

Legislative Brief

The Carriage by Road Bill, 2005

The Bill was introduced in the Rajya Sabha on December 7, 2005

The Standing Committee on Transport, Tourism and Culture (Chairman: Nilotpal Basu) submitted its report on March 21, 2006.

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Highlights of the Bill

- ◆ The Carriage by Road Bill aims to regulate all service providers in the business of booking and transporting goods (common carriers). The Bill replaces the Carriers Act, 1865.
- ◆ Every common carrier has to be registered. In case of rejection of an application for registration, an appeal may be filed with the State Transport Appellate Tribunal.
- ◆ The Bill seeks to fix the liability of common carriers. It also sets norms for documentation in the transportation business and fixes rules for compensation in case of unclaimed goods.
- ◆ It is the responsibility of the carrier to ensure that all hazardous goods being transported are insured. The central government may ban the carriage of certain goods.
- ◆ The Bill seeks to ensure that statistics regarding the sector are regularly collected and reported.

Key Issues and Analysis

- ◆ The registering authorities have discretionary powers to assess the competence of common carriers. It is not clear whether the process is one of "registration" or of "licensing".
- ◆ Truckers running their own business need two registrations – one under the Motor Vehicles Act, 1988 and the other under this Bill. Courier companies will come under the ambit of this Bill, in addition to the authority proposed in the draft Indian Post Office (Amendment) Bill, 2006.
- ◆ Common carriers need to be separately registered with the registering authorities at their head office and all branch offices. This requirement could make the registration process cumbersome.
- ◆ The Bill requires a common carrier to obtain prior approval if the main office is to be shifted. This requirement, as opposed to reporting the change of address, could be a source of delay and corruption.
- ◆ The liability of a common carrier is limited to Rs 10,000 for goods lost or damaged, even if their declared value is higher.
- ◆ On complaints against a common carrier, the registering authority issues a notice to rectify the error. This may be issued without any enquiry into the validity of the complaint.

PART A: HIGHLIGHTS OF THE BILL

Context

At present, the rights and liabilities of persons engaged in the business of booking and transporting goods (common carriers) are governed by the Carriers Act, 1865. This Act covers transportation of goods by land or inland water by all service providers other than the government. Given the increased sophistication and complexity of the transport trade, a new law is proposed to be enacted to cater to present day requirements. The Carriage by Road Bill, 2005 will regulate the business of transporting goods by road using motorised vehicles.

Key Features

Registration and Certification

- Every common carrier has to be registered. The registration is valid for 10 years. The registration can be renewed for a similar period.
- The Bill requires common carriers to register at their principal place of work and at each branch office if these come under the jurisdiction of different registering authorities. Branch offices within the jurisdiction of the same registration authority need to register only once.
- Every common carrier is required to a) maintain a register, b) obtain prior approval if the main office needs to be shifted, c) submit specified information and returns, and d) display the certificate of registration or an attested copy of the certificate at the office.
- In case of failure to comply with the provisions or in case of complaint being made against common carriers, the registering authority may give a notice to the holder to rectify the same. On failure to do this, the registering authority can suspend or revoke the registration in case five or more complaints in succession are found valid.
- Any person aggrieved by an order of the registering authority can appeal to the State Transport Appellate Tribunal.

Responsibility of the consignor

- The sender of the goods (consignor) needs to execute a goods forwarding note which shall include a declaration about the value of the consignment. He also has to indemnify the common carrier against any loss suffered by him due to incorrectness or incompleteness of the note.

Liabilities and responsibilities of the common carrier

- In case of loss, damage or delays to the consignment, the liability of the carrier is Rs 10,000 or the value of consignment, whichever is less. A higher contingent liability could be mutually agreed to, on payment of a higher rate (called risk rate) for carrying any consignment considered risky.
- For any delay in delivery up to the mutually agreed period, the liability is limited to the freight charged.
- The common carrier will have to ensure that hazardous goods are insured before the consignment is accepted. The Central Government may prohibit carriage of certain goods.
- A consignment is deemed as unclaimed if the receiver of goods (consignee) fails to take delivery within 30 days of notice. For perishables, the notice period is 24 hours. Unclaimed goods may be sold by the common carrier without further notice if they are perishable or after a further 15 day notice period if they are not perishable. The common carrier may retain a portion of the proceeds for the expenses incurred and return the rest to the consignor or consignee.

Other provisions

- The State Transport Authority shall submit to the Central Government every year, details of all goods carried by common carriers in that state/ UT.
- The Bill prescribes penalties for operating a common carrier without registration. It also penalizes those not following the provisions for carrying hazardous goods.

PART B: KEY ISSUES AND ANALYSIS

The Bill replaced the Carriers Act, 1865. We highlight the main points of departure in Table 1.

Table 1. Comparison of The Carriage by Road Bill, 2005 and The Carriers Act, 1865

	The Carriage by Road Bill, 2005	The Carriers Act, 1865
Definitions	The definition of “common carrier” and “person” modified to make them more specific for motorised road transport. Defines terms such as “Consignee”, “Consignor”, “Consignment”, “Goods” and “Goods Forwarding Note”.	“Common carrier” includes all transport by land and inland navigation.
Coverage	Only motorised transport by road, other than those provided by the government.	Does not define these terms. All transport by land and inland navigation, other than those provided by the government.
Registration	Certificate of registration is necessary for a person to engage in the business of common carrier. Registration authority shall take decisions on the applications for registration.	No provision for registration.
Liability of the Carrier	Carriers not to be liable for any loss of goods above Rs. 10,000, unless a higher rate for carrying risky goods is paid. In case of delay up to the period mutually agreed by the parties the liability is limited to the freight charges. And in case of delay exceeding such period, the liability is limited to the lower of Rs. 10,000 or the value of goods.	Carriers not to be liable for loss of certain goods (specified in a schedule) above Rs. 100 in value. No limitation on liability for loss or damage of other goods unless limited by a special contract. No specific provision for delay.
Rate of charge for carrying risky goods	The carrier may fix a higher rate for carriage of consignment carrying risk. Recovery of freight charges not specified.	The carrier may fix a higher rate for carriage of items listed in the schedule, and with value exceeding Rs. 100. In case of damage or loss of goods, the amount paid to the carrier for the higher risk to be returned.
Carriage of hazardous goods	Carrier needs to ensure before transporting that the goods are insured.	No provisions for hazardous and dangerous goods.
Unclaimed consignment	Can sell unclaimed goods, retain a part of the proceeds for expenses and return the rest to the consignor or consignee.	No provision for sale of unclaimed consignment.

Source: The Carriage by Road Bill, 2005; The Carriers Act, 1865; PRS

Registration and Certification

Registration or Licensing?

The registering authority has discretionary powers to assess whether the common carrier “has intimate knowledge of goods or freight business”. The registering authority also has to satisfy itself that any individual applicant “has not been convicted of any offense involving moral turpitude”. These provisions are more in the nature of a “license” that gives the authority the discretion to decide who can operate in this business area. This appears much more than a “registration” that is an automatic process subject to meeting certain specified transparent criteria. The Standing Committee has suggested that the criteria for grant or rejection of application for Certificate of Registration should be clearly defined.¹

Multiple Regulators

All goods vehicles need to be registered under the Motor Vehicles Act, 1988. Truckers running their own vehicles as goods carriers will require an additional registration under the proposed Bill.

Under the draft Indian Post Office (Amendment) Bill, 2006² all courier companies are required to get registered, and will be regulated by the authorities proposed by that Bill. Since all courier companies also come under the purview of the Carriage by Road Bill, they need two different registrations, and would be regulated by two different regulators.

Multiple Registrations

The Bill requires common carriers to register at their principal place of work and at all branch offices if these come under the jurisdiction of different registering authorities. This provision of multiple registrations could make the procedure lengthy.

Permission before Shifting Office

Every common carrier needs prior approval in writing before shifting the main office. This requirement is not in order to inform the change of address but to obtain prior permission.

Enquiry and Cancellation of Registration

In case of any complaint being made against a common carrier, the registering authority may give a notice to rectify the same. There is no mandatory requirement of an enquiry to ascertain the validity of the complaint before issuing such notice.

The registration of a common carrier may be revoked if there are five complaints or more in succession which are proved to be true. It appears that if five complaints are found to be true but are not in succession (for example, if complaints number 1 through 4 and number 6 are valid, and complaint number 5 is found invalid), then the registration will not be cancelled. Also, there is no timeframe for the complaints. That is, the registration is liable to be cancelled even if the five complaints occur over a ten-year period.

Coverage

Services provided by the government are excluded from the purview of this Bill.

Limits on Liabilities

Damage or loss of goods

In case of any loss or damage to the consignment, the liability of the common carrier is limited to Rs. 10,000 or the value of consignment, whichever is less. It is not clear how the amount (Rs 10,000) has been determined. A higher potential liability could be mutually agreed upon by the sender and the transporter in case of goods with higher risk, on payment of a risk rate.

The core issue is whether the transporter should be held responsible for the damage or loss of goods. Or whether it should be the consignor's responsibility to take insurance cover for the goods. In this respect, the proposed Bill departs from the provisions of the Carriers Act, 1865. Under that Act, the liability is not limited (except for a specified list of items) unless a special contract was signed between the sender and the transporter limiting the liability. The proposed Bill flips this condition: the liability is limited for all goods unless the sender pays a higher risk rate to the transporter. Indeed, the liability of the transporter for loss of goods has been upheld by courts.³

The liability of the transporter in case of delay within a mutually agreed time period is limited at the freight rate. In case of delay beyond this period, the liability is limited to Rs 10,000. This raises the possibility of the transporter deliberately delaying a shipment in case the freight rate is higher than Rs 10,000. For example, if the freight rate is Rs 15,000, and there is a slight delay, the transporter will have to pay Rs 15,000; by delaying the shipment by a further period, he can reduce his liability to Rs 10,000.

Delay in collecting goods

Under the current system, the liability of the receiver of goods on late collection is determined by mutual agreement between the common carrier, the consignor and the consignee. This Bill sets norms for unclaimed consignments as well as for the liability of the common carrier (as discussed above). However, there is no provision for the liability of the consignee in case of late collection of goods, in order to compensate the carrier for storage costs (demurrage).

Notes

1. Report of the Departmentally Related Standing Committee on Transport, Tourism and Culture (Chairperson: Shri Nilotpal Basu) presented on March 21, 2006. See paragraph 16.4.3.
2. The draft Indian Post Office (Amendment) Bill, 2006 is posted on the website of the Department of Posts (<http://www.indiapost.gov.in/>). An analysis of this proposed Bill and related documents are available at [http://www.prsindia.org/indian_post%20_office\(Amendment\)Bill.htm](http://www.prsindia.org/indian_post%20_office(Amendment)Bill.htm).
3. The National Consumer Disputes Redressal Commission (Original Petition No. 66 of 1992; Ms Tata Chemicals Ltd. vs. Skypak Couriers Pvt. Ltd.) upheld the decision of the Arbitrator that Skypak was liable to pay compensation of Rs 34,20,000 (including 18% interest) and a cost of Rs 50,000, and added costs of Rs 10,000 for loss/non delivery of a consignment worth Rs 34,00,000.

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