

## **Position of ITDP on the Recent Delhi High Court Decision to Ban Cycle Rickshaws on Old Delhi Roads**

### **Background**

On May 17<sup>th</sup>, 2006, the Delhi High Court passed an order directing the Municipal Corporation of Delhi – (1) “not to grant any licenses in future for plying Cycle Rickshaws on Delhi roads”, and (2) complete ban on plying of cycle rickshaws in ‘Chandni Chowk’ area (Walled City) and introduce the CNG buses in the area to replace rickshaws.”

This court order came in response to a complaint by the Chandni Chowk Sarv Vyapar Mandal, a trader association of Walled city which petitioned the High Court in February 2002 for restriction of the number of cycle rickshaws in the Chandni Chowk area, citing the fear that “the traffic in Chandni Chowk from Gauri Temple to Fatehputi is highly choked due to presence of unlimited number of cycle rickshaws and unauthorized occupation of road by vendors.

The Delhi High Court, headed by the Acting Chief Justice Vijender Jain, observed that “in spite of various orders passed by this court, plying of cycle rickshaws on the main roads, narrow roads and congested roads has become a horrible experience.” The court was also “of the view that plying of cycle rickshaws on Delhi roads by poor rickshaw puller is against human dignity and its result in exploitation of the poor people who as last resort take upon themselves the work of rickshaw pullers at the mercy of influential people owning such cycle rickshaws.”

Following the Court Order, Municipal Corporation of Delhi (MCD) immediately issued a circular to Deputy Commissioners of all the Municipal Zones (12) of Delhi to:

- “All the arterial roads of Delhi in MCD area should be strictly prohibited for the plying of cycle-rickshaws, on the pattern of NDMC, and strict legal action should be taken by MCD under Municipal Bye-laws against the violators.”
- “Ensure proper compliance of the above decision of the Committee (appointed by Delhi High Court) and to take strict legal action against the violators under the Cycle Rickshaw Bye-laws.”

### **ITDP’s Position**

*ITDP does not believe that the court should have jurisdiction in this matter, nor do we believe that a blanket ban on cycle rickshaws in the Walled City area of Delhi is justified on technical, economic, social, political, or environmental grounds. However, we do*

*recognize the right of the municipality to regulate cycle rickshaw access to some roads, as commercial vehicles, and as parked vehicles.*

ITDP's general position on the regulation of access by non-motorized vehicles to specific roads or zones is fully articulated on p. 30 – 34 of ***Training Course: Non-Motorized Transport***, published by GTZ and available from [www.sutp.org](http://www.sutp.org).

ITDP objects to the ban on cycle rickshaws imposed on the Delhi Government by the High Court on two principal grounds:

- a. We believe that for the court to make policy regarding road use is beyond its competence and judicial mandate.
- b. We see no technical, economic, social, or environmental justification for banning cycle rickshaws in the area where the court has suggested that they be banned.

#### I. Judicial over-reach

The judiciary in India interprets its jurisdictional boundaries extremely broadly, in part due to relatively weak a municipal executive branch. In any US court, it is likely that a judge facing a similar case, without a clear law, would have determined that the matter was beyond its technical competence and outside its jurisdiction. It would have turned the matter over to the competent municipal authorities, i.e. the Department of Transportation. The Municipal authorities would jealously guard this prerogative.

Giving the court the power to regulate the allocation of street space in order to give redress to a specific group of adversely affected shop keepers runs a very significant risk that redress will be awarded to a specific plaintiff at the expense of the general public interest. In virtually all countries, shop keepers have no right to judicial redress for the presence of traffic congestion in front of their shop. Nor are the shop keepers, nor the courts, a competent authority for determining whether or not cycle rickshaws are the cause of this congestion.

Roads are public property, and the financing of the design, reconstruction, and maintenance of these roads has been given over to specific branches of the government. Some roads are under the Municipal Corporation of Delhi, other roads are under the Delhi Development Authority, and still other roads are under different authorities. Normally, control of access to specific roads would rest with the relevant government authority responsible for that road. Normally, national roads are under the national government, provincial roads under the provincial government, municipal roads under the municipality, and local roads under district and local governments.

These authorities preserve the right to regulate access to these roads for a variety of public purposes. There is a globally recognized right of these relevant authorities to regulate access to these roads for certain categories of vehicles, for a variety of reasons. For example, different vehicles cause different levels of damage to roads. Trucks over a certain axle weight will cause damage to roads not built to handle such axle loads, so they

may be restricted on these roads, or required to pay fees to compensate the authorities for the additional road maintenance costs imposed by the use of that particular category of vehicle on a particular road.

Because roads are a public good, ultimately the use and allocation of scarce road space should be determined by a legitimate democratic political process informed by in depth technical understanding. In our opinion, since the law about how best to regulate road space and vehicle access to roads is not clear, and the policy of government is also not clear, it would be irresponsible of the judiciary to make a finding in an area such as this which is beyond the technical competence of the judiciary.

Rather, it should ultimately be up to the municipal and national legislatures to define the laws governing road use and road access, and it should be up to the competent national and municipal authorities to set regulations and procedures compliant with these laws. The appropriate role of the court should be restricted to the interpretation of such laws and regulations.

II. The blanket ban on cycle rickshaws is not justified on technical, economic, social, or environmental grounds. However, the municipality should reserve the right to regulate the commercial operation of cycle rickshaws and their on-street parking.

There are three acceptable possible justifications for restricting specific vehicles on specific streets and in certain conditions, and it is important that the rights of government to impose such restrictions be preserved. These legitimate justifications for restrictions are:

- a. Roads where safe operation of non-motorized vehicles is currently impossible
- b. Roads where, for whatever reason, a democratic political process has determined that the majority of the public does not want those vehicles
- c. Roads where the overall social benefit of restricting a particular vehicle on a particular road outweigh the overall social costs.
- d. The general right to regulate the behavior of commercial vehicles for economic purposes.
- e. Regulation of on-street parking

In our opinion, only “d” and “e” apply in the case of the walled city area of Delhi.

Because these justifications will apply differently for different types of roads, as a general rule, ITDP tends to favor the regulation of specific vehicle access based on the road classification system rather than blanket bans on specific zones. For example, ITDP has no objection to restrictions on cycle rickshaw and bicycle access on limited access freeways or highways where the physical design has been based on the facilitation of high speed intercity motor vehicle travel. By contrast, ITDP would almost never support a blanket ban on cycle rickshaw use on local residential streets designed for slow speed access to residential properties unless such a ban was fully supported by the affected community and a transparent mechanism for determining this support could be found.

Similarly, ITDP would be unlikely to support the full pedestrianization of a limited access freeway, but would likely support a full pedestrianization for a commercial street serving primarily short distance shopping trips if it had the support of the local community.

#### -----Safety-based restrictions

In the specific case of the walled city, safety may be a legitimate concern on some streets but not on others. In this case, the plaintiff did not raise the issue of safety as a factor in calling for a cycle rickshaw ban. However, in any case where there are good justifications for allowing non-motorized traffic, safety as the basis of an access restriction should be at most a temporary determination. The safety of the road for non-motorized vehicles is a function of the roadway design, so if a road is deemed unsafe but it is also determined that the road should facilitate non-motorized vehicle access, then a temporary ban on non-motorized travel until the road can be reconstructed for safe NMV travel can be considered. Most municipal authorities preserve the right to temporarily ban cycle rickshaws, bicycles, and pedestrians on streets temporarily unsafe for travel by these modes. It is well documented that fatalities resulting from crashes between motor vehicles and non-motorized passengers rise dramatically on roads with average vehicle speeds over 40kph. If a determination is made that such a road should allow non-motorized vehicles, the roadway should be redesigned for slower speed or with segregated facilities for slow moving traffic.

#### -----Democratically-derived restrictions on vehicle access

Intercity streets serve intercity functions, and the regulation of their use is a political decision that should be taken up at the national level. The design and allocation of space on municipal streets is a municipal level decision, and should be determined politically at the municipal level. Local streets should be regulated by more localized political processes, such as local public hearings, block associations, district level governments, etc.

If it were the case that the Chandi Chowk shopkeepers and residents were largely uniform in their design to ban cycle rickshaws on *local streets* for whatever reason, this decision should be respected regardless of other considerations. However, some of the roads in the walled city also serve origins and destinations beyond the walled city, so the residents of this area cannot have the power to regulate such roads. However, as the branch of government most distant from the democratic political process, it seems particularly inappropriate for the judiciary to make such a determination. This right of local residents to regulate local streets is important, as it should also be used to regulate the availability of on-street parking, street vendor activity, pedestrian zones, and other options that may be locally desirable.

Our impression is that the residents and shopkeepers of Chand Chowk are far from uniform in their opinions regarding the ban even on local streets, and the citizens of Delhi

are also far from uniform. Perhaps, in other words, the issue should be put to a public referendum rather than to the courts.

#### -----Cost Benefit Justifications of Vehicle restrictions

The main complaint of the shop keepers association in the case of the Delhi walled city was that cycle rickshaws are causing traffic congestion in front of their shops.

Should causing traffic congestion constitute a legitimate justification for categorical vehicular restrictions, then the private car and taxi should also be banned. Congestion results when too many vehicles and people of any type try to use the same part of a road at a given time. Congestion results from the sum total of all vehicular and passenger activity in that corridor at any given time. The amount of congestion that any given vehicle contributes is generally determined by engineers in the form of 'passenger car units' or PCUs. However, because different vehicles carry different number of passengers, the amount of congestion caused by any given mode is a function of the number of passengers that the mode can accommodate per lane per hour.

A bus, for example, generally consumes the same amount of road space as 2 cars, or PCUs. However, because a bus may be carrying 80 passengers, a bus may contribute to congestion 1/40 as much as a private car. A motorcycle in Delhi has a PCU of roughly .2, consuming roughly 1/5 as much space as a private car. A cycle rickshaw, a taxi, and a private car, all consume roughly the same amount of PCUs, and carry roughly similar numbers of passengers. As such, from a purely engineering perspective, any categorical vehicle ban based on concerns about congestion should be open to banning cycle rickshaws, but any such provision should also ban private cars and motorized taxis. *The notion that a cycle rickshaw generates more traffic congestion than a private car is empirically false.*

Cycle rickshaws, bicycles, and pedestrians do not belong on certain types of infrastructure designed for high speed intercity use. In most developed countries, such vehicles are not allowed on limited access highways. As roads have different functions based on their position in the road classification system, the optimal economic outcome tends to occur when the roads are designed to facilitate efficient movement for the predominant type of trip on that corridor. Some roads primarily serve a large number of very short trips. For very short trips, bicycles, walking and cycle rickshaws are by far the most efficient means of transport, as they do not require parking and cost very little to operate. Most of the major arterials in Chandi Chowk serve a mixture of both short and medium length trips. For this reason, the roads should be designed to accommodate both types of trip. As cycle rickshaws play an important role in short distance travel, banning them could be highly inefficient for passengers wishing to make short trips within the area. Studies from similar bans in Dhaka showed that passengers wishing to go between 1 and 3 kilometers faced significant increases in waiting time, travel time, and travel cost as they were forced to shift to motorized taxis or buses, or to walk.

The economic impacts of such a ban are quantifiable, and before any blanket ban on a particular vehicle category should be considered, a cost benefit analysis of the ban should be conducted.

Entire categories of vehicles might also be banned based on the environmental emissions related to that category of vehicle. Many environmental agencies have a ‘type-approval’ system, where vehicles over a certain age and engine type are banned because statistically such vehicles generate more emissions than are allowable under tailpipe standards. Cycle rickshaws do not generate any air pollution, so such a ban on environmental grounds is absurd.

Social considerations may also be taken into consideration. The court found that cycle rickshaw operators were ‘exploited’ and therefore a ban on these vehicles was somehow in their interest.

Research by ITDP and other organizations indicates that removal of an employment opportunity from a low income family is not in their interest. A similar ban in Dhaka, Bangladesh, led to a loss of income for cycle rickshaw operators on the order of 30% on average. Cycle rickshaw operators do not face an infinite variety of alternative employment options. The most frequent alternative option is day laborers in construction projects and factory workers. These employment options are found to be less desirable by most cycle rickshaw operators. In short, if the ban were really in the interest of the cycle rickshaw operators, they themselves would be supporting the ban, which of course they do not.

#### -----Regulating cycle rickshaws as commercial vehicles

The municipal authorities have the right to regulate cycle rickshaws as commercial vehicles. In an ideal world, the municipality would regulate the total number of cycle rickshaw licenses in any given area to a number that would serve the needs of that particular community without consuming too much public space. The operators of cycle rickshaws themselves generally support some form of commercial regulation because an oversupply of cycle rickshaw operators tends to undermine the ability of an operator to make an honest living. If a problem arises, it is also a good idea to have on record the operator’s identification. In practice, of course, it is typical worldwide for such regulations to be somewhat abused by both local authorities and middlemen with connections to the bureaucracy.

Nonetheless, cycle rickshaw unions, if recognized as semi-official by the municipal authorities, can be a successful means of creating a self-enforcing limitation on the total number of cycle rickshaw operators allowed to operate in a given area. In the case of the Chandi Chowk area, we recommend that the municipal authorities make participation in an officially designated Chandi Chowk cycle rickshaw union mandatory, the leader of this union duly elected by the membership, and the total number of operators in the area restricted to a reasonable number. The union should be given the power to notify the police in the case of a violation of their area of control, and police powers should be used

to assist in the regulation. Simple mechanisms for regulation, such as common color codes or special highly visible license plates should be used.

#### -----Regulating cycle rickshaw and other parking

Cycle rickshaws also take up road space when waiting for passengers. This problem is hardly restricted to cycle rickshaws however, so it is unclear why the court should necessarily single them out. Street vendors, motor vehicle operators, motorized three wheelers, and taxis, all tend to illegally occupy public street space. Poor regulation of on street parking and vendor activity in Delhi is a major political problem, and many critical traffic issues cannot be addressed if this issue is not addressed. There are areas in the Chandi Chowk area where motorized three wheelers are idling three and four abreast on a public road waiting for passengers, and where private cars are double parked three abreast. While these are serious problems, and the municipality needs to tackle them, there is no justification for singling out cycle rickshaw operators. If the overall process is better regulated in the future, however, cycle rickshaw operators should be expected to comply with parking fees and regulations just like all other vehicles.