

## **Adherence of the Road Transport Act, 2018 to the HCD directions in *HRPB v. Bangladesh*, 2015**

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### **Abstract**

*The Road Transport Act, 2018 was promulgated to address both the horrendous situation with road accidents and to quell the public unrest over the same. The Act is in conformity with certain directions given by the High Court Division back in 2015. This article focuses on the extent to which the Act conforms with the Court's directions and on certain aspects where the Act has fallen short, including the absence of a Motor Accident Claims Tribunal and the delay in formulation of rules under the Act.*

### **1. Introduction**

The World Bank report 'Delivering Road Safety in Bangladesh'<sup>1</sup> estimates that the annual deaths in road accidents in Bangladesh range from 2,538 to nearly ten times that—between 20,736 and 21,316. According to the World Health Organisation (hereinafter referred to as WHO) data, annual road crash deaths per capita in Bangladesh are twice the average rate for high-income countries and five times that of the best-performing countries in the world. In South Asia, the per capita fatality rate in Bangladesh has increased more rapidly over the past three decades than the regional average. The report also said that children in Bangladesh face growing road safety risks.<sup>2</sup>

From 29th July to 8th August 2018, Bangladesh experienced a nationwide student protest where school students took to the streets demanding safer roads, implementation, and formulation of road-safety laws and punishment for violation of such laws. The protest exploded with the tragic deaths of two high school students in the capital. To mitigate this protest, the Road Transport Act, 2018 (hereinafter referred to as RTA) was enacted by the Parliament, replacing the Motor Vehicles Ordinance, 1983. The preamble of the Road Transport Act read that the Act has been enacted to refine and modernize the road transport system. However, the High Court Division (hereinafter referred to as HCD), back in 2015, gave certain directions in the *Human Rights and Peace for Bangladesh vs. Bangladesh*<sup>3</sup> (hereinafter referred to as *HRPB v Bangladesh*) case to address the ineffective road safety laws. This write-up will appraise the Road Transport Act, 2018 in light of the directions given in the aforementioned case.

### **2. Directions of the High Court Division in *HRPB v. Bangladesh* (2015)**

The case was instituted as a Public Interest Litigation by HRPB. The petitioner's argument was based upon newspaper reports outlining the rising death toll on the roads due to

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<sup>1</sup> World Bank, 'Delivering Road Safety in Bangladesh: Leadership Priorities and Initiatives to 2030' (2020).

<sup>2</sup> *ibid.*

<sup>3</sup> *Human Rights and Peace for Bangladesh v. Bangladesh* (2016) 21 BLC 641.

ineffective road transport and traffic management system. The reasons behind this are hazardous roads, defective vehicles, and ignorance of the drivers regarding driving rules. Even though there is the Motor Vehicle Ordinance, 1983, the ordinance metes out meager penalties not properly suitable to the current reality.

To curb the callous situation existing in road and traffic management, specific directions were required by the Government and concerned authorities such as the Bangladesh Road Transport Authority (hereinafter referred to as BRTA). The petitioner pointed out the tremendous loss of working hours owing to the traffic jam along with an 11 point recommendation, which included making the Rule in the form of a continuous mandamus. The Deputy Attorney-General appearing on behalf of the respondent, submitted that the respondents had no objections to orders passed by the Court. The Court, in the form of continuous mandamus, issued a rule containing 25 recommendations addressing road safety and traffic management. The relevant directions for the purpose of this write-up are as follows:

- 1) Introduction of electronic and point-based license
- 2) Database detailing of every incident of road accident
- 3) Removal and halting of hat-bazars on highways
- 4) Establishment of bus bay and stoppage areas.
- 5) Not to allow defective vehicles to run on the road
- 6) Facilitation of proper training of drivers and setting up of weight scales on various points
- 7) Not to allow construction of bodies of vehicles without the approval of the authority nor to change the original manufactured structure of vehicles.

### **3. Road Transport Act 2018: How much did it reflect the HCD directives?**

The Road Transport Act, 2018 has repealed the Motor Vehicles Ordinance, 1983, and is an improvement over the previous law addressing certain aspects, which has also been reflected in the directions given by the HCD in *HRPB v. Bangladesh*.

**3.1. Point-based driving license:** Under section 11 of the RTA 2018, a 12 point-based driving license scheme has been introduced. It is not applicable for trainee drivers, and the points shall be remitted on certain grounds such as running the red light, creating obstruction for other vehicles, driving while intoxicated, and so on. However, the procedure and scheme of point remission have been largely left up to the Rules, which are yet to be framed.

**3.2. Removal of hat-bazars near highways:** No person for business or otherwise is permitted to establish any permanent or temporary structure within 10 meters of the highway.<sup>4</sup> This provision is in consonance with the direction of the HCD to take necessary steps for removal and prohibition of the establishment of hat-bazar and other commercial establishments within 10 meters of the highway.

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<sup>4</sup> The Road Transport Act, 2018, s 37.

**3.3. Establishment of bus bay and stoppage areas:** The HCD directed to establish bus bay or stoppage areas with a proper plan beside the roads. The RTA outlines that with the advice of Police in charge of traffic in the concerned area, through Gazette Notification or otherwise, motor vehicle parking space, stoppage area, and bus bay shall be determined by Bangladesh Road Transport Authority.<sup>5</sup>

**3.4. Prohibition of defective vehicles to run on the road:** Vehicles without fitness or with expired fitness certificates shall not be allowed to tread on the road.<sup>6</sup> While this provision is a reiteration of the provision in the Motor Vehicles Ordinance, 1983, it also warns of administrative actions against furnishing fitness certificates to vehicles not befitting the requirements.

**3.5. Prohibition of body alteration or change of original manufactured structure of vehicles:** Under Section 40(3), the prior approval of the authority is required to make any internal or external change of the vehicles. Nevertheless, alteration of technical specifications designated by the authorities, such as size and length of tires, horn, indicators, and exhaust pipes, cannot be done.

**3.7. Training of drivers:** Section 6(2) of the RTA lists a number of conditions that are required to be fulfilled in order for a person to receive a driving license, which include educational qualification (8<sup>th</sup> grade or higher), age bars (18 years for non-professional and 21 years for professional drivers) and qualification as per the driving test.

#### **4. Absence of Motor Accidents Claims Tribunal under the Road Transport Act 2018**

In the previous law, the Motor Vehicles Ordinance, 1983, section 127 established the Motor Accidents Claims Tribunal. Under the RTA, rather than a claims tribunal, a Trustee Board has been created.<sup>7</sup> Therefore, this means that there is no Court or Tribunal involved to deal with the compensation claims of a road accident victim under the RTA. The Trustee Board constituted under this Act shall be charged with the management of a Financial Aid Fund from which ‘financial aid’ shall be provided to the victims of road accidents.<sup>8</sup> The sources of the fund consist of donations from the Government, Road Transport Owners Association, and from the fines realized under this Act.<sup>9</sup>

What the establishment of this Trustee Board does is that it removes the presence of vicarious liability for motor vehicle owners, which otherwise would make them liable for the negligence of their employees, forcing them to pay damages for accidents. Moreover, this ‘financial aid’ replaces the right of a victim to sue for compensation with charitable financial aid. It must be kept in mind that there is a distinction between compensation and financial aid where the latter is always gratuitous, and the former is an entitlement as of

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<sup>5</sup> *ibid*, s. 47.

<sup>6</sup> *ibid*, s. 25 (1).

<sup>7</sup> *ibid*, s. 54.

<sup>8</sup> *ibid*, s. 53.

<sup>9</sup> *ibid*, s. 57.

right. The establishment of the fund under RTA fails to properly appraise the difference between the two.<sup>10</sup>

### **5. Complexities: Shortcomings, Implementation, and Lack of Follow-up**

The RTA 2018 provides novel schemes and regulations, which are needed given the current situation concerning road safety and management in Bangladesh. As has been discussed above, the Act addresses the key directions given by the HCD back in 2015. It goes beyond the purview of the given directions by reserving the power to both restrict and prohibit any and all types of vehicles for any period of time,<sup>11</sup> to control the number of vehicles registered for any person, family, or institution,<sup>12</sup> and to regulate the number of vehicles for any particular area or for the entirety of Bangladesh.<sup>13</sup> Section 105 of the 11th chapter states no matter what, if anybody gets seriously injured or killed in a motor vehicle-related accident, it would be considered as an offense under the relevant sections of the Penal Code, 1860. This ranges from Section 302 to 304B, with the maximum punishment being a death sentence. Besides this, the offenses that fall under section 105 of the Act are not eligible for bail.<sup>14</sup>

However, it largely fails to impress on primarily two accounts; firstly, the delay, the RTA came into force on 1st November 2019 whereas it had been passed in the year before in October. This one year delay is certainly questionable, as it has been said that an implementation scheme was to be set up before the commencement of the Act; nonetheless, certain provisions did need an enforcement scheme along with added logistical support. According to the Passenger Welfare Association of Bangladesh, ‘At least 7,855 people were killed and 13,330 others injured in 5,516 road accidents across the country in 2019, increasing the death toll from road crashes in the last year by 8.07 percent than that of 2018.’<sup>15</sup> It may be argued that the RTA could have played a role in lessening the number of both victims and incidents. Despite the country being halted due to the COVID-19 pandemic, at least 6,686 people were killed and 8,600 injured in 4,891 road accidents in 2020.<sup>16</sup>

Secondly, the RTA seems largely deficient, as a key number of provisions and their relevant schemes have been left up to the Rules to be framed under it. Despite the fact that

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<sup>10</sup> Taqbir Huda, ‘*Compensation under the new Road Transport Act: A critique*’, The Daily Star, 2<sup>nd</sup> October, 2018, available at: <https://www.thedailystar.net/law-our-rights/news/compensation-under-the-new-road-transport-act-critique-1641550> last accessed on 10.12.2020.

<sup>11</sup> The Road Transport Act, 2018, s 32.

<sup>12</sup> *ibid*, s. 23.

<sup>13</sup> *ibid*, s. 33.

<sup>14</sup> Rahbar Al Haq, ‘*Road Transport Act 2018 – details, repercussions, reactions*’, The Daily Star, 6<sup>th</sup> November, 2019, available at: <https://www.thedailystar.net/shift/news/road-transport-act-2018-details-repercussions-reactions-1823818>, last accessed on 10.12.2020.

<sup>15</sup> Star Online Report, ‘*Road crashes kill 7,855 people in 2019*’, The Daily Star, 11<sup>th</sup> January, 2020, available at: <https://www.thedailystar.net/country/road-accidents-kill-7855-people-in-2019-in-bangladesh-1852684#:~:text=At%20least%207%2C855%20people%20were,said%20in%20its%20annual%20report> last accessed on 10.12.2020.

<sup>16</sup> Staff Correspondent, ‘*6,686 killed, 8,600 injured in road accidents in 2020: Report*’, New Age Bangladesh, 10<sup>th</sup> January, 2021, available at: <https://www.newagebd.net/article/126764/6686-killed-8600-injured-in-road-accidents-in-2020-report> last accessed on 15.01.2021.

RTA has been enacted, there has been no further information as to whence the rules shall be drafted and come into force. Given that the RTA itself took a year to come into force, one cannot help but wonder how much time the rules might require. In August 2020, the High Court Division in *Syed Saifuddin Kamal v. Bangladesh*<sup>17</sup> issued a contempt of court rule against the health secretary and director general (DG) of the Directorate General of Health Services (DGHS) for not complying with its judgment in 2018 to ensure emergency medical services for road crash victims i.e. The Nitimala (Guidelines). Even though the HCD declared that the writ petition would continue as a continuous mandamus, there is no further information nor report submitted by the respondents as to the steps taken to facilitate the directions given by the HCD. It should be kept in mind that the first report was directed to be submitted on or before 1st April 2016.<sup>18</sup>

This is quite unfortunate as the HCD, through its extensive recommendations, essentially handed out a potential exoskeleton for a law suitable to tackle prevalent road safety and traffic management system. Had initiatives been taken by the state organs to follow through with the outcome of the continuous mandamus, an RTA might have been available to the people of Bangladesh without a nationwide protest and countless loss of lives leading up to it.

Moreover, transport leaders have renewed their demands to change several provisions of the RTA 2018 and that it be kept ineffective for six more months.<sup>19</sup> They had also demanded changes to several provisions, including making offenses under the Act bailable, reducing the educational qualification, etc. leading to non-enforcement of certain provisions of the RTA.<sup>20</sup> This is extremely unfortunate, and nothing short of an infuriating measure as watering down these requirements would essentially wipe out any ceiling or bar on an intellectual basis when it comes to receiving a driver's license. HRPB already cited ignorance of traffic laws and rules as a key reason for rampant road accidents (and this was back in 2015), we are now in 2021, and that reason still has not ceased to exist as a cause for loss of lives.<sup>21</sup> The fact that such demands are being made even now is a crystal-clear picture of the political climate impacting the implementation of laws in Bangladesh.

## 6. Conclusion

The RTA 2018 is a welcoming step in the right direction when it comes to dealing with widespread irregularities and lack of standards in traffic management, road safety, and standards of driving in Bangladesh. At least, that is what I would like to say, but that is

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<sup>17</sup> *Syed Saifuddin Kamal v. Bangladesh* (2020) 13 SCOB HCD 85.

<sup>18</sup> *Human Rights and Peace for Bangladesh v. Bangladesh* (2016) 21 BLC 641 [25].

<sup>19</sup> Staff Correspondent, 'Transport leaders renew demand for changes to Road Transport Act', The Daily Star, 25<sup>th</sup> December, 2020 available at: <https://www.thedailystar.net/city/news/transport-leaders-renew-demand-changes-road-transport-act-2016937>> last accessed on 10.12.2020

<sup>20</sup> Editorial, 'Amendments to Road Transport Act: In whose interest?', The Daily Star, 21<sup>st</sup> August, 2020, available at: <https://www.thedailystar.net/editorial/news/amendments-road-transport-act-whose-interest-1948317> last accessed on 10.12.2020

<sup>21</sup> Star Online Report, 'Road crashes kill 7,855 people in 2019', The Daily Star, 11<sup>th</sup> January, 2020, available at: <https://www.thedailystar.net/country/road-accidents-kill-7855-people-in-2019-in-bangladesh-1852684#:~:text=At%20least%207%2C855%20people%20were,said%20in%20its%20annual%20report> last accessed on 10.12.2020

sadly not the true story. It is true that the RTA has lived up to the recommendations as envisaged by the HCD in 2015, but it has come two years too late, and that too at the cost of a massive protest and regrettable loss of lives of countless individuals. Even while it is finally in force, its proper enforcement and implementation are further mired by targeted strikes and non-cooperation, which are aimed at carving out a suitable situation, essentially stripping the RTA of its effectiveness in favor of stakeholders. If there is ever to be order in the roads of Bangladesh, there has to be a unified legislation supported by proper implementation and logistics. Not half-measures like RTA with holding back provisions and non-existent Rules, which are supposed to outline the implementation of a majority of the provisions of the law itself.