

RIDE-SHARING BUSINESS

..... POLICY BRIEF



SAMRIDDHI
FOUNDATION

YATINDRA K.C
RESEARCHER

Ride-Sharing Businesses

:::: Policy Brief :::

Yatindra K.C
Researcher,
Samriddhi Foundation

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1. Introduction

An ideal law is not vague, restrictive of fundamental rights and contains within itself an anticipation of the future regulations that will be required with changing times. More often than not, the legislative body brings into effect a law that is vague, somewhat restrictive in nature and one that fails to anticipate the needs of the changing times. It therefore poses a serious threat to the exercise of fundamental rights, existence of ideal environment for innovative and new businesses to flourish and even as some might argue to the virtues of a democratic system. When a government body enforces a law which by its very own nature restricts innovative ideas and practices, society is left with no other option but to make do with whatever traditional and permitted means are available. As such an indirect, albeit unwanted restriction on choice is placed. Virtues such as competitive market environment, availability of substitutes, open and free competition between available substitutes only become a part of literature rather than practice.

Of particular importance within the context of an ideal law is the Laws relating to Vehicles and transportation. It must be stated at this juncture that the Motor Vehicles and Transport act of 2049 is probably the most detailed and well written piece of legislature second only to the prevailing constitution. However so, it fails in one aspect of the utmost importance. It is like most other laws stuck with the workings of the recent past.

After almost twenty six years since the act came into force, its provision till this date have been rather successful in restricting business practices that are of the utmost need today.

While we seek to dissect the provision that needs revision, other policies having a direct relationship with the said act and its provision will also be studied. It must also be pointed out that the restrictions imposed by the act have been sufficiently and for the time being annulled through a Prime Ministerial decision. But one must ask, whether in the absence of a legislation, an executive decision is the right way forward. Our system of government is based on three fundamental structures, each with its own distinct function, with an opportunity provided to all three structures to check and balance any wrongdoing on part of the others. However, it must not be assumed and concluded that in the absence of a legislative framework, an executive decision is the best alternative, for the problem lies with the fact that the decision can be overturned by a new government come the next general election. The only alternative is therefore to amend the existing provision through the specified procedure and before we move forward with the amendment, the fallacies and the implications of the provision must first be pointed out.

2. Problems requiring further review

2.1 Prohibition on use of private motor vehicles for transport services

SN	Section	Sub-section	Provision
1	8	2	Prohibition on use private vehicles for transport services

In the wake of inefficient public transportation system in Nepal evidenced by the myriad of cramped up buses witnessed plying on the streets, insufficient services being provided to the disabled and harassment of women in public transportation facilities; ride sharing services have flourished in Nepal. Currently only two such businesses namely Pathao and Tootle offer such services. The concept of ride sharing services is simple, private motor vehicle owners offer transportation services be it in the form of two wheeler transportation or four-wheeler transportation. It works as an alternative to public transportation i.e. buses and taxis.

The list of benefits of ride sharing businesses is numerous. First and foremost, is the simple accessibility and service it provides to disabled and the elderly who in the absence of such facility left with the use of buses, which are for the most part cramped and to a certain extent, significantly less user friendly than ride sharing services.

Secondly, we cannot ignore that ride sharing businesses are providing employment opportunity to people who lack the sufficient knowledge to qualify for traditional jobs (by this we mean employment opportunities in the traditional sense i.e. accountant, lawyer, doctor and so on).

More important is the contribution that ride sharing businesses offer to decrease in imports of vehicles. In theory, the central motive behind owning a private vehicle is the absence of proper and efficient public transportation system. When we observe the current situation we are in, we find that ride sharing businesses offer an efficient transportation system at rates that are regarded as economic. Given that there is an existence in an efficient means for transportation, the import of vehicles for private use could be discouraged by allowing such services to flourish. Since, ride sharing businesses is still in its nascent stage, it would be a little too early to state with the utmost certainty that ride sharing businesses can help discourage imports, however it would also be wrong to not assume about the same.

While talking of the implications of ride sharing businesses on imports of vehicles, it can be reasonable to believe and assume that such form of businesses contribute towards lesser and lesser traffic congestion. Since, the availability of transport facilities can lead to lesser number of imports of vehicles for personal use, the resulting effect will be lesser vehicles plying on urban roads thereby leading to lesser traffic congestion.

Although the benefits of ride sharing businesses is numerous, Nepal's arcane laws prohibit such businesses through section 8 subsection 2 of the Motor vehicles act, 2049, which reads, No private motor vehicle shall be used for the transport service. Perhaps, when the act was framed, its makers failed to imagine a situation where transportation services could be offered through means other than public transportation.

Moreover, the provision itself restricts competition in the transport sector by restricting any other vehicle registered as public vehicle to allow transport facility. Essentially one could also argue that a form

of monopoly can be created by granting only public transport entrepreneurs the right to deliver transport services. While on paper, the operation of syndicate in transport sector is prohibited by the Competition Promotion and Market Promotion act of 2063, the reality however seemed a lot different in the past. Although an agreement was reached to end the syndicate system, if the government restricts any substitute to the public transport system, it essentially grants more power to public transport service providers which could lead to transport entrepreneurs going back on their commitments.

Central to the problem of the provision is the restriction it poses on the freedom to profess or carry on any business as guaranteed by the Constitution of Nepal. Article 17 Sub article 2 Clause (f), provides the freedom to practice any profession, carry on any occupation, and establish and operate any industry, trade and business in any part of Nepal. Vide this provision any restriction imposed for carrying out any business such as ride sharing business become null and void. While some might argue that as per sub article six of the same, state can impose necessary qualification for carrying out a business and the restrictions imposed by the Motor vehicle and transport management act of 2049 is a form of qualification imposed for running a business related with transport services and therefore no fundamental right has been breached. But what must not be forgotten is that, a restriction imposed by states on any fundamental right must be reasonable and justifiable. Till date the rationale behind the restriction imposed by section 8 of Motor Vehicles and Transport Management act of 2049 have been unclear. Neither the government nor its agencies have been able to justify the limitations imposed.

Questions regarding the safety of the service users seem to be the only plausible justifications that one can think about while looking at such arcane provision. If the case is so, the alternative would be requiring mandatory background checks on employees of the ride sharing business rather than restricting them altogether.

2.1.2 Recommendation

Bangladesh encountered a similar situation when, Pathao started offering ride sharing services to the denizens of Dhaka. As in Nepal, Bangladeshi law prohibited private vehicles from offering transport services. But unlike Nepal, a strong realization of the potential benefits of ride sharing businesses was seen, which resulted in the Bangladeshi government swiftly enacting and enforcing Ride Sharing Business policy.

The policy was one of a kind that allowed an environment for ride sharing businesses to prosper by requiring them to register themselves with the relevant government department while also addressing the safety of the users by calling on businesses to perform background checks on employees.

In addition to creating an environment for ride sharing businesses the policy also allowed individuals to offer ride sharing services by requiring them to register with the relevant government department.

What is more interesting is that, the government was also able to find an appropriate way to tax a new form of business for which provisions were previously absent. VAT of 5% was

imposed on ride sharing services to make them fall under the taxation regime rather than restricting them altogether. Nepal also should follow a similar approach, by framing a regulation for ride sharing businesses. Allowing such business to operate owing to a Prime Ministerial decision is not the right way forward. A long term and better solution is the enactment of proper regulation for such businesses like in Bangladesh.

2.2 Imposition of VAT on transportation services

SN	Section	Annex	Group	Provision
1	24 (Finance act 2076)	1	8	Removal of transport services from the list of goods and services exempt from VAT

The recent budget of 2076/2077 contains within itself an interesting provision. Finance Minister Yubraj Khatiwada during the budget speech talked briefly about supporting new and innovative business practices. In order to promote an environment where such businesses may flourish, Minister Khatiwada even allowed for tax exemption on such businesses only if they mandatorily register with tax authorities by the end of the Nepalese month of Poush. This has indeed been a welcome step and entrepreneurs have nothing but praise for the initiative.

However, so on a different note, Minister Khatiwada also stated that transportation services will now be charged with the prevailing VAT. Per section 24 of the Finance act an amendment is made to annex 1 group 9 of the Value Added Tax law 2052. The amendment made removes transportation

services from the list of goods and services exempt from VAT. Consequently, ride sharing businesses now need to pay VAT per the amendment.

While, an agreement can be reached that imposition of VAT is perhaps a necessity in order to secure and generate revenues which the government holds very dear. One cannot help but disagree with the rate of VAT. Currently Nepal follows a uniform VAT rate i.e. all goods and services falling under the purview of value addition will be taxed the same rate of 13 percent. The problem here is that, a rate of 13 percentages is a bit excessive considering the fact that transportation services are a necessity.

The imposition of 13 percentage of VAT is itself against the very commitment made by the Finance Minister to promote innovative and new businesses. Considering that the burden of the taxation will be ultimately borne by the consumers who will witness an increase in prices, the likely result will be a decline in users of ride sharing businesses. Consequently, the benefits of ride sharing businesses that were eloquently pointed out earlier can never be reaped.

2.2.1 Recommendation

Vast amount of literature can be found on the topic of optimal taxation. The conclusion that can be derived from almost all of them is that a uniform tax rate is never optimal. Perhaps a change in taxation policy with regards to VAT is required in Nepal. We could even learn from approaches followed by our own neighbors, the most important among them being India. India follows an approach of taxation based on categorization. Goods and services are categorized as Basic, Expensive, Necessity and Luxury. Based on this category a

VAT of 0%, 1%, 4.5% and 12.5% is applied. The important thing to notice here is that approach does not increase the prices of the necessary goods and services in a manner which would discourage end users from consuming it. A similar approach is necessary at this period in Nepal. The uniform VAT rate has been proved to be un-optimal and legislation regarding VAT needs amendment to better suit the needs of the present day.

SN	Section	Sub-section	Annex	Provision	Problem	Recommendation
1	8	2		Prohibition on use of Private Motor vehicles to provide transport services	Violates constitutional right to be engaged in business or trade and restricts ride sharing business to provide facilities of transportation	Amendment of the said provision and enactment of new regulation concerning ride sharing businesses
2	24 (Finance act 2076)		1	Removes transport services from the list of goods and services exempt from taxation	Uniform taxation rates is not optimal	Determination of tax rates on the basis of categorization



SAMRIDDHI
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- i. Entrepreneurship development
- ii. Improving business environment
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Yatindra KC is a researcher at Samriddhi Foudation. His background in law gives him a sophisticated grasp on the many legal aspects associated to political and economic development of the nation. His real passion comes from his zeal to improve the policy landscape of Nepal through evidence-based policy making. For the same, he started his career by practicing his legal knowledge in identifying the issues and challenges in many acts and regulations of Nepal that has been hindering its growth. Today, he can be

addressed as a proficient youth who through his research have gathered immense knowledge in areas like land management, ICT development and public transport management. In his efforts to advocate for a better Nepal, he also engages himself in writing blogs and articles on contemporary economic and political issues.