trend, which is an ominous cause for dismay, the Law Commission of India has taken up the issue in right earnest and has suggested for appropriate amendments in the Indian Penal Code, 1860 as also the Motor Vehicles Act, 1988, so as to effectively arrest/control/reduce the growing phenomenon of road accidents.

Admittedly, the relative causes for such road accidents, as rightly noticed and elucidated by the Law Commission of India, are multitudinous. To this two more causes, namely, the introduction of high-speed motorized vehicles and the sudden over expose of the *nouveau riche* with their quixotic penchant for showmanship with their costly, glittering and trendy cars coupled with reckless and negligent driving, may also be added. Yet another cause which is required to be added thereto is the inefficiency in law enforcement and lack of concern on the part of traffic regulatory authorities.

As noticed by the Law Commission of India in the instant Report, the then Law Commission of India way back in June 1971 through the 42nd Report had recommended for appropriate amendments in the Indian Penal Code, 1860 to minimise incidence of road accidents and in the light thereof the Indian Penal Code (Amendment) Bill, 1972 was put in motion but unfortunately, though passed by the Council of

States (Rajya Sabha), it lapsed as the House of the People (Lok Sabha) was dissolved in 1979. However, thankfully, after a lapse of almost thirty years renaissance has dawned and the issue of eradicating/minimising road accidents has been revived through the instant Report with certain modifications and additions to the earlier report.

It needs to be stated at the very outset that since the very intent and purpose of the 234th Report is to combat road accidents through legal reforms, the recommendations made therein inevitably and for all practical purposes have to be read in context of the Indian Penal Code, 1860 (hereinafter referred to as the "I.P.C.") and the Motor Vehicles Act, 1988 (hereinafter referred to as the "M.V. Act") as also in juxtaposition with the 42nd and 156th Reports of the Law Commission of India, the Indian Penal Code (Amendment) Bill, 1972, the Indian Penal Code (Amendment) Bill, 1978 and the Motor Vehicles (Amendment) Bill, 2007.

The State Law Commission, while unequivocally agreeing with the thematic contents of the instant Report and the recommendations made therein, is apologetic in expressing its disagreement in respect of some of the substantive sentence and pecuniary fines proposed to be imposed/levied with regard to certain offences enumerated therein.

Amendment to Section 279 I.P.C.

We shall at the first instance take up for consideration the recommendations in respect of the amendment to section 279 I.P.C. (driving or riding on a public way so rashly or negligently as to endanger human life etc.) which in effect proposes to omit the words "which may extend to one thousand rupees" appearing therein with the purposive object of making the quantum of fine leviable thereunder unlimited. Unfortunately the reasons for such unilateral steps have not been disclosed. Even otherwise, the proposed amendment apparently is a mere reiteration of the earlier proposed amendment as mooted way back in 1971 through the 42nd Report of the Law Commission of India which was also incorporated in the Indian Penal Code (Amendment)

Bill, 1972 that unfortunately never had the occasion to see the light of the day.

The State Law Commission, apologetically, is unable to give its consent to the said recommendations as the same does not appear to be in consonance with the intent and purpose of the existing provisions of either section 279 I.P.C. or section 184 of the M. V. Act, 1988 (driving dangerously) or even with the proposed amendment of section 184 of the M. V. Act, 1988 as incorporated in the still pending Motor Vehicles (Amendment) Bill, 2007.

Admittedly, the offence under section 279 I.P.C. relates to rash and negligent driving or riding on a public way which is likely to cause hurt or injury to any other person and is punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to ` 1000/- or with both. It would appear that section 279 I.P.C. corresponds to section 184 M.V. Act, 1988, which for the first offence prescribes imprisonment for a term which may extend to six months or with fine which may extend to ` 1000/- and for any second or subsequent offence committed within three years of the commission of a previous similar offence the prescribed punishment is imprisonment for a term which may extend to two years or with fine which may extend to ` 2000/- or with both. By way of comparison, it may interestingly be noted that in the Motor Vehicles (Amendment) Bill, 2007, which is still pending, the proposal is for enhancement of the quantum of fine in section 184 M.V. Act, to a fixed amount of the ` 1000/- from the present maximum of ` 1000/- for the first offence and for subsequent offence the proposal is to enhance fine from the present maximum of ` 2000/- to ` 5000/- subject to the minimum of ` 2000/-. It will further appear that in the said Bill of 2007 there is also a recommendation for amending section 183 M.V. Act providing punishment for contravention of the speed limits referred to in section 112 M.V. Act, which in effect would also fall within the ambit of driving dangerously, so as to enhance to quanta of fines prescribed in sub-sections (1) and (2) thereof. Under sub-section (1) the quantum of fine for the first offence is proposed to be enhanced from the present maximum of ` 400/- to a fixed ` 500/- and for subsequent offence from the present maximum of the ` 1000/- to ` 5000/- subject to the

minimum of ` 2000/-, whereas under sub-section (2) the quantum of fine for the first offence is proposed to be enhanced from the present maximum of ` 300/- to a fixed ` 500/- and for subsequent offence from the present maximum of ` 500/- to ` 3000/- subject to the minimum of ` 1500/-. It further appears from Clause 58 of the Bill of 2007 that a new section 187 A has been proposed to be inserted in respect of liability of a person while driving a motor vehicle in certain cases and sub-section (1) thereof provides that without prejudice to the provision contained in the Indian Penal Code, 1860, whoever drives a motor vehicle in rash or negligent manner and causes injury to a person or damages any property shall be liable to penalty which may extend to ` 5000/-.

In the light of the discussions in the preceding paragraphs the recommendations for making the quantum of fine under section 279 I.P.C. unlimited appears not only to be incongruous but also illogical and irrational. Moreover, it would give an arbitrary and discriminatory tool in the hands of the court trying the offence. **The State Law Commission is of the opinion that instead of making the quantum of fine under section 279 I.P.C. unlimited, the same should be enhanced from the existing maximum of ` 1000/- to a fixed ` 2000/- keeping in view the recommended amendments to sections 183, 184 and the proposed section 187A of the M.V. Act.** One must also keep in mind the fact that the offence under section 279 I.P.C. is non compoundable and is distinct from offence either under section 337 or 338 I.P.C. and a person convicted of an offence either under section 337 or 338 I.P.C. can also be convicted under section 279 I.P.C. separately.

Insertion of a new section 279A I.P.C.

The 42nd Report of the Law Commission of India had recommended for the insertion of a new section 279A in the I.P.C. so as to address the offence of driving unsafe or overloaded vehicle on a public way and also suggested the punishment of imprisonment of either description for a term which may extend to six months, or with fine or with both. The recommendations though incorporated in the two I.P.C. (Amendment) Bills of 1972 and of 1978 unfortunately could not be enacted. The 234th Report while reiterating the said

recommendations has sought to suggest modification in the term of the imprisonment increasing it to five years for the first offence and to a minimum of six months for any second or subsequent offence. Such a provision, in view of the unprecedented increase in vehicular traffic and indiscriminate use of unsafe and non-roadworthy motor vehicles is indeed the need of the hour. Curiously, however, no quantum of fine, minimum or maximum, has been proposed although the same is desirable specially in cases of imposition of punishment.

In this connection it would be gainful to notice two sections of the M.V. Act, 1988- section 190 (driving vehicle in unsafe condition) and section 194 (driving vehicle exceeding permissible weight). Section 190 envisages various situations of a person knowingly driving or causing or allowing to be driven in a public place a defective motor vehicle and prescribes various degrees of punishments including imprisonment for terms extending from three months to three years as per the nature and degree of the offence and/or imposition of fine extending from ` 1000/- to ` 5000/-. Similarly, section 194 prescribes for imposition of minimum fine of ` 2000/- and an additional amount of ` 1000/- per tonne of excess load.

The State Law Commission while accepting the necessity of inserting the new section 279A in the Indian Penal Code, 1860, as the same would, in explicit terms, control, to a certain extent, the driving of unsafe or overloaded vehicles in a public way and thereby endangering human life and property is also inclined to suggest for a quantum of fine and would recommend fixing a fixed amount of ` 5000/- for driving an unsafe as also for an overloaded vehicle and an additional amount of ` 2000/- per tonne of excess load.

The State Law Commission is in full agreement with the recommendations of the maximum term of imprisonment under section 279 and proposed section 279A I.P.C. being increased to five years and of any second or subsequent offence there under inviting punishment with the minimum term of imprisonment of

six months. However, it is suggested that some quantum of fine should also be fixed for any second or subsequent offence.

Amendment to section 304A I.P.C. and proposed insertion of sub-section (2) therein

The State Law Commission unequivocally accepts the reasonings and recommendations made in the 234th Report of inserting a new sub-section (2) to section 304A I.P.C., increasing the maximum term of imprisonment under sub-section (1) and proposed sub-section (2) to ten years and making the offence under section 304A I.P.C. non-bailable. The recommendations for prescribing a minimum term of imprisonment of two years for the offence of causing death of any person through driving under influence of drink or drugs and a minimum term of imprisonment of one year for any second or subsequent offence under section 304A I.P.C. if the rash and negligent act of driving other than driving under the influence of drink or drugs are also accepted without any reservations.

However, curious as it appears, neither any minimum nor maximum quantum of fine is prescribed for an offence under the existing section 304A I.P.C. or in the recommendations made for amendment in section 304A I.P.C. or in the proposed insertion of sub-section (2) therein.

In this context it may be stated that since the import of the 234th Report is to usher in legal reforms to combat road accidents and as section 304A I.P.C. essentially deals with the offence of causing death by doing any rash or negligent act not amounting to culpable homicide one may necessarily take gainful resort to some of the provisions of the M.V. Act, 1988, which would in an expansive sense fall within the ambit of an offence under section 304A I.P.C. as existing or as per proposed amendment and insertion therein- namely, section 183 (driving at excessive speed etc.), section 184 (driving dangerously) and section 185 (driving by a drunken person or by a person under the influence of drugs). Sub-sections (1) and (2) of section 183 prescribes fine which may extend to 1000/- and between `300/- and `500/- respectively as per nature of the offence. Section 184 for the first

offence prescribes a fine which may extend to `1000/- and for the second or subsequent offence if committed within three years of the commission of the previous similar offence with fine which may extend to 2000/-. Section 185 prescribes a fine which may extend to `2000/- and for the second or subsequent offence if committed within three years of the commission of the previous similar offence with fine which may extend to `3000/-. It may be noticed that through the M.V. (Amendment) Bill, 2007 the suggestion is to enhance the quantum of fine prescribed under sub-section (1) of section 183 for the first offence from present maximum of 400/- to a fixed `500/- and for subsequent offence from the present maximum of `1000/- to `5000/- subject to the minimum of `2000/- and under sub-section (2) from present maximum of `300/- to a fixed `500/- and for the first offence and for the subsequent offence from present maximum of `500/- to `3000/- subject to minimum of `1500/-. Under section 184 the quantum of fine for the first offence is proposed to be enhanced from present maximum of `1000/- to a fixed `1000/- and for subsequent offence for the present maximum of `2000/- to `5000/- subject to minimum of `2000/-. Under section 185 the proposal is to enhance the quantum for the first offence for driving by a drunken person or a person under the influence of drugs from the present maximum of `2000/- to a fixed `2000/- and for the subsequent offence from the present maximum of `3000/- to a fixed `3000/-.

In view of the discussions made in the foregoing paragraphs the State Law Commission is inclined to propose that the quantum of fine under all the provisions of section 304A I.P.C. be fixed at a fixed `2000/- and for any second or subsequent offence at `3000/-.

Amendments to sections 336, 337 and 338 I.P.C.

The Law Commission of India on a reconnaissance and consideration of the prevailing situations and circumstances was of the opinion that the punishments provided for under sections 336 to 338 I.P.C. were not adequate and should be increased. Accordingly, through the 42nd Report recommendation was made in 1971 as hereunder:

- a) **Section 336:** Substitute "six months" for "three months" and "five hundred rupees" for "two hundred and fifty rupees."
- b) **Section 337:** Substitute "one year" for "six months" and omit the words "which may extend to five hundred rupees."
- c) **Section 338:** Substitute "three years" for "two years" and omit the words "which may extend to one thousand rupees."

These suggestions, as would appear, were incorporated in the Indian Penal Code (Amendment) Bill, 1972 which, as stated above, lapsed due to fortuitous circumstances.

Through the instant Report, while reaffirming the recommendations made in the 42nd Report, the Law Commission of India sought to suggest a few minor modifications therein in the following terms:

- i) Any second or subsequent offence under section 336 I.P.C., if committed within three years of the commission of the previous similar offence and the rash or negligent act involved is the act of driving, should be punishable with the maximum term of imprisonment of two years.
- ii) Any second or subsequent offence under section 337 I.P.C., if committed within three years of the commission of the previous similar offence and the rash or negligent act involved is the act of driving, should be punishable with the maximum term of imprisonment of three years.
- iii) Any second or subsequent offence under section 338 I.P.C., if the rash or negligent act involved is the act of driving, should be punishable with the maximum term of imprisonment of five years.

From a perusal of sections 336, 337 and 338 I.P.C. it is plain that they are in context of acts which are not unlawful but which are

done with criminal rashness and negligence so as to endanger human life (including causing hurt/grievous hurt or injury) or personal safety of others and where hurt or injury is so caused there must be direct nexus between the hurt or injury caused and the rash or negligent act. It is further to be noticed that whereas under section 336 I.P.C. punishment can be imposed even where no harm follows, section 337 I.P.C. is an aggravated form of section 336 I.P.C. and provides for punishment where hurt is caused and section 338 I.P.C. is still a further aggravated form of section 337 I.P.C. providing punishment for causing grievous hurt by some rash or negligent act. It goes without saying that such rashness or negligence contemplated are not exclusively or necessarily relatable to those which result from the use or driving of a motor vehicle and may also extend to doing of any other act so rashly or negligently so as to put the lives and safety of others in peril.

The 234th Report while reiterating the recommendations of the 42nd Report as incorporated in the Indian Penal Code (Amendment) Bill, 1972 has sought to suggest the inclusion of imposition of further punishment for offences under sections 336, 337 and 338 I.P.C. in the event of in second or subsequent offence there under where the rash or negligent act complained of is the outcome of the driving of a motor vehicle and rightly so as most of the cases under these sections are ordinarily resultant of rash and negligent driving.

The recommendations in the 234th Report are indeed welcome measures and this Commission while appreciating and accepting the same is inclined to recommend for incorporating some fine also in addition to the terms of imprisonment.

So far as the amendments/substitutions/omissions as projected for sections 337 and 338 I.P.C. are concerned, the State Law Commission is inclined to express its reservations particularly in respect of the recommendations made in the 42nd Report for omission of the words "which may extend to five hundred rupees" in section 337 I.P.C. as also the words "which may extend to one thousand rupees" in section 338 I.P.C. Though no reasons have been elucidated for suggesting such omissions, the same presumably must be with the purposive object of making the pecuniary punishment unlimited as propounded in the case of section 279 I.P.C.

The reservations of the State Law Commission to the proposed omissions in the case of sections 337 and 338 I.P.C. are identical to the reasonings assigned in the matter of section 279 I.P.C.

That apart, if one cares to look to the provisions of the Indian Penal Code, 1860 and the First Schedule of the Code of Criminal Procedure, 1973, it will be apparent there from that except for offences under section 303 and section 304B I.P.C., all offences prescribe substantive imprisonment and/or fine or both and in most cases the amount of fine have been stated.

Both sections 337 I.P.C. (causing hurt by act endangering life or personal safety of others) and 338 I.P.C. (causing grievous hurt by act endangering life or personal safety of others) do provide for imprisonment and/or fine or with both. But they do not fore see of situations when such offences are repeated.

Therefore the recommendations in the instant Report of providing for imprisonment in cases of commission of any second or subsequent offence under sections 337 and 338 I.P.C. is a welcome step. However, this Commission is of the opinion that some amount of fine should also be prescribed in the event of any second or subsequent offence under sections 337 and 338 I.P.C.

This suggestion for prescribing fine is founded, apart from what is stated hereinabove, on the proposal of the insertion of a new section 187A in the M.V. Act through the Motor Vehicles (Amendment) Bill, 2007, providing for penalty upon those who drive a motor vehicle in a rash and negligent manner and cause injury to a person or damages any property.

Then again, dangerous driving does essentially involve a relative degree of rash and negligent driving. Section 184 M.V. Act provides punishment for dangerous driving and the 234th Report seeks to propose an enhancement in the quantum of fine for the first offence from the present maximum of `1000/- to a fixed `1000/- and for the subsequent offence from the present maximum of `2000/- to `5000/- subject to the maximum of `2000/-. As a corollary, when there is a proposal pending for enhancement of fine for driving dangerously,

there obviously is no reasonable rationale behind the proposal for omission of fine in respect of sections 337 and 338 I.P.C. as proposed in the 42nd Report and reiterated in the 234th Report.

Section 184 M.V. Act for the first offence prescribes a term of imprisonment 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 both. The Motor vehicle (Amendment) Bill, 2007 has recommended for enhancement of the quantum of fine for the first offence to a fixed `1000/- and for the subsequent offence to `5000/- subject to a minimum of `2000/-. The recommendation in the 234th Report of the term of imprisonment for any second or subsequent offence under section 184 M.V. Act should be minimum term of six months in the circumstances appears to be reasonable.

Save and except the recommendations which have been dealt with in the paragraphs hereinabove, all other recommendations contained in the 234th Report of the Law Commission of India are fully accepted by this Commission.

To sum up, the State Law Commission is of the opinion as stated hereinafter :-

- a) **That instead of making the quantum of fine under section 279 I.P.C. unlimited, the same for the reasons stated be enhanced from the existing maximum of `1000/- to a fixed `2000/-.**
- b) **That while accepting the necessity of inserting the proposed new section 279A in the Indian Penal Code, 1860, suggestion is for incorporating some quantum of fine and the recommendation is for a fixed amount of `5000/- for driving an unsafe as also for an overloaded vehicle and an additional amount of `2000/- per tonne of excess load.**

- c) That the recommendations of the maximum term of imprisonment under sections 279 and proposed section 279A I.P.C. being increased to five years and of any second or subsequent offence there under inviting punishment with the minimum term of imprisonment of six months appears justified. However, it is suggested that some quantum of fine should also be fixed for the second or subsequent offence.**
- d) That the recommendations for inserting a new sub-section (2) to section 304A I.P.C., increasing the maximum term of imprisonment under sub-section (1) and proposed sub-section (2) to ten years and making the offence under section 304A I.P.C. non-bailable, prescribing a minimum term of imprisonment of two years for the offence of causing death of any person through driving under influence of drink or drugs and a minimum term of imprisonment of one year for any second or subsequent offence under section 304A I.P.C. of the rash and negligent act of driving other than driving under the influence of drink or drugs also appears justified.**
- e) That it is suggested that some quantum of fine be incorporated for offence under all the provisions of section 304A I.P.C. and it is proposed that the same be fixed at `2000/- and for any second or subsequent offence at `3000/-.**
- f) That the recommendations for inclusion of further punishments for offences under sections 336, 337 and 338 I.P.C. in the event of any second or subsequent offence there under where the rash and negligent act is the result of driving of a motor vehicle is justified. However,**

the suggestions is for incorporating some fine also in addition to the term of imprisonment.

- g) That the recommendations for the maximum term of imprisonment in section 184 M.V. Act to be increased to five years and that any second or subsequent offence there under should be punishable with the minimum term of imprisonment of six months is justified. It is desired that while prescribing the minimum term of imprisonment, the proposals for increasing the quantum of fine as recommended in the Motor Vehicles (Amendment) Bill, 2007 should also be incorporated in course of the amendments.**
- h) That the recommendations for a comprehensive central road traffic law in the prevailing circumstances for effective regulation of all kinds of traffic in the roads is a welcome measure.**
- i) That the recommendations for ushering in legal provisions in the M.V. Act for confiscation of the vehicles fitted with LPG cylinders meant for home kitchen and arrest and prosecution of owners/drivers of such vehicles is commendable as it has become a legal necessity.**
- j) That the recommendations for compulsorily installing weigh bridges at all point of entry and exit to and from a city as also at toll collection centres to keep in check overloaded vehicles appears to be justified.**
- k) That the recommendations for compulsorily installing CCTV cameras at all vulnerable points appears justified as the same will not only help in curbing traffic violations but will also figure as a tool in regulating traffic and prevent bottlenecks.**

- l) That the recommendations for vigorous campaign on the electronic media through regular programmes and debates for creating awareness amongst the general public about the imperative necessity to strictly follow traffic rules and regulations and highlight the consequences of rash and negligent driving is justified in the prevailing circumstances.**
- m) That the recommendations for making it mandatory for the notified transport vehicles to be fitted with an irremovable or tamperproof speed governor is the need of the hour and calls for urgent enforcement.**
- n) That the exemption of government vehicles from taking an insurance policy against third party risk is discriminatory. Therefore the recommendation for amending section 146 M.V. Act so as to make the provision of the necessity of taking an insurance policy against third party risk applicable also to government vehicles is welcome and fully justified.**
- o) That the recommendations for setting up fully equipped recognized driving training schools in different parts of the country is again a welcome measure and is worth implementations at the earliest.**

The State Commission recommends accordingly.

(Dr. Kumar Deo Dutt)
Member Secretary
Bihar State Law Commission

(Justice Abhijit Sinha)
Chairman
Bihar State Law Commission

(Dr. K.N. Poddar)
Member
Bihar State Law Commission

(Dr. Uma Shankar Prasad)
Member
Bihar State Law Commission

(Dr. Anshuman)
Member
Bihar State Law Commission