



सत्यमेव जयते

13th REPORT

Recommendation to make appropriate addition in service rules or issue direction to the effect that, those concerned officers/persons who certify the contracted work incorrectly would be held responsible for their departmental inquiry and would be liable to be punished under IPC

AND

Recommendations to impose ban on using mobile phone while driving, to take action against those who drive the vehicle with over-speeding and to take action against the drivers who are over-loading the vehicles beyond the prescribed seating accommodation, etc.

JULY, 2019

M. B. Shah

JUSTICE M. B. SHAH
(FORMER JUDGE,
SUPREME COURT OF INDIA)
AND
CHAIRMAN
GUJARAT STATE LAW COMMISSION

PART: I

RECOMMENDATION TO TAKE ACTION AGAINST THOSE CONCERNED OFFICERS/ PERSONS WHO ISSUE CERTIFICATE

1. At the outset, it is to be stated that large number of difficulties are, sometimes, faced because of the work carried out by the contractor who is assigned the work of constructing building or its repair, road/bridge or its repair, latrine, deepening of ponds or canals or such similar work.
2. It appears that, in number of cases, such work is not carried out as per the prescribed standard and the poor quality of material is used. The purpose is apparently to get more monetary benefit. In many cases, it reveals that large numbers of persons have suffered and many times, accidents take place or fresh work is required to be carried out within few years. This results in loss to the public at large.
3. At this stage, it is to be stated that:—
 - (i) Apart from the construction work, for implementation of environmental rules, there is the Pollution Control Board which is headed by the Chairman who normally would be the officer of higher rank and that Board is having staff for

visiting place to place for verifying whether any factory or premise is violating Environmental Acts, Rules or Guidelines. However, it can be easily found out that such violation is rampant and unabated which is more harmful to the human life. As such, Air Pollution has become the rule.

- (ii) Preservation of water is the duty and function of the Irrigation Department. For years together, rain water is neither harvested nor preserved and upto now, no responsibility is accepted by any department.

Irrigation Department is required to implement the rain water harvesting system. If that was followed, water crises could be less. As such, some reports are to the extent that an active sarpanch in some villages has implemented the rain water harvesting system and the result is – those villages are not facing any water crisis.

Not only this, vide Notification dated 12th October, 2017 issued by Urban Development and Urban Housing Department, Government of Gujarat sanctioned the Comprehensive Development Control Regulations, 2017 which is applicable to the land development and building construction in the entire State. Rule 25.2 of the said Rules deals with “Rain Water Management” and

Rule 25.2.2 provides for “Rain Water Harvesting”, stating that, rain water harvesting is mandatory for all the buildings with ground coverage 80 sq.mt. and above. It further states that, the system of storm water drainage and storage in reservoirs and recharge should conform to one of the specifications stated therein which are quoted as under:—

“a. For Buildings with ground coverage above 80 sq.mt. and below 500 sq.mt.:

Percolation Pit or Bore Recharge shall be provided in the marginal space around the building. Such pits shall be filled with small pebbles, brick jelly or river sand and covered with perforated concrete slabs.

b. For Buildings with building–unit area above 500 sq.mt. and up to 1500 sq.mt.:

Percolating Well with Rain Water Harvesting System shall be provided up to ground First River.

c. For Buildings with building–unit area above 1500 sq.mt. and up to 4000 sq.mt.:

Percolating Well with Rain Water Harvesting System shall be provided for every 4000 sq.mt. (up to ground Second River).

d. For Buildings with building–unit area above 4000 sq.mt.:

One Percolating Well shall be provided as per Regulation 25.2.2(c) for every 4000 sq.mt. land area. As an alternative to providing multiple percolating wells, a Water Retention Pond with minimum capacity of 300,000 litres with a percolating well for every five percolating wells or part thereof shall be permitted as an alternative."

Whether the above rules are complied with or not, shall be regularly and periodically monitored so that there may not be much shortage of water during the scarcity. In any case, permission to use the building shall not be granted, till the above rules are complied with.

- (iii)** Periodically, the Revenue Department should inspect for verification whether proper revenue entries are posted or not. At present, there is much difference between market value and jantri value of the land. Advantage is taken by some unscrupulous officers by demanding gift, stating that value of the land is Rs.50,000/– (fifty thousand) per acre and jantri price is approximately Rs.5,000/– (five thousand) and that would be the ground for not posting the entry without extra payment for their benefit.

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- (iv) Factory Inspectors who are supposed to inspect the factory and to certify: —
- (a) whether installation of machineries is proper and are in fully working condition, keeping in mind all safety measures;
 - (b) whether labourers are paid wages in accordance with the rules and regulations; and
 - (c) whether any minors are appointed in the factory.
4. On many occasions, it is reported that without there being any construction of ponds (talav), deepening of ponds, construction of latrine, etc., the amount claimed by the contractor was paid. In such cases, it should be made the duty of the concerned officer to monitor, inspect and verify whether the work as per the prescribed standard is being carried out or not. After verification, if it is found that work was not at all carried out **or** was not carried out properly as per the prescribed norms and if it is found during the visit that incorrect statements were made, then in such cases, the concerned officers/persons who had visited the place for monitoring the same and/or certified erroneously should not only be departmentally punished but also should be held liable to be punished for criminal negligence for issuing such certificate, too. For this purpose,

Sections 191, etc. of IPC can be relied upon and should be prosecuted. This would certainly reduce the corruption and possibly, amount for the substandard work would not be paid and the contractor would be held responsible for such work.

5. In view of the above, it is recommended that those concerned officers/persons who have visited and inspected the work carried out, must state or certify the facts of the place seen by them and if the information is found to be incorrect, then apart from the departmental inquiry, they should be held responsible and punishable for making incorrect statement. They should be made punishable under IPC as stated above. This would certainly control to a large extent corruption.

In short, the recommendation made above requires to be considered and action should be taken accordingly by appropriate addition in service rules or by direction for this purpose.

6. **In support of the above, some news reports are required to be referred to.**
 - (i) **News report titled as "Your pothole is contractors' pot of gold" published on 01st August, 2017 in Times of India reads as under:--**

"The Ahmedabad Municipal Corporation (AMC) has officially estimated that there are 4,500 potholes in the city. No wonder then that Ahmedabad roads these days evoke battlefield trenches from World War I. On Monday evening, the AMC's engineering department said that of the 2,600 kms. road network in the city, 202 kms. has been completely washed away – this is almost the distance between Ahmedabad and Vadodara and back. But the AMC said that contractors have been asked to pay for just 18 km. of damaged roads.

"Only 18 km. of roads have been brought under the defect–liability period for which contractors must pay, while the remaining 184 km. will be repaired using taxpayers' money," said a senior AMC official. This explains why for the past five years, the AMC, to favour contractors, has been putting its weight behind reducing the defect–liability period (warranty period) from five years to three years, claiming that the Gujarat roads and buildings department has similar tender conditions. Our broken roads expose the nexus between politicians and contractors – colossal amounts of money is to be made from road resurfacing and pothole contracts.

It appears that those who compromise on the quality of construction don't fear even Gods. The Kalupur–Saraspur road resurfaced in June for the Lord Jagannath Rath Yatra collapsed into rubble after a few spells of rain. Moreover, recently patched roads—for instance, the Akhbarnagar Circle road repaired under the supervision of mayor Gautam Shah – have turned to dust. In the city, close to 28,000 sq. m. of roads need patchwork worth Rs.74 lakh in the first phase. Raw material for 22,000 sq. m. of patchwork is being prepared. "Over the past four years, contractors avoided submitting final bills for 85% of the road stretches, which absolves the AMC assistant city

engineers of all responsibilities of filing a road quality report," the AMC official said.

*"According to conditions, contractors get paid 95% of their bills while they let go of the 5% deposit. The deposit was 12% seven years ago. **Standing Committee Chairman, Praveen Patel still feels that enough has been done by issuing 55 show-cause notices to contractors for just 18 km. of road repairs against the 202 km. damaged. Strict action will be taken against officers and contractors responsible for the recent road breakages," he said.***

Rain returns after 3-day hiatus

After three relatively dry days, following the week-long torrential rains, many parts of the city received showers again on Monday evening. On Monday, the afternoon was extremely humid and rains finally fell by the evening. The showers, which made the weather pleasant across Ahmedabad, was restricted to the western parts, the outskirts and a few eastern parts of the city. The weather department has predicted rain and thundershowers on Tuesday as well. The humidity for most of Monday afternoon was as high as 89%. Relief came in the evening when areas like Satellite, Vastrapur, Judges Bungalows Road, Ashram Road, Navrangpura and Paldi received showers. According to the State Emergency Response Centre of the Gujarat revenue department, Ahmedabad district had received 81.14% of its seasonal average rainfall till Monday. According to the India Meteorological Department (IMD), Gujarat, rainfall occurred at many places in the Gujarat region and at a few places in the Saurashtra Kutch region. This rainfall occurred due to the morning's upper air cyclonic circulation over Saurashtra, Kutch and adjoining areas.

Times View

Such criminal waste of public money on roads should not be tolerated any more. That just 18 km. of the 202 km. of damaged roads come under the warranty, speaks about the politician–contractor nexus. Road construction should ideally halt by mid–May, instead of June 30 as is the case now. The state government should form an expert body on the lines of the Standing Technical Advisory Committee (STAC) consisting of engineers and experts from civil engineering institutes to test and certify new roads, based on which payments should be released."

(It appears that no such action is taken against officers and contractors responsible for the road breakages, as said by the Standing Committee Chairman.)

- (ii)** Secondly, as per the news report titled as "Moderate to heavy showers lash city" published on 19th June, 2019 in Ahmedabad Mirror, ***"A St. Mary's school bus got stuck in waterlogged stretch of road in Ranna Park locality of Ghatlodia. All the kids were safely rescued."***

It appears that on the basis of aforesaid incident, the Commissioner of Transport issued guidelines (dated 11th July, 2019) that in the school bus, speed governor should be fixed and limit of vehicle should not be more than 40

kms./hour and that, School bus must have arrangement for GPS and CCTV and also have system of alarm during the emergency. It also provides for maximum seating accommodation depending upon the school bus.

(Somebody must go and verify, whether the aforesaid guidelines are at all followed?)

There are number of such incidents or reports which are not required to be stated or quoted, as the same are known.

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PART: II

[A]

RECOMMENDATION TO IMPOSE BAN ON USING MOBILE PHONE WHILE DRIVING

1. For this purpose, it is necessary on the part of the State to implement the Central Government Act and Rules namely, in terms of Section 19(1)(f) of the Motor Vehicles Act, 1988 *read with* Rule 21(25) of the Central Motor Vehicles Rules, 1989; if a licensing authority is satisfied that a driving license holder has committed any act which is likely to cause nuisance or danger to the public at large by using mobile phone while driving a vehicle, a license could be revoked or such driving license holder could be disqualified for holding or obtaining a driving license.
2. It is to be stated that this Commission submitted a third report on 27th August, 2014, namely, *"Recommendations for taking immediate actions to amend the Notification for levying composite fees under The Central Motor Vehicles Act, 1988 and the Rules framed thereunder and for controlling vehicular road accidents in the State of Gujarat."*

For controlling the nuisance of using mobile phone while driving, this Commission observed in the aforesaid report that:—

*"Known distraction to the driver is use of mobile phones, while driving the vehicle. The same remains uncontrolled. For such use, Rule 21(25) of the Central Motor Vehicles Rules, 1989 specifically provides that **using mobile phone, while driving a vehicle, constitutes nuisance or danger to the public.** For using mobile phone while driving, license can be revoked or to disqualify the person for holding the driving license."*

In the aforesaid report, this Commission referred to the Judgment of the Honourable Supreme Court of India rendered in the case of **M. C. Mehta v. Union of India [(1997) 8 SCC 770]** wherein the Court made it crystal clear that:—

*"The provisions of the Motor Vehicles Act, 1988, in addition to the provisions in the existing laws, for example, the Police Act and the Code of Criminal Procedure, confer ample powers on the authorities **to take the necessary steps to control and regulate the road traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses threat or hazard to public safety.** It needs hardly be added that the claim of any right by an individual or even a few persons cannot override and must be subordinate to the larger public interest and this is how all provisions conferring any individual right have to be construed."*

3. Not only this, for controlling the use of mobile phone, the Ministry of Road, Transport & Highways (MVI Section), Government of India had issued directions to the Principal Secretaries / Secretaries / Commissioners (Transports) of all the States / UTs, by letter dated 03rd July, 2009.

In Para: 3 of the said letter, it was stated that, *"Recently, the Committee on the Petitions of Rajya Sabha has taken a very serious view of the fact that use of mobile phone in motor vehicles is on the increase and this leads to many accidents. The Committee has strongly recommended that the use of mobile phone while driving motor vehicles should be banned in any form or in any manner."*

In that letter, it was recommended, to gear up the enforcement machinery in States / UTs to implement the provisions of law **in true spirit** to eliminate the chances of accident due to use of mobile phone while driving motor vehicles. It was clarified that use of mobile phone in any form would include hand held or hands free mobile or operated with the help of blue tooth or permanently installed and integrated into the wiring of motor vehicles. Also, the use of mobile phone in any manner would include making or receiving calls, sending messages, playing games, listening to music and taking photos or making videos. A stationary vehicle in the traffic jam or a traffic signal is a part of driving and in such conditions also, the use of mobile phone cannot be allowed.

As expressed by this Commission in the aforesaid report, there is no justifiable reason for not to implement the afore–quoted directions and also no reason for not punishing the license holder under Section 19 of the said Act for use of mobile phone while driving.

Considering the fact that there is rampant use of mobile phone while driving a vehicle, it would be just and proper to seize and deposit the same in the specified office for at least a day and can be released only after payment of fixed composite fee. This would certainly restrict the use of mobile phone during driving the vehicle.

4. At this stage, it is necessary to refer to the article, titled as “FAST FACTS: How other countries impose rules vs. distracted driving” published on 14th June, 2017 in www.rappler.com wherein the position in other countries for use of mobile phone while driving is mentioned to the following effect:—

“Singapore : In Singapore, it is illegal to use a mobile communications device while driving. By “use,” the law means “to hold it in at least one hand while operating any of its functions.” Drivers can't send text messages, make phone calls, or browse online when the car is in motion. First–time offenders can face fines of up to \$1,000 or jail time of 6 months.

- Japan** : ***Japan also has a similar law which states that a driver of a motor vehicle "shall not, unless the motor vehicle, etc. is stopped, use any wireless communication equipment."***
- Argentina** : ***In Buenos Aires, Argentina, a law was passed in 2007 that bans drivers from writing or reading text messages as long as the vehicle is in motion. Violators not only face fines, but are also penalized based on a point system in which points will eventually lead to the revocation of their license.***
- United Kingdom** : ***The UK has toughened up its penalty system for distracted drivers, with new laws passed last March. Those caught using mobile devices while driving will face fines of £200 and 6 points on their license – double the previous penalties. Someone who has been driving within the first two years of getting his or her license can also have his or her license revoked if caught violating the new rules.***

Portugal : *Following the lead of several other countries, Portugal extended the coverage of its distracted driving law to include banning even wireless handheld devices under threat of a 600–euro fine.*

United States : *In the US, 46 states plus the District of Columbia ban texting while driving, according to a CNN report. But this ban is only a secondary law in 5 of the states (Florida, Iowa, Nebraska, Ohio, and South Dakota), which means drivers who are texting while driving can be penalized only if they are also seen committing a primary offense, such as speeding. There are also rules in several US states specifically aimed at particular groups.*

According to a report by the World Health Organization, 28 of 50 states in the US prohibit the use of both handheld and hands–free devices among novice drivers. In 18 states, school bus drivers are also prohibited from using mobile phones when their passengers are present."

5. Suggestions:--

Vehicle users may be under the impression that there is no legal prohibition for use of mobile phone while driving a vehicle. Resultantly, it is suggested that ban should be imposed on using mobile phone while driving and the driver, who does not follow the aforesaid directions, should be punished.

It is reiterated that, the aforesaid letter dated 03rd July, 2009 of the Ministry of Road, Transport & Highways (MVI Section), Government of India be published for the information and its implementation by the public at large and also by the concerned authorities including Police Department and Regional Transport Office. However, it should be made clear that aforesaid authorities should not levy any penalty on the spot but should refer the violators to one central office to be established by the Government where fixed penalty is levied by the competent officer without any discretion.

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PART: II

[B]

SPEED-LIMIT OF VEHICLES

1. It is a known fact that number of fatal accidents takes place on the highways because of driving of vehicles by unlimited speed.
2. Firstly, it is to be stated that Section 112 of the Motor Vehicles Act, 1988 deals with "Limits of speed" which *inter-alia* provides that, "*no person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed or below the minimum speed fixed for the vehicle under this Act or by or under any other law for the time being in force: Provided that such maximum speed shall in no case exceed the maximum fixed for any motor vehicle or class or description of motor vehicles by the Central Government by notification in the Official Gazette.*"

Section 112(2) of the Act *inter-alia* provides that the State Government may fix such maximum or minimum speed limits as it thinks fit for motor vehicles or any specified class or description of motor vehicles either generally or in a particular area or on a particular road/s.

Over-speeding of vehicles

3. It is to be stated that another reason for vehicular road accidents is “over-speeding”. Such incidents are increasing day-by-day. It is observed that State Highways and roads at cities are the places where incidents of road accidents are increasing due to “over-speeding” of vehicle. Over-speeding of the vehicle is not to be looked at only by the speed limit prescribed under the rules. It depends upon the various circumstances including congestion in the area or movement of other vehicles in the area. Speed limit is to be judged on the facts, that is to say, in a congested locality or in the locality where persons are moving from one place to another, driver of the vehicle should take appropriate care but in any case, it should not constitute a danger to the public.
4. For the aforesaid purpose, it would be worthwhile to refer to only few news reports:--
 - (i) **In the news report, namely, “Gujarat is third worst for road accidents” published in www.gujaratglobal.com on 21st July, 2015, it is *inter-alia* reported that:--**
 - (a) **Gujarat is ahead of other states in registering speeding deaths** and Gujarat has also reported one of the highest death rates of 35.7 compared to other States **whereas** the national rate is 29.27;

- (b) Gujarat recorded the third highest number of deaths, 4,830, **due to speeding** in India; and
- (c) Gujarat recorded 7,857 deaths in all in road accidents in 2014, of which the 4,830 were caused **due to speeding**.
- (ii) **In the news report, namely, "Road accidents in India claimed 405 lives, injured 1,290 each day in 2017" published in www.autocarpro.in on 13th October, 2018, it is *inter-alia* reported that:—**
- (a) as mobility plays a crucial role in the development of any country, India has seen tremendous improvement in creation of new roads, highway and bridges among others **but unfortunately, road safety rules and vehicle safety (safety equipment standards) have not been able to match this fast pace of infrastructure development or with the same commitment;**
- (b) National Highways, which constitute approximately 2% of India's total road network of over 56 lakh kilometres, accounted for 30.4% of total road accidents and 36.0% of deaths in 2017 **while** accidents on State Highways and other roads constituted 25% and 44.6% respectively **and** in case of fatality, State Highways and other roads accounted for 26.9% and 37.1% respectively; and

(c) In terms of the main factors behind road accidents, **over-speeding** topped the list and contributed to 70.4% of all the accidents which accounts for 66.7% lives lost and 72.8% individuals being injured.

(iii) From the news report, namely, **“Ahmedabad registers two accidents per hour and Gujarat 18: EMRI 108” published in Times of India on 18th November, 2018, it is revealed that:—**

(a) at every 30 minutes, one ambulance somewhere in Ahmedabad rushes an accident victim to the hospital and **this figure is nine for Gujarat;**

(b) a majority of the aforesaid accident victims—49% to be precise, are below 30 years of age;

(c) there were 294 deaths on the city roads – 250 men and 44 women [nearly 25 deaths per month]; and

(d) there were 1,914 accident cases registered with city police, giving the average of one fatal accident per 20 accidents.

5. It is a known fact that, *“Over speeding is the most common behavior of drivers, as found by the researchers, which leads to accidents and in most of the cases, it results into fatal accidents. **There is tremendous increase in new brand of faster vehicles (cars), rather there is competition for increasing maximum speed of such vehicles.**”*

*Faster vehicles are more prone to accident than the slower one and the severity of accident will also be more in case of faster the severity of accident will also be more in case of faster vehicles. **Higher the speed, greater the risk. At high speed, the vehicle needs greater distance to stop i.e. braking distance.** A slower vehicle comes to halt immediately, while faster one takes long way to stop and also skids a long distance due to law of motion.*

***A vehicle moving on high speed will have greater impact during the crash and hence, will cause more injuries.** The ability to judge the forthcoming events also gets reduced, while driving at faster speed which causes error in judgment and finally a crash.*

Because of increase in high speed vehicles – costly/ attractive cars – the drivers/youngsters are tempted to drive the same at the higher/maximum speed which is dangerous to even on lookers/passersby. Now–a–days, there are number of such instances wherein even minor having no license are driving such vehicles. In cities of Gujarat State like Ahmedabad, accidents by such motor vehicle are increasing day–by–day unabatedly."
[as reported in the said report of the Commission]

Finally, this Commission suggested that, "maximum speed limit should be notified for cities & towns and violation thereof should be made punishable, by issuing statutory notification. In addition, Rule 21(9) of the Central Motor Vehicles Rules, 1989 specifically empowers the licensing authority to disqualify the holder of a driving license, if he is driving at speed exceeding the specified limit."

6. In the aforesaid report, based on the information received with regard to accidental cases and persons killed therein, the Commission observed that in the State of Gujarat, there was tremendous increase in such cases and persons killed from the year 2008 to 2013. The figures reported therein are reproduced as under:—

<i>Year</i>	<i>Number of cases</i>	<i>Number of persons killed</i>
2008	21,027	6,386
2009	20,101	6,914
2010	20,498	7,384
2011	30,199	8,006
2012	27,267	7,855
2013	25,035	7,458
Total	1,44,127	44,003"

On the website of Commissionerate of Transport, Department of Ports and Transport, Government of Gujarat, the figures of road accidents are reported. Such figures pertaining to the years 2014, 2015, 2016 and 2017 are reproduced as under:—

<i>Year</i>	<i>No. of accidents</i>	<i>No. of deaths</i>	<i>No. of persons injured</i>	<i>@ 100% accident average</i>	
				<i>No. of death</i>	<i>No. of injured</i>
2014	23712	7955	22493	34	95
2015	23183	8119	21448	35	93
2016	21859	8136	9998	37	91
2017	19081	7289	16802	38	88

In addition, as per the WHO's Global Status Report on Road Safety, 2018, road accidents killed more people in India than any other countries in the year 2016 as stated below:—

India	1,50,785
China	58,022
Brazil	38,651
USA	35,092
Indonesia	31,282
Thailand	21,745

7. At this stage, it is to be stated that in terms of Section 184 of the Act, penalty can be imposed to the drivers who drive the vehicle dangerously. Said Section reads as under:—

" 184. 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."

Suggestions:—

8. Considering the facts stated in the various newspaper reports referred above and in view of the observations made in the aforesaid report of this Commission, it is absolutely an urgent need to implement the afore–quoted suggestion as early as possible.

Further, there is the urgent need to prescribe the speed limit for different areas and to implement it due to development of various cities having uncontrolled traffic and congestion.

In addition, Section 184 quoted above should be implemented rigorously without any reservation, as and when it is noticed that driver is driving a vehicle beyond the prescribed speed–limit.

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PART: II

[C]

OVERLOADING OF VEHICLES

1. There is also the need to take action against the drivers of the vehicles who are over-loading the motor vehicles beyond the prescribed seating accommodation.
2. Driver of the vehicle, may be four-wheeled or other, should not permit more passengers in the vehicle during its use. If the capacity of the vehicle is say, five/six, driver should not be permitted to have more than the prescribed capacity of persons in the vehicle because the result is, when accident, such as fire, takes place in a case of congested vehicle, it is difficult for the persons seating in the vehicle to get out from it.
3. Further, it would be easier for the driver to drive a vehicle having the prescribed capacity of persons. At the time of accident or accidental fire, number of persons loses their life. If the vehicle was used having prescribed seating capacity, it is possible that number of person may not loose their life or may not be injured or in danger because they would get out from the vehicle easily.

4. At this stage, it would be worthwhile to quote Section 128 of the Motor Vehicles Act, 1988 which deals with "Safety measures for drivers and pillion riders":—

"(1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon."

Various rules prescribe for limit of persons who can seat in the vehicle and that should be strictly followed.

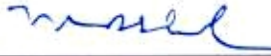
5. In terms of Section 19(1)(f) of the Act *read with* Rule 21(10) of the Rules, if a licensing authority is satisfied that a driving license holder has committed any act which is likely to cause nuisance or danger to the public at large by allowing to seat more persons than the prescribed, a license could be revoked or such driving license holder could be disqualified for holding or obtaining a driving license.

Suggestions:--

6. In view of the above, it is suggested that action should be taken against the drivers of the vehicles who are over-loading the motor vehicles beyond the prescribed seating accommodation.

However, it should be made clear that instead of levying penalty on the spot, such vehicles should be first detained and should be released only after referring the drivers to one central office to be established by the Government where fixed penalty is levied by the competent officer without any discretion.

Date : 18th July, 2019
Place : Ahmedabad



JUSTICE M. B. SHAH
Former Judge,
Supreme Court of India
AND
Chairman,
Gujarat State Law Commission