

THE BATTERY RICKSHAW “CRISIS” IN NEW DELHI

—SIMON HARDING*

This paper uses a case study of battery rickshaws in New Delhi as a lens through which to view the policy making process in urban India. Battery rickshaws are small public transport vehicles that typically transport passengers to and from metro stations for a small fare. In 2010, there were a few dozen in New Delhi; by 2014, estimates put their numbers at around 100,000. Despite their proliferation, the process of constructing an appropriate regulatory framework has been lengthy, antagonistic and dysfunctional, prompting the use of the term “crisis”. This paper briefly discusses the negative perceptions of battery rickshaws in New Delhi, which focus on the idea of informality. It then gives an account of the history of the “crisis”. Thereafter, the fourth section identifies two factors which, it argues, are significant causes of this “crisis”: a) the polycentric nature of urban policy making and b) the lack of data upon which to base decisions. It concludes by following Roy’s (2007) contention that the policy making process can, itself, often be accurately termed informal.

I. INTRODUCTION

The vehicle has transformed the lives of drivers such as Mohammed Rafique who, just a year ago, sweltered in New Delhi’s 40°C-plus heat as he peddled a cycle rickshaw to earn about 15 to 45 cents for each passenger. Now, he waits for passengers in the shade of the tarpaulin of a new electric rickshaw. “This one’s better,” he tells Al Jazeera with a broad smile as he leans on the handlebars of the vehicle. “It takes less effort to drive. This will last longer too.” Rafique is not the only one who appreciates the new wheels. “Passengers prefer this one because they travel faster,” he points out. “And with pedalling

* PhD candidate, Institute for Resources, Environment and Sustainability, University of British Columbia, Vancouver, Canada.

you can only take two people, it takes longer, and sometimes they arrive late.”

—(*Al Jazeera, 2014*)¹

In just over four years, the number of battery-powered electric rickshaws (hereinafter referred to as ‘battery rickshaw’) in New Delhi has grown from a few dozen to anywhere up to 100,000.² Back in 2010, a handful of battery rickshaws ran short passenger trips in a few areas of West Delhi and on Delhi University’s North Campus. Today, these low-floored three-wheelers are a familiar sight across the whole city: the driver gripping the handlebar steering whilst up to four passengers sit behind, typically en route to a metro station or bus stop. These low-speed vehicles find their role in the urban transport system by providing ‘last mile connectivity’: running as shared vehicles on fixed routes between residential areas and public transport access points, primarily metro stations. They typically charge a low flat fare rate (i.e. INR 10-15 per person per trip), which makes them widely affordable. They tend to operate on smaller, less busy roads, away from busy arterial routes on which their speed and fragility make them vulnerable to larger vehicles.

Battery rickshaws are relatively simple vehicles. They are powered by four rechargeable lead-acid batteries with a power output of between 250-850W and are capable of speeds of up to 30 kmph. After 40-60 km of driving, the batteries must be recharged, usually from a mains electricity socket. This takes between six to eight hours. Almost all battery rickshaws in New Delhi are imported from China and sold on by local retailers. Although the build quality is modest at best - with an expected total lifespan of two to three years - the capital costs are relatively low: a new battery rickshaw costs between INR 55,000-100,000 and does not require an operating permit, whilst a CNG powered auto rickshaw with operating permit costs between INR 200,000-300,000. Furthermore, driving a battery rickshaw does not currently require a standard driving licence, commercial licence, or permit as they are not officially regulated by the Delhi Transport Department (hereinafter referred to as ‘Transport Department’). This further decreases the barriers to entry, making battery rickshaws within the reach of many ex-cycle rickshaw pullers.

This paper seeks to use the policy reaction to the rise of the battery rickshaws in New Delhi as a lens through which one can view the policy making environment in urban India. This case study is of particular interest as it starts from a relatively blank slate: there is no existing regulation governing

¹ Faiz Jamil, *Regulation Threatens India’s E-Rickshaws*, AL JAZEERA, 03-06-2014, <<http://www.aljazeera.com/indepth/features/2014/05/regulation-threatens-india-e-rickshaws-201451331017908658.html>>.

² Deepak Kumar Dash, *E-rickshaws Turn Campaign Vehicles*, THE TIMES OF INDIA, 11-03-2014, <<http://timesofindia.indiatimes.com/city/delhi/E-rickshaws-turn-campaign-vehicles/articleshow/31804697.cms>>.

these vehicles in New Delhi as the technology is new. The paper will describe the negative perceptions of battery rickshaws in the English-language media. It then gives a brief history of battery rickshaws in New Delhi, a story marked by indecision, delay, claim, and counterclaim. It will then analyse the causes of this “crisis”, which it takes to be the polycentric nature of urban governance and a lack of empirical data. It concludes by concurring with Roy’s³ assertion that policy making in urban India itself may be informal as the boundary between legality and illegality is not fixed in terms of objective criteria, rather it is constantly negotiated.

II. NEGATIVE PERCEPTIONS

Despite their rapid growth and increasingly important role in the urban public transport system, battery rickshaws are the subject of a number of negative perceptions amongst the middle classes and the English-language media. The battery rickshaw is seen as operating without regulatory oversight. It is perceived as operating free from the burden of compliance, as such, the battery rickshaw and its driver are seen as free to run amok on the streets of New Delhi, driving dangerously and choking main roads, whilst the authorities, whose duty it is to govern such activities, stand idly by, either powerless - “stumped” by the sudden explosion of this new variety of rickshaw⁴ - or simply unwilling to protect the “common man” from the “menace” posed by this “unsafe vehicle”.⁵ One news agency story, reproduced by a variety of news sources, described the situation as Delhi’s “e-rickshaw crisis”.⁶ The Times of India - succinctly and hyperbolically sums up this sentiment:

*These slow-moving rickshaws add to congestion, flout traffic rules and freely move on main road, putting commuters at risk...The growing number of e-rickshaws is becoming a traffic menace in the city but all cops can do is watch helplessly.*⁷

Hundreds of battery-powered rickshaws can be seen ferrying people - speeding down narrow lanes, crowding Metro stations and creating a traffic jam on arterial roads....Neither the transport department, nor

³ Ananya Roy, *Why India Can't Plan its Cities: Informality, Insurgence and the Idiom of Urbanization*, 8(1) PLANNING THEORY 76 (2009).

⁴ Aanchal Bansal, *The Menace of E-rickshaws*, OPEN, 24-09-2014, <<http://www.openthemagazine.com/smallworld/the-menace-of-e-rickshaws>>.

⁵ Aamir Manzoor, *No Policy Yet to Curb E-rickshaw Menace*, THE PIONEER, 15-05-2014, <<http://www.dailypioneer.com/city/no-policy-yet-to-curb-e-rickshaw-menace.html>>.

⁶ *Delhi BJP Leaders Meet Gadkari over E-rickshaw Crisis*, BUSINESS STANDARD, 16-09-2014, <http://www.business-standard.com/article/news-ians/delhi-bjp-leaders-meet-gadkari-over-e-rickshaw-crisis-114091600553_1.html>.

⁷ Somreet Bhattacharya, *E-rickshaw Menace Grows, Cops Helpless*, THE TIMES OF INDIA, 17-10-2013, <<http://timesofindia.indiatimes.com/city/delhi/E-rickshaw-menace-grows-cops-helpless/articleshow/24271710.cms>>.

*the civic bodies are willing to own up to these battery-powered rickshaws. ...Incredibly, the transport department is blind to the open sale of these e-rickshaws.*⁸

The power and willingness of the authorities to “tame” battery rickshaws is widely perceived as having been curtailed by “sprouting” battery rickshaw operator unions, retailer organisations, and the efforts of political parties to mobilise battery rickshaw drivers as a voting block. Courting battery rickshaw operators means stalling the introduction of regulations and promising that, when they do arrive, they will be as favourable to operators as possible. Such manoeuvring is seen as a common tactic used to get ahead of one’s political opponents in urban “competitive politics”.⁹

The reactions of the middle class and English-language media to the rise of the battery rickshaw in New Delhi should be viewed with reference to a wider set of attitudes to what is often termed “informality” in urban India, which includes both occupations viewed as “informal” (such as food vending and street hawking) and “informal” modes of settlement (i.e. jhuggibasti clusters). There is a well-developed literature on elite attitudes towards “informality”. The term “informal” has many definitions and is particularly hard to pin down. In this paper, it will be used to refer to groups of people who are part of professions which are perceived as “informal” in a pejorative sense by the media and the middle classes rather than those who are given the term based on a set of analytical criteria.

Informality is perceived by the media, middle classes, and many civil society groups as a disruption of an urban order that is based on a set of “orthodox modernist principles” originating in Europe and North America in the 1960s.¹⁰ These principles value the clearly delineated single-use spaces of mid-20th century urban planning over the comparatively chaotic, disruptive Indian street with its porous boundaries (which, it can be ventured, more closely resembles the post-modern conception of space). The archetypal disrupters are recent migrants from rural areas who make a living in low-wage occupations. Their employment takes them to the fringes of legality on a daily basis due to the inevitable lack of any number of official permissions and their unavoidable encroachment on public space. They keep this precarious balance between legality and illegality through negotiations with representatives of the

⁸ Rumu Banerjee, *Electric Rickshaws in Fast Lane Flout Ban on Battery Power*, THE TIMES OF INDIA, 13-05-2013, <<http://timesofindia.indiatimes.com/city/delhi/E-rickshaws-in-fast-lane-flout-ban-on-battery-power/articleshow/20076065.cms>>.

⁹ Sumit Kumar Singh, *Politicians Vroom Delhi’s Doom*, THE SUNDAY STANDARD, 03-08-2014, <<http://www.newindianexpress.com/thesundaystandard/Politicians-Vroom-Delhis-Doom/2014/08/03/article2361663.ece>>.

¹⁰ Jonathan Shapiro Anjaria, *Street Hawkers and Public Space in Mumbai*, 41(21) ECON. & POL. WKLY. 2140, (2006), <<http://www.jstor.org/stable/10.2307/4418270>>.

local state, such as low level police officers. Weekly payments (*hafta*) buy police apathy, but this is not all - the need to appear vigilant means the police must occasionally make a big show of “cracking down” on informal professions. Many informal professions have unions which can cut deals with officials in the higher levels of the state,¹¹ although they are criticised as “single interest” groups by the media and civil society organisations – groups which advocate solely for the benefit of a certain activity undertaken by their members without consideration for its potential impacts on wider urban society. They can also be courted by political parties. This complex toleration of informality, often involving selective application of the law, has led to the middle classes, media, and middle class civil society organisations to claim that the local state and politicians reap benefits from what they see as informal law-breaking. The former is corrupt and has no interest in doing its job which is seen as holding the latter to the letter of the law; the latter is dismissed as a “dirty river” - a space of corruption and personal gain with little concern for the public interest or service.¹²

Seeing the informal disruption of ordered urban space as becoming more marked, better organised, and increasingly indulged by the state and political parties, the middle class and middle class civil society organisations (such as those in South Chennai documented by Harriss) have come to regard themselves as the sole force for the maintenance of order: “Only five-percent of us keep this city from disaster”, a civil society activist in Mumbai told Shapiro Anjaria. Fernandes¹³ argues that the middle classes have recast themselves as the new “*aam aadmi*”, the common man of modest means, typically perceived as battling to make a living in the face of rent-seeking by a corrupt state. However, unlike the traditional common man for whom the ballot paper is the main outlet for expression, the ‘new *aam aadmi*’ and the civil society organisations which represent their views, seek to control urban space through media channels. With political influence curtailed by the rise of vote bank politics, they increasingly bypass the political process through legal campaigns: going straight to the judiciary, which has been increasingly supportive of what Bhan¹⁴ characterises as anti-poor actions. Measures to tackle informality are justified by recourse to ideas of the primacy of the law and legality but also increasingly through environmental narratives, which reconstruct informality into an environmental risk: i.e. the clearing of low-income housing is justified

¹¹ Jonathan Shapiro Anjaria, *Ordinary States: Everyday Corruption and the Politics of Space in Mumbai*, 38(1) AM. ETHNOLOGIST 58 (2011).

¹² John Harriss, *Middle Class Activism and the Politics of the Informal Working Class: A Perspective on Class Relations and Civil Society in India Cities*, 38(4) CRITICAL ASIAN STUDIES 445 (2006); John Harriss, *Antinomies of Power: Observations on Civil Society, Politics and Urban Governance in India*, 42(26) ECON. & POL. WKLY. 2716 (2007).

¹³ Leela Fernandes, *The Politics of Forgetting: Class Politics, State Power and the Restructuring of Urban Space in India*, 41 URBAN STUDIES 2415 (2004).

¹⁴ Gautam Bhan, “*This is No Longer the City I Once Knew*” *Evictions, the Urban Poor and the Right to the City in Millennial Delhi*, 21(1) ENV'T & URBANISATION 127 (2009).

as an improvement to public health as it removes from proximity communities without access to sanitation¹⁵.

The literature on the Indian middle classes and urban spaces provides a helpful characterisation of the ways in which those in informal occupations negotiate a place in the city, the prevalent perceptions of informality, and the tactics employed to tackle it. It helps situate the following analysis in a wider context.

III. A SHORT HISTORY OF NEW DELHI’S BATTERY RICKSHAW “CRISIS”

“Status quo’ is Latin for ‘the mess we’re in.’

—R. Reagan

The Motor Vehicles Act, 1988, (hereinafter referred to as ‘the MVA’) stipulates that any electric vehicle with a power output of more than 250W or a top speed exceeding 25 kmph is a motor vehicle and thus falls under the ambit of the local Transport Department. According to a study done by TERI University for the Delhi Government, almost all the city’s battery rickshaw fleet fall into this category, with power outputs of 650-1000W.¹⁶ However, the local Transport Department was not able to register them as the battery rickshaw had not been assigned a classification, which is a prerequisite for imposing regulation; in short, the authorities did not know what to register them as. The job of designating classifications falls to any one of four state-run technological research institutes under the Central Motor Vehicles Rules, 1989, (Rule 126): the Vehicle Research and Development Establishment of the Ministry of Defence of the Government of India; the Automotive Research Association of India, Pune; the Machinery Testing and Training Institute, Budni (MP); and the Indian Institute of Petroleum, Dehradun.¹⁷ In order to qualify for a classification, any given vehicle model would have to pass a series of performance tests. Failure means the vehicle is not fit for public roads. The battery rickshaws already on the roads in New Delhi had not been subject to these tests, which they would be unlikely to pass due to their low build quality.¹⁸

This situation created a paradox: in order to regulate battery rickshaws, they needed to be officially tested and assigned a classification. But the

¹⁵ Ashner Ghertner, *Nuisance Talk and Propriety of Property: Middle Class Discourses of a Slum Free Delhi*, 44(4) *ANTIPODE* 1161 (2012).

¹⁶ *High Court Pulls up Government, Stop Passing the Buck, Regulate City’s E-autos*, *THE INDIAN EXPRESS*, 20-03-2014, <<http://indianexpress.com/article/cities/delhi/high-court-pulls-up-govt-stop-passing-the-buck-regulate-citys-e-rickshaws/>>.

¹⁷ Central Motor Vehicle Rules, 1989, G.S.R. & O. 593(E), *GAZETTE OF INDIA*, Extra., Part II, §. 3 (June 1989).

¹⁸ R. Agarwal, Personal Interview, interviewed by Simon Harding in New Delhi, 22-05-2014.

testing would most likely reveal that they were not in compliance with the Government of India's (hereinafter referred to as 'the Centre') technological standards for road vehicles, which would result in their outright ban on public roads. Conversely, this situation would mean that attempts to bring battery rickshaws under the ambit of regulation using the traditional regulatory means would, paradoxically, push them further from it. This situation resulted in paralysis. Aware of the large numbers of battery rickshaws on the roads, their role in employment generation, the likelihood of failure in technical testing, and the consequent ban, the Delhi Government, Transport Department, and Traffic Police were loath to take action. However, the Centre stepped in by issuing a ban in April 2014, without demanding any tests, citing non-compliance with the MVA since the power outputs of the battery rickshaws were well beyond the 250kW threshold set by the Ministry for Road Transport and Highways (hereinafter referred to as 'MoRTH').

However, battery rickshaws continued to operate, largely due to the logistical difficulties of removing up to 100,000 vehicles from the roads and the unwillingness to do so by local state representatives who were reluctant both to deprive drivers of their livelihoods and to give up the regular informal payments they supplied.¹⁹ In response to their continuing presence, in May 2014, social activist S. Khan responded by filing a petition at the Delhi High Court asking that the ban be enforced if the vehicles could not be regulated as they posed a threat to the public.²⁰

Khan's petition contains a telling axiom. A ban should be enforced if the vehicles cannot be regulated. It can be argued that whilst the public attitude towards the battery rickshaw was overwhelmingly negative, the focus of that ire was the prevailing use of the vehicle rather than the battery rickshaw as a technology. Controlled and regulated, the battery rickshaw fits neatly into the middle class urban environmental agenda: it is a technological innovation which can be claimed to lower emissions from public transportation (whilst leaving emissions from private vehicles out of the analysis). The perception of prolonged failure to regulate their use by the authorities pushed the tide of middle class opinion towards support for the ban. On the supply side, battery rickshaw drivers themselves saw regulation as a double edged sword. It would bring much needed security of ownership and hinted at the possibility of access to credit and insurance markets whilst concomitantly threatening to unleash a Byzantine wave of mandatory approvals.²¹

¹⁹ S. Harding & Seram Rojesh, *Battery Rickshaws in New Delhi and the Regulatory Conundrum*, 49(35) ECON. & POL. WKLY. (2014).

²⁰ Mohammed Iqbal, *Ban on E-rickshaws in Delhi to Continue, Rules High Court*, THE HINDU, 09-09-2014, <<http://www.thehindu.com/news/cities/Delhi/ban-on-erickshaws-in-delhi-to-continue-rules-high-court/article6394257.ece>>.

²¹ Harding & Rojesh, *supra* note 19.

In June 2014, following the Indian Election of 2014 and the formation of a new BJP-led government at the Centre, the new Minister for Road Transport and Highways, Nitin Gadkari, announced a formalisation scheme for battery rickshaws at a large rally in New Delhi organised by a drivers’ union. The proposed “Deen Dayal” scheme would include a revision to the MVA allowing battery rickshaws with power outputs of up to 650W to ply as non-motorised vehicles. This would allow them to operate without commercial licences, which are difficult and time consuming to obtain. Furthermore, battery rickshaws would not be subject to permit regimes, like Delhi’s auto rickshaw sector, which between 1997 and 2012 added only a few thousand operating permits. This created a large and lucrative black market, on which permits changed hands at massively inflated prices, often up to three times the cost of the vehicle itself. Under the banner of poverty alleviation and to phase out “inhuman” cycle rickshaws, new entrants would receive soft government loans to purchase Indian made electric rickshaws, which were seen as being of higher quality than Chinese imports.²² The proposed scheme was the result of series of discussions between nascent battery rickshaw retailer associations, driver unions, and local BJP officials. However, it later emerged that until 2011, the Minister was the chairman of the Purti Group, which, among other concerns, included Purti Green Technologies Private Limited, one of the seven Indian companies certified to manufacture battery rickshaws by the Council of Scientific and Industrial Research in 2012. At the time of the announcement of the scheme, the Minister’s brother-in-law was the chairman.²³

The announcement from the Centre gave few details on how the proposals should be implemented at the local level. Furthermore, the processes of amending the MVA would most likely be a lengthy one. By remaining quiet on implementation and ensuring that no action on the scheme could be taken prior to the completion of the amendment process, the new government had bought itself time. The announcement of the scheme had boosted its popularity with a large and growing group of urban voters (operators and their dependents) without the need for measurable change in the short term. However, it further complicated the policy situation on the ground as enforcement of the earlier MoRTH ban slackened as the Delhi Government, Transport Department, and Traffic Police believed that the Centre was looking favourably on battery rickshaws. This prompted renewed judicial attempts to tighten it.

²² Ruhi Bhasin, *At Maha Rally, Gadkari Says Ban on E-autos Will be Revoked*, THE INDIAN EXPRESS, 18-06-2014, <<http://indianexpress.com/article/cities/delhi/at-maha-rally-gadkari-says-ban-on-e-rickshaws-will-be-revoked/>>.

²³ Jay Mazoomdaar, *Union Minister, Gadkari, Want to Legalise E-rickshaws, Family Firm Wants to Make Them*, THE INDIAN EXPRESS, 19-09-2014, <<http://indianexpress.com/article/india/india-others/union-minister-gadkari-wants-to-legalise-e-rickshaws-family-firm-wants-to-make-them/>>.

The following month, the High Court heard an affidavit from the Delhi Chief Secretary (a high-ranking IAS officer), S.K. Srivastava, who called for swift regulation on battery rickshaws arguing that their continued operation was “wholly unauthorised and illegal”. The affidavit stated that since battery rickshaws were already covered by the MVA, creating special amendments for them, as under the “Deen Dayal” scheme, was not legal. It also claimed that, following the intervention of the MoRTH Minister, the Delhi Transport Department had stopped taking action on the matter. Hearing the affidavit, the High Court criticised the Delhi Government for allowing “unregulated transport” to operate in Delhi and demanded that it clarify its stance on regulation by the end of the month. It also stated that battery rickshaws should not be allowed to ply without a licence, registration and insurance. As such, the court stated that ban must remain very much in force.²⁴

August 2014 saw the Delhi Government take efforts to tighten the earlier MoRTH ban, partly in response to the demands of the High Court and partially due to the reaction of the media to a tragic accident in which a child died after falling from his mother’s arms into a pan of hot oil on the roadside after she was struck by a battery rickshaw. The media lay almost all of the blame for the accident on battery rickshaw drivers.²⁵ Efforts by driver organisations to get the ban lifted, such as the petition filed at the court by the Battery Rickshaw Welfare Association, failed.²⁶ A further legal attempt by the Centre and the E-Rickshaw Owners Association argued that the ban deprived drivers of income and that the Centre would soon put in place measures to regulate the sector making the current situation a short-term inconvenience. This was also dismissed by the court.²⁷

However, a month later, local BJP leaders were in talks with MoRTH in an attempt to come up with a clear regulatory framework, which would likely enforce new regulations on entrants to the sector, but exempt existing operators.²⁸ The discussions came after reports that large scale retailers and importers had privately met with the Minister, prompting fears that the

²⁴ *Delhi High Court asked DC to Ban Unregulated E-rickshaws*, JAGRAN JOSH, 24-07-2014, <<http://www.jagranjosh.com/current-affairs/delhi-hc-asked-delhi-government-to-ban-unregulated-erickshaws-1406194359-1>>.

²⁵ *E-rickshaw Hits Mum, Kid Falls into Hot Oil Pan*, THE TIMES OF INDIA, 31-07-2014, <<http://timesofindia.indiatimes.com/city/delhi/E-rickshaw-hits-mom-kid-falls-into-hot-oil-pan/article-show/39322273.cms>>.

²⁶ *Delhi: E-rickshaws are Illegal - Ban to Continue, says High Court*, NDTV, 09-09-2014, <<http://www.ndtv.com/article/cities/delhi-e-rickshaws-are-illegal-ban-to-continue-says-high-court-589048>>.

²⁷ *Ban on E-rickshaws Will Continue, Delhi High Court says*, THE TIMES OF INDIA, 09-09-2014, <<http://timesofindia.indiatimes.com/city/delhi/Ban-on-e-rickshaws-will-continue-Delhi-high-court-says/articleshow/42097835.cm>>.

²⁸ *Delhi BJP Leaders Meet Nitin Gadkari to Discuss E-auto Issue*, DNA, 16-09-2014, <<http://www.dnaindia.com/delhi/report-delhi-bjp-leaders-meet-nitin-gadkari-to-discuss-e-rickshaw-issue-2019086>>.

final settlement would benefit them rather than the drivers.²⁹ In response, the leader of the Aam Aadmi Party (AAP), Arvind Kejriwal, accused the Minister of “misleading” battery rickshaw drivers by promising concessions, as part of the “Deen Dayal” scheme, but failing to deliver on his promises. The AAP leader met the Minister with a delegation of battery rickshaw drivers in order to push driver interests in the forthcoming settlement. The involvement of the AAP is significant as the party mobilised large numbers of auto rickshaw drivers as part of its successful Delhi Legislative Assembly election campaign in December 2013. It won their backing on the promise of delivering favourable policies.

Enforcing the ban proved unpopular all-around. Many drivers had taken out loans to buy their vehicles and were compelled to flout the ban in order to make the repayments, risking fines and confiscation by the police. Furthermore, the absence of regulation put them in a precarious position with regards to vehicle ownership and removed any possibility of obtaining insurance.³⁰ Retailers and importers lost business, commuters lost the feeder services they had come to rely on, stretched police resources were diverted from more serious issues, and the governing party lost the support of the group it had attempted to mobilise only to see a political rival take up their cause. The “crisis” stemmed from the failure to come up with any workable policy for formalising battery rickshaws (not to mention one acceptable to all stakeholders).

IV. SOME CAUSES OF THE “CRISIS”

Chaos in inherent in all compounded things.

—Buddha

A. Polycentrism

The battery rickshaw case study illustrates the polycentric nature of urban transport policy making.³¹ It involves a number of actors none of whom have the effective monopoly power over policy. Responsibilities are not clearly delineated and jurisdictions appear to overlap.

The Centre can amend the MVA to allow battery rickshaws to ply as non-motorised vehicles and subject them to relatively light regulation. This policy is justified by the view that battery rickshaws provide affordable

²⁹ *E-rickshaw Importers at Minister’s Door*, THE TIMES OF INDIA, 17-09-2014, <<http://timesofindia.indiatimes.com/city/delhi/E-rickshaw-importers-at-minister-door/articleshow/42672621.cms>>.

³⁰ Harding & Rojesh, *supra* note 19.

³¹ V. Vaidyanathan, R. A. King & Martin de Jong, *Understanding Urban Transportation in India as a Polycentric System*, 32(2) POLICY & SOCIETY 175 (2013).

transport and create employment for the urban poor. Formalisation and expansion of the sector will reduce poverty, an outcome which, for many voters, is the source of the government's legitimacy. Being perceived as the provider of livelihoods to a large and growing number of drivers (and their families) is also politically beneficial at both national and local levels. The Centre can attempt to influence the transport policies of the Delhi Government, but cannot make policies at the local level. With a BJP government at the Centre and in Delhi, party structures could be used to exert influence, but this was no longer possible following the landslide election of the Aam Aadmi Party (AAP) to power in Delhi in early 2015. However, whilst the AAP is not aligned with the BJP, both parties share a common policy on battery rickshaws. AAP leader, Arvind Kejriwal, had previously advocated for battery rickshaw drivers under President's Rule.³² Fortunately for the Centre, its views find little opposition in the Delhi Government itself (under the BJP or AAP) and its relevant administrative arms: the Transport Department and Traffic Police, both of which have some grasp of ground realities of the enormity of the task of removing battery rickshaws from the roads and the potential impacts on urban transport and livelihoods.

The main opposition to this enthusiastic embrace of the battery rickshaw comes from the judiciary, which has consistently questioned the legality of such a move and steadfastly upheld the ban with constant recourse to the law, the source of its legitimacy. It has even rapped the Delhi Government for its poor enforcement of the ban, which leaves the local state trapped between the Centre and the judiciary. The latter's position is powerful: it is able to enforce its view by supporting the ban, based on a petition by a single social activist, while dismissing a petition to the contrary by the Centre. However, its power is severely checked by the willingness and capacity of the Delhi Government to carry out its writ. Battery rickshaw unions and retailer-importer organisations represent further centres of influence, however, unlike intra-state relations, their membership, roles, responsibilities and connections are unknown. The influence of large scale manufacturers, importers and retailers on future policy in this area is hard to ascertain as any discussions with the state, as described by the Times of India,³³ are private. The emergence of these organisations and their close ties to the Centre also allowed other political groups, notably the AAP, to attempt to hijack the Centre's claim that its legitimacy with regards to policy making in this field is based on poverty alleviation. Claiming that vested interests are preventing a pro-poor policy enabled the AAP to make political capital by claiming to represent driver welfare. Both could be accused of playing 'vote bank' politics: appealing to drivers as a community with common interests in order to secure their support.

³² *Arvind Kejriwal Meets Lt. Gov Najeeb Jung Over E-rickshaw Issue*, THE ECONOMIC TIMES, 16-06-2014, <http://articles.economictimes.indiatimes.com/2014-06-16/news/50623679_1_lt-governor-najeeb-jung-arvind-kejriwal-aap-mlas>.

³³ *Supra* note 29.

The above gives rise to a situation similar to the one characterised in the opening section. For the media, the judiciary is the only body willing to throw the full weight of the law at the burgeoning battery rickshaw fleet whilst political bodies court the law breakers and administrators wash their hands off the situation. Whilst there are multiple centres, Partha Chatterjee’s³⁴ concepts of the ‘political society’ and ‘civil society’ may provide some analytical clarity by categorising these multiple centres in terms of the way in which each connects to the state.

Battery rickshaw drivers and driver unions fall on the ‘political’ side of the dichotomy. Their demands are usually based on communal welfare and security. They make these claims “not within a framework of stable constitutionally defined rights and laws, but rather through temporary contextual and unstable arrangements arrived at through direct political negotiation”.³⁵ They articulate their demands using agitations and complex local and national urban politics. Components of the ‘political society’ are constituted as communities by the state through the recognition of their common interest (i.e. in better welfare), which provides a useful leveraging point for winning communal support.

‘Civil society’, by contrast, describes the middle class and elite groups who base their claims on the concept of equal rights for all citizens as individuals. They avoid politics, which is seen as abandoning the equal rights principle in order to privilege the claims of certain communities in order to win their support. Instead, their interests are articulated through legal activism, namely, through petitions to the law courts, which are perceived as the last remaining arena of objective, non-political governance. The intervention of S. Khan and S. K. Srivastava could be seen as examples of this latter strand. The entanglement of both strands around a single policy issue, such as battery rickshaws, gives rise to a situation in which different actors make contrasting claims in divergent ways. Without a monopoly power, the result is an antagonistic struggle of claim and counterclaim, ruling, and counter ruling. However, whilst this multiplicity of actors gives rise to raucous debate and inertia, that is not to claim that assigning power to legislate on the matter to a single authority constitutes a viable alternative. Vesting authority in the courts would mean legislating on the issue using laws which were written prior to the development of the technology involved which would ultimately result in prohibition: another ‘anti-poor’ ruling, to use Bhan’s terminology³⁶ that would have implications for urban livelihoods. Similarly, side-lining the courts would place the

³⁴ PARTHA CHATTERJEE, *THE POLITICS OF THE GOVERNED: REFLECTIONS ON POPULAR POLITICS IN MOST OF THE WORLD* (2004).

³⁵ Partha Chatterjee, *Democracy and Economic Transformation in India*, 43(16) *ECON. & POL. WKLY.* 53 (2008).

³⁶ Bhan, *supra* note 14.

matter in the midst of a maelstrom of political interests which would not necessarily prioritise driver and public welfare.

In short, the battery rickshaw case study involves a number of actors, who justify their stances differently: the judiciary with reference to the law; the Centre and Delhi Government with poverty alleviation, challenged by political opponents; the Transport Department and Traffic Police with a combination of poverty alleviation and pragmatic concerns; and social activists with public safety and the law. The ‘political-civil society’ framework helps to clarify this confusion by focusing on actor-state connections. Overall, no single actor has monopoly power, despite the existence of established hierarchies (i.e. local and central government). This results in a situation in which no single ruling on the case is decisive - each is open to question, appeal, and simple non-compliance by other actors. Furthermore, the rulings themselves frequently stem from claims which are not based on sufficient empirical data.

B. “Paucity of Data”

At its simplest, there is no accurate data on the number of battery rickshaws in New Delhi. A Transport Department official admitted (under the condition of anonymity) that “at present, we do not even know how many electric rickshaws exist in Delhi”.³⁷ The figure of 100,000 is often quoted, but this is an estimate and not based on any official count. Nor can there be, as there is no systematic record of any data relating to battery rickshaws numbers, operator characteristics or vehicle performance in Delhi, aside from the small study by TERI University that sampled just 53 vehicles and was not made available for public scrutiny.

This lack of data means that claims relating to the vehicle are hard to substantiate. For example, the petition made by S. Khan argues that battery rickshaws are unsafe. It blamed the vehicles for two deaths and cited 137 cases of “rash driving” from police records.³⁸ However, without total numbers and operating data (from which to estimate trip numbers) the number of fatalities per passenger kilometer is unknown, which makes any claim about it being an unsafe vehicle or predominantly dangerously driven highly speculative. To the contrary, the nearest equivalent to the battery rickshaw is the auto rickshaw, which also acts predominantly as a relatively low-speed feeder service. The auto rickshaw has a significantly lower pedestrian and cyclist death rates

³⁷ Rahul Chhabra, *E-Rickshaws Free Run to End, New Policy Drafted*, DECCAN HERALD, 04-03-2014, <<http://www.deccanherald.com/content/390941/e-rickshaws039-free-run-end.html>>.

³⁸ Abhinav Garg, *Ban to Stay on ‘Prohibited’ E-rickshaws*, THE TIMES OF INDIA, 10-09-2014, <<http://timesofindia.indiatimes.com/city/delhi/Ban-to-stay-on-prohibited-e-rickshaws-in-Delhi/articleshow/42119860.cms>>.

per kilometer than cars and motorcycles.³⁹ Similar problems are associated with claims about the vehicle’s environmental benefits: little is known about the power sources used to recharge the batteries, the longevity of the vehicles, the durability of the batteries, and the arrangements for disposal of the lead acid.

This “paucity of data” characterises the Indian state’s relationship with the “informal” or “unorganised” sector,⁴⁰ typically small, often single person enterprises, which do not pay taxes or adhere to labour laws. Seen by the state as outside its ambit, little effort is made to collect data as a basis for policy making. As such, policies relating to “informal” or “unorganised” occupations tend to be archaic since without regular data collection there is little recognition of changing ground realities. As a consequence of the gap between *de jure* regulation and *de facto* everyday operations, “one should not assume a direct relationship between the letter for the law and how the law works in practice”⁴¹. This principle is illustrated in an article on New Delhi’s cycle rickshaw sector. Sood argues that the 1960 Cycle Rickshaw Bylaws, which governed the sector largely unmodified until 2012, were a “marvel of over regulation”, which created a “series of nearly insurmountable hurdles” for operators and “choked the sector it purported to regulate”.⁴² The Act capped the number of cycle rickshaws in New Delhi at 750 in 1960; 20,000 in 1975; 50,000 in 1995 and 99,000 in 1997. However, despite strict limits imposed by the High Court, there were around 600,000 in 2006. The local state was simply unwilling to police the cap by removing ‘illegal’ rickshaws from the streets. The ban on battery rickshaws has been similarly patchily enforced.

V. CONCLUDING THOUGHTS

This paper has argued that polycentrism and lack of data are major causes of the battery rickshaw “crisis” in New Delhi. The absence of a clear mechanism through which to make policy in this area combined with a dearth of accurate quantitative information on battery rickshaw operators, operations and technology gives rise to a chaotic situation in which multiple, often highly polemic claims are made to numerous sources of authority based on different logic, but contain precious little analytical rigour.

Relating to the policy making process, the “crisis” relates to the formalisation of an informal sector, however, the nature of the state’s response

³⁹ Akshay Mani et. al., Report for EMBARQ India, *Sustainable Urban Transport in India: The Role of the Auto Rickshaw Sector*, WORLD RESOURCES INSTITUTE, (2012), <http://www.wri.org/sites/default/files/pdf/sustainable_urban_transport_india.pdf>.

⁴⁰ Jan Breman, *India’s Social Question in a State of Denial*, 45(23) *ECON. & POL. WKLY.* 42 (2010).

⁴¹ Shapiro, *supra* note 10.

⁴² Ashima Sood, *A Future for Informal Services: The Cycle-Rickshaw Sector as a Case Study*, 47(42) *ECON. & POL. WKLY.* 95 (2012).

to the rise of the battery rickshaw could itself be called informal. Roy argues that when an object or profession cannot be tightly mapped onto existing regulations or the law, then “here the law itself is rendered open-ended and subject to multiple interpretations and interests”. In this context, the boundary between ‘legal’ and ‘illegal’ is constantly changing, as Ghertner⁴³ points out, most of New Delhi as informally constructed - without all the necessary planning permissions, but only certain parts are deemed ‘illegal’ (i.e. jhuggi clusters). The setting of this boundary is negotiable at all levels. It is without solid base in codified laws and regulations. In this sense it is informal. In the battery rickshaw case, it is negotiated at the local level through police apathy or payment-seeking and at the national level through the willingness of the Centre to exempt battery rickshaws from the possibility of inclusion under the ambit of long-standing government acts, mobilising what Roy calls “unmapping” - going against its own rules to create a state of exception. As the complex urban environment means existing, often archaic, laws seldom mesh tightly to new phenomena or developments, the state is free to create a new boundary between legality and illegality based on its interests and those of a multiplicity of actors, unbound by legal prescriptions. As such, Roy contends that informality is the norm in Indian urban planning; formal processes are mere “fleeting fictions”.

However, an informal policy making environment, as described by Roy, does not necessarily mean it is free of erratic decision making, just as adherence to formal laws does not necessarily deliver functional policies. Formal laws may be archaic and not accurately reflect ground realities, whilst the informal negotiating process, which forms the base of policy making, will most likely not make completely arbitrary decisions. Its task is to find a compromise between competing claims, an undertaking which still has use for accurate, systematically collected data. In cases like the battery rickshaw “crisis”, there is little that can be done about the polycentric nature of the policy making environment short of attempting to understand its constituent parts and their motives and interactions. Despite this, there is still ample opportunity to improve the functionality of policy making in this case by collecting, analysing, and disseminating data which may go some way towards improving on the current informational vacuum in which the veracity of claims from numerous competing actors cannot be weighed.

⁴³ Asher Ghertner, *Analysis of New Legal Discourse Behind Delhi's Slum Demolitions*, 43(20) ECON. & POL. WKLY. 57 (2008).