

**COMMITTEE ON SUBORDINATE LEGISLATION**  
**(2017-2018)**

**(SIXTEENTH LOK SABHA)**

**TWENTY FOURTH REPORT**

**THE NATIONAL HIGHWAYS FEE (DETERMINATION OF RATES AND COLLECTION)  
SECOND AMENDMENT RULES, 2014**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**DECEMBER, 2017 / PAUSA, 1939 (Saka)**

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SECOND AMENDMENT RULES, 2014**

**(PRESENTED TO LOK SABHA ON 28.12.2017)**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**DECEMBER, 2017 / PAUSA, 1939 (Saka)**

**COSL No.**

**PRICE: Rs.**

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Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fourteenth Edition) and printed by the Manager, Government of India Press, Minto Road, New Delhi.

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION**  
**(16<sup>th</sup> LOK SABHA)**  
**(2017-2018)**

Shri Dilipkumar Mansukhlal Gandhi                      Chairperson

**Members**

2. Shri Idris Ali
3. Shri Birendra Kumar Choudhary
4. Shri S. P. Muddahanumegowda
5. Shri Shyama Charan Gupta
6. Shri Jhina Hikaka
7. Shri Janardan Mishra
8. Shri Prem Das Rai
9. Shri Chandul Lal Sahu
10. Shri Alok Sanjar
11. Shri Ram Prasad Sarmah
12. Adv. Narendra Keshav Sawaikar
13. Shri V. Panneer Selvam
14. Shri Ram Kumar Sharma
15. Shri Nandi Yellaiah

**SECRETARIAT**

1. Smt. Sudesh Luthra                      -            Additional Secretary
2. Shri Ajay Kumar Garg                      -            Director
3. Smt. Jagriti Tewatia                      -            Deputy Secretary

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## INTRODUCTION

I, the Chairperson, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, do present this Twenty Fourth Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 1.12.2016 during which oral evidence of the representatives of Ministry of Road Transport and Highways / NHAI were taken.

3. The Committee considered and adopted this Report at their sitting held on 18.12.2017.

4. The relevant extracts of the National Highways Act, 1956, The National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014 (GSR 831-E of 2014) and Rules 6 (3) of The National Highways Fee (Determination of Rates and Collection) Rules, 2008 have been included in Appendix I, II and III respectively.

5. Minutes of the Fourth Sitting of the Committee (2016-17) held on 1.12.2016 and Extracts from Minutes of Sixth Sitting of the Committee (2017-18) held on 18.12.2017 relevant to this Report are included in Appendix-IV of the Report.

***New Delhi;  
18 December, 2017  
27 Agrahayana, 1939 (Saka)***

**DILIPKUMAR MANSUKHLAL GANDHI  
*Chairperson  
Committee on Subordinate Legislation***

## REPORT

### **The National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014 (GSR 831-E of 2014).**

The Ministry of Road Transport and Highways in exercise of powers conferred by Section 9 read with Section 7(1) of the National Highways Act, 1956 (Relevant extract at Appendix-I) notified the National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014 which were published in the Gazette of India, Extraordinary, Part II Section 3, Sub Section (i) dated 21.11.2014 (Appendix-II). The aforesaid Rules amended Rule 6(3) of the principal Rules of 2008 published in GSR 838- E of 2008 (Appendix - III) to incorporate a proviso which stated that the user of a vehicle not fitted with FAST tag and entering into the FAST Tag lane of the Toll plazas shall pay a fee equivalent to two times of the fee applicable to that category of vehicles. In this regard, the comments of Ministry of Road Transport and Highways were sought to ascertain the rationale behind prescribing such kind of harsh provision and the protection available to the bonafide persons who inadvertently venture into the FAST tag lane. In addition, the Ministry was also asked to indicate the precise statutory authority under the National Highways Act, 1956 which authorizes the Authority to impose such kind of penalty. The Ministry was also asked as to whose account the penalty so collected is deposited.

2. The Ministry of Road Transport and Highways vide their OM No. H-24036/01/2015-Toll dated 9 December, 2015 furnished their clarifications on certain issues related to the matter:-

3. As per the proviso to Rule 3 (b) of the Amendment Rules, a 100% penalty has been imposed on non-FASTag users if they enter the FAST Tag lane. When enquired about the rationale behind such a harsh provision and the protection available to bonafide persons who accidentally venture into FAST Tag lane, the Ministry in the written replies stated that, it is done to prevent non FASTag user entering into dedicated 'FASTag lane' and ensuring seamless movement of vehicles in the 'FASTag lane'. The Ministry also mentioned that indicators at boom barrier of 'FASTag lane' indicate the user vehicle not fitted with FASTag to move from 'FASTag lane' to normal lane.

4. On the issue of precise statutory authority under the Act which authorises the Authority to impose such kind of penalty the Ministry elaborated as under:-

"There is no provision of penalty in the fee rules. The Rule only prescribes the rate of fee for non FASTag users using dedicated "FASTag lane" Article 7 of the National Highways Act, 1956 empowers the Govt. for levy fee for use of National Highways".

5. On a specific query as to whether the extra amount so collected by way of penalty goes to the Government or the concessionaire, the Ministry respond that fee levied and collected under the National Highways Fee (Determination of Rates and Collection) Rules, 2008 as amended is retained by Government in case of public funded projects and by concessionaire in case of private investment of projects.

6. For elucidating further clarifications on the above issues, the Committee took oral evidence of the representatives of the Ministry of Road Transport and Highways at their sitting held on 1st December, 2016.

7. During the oral evidence, the representative of the Ministry of Road Transport and Highways informed the Committee that the concept of dedicated fast lanes is yet to take off and as such the collection of any penalty has not yet started. Stating the rationale behind prescribing two times the user fee on non-fast tag vehicles entering into fast tag lanes, the Ministry submitted the following:-

"As regards the penalty issue, we are giving a facility and people are availing the facility. People want that the toll plazas be seamless and for the same penalty was necessary. We have many slabs, for example, if we impose a flat fee of Rs 50 or Rs 100, it will be more for some people and less for some. Currently, the minimum fees between two toll plazas is Rs 25 and by imposing a flat fee of Rs 50 or Rs 100, the minimum fee would become three times. For this reason two times the fees was imposed. This was the easiest way that we could find in which principle of equity could be applied across the board."

8. The Ministry of Road Transport and Highways in their subsequent written reply dated 29.12.2016 submitted as under:-

"The provision of two times user fee for non-FASTag vehicles in FASTag lanes is not penalty but is user fee only. The Section 9 of the National Highway Act, 1956 gives power to Central Government by notification in the official Gazette, make rules for carrying out the purposes of the National Highways Act, 1956. The section 7 of the



National Highways Act, 1956 empowers Central Government to collect user fee on National Highways. Using this Act, Central government has framed National Highways Fee (Determination of Rates and Collection) Rules, 6 (3), Section 7 and Section 9 of the National Highways Act, 1956 as reproduced below:

**Section 7: Fees for services or benefits rendered on national highways –**

(1) The Central Government may, by notification in the Official Gazette, levy fees at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of ferries, 'permanent bridges the cost of construction of each of which is more than rupees twenty-five lakh and which are opened to traffic on or after the 1st day of April, 1976, temporary bridges and tunnels on national highways and the use of sections of national highways.

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act.

**Section 9: Power to make rules-** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the manner in which, and the conditions subject to which, any function in relation to the development or maintenance of a national highway or any part thereof may be exercised by the State Government or any officer or authority subordinate to the Central Government or the State Government;

(aa) the manner in which the amount shall be deposited with the competent authority under sub-sections (1) and (6) of section 3H;

(b) the rates at which fees for services rendered in relation to the use of ferries, permanent bridges, temporary bridges and tunnels on any national highway and the use of sections of any national highway] may be levied, and the manner in which such fees shall be collected, under section 7."

9. As far as levying of fees and other measures to discourage the use of FASTag lanes by Non-FAST tag users is concerned, the Ministry in their written submission dated 29.12.2016 furnished the following:-

"User Fee of 2 times has been incorporated in Amendment dated 21.11.2014 to National Highways Fee (Determination of Rates and Collection) Rules, 2008 so as to have a suitable deterrent for those who venture into FAST tag lane. Cash users may enter the FAST tag lane and obstruct the seamless passage, jeopardising the whole system. Thus some additional fee, in terms of two times the user fee, will serve as a deterrent.

User fees are being collected at uniform base rates. Under Rule 4, National Highways Fee (Determination of Rates and Collection) Rules, 2008, 60% base rates apply to 2-lane with paved shoulders (with at least 3m widening work), 100% base rates for 4-lane, 150% base rates for bypasses and equivalent road length of major bridges (more than 60m) is taken as ten times.

NHAI has installed large sign boards stating-“FAST tag lane” in relevant lanes earmarked for FAST tag users. Besides this, there are lane markings and manpower at Toll plazas that direct RFID enabled vehicles to respective lanes.”

## PART-II

### OBSERVATIONS/RECOMMENDATIONS

10. The Committee note that the National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014 amended the principal rules of 2008 to provide for imposition of *two times* the user fee on the non-FAST tag users when they enter the FAST tag lane. According to the Ministry, this has been done to prevent non FAST tag users entering into dedicated "FAST tag lane" and ensuring seamless movement of vehicles in the "FAST tag lane". As regards the statutory authority to impose such penalty, the Committee note that though the National Highways Act, 1986 empowers the Central Government to levy fee on the use of national highways, there is, however, no provision in the Act which authorise the Government to impose any kind of penalty or charging extra fee or giving *challan* on any kind of violations of the prescribed toll fee norms. The Ministry have, however, tried to justify the same on account of Section 7 of the National Highways Act, 1956 which empowers the Central Government to levy fees at such rates as may be laid down by rules for services or benefits rendered on national highways.

11. The Committee are of the considered view that imposition of any kind of additional charges beyond the prescribed charges on violation of some norms/criteria definitely qualifies as penalty and as such the charges imposed upon the user of a vehicle non-fitted with FASTag venturing in the FASTag lane, over and above the normal fee/charge, falls under the category of penalty and not the fee as the Ministry has tried to justify. Not only that, in terms Rule 4 of the National Highways (Determination of rates and collection) Rules, 2008, user fees are to be collected at uniform base rates as per the category of the vehicle, and as such imposing any additional fee beyond the prescribed rates on non FASTag vehicles entering the FASTag lanes is not in conformity with the Rule 4.

12. While the Committee do not tend to agree to the interpretation of the Ministry as stated in the preceding para, the Committee are in agreement with the spirit of the

amendment i.e. to provide seamless movement of vehicles at toll plazas which besides saving time and fuel adds to the efforts of the Government to reduce the cash transactions in the economy. The Committee also note that concept of dedicated fast lanes is yet to take off and as such the collection of any penalty has not yet started. In this connection, it may be relevant to point out that the Committee in their reports have been recommending for making provisions for substantive matters like imposition of fees, penalties in the parent statute instead of leaving it to the Executive under delegated legislation. The Committee, therefore, recommend that if the provision of imposition of penalty is to be retained in the Rules, the Government may bring appropriate statutory amendment in the parent Act delegating the powers on the Central Government to impose penalties on the toll lane violators. The Committee further recommend that before resorting to imposition of penalties on toll lane violators, once the statutory amendment in the parent Act as recommended by the Committee is made, the Government must ensure easy availability of fast Tags to the public by exploring the feasibility of providing the same through various public channels like online applications, Banks, Post Offices, toll plazas etc besides ensuring adequate number of lanes as well as initiating awareness campaigns to educate the people as the FASTag concept being a new concept is at a nascent stage in India. The necessary action as suggested may be taken and the Committee be apprised accordingly at the action taken stage.

*New Delhi;*  
*18 December, 2017*  
*27 Agrahayana, 1939 (Saka)*

**DILIPKUMAR MANSUKHLAL GANDHI**  
*Chairperson*  
*Committee on Subordinate Legislation*



## APPENDIX I

### **(Vide Para 3 of the Introduction)**

#### EXTRACTS FROM NATIONAL HIGHWAYS ACT, 1956

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7. Fees for services or benefits rendered on national highways.—(1) The Central Government may, by notification in the Official Gazette, levy fees at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of ferries, permanent bridges the cost of construction of each of which is more than rupees twenty-five lakhs and which are opened to traffic on or after the 1st day of April, 1976, temporary bridges and tunnels on national highways and the use of sections of national highways.

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act.

(3) Any fee leviable immediately before the commencement of this Act for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels on any highway specified in the Schedule shall continue to be leviable under this Act unless and until it is altered in exercise of the powers conferred by sub-section (1):

Provided that if the Central Government is of opinion that it is necessary in the public interest so to do, it may, by like notification, specify any bridge in relation to the use of which fees shall not be leviable under this sub-section.

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9. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which, and the conditions subject to which, any function in relation to the development or maintenance of a national highway or any part thereof may be exercised by the State Government or any officer or authority subordinate to the Central Government or the State Government;

(aa) the manner in which the amount shall be deposited with the competent authority under sub-sections (1) and (6) of section 3H;

(b) the rates at which fees for services rendered in relation to the use of ferries, permanent bridges, temporary bridges and tunnels on any national highway and the use of sections of any national highway may be levied, and the manner in which such fees shall be collected, under section 7.

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**APPENDIX II**

**(Vide Para 3 of the Introduction)**

The National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014 (GSR 831-E of 2014)

**APPENDIX III**

**(Vide Para 3 of the Introduction)**

Rules 6 (3) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008.

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Rule 6. Collection of fee

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**(3)** The fee collected under these rules shall be paid either in cash or through smart card or on board unit (transponder) or any other like device:

Provided that no additional charges shall be realised for making the payment of fee by use of a smart card or on board unit (transponder) or any other such device.

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## **APPENDIX IV**

### **(Vide Para 4 of the Introduction)**

#### **MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2016-2017)**

—  
The fourth sitting of the Committee (2016-17) was held on Thursday, the 1<sup>st</sup> December, 2016 from 1500 to 1615 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

#### **PRESENT**

1. Shri Dilipkumar Mansukhlal Gandhi Chairperson

#### **MEMBERS**

2. Shri Idris Ali
3. Shri S. P. Muddahanume Gowde
4. Shri Janardan Mishra
5. Shri Prem Das Rai
6. Shri Chandu Lal Sahu
7. Shri Alok Sanjar
8. Adv. Narendra Keshav Sawaikar
9. Shri Ram Kumar Sharma
10. Nandi Yelliah

#### **SECRETARIAT**

1. Shri Devender Singh - Addl. Secretary (DS)
2. Shri Ajay Kumar Garg - Director
3. Shri Nabin Kumar Jha - Addl. Director
4. Smt Jagriti Tewatia - Deputy Secretary

### **Ministry of Road Transport and Highways**

- |    |                    |   |                         |
|----|--------------------|---|-------------------------|
| 1. | Smt Dakshita Das   | - | Joint Secretary         |
| 2. | Shri Niraj Verma   | - | Member, NHAI            |
| 3. | Shri R. C. Palekar | - | CEO, IHMCL              |
| 4. | Shri L. P. Padhy   | - | CGM, NHAI               |
| 5. | Shri U. C. Joshi   | - | Superintending Engineer |

2. The sitting of the Committee was convened for seeking clarifications from the representatives of the Ministry of Road, Transport and Highways regarding the provisions in the National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014.

3. At the outset, the Chairperson welcomed the Members of the Committee. Thereafter, the representatives of Ministry of Road Transport and Highways were called in. The Chairperson welcomed the representatives of the Ministry of Road Transport and Highways to the sitting of the Committee and also drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings. The representatives of the Road Transport and Highways then briefed the Committee on various provisions relating to the FASTag facility provided at the Toll plazas including the provisions contained in the Rules.

4. The representatives of the Ministry made a brief Power Point Presentation outlining the various facets of FASTag lane facility. Thereafter, the Committee deliberated on various issues broadly covering aspects such as imposition of harsh penalty on the vehicles not fitted with FASTag venturing into the FASTag lane, imposition of such penalty without proper statutory backing in the Act, methodology involved in working out the quantum of penalty, problems associated with toll plazas, revenue loss due to demonitisation, policy of the Government & its affect on the working of toll plazas, etc.

5. The representatives of the Ministry then furnished clarifications on the queries raised by the Committee. On some of the points, the information on which was not readily available with

the representatives of the Ministry, the Chairperson asked them to furnish written replies to those points within 15 days to the Lok Sabha Secretariat.

6. The Chairperson then thanked the representatives of the Ministry for presenting their inputs on the subject before the Committee.

7. The witnesses then withdrew.

8. The verbatim proceedings were kept on record.

The Committee then adjourned.

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## EXTRACTS FROM MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2016-2017)

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The Sixth sitting of the Committee (2017-18) was held on Monday, the 18 December, 2017 from 1500 to 1615 hours in Committee Room No. 2, Parliament House Annexe Extension Building, New Delhi .

### **PRESENT**

1. Dilip Kumar Mansukhlal Gandhi - Chairperson

### **MEMBERS**

2. Shri Idris Ali
3. Shri Birendra Kumar Chaudhary
4. Shri Shyama Charan Gupta
5. Shri Prem Das Rai
6. Shri Chandulal Sahu
7. Shri Alok Sanjar
8. Shri Ram Prasad Sarmah
9. Adv. Narendra Keshav Sawaikar

### **SECRETARIAT**

1. Smt Sudesh Luthra - Additional Secretary
2. Shri Ajay Kumar Garg - Director
3. Smt Jagriti Tewatia - Deputy Secretary

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2. At the outset, the Chairperson welcomed the members to the sitting of the Committee (2017-18). The Committee, then, considered the draft Twenty-fourth Report on the National Highways Fee (Determination of Rates and Collection Second Amendment Rules, 2014) and Twenty-fifth Report on the action taken by Government on the Observations/Recommendations contained in the Eighteenth Report of the Committee on Subordinate Legislation (Sixteenth Lok Sabha) on 'Discontinuation of Physical Printing of Gazette Notifications' and adopted the same without modifications. The Committee also authorized the Chairperson to present the same to the House.

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The Committee then adjourned.

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\*\* Omitted portion of the Minutes are not relevant to this Report