

Submission of Comments on the Draft Motor Vehicles (All India Tourist Vehicles Authorisation and Permit) Rules, 2018

1. About CUTS

1.1. Consumer Unity and Trust Society (CUTS) is an independent non-profit consumer organisation. It promotes consumer welfare through evidence based policy research and advocacy for optimal regulation, competition, and governance across sectors, including urban mobility.¹

1.2. CUTS has recently concluded a study on Regulatory Impact Assessment (RIA) of Maharashtra City Taxi Rules, 2017² and is currently implementing a study on Competition Assessment in Ride Sharing Industry³. It has engaged with Parliamentary Standing Committee on Transport, Tourism and Culture⁴; Ministry of Road Transport and Highways;⁵ and state governments of Rajasthan⁶, Madhya Pradesh⁷, Chandigarh⁸ and Gujarat⁹, and Karnataka, on urban mobility related regulations.

2. Background

2.1. The Central Government (Ministry of Road Transport and Highways – MORTH) vide notification dated 12th September 2018 published the draft rules called the “Motor Vehicles (All India Tourist Vehicles Authorisation and Permit) Rules, 2018” (herein after Draft AITP Rules) under the Motor Vehicles Act, 1988, and invited public comments on the same.

2.2. These Draft AITP Rules are meant to substitute the existing Motor Vehicles (All India Permit for Tourist Transport Operators), Rules, 1993.

2.3. In this regard, CUTS is pleased to make its submissions for the consideration by the Government, as set out below.

3. CUTS' submissions

3.1. It is difficult to gather the rationale or objective for which these Draft AITP Rules have been proposed, which shall replace the earlier rules on the subject. An Object Clause and Preamble not only helps in better interpretation in case of dispute, but also helps in

¹ www.cuts-international.org

² http://www.cuts-ccier.org/RIA_Maha_City_Taxi_Rules_2017/Publication.htm

³ http://www.cuts-ccier.org/Cars/pdf/project_brief.pdf

⁴ <http://www.parfore.in/Representation.htm>

⁵ http://www.cuts-ccier.org/pdf/Advocacy-CUTS_Comments_on_the_MoRTH_Taxi_Aggregator_Guidelines.pdf

⁶ http://www.cuts-ccier.org/pdf/Advocacy-Rajasthan_draft_agg_rules.pdf

⁷ http://www.cuts-ccier.org/pdf/CUTS_Comments_on_Draft_Madhya_Pradesh_Aggregator_for_the_Hire_of_Motor_Cab.pdf

⁸ http://www.cuts-ccier.org/pdf/Advocacy-CUTS_comments_on_draft_Chandigarh_Administration_On_demand_Transportation_Technology_Aggregators_Rules,%202016.pdf

⁹ http://www.cuts-ccier.org/pdf/Advocacy-CUTS_Comments_on_Draft_Gujarat_State_on_Demand_Transportation_Aggregator_Rules2018.pdf

understanding the problem intended to be resolved, ascertaining whether the given rules are least restrictive to achieve the given objectives, and hence pass the tests of 'optimal' regulation. Therefore, a suitable objective clause and preamble may be added in the Draft AITP Rules.

3.2. Under Rule 4, the prescribed fee appears to be on a higher side, which may act as entry barrier, result in uneven playing field, and adversely impact consumer welfare. Therefore, the prescribed fee should be rationalised. It is recommended that a separate category – "Less than 5 Passenger Capacity" (i.e. for normal 5-seater car) – of tourist vehicles be created for which nominal fee be prescribed. In our recent study on RIA of Maharashtra City Taxi Rules, it was found that a significant majority of taxis providing tourist transport services had engine capacity of less than 1400 CC, and seating capacity of 5 persons.¹⁰ Creating a separate category for such smaller cars with nominal fee would not only facilitate micro-entrepreneurship by including owners of cars, but will also benefit consumers (say in case of tourist cars engaged for a family outing or tour for tourist purposes) with lesser burden on their pocket (as the fee is likely to be passed on to the consumers).

3.3. The 'authorisation' under Rule 2(b) is to operate the vehicle throughout the territory of India. Similarly, the 'permit' under Rule 2(1)(c) authorises the vehicle to be operated in whole of India. Presumably, the authorisation/ permit is applicable for operation of vehicle 'within' and 'between' states. Rule 4 and an advisory issued by MoRTH in December 2016 reinforces this presumption¹¹. However, it appears that Rule 6 may create unnecessary confusion by requiring contract between consumers and operator of tourist vehicle only for inter-state travel. A similar contract should be required even where the travel is 'within' a state. In our recent study on RIA of Maharashtra City Taxi Rules, we recommended that taxis with All India Tourist Permits should be permitted to operate within states for intra-city and inter-city travel without additional permit/licensing requirements, based on a comprehensive assessment of likely costs and benefits.¹²

3.4. Rule 2(1)(h) limits the form of 'tourist vehicle operator' to company or firm or individual. It appears to inadvertently exclude other forms in which business could be conducted, such as partnerships, trusts, association of persons, and body corporates. Limiting the forms may cause unnecessary inconvenience to and impose avoidable costs on entities not comfortable in utilising such forms. Thus, it is recommended that any 'person' engaged in such business may be authorised to apply for permit/ license under the draft AITP Rules.

3.5. Rule 15 requires the tourist vehicle operator to keep a record of the passenger, including journey details, for a minimum period of one year. The records are required to be made available to the jurisdictional Transport Authority on demand. Rule 13 provides that list of passengers and journey details are required to be produced by operator on demand to authorised officers. Such requirements of retention of record and allowing

¹⁰ Supra note 1. Around 95% taxis linked with app based aggregators had engine capacity less than 1400 CC and some had engine capacity less than 980CC. Findings were based on the survey of 1,000 riders and 1,000 drivers of taxis in Mumbai Metropolitan Region.

¹¹ <http://morth.nic.in/showfile.asp?lid=2525>

¹² Supra note 1.

access to government agencies must be subject to the applicable privacy and data protection regimes.¹³ Best practices in relation to prior disclosure, express and informed consent, purpose and storage limitation, reasonable expectation of data principals, must be complied with, to protect interests of consumers. The Supreme Court has recently acknowledged right to privacy as a fundamental right and has prescribed conditions for retention, usage and access to data by private parties and government agencies.¹⁴

3.6. Rule 16 requires each vehicle to install a Fastag. The purpose of Fastag is to enable electronic payment of toll through the National Electronic Toll Collection (NETC) program of the National Payments Corporation of India.¹⁵ However, it appears that Fastag has several limitations. For instance, only banks are authorised to issue Fastag and as on date, not all banks have initiated this facility.¹⁶ Moreover, concerns with respect to collection of travel data, toll payment data, and unfair usage of the same have been raised. In addition, safety and security concerns with respect to payments made through Fastag have been pointed out.¹⁷ Experience with roll-out of Fastag till now has not been pleasant.¹⁸ The importance of Fastag and toll payment may differ with vehicle and the scope of its operation. For instance, a vehicle with limited inter-city operations may have scarce use of Fastag. The vehicle operators should have an opportunity to choose the mode of payment and digital payment should not be the sole available option. Consequently, use of Fastag should be made voluntary for operators.

3.7. Typically, regulations intend to promote consumer welfare and address innovation related risks. The Regulatory Impact Assessment (RIA) framework helps in estimating costs and benefits of possible regulatory options on different stakeholders while also assessing likelihood of achievement of regulatory objectives. It can be used to achieve regulatory objectives in a manner that net costs to stakeholders are significantly outweighed by net benefits. Thus, it is recommended that the Government (MoRTH) uses RIA framework in finalising the Draft AITP Rules. CUTS will be pleased to provide necessary support in this regard.¹⁹

¹³ The Information Technology Act, 2000, and the draft Personal Data Protection Bill, 2018.

¹⁴ The Puttaswamy judgement, analysis of which is available at <https://blog.theleapjournal.org/2017/09/an-analysis-of-puttaswamy-supreme.html>

¹⁵ <https://www.npci.org.in/netc>

¹⁶ <http://www.ihmcl.com/fastag/>

¹⁷ <https://twitter.com/logic/status/968830909356134401> and

<https://twitter.com/banglani/status/1047464329161920512>

¹⁸ <http://www.newindianexpress.com/cities/kochi/2018/oct/22/fastag-on-a-slow-pace-1888194.html>

and <https://timesofindia.indiatimes.com/india/allow-vehicles-with-valid-fastag-travel-free-if-system-cant-read-them-highways-min-to-nhai/articleshow/63289522.cms>

¹⁹ CUTS initiatives on RIA are available at <http://cuts-ccier.org/ria/>