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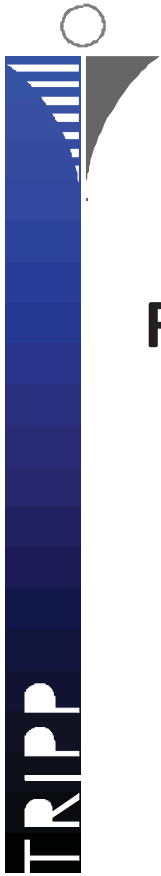
ROAD SAFETY LEGISLATION & ENFORCEMENT IN INDIA

INTERNATIONAL COURSE ON ROAD SAFETY AUDIT AND ROAD CONSTRUCTION SAFETY

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Pedestrians in Urban Spaces

“Public spaces need to be spaces to play, where green is not an anecdote—where the neighborhood’s history and local life have a presence.”

Janet Sanz, Barcelona City Council,
Member for ecology, urbanism and mobility





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
- For the last few years, about 150,000 of these traffic deaths have occurred in India
 - About 50 to 55 thousand of those who die in these road accidents in India are pedestrians (Mohan et al., 2015)
 - Another 15 to 20 thousand are cyclists
 - Two-wheeler riders account for another 35 to 40 thousand fatalities
- According to a survey conducted by the Central Road Research Institute, of India nearly 90% of pedestrians on urban roads feel unsafe

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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

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Pedestrians in Urban Spaces

Walk? Or Live?

MODAL SHARE OF WALKING IN KEY CITIES OF INDIA

City Size	Percentage walking
< 500,000 (hill terrain)	34
< 500,000 (plain terrain)	57
500,000 – 1 million	32
1 – 2 million	24
2 – 4 million	25
4 – 8 million	25
> 8 million	22
National average	28

Source: Study done by Wilbur Smith Associates for MoUD in 2008



Statutory Road Safety Protection in India

Is it due to lack of apt provisions in our law that travel through Indian roads is a tryst with Death? This crucial question has been engaging the attention of the Law Commission of India for quite some Time.

Legal Reforms to Combat Road Accidents
Report by the Indian Law Commission, 2009



Statutory Road Safety Protection in India

- Road safety in India needs a coordinated response, crisis-level response
- Response of the Centre and the States is incremental at best
- No specific road safety legislation in India
- The *Motor Vehicles Act of 1988* (MVA 1988), as modified by the *Motor Vehicles (Amendment) Act 2019* (MVA 2019) – 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 Which Are Somewhat Relevant to Safety

- **Relevant:** Speed limits
- **Questionable:** Licensing regulations (§§ 38 – 112)
- **Relevant, but largely unused:** Section 138, empowering state governments to make rules prohibiting motor vehicles from using footpaths/sidewalks and the roadway pavement itself in any manner which causes
 - Danger, injury or annoyance to the public or any person
 - Danger or injury to property
 - 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
- The law is extremely problematic



Does the *Motor Vehicles (Amendment) Act 2019* Enhance Road Safety?

- 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
- Proposes dramatic increases in penalties w/o any thought given to the likely impact
- 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 100,000 rupees if a contractor fails to comply with road design standards. This is a miniscule amount when one realizes that it costs about 15 crore to build one km of new highway.



Penalties Imposed by the Amended MVA

Section	Violation	Old Penalties	New Minimum Penalties
177	General violations	Rs 100	Rs 500
179	Non Compliance of orders	Rs 500	Rs 2000
181	Driving without licence	Rs 500	Rs 5000
182	Driving despite disqualification	Rs 500	Rs 10,000
183	Over speeding	Rs 400	Rs 1000 for LMV Rs 2000 for Medium passenger vehicle
184	Dangerous driving	Rs 1000	Upto Rs 5000
185	Drunken driving	Rs 2000	Rs 10,000
189	Speeding / Racing	Rs 500	Rs 5,000
192 A	Vehicle without permit	upto Rs 5000	upto Rs 10,000
194 B	without Seat belt	Rs 100	Rs 1000
194 C	Overloading of 2 wheelers	Rs 100	Rs 2000, disqualification for 3 months for licence
194 D	Without Helmets	Rs 100	Rs 1000 disqualification for 3 months for licence
194 E	Not giving way to emergency vehicles	No Provision	Rs 10,000
196	Driving Without Insurance	Rs 1000	Rs 2000
199	Offences by Juveniles	No Provision	Guardian / owner shall be deemed to be guilty. Rs 25,000 with 3 yrs imprisonment. Juvenile to be tried under Juvenile Justice Act. Registration of Motor Vehicle to be cancelled
210 B	Offences committed by enforcing authorities		Twice the penalty under the relevant section



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



Policy, Rules & Enforcement

- 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

- 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)



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 20 years)

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]

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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



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

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

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

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 practise any profession, or to carry on any occupation, trade or business.”



Pedestrian Safety Jurisprudence in India

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

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.”



Best Practices Possible Under Current Laws & Jurisprudence

- 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 should seize every transportation improvement as an opportunity to enhance the safety and convenience of the two modes
- “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]



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 shall be established in new construction and reconstruction projects in all areas
- In rural areas: Paved shoulders should 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

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

Why Government at All Levels Needs Trained Transportation Planners and Engineers

W-Beam Crash Barrier Installed along the Eastern Peripheral Expressway – a new two billion dollar “showpiece” highway in the NCR

- Note the placement of the W-beam barrier behind a hard curb
- The intended purpose of a W-beam crash barrier is to absorb impact and minimize the chance of a vehicle bouncing back into traffic
- Placing a crash barrier behind a hard curb makes it useless for its intended purpose

