

LAW WATCH

Regulating on-demand transport technology

MORSHED MANNAN
WITHIN days of Uber launching its operations in Dhaka, Bangladesh Road Transport Authority (BRTA) suspended its operations on the ground that it was illegally providing a taxi/private hire service (BRTA Notice, 24.11.2016). Now there is discussion on how to bring Uber within the country's legal framework (Dhaka Tribune, 26.11.2016). This article will highlight the regulatory challenges that 'on-demand transportation technology aggregators' (hereinafter 'aggregators') like Uber pose and recommend steps that can be taken to harness the value of these enterprises without harming the individuals that use them.

but anonymous cars, imposes 'surge' pricing to automatically raise fares during peak periods and penalises drivers who do not follow designated routes on their smartphones.

Contracting with private-hire vehicles that are driven by the individuals who own them, could be a legitimate alternative, yet the requirements to obtain a distinct series registration, distinguishing marks and colours etc. are onerous and not fit-for-purpose. It is also evident that the permits granted under these laws do not contemplate the use of internet applications for navigation and customer complaints or GPS tracking of vehicles. Retrofitting existing rules, as initially attempted in India by extending old

at any time? Here questions may be asked whether the existing classification of workers as permanent/casual is adequate.

The aforementioned regulatory 'grey' areas are the tip of the iceberg. The operation of aggregators may raise concerns about passenger discrimination and safety, secure handling of private data (Sec.63, ICT Act 2006) and anti-consumer allegations for arbitrary pricing. Conversely, as rival aggregators have similar products, issues regarding copyright and patent infringement might also arise. Future clashes with rival aggregators or drivers' associations regarding abuse of market dominance (Sec.16, Competition Act 2012) may occur if this industry grows.

This shouldn't be grounds for an indeterminate ban. A compromise should be struck between preserving laudable protections and enabling a culture of shared, convenient commuting. One option could be introducing the "on-demand transportation technology aggregator" category into our laws as has been recently done in various parts of India through advisories and guidelines. Following a multi-stakeholder consultation, the BRTA could consider issuing a new form of permit for aggregators that wish to operate in Bangladesh on the condition that they maintain detailed, up-to-date records on their drivers and vehicles, ensure passengers are not discriminated against or their safety threatened and cooperate with government authorities when required. Concurrently, licensed vehicles could be exempt from having distinguishing marks, colours or a separate registration category. This permit could be complemented with guidelines setting out best practices on data protection, pricing, and maintaining a 'level playing field' in the road transport market.

With regard to their drivers' employment status, some scholars (Harris & Krueger, 2015) have argued for introducing an intermediate category of 'independent'/dependant workers between employee and self-employed. For the sake of simplicity, it may be preferable to preserve a presumption towards 'worker' status - but only if a certain amount of time is spent using the aggregator's platform or an amount of income earned (Cherry & Aloisi, 2016), as specified under law.

THE WRITER IS A PHD CANDIDATE, COMPANY LAW DEPARTMENT, LEIDEN UNIVERSITY.



The suspension rests on the assumption that Uber is a taxicab/private hire company itself. In contrast, Uber has presented itself as an online labour brokerage that employs no drivers and has no fleet but rather dispatches 'independent' drivers to passengers logged-on to their app. In some countries, it connects non-professional drivers in unlicensed vehicles to passengers, while in many others it is limited to those that have private hire vehicle licenses or contracts with taxicab operators. Prior to its ban, it is reported that Uber exercised the latter option (Dhaka Tribune, 23.11.2016). Under the existing regime, it would be difficult to square Uber's business model with the Taxicab Service Guidelines 2010. While the latter requires certain distinguishing marks (Articles b(5)-(6), f(1)) to be used, fixed transparent fares (Articles e(1)-(2)) to be charged and mobile phones not to be used while driving (Article i(9)), Uber's business model generally uses well-conditioned

licensing rules for 'radio taxi' operators to aggregators, had little success and a fresh approach is required.

In addition to licensing reforms, authorities need to consider who will be responsible for the working conditions of the drivers. Is the driver self-employed, using an online platform to secure client-passengers or is he a worker in a subordinate, dependant relationship? While the argument that drivers are workers of taxicab companies has strong legal footing, the insertion of aggregators complicates the picture as they seek to contractually carve out any responsibilities they might have to the driver or the passenger. However, a growing body of judgments, including one delivered in London on 28.10.2016, reveals that as aggregators wield significant influence on how a driver carries out their duties, a dependant relationship exists between them (paras. 92, 98). Yet, even if aggregators are employers, what class of worker is a driver who can log-off an app

RIGHTS MONITOR

The crisis of undocumented Rohingyas

MD. MAHBUBUR RAHMAN

BANGLADESH has adopted a 'National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals' in 2013. This kind of policy approach to deal with a less-attended section of people, who need a legal status for enjoying basic protection, is not a plausible solution to the problem. In order to understand the case, one should believe that a country may face a number of non-traditional security challenges if human rights issues of the concerned country are not addressed properly.

Bangladesh is a home of some 300,000-500,000 undocumented Rohingyas. They live in squalid and dangerous conditions at Leda Site, on the banks of a tidal river in Teknaf and in various villages and towns in proximity to the refugee camps in Cox's Bazar. UNHCR has reported that they are frequent victims of sexual and gender based violence such as domestic abuse and rape from both inside and outside of their community.

The prevailing human rights conditions among the undocumented Rohingya community pose a number of security challenges to Bangladesh. It encourages human trafficking, smuggling and other forms of irregular migratory movement to and from Bangladesh. The present situations have forced them to migrate to elsewhere through irregular channels. In this way, many of them have become the easy prey of human trafficking. Once the Rohingyas are started being trafficked, it becomes a venture of massive profit to make for the traffickers. The number of Bangladeshi victims of human trafficking is no significantly lower than that of the Rohingyas.

The challenges have created conditions for policy interventions and Bangladesh has too adopted the aforementioned policy. In this context, the Bangladesh government does not want to register the undocumented Rohingyas as refugees so as not to create a pull-factor generating a further influx to an already over

populated country. The same perception has barred Bangladesh not only from formulating a national refugee law, but also from signing the 1951 Refugee Convention and its 1967 Protocol. Bangladesh identifies the undocumented Rohingyas as 'undocumented Myanmar nationals' under the adopted strategy. No doubt that this policy step shows Bangladesh government's interest to address the issue. However, since the 2013 Strategy does not provide any legal status to the 'undocumented Myanmar nationals' as either refugees or migrants, the given recognition does not leave much room for availing legal protection.

Until or unless the undocumented Rohingyas are being registered or documented either as migrants or as refugees, they legally exist nowhere. As a result, the Constitution of the People's Republic of Bangladesh and all associated legal instruments including frameworks, strategies, compacts and policies cannot provide

protection to these ill-fated people. Although the Constitution guarantees fundamental rights, not only for its own citizens, but also for anyone living in its territory, it basically says so for the people who already have some sort of legal status. Furthermore, the UNHCR has reported that when the undocumented Rohingyas need to approach the police or other members of law enforcement agencies for legal protection, they risk being jailed for at least five years under the Foreigners' Act, 1946 on the criminal charge of illegal entrance into Bangladesh.

In order to bring a durable solution to the Rohingya problem and to better address the non-traditional security challenges posed by the irregular migratory movements to and from Bangladesh, the government should make necessary changes to its 2013 Strategy by giving the undocumented Rohingyas a specific status as either refugees or migrants under relevant international law.

THE WRITER IS A RESEARCHER OF POLITICAL SCIENCE, UNIVERSITY OF DHAKA.



Absence of limited liability partnership



K. SHAMSUDDIN MAHMOOD
 Partnership Act 1907) and the business community could avail of its benefits. Nevertheless, while enacting Partnership Act 1932 back then, it did not incorporate the LLP provisions. Recently, India and Pakistan have adopted or are in the process of

New York was the first to introduce the LLP concept and in fact, borrowed the basic idea from the French Commercial Code. As a business structure, LLP operates quite similar to an organisational setup of a partnership business, the only difference being that it affords limited personal liability to partners.

In the domain of business community, LLP as a 'form of business' is considered to be a 'useful vehicle' that can often be used in tax planning and financial structuring and thus, suitable for a group of people engaging together in a property or financial venture. Obvious reasons behind the

defining characteristics of LLP that brings in partners ability to decide how much they want to contribute and how much of a partner they truly want to be in the business.

However, LLPs do have disadvantages too -the partners with limited liability cannot state how the entity/business should run, irrespective of their percentage of share in the business and active partner runs the show alone. A limited partner can become a general partner in order to exercise control over the internal affairs of the business, but in that case, liability protection for them will no longer apply.

Appropriate words to advertise their status (the name of a limited liability partnership business must end with the expressions 'Limited Liability Partnership' or abbreviation 'LLP');

Mandatory provision for registration pursuant to the LLP statute along with requirements that records be always kept updated.

To incorporate provisions that the LLP business render financial disclosure as usually required by a company/corporations and must file annual accounts (which must be audited) with the office of Registrar of Companies and Firms;

To incorporate provisions that limited liabilities members to be sued for wrongful and fraudulent trading, in cases where they allowed LLP business to continue their trading even after they knew that it had no reasonable prospect of avoiding bankruptcy, or allowed it to continue trading with a view to defraud creditors;

To incorporate enough adoptable provisions for dealing with bankruptcy/insolvency as well as winding-up of the LLP business, if and when required;

To have 'claw back provisions' in the LLP statute with a view that members be subject to a claw back, in as much as, the liquidator may apply to the court of law to recover withdrawals of property of the business made by a member within two years prior to the winding-up, if the member concerned knew or had reasonable grounds to believe that the LLP business was bankrupt/insolvent or would be made bankrupt/insolvent by the said withdrawal and;

To incorporate requirement of 'bond' in the LLP statute, i.e., the idea of LLP has to maintain arrangements with one or more banks or insurance companies to pay 'substantial amount of fund' to the person (receiver or official assignee) responsible for winding-up affairs of the LLP business upon its dissolution, for the benefit of creditors of the limited liability partnership.

THE WRITER IS THE DEAN, SCHOOL OF LAW, BRAC UNIVERSITY.



adopting LLP subsequently considering its need [without repelling the Partnership Act 1932 by separate legislative enactments, the Limited Liability Partnership Act 2008 and Limited Liability Partnership Act 2016 (proposed) respectively]. On the other hand, Bangladesh has remained indolent and succumbed to its adverse effects.

The concept of LLP is usually a mixture of partnership and corporate structure, adaptation of it as a 'business form' arose in the early nineteenth century in the United States as a response to concerns stemming from the partner's liability to third persons, as well as the difficulty of obtaining a corporate character for business entities. As early as 1822 in the USA, the State of

acceptability of LLP as a business association relates to its advantages - there is no limit on the number of owners that can be involved with the business which evenly spreads out the amount of liability that each partner can have if something were to go wrong with the business; limits partners liability since there are multiple owners involved in the business thus, all of the risks of the business spreads out and made much smaller than if a single person was responsible for the business on her/his own; the partnership firm itself does not have to file taxes on their business that provides great breaks for the entity (though each individual partner must file a variety of different tax forms regarding the business); and lastly, 'flexibility' is a

Whatever advantages or disadvantages that may be attributed to LLP business, in the present world they are realities and need of the time. In Bangladesh, it is the time that we should actively consider enacting a statute to enable the business community of our jurisdiction to avail the advantages of such 'legal business form' to foster and enhance their trade and commerce.

Nevertheless, appropriate safeguards in the legislation process have to be provided to maintain a balanced approach towards adaptation of such a legal regime in Bangladesh. The following safeguards calls for considerations in conceiving future legal regimes for LLP business in Bangladesh:

LAW TRIBUTE From lawyer to revolutionary



'You can judge me but it's not important; history will justify me.'

FIDEL Castro has died. Few political leaders of modern times have been as iconic or as enduring as the Cuban revolutionary, who had turned ninety in August. He had been formally retired since 2008, his younger brother Raúl taking his place two years before, after falling seriously ill, but he had ruled as Cuba's *jefe máximo* for no less than forty-nine years, and he remained Cuba's undisputed revolutionary patriarch until his death.

Castro had also pursued a career in law - the fact of which is less discussed.

In 1945, Castro began studying law at the University of Havana. Admitting he was 'politically illiterate', he became embroiled in student activism, and the violent gangsterismo culture within the university. Passionate about anti-imperialism and opposing US intervention in the Caribbean, he unsuccessfully campaigned for the presidency of the Federation of University Students on a platform of 'honesty, decency and justice'. Castro became critical of the corruption and violence of President Ramón Grau's government, delivering a public speech on the subject in November 1946 that received coverage on the front page of several newspapers.

In September 1950; he graduated as a Doctor of Law from University of Havana. He co-founded a legal partnership that primarily catered for poor Cubans, proved a financial failure.

Few years later, Castro, like many others, considered the regime of former president Fulgencio Batista a one-man dictatorship. Batista moved to the right, solidifying ties with both the wealthy elite and the US, severing diplomatic relations with the Soviet Union, suppressing trade unions and persecuting Cuban socialist groups. Intent on opposing Batista, Castro brought several legal cases against the government, but these came to nothing, and Castro began thinking of alternate ways to oust the regime. The prefaces to the revolutionary chapter in his life just then began and lead to the years that made him the revolutionary we know today.

Fidel's legacy will long remain divisive. Cuba lost its former glory, but its social and economic indicators are the envy of many of its neighbours. The highly restrictive Marxist regime that Fidel put in place all those years ago has loosened up in some ways, there is a great deal of religious freedom in Cuba today, and Cubans, including outspoken political dissidents, come and go freely from the island despite the country still being a one-party state.

FROM LAW DESK