



8TH IRF REGIONAL CONFERENCE 2013

STRENGTHENING OF LEGAL PROVISIONS

Anish Dayal

INTRODUCTION

- *“Comprehensive and clear legislation, enforced with appropriate penalties and accompanied by public awareness campaigns, has been shown to be a critical factor in reducing road traffic injuries and deaths.....”*

Global Status Report on Road Safety, 2009 (World Health Organization)

- *Measures to prevent road accidents may be preventive, precautionary and punitive. There is no denying the fact that there is a need of improved road-watch, surveillance and detection , effective and holistic regulation of all kinds of traffic on the roads and proper deterrence*

234th Report of the Law Commission of India (August, 2009)

SUBJECT MATTER OF REGULATION

MOTORIZED VEHICLES

NON-MOTORIZED VEHICLES

NATIONAL HIGHWAYS

STATE HIGHWAYS

LOCAL ROADS

TRAFFIC FLOW AND MANAGEMENT

ELEMENTS OF ANY REGULATION

- Vehicle standards
- Vehicle use
- Nature of the vehicles
- License to users
- Road design
- Road signage
- Road laning
- Nature of various roads
- Traffic flow and management
- Penalties and fines
- Pan-Indian application
- Nodal agencies
- Enforcement
- Education and training

ELEMENTS – BROAD CATEGORIES

STANDARDS

- For roads, vehicles, users, traffic
- Prescribing and evolving

IMPLEMENTATION

- Nodal Agency
- Pan – India coordination
- Audit

ENFORCEMENT

- Local agencies
- Penalties and fines
- Training

THE CONSTITUTIONAL FRAMEWORK

WHO CAN LEGISLATE?

7th Schedule of the Constitution of India

Union List (Central Government):

Entry 23 – Highways declared by Parliament to be National Highways

State List (State Government):

Entry 13 – Roads and vehicles other than mechanically propelled vehicles

Concurrent List (Both – but Central prevails):

Entry 35 – Mechanically propelled vehicles

EXISTING REGULATION

MOTORIZED VEHICLES - The Motor Vehicles Act, 1988

NON-MOTORIZED VEHICLES – No Legislation – Local Bodies/Municipalities

NATIONAL HIGHWAYS - The National Highways Act, 1956
The Control of National Highways Land
and Traffic Act, 2002

STATE HIGHWAYS – State Laws

LOCAL ROADS – Local Bodies/ Municipalities

TRAFFIC FLOW AND MANAGEMENT - The Motor Vehicles Act, 1988
Rules of the Road Regulations, 1989
Indian Penal Code, 1860

THE BIG GAPS IN REGULATION - I

NON- MOTORIZED VEHICLES

- State Subject and therefore upto municipalities
- Lack of proper manufacturing standards

PEDESTRIANS

- No regulation as users of the road
- Rules of Road Regulations – Clause 11 - inadequate
- Law Commission – “*No appropriate regulation to govern behaviour of pedestrians and non-motorized traffic*”

LANING

- No regulations on laning
- Rules of Road Regulations – Clause 18 – only mention laning

THE BIG GAPS IN REGULATION - II

SIGNAGE

- Motor Vehicles Act – First Schedule – outdated – Indian Roads Congress 2001
- Zero standardization
- Parliamentary Committee : “*..no mention of road markings or traffic signals in First Schedule....its a major shortcoming*”

EMERGENCY VEHICLE ACCESS

- No comprehensive regulation
- Rules of Road Regulations – Clause 10 - insufficient
- Inadequate penalties

PENALTIES AND FINES

- Woefully inadequate
- Resident in Act not Rules – difficult to amend
- Supreme Court in Dalbir Singh – “*One of the most effective ways of keeping drivers under mental vigil is to maintain a deterrent element...*”

WHAT HAS BEEN DONE?

AMENDMENTS TO THE MOTOR VEHICLES ACT

- Amendment Bill 2007 – passed by Rajya Sabha in 2012 - pending
- Deals primarily with increase of fines – but still resident in the Act
- Licensing – seeks to give power to State based establishments to train
- Not comprehensive

THE NATIONAL ROAD SAFETY AND TRAFFIC MANAGEMENT BOARD BILL

- Mooted by the Ministry pursuant to the Sundar Committee Report
- Parliamentary Committee rejected the Bill – yet another entity, don't bring legislation piecemeal, mandate of Board limited

THE NATIONAL ROAD SAFETY POLICY

- Union Cabinet approved in March 2010
- Based upon the Sundar Committee Report

WHAT CAN BE DONE?

THE CHOICE

Replace existing enactments with one comprehensive legislation (like LARR)

OR

Strengthen existing institutions and enactments

Supreme Court in MC Mehta Case 2007:

- *“In our opinion, the provisions of the Motor Vehicles Act, 1988, in addition to the provisions in the existing laws, for example, the Police Act and the CrPC, confer ample powers on the authorities to take the necessary steps to control and regulate the road traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses threat or hazard to public safety”*

STRENGTHENING - I

ROAD SAFETY COUNCILS

- section 215 of the MVA enables to set up Central and State Councils and District Committees
- clothe them with “*all functions relating to road safety...having regard to the objects of the Act*”
- set standards, ensure coordination, conduct audits

FIRST SCHEDULE

- comprehensively amend the First Schedule to update all signage, form, color, size, category (based on nature of roads), language
- add laning provisions – use same concept as traffic signs to centralize specifications

RULES OF THE ROAD REGULATIONS

- comprehensively amend to add all aspects of traffic flow and management – lane management, emergency vehicle access, pedestrian control

STRENGTHENING - II

PENALTIES AND FINES

- Amend MV Act to enable rule making for updating fines
- Prescribe minimum fines – States can amend to increase

LICENSING

- Establish and encourage driving training schools with centrally regulated standards – allow certification
- Make driver testing stringent and ensure oversight of process
- Include more stringent powers of suspension, black-marking and revocation

NON – MOTORIZED VEHICLES

- mandate states to comply with minimum standards for non-motorized vehicles

HIGHWAYS

- amend Control of National Highways Act 2002 to mandatorily implement centrally prescribed standards for traffic, signage, laning

INGREDIENTS OF AN EFFECTIVE REGULATION

- CLEAR AND COMPREHENSIVE
- CAPABLE TO EVOLVE AND ADAPT
- CAPABLE OF BEING EFFECTIVELY ENFORCED
- ENSURES MAXIMUM STANDARDIZATION ACROSS INDIA

“You are not stuck in a traffic jam. You are the traffic jam”

- road safety advertisement in Germany

Thank you!

anish.dayal@gmail.com