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Lawless Laws: Land Rights, Poverty and Empowerment of Common People in Bangladesh

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LEGAL FRAMEWORK TO COMBAT ROAD ACCIDENTS IN BANGLADESH: ISSUES AND CHALLENGES

Momotaz Khatun*

ABSTRACT *The present articulation focuses on the role of legal tools to combat road accidents in Bangladesh. This study is based on the articles published in national and international journals and conference proceedings, news paper articles and reports published by various government agencies, online articles and interviews. The study reveals that the major cause of road accident is the negligence of the driver and the shortcomings in law enforcement. The present Motor Vehicle Ordinance of 1983 (MVO 1983) and the proposed Road Transport and Traffic Act (RTTA) are critically reviewed here. The MVO 1983 is applicable only to the motorised vehicles though the number of non-motorised vehicles in Bangladesh is twice than that of motorised vehicles. The study finds that major limitations and outdated penal provisions of the MVO 1983 are addressed in the proposed RTTA and additionally, a new point demerit scheme is been introduced in the proposed Act. Finally it is suggested that, policing activities must be strengthen to reduce the road accident through law enforcement.*

KEYWORDS: *Bangladesh Road Transport Authority (BRTA), legislative control, road accidents, Motor Vehicle Ordinance 1983, road transport, traffic law*

1. INTRODUCTION

Bangladesh is a developing country in South Asia with a population of more than 150 million. About 27 percent of the population is living in the urban areas and the rate of urbanisation over the last decade has been between 7 to 8 percent (USGHP 2012). In recent decades economic activities in Bangladesh have been increased by several folds and the role of transport is playing an extremely important part of the Bangladesh economy. About 12% of GDP and 20% of the annual development budget is spent on transport, and 9.4% of the national employment is in the transport industry. Bangladesh has about 1.5 million motorised vehicle and more than 3 million non-motorised vehicles (Hoque 2004; BRTA 2011). At the current growth rate the number of vehicles in the country is

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expected to be double in the next ten years. The shares of passengers and freights carried by road compared to rail and water is continuously increasing and currently over 75% of passenger and nearly 70% of freight is carried by road transport (Hoque 2007). On the other hand, the number of road traffic accident is continuously increasing day by day and the death toll as well as number of injured person is increasing. The scenario of road accidents and the fatalities involved for the last two decades is given in Table 1. According to police statistics road accidents in Bangladesh on average claim 4,000 lives and injure another 5,000. But some other agencies reported that the actual estimated road fatalities each year may be around 10,000 to 12,000 which is fifty times higher than the fatalities in a developed country (Hoque 2007). In a recent study, Bangladesh ranked seventh on the basis of road fatalities per 100,000 motor vehicles (WHO 2009). The road accident is a burning issue not only in Bangladesh but also in other countries irrespective of the economic status. Every year approximately 1.3 million people are killed and 50 million people are injured in road crashes all over the world (WHO 2011). In 2020, it is estimated that road accidents may kill approximately 2.4 million people which is more than those dying due either to malaria, TB or HIV/AIDS (WHO 2004). The scenario in low and middle income countries will be worst in future where fatalities are predicted to increase by nearly 90 percent where as in high income countries it is expected to decrease by 30 percent. The cost of road traffic injuries all over the world is estimated as \$ 518 billion each year (WHO 2004). In Bangladesh, the loss due to road accident is estimated around Tk 50,000 million each year (NRSC 2011). Therefore it is clear that though the road transport is taking a major part on the development of the country, it is also causing huge loss of property and lives. In fact the issue of road safety has emerged as one of the most important concern of mankind in recent times.

It is unquestionable that the safety on road should be ensured not only to reduce the casualties but also to strengthen the economic growth. This issue has been addressed by many social and human rights organisations, NGOs, professionals from different fields and class and, there are a good number of articles published on different national daily voicing the safety on the roads. Recently some initiatives such as creation of high way police, installation of modern equipments on critical road sections and framing new laws and policies have been taken to reduce road accidents in Bangladesh. However the road safety situation did not improve and is still in the darkness. This study critically analyses the major causes of road accidents in Bangladesh, examines the literatures pertaining to the control of road accidents in different ways, the methods of legislative control to reduce it with respect to the present laws in Bangladesh. The study is aimed at exploring (i) the causes of ever-continuing cases of road accidents, (ii) whether the existing law on road traffic provides sufficient management and deterrence, (iii) whether the existing MVO and related legislations are in harmony with the ever changing

demands of road use, and (iv) what measures are needed to improve the current legal and regulatory framework for road traffic management?

Table 1: Reported road accident trends in Bangladesh (1994-2010)¹

Year	No. of registered vehicles	Total No. of accidents	Death	Total casualty
1994	-	3,013	1,597	4,333
1995	44,004	3,346	1,653	4,517
1996	46,457	3,730	2,041	5,342
1997	32,283	5,448	3,162	8,238
1998	32,481	4,769	3,085	7,082
1999	31,503	4,916	3,314	6,767
2000	28,764	4,357	3,430	6,641
2001	42,510	4,091	3,109	6,281
2002	54,877	4,918	3,398	7,168
2003	59,248	4,749	3,289	7,107
2004	49,202	3,917	2,968	5,621
2005	65,878	3,955	3,187	5,941
2006	80,305	3,794	3,193	5,602
2007	121,272	4,869	3,749	7,022
2008	144,419	4,427	3,765	7,049
2009	145,243	3,381	2,958	5,644
2010	161,178	2,827	2,646	4,449

2. CAUSES OF ROAD ACCIDENTS

A single factor is not responsible for road traffic accident. The factors causing road accidents can be categorised as (i) characteristics of road users, (ii) characteristics of the road, and (iii) vehicle. In Bangladesh the number of road accidents is increasing at an alarming rate. According to the statistics of the accident research institute of Bangladesh 90% road accidents caused due to the road user errors. On the other hand, adverse road conditions or environment and defective vehicles contribute respectively 30% and 10% road accidents (Hoque 2007). Among many factors this study focuses only to those factors that are discussed or covered by the present laws related to motor vehicles in Bangladesh. A brief summary of the factors affecting or influencing the road accident is discussed in the following sections:

2.1 Road Users

Vehicle drivers, cyclists, pedestrians, bullock-cart drivers etc. are called road users. Human factor is involved in all types of road users. The physical, mental,

¹ Source: Police Reported Accidents and the BRTA.

psychological and environmental factors affect road user characteristics and therefore involved in road accidents.

Driver

The MVO 1983 of Bangladesh clearly defines the conditions to be fulfilled to become a professional/ non-professional driver as well as the duties and responsibilities of a driver on the road. According to the statistics, 57% accidents are caused due to the drivers fault only (Maniruzzaman and Mitra 2005). In most cases drivers often cross the speed limit and drive carelessly. As a result the vehicle skids off the road and causes several death and injuries (Rahman 2012). In addition lack of knowledge of driving practice and rules of road, skill, intelligence, literacy, experience, impatience etc. accidents are taking place on the road. A survey on the heavy vehicle- drivers reports that about 40 % drivers do not have any kind of formal education, 40% drivers study up to class V of primary school and the rest continued up to class X of secondary school and only a few complete the secondary school certificate examination (Uddin and Hoque 2003).

Talking on mobile phone during driving is one of the important reasons for which many fatal accidents happen in Bangladesh. The recent tragic accident in Mirsarai, Chittagong which killed 44 children happened after the driver lost his focus on the road while talking on his mobile phone. This tragic accident received tremendous media attention all over the world and the responsibilities of the drivers have been questioned (Xinhua 2011).

The Bangladesh Road Transport Authority (BRTA) is responsible for issuing all kind of driving license but fake driving license owned by the incompetent driver is very common all over the country. In addition the bus owners' greed has magnified the level of road accident tragedies. The same statement is also confirmed by the former communications minister Nazmul Huda as he said, 'drivers holding fake licenses and the tendency of driving recklessly are responsible for 80 percent of the accidents' (Bagchi 2007).

In the MVO the minimum age of professional and non-professional driver is mentioned as twenty and eighteen years respectively. Similarly according to the Bangladesh Labour Act 2006, the employment of child or adolescent has also been prohibited. Unfortunately this rule is merely followed especially in the urban areas and underage drivers causing many accidents. For example, in the capital city twenty-eight road accidents on average occur every day and under-aged drivers of public transport are mostly responsible (Rahman 2009).

Pedestrians

In Bangladesh the level of motorisation is still low and the role of walk mode is quite significant. However, pedestrians have received much less attention than motorised vehicles (Chowdhury 2007). According to the report of the BRTA, pedestrians accounted for about 50 percent of all reported fatalities in the accident database. In most cases pedestrians are hit by the motorist. The scenario in urban area is more serious where up to 61 percent road accident deaths are pedestrians

alone. Traditionally footpath is designated for the pedestrians. Unfortunately footpath is occupied by the hawkers and as a result pedestrians have the tendency to walk on the roads instead of using the footpath. Hasan mentioned that crossing of the road without using the foot over bridge or designated road section and crossing the road during the period of red light also other major reasons for the very high rate of pedestrian's fatalities. The MVO does not define any penalty for violating traffic rules or jaywalking by pedestrians. However in many countries violating traffic rules for pedestrians is a crime and pedestrians have to pay the penalties (Times of India 2012). Recently provision has been made to bring the traffic rules violating pedestrians within the ambit of law and the traffic rule violators will be penalised with fine and/or detained for such activities.

Characteristics of the road

Every road user desires to reach his destination safely in shortest possible time and with maximum safety or least inconvenience. A good road should provide maximum safety to the road users. Safety of the road also depends on the design of various components of the road and engineers are mainly responsible for this job. In Bangladesh there are many organisations [e.g., Roads and Highway Department (RHD), Local Government and Engineering Department (LGED), Bangladesh Bridge Authority (BBA), City Corporation etc.] responsible for the construction and maintenance of the roads and road structures. Most of the roads including national highway, major district roads or rural roads are lacking necessary facilities like road marking, sign, signals or proper design for road safety (Talukder 2012). According to a survey report only 10% of the total roads are rated good and 60% roads are rated as poor to very bad and the highways are considered as man-made death trap (Hoque and Khan 2012). The poor condition of the road which is also responsible for the major accidents is also highlighted in the international news coverage (Anis and Majumder 2011). A damaged road can be the source of accident in many ways. It can slow down the speed of the vehicle and make the driver impatience. As a result the driver has the tendency to drive rush and ignore the traffic rule to reach the destination on time and causes accidents.

Vehicle

Brake failure, steering failure, tyre burst, light failure during nights etc. are the most common vehicle failures. A single cause of the above list may lead to fatal accident. The MVO clearly defines the criteria of a fit vehicle to be run on the road as well as a fitness certificate of the BRTA is a prerequisite. Violation of any one of these rules is punishable offence; however, successful implementation of the laws is a rare event in Bangladesh. The BRTA is responsible to check the fitness of the vehicle but it is ironic that a large percentage of the vehicles running on the road do not have many essential components (Uddin and Hoque 2003). Moreover, the number of locally made illegal 'nasimon' and 'karimon' like vehicles is increasing day by day which are responsible for a large percentage of the total accidents on the regional roads (Chowdhury et al. 2012). Fitting of speed

governors may be a good choice to automatically control the speed of the vehicle and this option can be made mandatory to all vehicles to be run on the road. Recently the Karnataka High Court of India has directed the state government to ensure that all public transport vehicles are fitted with speed governor (The Hindu 2008).

3. METHODS OF REDUCING ROAD ACCIDENTS

Road accidents are a major cause of death all over the world. It has been estimated that there is a global frequency of 50 serious and one fatal accident every 80 seconds. Road accidents also have significant direct and indirect impact on social life and economy of a country. Research reports indicate that 'driver error' is a causative factor in about 60 to 70 percent of all road traffic accidents. Therefore, it is reasonable to expect that anything which can be done to influence driver behaviour should help to reduce the large proportion of road accidents involving 'driver error'. The way of reducing or preventing road accidents can be broadly classified into three categories, such as (i) engineering treatments, (ii) road user education and (iii) traffic law enforcement. The first two of these approaches can play an important role in the process of modifying road user behaviour. However, when it is not possible to bring sufficient changes in the level of unsafe road user behaviour then traffic law enforcement system should be applied to deter, apprehend and punish such behaviour. The traffic law enforcement can be an effective means of reducing road accidents and it is reported that the reduction of traffic violations could result in a significant reduction in the number of injury.

3.1 Traffic Law Enforcement

The Organisation for Economic Co-operation and Development (OECD, 1974) has defined traffic law enforcement as the area of activity aimed at controlling road user behaviour by preventative, persuasive and punitive measures in order to effect the safe and efficient movement of traffic. In developed countries the importance of traffic law enforcement has been highly emphasised as a means of modifying road user behaviour. For example, in Norway it was estimated that the elimination of traffic law violations could result in a 20% to 25% reduction in the number of injury (Assum 1986). Some research report suggests that the accident reduction potential of traffic law enforcement may be about 40% (Evans 1991).

Rothengatter (1990) described traffic law enforcement as a three step-process including, legislation, traffic policing and legal sanctions. All three of these components play an important role in determining the impact and effectiveness of the traffic law enforcement system. The enforcement system is based on the principle of deterrence which is defined as the omission of an act as a response to the perceived risk and fear for contrary behaviour. The deterrent effect of the enforcement threat depends on the road user's perception regarding the risk of apprehension, the severity of the resulting penalties, and the immediacy of punishment.

3.2 The Efficiency and Effectiveness of Traffic Law Enforcement

The efficiency and effectiveness of the traffic law enforcement is dependent on the policing activities. To make the traffic law enforcement effective and to pose a meaningful and immediate deterrence threat to the traffic offender, structured policing is required. The inability of the authorities to maintain the necessary high level of enforcement is reported as one of the fundamental problems hindering the effectiveness of the traffic law enforcement process (Rothengatter 1990). Insufficient policing resources may be the main factor contributing to this situation and a survey conducted in The Netherlands, Spain and Norway reported the same (Ostvik et al. 1989).

Introduction of automated enforcement and detection devices may be a possible solution to overcome this problem and is gaining popularity. These devices can be used to support speeding and red light enforcement operations. The modern technology can even detect the offender. Although the initial cost of these devices can be high, they can be a cost effective policing tool, increasing at the end of the day the deterrence and conviction rates without significant additional increases in police resources. Recently these devices have been installed in some selected areas in Metropolitan cities. The effectiveness of installing these devices is yet to be reported.

3.3 Traditional Methods of Traffic Law Enforcement

The most common and effective method applied all over the world as a means of traffic law enforcement operations is the deployment of marked and unmarked police vehicles. In fact the presence of police vehicle has a direct effect on the behaviour of road users and it compels the road user to follow the rules. However, when a traffic offence is detected there are a range of possible penalty options available to police. The penalty options depend on the severity of the offence committed such as: no action, verbal or written warning, and fixed penalty to prosecution or arrest (Southgate and Mirrlees-Black 1991). Application of the penalty options has been shown to effect road user behaviour in a number of different ways thus help to reduce the road traffic accident.

Fines

Fixed amount fines for violating the traffic rules is the most common type of penalty option applied all over the world and application of this type of sanction has an impact on the illegal road user behaviour. It is the simplest type of penalty to administer. Therefore it can reduce the workload placed upon the legal system and can increase the efficiency of offence processing tasks. Financial punishment causes the offenders to have less money available for other purposes and increasing the fine amount can also increase the level of overall deterrence (Ross 1988).

License Suspension

License suspension should be applied as an effective counter measure against those road users who violate more serious traffic laws and are repeated offenders.

License suspension as a method of traffic law enforcement can be very effective to the professional as well as non-professional drivers. It can have direct impact on the daily life of the offenders as it stops the earning of the professional driver and places restrictions on the non-professional driver's mobility.

Point Demerit Schemes

Point demerit scheme is a time dependent process to apply penalty on the traffic law offenders which involves the allocation of points to various types of traffic offences. If a driver accumulates more points within a specified time limit than the maximum number permitted, then automatic license suspension results. This method allows road users to make a certain number of errors before more serious penalties are applied. In fact this method is an effective way to differentiate among various types of road users and as a way of providing a threat of legal sanction to those road users who consistently violate traffic laws (Williams et al. 1992).

4. TRAFFIC LAWS IN BANGLADESH

The objective of framing a law is to regulate some form of activities which in most cases are time sensitive. In Bangladesh the law related to the operation, maintenance and control of traffic has also gone through several revisions and amendments to meet the demand of time. The existing laws related to the operation, maintenance and control of traffic are generally known as the MVO 1983. In addition there are penal provisions for rash driving in the Penal Code 1860. Before the MVO, Motor Vehicle Act 1939 was framed during the undivided Indian era. In 1987, the MVO was amended and a new chapter pertaining to the establishment of the BRTA was added. The BRTA was also empowered to make regulations relating to licensing of drivers, registration of motor vehicle and issuance of permits. The MVO was last amended in 1989 to reduce the penalty provisions and address some of the demands of the transport workers and owners. It may be mentioned that till date no new regulations have been framed. The major features of the MVO 1983 can be summarised as follows:

The jurisdiction of the MVO is mainly limited to motorised traffic such as bus, micro bus, mini bus, motor cab, motor car, motor cycle and others. The BRTA plays the major role on the operation and maintenance of vehicular traffic. According to the MVO, a valid license is required to drive a motorised vehicle. The BRTA is responsible for issuing driving licenses of motor vehicles, motor driving instructor licenses, registration of motor driving training schools, registration of motor vehicles, fitness certificate of motor vehicles, route permit for transport vehicles, inspection of motor vehicles involved in road accidents etc. Speed limit, weight limit and mandatory stop at pedestrian crossings are also introduced as tools to control traffic and ensure safety on the road.

In the MVO there are certain provisions relevant to offences relating to traffic violations. The power of the officials, certain procedures for prosecution and recording of penalties are also described. The punishments defined in the MVO

can be classified into three categories; namely, (i) fines, (ii) imprisonment and (iii) penalties with regards to suspension, disqualification and cancellation of documents of drivers (license) and vehicles (registration certificate, fitness certificate, permits etc.). In addition the in-charge officer can seize the vehicle.

4.1 Major Limitations of the MVO 1983

The MVO is the principal instrument for regulating motor vehicles. Jurisdiction of the MVO is limited to motorised vehicles only. A road is used by different types of users such as motorised, non-motorised (bicyclist, rickshaw puller, bullock cart driver etc.) and pedestrians. Therefore rules and regulation should be framed for non-motorised road users to increase the safety of the road.

The deterrent effect of fines specified in the MVO becomes less effective due to inflation over a period of time. In fact these fines need to be increased from time to time to keep the effect of their deterrence. Therefore, it is necessary to amend penal provisions of the MVO. Research on road safety reports that point demerit scheme is very effective method of penalty option for offenders of the rules. However, such point demerit scheme is not available in the MVO. Most recently the uses of mobile phones and electronic gadgets have been increased many folds and drivers are using these electronic gadgets while driving. Many tragic road accidents occurred in recent times in Bangladesh and the main cause was the use of mobile phones during driving. The MVO has no penalty options for using mobile phones during driving. However, as per the Motor Vehicle Regulation 1940, use of ear phones or radio in public transport is not allowed while driving. The Road Transport Advisory Council of Bangladesh has banned talking over mobile phone while driving and impose punishment including monetary penalty and imprisonment to the violators.

Moreover it has passed almost three decades after framing the MVO. In this time span vehicle technology has received revolutionary changes and modern vehicles are entering the market with newer technology as well as the operation of public transport vehicles has changed, administration and regulation of transport sector is being done with new tools, standards and procedures and the roads user's patterns have most radically changed. The current law does not cover these changes and most of the changes are either outside of the horizon of the law or backed by executive orders.

5. INITIATIVES TO COMBAT ROAD ACCIDENTS IN BANGLADESH

Bangladesh has a serious road safety problem. In spite of having very high rate of road accidents, road safety issue did not get due importance. Recently some initiatives including the framing of new laws have been taken to improve the road safety.

5.1 National Road Safety Council

The National Road Safety Council (NRSC) was established in 1995 considering the alarming road safety problem in Bangladesh. The NRSC secretariat was created within the BRTA in 1997 and later in 2001 it was converted to the Road

Safety Cell. The first two-year Road Safety Strategic Plan was formulated in 1997. The latest National Road Safety Strategic Action Plan is the sixth plan in Bangladesh accomplished in 2011-2013. The plan is organised into nine sectors: planning, data system, engineering, legislation, enforcement, driver training and testing, vehicle safety, awareness and medical services. In fact the road safety activities in Bangladesh gained momentum only after the creation of the NRSC. The vision of the National Road Safety Strategic Action Plan is achieving nearly 50% reduction in road accident fatalities within next ten years and also the reduction of the frequency of road accidents to nearly 30%. The goal of sixth plan is achieving about 15-20% reduction in the annual number of road accident fatalities by the end of the year 2013 (NRSC 2011).

5.2 Highway Police

The Highway Police rule was formed in the year 2005 under section 12 of the Police Act 1861 to make the road safer and to ensure smooth traffic management system. The Highway Police has two units namely traffic unit and investigation unit and jurisdiction is limited in national roads and highways. The Highway Police has the authority of prosecution and spot fine. The major responsibilities include (i) maintain and ensure discipline of the bus, truck terminal, parking area, toll plaza, passenger stoppage etc., (ii) maintaining law and order on highway, (iii) investigation and prevention of highway crime, (iv) patrolling, (v) enforcing traffic rules on the highway, (vi) road traffic management and control and (vii) ensure road safety. The Highway Police is unable to enforce traffic laws effectively because of many constraints like (i) shortage of manpower, (ii) insufficient and outdated vehicles, (iii) infrastructural problem, (iv) lack of independent radio communication systems and (v) lack of modern equipment and logistics support.

5.3 Proposed Road Transport and Traffic Act

It has been reported that the structure and contents of the MVO is obsolete and redundant and it is essential to prepare a new law encompassing all road users instead of updating the MVO (RTTA 2011). As a result the Dhaka Transport Coordination Board (DTCB) under the Clean Air and Sustainable Environment (CASE) project took the initiative to review and update the MVO 1983 and drafted a new bill named 'The Road Transport and Traffic Act 2011'. The RTTA is aimed at addressing the present and incoming road traffic regulation needs. The proposed RTTA has made several changes in MVO, such as in the present MVO, the BRTA is both a regulatory body and a service provider. In the new law, provision has been kept to outsource the services with regulatory control of the BRTA and the chapter on the BRTA has been changed to the road transport administration to give the law greater application.

In the MVO, among the transport workers, licensing option was limited only to the conductors of the public service vehicles. But in the proposed RTTA, provision has been made for licensing of all transport workers including helpers

etc. Rules for licensing of drivers have also been updated to fit with other modern laws. Similarly the registration laws of motor vehicles have been updated and modernised.

In Bangladesh a large number of accidents involve pedestrians and other non motorised vehicle users. However, the MVO has no provision to regulate pedestrians and non motorised transports. The necessary regulatory provisions to cover all road users are made in the proposed RTTA. In addition, provision of empowering the local government organisations to prepare and enforce by laws on these subjects has been made in the RTTA. In the MVO there was no bar on the use of mobile phones or ear plugs at the time of driving. In the RTTA, use of mobile telephone and ear plugs has been barred while driving the vehicle and use of helmets and/or seat belts is mandatory.

The penal provisions in the MVO have become irrelevant with time. To overcome this situation 'Penalty Unit' based on the severity of the offence has been introduced in the RTTA. It is necessary to increase these fines from time to time to maintain the deterrent effect and it can easily be done simply by increasing the value of one penalty unit. Moreover demerit point for an offence has been assigned in the RTTA. This option will help to differentiate between drivers and, a license of the offender will automatically be suspended if the offender accumulates certain number of demerit points. In addition provisions have been made to provide some specific obligations of driver with regard to road accidents and accident investigation.

Besides, provision for establishing the National Road Safety Councils which will act as a coordinating and a policy council for all road safety works have been made in the RTTA in order to formulate policies, strategies and prepare action plans for the improvement of road safety and reduction of road traffic accidents.

6. COMPENSATION TO THE ROAD ACCIDENT VICTIMS

It is apparent that the waste of human and material resources caused by the resulting deaths, bodily injuries and damage to property is a matter of concern. Road safety improvement efforts in Bangladesh suffer from several serious challenges. The shortcomings of the present laws and the law enforcing agencies have been discussed in previous sections and these can be summarised as: (i) the present MVO is outdated and need major changes, (ii) there is lack of trained traffic police for effective enforcement and traffic regulations, (iii) the newly formed Highway Police is not equipped with modern instruments to identify and catch the offender, (iv) lack of a strong professional safety agency with adequate executive powers and responsibilities and (v) lack of inter-agency coordination and fragmentation of responsibilities between agencies. It is also evident from the road accident data that in most cases the victims are from low income group and their income suffers when the head of the family or the earning person is injured or expired in road accident. In such a situation the victim's family or the victims are forced to negotiate with the killer driver. As a result the offender remains free

and gets more courage to drive recklessly. The author also interviewed some law professionals to find the answer of the question – why the killer drivers are not punished? The answer pointed out (i) the time consuming process to resolve the case, (ii) financial condition of the victim and (iii) lack of evidence and proof. Besides the labour union is always a barrier to reform the road safety law. In this regard the road safety situation can be improved by introducing compensation scheme to the victims of road accidents. In many countries, developed and developing, introduction of such provision has proved to have better deterrent effect and resulted in improvement in the road safety condition. The compensation can directly be charged to owner or driver of the vehicle or the state should take the liability in different forms. In 1985, France reformed its legal system which is known as the *Badinter Law* and made drivers liable for non-driver injuries. In this law the pedestrian victims also have the right to receive compensation and the under aged and elderly people have the highest priority to get protection. A similar policy exists in The Netherlands where drivers are held fully liable with vulnerable road user victims, such as pedestrians and cyclists, people under age of 14 years or older than 70 years (Thomas 2002). In some low income countries like Eritrea and Ethiopia (where motor vehicle insurance is not compulsory) allow the victim to claim compensation without proving the motorist was at fault (COMESA 1998). In Botswana, government enacted the Motor Vehicle Finance Act 1988 by introducing a fuel levy which will be used to create a fund to provide compensation to the road accidents victims (Fombad 1999).

In Japan the road accidents victims receive compensation for direct damages (medical related expenses, funeral cost etc.) and indirect damages (lost income and future income losses). Third party insurance is a must there and in some cases the driver needs to pay the amount if the insurance does not cover the cost. In Australia, the Motor Accident Commission is the compulsory third party insurer which provides compensation to road accident victims. In India, the Supreme Court has ruled that it is not necessary to prove rash and negligent driving to claim damages in road crashes. A Justice Division bench has also reported that motor vehicle owners must pay compensation to victims and their families on the basis that the crash occurred while the vehicle was in use (WHO-SEARO 2001).

In the proposed RTTA two important sections (ss 336 and 337) have been added to ensure compensation to the road accident victims. It is proposed that the government or the authority shall maintain a fund to secure compensation to the road accident victims in hit and run motor accident that is an accident where the identity of the vehicle(s) involved in the accident can not be ascertained in spite of reasonable efforts. Similarly, the owner of the motor vehicle, or the authorised insurer or the security giver, is liable to pay compensation on the basis of any structured formula to the victims. The compensation will be based on the annual income, age and the loss of income of the victim considering the national cost of living. Moreover, in both cases it is not required to plead or establish that the death or grievous or non-grievous injury was due to negligent driving.

7. CONCLUSIONS

Although Bangladesh is a riverine country the road transport is playing the most important role in transport sector. Recently many roads and bridges are being constructed adding speed to transportation and frequency of movement of people. In addition the number of motorised and non-motorised vehicles on the road is increasing rapidly. On the other hand number of road accidents is also soaring high. Road accidents causing live losses as well as property losses of significant amount. There are many factors involved in the road accidents. From the study it is evident that there are deficiencies in road environment, inadequacy in police inspection and safety, deficiency in systematic understanding and investigation of the accident problems etc. Moreover driving the vehicle without any driving license or with fake driving license, incompetence of drivers, apathy, lack of knowledge, training, education and tendency to disregard road safety with unfit vehicles worsening the safety matter in a shocking and painful level. Although the BRTA is a key player in ensuring road safety, it is beyond question that the BRTA, as a part of the government, has failed to maintain the constitutional commitment for right to life.

The current laws in Bangladesh to regulate motor vehicles were framed in 1983 and the principal limitation of the law is in its jurisdiction. In Bangladesh the number of non-motorised vehicles is twice the number of motorised vehicles, however the current law is applicable only to the motorised vehicles. The efficiency and effectiveness of the traffic law enforcement is dependent on the policing activities but in Bangladesh the police department does not have enough man power as well as logistic supports.

To minimise the adverse trend which is likely to continue with the progressive expansion of road network and growth of traffic, some remedial initiatives have also been taken by the government. A new law named the Road Transport and Traffic Act has been proposed to this end. The new law not only covers all types of road users but also provides the legal back up to the road safety institutions. The fine proposed in this law is a scientific approach which is point based and depends on the severity of the accident and can be enhanced any time. But the highest penalty recommended in this law is two years imprisonment instead of the present three years and, a fine of Tk 10,000 for reckless driving and violation of traffic rules - has raised some debate. This penal provision is in contradiction with the Penal Code 1860 (s 304B), where seven years of imprisonment is provided for causing death by rash driving or riding on a public way. This controversy need to be avoided and an acceptable penal provision should be recommended. In fact this issue has also been addressed in the neighboring country India. For example, the Law Commission of India has recommended that the punishment for rash and negligent driving be raised to five years imprisonment, with a maximum seven years term for hit-and-run cases (Law Commission of India 2009). Also in 2007, the Supreme Court of India pointed out that some sorts of road accidents may be treated as acts amounting to culpable homicide rather than of just reckless driving

(The Hindu 2008). Moreover, the newly added compensation scheme to the road accident victims may have some impact on the drivers as well as owners of the vehicles. Another important issue that should be addressed in the law is the safety of the children and elderly people on the road. Although fatalities of children under 16 years of age are accounting for nearly 22 percent of total fatalities in Bangladesh, it is 2.5 times greater than that of the industrialised countries. Special safety provision for the children and elderly people is yet to be framed.

Improvement of road safety is a multi-disciplinary task and a satisfactory level of safety can be achieved only after the successful coordination of different organisations involved in it. Recently in many developed countries the road safety laws and strategies have been proposed with the vision of eliminating death in road accidents. For example, the road traffic safety bill of Sweden is based on 'Vision Zero' or the road safety strategy of Denmark 'Every Accident is One too Many' (Shoukrallah 2008) which aims that eventually no one will be killed or seriously injured within the road transport system. The responsibility of implementing these strategies is shared by many stakeholders, led by the government's department for transport or communication. Unfortunately the reverse scenario is seen in Bangladesh. Coordination among the related agencies should be increased to combat road accident successfully by applying the legal tools.

REFERENCES

- Ahmed, Anis and Majumder, Azad. 2011. Poor Roads, Lax Laws Hike Bangladesh Death Toll. *Reuters online Edition*, 26 August. Available at <<http://www.reuters.com/article/2011/08/26/bangladesh-accidents-idUSL4E7JP24B20110826>>. Accessed 18 August 2012.
- Assum, Thomas. 1986. Deterrent Effects of Imprisonment and Fines for Driving while Impaired. Paper presented at the 10th International Conference on Alcohol, Drugs and Traffic Safety at Amsterdam, The Netherlands.
- Bagchi, Krishna. 2007. Proper Enforcement of Law Needed to Check Road Accidents. *The Daily Star*, 1 September.
- BRTA (Bangladesh Road Transport Authority). 2011. National Road Safety Strategic Action Plan 2011 – 2013. [Online]. Available at <www.unescap.org/ttdw/common/Meetings/.../Bangladesh-Add-Info-1.pdf>. Accessed 30 July 2012.
- Chowdhury, ASM Jahangir; Shamsul Alam, Mohammed; Biswas, Sawpan Kumar. 2012. Road Traffic Accident by 'Nasimon' and 'Karimon'-A Study at Faridpur Medical College Hospital. *Faridpur Medical College Journal* 7(1): 6-9.
- Chowdhury, Tazul Islam. 2011. The Status Paper on Road Safety Problems in Bangladesh. Paper presented at Economic and Social Commission for Asia and Pacific, Bangkok.
- COMESA (Common Market for Eastern and South Africa). 1998. *COMESA Yellow Card Compendium*, Zambia.
- The Hindu. 2008. 'Of Negligence and Culpable Homicide' (Editorial Report). *The Hindu*, 8 September.

- Evans, Leonard. 1991. *Traffic Safety and the Driver*. New York: Van Nostrand Reinhold.
- Fombad, Charles Manga. 1999. Compensation of Victims of Motor Vehicle Accidents in Botswana: An Appraisal of the MVA Fund Act Scheme. *Journal of African Law* 43(2): 151-183.
- Home Office Research Study, no. 124. Home Office Research and Planning Unit, London.
- Hoque, Mazharul. 2004. The Road to Road Safety: Issues and Initiatives in Bangladesh. *Regional Health Forum* 8(1): 39-51.
- Hoque, Mazharul. 2007. Road Safety in Bangladesh and Some Recent Advances. Paper presented at the Road Safety on Four Continents: 14th International Conference, Bangkok. 14-16 November 2007.
- Hoque, Mazharul and Khan, Aftab Hossain. 2012. Bangladesh: Road Infrastructure Assessment and the Next Generation of Engineers. Paper presented at Asia Pacific Workshop & GRSP Asia Road Safety Seminar, Bangkok. 7-9 March 2012.
- Law Commission of India. 2009. *Legal Reforms to Combat Road Accidents*. Report No. 234.
- Maniruzzaman, K.M. and Mitra, Raktim. 2005. Road Accidents in Bangladesh. *IATSS Research* 29(2): 71-73.
- National Road Safety Council. 2011. National Road Safety Strategic Action Plan 2011-2013, Bangladesh.
- Organization for Economic Co-operation and Development (OECD). 1974. Research on Traffic Law Enforcement. OECD, Paris.
- Ostvik, Egil and Vaa, Truls. 1989. Police Enforcement and Surveillance Techniques: Survey Among Police Officers in Ireland, the Netherlands, Norway and Spain. Oslo, Institute of Transport Economics, Deliverable Report 1033/R7, Norway.
- Rahman, Anisur. 2012. 21 Killed in Road Accidents Across Bangladesh. *MSN News*, 24 May. Available at <http://news.in.msn.com/international/article.aspx?cp-documentid=250072371>, accessed 16 July 2012.
- Rahman, Mukhlesur. 2009. Underage Drivers behind Most of City Deaths. *The Daily Star*. 6 December. Available at <http://archive.thedailystar.net/newDesign/news-details.php?nid=116606>, accessed 16 July 2012.
- Road Transport and Traffic Act 2011 – Final draft report submitted to the Ministry of Communication, Peoples Republic of Bangladesh.
- Ross, Hugh Laurence. 1988. Deterrence-based Policies in Britain, Canada and Australia. In Michael Lurance, John R. Snortum, and Franklin E. Zimring (eds.). *The Social Control of Drinking and Driving*. Chicago: University of Chicago Press. 64-78.
- Rothengatter, Talib. 1991. Automatic Policing and Information Systems for Increasing Traffic Law Compliance. *Journal of Applied Behavioral Science* 24: 85-97.
- Shoukrallah, Rifaat. 2008. Road Safety in Five Leading Countries and Lessons for Developing Countries. Paper Presented at the XIII CODATU Conference, Ho Chi Minh City Vietnam, 12-14 November 2008.
- Southgate, Peter and Catriona Mirrlees-Black. 1991. *Traffic Policing in Changing Times*. London: Stationary Office Books.

- Talukder Morshed. 2012. সড়ক-মহাসড়কে পর্যাপ্ত সংকেত চিহ্ন নেই, বাড়ছে দুর্ঘটনা। অনেক চালক জানেনা এসব চিহ্নের ব্যবহার'. *The Daily Azadi*. 11 July. [Online]. Available at <http://www.dainikazadi.org/details2.php?news_id=1067&table=july2012&date=2012-07-11&page_id=1>, accessed 17 July 2012.
- Thomas, A Aeron. 2002. *The Role of the Motor Insurance Industry in Preventing and Compensating Road Casualties* Final Report, DFID, London.
- Times of India*. 2011. Walking into Harms Way. 23 March. [Online]. Available at <http://articles.timesofindia.indiatimes.com/2012-03-23/nagpur/31229453_1_footpaths-jaywalking-number-of-pedestrian-deaths>, accessed 21 July 2012.
- Uddin, Syed Rakib and Hoque, Shamsul. 2003. Study of Heavy Vehicles' Driver Behavior in Road Accidents of Bangladesh. Paper Presented at 26th Australasian Transport Research Forum, Wellington, New Zealand. 1-3 October 2003.
- USGHP (United State Global Health Policy). 2012. [Online]. Available at <<http://www.globalhealthfacts.org/data/topic/map.aspx?ind=83>>. Accessed 15 July 2012.
- WHO SEARO. 2001. Disability-Violence-Injury Prevention and Rehabilitation. *WHO SEARO Newsletter* 2(1).
- Williams, S.H.; Gerner, G.J. and Philby, F.N. 1992. The Use of Traffic Offence Points and License Suspension as a Means of Deterring Motorists Who have Committed Less Severe Traffic Offences. In W.D. Smith. (ed). *The Prevention of Road Traffic Accidents: An Overview of Behavioral Modification Techniques*. Chicago: Chicago University Press. 85-97.
- WHO (World Health Organization). 2009. *Global Status Report on Road Safety: Time for Action*. Available at http://whqlibdoc.who.int/publications/2009/9789241563840_eng.pdf, accessed 29 July 2012.
- WHO (World Health Organization). 2011. *Report on Road Traffic Injuries*.
- Wikipedia. Available at <<http://en.wikipedia.org>>. Accessed 1 September 2012.
- World Health Organization. 2004. Report on The Global Burden of Disease. [Online]. Available at http://www.who.int/topics/global_burden_of_disease/en/, accessed 12 July 2012.
- Xinhua. 2011. Deaths of Students in Road Accident Cast Pall of Gloom over Bangladesh. *engliash.news.cn*, accessed 20 August 2012.