

**CUTS Memorandum on Motor Vehicle (Amendment) Bill 2016**  
**To**  
**Parliamentary Standing Committee on Transport, Tourism and Culture**

**i. Strengthening the licensing system**

In the proposed amendments to Ss. 9, 12 and 14 it is suggested for prescribing mandatory training for all licence holders and competence test at the office of licensing authority. It is imperative to suggest that the Government for the purpose of steering training module may prescribe for minimum period for basic training<sup>1</sup>. To elucidate further, it is suggested that a provision be incorporated along with driving certificate issued by a school or establishment an applicant shall undergo a mandatory test of competence at the licensing centre, in a manner prescribed by the Central Government. Needless to say, this will enhance private sector participation, especially from the motor vehicle companies. In tune of the training requirement, it is suggested that for accreditation, monitoring and moderation of the school or establishment, section empowering the State Government to formulate such guidelines may be incorporated. It is essential to suggest here that state government should formulate guidelines for regulation of training fee and licence fees, to provide affordability of training and license procurement.

**ii. Scientific investigation of road crashes**

Under the extant legal framework, road accidents are to be reported in manner similar to reporting of any other offence, i.e. a First Information Report (FIR) by the police.<sup>2</sup> It is an inadequate indicator of the cause of a road crash, as it does not capture the various human, infrastructural, and vehicular factors that play a vital role in road crash. With a view to ensure accurate and reliable collection of data on road accidents and scientific investigation thereon, it is suggested to incorporate a new provision to empower the Central Government to prescribe by rules a suitable form and manner of reporting, recording and investigating of road accidents. The Bill seeks to transfers the power from State to the Central government which affects the legislative powers of the state in this regard. Essentially, the Communications, such as roads, police, public health are subject matter of State Lists, thus retaining power and procedure of collection and scientific data will be more practicable, supervisory role to the Central Government for maintaining a national registry may harmonise the distribution of power among governments. With a view to ensure accurate and reliable collection of data on road accidents and scientific investigation thereon, it is suggested to incorporate a new provision to empower the State Government to prescribe by rules a suitable form and manner of reporting, recording and investigating of road accidents. Countries like the U.S., Germany, Sweden, Singapore and Japan have established robust data collection systems not just to ascertain the causes of crashes, but also to track their effects on the victims through a national trauma registry. In Cambodia, the Road Crash and Victim Information System combine data collected from both the police as well as the hospitals.<sup>3</sup> Thus, a holistic approach of understanding the cause of crash taking into account driver

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<sup>1</sup> For example US, inter alia, has a six-month graduated licence programme.

<sup>2</sup> S. 154, Criminal Procedure Code, 1973

<sup>3</sup> Cherian, Saji, "Making our roads safe" *The Hindu*, August 8, 2016, Opinion. Available at, <http://www.thehindu.com/opinion/op-ed/saji-cherian-on-making-our-roads-safe/article8955841.ece>

faults, road conditions as well as any other external causes for crashes is important to further investigation and take appropriate safety measures in this regard. Improvising the current data collection form is another suggestion we would like to propose for the committee's consideration which can be put to use for designing corrective measures.

### **iii. Accountability for faulty road designs**

The extant Motor Vehicles Act, 1988 is silent on fixing accountability for road accidents that are caused due to poor road design and maintenance. Thus under the present legal framework, nabbing road contractor or an engineer for their wilful negligence is very difficult. In fact, Sec 28 of the National Highways Authority of India Act, 1988 absolves the liability of its officials by stating that no action can be taken against them for work carried out in "good faith"<sup>4</sup> In line of the statement, we suggest inserting a section on safe road design engineering and construction standards and that culpability of road contractors, road authorities and its officials be fixed and be brought under the ambit of the proposed amendments. Penalising the contractors and officials with civil or criminal liabilities for death or grievous injury caused due to poor road design or engineering will help ensure an accountability framework along with improving the quality of roads, *per se*.

### **iv. Traffic calming measures**

The Brasilia Declaration<sup>5</sup> highlights strategies to ensure the safety of all road users, particularly by improving laws and enforcement; making roads safer through infrastructural modifications; ensuring that vehicles are equipped with life-saving technologies.<sup>6</sup> Traffic calming measures, that is, road designed to automatically control excessive speeding like speed breakers to contain rash driving on green light and signal jumping, will adequately impact road safety. In the context of shared road space, traffic calming measures would mean fewer crashes and fatalities for not only car users, but for pedestrians and other road users as well.<sup>7</sup> We suggest for a section in the Act where the appropriate Government must be given direction to formulate a regular calendar of identification and rectification of black spots along with the monitoring mechanism on National and State highways<sup>8</sup>, as the case may be. Conducting a third party road safety audit will help ensure implementation of the road safety measures and will ensure accountability of road contractors and engineers. The present draft however, under S. 137 (1A) empowers the state government to make rules to regulate non-motorised traffic it is suggested that a new provision in the Act be added to empower the appropriate Government to formulate a regular calendar of identification and rectification of black spots along with the monitoring mechanism on National and State highways<sup>9</sup>, as the case may be.

### **v. Protection of children during commute**

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<sup>4</sup> Sec 28, "Protection of action taken in good faith:1)No suit, prosecution or other legal proceeding shall lie against the Authority or any member or officer or employee of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made there under.(2)No suit, prosecution or other legal proceeding shall lie against the Authority or any member or officer or employee of the Authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or the rules or regulations made there under."

<sup>5</sup> Brasilia Declaration on Road Safety, 2nd Global High Level Conference on Road Safety, Brasilia, Brazil, 18-19 November 2015. Available at [http://www.who.int/violence\\_injury\\_prevention/road\\_traffic/Brasilia\\_Declaration/en/](http://www.who.int/violence_injury_prevention/road_traffic/Brasilia_Declaration/en/)

<sup>6</sup> *Ibid*.

<sup>7</sup> <http://thecityfix.com/blog/india-cant-afford-lose-more-lives-due-road-crashes-fatalities-amit-bhatt/>

<sup>8</sup> Recommendation of Supreme Court Committee on Road Safety

<sup>9</sup> Recommendation of Supreme Court Committee on Road Safety

The proposed amendment to Section 129 provides to exempt children below the age of 4 years to wear headgears. It is advised that this exemption to children below 4 years be replaced with a provision issuing guidelines for safety measures to be followed while commuting with child below 4 years of age. Given our sociocultural and economic norms two wheelers are usually used to transport young children which are placed in the front or in between two adults without any protective headgear. The issue of commute of children on two wheelers, including non-motorized vehicle needs to be addressed separately by insertion of new section. It is proposed that the government should within a reasonable time frame mandatorily draft guidelines for mandatory use of child restraints for children less than 14 years of age rather than the option of seat belts or child restraints as currently mentioned in the bill and penalty for violation of the same. Defining what constitutes a child restraint, for example by referring to international standards will provide a concrete basis for implementation of the same. It is further suggested that requiring child restraints for children up to a specific weight and/or height rather than an age will be rational move in child safety measures. Children in an appropriate restraint for their size and weight are significantly less likely to be killed or injured than unrestrained children. For instance, Rear-facing restraints for children aged 0 to 23 months have been shown to reduce the risk of death or injury by over 90% and forward facing child restraints by almost 80% compared to being unrestrained<sup>10</sup>.

**vi. Blood Alcohol content regulation for new drivers**

We suggest reducing BAC levels for novice or young drivers<sup>11</sup> to 20 mg per 100 ml in order to meet WHO best practices. Provision to establish lower BAC limits ( $\leq 0.02$  g/dl) for novice or young drivers can lead to reductions in the number of crashes involving young people of up to 24%. As per the current standards, BAS level is set at 30 mg. per 100 ml. of blood<sup>12</sup>. We also propose permission of random stops for testing sobriety and make post-crash testing for alcohol or for breaches of other traffic offenses mandatory rather than optional.

**vii. Limit on Insurer's liability in third party motor accidents to be omitted**

The proposed amendment importantly seeks to include provision for payment of compensation up to Rs 10 lakh in road accidents fatalities. The compensation that is paid to the victims, depend on numerous factors such as medical expenses, loss of income, disability, expenses for future treatment, etc. will now have to be shared by the insurance company and the insured vehicle owner. There is presently no restriction or ceiling on the compensation payable by the insurance companies. The provision will afflict self-owned vehicles. Despite the option to move to the Claim tribunal in case of non-compensation, the vehicle owner will have no effective remedy, due to the upper cap. At present, the amount of compensation is decided upon by the Tribunal based on factors such as the age, dependency, income of the victim in case of fatal accidents and based on the nature of injuries and medical expenses in cases of grievous hurt, to be paid by insurance companies. The amount awarded in previous cases has been even up to Rs 50 lakh. We suggest that the proposed amendment should omitted.

**Rationalization of penalties for life threatening offences**

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<sup>10</sup> World Health Organization, Global Status Report on Road Safety, 2015

<sup>11</sup> To elucidate, a novice driver would mean inexperienced driver who holds a learner's permit.

<sup>12</sup> Section 128, The Motor Vehicles Act, 1988

According to the data provided by the Ministry of Road Transport and Highways (MoRTH), exceeding the lawful speed/over speeding by drivers caused 240,463 (47.9%) accidents and 64,633 (44.2%) road deaths. Driving under influence of alcohol/ drugs accounted for 16,298(3.3%) accidents and 6755 (4.6%) deaths. 57,083 (11.4%) accidents were registered as hit & run cases causing 20,709 road deaths.<sup>13</sup> With regard to traffic violations, most developed countries like the USA and Australia practice a graduated penalty system. Under this system, fines are increased with each repetitive offence and based on the relative severity of the offence, with the final penalty being a loss of one's driver's license.<sup>14</sup> In developing countries such as Brazil, offences like over speeding result in a 7-point loss of the license system, and a fine of 4040 INR.<sup>15</sup> Similarly, in Russia, the fine for drunk driving ranges from 30, 000 to 300, 000 INR.<sup>16</sup> This aptly justifies the rationale behind progressive penalties with frequency of offence. Hence we must uphold the stringent penalties proposed in the bill especially for life threatening offences with graduated penalty system will help mitigate the violations and at the same time will be deterrent against repeat cases of violation.

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<sup>13</sup> *Road Accidents in India 2015 report*, Transport Research Wing, Ministry of Road Transport and Highways  
<http://pibphoto.nic.in/documents/rlink/2016/jun/p20166905.pdf>

<sup>14</sup> Department of Motor Vehicles: <http://www.dmv.org/point-system.php> and NSW Government (2014). 'Australian Graduated Licensing System'.

<sup>15</sup> The Brazil Business. (2013). <http://thebrazilbusiness.com/article/traffic-penalties-in-brazil>

<sup>16</sup> Global Legal Monitor. (2014). <http://www.loc.gov/law/foreign-news/article/russia-stricter-punishment-for-drunk-driving-speeding/>