

Apps speed on, law to catch up

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Listing taxi service aggregators under the IT Act is innovative, but the need of the hour is a uniform law

Just as app-based cab services were picking up in India, an alleged rape in December 2014 by a driver of Uber, a San Francisco-based firm, became a speed-breaker. The incident prompted Delhi's transport department to bar all app-based transport services without a radio taxi licence. The Union home ministry advised all states to ban unregistered web-based taxi firms.

The road, however, looks to have cleared partially with the Bidhannagar Commissionerate in Kolkata bringing Uber - for the first time - under the ambit of the Information Technology (IT) Act, 2000, quashing the need for companies to seek a radio taxi licence.

The move was wholeheartedly welcomed by Uber, which said in a statement: "We continue to engage with the Delhi authorities to work towards the Kolkata model... We believe this is the progressive model that ultimately puts the safety of consumers first, while recognising the power of new technologies like Uber that will make city transportation safer."

Kolkata model

The Bidhannagar Police Commissionerate recognised app-based transport providers simply as aggregators of services, therefore an intermediary, which brings them under the purview of the IT Act.

Bringing app-based transport services under the IT Act serves two purposes - first, it brought such companies under the ambit of the law; second, it absolves them from any crimes committed by the drivers.

Such cabs were governed by the Motor Vehicles Act, 1988, which did not regulate service providers, as the Act is applicable only to the cab drivers.

"Among Uber, Meru and Megacabs - the three major web-based transport service providers in Kolkata, only Megacabs has around 200 cabs of its own registered with the state transport authority," said Alapan Bandhopadhyay, principal secretary, West Bengal transport department.

On the day of notification, the Bidhannagar Commissionerate explicitly pointed out that the web-based service providers must not own or lease any vehicle.

The order to regulate the web-based cab aggregators under the IT Act, it has been issued under Section 144 of the Criminal Procedure Code, 1973. The section empowers the police to issue such an

order in urgent cases of nuisance or apprehended danger. However, such an order remains valid only for two months.

"This will not be a problem. We have already noted that the operators will have to re-enroll with us every two months. This will ensure more security and safety, which is our aim," said Ranendranath Banerjee, deputy commissioner (traffic), Bidhannagar.

The new regulations ask the service providers, including the radio taxi operators, to set up a proper grievance redressal system under which a customer care number and contact details of a person-in-charge has to be made public.

"We believe bringing them (taxi aggregators) under the ambit of the IT Act will ensure stricter regulation. As they will be treated as IT companies, they will also have to go through technological upgrade," said Banerjee.

Aggregators like Uber will have to develop an app which will show the picture of the driver, allowing the passengers to verify them.

All service providers also have to develop two apps within a month. One will contain all details submitted to the commissioner along with drivers' photo. Passengers can check the driver and the registration number before boarding vehicles. The second app will enable passengers to make a distress call to the nearest police station and share their locations with up to five persons.

Like any other company, the service providers will also have a grievance officer, whose details, too, will be recorded with the police. Operators have to ensure that drivers undergo gender-sensitisation programmes.

However, while the service providers will be treated as IT companies, the cabs and drivers will continue to be governed by Motor Vehicles Act. "If the operators or drivers flout rules, they still can be booked under the Motor Vehicle Act," Banerjee said.

Thus, the order has segregated the responsibilities of driver and the aggregator.

Existing regulations

Notably, app-based transport providers have always been covered under the IT Act, 2000, as they operate on a digital platform, according to Pavan Duggal, advocate, Supreme Court and cyber law expert. Any service provided in the electronic format falls under the IT Act.

"There is no direct description of the services to be covered under the IT Act. However, there is a category called 'intermediary', which are network service providers. Section 79 of the IT Act mandates that the intermediary exercise due diligence while discharging services. However, most service providers today act in breach, rather than compliance, of the provision."

There are no clear laws governing on-demand transport providers, who started venturing into India from 2000. In fact, laws governing such services have been a matter of debate. In September, 2014, a German regional court issued a temporary injunction against Uber, stating that Uber drivers did not have the necessary commercial licences. However, later, the ban was lifted.

"The IT Act, 2000, was enacted for legalising e-commerce related transactions and for various cyber crimes. Using it for transactions involved in app-based transport services is appropriate, but making it governing Act for transport-related services seems bit illogical to me. Transport is an essential service and also governed by a different set of Acts which don't gel with IT-related provisions," said Prashant Mali, advocate, cyber law expert

Around 2006, several states took steps to govern the services. For example, Delhi started the Radio Cab Scheme, while Maharashtra called it the Fleet Taxi Service Scheme. In West Bengal, it came to be known as the Call-Taxi Scheme. At present, there are 16 states which have specific schemes governing taxi-on-demand services.

However, the rules were applicable to only those companies which owned the vehicle. Recently, the Delhi government amended the Radio Cab Scheme, so as to include aggregators in it. The scheme will now be applicable to service providers which do not own a vehicle. In addition, the firms will be governed by two Acts - the Motor Vehicle Act and the IT Act.

"The Bidhannagar legislation is better as it segregates the liabilities of the service provider and driver," said Jaspal Singh, co-founder of Valoriser Consultants.

The app-based service providers will find it more difficult to operate in Delhi than in Kolkata as they have to adhere to the provisions of both the IT Act and the Motor Vehicles Act.

Till the time there is a uniform law governing app-based transport services, the road ahead is going to be bumpy.