

Legislative Brief

The Railways (Amendment) Bill, 2014

The Railways (Amendment) Bill, 2014 was introduced in the Lok Sabha on August 07, 2014.

It was referred to the Standing Committee on Railways on September 16, 2014.

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Highlights of the Bill

- ◆ The Railways (Amendment) Bill, 2014 amends the Railways Act, 1989.
- ◆ The Bill defines ‘accidental falling’ to exclude cases of falling from a moving train such as when: (i) entering or leaving a train, (ii) standing near train door, and (iii) travelling on roof top/foot board.
- ◆ The Bill states that compensation will not be given for cases of accidental falling involving passenger negligence, suicide attempts, etc.

Key Issues and Analysis

- ◆ It may be argued that by excluding a few instances of accidental falling from the ambit of the Bill, several cases of accidental falling might not get compensation. These include falling from the footboard of an overcrowded train or when boarding a train with a two minute stop.
- ◆ Railways may deny compensation in cases of accidental falling due to passenger negligence, unless the passenger proves that he took reasonable care to avoid the accident. This differs from other transport laws where the onus of proving negligence is not on the passenger.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Railways Act, 1989 regulates various aspects of the functioning and administration of the Indian Railways. With respect to accidents and untoward incidents, it provides that, the railways administration shall give compensation in the case of death and injury to passengers.² Until 1987, all cases of compensation for loss of goods and accidents were handled directly by the railways administration. The Railways Claims Tribunal Act, 1987 established the Railways Claims Tribunal to address compensation claims in a time bound manner.³

The Railways (Amendment) Bill, 2014 amends the Railways Act, 1989. According to the Statement of Objects and Reasons, the filing of duplicate and false claims has increased, and cases of accidental falling occur due to negligence by passengers. The Bill seeks to address these issues.

Key Features

The Bill amends the Railways Act, 1989 to (i) make the railways administration where the accident occurred a party before the Claims Tribunal; (ii) define ‘accidental falling’ to exclude cases of falling from a moving train, footboard, etc.; and (iv) states instances in which compensation for accidental falling will not be provided.

Table 1: Key changes proposed in the Bill compared with the provisions of the Act

	Railways Act, 1989	Railways (Amendment) Bill, 2014
Accidental falling	Accidental falling is included under the definition of untoward incidents.	Accidental falling is removed from ‘untoward incidents’. It is defined separately to exclude cases of falling from a moving train when: entering a train, standing near train door, on foot board/rooftop, or endangering safety of others wilfully or through neglect.

	Railways Act, 1989	Railways (Amendment) Bill, 2014
Filing of claims for compensation	Claims can be filed with the Claims Tribunal having jurisdiction over the place: (i) where the ticket was purchased, (ii) where the accident occurred, or (iii) at the destination station.	The procedure to file claims remains the same. A proviso has been added to state that the railways administration where the accident occurred will be made a party before the Claims Tribunal for all cases.
Liability of the railways administration	Railways administration pays compensation, irrespective of fault, for untoward incidents. Compensation is not payable for: (i) suicide, (ii) criminal acts, (iii) acts committed in a state of intoxication, or (iv) natural or medical causes.	Liability in case of untoward incidents remains the same. Compensation in case of accidental falling will not be given in case of passenger negligence, suicide attempt, self-inflicted injury, criminal acts and acts committed in a state of intoxication/ insanity.
Burden of proof	Onus of proving a case of untoward incident, including accidental falling, is not on passenger.	For cases of accidental falling due to passenger negligence, passenger has to prove he took reasonable care to avoid accident.

Sources: Railways Act, 1989; Railways (Amendment) Bill, 2014; PRS.

PART B: KEY ISSUES AND ANALYSIS

Accidental falling: Definition and burden of proof on passenger

Definition of accidental falling would exclude most cases from the ambit of the Bill

Act: Clause 123 (C) The Act defines ‘untoward incident’ to include: (i) terrorist activities, (ii) a violent attack or robbery, (iii) rioting, shoot-out or arson, (iv) accidental falling of any passenger from a train carrying passengers.

Bill: Clause 3 The Bill removes ‘accidental falling’ from the definition of ‘untoward incident’. It defines ‘accidental falling’ separately to exclude instances of falling from a train while: (i) entering or leaving a moving train, (ii) standing near or opening the door of a moving train, (iii) endangering the safety of other passengers willfully or by neglect, or (iv) travelling on the roof, step or engine of a train from within its ambit.

It may be argued that by excluding these instances of accidental falling from within the ambit of the Bill, several cases of accidental falling might not get compensation. For example, a passenger will not get compensation when falling: (i) while travelling on the footboard or roof top of an overcrowded train (including suburban trains), or (ii) while trying to board or leave a train with a two minute stop at a station or an overcrowded train.

This should be considered along with the fact that the Indian Railways is a monopoly service in rail transit. Thus, a passenger may not have alternate choices for travel if the trains are overcrowded due to insufficient capacity or if there are insufficient number of trains.

Onus of proving that accidental falling was not due to negligence on victim

Act: Clause 124(A) Under the Act, irrespective of fault, the railways administration is liable to pay compensation in cases of accidental falling. The Bill states that the Railways may deny compensation in cases of accidental falling arising due to passenger negligence, unless the passenger can prove that he took reasonable care to avoid the accident. This is at variance with other transport laws where the onus of proving negligence is not on the passenger.

Bill: Clause 4 In the Motor Vehicle Act, 1989, in case of an accident, the victim gets compensation regardless of fault.⁴ Under the Carriage by Air Act, 1972, which regulates air traffic, the carrier is not liable if it proves that it took all necessary measures to avoid the accident. The carrier may be cleared from its liability if it proves that the accident was caused due to the victim’s negligence.⁵

Notes

1. This Brief has been written on the basis of the Railways (Amendment) Bill, 2014 which was introduced in Lok Sabha on August 07, 2014. The Bill was referred to the Standing Committee on Railways on September 16, 2014.
2. The Railways Act, 1989, Chapter XIII.
3. The Railways Claims Tribunal Act, 1987, Chapter II, Clause 3.
4. The Motor Vehicle Act, 1989, Section 140.
5. The Carriage by Air Act, 1972, Chapter III, Clauses 20, 21.

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