ROAD SAFETY COUNCIL ACT, 2018

(Act No. V of 2018)

THE JAMMU AND KASHMIR STATE ROAD SAFETY COUNCIL ACT, 2018

(Act No. V of 2018)

CONTENTS

SECTION.

CHAPTER I

Preliminary

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

Constitution of the State Road Safety Council

3. Constitution of the Sate Road Safety Council.
4. Lead Agency.

CHAPTER III

Conduct of Business

5. Meetings.
6. Disposal of business.
7. Vacancies not to invalidate the proceedings of the Council.
8. Road Safety Commissioner.
9. Levy and collection of cess.
10. Establishment of the Fund.
11. Vesting and administration of the Fund.

SECTION.

12. Utilization of the Fund.
13. Removal of causes of accidents.
14. Power to order works.
15. Power to recover cost.
16. Amounts recoverable as arrear of land revenue.
17. Delegation of powers.
18. District Road Safety Committee.
18. District Road Safety Committee.
19. Staff.
20. Expenses.
21 Accounts.
22. Annual report.
23. Audit.

CHAPTER V

Punishment and Penalty

24. Punishment.
25. Compounding of offences.
26. Offences by the Companies

SECTION.

CHAPTER VI

Appeal, Revision and Review

27. Appeal.
28. Revision.

CHAPTER VII

Miscellaneous

SECTION.

31. Cognizance of offences.
32. Bar of jurisdiction of Civil Courts.
33. Power to give directions.
34. Power to make rules.
35. Regulations.

29. Members and employees of the Council to be the public servants.
30. Protection of action taken in good faith.
36. Power to remove difficulties.
37. Repeal and savings.

STATE ROAD SAFETY COUNCIL ACT, 2018 5

THE JAMMU AND KASHMIR STATE ROAD SAFETY COUNCIL, ACT, 2018

(Act No. V of 2018)

[Received the assent of the Governor on 21st February, 2018 and published in the Government Gazette dated 21st February, 2018.]

An Act to provide for the constitution of a State Road Safety Council and establishment of a Road Safety Fund for implementation of road safety programmes in the State and for matters connected therewith and incidental thereto.

Be it enacted by the State Legislature in the Sixty-ninth Year of the Republic of India as follows :—

CHAPTER I

Preliminary

1.*Short title, extent and commencement*. —(1) This Act may be called the Jammu and Kashmir Road Safety Council Act, 2018.

2. *Definitions.* —(1) In this Act, unless the context otherwise requires,—

(a) **"Act"** means the Jammu and Kashmir Road Safety Council Act, 2018 ;

(b) **"Accident"** means any incident wherein, on account of the use of a motor vehicle on a public road, death, bodily injury or damage is caused to any public property, other vehicle, or person, as the case may be ;

(c) **"Cess"** means the cess levied under Section 9 of this Act ;

(d) **"Chairman"** means the Chairman/Chairperson of the Council, or District Road Safety Committee, as the case may be ;

(e) **"Council"** means the State Road Safety Council constituted under section 3 of this Act ;

6 STATE ROAD SAFETY COUNCIL ACT, 2018

(f) **"District"** means a revenue district ;

(g) **"District Road Safety Committee"** means the District Road Safety Committee constituted under section 18 of this Act ;

(h) **"Fund"** means the Road Safety Fund established under section 10 of this Act ;

(i) **"Government"** means the Government of Jammu and Kashmir ;

(j) **"Lead Agency"** means the Secretariat of State Road Safety Council constituted under section 4 of this Act ;

(k) **"Local Authority"** means a Panchayat constituted under the Jammu and Kashmir Panchayat Raj Act, 1989 or a Municipality constituted under the Jammu and Kashmir Municipal Act, 2000 and the Jammu and Kashmir Municipal Corporation Act, 2000, as the case may be ;

(l) **"Prescribed"** means prescribed by rules made under this Act ;

(m) **"Public road"** means a road, street, ways or other place, whether a thoroughfare or not, which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage ;

(n) **"Vehicle"** means any mechanically propelled vehicle adopted for use upon road whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer ; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 4 [twenty-five cubic centimeters], being used for the carriage or movement of human beings, animal or goods.

(2) Words and expressions used but not defined in the Act shall have the meaning respectively assigned to them in the Motor Vehicle Act, 1988 (Central Act 59 of 1988) or the rules made thereunder and the Jammu and Kashmir Motor Vehicles Taxation Act, (Samvat) 1957 and the Jammu and Kashmir Motor Vehicles Rules, 1991.

CHAPTER II

Constitution of the State Road Safety Council

3. *Constitution of the Sate Road Safety Council.* —(1) The Government shall, by notification in the Government Gazette, constitute a Council to be known as, "The Jammu and Kashmir State Road Safety Council", comprising of Chairman, who shall be Incharge Minster of Transport Department, Chief Secretary of the State as Vice-Chairman and such other members as may be notified by the Government.

(2) The Council shall be a body corporate by the name of "The Jammu and Kashmir State Road Safety Council", and shall have perpetual succession and a common seal, with powers to acquire, hold and dispose of property, subject to the laws relating to immovable property in the State and to contract and may sue and be sued in its name.

(3) The Council shall exercise such powers and perform such functions, as may be prescribed by the Government in this behalf from time to time.

(4) Without prejudice to generality of the foregoing provision, the Council shall have following functions, namely :—

(a) advise the Government on road safety policies ;

(b) prescribe and enforce road safety standards and procedures, formulate and implement schemes, projects and programmes, relating to road safety ;

(c) co-ordinate the functions of all the agencies and Government Departments discharging the duties relating to road safety ;

(d) conduct the road safety awareness programmes ;

(e) management of the Road Safety Fund ;

(f) allocation of expenditure for implementation of road safety schemes and programmes ;

(g) allocation of expenditure for road safety projects and for purchase and installation of equipments and devices connected with road safety ;

(h) allocation of expenditure for the conduct of studies, projects and research on matters relating to road safety ;

(i) allocation of expenditure for trauma-care programmes or activities ;

(j) allocation of administrative expenditure of the Council ;

(k) allocation of expenditure on matters connected with road safety measures ;

(l) formulation of self help groups, under the supervision and control of the Council for the rescue operation on the place of accidents ; and

(m) any other matter which the Council may consider necessary.

4. *Lead Agency.* —(1) There shall be a Lead Agency, which shall be headed by an officer not below the rank of Additional Commissioner, Transport/Special Secretary and such other members as may be notified by the Government.

(2) The Lead Agency shall be the implementing agency for implementation of the decisions of the State Road Safety Council.

(3) The functions of the Lead Agency shall be as follows :—

(i) to work as a Secretariat for the State Road Safety Council, arrange meetings of the Council, issue its minutes and monitor the implementation of the decisions of the Council by the concerned departments of the State ;

(ii) to co-ordinate with the concerned departments of the State Government to ensure implementation of the directions issued from time to time by Supreme Court Committee on Road Safety and furnish Compliance Report in a time bound manner ;

(iii)to ensure implementation of the directions given by the Central Government ;

(iv) to notify annual targets for reduction of accidents and fatalities as fixed by the State and draw up an Annual Action Plan to achieve the targets and monitor its implementation.

(v) to collate on a regular basis data on road accidents and analyze the data to identify areas/road stretches and categories of accident victims who should be focused upon ;

(vi) to manage the Road Safety Fund and ensure that the Fund is effectively utilized.

(4) The Lead Agency shall also exercise such powers and perform such functions of the Council as may be delegated to it by the State Road Safety Council.

CHAPTER III

Conduct of Business

5. *Meetings.* —(1)The Council and the District Road Safety Committees shall meet at such time and place as may be decided by the Chairman of the Councilor District Road Safety Committee, as the case may be. The Council and the District Road Safety Committee shall conduct its business in such a manner and in accordance with such procedure as may be determined by the regulations with the approval of the Government. Every meeting of the Council shall be presided over by the Chairman or in case of his absence the Vice-Chairman or senior-most member of the Council.

(2) The Council shall meet at least once in six months.

(3) The quorum for a meeting of the Council shall be the two-third of the total strength of the Council.

(4) The District Road Safety Committee shall meet at least once in three months.

6. *Disposal of business.*— Every matter to be decided by the Council or the Lead Agency shall be considered and disposed of at the meetings of the Council or the Lead Agency as the case may be, in accordance with the decision of the majority of the members present.

7. *Vacancies not to invalidate the proceedings of the Council.*— No act or proceedings of the Council shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Council.

8. *Road Safety Commissioner.*— The Transport Commissioner (Member-Secretary of the Council), shall be the *ex-officio* Road Safety Commissioner for the purpose of this Act.

9. *Levy and collection of cess.* —(1) There shall be levied and collected for the purposes of the Act, a cess on vehicles used or kept for use in the State, at the rate and manner specified for the vehicle, by the Government from time to time :

Provided that no such cess shall be levied on a vehicle kept by dealer or manufacturer for the purpose of trade :

Provided further that if the Government is of the opinion that it is necessary in the public interest, it may by notification in the Government Gazette, exempt any vehicle or any class of vehicle from the cess payable under this Act.

(2) Every cess leviable under sub-section (1) shall be payable by the registered owner or any person having possession or control of the motor vehicle, as the case may be.

(3) Subject to the provisions of the Jammu and Kashmir Motor Vehicles Taxation Act, 1957, the cess leviable under sub-section (1) shall be collected by any other officer as may be authorized by the Government in this behalf or in such manner and at such time as may be prescribed by the Government from time to time.

(4) Where any person who is liable to pay the cess in respect of a motor vehicle fails to pay the cess within the prescribed time, such person shall for the default of each year, in addition to the cess, pay an amount of penalty equal to 10% of the cess due at the time of making the payment.

10. *Establishment of the Fund.* —(1) After the constitution of the Council, there shall be established a Fund to be called the "The Jammu and Kashmir Road Safety Fund" which shall be non-lapsable. There shall be credited to the Fund—

(a) Grant-in-aid from the State Government ;

(b) Grants/loans/advances from the Central Government ;

(c) Contribution from public/private institutions or voluntary organizations ;

(d) Special cess collected from all types of motor vehicles.

(2) Finance Committee shall be constituted which shall scrutinize and recommend budget proposal for the approval of the Road Safety Council.

STATE ROAD SAFETY COUNCIL ACT, 2018 11

(3) The Government may make the rules for management of the Fund and for the procedure to be followed in respect of payment of money into the said Fund, withdrawal of money therefrom, the custody of money therein and any other matter incidental thereto or connected therewith.

(4) The Fund shall be maintained in such manner as may be prescribed.

11. *Vesting and administration of the Fund.* —(1) The Fund shall vest in and be administered by the Council constituted under section 3.

(2) The Council shall administer the Fund vested in it in such manner as may be prescribed.

(3) All amounts forming part of the Fund shall be deposited in the manner as decided by the Council or prescribed by the Government and shall be operated as decided by the Council or as prescribed by the Government.

12. *Utilization of the Fund.*— The Fund shall be utilized for all or any of the following purposes, namely :—

(a) road safety programmes ;

(b) awareness programmes in respect of road safety ;

(c) funding of approved studies on projects and research regarding road safety ;

(d) trauma-care programmes and related activities ;

(e) administrative expenses of the Council ;

(f) expenditure on matters connected with road safety, correction of black spots and as the Council may deem fit ; and

(g) any other purpose as may be prescribed/notified by the Government.

13. *Removal of causes of accidents.* —(1) Notwithstanding anything contained in any other law for the time being in force, the Council shall have the powers to pass

an order for removal of causes of accidents where the Council is satisfied on a complaint or a report made by any person or otherwise that,—

(a) the act of any person or persons on a public road ; or

(b) the placement or positioning of any vehicle, animal, object built without the approval of any recognized administrative council, structure or materials including arches, banners, display boards, hoardings, awnings, tents, pandals, poles, platforms, rostrums, statues, monuments and other structures on a public road ; or

(c) the movement of animals or vehicles on a public road ; or

(d) the conditions of any tree, structure or building situated in the vicinity of a public road ; or

(e) the entry or exit of any building or premise in the vicinity of a public road ; is likely to cause accidents or obstructions to the free flow of traffic or distract the attention or obstruct the vision of the driver of any vehicle. The Council may direct the Road Safety Commissioner to direct the person concerned by a reasoned general or special order, to take such measures as it consider necessary within such period as it may deem fit and proper in the circumstances of the case and such person shall be bound to comply with the direction within such time, as may be specified by the Council.

(2) Notwithstanding anything contained in sub-section (1), in case of urgency, the Road Safety Commissioner may take himself such action, as may be necessary, to prevent accident or obstruction, as the case may be, and recover the cost thereof from the person responsible, in such manner as may be prescribed.

14. *Power to order works.* —(1) Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Council to order any work or improvement on a public road, as it considers necessary, to secure safety on such roads and the concerned department or the local Authority or any other Authority or any other Agency and Corporation shall be bound to carry out such works or improvement within such time, as may be specified by the Council :

Provided that no order under this sub-section shall be issued in respect of any highway except with the prior notice/consultation of the National Highway Authority of the respective area appointed under the National Highway Authority Act.

(2) It shall be the duty of every officer of the Government, Local Authority or any other Authorityto act in aid of the Council in enforcing the orders under sub-section (1).

15. *Power to recover cost.*— If any person on whom a written order is served under sub-section (1) of section 13, refuses or fails to comply with the order, the Council may take such action as to prevent danger and ensure safety to the public and may recover the cost with legitimate interest thereof from such person.

16. *Amounts recoverable as arrear of land revenue.*— Any amount recoverable under this Act shall, without prejudice to any other mode of recovery, shall be recoverable as an arrear of land revenue in the same manner, as provided under the Jammu and Kashmir Land Revenue Act, 1996.

17. *Delegation of powers.*— The Council may, with the previous approval of the Government by general or special order, and subject to such conditions which it may think necessary delegate to the Lead Agency, Road Safety Commissioner or the District Road Safety Committee such of its powers and functions, as it may consider necessary, for the effective implementation of the road safety programme.

18. *District Road Safety Committee.* —(1) The Government may, by notification in the Government Gazette, constitute for each district a committee to be called “the District Road Safety Committee”.

(2) Every District Road Safety Committee shall consist of not more nine members or any other member as may be nominated by the Government.

(3) The District Road Safety Committee shall exercise such powers and perform such functions, as the Council may specify, from time to time.

19. *Staff.* —(1) The Council may, with prior approval of the Government, appoint such officers and staff as it deems necessary for the discharge of its functions under this Act.

(2) The designation, method of appointment and other conditions of service of the staff shall be such, as may be prescribed.

20. *Expenses.*— All expenses of administration of the Fund including the salary and allowances of the staff and other employees shall be met from the Fund.

21. *Accounts.*— The accounts of the Fund shall be maintained by the Transport Department in such manner, as may be prescribed.

22. *Annual report.* —(1) The Council shall during each financial year, prepare in such form and at such time, as may be prescribed, an annual

report giving a complete account of its activities of the previous year and submit such report to the Government.

(2) The Government shall lay such report before the State Legislature, as soon as may be, after the receipt of the same.

23. *Audit.* —(1)The accounts of the Council shall be audited by the Accountant General.

(2) The Council may carry out internal audit of the accounts every year by such officer as it thinks fit.

(3) The accounts of the Council, as certified by the auditor, together with the audit report thereon shall be submitted to the Government alongwith the remarks thereon of the Council and the Government shall lay the same before the State Legislature.

(4) The Council shall take such corrective steps as may be ordered by the Government on the basis of the report.

CHAPTER V

Punishment and Penalty

24. *Punishment.* —(1) Whoever refuses or fails to comply with any order of the Council or the Road Safety Commissioner or any District Road Safety Committee under this Act, shall be punishable with imprisonment for a term of six months or with fine which may extend to Five Thousand Rupees or with both. In the case of continuing offence, a fine of rupees one thousand shall be imposed for each day for which the offence continues.

(2) Whosoever, obstructs the State Road Safety Council, the Road Safety Commissioner, District Road Safety Committee or any officer of the Council or of the District Road Safety Committee or any person employed or engaged while discharging of the functions under this Act, shall be punishable with imprisonment for a term of maximum three years or with fine which may extend to rupees five thousand or with both.

25. *Compounding of offences.*— Any offences punishable under section 24 may, either before or after the institution of prosecution, shall be compounded by such officers or authorities and for such amount as the Government may, by notification in the Gazette, specify in this behalf.

26. *Offences by the Companies.*— Where an offence punishable under this Act has been committed at any time by a company, every person who at the time the offence has committed, was in-charge of, and was responsible to company for the conduct of its business shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that where any offence under this Act has been committed by a company and it is proved that the commission of the offence is with the consent or connivance or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :— For the purpose of this section—

(a) "company" means anybody corporate and includes a firm or other association of individuals ; and

(b) "Director" in relation to a firm means the partner in the firm.

CHAPTER VI

Appeal, Revision and Review

27. *Appeal.* —(1) Any person aggrieved by an order passed by any authority under this Act may within a period of thirty days from the date on which the decision was communicated to him, prefer an appeal before the Appellate Authority as may be appointed by the Government who shall be a person holding the post not below the rank of District Judge or has held the post as such :

Provided that the Appellate Authority may entertain the appeal after the expiry of said period of thirty days but not later than sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) After the receipt of any appeal under sub-section (1), the Appellate Authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

28. *Revision.*— The Government may at any time, either on its own motion or on application made to it by the aggrieved person, call for the records of any proceeding under this Act which is pending before, or has

been disposed off by an officer or an authority under the Act, for the purpose of satisfying himself as to the legality of the order passed in the said proceeding and may pass such order in relation thereto as thinks fit and proper, after giving an opportunity of being heard to the concerned.

CHAPTER VII

Miscellaneous

29. *Members and employees of the Council to be the public servants.*—All members and employees of the Council while acting or purporting to act under the provisions of this Act or any rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code, Samvat 1989.

30. *Protection of action taken in good faith.*— No suit, prosecution or other legal proceedings shall lie against the Council or any member or any employees of the Council thereof for anything, which is done in good faith or purported to be done in pursuance of this Act or the rules or regulations made thereunder.

31. *Cognizance of offences.*— No court shall take cognizance of any offence punishable under this Act except on a report in writing constituting the facts of such offence, submitted with the prior permission of the Road Safety Commissioner.

32. *Bar of jurisdiction of Civil Courts.*— Save as otherwise expressly provided in this Act, no Civil Court shall entertain any suit or any other proceeding to set aside or modify or question the validity of any order or decision made or passed by any officer or authority under this Act or any rules made thereunder, or in respect of any other matters falling within its scope.

33. *Power to give directions.*— For purpose of giving effect to the provisions of this Act, it shall be competent for the Government to issue such directions, as it may deem fit to any authority or officer or person under this Act, in the matter of policy.

34. *Power to make rules.* —(1) The Government may, by notification in the Government Gazette, make rules for the purpose of carrying out all or any provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) constitution of State Road Safety Council under section 3 ;

(b) functions to be performed by the State Road Safety Council under section 3 ;

(c) constitution of Lead Agency acts as Secretariat of State Road Safety Council under section 4 ;

(d) the manner and time for collection of cess under section 9 ;

(e) the manner in which the Fund shall be administered and utilized by the Council and Lead Agency under section 11 and section 12 ;

(f) powers with regard to the removal of cause of accident under section 13 ;

(g) the matter relating to the delegation of powers under section 17 ;

(h) constitution and function of the District Road Safety Committees under section 18 ;

(i) the designation, method of appointment and other conditions of service of the officers and staff of the Council under section 19 ;

(j) the manner in which the accounts of the Fund to be maintained under section 21 ;

(k) the form and time for preparation of annual report under section 20 ;

(l) the matter relating to the compounding of offences under section 25 ; and

(m) any other matter which is required to be, or may be, prescribed.

(3) Every rules made under this Act shall, immediately after it is made, be laid before the Legislative Assembly of the State if it is in the session and if is not in session, in the session immediately following, for a total period of 14 days (fourteen days) which may be comprised of one session, or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled as the case may be, so however, that any such modification or

annulment shall be without prejudice to the validity of anything previously done under that rule.

35. *Regulations.* —(1) The Council shall have powers, subject to the provisions of this Act and rules made thereunder, to make regulations and bye-laws with the prior approval of the Government in respect of the procedure to be adopted by the Council, Lead Agency and the District Road Safety Committee for all or any of the matter required to be provided by regulations or by-laws under any of the provisions of this Act.

(2) All regulations and by-laws made under sub-section (1) shall have effect upon their publication in the Government Gazette.

36. *Power to remove difficulties.*— If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order in the Government Gazette, make such provisions not inconsistent with the purpose and provisions of this Act or the rules made thereunder, as appear to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

37. *Repeal and savings.*— All rules, notifications, policies and orders corresponding to the provisions of the Jammu and Kashmir Road Safety Council Act, 2017 shall, in so far as they are inconsistent with any provision of this Act stand repealed.