



# A panacea for the 'age-old' transport anarchy?

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BA NGLADESH has probably seen for the first time an unprecedented country-wide student protest, started in the last week of July, condemning the unfortunate death of two college students ensuing from the rash driving of two buses in the capital on 29 July. Sustained for a week, the protest has been a concerted effort and strength of school- and college-going students who have unhesitatingly stood up and worked together against the country's 'age-old' anarchy in its road transport sector. It was a time, not very far, when we all were okay with accepting the daily deaths of many countrymen on the road. Hopelessly, that culture once became very normal and common in our country. Because of transport anarchy and lack of road safety, we lost many brilliant and bright minds over the years – whose untimely disappearances still hurt us, the whole nation. Against this anarchy and disorder, the 'below 18' students of our country through their peaceful protest, apolitical leadership and entrepreneurial ideas showed us the path to address the 'age-old' lawlessness in our road transport sector.

In response to this protest demanding the road safety for all, the Cabinet on 6 August 2018 gave a go-ahead to the proposed Road Transport Bill, which apparently aims to reform the existing legal framework concerning road safety of the commuters in public transport, specially in public buses. As the media reports, we have known that the Bill seeks to repeal the existing Motor Vehicles Ordinance 1983. However, title of the Bill unfortunately remains unconvincing as it does not hold the nomenclature of 'road safety' in it. How can, however, we forget that road safety of the commuters has been a demand for decades in Bangladesh?

Certainly, the Bill has some praiseworthy provisions – with even telephonic conversations while driving being made an offence. Driving of a motor vehicle on the footpath too has been proposed to be penalised. However, the proper implementation of these provisions needs stringent procedural rules; otherwise, the prescriptions would be tantamount to stale and meaningless words appearing in the law books only. Another praiseworthy provision is that the Bill endeavours to fix working hours, in line with the the Labour Act 2006, for the driver, helper, conductor and every other associated with the motor vehicles.

Another change intended to be brought about by the Bill is that it has introduced minimum educational qualification for being drivers. According to the Bill, in order to obtain driving license, the driver has to pass

COMPARISON-EXISTING AND DRAFT LAW		
EXISTING LAW		DRAFT LAW
Offence	Punishment	Punishment
Driving without license	4 months jail or Tk 500 fine or both	6 months jail or Tk 25,000 fine or both
Vehicle without registration	3 months jail or Tk 2000 fine or both (for first time)/ 6 months jail or Tk 5000 fine or both (for second time)	6 months jail or Tk 50,000 fine or both
Unfit vehicles	3 months jail or Tk 2000 fine or both (first time)/ 6 months jail or Tk 5000 fine or both (second time)	6 months jail or Tk 25000 fine or both
Vehicles without route permit	3 months jail or Tk 2000 fine or both	3 months jail or Tk 20,000 fine or both
Meter tempering		6 months jail or Tk 50,000 fine or both
Body modification	2 years and or Tk 5000 fine or both	3 years or Tk 300,000 fine or both
Over speeding	3 months jail or Tk 500 fine or both	3 months jail or Tk 10,000 fine or both
Honking banned horns	Tk 200	3 months jail or Tk 15,000 fine or both
Using wrong route	Tk 200	3 months jail or Tk 10,000 fine or both
Violating traffic signals	1 month jail or Tk 500 fine or both	3 months jail or Tk 10,000 fine or both

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eight grade while the helper as well as the conductor of a driver have to pass fifth grade. Minimum age for obtaining driving license has been set to be 18.

In respect of a plethora of offences, the Bill has proposed an increased punishment – both in terms of imprisonment and fine. For driving without license, maximum six-month imprisonment or maximum fifty thousand taka as fine or both have been proposed. Rigour has been brought in by providing that if someone commits this offence, he can be arrested without a warrant. Under the Bill, not only the driver, but also the helper has to have a license, and in absence thereof, the latter will be imprisoned for one month or be fined with twenty-five thousand taka. For using a forged license, the penalty under the existing law is two-year imprisonment or two lakh taka fine. Now under the proposed law, the imprisonment period has been kept the same; however, the fine has been increased and made three lakh taka.

Section 11 introduces an innovative

provision by saying that every driver shall have 12 points against his license. Each point will be deducted every time the driver commits any offence under the proposed law. After all the 12 points get fully deducted, his license will ultimately be cancelled. Section 12 says that if someone who has a license, is found to be drunk, insane or physically disable, his license will be cancelled. Section 103 of the Bill says that the offences committed thereunder will be non-bailable, as opposed to the existing 1983 Ordinance which makes the offences bailable. There is another admirable provision for rendering financial assistance to the people who become victims to road accidents and/or lose their family members through a financial aid trust to be conducted by a trustee board.

However, the Bill does have some serious loopholes too. For murders and grievous hurts emanating from reckless (*beporowa*) and/or negligent (*obohela kore*) driving, maximum penalty has been proposed to be five years. However, if investigation tells a

different story, such that when the investigation shows that if the driver were careful, the accident could have been prevented, in that case, he will be punished with death sentence or life imprisonment under section 302 of the Penal Code 1860, or with life imprisonment or ten-year imprisonment under section 304 of the same Code. Monetary fine is applicable in both cases.

The Bill has clarified that section 304B, which provides maximum three-year imprisonment or fine or both, will not be applicable to try an offender for reckless or negligent driving. Back in 1982, section 304B was inserted in the Penal Code with a maximum punishment of seven-year imprisonment. However, due to protest of the truck drivers, the Ershad government later reduced the punishment to three-year imprisonment – the reduction of which was subsequently challenged in the Supreme Court of Bangladesh. In 2014, the High Court Division declared the reduction of imprisonment illegal. This has given rise to a problem as many lawyers argue that 'maximum jail term of seven years was restored' by the Court when it declared the reduction of imprisonment (i.e. three-year imprisonment) void and illegal. If we favour this view, the position of the Government seems to be untenable – which preaches that punishment has been increased for the offence of rash driving. Though the proposed Bill has made section 304B inapplicable for the offence of rash or negligent driving, it has basically reproduced the same offence in different section and *apparently* increased the punishment (three-year imprisonment to five-year imprisonment), but *actually* reduced the punishment (from seven-year imprisonment to five-year imprisonment) for reckless or negligent driving.

In short, thus, for reckless or negligent driving, the penalty provided for in the Bill will apply; and resort to the Penal Code shall only be taken when homicide/killing is proved to be 'intentional'. However, the problem underlying this proposition is the means for proving 'mens rea' or 'intention to kill' on part of the driver as such. The burden always lies upon the prosecution to prove the case beyond every reasonable doubt to hold the accused guilty and to persuade the Court for applying section 302 upon proving 'intention to kill' on part of the driver for the vehicular homicide in question. The common problem in respect of vehicular homicides, regardless of the jurisdictions, therefore lies with the same thing; in almost all the cases, there remains a scope for the driver to get away with the offence through conceding to an allegation

of 'negligence' or 'recklessness' as opposed to an 'intention to kill'. Under modern criminal law, therefore, an attempt is gradually being made to bring all categories of vehicular homicides (be it with an intention to kill or otherwise) within the purview of 'negligent' vehicular homicide (e.g. Model Penal Code of the United States of America). Another interesting thing to note is that Section 302 (and section 304 in specific situations) has been criminalising 'intentional' killings from 1860 (be it vehicular or anyhow else).

The Bill has also completely disregarded the twenty-year long Strategic Transport Plan (STP) for the capital, chalked out by the Government Transport Coordinating Authority in 2005. The observation forwarded by Japan International Cooperation Agency (JICA) in 2015, recommended that all the buses and mini-buses should be brought under four companies. Similarly, one of the demands forwarded by the protesters was that all the buses as well as mini-buses should be brought under the authority of a few companies (franchise system) to be centrally controlled. This has been completely overlooked by the Bill.

The proposed Bill says that Government through Gazette notification shall determine the minimum rate of fare for public transports. However, public transports which are air-conditioned and which have special facilities are said not to fall within this provision. In practice, even sitting service is considered to be a 'special facility' as such and hence, the fare of buses with sitting services do never correspond to those which are local. The air-conditioned buses fix their fare depending on their respective whims and they do never comply with the rules. No provision has been made in the Bill addressing the issue of determination of fare.

Despite all these criticisms, the Government has indeed taken the issue of road safety very seriously. But question remains: will this proposed law operate as a panacea for the 'age-old' anarchy in transport sector? Will the new law be able to make the public transport sector truly 'people-friendly'? We make laws, but do we ensure their proper implementation, irrespective of our position and status? If not, then what is the use of making new laws? These are the questions which are now getting spoken against the 'age-old' transport anarchy – an anarchy which has bred for long a sense of lawlessness and political favoritism towards all wrong-doers on the road.

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The larger version of this write-up can be read at The Daily Star online (thedailystar.net/law-our-rights).



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ALTHOUGH the statistics of road accidents occurring in Bangladesh is alarming, the number of successful cases is frustratingly disappointing. The Supreme Court (SC) of Bangladesh has been endeavouring to develop a jurisprudence of compensatory justice for the victims of road accidents. Let us have a look on some notable cases:

Claim Tribunal in Manikganj, on February 13, 2012. In 2014, it was ruled that HCD will hold the trials. The HCD on December 3, 2017 ordered to pay TK 4.61 crore in compensation to the family of TarequeMasud for his untimely death in the accident.

**Rajib Hossain Case**  
Rajib Hossain (22) lost his right hand between two buses on April 3, 2018. He

asked show cause as to why TK 1 crore compensation would not be given to the family of Nazim.

**Nurul Amin Chowdhury Case**  
The right leg of Nurul Amin Chowdhury (56) was damaged under the wheels of a bus, on May 17, 2018. His leg had to be later amputated. Following a writ petition filed by Amnesty Bengal, the HCD issued a rule asking the authorities concerned to



**Bangladesh Beverage Industries Ltd Case**  
The case of Bangladesh Beverage Industries Ltd v Rowshan Akhter is seminal for evaluating damages and granting compensation for the non-calculable losses. In this case, a journalist, was killed in a hit and run incident. A minivan rushing from the wrong side shattered his skull.

The Joint District Judge, Dhaka, awarded TK 3,52,97,000 as compensation. Reduced to TK 2,01,47,008 in the High Court Division (HCD), the Appellate Division (AD) finally decreed the compensation amount to be TK 1,71,47,008.

**Catherine Masud Case**  
Catherine Masud case is the first of its kind case decided directly in the HCD. On August 13, 2011, the renowned filmmaker TarequeMasud(54) died in a fatal road accident. Compensation was sought from co-owners of the bus, the driver and the insurance company. A case was filed with the District Judge and Motor Accident

died subsequently after succumbing to the injuries. Following a writ petition filed over the incident, the HCD ordered BRTC and bus owner to pay TK 10 million as compensation to Rajib's family.

However, the AD stayed the order and directed the HCD to form a committee to unearth the persons responsible for Rajib's death and submit a report thereafter. A three-member committee to assess the liabilities and compensation was formed. Later, a time prayer was moved as the committee members could not talk to the accused drivers and the probe report remained incomplete. On August 1, the HCD directed the IG of Prisons to allow the committee to interview the two accused drivers. The Court may deliver its next order on October 4.

**Nazim Uddin Case**  
On May 17, 2018 a bus ran over Nazim Uddin's (38) motorcycle. Nazim later died in a hospital. Taking notice of the newspaper reports published in respect of the accident, the Court passed a suo moto rule on May 22. The respondents were

explain why they should not be directed to give TK 1.5 crore as compensation.

**Airport Road Bus Accident Case**  
On July 29, 2018 two students were killed in a road crash in the Airport Road area. The HCD ordered the owners of 'Jabal-e-Noor Paribahan' to pay TK 5 lakh to each of their families within a week. The Court also ordered the bus operators to bear all costs of treatment of the injured students.

The Court further issued a rule asking the authorities to explain why directives should not be given to provide TK 2 crore to each of the families as compensation. The HCD also directed the BRTA chairman to file a report ensuring that the bus owners pay the damages within seven days, and to submit a report on what steps they have taken to ensure the security of commuters on roads and on the basis of what drivers of public transports are given driving licenses. On August 09, the AD upheld the HCD's order.

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## Right to emergency medical services

ON 8 August 2018, the honourable High Court Division (comprising Justice Syed Refaat Ahmed and Justice Farid Ahmed) approved a comprehensive set of guidelines on facilitating emergency medical services to the victims of road accidents and protecting Good Samaritans. The Court provided two observations on the Guidelines. With regard to the provision no. 9.1 of the Guidelines, the Court made it mandatory for all public and private hospitals to provide emergency medical services to the victims of road accidents, even without the necessity of availing consent of the competent guardians or relatives. Immediate treatment and safety of the injured person is more important than the consent of the guardians or relatives. On the other hand, the Court required all public and private hospitals to have sufficient infrastructure for the emergency department including adequate numbers of manpower, machineries and ambulances for the injured patients. The Court urged the concerned authority to give required directions in this regard within six months of enforcing the Guidelines.

On top of that, the Court asked the Ministry of Health and Family Planning to incorporate Court's observations into the already formulated Guidelines, publish them through a gazette notification and publicise in mass media so that people from all walks of life can know about this development. Furthermore, the Court was of the view that the Court's observations will be treated as equivalent to law until a competent Act in this regard is passed by the Parliament.

On the basis of the Guidelines coupled with the Court's observations, all public and private hospitals/clinics are now

obligated to extend emergency medical services to the victims of road accidents, ignoring legal complexities (that might arise out of the case) and financial strength of the victims. It is to mention that the Guidelines have protected the interest of the Good Samaritans who (such as doctors, medical assistants and nurses) are basically dedicated to provide the best care possible to patients.

Background:

On 10 February 2016, Bangladesh Legal Aid and Services Trust (BLAST) and others filed a writ petition in the High Court Division of the Supreme Court of Bangladesh seeking directions from the Court with regard to the necessity of extending emergency medical services to the victims of road accidents and protecting Good Samaritans. During that time, many reports were published in the newspapers that some hospitals denied emergency medical services to the individuals who were seriously injured of road accidents. The hospitals used to avoid providing emergency medical services thinking of some legal complexities and uncertain financial capacity of the injured persons. On the basis of that writ petition, the Court then issued a rule nisi calling upon the Secretary of Ministry of Health and Family Planning, Secretary of Ministry of Road and Bridges, and Directorate General of Health Services, to show cause as to why the Court would not give directions in favour of extending emergency medical services to the victims of road accidents and protecting Good Samaritans. The Court then asked the government o formulate Guidelines with regard to the issue and the government also complied with the orders of the Court.

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