

PUBLIC WORKS DEPARTMENT

Government of Uttar Pradesh, India

UTTAR PRADESH STATE ROADS PROJECT Under IBRD Loan No. 4684-IN

Technical Assistance for Implementation of Institutional Reforms in the Road Sector of Uttar Pradesh

REPORT TO IMPLEMENT REVISED UP PWD MANUAL/ CODE AND OPERATING PROCEDURES, TAKING INTO ACCOUNT NEW UP ROADS LEGISLATION (FINAL)

Report No. 53

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TABLE OF CONTENTS

1.	BACKGROUND	1
2.	SALIENT FEATURES OF EXISTING LEGISLATIONS	3
2.1	U.P. STATE HIGHWAYS AUTHORITY ACT, 2004	3
2.2	THE UTTAR PRADESH ROADSIDE LAND CONTROL ACT, 1945	3
2.3	THE UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973	3
2.4	LAND ACQUISITION ACT, 1894	4
2.5	LA ON MUTUAL UNDERSTANDING, AS PER GO NO. 1718/1-13-2001-20(124)/2001- SA-13, DATED 29-9-2001	4
2.6	NATIONAL HIGHWAY AUTHORITY OF INDIA ACT, 1988	5
2.7	THE NATIONAL HIGHWAYS ACT, 1956	5
2.8	THE CENTRAL ROAD FUND ACT, 2000	5
2.9	THE CONTROL OF NATIONAL HIGHWAYS (LAND AND TRAFFIC) ACT, 2002	6
3.	REVIEW OF DRAFT LEGISLATION, U.P. ROADS (DEVELOPMENT, MANAGEMENT AND MAINTENANCE) ACT, 2008	7
4.	REVIEW THE EXISTING UP PWD MANUAL/CODE AND OPERATING PROCEDURES TO THE EXTENT THAT IT WOULD BE AFFECTED BY THE NEW DRAFT LEGISLATION AND REVISING THE SAME, WHEREVER REQUIRED, IN VIEW OF THE NEW DRAFT LEGISLATION	9
4.1	CONCLUSION	11
5.	FOCUS GROUP MEETING	12
6.	PRESENTATION TO PROJECT STEERING COMMITTEE	13

Glossary

ADB	Asian Development Bank	PMS	Pavement Management System
ADT	Average Daily Traffic	PSP	Private Sector Participation
AE	Assistant Engineer	PWD	Public Works Department
CE	Chief Engineer	RES	Rural Engineering Services
CEO	Chief Executive Officer	RIDF	Rural Infrastructure Development Fund
CRF	Central Road Fund	RMMS	Road Maintenance Management System
CRN	Core Road Network	SE	Superintending Engineer
DPR	Detailed Project Report	SH	State Highway
DRDA	District Rural Development Authority	SHA	State Highway Authority
EE	Executive Engineer	SPV	Special Purpose Vehicle
E-in-C	Engineer in Chief	SRF	State Road Fund
GO	Government Order	SRP-II	State Road Project-II
GOI	Government of India	TA	Technical Assistance
GoUP	Government of Uttar Pradesh	ToR	Terms of Reference
GSDP	Gross State Domestic Product	UP	Uttar Pradesh
HDM	Highway Design Model	UPRNN	Uttar Pradesh Rajkiya Nirman Nigam
HQ	Head Quarter	UPSBC	Uttar Pradesh State Bridge Corporation
HR	Human Resource	UPSRP	Uttar Pradesh State Road Project
IDS	Institutional Development Strategy	UPSHA	Uttar Pradesh State Highways Authority
IDSP	Institutional Development and Strengthening Plan	VOC	Vehicle Operating Cost
IRC	Indian Road Congress	VR	Village Roads
IT	Information Technology	WB	World Bank
ISAP	Institutional Strengthening Action Plan		
JE	Junior Engineer		
MDR	Major District Roads		
MLA	Member of Legislative Assembly		
MIS	Management Information System		
MOST	Ministry of Surface Transport		
MoSRTTH	Ministry of Shipping, Road Transport & Highways		
MoRTH	Ministry of Road Transport and Highways		
M&E	Monitoring and Evaluation		
MIS	Management Information System		
MMS	Maintenance Management System		
NABARD	National Bank of Agricultural and Rural Development		
NITHE	National Institute for Training of Highway Engineers		
NH	National Highway		
NHAI	National Highways Authority of India		
NREP	National Rural Employment Programme		
ODR	Other District Road		
OD	Origin and Destination		
O&M	Operation and Maintenance		
PCC	Project Coordinating Consultant		

1. BACKGROUND

This report in the TA follows Report No. 26 'Report to Submit Draft Legislation and Associated Recommendation to GoUP'. The Terms of Reference applicable to Report No. 53 of the TA Institutional Development and Strengthening Plan [IDSP] as approved by the GoUP is as under.

INSTITUTIONAL DEVELOPMENT AND STRENGTHENING PLAN [IDSP]¹

OBJECTIVE	DECISIONS ALREADY TAKEN	PROGRESS TO DATE	ACTION MILESTONES
2B. PWD operating rules and codes modernised	IDS Study concerns on PWD policies and rules noted by GOUP	GOUP agreement to necessary revision of PWD policies, rules and norms	1. Implement revised UP PWD Manual/Code and operating procedures, taking into account new UP roads management legislation - January 2005

This essentially translates the scope of the present report two fold:

- a) To review the existing UP PWD Manual/Code and operating procedures to the extent that it would be affected by the new draft legislation;
- b) To revise the same appropriately in terms of the new draft legislation being the U.P. Roads (Development, Management and Maintenance) Act, 2008.

The brief background to the TA is that the Tata Consulting Engineers (TCE) carried out a Policy Support and Institutional Development study in 2000-2002. The Government of Uttar Pradesh endorsed the recommendation in the above study, and included in the present contract with the TA Consultants for Institutional Development and Strengthening Plan (IDSP). As per the understanding of the Description of Services² Technical Assistance for Implementation of Institutional Reforms in State Road Sector of Uttar Pradesh, it was specifically stated that, *'the TA services will be expected to build directly on the achievements and outputs of the 2000/2001 Institutional Development Study'*³.

In the said Review Report of October 2000⁴ it was mentioned under Legal framework that 'roads as any other sector are governed by certain acts of legislation. These acts of legislation regulate and thus create the environment within which the sector players operate to deliver the services expected from them'⁵.

¹ Description of Services: Uttar Pradesh State Roads Project [UPSRP]; Technical Assistance for Implementation of Institutional Reforms in Road Sector of Uttar Pradesh; Institutional Development & Strengthening Plan [IDSP] – ANNEX II

² Appendix A

³ Internal page 4; paragraph 4.1 Description of Services Technical Assistance for Implementation of Institutional Reforms in State Road Sector of Uttar Pradesh

⁴ Report of TCE Consulting Engineers Ltd; TATA Consultancy Services; Sir Owen Williams Innovestment Ltd. – October 2000.

⁵ Chapter-2 Page 14 of 15; Review Report of October 2000

The TA requirement of a modernized U.P. Road Legislation after a comprehensive review of the existing and applicable Statutes, both Central and State, has been delivered in Report No.26.

The mandate of Report No. 26 was not only to draft a suitable legislation that would reflect the updated roads policies but would also essentially address issues with respect to development, management and maintenance of the roads for the State of Uttar Pradesh. Having achieved that the follow up on the same would be the corresponding updating of the UP PWD Manual/Code and operating procedures to the extent that it would be affected by the new draft legislation.

To appreciate whether or not, and to what extent, there is any requirement for updating of the UP PWD Manual/Code and operating procedures, a review of the new draft legislation being the U.P. Roads (Development, Management and Maintenance) Act, 2008 is in order.

For the purpose of appreciating the existing PWD Manual/Code and operating procedures in the light of the legislations already in operation, it is necessary to briefly recount the salient features of the existing Acts in operation, relating to the road sector, which have been reviewed in Report No.26. Therefore, this report would briefly dwell on the existing legislations applicable to the road sector to the State of Uttar Pradesh, before reviewing the new draft legislation, i.e., U.P. Roads (Development, Management and Maintenance) Act, 2008 and examining the changes/ amendments that would be required in the PWD Manual/Code and operating procedures to bring it updated with the new proposed law.

This report is in sections as described below:

Section 2: Brief recounting of the salient features of the existing legislations

Section 3: Review of the new draft legislation, i.e., U.P. Roads (Development, Management and Maintenance) Act, 2008

Section 4: Review the existing UP PWD Manual/Code and operating procedures to the extent that it would be affected by the new draft legislation and revising the same, wherever required, in view of the new draft legislation, i.e., U.P. Roads (Development, Management and Maintenance) Act, 2008.

2. SALIENT FEATURES OF EXISTING LEGISLATIONS

Legislations as applicable to the road sector for the State of Uttar Pradesh have been reviewed in detail in Report No.26. The purpose in this section is only to highlight the salient features of the existing Acts.

2.1 U.P. STATE HIGHWAYS AUTHORITY ACT, 2004

This Act purported to set up a State Highway Authority, which had been set up by the name of UPSHA for the purpose of development, maintenance and management of those State Highways that may be entrusted to it. This act was drafted on the lines of the National Highways Authority of India Act, 1988. The greatest drawback of this Act was the constitution of a top-heavy governing body in contrast to the lean organisation of the NHAI that exists in the Centre and whose success was sought to be emulated herein.

Certain functions of the Authority⁶ included the laying down of the standards for design and construction of state highways and developing methods of performance based maintenance systems for maintenance of the state highways by quality private contractors. In this context it is recorded that neither any standards for design and construction of state highways nor any methods of performance based maintenance systems have been developed. It is assumed, in the absence of the same, that the UP PWD Manual of Orders as it stands would be followed, as the standard for design and construction.

2.2 THE UTTAR PRADESH ROADSIDE LAND CONTROL ACT, 1945

The statute was enacted for the purpose of exercising control over the areas adjacent to main roads with the focus on regulating the use of land for brick-fields and kilns. This was necessitated, as declared by the Act, for two reasons, first that unregulated excavation would lead to the creation of breeding places for malaria carrying mosquitoes, and second that it would render future development of the land for building purposes impossible without expensive levelling operations. This Act gives a comprehensive definition of 'Road'.

Compulsory acquisition is also contemplated under this Act and for that even proceedings under Section 5A of the Land Acquisition Act, 1894 dealing with the hearing of objections would not be required.

2.3 THE UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973

This Act defines 'road' as an amenity though it is essentially an urban planning and development law and has a limited application to the road sector in the State. Development includes the construction of road and a development fee can be levied for the same.

⁶ Under Section 19

Under this Act the State Government can compulsorily acquire land for the purpose of development under the Land Acquisition Act, 1894 and by a proviso to Section 17 of this Act, can hold on to the land for a period of five (5) years from the date of acquisition before the same can be claimed by the erstwhile owner to be restored, if the same was not utilised within the said period. No such provision for restoration of the land on expiry of any period of time exists under the Land Acquisition Act, 1894.

The applicability of this Act to the Road sector is limited as recorded hereinabove.

2.4 LAND ACQUISITION ACT, 1894

This is by far one of the most important acts for the purpose of development projects as requirement for land is undeniable. There is a particular procedure for acquiring land under the Act. The first steps begin with the publication of preliminary notification u/s 4 (1) of the Act in the Official Gazette and two local newspapers having circulation in the area, at least one of which is required to be in the regional language. Thereafter the authorized officers are entitled to enter the land and mark boundaries etc. and to ascertain whether the land is actually fit to be acquired for the purpose of the proposed acquisition. Thereafter, any person interested in that land can file an objection in writing within 30 days under Section 5A (1) of the Act. After hearing the objection the Collector is required to prepare and present a report under Section 5A (2) to the Government along with the record of the proceedings held by him. The Government after considering the report of the Collector would take a further decision on the land, which would be required for the stated public purpose. The decision of the Government would be binding and final. Once the Government is satisfied regarding the requirement of the land it would issue a notification being a declaration of intended acquisition under Section 6(1) of the Act of 1894 in the Official Gazette intimating that the land would be required by the Government for public purpose. Thereafter the procedure relates to the payment of compensation to the persons concerned, after which the Government takes possession of the land free of all encumbrances.

2.5 LA ON MUTUAL UNDERSTANDING, AS PER GO NO. 1718/1-13-2001-20(124)/2001-SA-13, DATED 29-9-2001

The Government of the State of Uttar Pradesh issued an order dated September 29, 2001 in exercise of powers under Section 11 and Section 55 of the Land Acquisition Act, 1894 for the purpose of Acquisition of Land based on negotiations or mutual understanding with the land owners. Under sub-section (2) of Section 11 the Collector if satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. Essentially it translates into a consensual form of fixation of the price/compensation for their land and by this method further challenge before the courts for seeking enhanced compensation is obviated resulting in a smooth, swift and efficient acquisition of land required by the State.

2.6 NATIONAL HIGHWAY AUTHORITY OF INDIA ACT, 1988

The National Highways Authority of India was operationalised in February, 1995 being a creature of the National Highways Authority of India Act, 1988. It is entrusted with the responsibility to develop, maintain and manage the stretches of national highways vested in it by Notification in the Official Gazette.

Acquisition of land for the Authority has an element of compulsory acquisition under the provisions of the National Highways Act, 1956. It is specifically provided under Section 3J of the National Highways Act, 1956 that the provisions of the Land Acquisition Act, 1894 would not apply.

2.7 THE NATIONAL HIGHWAYS ACT, 1956

This Act provides for the declaration of certain highways to be national highways.

Government's power to acquire land for the purpose of building, maintenance, management or operation of a national highway is very clear. There is a complete procedure laid down for the acquisition of land for the said purpose and it is unequivocally stipulated therein that the provisions of the Land Acquisition Act, 1894 would not apply. Highways is defined in detail to include all lands appurtenant thereto, all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and all fences, trees, posts and boundary, furlong and mile stones of such highways or any land appurtenant to such highways.

2.8 THE CENTRAL ROAD FUND ACT, 2000

This is an Act for the purposes of levy and collection by way of cess, a duty of excise and duty of customs on motor spirit commonly known as petrol and high speed diesel oil. This money is used for the development and maintenance of national highways and improvement of safety at railway crossings. Presently the distribution of the revenues accruing to the fund are; 50 per cent of the cess on high-speed diesel is to be dedicated for the development of rural roads; remaining 50 per cent of the cess on high-speed diesel and the entire cess from petrol is to be distributed as follows:

- (i) 57.5 per cent for development and maintenance of national highways;
- (ii) 12.5 per cent for construction of bridges for road over/under railways and, the provision of safety measures at unmanned rail crossings;
- (iii) 30 per cent for the development and maintenance of State roads with 10 per cent of this amount being kept as a reserve for the implementation of road schemes that have interstate and/or economic importance.

The Road Fund though in existence since 1998 in the State of Uttar Pradesh, pursuant to the 1998 UP Road Development Policy, however, the same came to be officially established only in 2000 by way of a Notification.

2.9 THE CONTROL OF NATIONAL HIGHWAYS (LAND AND TRAFFIC) ACT, 2002

This Act applies only to the National Highways and provides for control of land, the right of way and traffic and also for removal of unauthorized occupation on the National Highways.

The purpose of this enactment is to keep the National Highways, clean, free of encroachment of any kind, ensure free and rapid movement of motorised traffic. It seeks to enforce the same by the Establishment of Highway Administrations that would have defined jurisdictional limits on the Highway.

There are penalty provisions for reoccupying highway land unauthorisedly after having been evicted once earlier, being punishment with imprisonment upto one year and/ or fine at the rate of one thousand rupees per square metre of occupied land, but which shall not exceed two times the cost of such highway land.

3. REVIEW OF DRAFT LEGISLATION, U.P. ROADS (DEVELOPMENT, MANAGEMENT AND MAINTENANCE) ACT, 2008

As per the requirement of the TOR, the U.P. Roads (Development, Management and Maintenance) Act, 2008 was drafted and the same forms part of Report No.26 as Annexure. The endeavour was to draft a holistic legislation for the road sector applicable to the State of Uttar Pradesh and the same is made amply clear by the Statement of Object and Reasons⁷.

The scheme of the Act contemplates the creation of the PWD Road Development Board⁸ comprising of the Engineer-in-Chief as Chairman, and all Chief Engineers of the PWD Zones as members⁹. The functions of the Board are all encompassing for a comprehensive development of the Road Sector in the State from construction to maintenance¹⁰.

⁷ "The Road Sector in the State of Uttar Pradesh is in need of immediate attention for an all round, appropriate and proper Development of the State. The Road sector has till date been largely developed by the State Public Works Department, and certain other departments of the Government, such as the Rural Engineering Services, Railway Department, Municipal Authorities, Forest & Irrigation Departments and other Local Development Authorities, apart from certain other bodies such as the Mandi Parishads, Cane Development Department, etc.

Although one of the primary functions of PWD is to develop, maintain and manage the state road network, but a lot remains to be desired in the context of clarity of road network jurisdictions with respect to construction and maintenance thereafter, especially in view of the other aforementioned agencies. Further there is a need to maintain certain standards of road construction and maintenance, which should be followed by all the agencies involved. There is also a felt need to create an umbrella organization, a nodal body that shall be informed of all road construction activity in the State as well as be equipped to ensure the compliance of the necessary standards of road construction and maintenance as applicable to the different categories of roads, all of which essentially translates into a need to ensure all road construction activity to be undertaken in an organized and institutional manner. This is especially relevant in the context of various sources of available funding for the construction of roads presently, such as, the Member of Parliament Local Area Development Fund (MPLAD Fund), the Member of Legislative Assembly Local Area Development Fund (MLALAD Fund), the Pradhan Mantri Gram Sadak Yojna (PMGSY) etc. Further in the context of increasing policy of private sector participation in infrastructure development with respect to roads, there is a felt need to ensure a methodology for selection of the private sector participant in a proper and transparent manner, which also this legislation seeks to address.

With coming into effect the Uttar Pradesh Road Development Policy 2008, there is a felt need for a new legislation focusing solely on the Roads sector, not only, for the aforementioned reason of an all round Development of the State but also to give effect to the Road Development Policy or any other Road Policy laid down by the Government by way of an appropriate legislation."

⁸ Chapter II ; Section 3 – Establishment of Board.

⁹ Section 5.

¹⁰ Section 13 - Functions of Board – The functions of the Board shall be as follows, namely:-

To actively promote and ensure development, maintenance and management of the state PWD road network;

To actively promote and ensure development, maintenance and management of any other road network of the State as may be entrusted to it by the State Government, from time to time;

To be responsible for the road projects from conceptualization to implementation and thereafter for maintenance and operation of any project irrespective of its cost;

To advise the State Government, or any the Government agency on matters of policy in respect of the development of the Road Sector in the State;

To lay down priorities of projects to be undertaken by the Board;

To assist in developing concepts of projects by undertaking pre-feasibility and feasibility studies of the project ;

To undertake such project as may be entrusted to it by the State Government ;

To perform such other functions as may be entrusted to it by the State Government;

To co-ordinate and monitor the projects undertaken in the State;

To consider the proposal(s) for undertaking any project on private sector participation format, after obtaining prior approval of the State Government;

To ensure construction compliance of road specifications to all agencies involved in road construction throughout the State of Uttar Pradesh;

To consider the proposed concession agreement submitted to it and to recommend with or without modifications or not recommend or return the proposal and proposed concession agreement for reconsideration of the State Government or the Government agency;

This Act envisages private sector participation in road projects¹¹, by varied nature of the concession agreement as specified under Schedule I therein. In fact, an entire chapter is dedicated towards the same, which spells out, amongst other, the procedure for concession agreement¹² and the method for selection of a person, either by competitive public bidding¹³, or by direct negotiation¹⁴. This chapter is also in consonance with the recent guidelines¹⁵ issued by the Department of Infrastructure Development, Government of Uttar Pradesh.

Financial accountability and transparency have been factored into the legislation¹⁶.

To elicit information relating to National and International Financial Institutions and to examine the feasibility of their participation;

¹¹ Chapter IV – Road projects by private sector participation.

¹² Section 18

¹³ Section 20

¹⁴ Section 21

¹⁵ 'Guidelines for Selection of Consultants / Advisors. Developers for PPP Projects & Private Partners for Disinvestments in Uttar Pradesh'.

¹⁶ Chapter V- Finance, Account, Audit and Annual Report. Sections 28 –30.

4. REVIEW THE EXISTING UP PWD MANUAL/CODE AND OPERATING PROCEDURES TO THE EXTENT THAT IT WOULD BE AFFECTED BY THE NEW DRAFT LEGISLATION AND REVISING THE SAME, WHEREVER REQUIRED, IN VIEW OF THE NEW DRAFT LEGISLATION

A review of the UP PWD Manual/Code and operating procedures indicates the manual to deal with perfunctory functions relating to the day to day activities of the PWD with respect to the establishment and organization. Under the same are found various requirements such as that of examinations for Assistant Engineers, which they have to pass so as to ensure that their increments are not withheld. There are various definitions, such as 'temporary establishment' and 'probationary permanent establishment' and how the two are not to be confused. Further on, the manual deals with postings and transfers, annual reports, casual leave, leave, medical certificates, punishments, general conduct, liveries warm clothing and blankets, memorials, retirement and death. There are rules pertaining to constitution of medical board for invalid persons, personal records, rules governing the relations of the PWD with local bodies and prohibition of officers of the PWD to render professional advice and assistance to any private person or bodies etc.

The general procedure begins by defining the powers and duties of the Chief Engineer, SE, Divisional Officer and other officers of the PWD. The manual deals with the minuteness of each contemplated action that may arise from the day to day functioning of the PWD, such as that duplicate keys of locks of cash chest shall be maintained and the procedure laid down....in the Financial handbook.....shall be followed in the matter of their custody¹⁷. The purpose of recounting these rules in somewhat detail is to demonstrate that the manual is what it is meant to be, that is, a sort of a blue book for the department for the purpose of its day to day functioning. While the legislation, quite obviously, holds another place altogether and the same are not comparable. But this is not to say that there are no areas of commonality between the manual and legislation, for there are such as Land Acquisition. Here also the manual very clearly stipulates that the Land Acquisition Act, 1894 has to be followed and dutifully records the procedure as laid down under the said Act in the Manual¹⁸.

¹⁷ UP PWD Manual of Orders, Volume I; Page 31 para 168

¹⁸ UP PWD Manual of Orders, Volume I; Page 44 para 233 to 234.

Further the manual lays down the manner of transfer of forest land to PWD, i.e., from government to government by an executive order where no formal notification is required¹⁹. Roadmaps are also required to be kept corrected and updated²⁰. Manner of keeping an eye for encroachments and the method to be adopted for the removal therein are also spelled out²¹.

It is noticed that the Public Works Department is the controlling authority for all provincial roads, road patries, pavements, stones and other materials thereof and also all drains, culverts, trees, erections, materials, implements and things existing on or appertaining to such roads and even though the same is passing through municipal areas, the Municipal board cannot make use of the property detailed without first obtaining the sanction of the Public Works Department as the same have been reserved under section 116 of the United Provinces Municipalities Act of 1916, to the authority controlling those roads and do not vest in the Municipal boards within the limits and jurisdiction of which they may be²².

The manual further lays down with respect to ferries, bridges and also law suits and the manner in which each are to be dealt with. Before parting with the review of the manual, two further points dealt with in the manual deserves attention. First, that detailed estimates are though not required to be prepared for detailed projects until the provision for its execution has been voted by the Legislature on the basis of a properly sanctioned Preliminary proposal. However, it is a requirement that the preliminary proposal should be framed with such care that when the detailed estimates are prepared they do not differ from them by more than plus or minus 5 per cent. Contingencies may be allowed at 10%²³, which essentially translates to mean that the

¹⁹ UP PWD Manual of Orders, Volume I; Page 45 para 240(a) - When land laying within the limits of reserved forest is required by this branch it is not necessary that a formal notification disforesting the land should be issued under section 24 of the Forest Act. An executive order of the local Government transferring the land from the Forest Department to the Public Works Department Buildings and Road Branch is sufficient.

²⁰ UP PWD Manual of Orders, Volume I; Page 46 para 244 - Road map, showing accurately the boundaries of all 1st and 2nd class roads in charge of the department, should be kept corrected upto date, in the divisional and sub-divisional officer. The divisional officers shall take care that their subordinates make themselves acquainted with the boundaries and see that they are respected.

²¹ UP PWD Manual of Orders, Volume I; Page 47 para 252-255 - The construction on Government land in charge of the Public Works Department of a building, well, or other structure (whether permanent or temporary) by a tenant or any other individual official or private, and whether for a public or private purpose, or the occupation or disturbance of the surface of the such land, except such as a tenant is entitled to effect, without the knowledge and consent of the Divisional Officer is to be considered an encroachment.

253. Divisional and sub-divisional officers when inspecting their road should be specially careful to notice promptly, any encroachments on the road boundaries. The need for watchfulness in this respect is all the greater as encroachments are almost invariably made very gradually (G.O. No. C- 23 B.R. dated May 2, 1880).

254. As soon as any encroachment is noticed, a report should immediately be sent by the Public Works officer to the Magistrate in whose district the encroachment has occurred; thereafter the responsibility of removing such encroachments will lie with the civil authorities; but if satisfactory action is not taken, the Public Works Department should continue to draw attention to the case. The divisional and sub-divisional officers should keep each other informed of encroachments noticed and of the action arising from them. In this connexion see Appendix 14.

255. The procedure to be followed in regard to the crection of buildings, etc. within municipal limits which amount to encroachments upon a public road under the control of the Public Works Department, will be found in Appendix 14.

²² UP PWD Manual of Orders, Volume I; Page 51 para 277(a) - All provincial roads, road patries, pavements, stones & other materials thereof and also all drains, culverts, trees, erections, materials, implements and things existing on or appertaining to such roads passing through municipal areas have been reserved under section 116 of the United Provinces Municipalities Act of 1916, to the authority controlling those roads and do not vest in the Municipal boards within the limits and jurisdiction of which they may be. The Public Works Department is, therefore, the controlling authority and Municipal board cannot make use of the property detailed without first obtaining the sanction of the Public Works Department.

²³ UP PWD Manual of Orders, Volume I; Page 71 para 342 - No detailed estimate need be prepared for a major work until the provision for its execution has been voted by the Legislature on the basis of a properly sanctioned Preliminary proposal. Such

preliminary proposal must be fairly accurate. Second, is with respect to the duty of the railways, which says that the Railway is bound to provide and afterwards maintain at its own cost all level-crossings, underbridges or overbridges required for the public convenience when a line of railway is first constructed²⁴. This somewhat contradicts the U.P. Road Development Policy, 2008, where in it is recorded that, '*as far as possible construction and improvement of roadsand railway overbridges (ROBs)....will be carried out under JNNURM*²⁵. This has led to further errors, where the spaces under the ROBs in urban areas have been declared under this new road policy to be used commercially²⁶ and the revenue to be generated to be shared with the railways²⁷, while the responsibility of the task remains with the Urban Development Department. This is contradictory to the UP PWD Manual of Orders, Volume I; Page 79 para 385 referred to hereinabove, by which it is clear that the area under the ROBs belongs to the Railways.

It is noticed that though the Manual had come in existence after the passing of the Government of India Act, 1919, the same has been updated and amended from time to time.

4.1 CONCLUSION

Keeping in view the action milestone in the Institutional Development and Strengthening Plan [IDSP] as approved by the GoUP which records as 'Implement revised UP PWD Manual/Code and operating procedures, taking into account new UP roads management legislation', it is well worth recording that though the manual deals with a lot of issues and instructs the manner of dealing with them, and many of the issues deal with topics which are common to the legislation as well such as land acquisition, encroachment, term of office etc., but they are working in a completely different sphere to the legislation. The manual operates at a sphere below the legislation. The draft legislation does not tinker with or alter any of the instructions as laid down in the UP PWD manual and therefore, there arises no occasion to revise the manual in terms of the new draft legislation.

preliminary proposal shall be framed with such care that when the detailed estimates are prepared they do not differ from them by more than plus or minus 5 per cent. Contingencies may be allowed at 10%.

²⁴ UP PWD Manual of Orders, Volume I; Page 79 para 385 - When a line of railway is first constructed the Railway is bound to provide and afterwards maintain at its own cost all level-crossings, underbridges or overbridges required for the public convenience. Where owing to the construction of a new line of railway it is found necessary to divert an existing road the entire original cost of realignment of road will be borne by the Railway. As regards future maintenance the obligation devolving on the Railway will be limited to the portion within its own boundaries (G.O. No. 409/V, 172B, dated September 21, 1883).

²⁵ Uttar Pradesh Road Development Policy 2008 – Chapter IV – Policy Statements – Paragraph 5.2 - As far as possible construction and improvement of roads and surface drainage works, including bypasses, ring roads and railway overbridges (ROBs) in Kanpur, Lucknow, Varanasi, Allahabad, Agra, Meerut and Mathura will be carried out under JNNURM.

²⁶ Uttar Pradesh Road Development Policy 2008 – Chapter IV – Policy Statements – Paragraph 5.5 - In urban areas, the spaces under the ROBs and flyovers will be utilized for commercial or green usage. Urban Development Department will be responsible for this task.

²⁷ Uttar Pradesh Road Development Policy 2008 – Chapter IV – Policy Statements – Paragraph 7.4 - The space under ROBs in urban areas will be put to usage as parking / green space and any revenues so generated will be shared with the Railways.

5. FOCUS GROUP MEETING

A meeting of Focus Group A was held on Tuesday 29th July 2008 to discuss Report No. 53 submitted as draft.

The said Report was discussed in detail for more than an hour. The Focus Group members agreed to the suggestions made in the Report.

6. PRESENTATION TO PROJECT STEERING COMMITTEE

Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

- Background
- Salient features of Existing Legislations
 - U.P. State Highways Authority Act, 2004
 - The Uttar Pradesh Roadside Land Control Act, 1945
 - The Uttar Pradesh Urban Planning and Development Act, 1973
 - Land Acquisition Act, 1894
 - La on Mutual Understanding, as per GO No. 1718/1-13-2001-20(124)/2001-sa -13, Dated 29-9-2001
 - National Highway Authority Of India Act, 1988
 - The National Highways Act, 1956
 - The Central Road Fund Act, 2000
 - The Control of National Highways (Land and Traffic) Act, 2002
- Review of Draft Legislation, U.P. Roads (Development, Management and Maintenance) Act, 2008
- Review the Existing UP PWD Manual/Code and Operating Procedures to the extent that it would be affected by the new draft legislation and revising the same, wherever required, in view of the new draft legislation
- Conclusion



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

BACKGROUND

- Follows Report No. 26 'Report to Submit Draft Legislation and Associated Recommendation to GoUP'.
- The Terms of Reference applicable to Report No. 53.



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

INSTITUTIONAL DEVELOPMENT AND STRENGTHENING PLAN [IDSP]

OBJECTIVE	DECISIONS ALREADY TAKEN	PROGRESS TO DATE	ACTION MILESTONES
2B. PWD operating rules and codes modernised	IDS Study concerns on PWD policies and rules noted by GOUP	GOUP agreement to necessary revision of PWD policies, rules and norms	1. Implement revised UP PWD Manual/Code and operating procedures, taking into account new UP roads management legislation - January 2005



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

SCOPE OF THE PRESENT REPORT

- Review existing UP PWD Manual/Code and operating procedures
- Examine the extent that it would be affected by the new draft legislation
- Revise the UP PWD Manual/Code
- Bring it in harmony with the new draft legislation.

(The U.P. Roads (Development, Management and Maintenance) Act, 2008)



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

SALIENT FEATURES OF EXISTING LEGISLATIONS

- Legislations as applicable to the road sector for the State of Uttar Pradesh
- Highlight only the salient features of the existing Acts.



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

U.P. STATE HIGHWAYS AUTHORITY ACT, 2004

- Act to set up a State Highway Authority - UPSHA
- Purpose - Development, Maintenance and Management of State Highways
- Fashioned on the lines of the National Highways Authority of India Act, 1988
- Greatest drawback of this Act is a top-heavy governing body
- NHAI in contrast is a lean organisation
- Functions of the Authority include
 - Laying down standards for design and construction of state highways
 - Developing methods of performance based maintenance systems



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

THE UTTAR PRADESH ROADSIDE LAND CONTROL ACT, 1945

- Statute enacted to exercise control over the areas adjacent to main roads
- Focus is on regulating the use of land for brick-fields and kilns
- Necessity of the Act are for two reasons
 - Unregulated excavation leads to the creation of breeding places for malaria carrying mosquitoes
 - Unregulated excavation would render future development of the land for building purposes impossible without expensive levelling operations
 - Compulsory acquisition is contemplated under this Act
 - Even proceedings under Section 5A of the Land Acquisition Act, 1894 dealing with the hearing of objections would not be required



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

THE UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973

Defines 'road' as an amenity

- Essentially an urban planning and development law
- Has limited application to the road sector
- Development includes the construction of road
- Development fee can be levied for the same
- State Government can compulsorily acquire land
- Land Acquisition Act, 1894 applies
- State Government can hold onto land for five years before restoration (Proviso to Section 17 applies in case land not used)
- No such provision for restoration of the land exists under the Land Acquisition Act, 1894
- Limited applicability to the Road sector



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

LAND ACQUISITION ACT, 1894

- One of the most important acts for development projects
- Requirement for land is undeniable
- Laid down procedure for acquiring land
- First step being the publication of preliminary notification u/s 4 (1)
- Thereafter filing of objections within 30 days under Section 5A (1)
- Hearing of objections by the Collector
- Preparation of a report to the Government under Section 5A (2)
- Government issues a notification under Section 6(1)
- Procedure relating to the payment of compensation
- Government takes possession of the land free of all encumbrances



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

LA ON MUTUAL UNDERSTANDING, AS PER GO NO. 1718/1-13-2001 20(124)/2001-SA-13, DATED 29-9-2001

- Government an order dated September 29, 2001
- Issued in exercise of powers under Section 11 and Section 55 of the Land Acquisition Act, 1894
- Purpose being Acquisition of Land based on negotiations with the land owners
- Consensual form of fixation of the price/ compensation for the acquired land
- This method obviates further challenge for enhanced compensation
- Result is a smooth, swift and efficient acquisition of land required by the State
- Award by Collector Under sub-section (2) of Section 11



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

NATIONAL HIGHWAY AUTHORITY OF INDIA ACT, 1988

- National Highways Authority of India was operationalised in February, 1995
- Creature of the National Highways Authority of India Act, 1988
- Entrusted to develop, maintain and manage stretches of national highways
- Stretches of NH vested in it by Notification in the Official Gazette
- Compulsory acquisition of land under the National Highways Act, 1956
- Non-applicability of Land Acquisition Act, 1894 (Section 3J)



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

THE NATIONAL HIGHWAYS ACT, 1956

- Provides for declaration of certain highways to be national highways
- Government has power to acquire land for the purpose of building, maintenance, management or operation of a national highway
- Complete procedure laid down for the acquisition of land
- Unequivocally stipulated that provisions of the Land Acquisition Act, 1894 would not apply
- Highways defined to include
 - All lands appurtenant thereto
 - All bridges, culverts, tunnels, causeways, carriageways and other structures
 - All fences, trees, posts and boundary, furlong and mile stones



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

THE CENTRAL ROAD FUND ACT, 2000

- Act for levy and collection of cess, a duty of excise and duty of customs on motor spirit commonly known as petrol and high speed diesel oil
- Money is used for
 - Development and maintenance of national highways
 - Improvement of safety at railway crossings
- Present distribution of revenues as follows
 - 50 per cent of the cess on HSD for development of rural roads
 - Remaining 50 per cent and the entire cess from petrol is to be distributed as follows
 - ✓ 57.5 per cent for development and maintenance of national highways
 - ✓ 12.5 per cent for construction of bridges for road over/under railways and provision of safety measures at unmanned rail crossings
 - ✓ 30 per cent for the development and maintenance of State roads
(10 per cent of this amount being kept as a reserve for the implementation of road schemes that have interstate and/or economic importance)



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

THE CONTROL OF NATIONAL HIGHWAYS (LAND AND TRAFFIC) ACT, 2002

- Applies only to National Highways
- Provides for
 - Control of land
 - The right of way and traffic
 - For removal of unauthorized occupation on NH
- Purpose of the enactment
 - To keep NH clean & free of encroachment
 - Ensure free and rapid movement of motorised traffic
- Enforcement by the Establishment of Highway Administrations
- Penalty provisions include
 - Imprisonment upto one year
 - And/ or fine at the rate of one thousand rupees per square metre of occupied land, but which shall not exceed two times the cost of such highway land.



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

REVIEW OF DRAFT LEGISLATION, U.P. ROADS (DEVELOPMENT, MANAGEMENT AND MAINTENANCE) ACT, 2008

- Drafted as per the requirement of the TOR
- The U.P. Roads (Development, Management and Maintenance) Act, 2008
- A holistic legislation for the road sector for the State of U.P.
- Creation of the PWD Road Development Board
- Board comprises of
 - The Engineer-in-Chief as Chairman
 - All Chief Engineers of the PWD Zones as members
- Functions of the Board all encompassing for a comprehensive development of the Road Sector in the State from construction to maintenance



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

REVIEW OF DRAFT LEGISLATION, U.P. ROADS (DEVELOPMENT, MANAGEMENT AND MAINTENANCE) ACT, 2008 (Contd..)

- Act envisages private sector participation in road projects
- Varied nature of the concession agreement as specified under Schedule I
- Spells out the procedure for concession agreement
- The method for selection of a person
 - Either by competitive public bidding or
 - By direct negotiation
- In consonance with the recent guidelines on PPP
(Issued by the Dept. of Infrastructure Development Government of U. P.)
- Financial accountability and transparency factored in the legislation.



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

REVIEW THE EXISTING UP PWD MANUAL/CODE AND OPERATING PROCEDURES TO THE EXTENT THAT IT WOULD BE AFFECTED BY THE NEW DRAFT LEGISLATION AND REVISING THE SAME, WHEREVER REQUIRED, IN VIEW OF THE NEW DRAFT LEGISLATION

- Review of UP PWD Manual/Code and operating procedures
- Indicates the manual to deal with perfunctory functions
- Relates to the day to day activities of the PWD
- Relates with respect to the establishment and organization
- Such as
 - Examinations for Assistant Engineers to get their increments
 - Deals with postings and transfers
 - Annual reports
 - Casual leave, leave, medical certificates
 - Punishments, general conduct, liveries warm clothing and blankets
 - Memorials, retirement and death etc.



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

REVIEW THE EXISTING UP PWD (Contd...)

- Legislation holds another place
- Not comparable to the Manual
- Areas of commonality are such as Land Acquisition
- Manual clearly stipulates the Land Acquisition Act, 1894 to be followed
- And dutifully records the procedure as laid down under the Act in the Manual



Report No. 53 : Report to implement revised UP PWD Manual / Code and Operating Procedures, Taking into Account New UP Roads Legislation

CONCLUSION

- Though the manual deals with a lot of issues
- Instructs the manner of dealing with them
- Many issues deal with topics common to the legislation such as
 - Land acquisition
 - Encroachment
 - Term of office etc.
- They operate in a completely different sphere to the legislation
- The manual operates at a sphere below the legislation
- The draft legislation does not tinker with or alter any of the instructions as laid down in the UP PWD manual
- There arises no occasion to revise the manual in terms of the new draft legislation

