ROAD SAFETY LEGISLATION, POLICY, AND JURISPRUDENCE IN INDIA

INTERNATIONAL COURSE ON ROAD SAFETY

33rd Annual Winter Course, TRIP Centre, IIT Delhi

Day 2, Friday, November 24, 2023

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Road Safety and the Law

Core Problem

- Road traffic crashes lead to the deaths of about 1.3 million people in the world each year

- According to official statistics 151,113 persons were killed in 2021 on roads in India
  - This corresponds to 11.6 deaths per 100,000 population

- There is evidence suggesting that number of road deaths in India is under-reported, however, its extent is not well understood
The ‘Global Burden of Diseases, Injuries, and Risk Factors Study’ estimated that in 2019, 211,975 deaths (95% confidence interval: 159,343 - 250,315) due to road injuries occurred in India.

This estimate is 40% greater than government-reported number of deaths.

A National Burden Estimates study, using Sample Registration System (SRS) estimates of deaths by different causes, reported 275,000 road deaths in 2017.

This estimate is 82% higher than the government-reported number (150,785) for the corresponding year.
Road Safety and the Law
Core Problem (cont’d)

- About 55 to 60 thousand of those who die in road accidents in India are pedestrians
- Another 15 to 20 thousand are cyclists
- Two-wheeler riders account for another 40 to 45 thousand fatalities
- Over the last decade (2009-2019) road traffic crashes have been the 13th largest contributor to health burden ( deaths and disabilities) in India
- For the working age population (15-49 years), they are the sixth largest contributor
Silent Tsunami on Indian Roads
Pedestrians: Walk? or Live?

- Mix of high-speed motorised traffic and vulnerable road users
- The number of people in India who commute by walking outnumber those who use motorized vehicles
- Poorly designed and maintained roads and footpaths
  - Little to no provision for safe accessibility by non-motorized traffic and pedestrians
  - Pedestrians forced to walk on the carriageway because sidewalks are too narrow, too high, uneven, and strewn with obstructions
- Rudimentary accident investigation – so no lessons are learned
- Unresponsive road-related systems
## Pedestrians in Urban Spaces

### Walk? Or Live?

#### MODAL SHARE OF WALKING IN KEY CITIES OF INDIA

<table>
<thead>
<tr>
<th>City Size</th>
<th>Percentage walking</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 500,000 (hill terrain)</td>
<td>34</td>
</tr>
<tr>
<td>&lt; 500,000 (plain terrain)</td>
<td>57</td>
</tr>
<tr>
<td>500,000 – 1 million</td>
<td>32</td>
</tr>
<tr>
<td>1 – 2 million</td>
<td>24</td>
</tr>
<tr>
<td>2 – 4 million</td>
<td>25</td>
</tr>
<tr>
<td>4 – 8 million</td>
<td>25</td>
</tr>
<tr>
<td>&gt; 8 million</td>
<td>22</td>
</tr>
<tr>
<td><strong>National average</strong></td>
<td><strong>28</strong></td>
</tr>
</tbody>
</table>

*Source: Study done by Wilbur Smith Associates for MoUD in 2008*
Modal Share of Travel to Work

• Census 2011 was the first Indian census to record any sort of travel information – provides a baseline to assess the change in pattern in the coming decades

• A plurality of Indian workers travel on foot or by bicycle – 58.1% in rural areas and 48.9% in urban areas

• The share of motorized two-wheelers in urban districts is nearly 20% while the modal share of cars (including jeeps/vans) is less than 5%

• Users of para-transit have a minimal share (less than 5%)
Modal Share of Travel to Work (cont’d)

• With more than 20% share, use of public transportation modes (bus and train) for travel to work is significant in urban as well as rural districts

• The proportion of workers who travel a distance of less than 5 kilometer is almost 70% for both rural and urban districts

• Only a little above 10% workers in rural as well as urban areas have work location farther than 10 kilometers
Modal Share of Travel to Work (cont’d)

• The proportion of trips involving longer distances (more than 10 km) is very low across all the states

• The proportion of trips involving more than 10 km is highest in NCT of Delhi (25%) and Goa (22.8%)

• 24.5% workers in urban areas and 38.8% workers in rural areas do not travel at all to get to their workplaces

• Nearly one-fifth of male workers and one-third women workers in urban India do not leave home for their work
Statutory Road Safety Protection in India

- Road safety in India needs a coordinated, crisis-level response
- Response of the Centre and the States is incremental at best
- **No road safety-specific legislation in India**
- The *Motor Vehicles Act of 1988* (MVA 1988), as modified by the *Motor Vehicles (Amendment) Act 2019* (MVA 2019) is the principal legislation by which road transport, and by extension, road safety, is regulated in India
Statutory Road Safety Protection in India

- Direct Statutory Road Safety Protection – None
- Indirect Statutory Protection
  - Provisions of criminal law as codified in the *Indian Penal Code, 1860*
  - Provisions of the *Motor Vehicles Act, 1988*, as amended by the *Motor Vehicles (Amendment) Act, 2019*
  - Provisions of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*
Statutory Road Safety Protection in India

- Even when the MVA does ‘regulate’ road safety:
  - It does so by imposing penalties in the form of punitive fines and incarceration – apparently based on the assumption that road safety is almost entirely a function of ‘Driver Behavior’
  - Or by deferring the ‘punishment’ to the criminal justice system
Motor Vehicles Act – Sections Relevant to Road Safety, and Questionable Sections

- **Relevant:**
  - § 112 – Limits of Speed
  - § 129 – Helmet Wearing
  - § 185 – Drunk Driving

- **Questionable:** §§ 2(10), 2(19), 3, 8, 9, 10, 15, 16, 19, 21, 22, 181, and 182 – Licensing regulations
Motor Vehicles Act – Sections Which Are Somewhat Relevant to Safety

- Relevant, but rarely (very) enforced: § 122 – Leaving Vehicle in Dangerous Position
  No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

- Relevant, but largely unused: § 138 empowers state governments to make rules for:
  - Prohibiting the use of foot-paths or pavements by motor vehicles
  - Generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic
Criminal Law – Comes into play whenever there is injury

- Relevant laws from the criminal code
  - IPC § 279 – rash or negligent driving
  - IPC § 304 – causing of death due to negligence
  - IPC § 336 – endangering life or personal safety of others
  - IPC § 337 – causing hurt
  - IPC § 338 – causing grievous hurt
Does the Motor Vehicles (Amendment) Act 2019 Enhance Road Safety?

- The Ministry of Road Transport and Highways (MoRTH) claimed that the primary driver for amending the 30+ years old Motor Vehicles Act was to address urgent issues related to road safety.
- The Amendment introduces some useful provisions for compensating accident victims.
- Streamlines driving license and vehicle registration procedures.
- *But it does not do anything much for road safety*.
Does the Motor Vehicles (Amendment) Act 2019 Enhance Road Safety? (cont’d)

- The law is extremely problematic
- No rethinking – just a series of overlapping amendments to the existing 30-year-old Motor Vehicles Act of 1988
- Continues to see road safety as a “driver behavior” issue
- Dramatic increase in penalties w/o any thought to the likely impact
Does the Motor Vehicles (Amendment) Act 2019 Enhance Road Safety? (cont’d)

But where it matters and where fines could be an actual deterrent, the fines are ridiculously low: for instance, a new provision, purportedly to improve road construction quality, imposes a penalty of one lakh rupees if a contractor fails to comply with road design standards.

One lakh rupees is a miniscule amount when one compares it to roadway construction costs: about 8 to 10 crore per km to build a four-lane highway, and around 15 crore per km for a six-lane highway.
## Penalties Imposed by the Amended MVA

<table>
<thead>
<tr>
<th>Section</th>
<th>Violation</th>
<th>Old Penalties</th>
<th>New Minimum Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>177</td>
<td>General violations</td>
<td>₹ 100</td>
<td>₹ 500</td>
</tr>
<tr>
<td>179</td>
<td>Non Compliance of orders</td>
<td>₹ 500</td>
<td>₹ 2000</td>
</tr>
<tr>
<td>181</td>
<td>Driving without licence</td>
<td>₹ 500</td>
<td>₹ 5000</td>
</tr>
<tr>
<td>182</td>
<td>Driving despite disqualification</td>
<td>₹ 500</td>
<td>₹ 10,000</td>
</tr>
<tr>
<td>183</td>
<td>Over speeding</td>
<td>₹ 400</td>
<td>₹ 1,000 for LMV</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>₹ 2,000 for Medium passenger vehicle</td>
</tr>
<tr>
<td>184</td>
<td>Dangerous driving</td>
<td>₹ 1,000</td>
<td>Up to ₹ 5,000</td>
</tr>
<tr>
<td>185</td>
<td>Drunken driving</td>
<td>₹ 2,000</td>
<td>₹ 10,000</td>
</tr>
<tr>
<td>189</td>
<td>Speeding / Racing</td>
<td>₹ 500</td>
<td>₹ 5,000</td>
</tr>
</tbody>
</table>
### Penalties Imposed by the Amended MVA (cont’d)

<table>
<thead>
<tr>
<th>Section</th>
<th>Violation</th>
<th>Old Penalties</th>
<th>New Minimum Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>192 A</td>
<td>Vehicle without permit</td>
<td>Up to ₹ 5,000</td>
<td>Up to ₹ 10,000</td>
</tr>
<tr>
<td>194 B</td>
<td>without Seat belt</td>
<td>₹ 100</td>
<td>₹ 1,000</td>
</tr>
<tr>
<td>194 C</td>
<td>Overloading of 2 wheelers</td>
<td>₹ 100</td>
<td>₹ 2,000, disqualification for 3 months for licence</td>
</tr>
<tr>
<td>194 D</td>
<td>Without Helmets</td>
<td>₹ 100</td>
<td>₹ 1,000 disqualification for 3 months for licence</td>
</tr>
<tr>
<td>194 E</td>
<td>Not giving way to emergency vehicles</td>
<td>No Provision</td>
<td>₹ 10,000</td>
</tr>
<tr>
<td>196</td>
<td>Driving Without Insurance</td>
<td>₹ 1,000</td>
<td>₹ 2,000</td>
</tr>
<tr>
<td>199</td>
<td>Offences by Juveniles</td>
<td>No Provision</td>
<td>* Guardian / owner shall be deemed to be guilty*&lt;br&gt;* ₹ 25,000 with 3 years imprisonment*&lt;br&gt;* Juvenile to be tried under Juvenile Justice Act*&lt;br&gt;* Registration of Motor Vehicle to be cancelled*</td>
</tr>
<tr>
<td>210 B</td>
<td>Offences committed by enforcing authorities</td>
<td>Twice the penalty under the relevant section</td>
<td></td>
</tr>
</tbody>
</table>
Policy, Rules & Enforcement

• Policy
  • The *National Urban Transport Policy* of 2014 was the first time that the Ministry of Urban Development made substantive recommendations concerning pedestrian access and safety.
  • But the focus is still on motorized transport – the word “pedestrian” occurs just 10 times in the 22 page document, in just 4 of the 56 sections.
The only regulation where the term “pedestrian” appears is the *Rules of the Road Regulation, 1989*

- The *Regulations* actually recognize a right of the pedestrian:
  - “The pedestrians have the right of way at uncontrolled pedestrian crossing.”
  - “When any road is provided with footpath or cycle tracks specially for other traffic, except with permission of a police officer in uniform, a driver shall not drive on such footpath or track.” [Rule 11]
Policy, Rules & Enforcement (cont’d)

➤ The *Rules of the Road Regulation, 1989* impose certain obligations on the driver of a motorized vehicle with respect to non-motorized traffic and pedestrians:

➤ the duty of the driver to slow down when approaching a pedestrian crossing (Rule 8)

➤ Not to drive on the footpath or the cycle lane (Rule 11)

➤ No driver shall park a motor vehicle near a traffic light or on a pedestrian crossing or a footpath (Rule 15)
Residential Parking Rules in Delhi

- Parking will only be permitted in demarcated areas in residential areas
- Vehicles parked on footpaths will be towed away
- On residential streets, a lane must be earmarked for unhindered movement of emergency vehicles – no parking will be allowed on this lane
- Open areas other than parks and green areas in residential areas can be used as parking lots against a fee
- A shuttle service may be provided from these parking lots, charges of which will be included in the parking in the parking fee
- Owners having vacant plots will also have to give up their space for parking against a fee
Statutory Protection for Pedestrians in India

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the government must provide for:

- Auditory traffic signals
- Engravings on the surface of zebra crossings and on the edges of railway platforms
- Slopes at sidewalk/footpath intersection points for easy wheelchair access
- Warning signals at appropriate places

Disabilities Act recognizes pedestrians and their interests – but in a very fragmented and disjointed manner (and most of these provisions have not been implemented in the almost 30 years since the act came into force)
Statutory Protection for Pedestrians in India

Municipal Corporations have the legal duty to safeguard pedestrians

• Some state and local municipal acts provide a degree of protection to pedestrians by making it the duty of a government entity to keep obstructions off of footpaths / sidewalks and public streets
  • Maharashtra Municipal Corporations Act states that at the time of any kind of “street repair,” adequate arrangements in the form of posts and fences must be made to ensure the safety of pedestrians
  • Bangalore Development Authority Act, 1976, makes the Authority responsible for the “maintenance, keeping in repair, lighting and cleansing of the streets formed by the Authority” [till such streets are vested in the Bangalore Municipal Corporation]
Pedestrian Safety Jurisprudence in India

Olga Tellis & Ors. v. Bombay Municipal Corporation and Ors. [1985 SCC (3) 545]

- This judgment was delivered on 10 July 1985, and is the earliest case where the Supreme Court of India addressed the issue (albeit indirectly) of pedestrian access and safety
- “The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be ... sacrificed in order to accommodate persons who use public properties for a private purpose, in an unauthorized manner.”
Pedestrian Safety Jurisprudence in India (cont’d)

Madhya Pradesh State Road Transport Corp. v. Kanti Devi and Two others [1 (1986) ACC 7]

• This judgment is one of the earliest in a High Court which defines the respective duties of drivers and pedestrians. The Court states:
  • “... it is the duty of the driver to keep a proper look out for pedestrian and other users of the road. It is his duty, whenever he feels expedient to give warning to the pedestrian and other road users by mechanical or electric horn.”
Pedestrian Safety Jurisprudence in India (cont’d)

M C Mehta v. Union of India [1997 (8) SCC 770]

- Perhaps the most crucial judgment in interpreting the primacy of pedestrians in Indian jurisprudence ... and a landmark in an attempt to enhance road safety
- Initiated by a PIL (Public Interest Litigation) filed in 1985 (Writ Petition (Civil) 13029 of 1985), asking for:

  “Proper management and control of the traffic in the National Capital Region (NCR) and the National Capital Territory (NCT), Delhi to ensure the maximum possible safeguards which are necessary for public safety”


M. C. Mehta is actually, a series of connected judgments delivered in 1997-98
Pedestrian Safety Jurisprudence in India (cont’d)

M C Mehta v. Union of India [1997 (8) SCC 770]
  • The Supreme Court established a new principle in Indian jurisprudence
    **Right to be safe on the roads == Right to life**
  • Public safety on the roads is “within the ambit of Article 21 of the Constitution[,]” and so implicates the right to life
  • **Ruling:** Right to be safe on the roads takes precedence over the Article 19 (1) (g) right “to practice any profession, or to carry on any occupation, trade or business”
Pedestrian Safety Jurisprudence in India (cont’d)

High Courts have followed the Supreme Court’s *M C Mehta* ruling to emphasize road user safety

- Even though these judgments do not have the pedestrian as their focus, they can be used to enhance pedestrian and NMT safety
- One of the best examples is the so-called “Blue Line” case of 2007. Crucial bit of ruling:

“The right under Article 19 (1) (g) would be subject to restrictions, particularly those which protect the right to life and the liberty of citizens to move freely within their city. Article 21 is all pervading in balancing of fundamental rights.”
Pedestrian Safety Jurisprudence in India (cont’d)

A statement which is most supportive of the goal of pedestrian access and safety came about ten years ago in a case in the High Court of Delhi [2007 (2) CTLJ 179 (Del)]

“The pavement by its very definition is meant for the use of pedestrians. The pedestrian is as much a user of the road or the circulation system of the city as a bus, a truck or a luxurious car .... Pedestrians include the healthy citizens and also the unhealthy. It includes physically handicapped people and may also include the visually impaired.”
International policies and statutes related to pedestrian safety

At the United Nations

• *Geneva Convention on Road Traffic, 1949* – the earliest attempt by the UN in the field of Road Traffic

• Signed and ratified by India

• Refers to “pedestrian” in two articles, 7 and 11, in a very cursory manner – *sort of like a nuisance to be tolerated*
International policies and statutes related to pedestrian safety

At the United Nations

• GCRT was replaced in 1968 by the Vienna Convention on Road Traffic (VCRT) and the Vienna Convention on Road Signals and Sounds
  • Created uniform road traffic laws to aid international transportation and ensure road safety
  • Primarily aimed at safeguarding the rights of a motorized road user rather than the pedestrian
    • For instance, Article 20 of the VCRT provides a pedestrian with the right to walk on the carriageway only if there is no sidewalk/footpath
    • Article 20 also makes it incumbent upon the pedestrian to make sure that he or she does not impede the road traffic while crossing the road

India has not ratified the VCRT or VCRSS
International policies and statutes related to pedestrian safety

At the United Nations

- Other than the VCRT, the General Assembly has passed several resolutions on road safety (GA Res. 57/303, 58/289)
- These resolutions recognize the need to take steps to make the roads safe for everyone
- The World Report on Road Traffic Injury Prevention, published by the World Health Organization (Peden et al., 2004), provides a basic framework for countries to make roads safer
Policies in the European Union

• European Charter of Pedestrian Rights, adopted in 1988
  • Acknowledges the right of a pedestrian to be able to live in a healthy environment and be provided with various necessary amenities

• Pedestrian Protection Regulation, adopted in 2009
  • Aims to protect pedestrians involved in a collision with a vehicle
  • Requires manufacturers to fit Brake Assist Systems into their vehicles to reduce the stopping distance and lower the speed of impact
  • Requires manufacturers to make energy absorbing bonnets and front bumpers
“People Catchers” – trying to make cars acceptable

A ‘scoop’ made of metal and mesh, mounted on a Model “T” Ford Taxi Cab. It was patterned after a “Cowcatcher” and was used to deflect, catch and keep the pedestrian from ending up under the car.
“People Catchers” – trying to make cars acceptable

Another variant of a scoop, mounted on a 1920’s car in Baltimore
Best Practices Possible Under Current Laws & Jurisprudence

“We expect every transportation agency to make accommodation for bicycling and walking a routine part of their planning, design, construction, operations and maintenance activities” \[FHWA policy statement\]

• The current jurisprudence shows that Courts clearly intend for non-motorized traffic and pedestrians to have safe, convenient access to the transportation system

• Policy makers in India should seize every transportation improvement as an opportunity to enhance the safety and convenience of non-motorized traffic and pedestrians
Best Practices Possible Under Current Laws & Jurisprudence

• Design highways from the right-of-way limits in, rather than the centerline out
  • Begin the design of a highway with the sidewalk and/or trail, including a buffer before the paved shoulder or bike lane, and then allocating the remaining space for motor vehicles
  • Through this approach, walking and bicycling are positively encouraged, made safer, and included as a critical element in every transportation project rather than as an afterthought in a handful of unconnected and arbitrary locations within a community
Best Practices Possible Under Current Laws & Jurisprudence

- **In urban areas**: Bicycle and pedestrian ways must be established in new construction and reconstruction projects in all areas.

- **In rural areas**: Paved shoulders must be included in all new construction and reconstruction projects on roadways used by a certain number of vehicles per day.

  - Paved shoulders have safety and operational advantages for all road users in addition to providing a place for bicyclists and pedestrians to operate.
Best Practices Possible Under Current Laws & Jurisprudence

- Sidewalks, shared use paths, street crossings (including over- and under-crossings), pedestrian signals, signs, street furniture, transit stops and facilities, and all connecting pathways shall be designed, constructed, operated and maintained so that all pedestrians, including people with disabilities, can travel safely and independently
Best Practices Possible Under Current Laws & Jurisprudence

*Rewrite the Manuals* Approach

- Manuals that are commonly used by highway designers covering roadway geometrics, roadside safety, and bridges should incorporate design information that integrates safe and convenient facilities for bicyclists and pedestrians – including people with disabilities – into all new highway construction and reconstruction projects.

- Incorporate detailed design information such as the installation of safe and accessible crossing facilities for pedestrians, or intersections that are safe and convenient for bicyclists.
Best Practices Possible Under Current Laws & Jurisprudence

\textit{Rewrite the Manuals} Approach

- Create stand-alone bicycle and pedestrian facility manuals that provide detailed design information addressing on-street bicycle facilities, fully accessible sidewalks, crosswalks, and shared use paths, and other improvements
Best Practices Possible Under Current Laws & Jurisprudence

Train Transportation Planners and Engineers

• Initiate an intensive re-tooling and re-education of transportation planners and engineers to make them conversant with the information required to accommodate bicyclists and pedestrians

• Training should be made available for, if not required of, agency traffic engineers and consultants who perform work in this field
THANK YOU