

# INCREASING THE FINE TO 25,000 RS. FOR DRINKING & DRIVING: INJUSTICE BY PREJUDICE IN MEDICO-LEGAL DIAGNOSIS

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## INTRODUCTION

The Cabinet of Democratic Socialist Republic of Sri Lanka approved the increase of certain traffic fines to Rs. 25,000 on a memo presented by the Minister of Transport & Civil Aviation under the provisions of Motor Traffic Act. "Driving under the influence of liquor & drugs" is one of the offences for which the fine will be increased as such. This is a drastic increase by Rs. 23,000 from the existing fine.<sup>1</sup> However, there is evidence that increasing of fines for the traffic offences showed a marked reduction and effectively curbed crashes causing injuries and deaths in Sri Lanka.<sup>2,3</sup> However, imposing a comparatively extraordinary fine in this regard should be without prejudice to the alleged driver. Therefore, we need a crystal clear legal framework which guide for a very solid diagnosis to the conclusion that the alleged driver has consumed alcohol/drug or not.

### 1. Current legal status

According to the amendment act no. 31 of 1979 to the Motor Traffic Act of Sri Lanka, the relevant sub-sections of the section 151 states;

(1) No person shall drive a motor vehicle on a highway after he has consumed alcohol or any drug.<sup>4</sup>

### 2.1 Driving following consumption of alcohol

(1c) (a) Where a police officer suspects that the driver of a motor vehicle on highway has consumed alcohol he may require such person to submit himself immediately to a breath test for alcohol or an examination by a Government medical officer in order to ascertain whether such person has consumed alcohol and that person shall comply with any such requirement as the case may be.

(1D) (iii) Regulations may be made prescribing the mode and manner in which any examination may be conducted to ascertain whether a driver of a motor vehicle has consumed alcohol.

In the case of *Sumanaratne vs. O.I.C. Police Station, Borella and Another*, Justice A. De Z. Gunawardana held that the provisions in section 151 of the Motor Traffic Act does not take cognizance of the concepts "patient smelling of liquor" and "under the influence of liquor". He further stated that "what is required in a charge under section 151 of the Motor Traffic Act is to prove that the accused had consumed alcohol by adducing evidence that the concentration of alcohol in his blood is 80 mg/dl or more".<sup>5</sup>

### 2.2 Driving following consumption of drugs

Amendment no. 40 of 1984 to the subsection 151 (1C) (c) states, "Where a police officer suspects that the driver of a motor vehicle on a highway has consumed any drug, it shall be

lawful for the police officer to produce such person before a Government medical officer for examination and that person shall comply with such requirement.”<sup>6</sup>

Sub-section (1D) (iii) states regulations may be made prescribing the mode and manner in which any examination may be conducted to ascertain whether a driver of a motor vehicle has consumed any drug.

Further, the sub-section 151 (1D) (iv) states, “Regulations may be made by prescribing the concentration of any drug in a person’s blood at or above which a person shall be deemed to have consumed any drug.”<sup>7</sup>

### **3. Contradictions in a medico-legal context**

According to the judgment in *Sumanaratne vs. O.I.C. Police Station, Borella and Another*, the stipulated blood alcohol level can only be determined by carrying out the breathalyzer test or by carrying out a blood test of the alleged driver charged with this offence. When breathalyzers are available with Sri Lanka Police, this does not create a problem. However, the breathalyzers often go out of stock and in such circumstances, the driver is produced for a clinical forensic medical examination for drunkenness. The Government medical officer who performs only the clinical forensic medical examination without blood alcohol analysis cannot numerically opine on the blood alcohol concentration. However, blood alcohol analysis is not legally validated in the current Motor Traffic Law. Also, in Sri Lankan context, there are no legal regulations prescribing the mode and manner in which blood alcohol examination is conducted. Further, facilities for blood alcohol analysis of the drivers has not been set up either in police stations or hospitals.

Further, it is quite unclear that which agency analyses the blood sample for alcohol. Availability of sampling bottles, procedure of dispatch and proper maintenance of chain of custody are some pertinent issues which

should be streamline before increasing the fine for a fair administration of justice.

The conventional “Medico-Legal Examination Form” & “Medico-Legal Report” still use the terms “Smelling of liquor” & “Under influence of liquor”. These terms are now redundant following the amendment no 31 of 1979 of the Motor Traffic Act, which speaks “consumption of liquor/alcohol”.

According to the existing law when a driver is suspected for consumption of a drug, the only method of proving it, is by a clinical forensic medical examination. It is extremely doubtful whether a mere clinical forensic medical examination without blood/urine drug analysis is able to conclusively diagnose the consumption, differentiation and the exact blood concentration of the particular drug in the alleged driver.

In addition, there are no legal regulations prescribing the mode and manner in which blood drug examination is conducted. Further, regulations have not been made prescribing the legal limit (blood concentration) of any single drug.

### **CONCLUSION**

The government medical officer’s opinion to the fact that consumption of alcohol, based only on clinical forensic medical examination without blood alcohol analysis is redundant following the said amendment and the judgment of *Sumanaratne vs. O.I.C. Police Station, Borella and Another*.

Prior to implementing this law, following legal restructuring should be done.

- 1) Validate blood alcohol analysis under the section 151 of the Motor Traffic Act.
- 2) Validate blood drug analysis under the section 151 Motor Traffic Act.
- 3) Impose regulations under the subsection 151 (1D) (iii) Motor Traffic Act, prescribing the mode and manner in

which any examination may be conducted to ascertain whether a driver of a motor vehicle has consumed alcohol or any drug.

- 4) Impose regulations under the subsection 151 (1D) (iv) Motor Traffic Act, prescribing the concentration of any drug in a person's blood at which a person shall be deemed to have consumed any drug.
- 5) The terms "Smelling of liquor" & "Under influence of liquor" in the conventional "Medico-Legal Examination Form" & "Medico-Legal Report" should be amended so that they fit with contemporary motor traffic law of the country.  
Without such legal restructuring, the implementation of this law invariably causes injustice.

**Key words:** drinking, driving, alcohol, clinical examination

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