From

All India Federation of Motor Vehicles Department Technical Executive Officers’ Association, Represented by its President,

Shri Ashfaq Ahamed, 406, Mythri Apartments, Judges colony, R.T Nagar, BANGALORE – 560032

[Mobile number 097411 90000]

To

The Hon’ble Chairman, Select Committee of Rajya Sabha on Motor Vehicles Act (Amendment) Bill 2017, Parliament Of India , Rajya Sabha Secreteriat

Room No 403, 4th Floor, Parliament House annexe extension buiding, New Delhi.

Sir,

Sub:- Motor Vehicles (Amendment Bill) 2017 – referred to the Select Committee of Rajya Sabha – representation of All India Federation of Motor Vehicles Department Technical Executive Officers’ Association- submitted. --

On behalf of All India Federation of Motor Vehicles Department Technical Executive Officers’ Association, Bangaloree we submit herewith our representations/suggestions with regard to certain provisions of the Motor Vehicles (Amendment) Bill 2017.

2. We humbly request the Hon’ble Chairman and Members of the Select Committee to consider our representation and recommend to the Government to make necessary official modifications to the Bill as pointed out in the representations.

3. We also request that opportunity of hearing may be given to us under rule 84 as we are representatives of special interest affected by various provisions in the Bill.

Thanking you,

Bangalore, Yours faithfully,

.08.2017

(Ashfaq Ahamed)

|  |
| --- |
| **SELECT COMMITTEE OF RAJYA SABHA**  **ON**  **MOTOR VEHICLES**  **(AMENDMENT) BILL 2017**  **[Bill No. 214 C of 2016]**  [as passed by the Lok sabha on 10.4.2017 and referred to  the Select Committee of Rajya sabha on 8.8.2017]  **Chairman: Dr. Vinay P. Sahasrabuddhe**  **Hon’ble Member of Parliament**  **[Rajya Sabha]**  **Memorandum of**  **written representations/suggestions submitted by the President,**  **All India Federation of Motor Vehicles Department**  **Technical Executive Officers’ Association**  **Bangalore.** |

**Members of the Select Committee**

1. Shri Ajay Sancheti .. Hon’ble M.P. [Rajya Sabha]

2. Shri Shwait Malik .. Hon’ble M.P. [Rajya Sabha]

3. Shri Ram Vichar Netam .. Hon’ble M.P. [Rajya Sabha]

4. Shri P. Bhattacharya .. Hon’ble M.P. [Rajya Sabha]

5. Shri B.K. Hariprasad .. Hon’ble M.P. [Rajya Sabha]

6. Shri Pramod Tiwari .. Hon’ble M.P. [Rajya Sabha]

7. Shri Javed Ali Khan .. Hon’ble M.P. [Rajya Sabha]

8. Shri A. Navaneethakrishnan .. Hon’ble M.P. [Rajya Sabha]

9. Shri Manish Gupta .. Hon’ble M.P. [Rajya Sabha]

10. Shri Harivansh .. Hon’ble M.P. [Rajya Sabha]

11. Shri C.P. Narayanan .. Hon’ble M.P. [Rajya Sabha]

12. Shri Pratap Keshari Deb .. Hon’ble M.P. [Rajya Sabha]

13. Shri C. M. Ramesh .. Hon’ble M.P. [Rajya Sabha]

14. Shrimati Vandana Chavan .. Hon’ble M.P. [Rajya Sabha]

15. Shri Veer Singh .. Hon’ble M.P. [Rajya Sabha]

16. Shrimati Kanimozhi .. Hon’ble M.P. [Rajya Sabha]

17. Shri Anil Desai .. Hon’ble M.P. [Rajya Sabha]

18. Shri Naresh Gujral .. Hon’ble M.P. [Rajya Sabha]

19. Shri Nazir Ahmed Laway .. Hon’ble M.P. [Rajya Sabha]

20. Shri Ram Kumar Kashyap .. Hon’ble M.P. [Rajya Sabha]

21. Shri Rajeev Chandrasekhar .. Hon’ble M.P. [Rajya Sabha]

22. Dr. Narendra Jadhav .. Hon’ble M.P. [Rajya Sabha]

23. Shri Swapan Dasgupta .. Hon’ble M.P. [Rajya Sabha]

-oo-

**CONTENTS**

| S.No. | Subject | Page No |
| --- | --- | --- |
| 1 | Introduction | 7 |
| 2 | About the Petitioner Federation/Association | 7 |
| 3 | About Motor Vehicles Department | 8 |
| 4 | About Motor Vehicles (Amendment) Bill 2017 and its referral to Select Committee | 8 |
| 5 | Objects and reasons for introducing Motor Vehicles (Amendment) Bill 2017 | 8 |
| 6 | Concern of Petitioner Federation/Association | 9 |
| 7 | Background of the Motor Vehicles (amendment) Bill 2017 | 10 |
| 8 | Objectionable clauses in the Bill:  Clause 89 [ page 41 Lines 12 to 29]  Insertion of new section 211-A | 16 |
| Clause 91 [ page 42 Lines 6 to 13]  Insertion of new section 215-A |
| Clause 91 [page 42 Lines 15 to 24]  Insertion of new section 215-B |
| Clause 91 [page 42 Lines 25 to 39]  Insertion of new section 215-C |
| Clause 18 [page 7 Lines 31 to 38]  Omission of existing section 44 and substituting it by a new section 44 |
| Clause 33 [page 13 Lines 10 to 36]  Insertion of new section 88-A |
| 9 | Objection against insertion of new section 211-A [Clause 89] | 17 |
| 1. The object of new section 211-A | 17 |
| 1. Contents of Section 211-A | 18 |
| 1. Recommendation of the Parliamentary Standing Committee on section 211-A | 19 |
| 1. Grounds for objection for insertion of section 211-A |  |
| 1. Constitutional validity | 20 |
| 1. Impact on State powers | 24 |
| 1. Impact on State revenue | 27 |
| 1. Impact on Motor Vehicle Department | 28 |
| 1. Impact on road safety and general public | 29 |
| 1. Case Laws | 29 |
| 1. Representation/Suggestions | 30 |
| 10 | Objection against insertion of new section 215A [Clause 91] | 33 |
| 1. The object of new section 215-A | 33 |
| 1. Contents of Section 215-A | 34 |
| 1. Grounds for objection for insertion of section 215-A |  |
| 1. Reasons and objects are not transparent | 35 |
| 1. Constitutional validity | 36 |
| 1. Definition of public servant | 37 |
| 1. Definition of ‘public authority’ | 40 |
| 1. Central and State Governments cannot re-delegate their powers to public servant or public authority | 42 |
| 1. Recommendation of Parliamentary standing committee | 45 |
| 1. Impact on State powers | 47 |
| 1. Impact on State revenue | 47 |
| 1. Impact on Motor Vehicle Department | 48 |
| 1. Impact on road safety and general public | 49 |
| 1. Representation/Suggestions:- | 50 |
| 11 | Objection against insertion of new section 215-B [Clause 91] |  |
| 1. The object of new section 215-B | 51 |
| 1. Contents of Section 215-B | 52 |
| 1. Grounds for objection for insertion of section 215-B |  |
| 1. Constitutional validity | 53 |
| 1. Impact on State powers | 55 |
| 1. Impact on Motor Vehicle Department | 58 |
| 1. Impact on road safety and general public | 58 |
| 1. case law | 59 |
| 1. Representation/Suggestions | 60 |
| 12 | Objection against insertion of new section 215 C [Clause 91] |  |
| 1. The object of new section 215-C | 61 |
| 1. Contents of Section 215-C | 61 |
| 1. Grounds for objection for insertion of section 215C | 62 |
| 1. Representation/Suggestions | 62 |
| 13 | Objection against Omission of existing section 44 and substituting it by a new section 44 [Clause 18] | 63 |
| 1. The object of new section 44 | 63 |
| 1. Contents of Section 44 | 64 |
| 1. Recommendation of the Parliamentary Standing Committee on section 44 | 64 |
| 1. Grounds for objection for insertion of section 44 | 65 |
| 1. Constitutional validity | 68 |
| 1. Impact on State powers | 68 |
| 1. Impact on State revenue | 69 |
| 1. Impact on Motor Vehicle Department | 69 |
| 1. Impact on road safety and general public | 70 |
| 1. case law | 72 |
| 1. Representation/Suggestions | 73 |
| 14 | Objection against insertion of new section 88A [Clause 33 ] | 75 |
| 1. The object of new section 88A | 75 |
| 1. Contents of Section 88A | 76 |
| 1. Recommendation of the Parliamentary Standing Committee on section 88A | 79 |
| 1. Grounds for objection for insertion of section 88A | 79 |
| 1. Constitutional validity | 79 |
| 1. Impact on State powers | 82 |
| 1. Impact on State revenue | 83 |
| 1. Impact on Motor Vehicle Department | 84 |
| 1. Impact on road safety and general public | 86 |
| 1. Representation/Suggestions | 86 |
| 15 | Prayer | 87 |

BEFORE THE HON’BLE CHAIRMAN OF SELECT COMMITTEE, RAJYA SABHA

ON MOTOR VEHICLES (AMENDMENT) BILL 2017

[Bill No.214 C of 2016]

All India Federation of Motor Vehicles Department Technical Executive Officers’ Association,

Represented by its President,

Shri Ashfaq Ahamed, 406, Mythri Apartments, Judges colony,R.T. Nagar, BANGALORE – 560032 [Mobile number 097411 90000] .. .. .. .. .. Petitioner/Opponent

---

Memorandum of written representations/suggestions submitted by the President, All India Federation of Motor Vehicles Department Technical Executive Officers’ Association

---

We humbly submit the following representations/suggestions with regard to certain provisions in the Motor Vehicles (Amendment) Bill 2017 for benign consideration of the Hon’ble Chairman and Members of Select Committee of Rajya Sabha.

**2. About the petitioner Federation**:

We, the members of All India Federation of Motor Vehicles Department Technical Executive Officers’ Association, are all officers appointed by the respective State Governments in accordance with the powers conferred upon the States under section 213 of the Motor Vehicles Act 1988.

The said section 213 envisages that the State Governments shall establish a Motor Vehicle Department and appoint such of the officers as are necessary to enforce the provisions of the said Act. The powers and functions, duties and responsibilities of the officers of Motor Vehicles Department are quasi judicial in nature. The orders passed by them are appealable ones. As such, the officers of Motor Vehicles Department are statutory authorities who are conferred with powers to control and regulate the movement of motor vehicles in public places. We are responsible to enforce the motor vehicle law relating to licensing, registration, permits, fitness certificate, traffic regulation, road safety, levy and collection of taxes and fees on motor vehicles.

**3. About Motor Vehicles Department**:-

The powers of the States to establish Motor Vehicle Department and appoint officers are protected under the provisions in Part XI, Article 246 and Seventh Schedule (List II) of the Constitution of India. Therefore the statutory powers under the provisions of Motor Vehicles Act 1988 can be conferred upon the officers appointed by the respective States under section 213 of the Motor Vehicles Act 1988 only.

**4. About Motor Vehicles (Amendment) Bill 2017 and referral to Select Committee**

We respectfully submit that in the Motor Vehicles (Amendment) Bill 2017 it has been proposed to make amendments to various provisions in the principal Act viz, Motor Vehicles Act 1988. It was introduced by the Ministry of Road Transport & Highways, Government of India in the Lok Sabha. Then it was referred to the Parliamentary Standing Committee on Transport, Tourism and Culture. Upon consideration of the report of the Committee and after debate, the Bill was passed by Lok Sabha. It was then sent to Rajya Sabha for consideration and passing. The Rajya Sabha has referred the Bill to this Hon’ble Select Committee for consideration and report. The said Bill is now under consideration before this Hon’ble Select Committee.

**5. Objects and reasons for introducing Motor Vehicles (Amendment) Bill 2017**

The Government have claimed that the Bill has been introduced to make amendments to the Parent Act viz, Motor Vehicles Act 1988 to achieve the following objectives among other issues:-

* 1. to create a common electronic platform for making application, remitting fees and taxes for the purpose of licenses, registration, fitness certificate, permit etc and to provide citizens’ facilitation while dealing with the Transport Department. Strengthening rural transport, last mile connectivity and public transport, automation and computerization and enabling online services.

1. to amend the existing categories of driver licensing.
2. to dispense with the necessity of producing the vehicles for inspection before the competent authority for registration
3. to recall of vehicles in case of defects
4. to regulate taxi aggregators as per the guidelines to be determined by the Central Government
5. to address issues relating to third party insurance and ensure expeditious settlement of compensation to victims
6. to create a Motor Vehicle Accident Fund which would provide compulsory insurance cover to all road users in India for certain types of accidents
7. to ensure protection of good Samaritans who have rendered voluntary service to help road accident victims from any civil or criminal action, and
8. increase of penalties for commission of offences punishable under the provisions of Motor Vehicles Act 1988.
9. to ensure road safety and reduce accidents

In the present Motor Vehicle Act, there are 217 Sections out of which the Bill aims to amend 68 sections. The Bill also proposes insertion of 28 new sections. Whereas Chapter X has been deleted. Chapter XI is being replaced with new provisions claiming that it would simplify third party insurance claims and settlement process.

**6. Concern of Petitioner Federation**:-

We, the members of All India Federation of Motor Vehicles Department Technical Executive Officers’ Association, would always welcome any proposals under the Motor Vehicles Laws to ensure better service delivery to public interest. In the past, whenever such public oriented Laws were enacted and modern technologies were introduced we got ourselves familiarized with such changes. We have established sense of responsibility and executed the policy decision of the Government effectively. Now also, we are prepared to cope up with further innovative techniques including service on electronic platforms. It is our earnest hope that the Government will deploy our officers to the relevant purpose and utilize our services to achieve the objectives.

But, to our dismay, the Motor Vehicles Amendment Bill 2017 is silent on several important issues. There is no transparency as to how and by whom the above measures are going to be implemented by the Government. Obviously there is a hidden schedule in the Bill to entrust the powers, functions and responsibilities to some unknown persons or unknown corporate bodies to be nominated by the Central Government in the place of the officers of Motor Vehicle Department. Such private individuals/bodies are given the nomenclature ‘public servant’ and ‘public authority’ to provide statutory background to them and to make it appear as if they are propertly constituted authorities. This issue is the main concern of every member of our Federation and also all other stakeholders.

We apprehend that most of the provisions in the proposed Motor Vehicles Amendment Bill 2017 are against the provisions of Constitution of India. The States will be deprived of their powers to levy fees and taxes. The object and reasons given in introducing the Bill are not truly reflected in the Bill.

We are of the considered view that that certain provisions in the Bill will have serious impact on our service conditions and will be against public interest. As we are the persons of special interest and likely to be affected, we crave leave of this Hon’ble Selecct Committee to submit our representations/suggestions for consideration.

Before going into clause-by-clause analysis and grounds of our objections, we submit the background of the Bill as follows:-

**7. Background of the Motor Vehicles (amendment) Bill 2017**

(1). Control and regulation of motor vehicles is presently governed by the Motor Vehicles Act 1988 [Central Act 59 of 1988] and the rules framed thereunder by the Central Government as well as by the respective State Governments. The said Act came into force on 01.07.1989 vide notification S.O. No 368(E), dated 22.05.1989 by repealing the previous Motor Vehicles Act 1939.

(2). The enforcement of these provisions is to be done concurrently by the Central Government as well as by the State Governments in respect of the areas specified in the Act. The areas in which the State Governments have got exclusive powers have been clearly specified in Entry 56 and 57 of List II [state list] and Entry 35 of List III [concurrent list] vide Article 246 and Seventh Schedule of the Constitution of India.

(3). Some of the provisions of the Motor Vehicles Act 1988 have been amended from time to time.

(4). On 13.09.2014, the Ministry of Road Transport and Highways, Government of India, have notified a Draft Bill known as ‘Road Transport and Safety Bill” with the object of repealing the Motor Vehicles Act 1988 and substituting it by a new Act. The Bill contained 340 sections. It was stated in the object and reasons that, among other things, the Union Government should take Road Transport under its control and form Independent Corporate Bodies in the place of Motor Vehicles Department

(5). On 28.10.2014, the national level meeting of National Road Safety Council and Transport Development Committee was held at New Delhi. The Road Transport and Safety Bill was also discussed in the meeting. The bill was vehementaly opposed by several States including the State of Tamil Nadu on the ground that the Central Government cannot encroach upon the powers conferred upon the States in Transport Sector by Constitutional provisions. We, the President and other office bearers of All India Federation of Motor Vehicle Department Technical Executive Officers Association have also filed objections with reference to certain provisions in the Bill and submitted our representations.

(6). On 02.12.2014, the Ministry of Road Transport and Highways published a revised edition known as “Road Transport and Safety Bill - Version 2” which contained 347 sections. This Bill also contained provisions empowering the Central Government to usurp the powers of the States and also affecting revenue resources to the States. Therefore the Version-2 of the Bill met with several objections. All India Federation of Motor Vehicle Department Technical Executive Officers Association also filed objections.

(7). On 19.01.2015 the Ministry of Road Transport and Highways published Version 3 of Road Transport and Safety Bill congtaining 348 sections. The major issues raised earlier by the States were not addressed in this Version also. So the States expressed their concern and opposed this Version 3 of the Bill. All India Federation of Motor Vehicle Department Technical Executive Officers Association also filed objections.

(8). On 20.02.2015, the Ministry of Road Transport and Highways came up with yet another revised Version 4 of the Road Transport and Safety Bill containing 343 sections. There was no change in the stand of the Ministry from the original version of the Bill and the objections of the States were not resolved. Therefore Version 4 of the Bill was also acceptable to the States. All India Federation of Motor Vehicle Department Technical Executive Officers Association also filed objections.

(9) On 09.04.2015 and 10.04.2015, the periodical meeting of Southern States Transport Committee was held at Goa. Hon’ble Union Minister for Road Transport and Highways presided over the meeting. After elaborate discussions,all the southern States including Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, Telengana, Pondicherry objected to Version 4 of the Road Transport and Safety Bill.

(10) On 05.06.2015, the Ministry of Road Transport and Highways published Version 5 of Road Transport and Safety Bill containing 227 sections. The issues raised by the States still remained unresolved and hence Version 5 was opposed by the States. All India Federation of Motor Vehicle Department Technical Executive Officers Association also filed objections.

(11).On 22.02.2016 the meeting of National Road Safety Council and Transport Development Council was held at New Delhi. Version 5 of the Road Transport and Safety Bill was discussed. The objections made on behalf of the State of Tamil Nadu and other states were recorded.

(12).On 29.02.2016, during Union Budget Session of Parliament, the Hon’ble Finance Minister declared that the Union Government was going to withdraw the Road Transport and Safety Bill and proposed to make amendments to the existing Motor Vehicles Act 1988.

(13). A Group of Ministers (GoM) was formed under the Chairmanship of Hon’ble Shri Yunus Khan, Minister for Transport, Rajasthan to address the issues to formulate a proposal to make amendment to the Motor Vehicles Act 1988. On 29.04.2016, the first meeting of GoM was held at New Delhi with the Transport Commissioners/Secretaries of all States. On 20.05.2016, the second meeting was held at Bangalore. On 12.06.2016 and 13.06.2016, the third meeting was held at Dharmasala, Himachala Pradesh. On 08.11.2016 the fourth meeting was held at Trivandrum, Kerala.

(14). As a result of the meeting of GoM, a total number of 22 resolutions were passed, 6 resolutions were taken up for making amendment to the Motor Vehicles Act 1988. It was suggested to make such in 89 clauses. [Later on, 3 more clauses were added on 05.04.2017. As such 92 clauses have been proposed in the amending Bill to make amendments to the Motor vehicles Act 1988]. On 3.8.2016 the Union Cabinet Chaired by the Hon’ble Prime Minister of India has given its approval for the Motor Vehicles (Amendment) Bill 2016.

(15).On 09.08.2016, which was the last day of the then Parliamentary session, the Hon’ble Union Minister for Road Transport and Highways hurriedly introduced the Draft Bill no. 214 of 2016 [Motor Vehicles (Amendment) Bill 2016] in the Lok Sabha for consideration and passing. Before introducing the Bill, the routine parliamentary procedures were not followed. The Subject was not listed in the Business of Lok Sabha for 09.08.2016. Copies of the Bill were not supplied to the members of the House. Leave to move the Bill in the Lok Sabha was not sought for. Instead, it was notified that the concurrence of His Excellency the President of India was obtained for introducing the Bill.

(16) The Lok Sabha referred the Bill to Parliamentary Standing Committee on Transport, Tourism and Culture for consideration and reporting to Rajya Sabha.

(17). On 21.09.2016, during the Dinner meeting held at New Delhi with the Hon’ble Union Minister for Road Transport and Highways, the Hon’ble Minister for Transport, Government of Tamil Nadu expressed the concern of the State and strongly opposed the Bill. Hon’ble Ministers of other states also opposed the Bill.

(18).On 04.11.2016, the Parliamentary standing Committee held its meeting at New Delhi with all stakeholders including the Transport Commissioners/Secretaries of States. We, the President and other office bearers of All India Federation of Motor Vehicle Department Technical Executive Officers Association have also filed objections with reference to certain provisions in the Bill and submitted our representations.

(19) On 08.02.2017 the Parliamentary Standing Committee submitted its Report No. 243 to the Rajya Sabha. It was laid on the table of Lok Sabha on the same day for consideration.

(20) When the Bill 214 of 2016 was under consideration before the Lok Sabha, the Ministry of Road Transport and Highways published a list of modifications to Bill 214 of 2016 running to 8 pages on 05.04.2017. The Bill No. 214 of 2016 was renumbered as 214C of 2016. The title of the Bill was named as ‘Motor Vehicles (Amendment) Bill 2017”.

(21) The renumbered Bill 214C of 2016 was introduced by Hon’ble Union Minister for Road Transport and Highways in the Lok Sabha on 07.04.2017 for consideration and passing. The bill was debated till 10.04.2017. It was declared as passed by Lok Sabha.

(22) On 11.04.2017 the Hon’ble Union Minister for Road Transport Highways tried to move the Bill in Rajya Sabha for consideration and passing. Several members of Rajya Sabha made objections on the ground that parliamentary procedures were not followed, sufficient time was not given to them. Therefore the Bill was not taken up for consideration on that day. However, it was listed in the Business of Rajya Sabha on 12.04.2017.

(23) On 12.04.2017, some of Members of Rajya Sabha filed their objections for taking up the consideration of the Bill. The Hon’ble Chairman of Rajya Sabha due to lack of time the session was adjourned sine die and so the Bill was not taken up for consideration.

(24) During the recent session of Parliament, the Bill 214C of 2016 was listed in Business of Rajya Sabha on various dates in the month of July and August 2017 but could not be taken up for debate. Some of the Memebrs of Rajya Sabha filed their objections. In the meanwhile, in consultation with Hon’ble Memebrs of Rajya Sabha, the Hon’ble Chairman of Rajya Sabha decided to refer the Bill to Select Committee of Rajya Sabha for report. However, the Bill was listed for debate on …………. The Hon’ble Members raised objections and requested that the Bill be referred to Select Committee as already decided. The Hon’ble Deputy Chairman convinced the Members that the Hon’ble Union Minister for Road Transport and Highways wanted to have a meeting with Leaders of all parties in Rajya Sabha to address the issues.

(25).On .2017 a meeting was held in the Chamber of Hon’ble Chairman of Rajya Sabha. Hon’ble Union Minister for Road Transport and Highways discussed the Bill with Party Leaders and requested them to file their written Notes for consulting with the Ministry. Accordingly the Members of Rajya Sabha filed their written notes/objections/suggestions.

(26).On 03.08.2017 the Hon’ble Union Minister for Road Transport and Highways conveyed his remarks and reply to the objections raised by the Members of Rajya Sabha.

(27). Since no consensus was reached during the meeting with Leaders of all parties, the Hon’ble Chairman of Rajya Sabha decided to refer the Bill to Select Committee as already decided.

(28).In the meanwhile, the meeting of Southern States Transport Committee was held at Trivandrum on .07.2017. It was unanimously resolved that certain provisions in the Motor Vehicles (Amendment) Bill 2017 are against the interest of the States and they should be deleted.

(29).On 11.08.2017, the Hon’ble Minister for State, Road Transport and Highways moved the Motor Vehicles (Amendment) Bill 2017 in Rajya Sabha to refer it to Select Committee consisting of 23 members under the Chairmanship of Hon’ble Member Parliament (Rajya Sabha) Dr. Vinay P. Sahasrabuddhe. The motion was adopted.

(30).In the backdrop of the above events, facts and circumstances, the Motor Vehicles (Amendment) Bill 2017 is now under consideration before the Select Committee of Rajya Sabha. The Committee is supposed to submit its report on the first day of next session of Rajya Sabha.

--

**8. Objectionable clauses in the Bill:**

On behalf of All India Federation of Motor Vehicle Department Technical Executive Officers’ Association, we hereby make our objections to the following provisions in the proposed Motor Vehicles Amendment Bill 2017 for the reasons stated hereunder:-

|  |  |  |  |
| --- | --- | --- | --- |
| **Sl.**  **No.** | **Amending clause**  **In the Bill** | **Amendment proposed in the Principal Act** | **Grounds of objection**  **pages** |
| 1 | Clause 89  [ page 41  Lines 12 to 29] | Insertion of new section 211-A | Page 17 to 32 |
| 2(a) | Clause 91  [ page 42  Lines 6 to 13] | Insertion of new section 215-A | Page 33 to 50 |
| 2(b) | Clause 91  [page 42  Lines 15 to 24] | Insertion of new section 215-B | Page 51 to 61 |
| 2(c) | Clause 91  [page 42  Lines 25 to 39] | Insertion of new section 215-C | Page 61 to 62 |
| 3 | Clause 18  [page 7  Lines 31 to 38] | Omission of existing section 44 and substituting it by a new section 44 | Page 63 to 74 |
| 4 | Clause 33  [page 13  Lines 10 to 36] | Insertion of new section 88-A | Page 75 to 86 |

We submit the clause-by-clause analysis and grounds of our objections as follows:-

**9. Objection against insertion of new section 211-A**

**Clause 89**

[page 41 – Lines 12 to 29]

Insertion of new section 211-A

**(1) The object of new section 211-A**:-

The Bill No 214 of 2016 containing 89 clauses was introduced in the Lok sabha on 09.08.2016 with the object of making amendments to the Principal Motor Vehicles Act 1988.The amending Act was titled as “Motor Vehicles (Amendment) Act 2016”. In Clause 87 of the Bill it has been proposed to to insert sections 211-A in the Principal Act.

In the objects and reasons annexed to the Bill it is stated that

*“Clause 87 seeks to insert a new section 211A in the Act to provide that all documents, forms and applications under this Act may be filed in an electronic format to be prescribed by the Central or State Governments, as may be applicable”*

When the Bill 214 of 2016 was under consideration before the Lok Sabha, the Ministry of Road Transport and Highways published a list of modifications on 05.04.2017. The Bill No. 214 of 2016 was renumbered as 214C of 2016 with 92 clauses. The title of the Bill was named as ‘Motor Vehicles (Amendment) Bill 2017”. It was introduced in the Lok Sabha on 07.04.2017 and passed on 10.04.2017.

Clause 87 in the original Bill No. 214 of 2016 was renumbered as clause 89 in the new Bill 214 C of 2016. No statement of reasons and objectives or Memorandum regarding Delegated Legislation were annexed to the Bill 214 C of 2016. The amendment proposed in section 211-A was retained.

**(2). Contents of Section 211-A:-**

In Clause 89 of the Bill 214 C the following amendment is proposed:-

After section 211 of the Principal Act, the following section shall be inserted, namely:—

*"211A. (1) Where any provision of this Act or the rules and regulations made thereunder provides for-*

* + - 1. *the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the Central Government or the State Government in a particular manner:*
      2. *the issue or grant of any licence, permit, sanction, approval or endorsement, by whatever name called in a particular manner;*
      3. *the receipt or payment of money in a particular manner, then notwithstanding anything contained in such provision, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the Central Government or the State Government, as the case may be.*

*(2).The Central Government or the State Government shall, for the purpose of sub-section (1), prescribe —*

1. *the manner and format in which such electronic forms and documents shall be filed, created or issued; and*
2. *the manner or method of payment of any fee or charges for filing, creation or issue of any electronic document under clause (a)".*

**(3). Recommendation of the Parliamentary Standing Committee**

The Parliamentary Standing Committee has held discussions with various stakeholders on the scope of section 211-A and it has recommended as follows:-

“*311. Clause 87 says after section 211 of the principal Act, the following section shall be inserted, namely:—*

*"211A. (1) Where any provision of this Act or the rules and regulations made thereunder provides for—*

1. *the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the Central Government or the State Government in a particular manner;*
2. *the issue or grant of any licence, permit, sanction, approval or endorsement, by whatever name called in a particular manner;*
3. *the receipt or payment of money in a particular manner, then notwithstanding anything contained in such provision, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the Central Government or the State Government, as the case may be.*

*(2) The Central Government or the State Government shall, for the purpose of sub-section (1), prescribe —*

1. *the manner and format in which such electronic forms and documents shall be filed, created or issued; and*
2. *the manner or method of payment of any fee or charges for filing, creation or issue of any electronic document under clause (a).".*

*Clause 87 seeks to insert a new section 211A in the Act to provide that all documents, forms and applications under this Act may be filed in an electronic format to be prescribed by the Central or State Governments, as may be applicable.*

*312. The stakeholders feel that insertion of Section 211 A which deals with electronic documents, etc. would lead to a situation where the power to deal with applications or any other form of transaction would be taken away from officials of the State Government. Such an insertion is unwarranted.*

*313. The Ministry in its reply said that Section 211 A is merely the extension of the law codified in Section 41(6) of the IT Act 2000 ,according to which any document which can be filed in a physical form may also be filed in an electronic form subject to any rules that may be made by the appropriate Government in that behalf. It does not change the division of powers as envisaged in MV Act, in any form or manner.*

*314. The Committee recommends that the digitalization and making the things electronically available should be done on priority but it should not be forced and it may be done in a phased manner because some states and some centres within the State may not be in a position to switch over to electronically equipped office in a short period due to financial shortage and lack of manpower.*

**(4). Grounds for objection**

(a). Constitutional validity:-

**Section 211A now sought to be introduced by clause 89 is unconstitutional for the reasons stated hereunder**

The proposed section 211-A is intended to empower the Central Government to levy and collect fees and taxes through any office, authority, body or agency owned or controlled by the Central Government in a particular manner. That will be an encroaching operation on the exclusive power of State Government. The powers conferred upon the State to levy tax are inclusive of fees also.

Under Entry 35 List III the Parliament and the State Governments have concurrent powers to make legislations regarding the mechanically propelled vehicles. This includes the power of Parliament to legislate in relation to the principles on which taxes on such vehicles are to be levied.

|  |  |
| --- | --- |
| **State List**  **List II**  **Seventh Schedule of Article 246** | **Concurrent List**  **List III**  **Seventh Schedule of Article 246** |
| **Entry 57**: Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III." | **Entry 35**: Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied." |

Entry 35 in List III and Entry 57 in List II deal with two different matters though allied ones. The latter deals with taxes on vehicles and the former with the ‘Principles on which such taxes are to be levied’. The terms ‘Taxes on vehicles” connote the liability to pay at the rates at which the taxes are to be levied. Whereas, the expression ‘Principles of taxation’ denotes rules of guidance in the matter of levy of tax. (Reference: Case Law State of Assam vs Lakanya Probha, Delhi (AIR 1967, SC 1575) and (2) AIR 2016 (Kar.83))

The subjection of Entry 57 of the List II to the provisions of Entry 35 of the List III would mean that if there is an existing law made by Parliament laying down the ‘Principles on which taxes” should be levied, then any state legislation enacted with reference to Entry 57 of List II must be in conformity with the principles of taxation laid down by the Parliament. In this absence of such law by the Parliament with regard to the principles, the State legislation will prevail (AIR 1966, Madhay Pra 131) and M/s. Sharma Transport Vs. State of AP and others in SC appeal (civil) 4998 of 2000.

Further in Chapter IV of the Motor Vehicles Act, 1988 most of the fees are collected along with tax leviable on motor vehicles. Under the existing system, the power to regulate the movement of motor vehicles and the power to levy taxes on motor vehicles are treated as two distinct powers under the provisions of the Constitution of India.

The power to control and regulate the movement of motor vehicles falls within the concurrent list and the power is exercised by both the Central and State Governments.

Whereas, the levy and collection of taxes on motor vehicles is clearly within the ambit of State legislative competence as per Entry 57 List II Seventh Schedule of Article 246 under the Constitution.

As Parliament has not enacted any law regulating the principles or guiding rules of taxation on motor vehicles, the plenary powers of legislation with the State Government is exclusive under Article 246(3).

The nature of taxes under the entries being compensatory, the State’s power to impose taxes is absolute, unrestricted and not subject to the control of Parliament on the Motor Vehicle Act 1988 (AIR 1985, karna 186).

In this connection it is to be stated that each of the entries relating to levy of fees (Entry 96 List I, Entry 66 List II and Entry 47 List III) is an adjunct to every legislative power including the entries conferring the powers to levy particular taxes.

In the absence of any principles laid down by the Parliament by law under Entry 35 List III it is the prerogative of the state Government to levy fees on all mechanically propelled motor vehicles, inclusive of taxes.

The Central Government has now proposed to introduce new law under section 215A empowering it to delegate any power or functions that have been conferred upon it by the Act to a body/agency/authority named as public servants/public authority owned or controlled by the Central Government and to authorize such public servant/public authority to discharge any of its powers, functions and duties under this Act.

Obviously, the said body/agency is going to deal with the filing of forms, application or any other documents. It will also be engaged in the receipt or payment of money towards fees or charges for filing, creation or issue of any electronic document in respect of all matters pertaining to licensing / registration of vehicles and issue of permits on interstate routes under new section 88A.

The proposed amendment in section 211-A will take away the powers of States to levy and collect fees pertaining to all matters connected with motor vehicle laws and empower the Central Government to exercise such powers. This proposal is against Constitutional provisions in Entry 57 List II Seventh Schedule of Article 246. Therefore section 211-A shall be deleted.

The objects and reasons for insertion of section 211-A is very simple i.e. to provide for filing of documents, forms and applications under the Motor Vehicles Act in electronic format. In its reply to the Parliamentary Standing Committee the Ministry has said that Section 211A is merely the extension of the law codified in Section 41(6) of the IT Act 2000 according to which any document which can be filed in a physical form may also be filed in an electronic form subject to any rules that may be made by the appropriate Government in that behalf. It does not change the division of powers as envisaged in MV Act, in any form or manner.

On the contrary, the section 211-A contains provisions which are beyond the above scope. It contains controversial provisions such as “filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the Central Government or the State Government, and the issue of license, permit, sanction, approval, the receipt or payment of money shall be effected by means of such electronic form as may be prescribed by the Central Government or the State Government, as the case may be”

Thus the Ministry has not properly clarified the issue behind the scope of section 211-A before the Parliamentary Standing Committee. But it has suppressed the hidden object of requiring the public to file documents and remit fees and taxes in electronic form with any body or agency owned on controlled by Central Government and to be authorized for the purpose. The Ministry has not kept its promise that “section 211-A does not change the division of powers as envisaged in MV Act, in any form or manner*”.* The entire provisions in section 211-A are deceptive.

(b). Impact on State powers:-

The object of the proposed amendment is that filing of any application, issue and grant of licenses and permits, receipt or payment etc. may be effected by means of such electronic form. This object is a welcome measure.

In the principal Motor Vehicles Act 1988 and the Central Motor vehicles Rules 1989 as well as in the State Rules provisions have been made with regard to the Form of application, manner in which such applications have to be made, authority to which the applications shall be made, method of payment of fees etc.

The States have already implemented computerization of all transactions of the Transport Department. On-line remittance of motor vehicle taxes, on-line application for fixing appointment to obtain learners’ licenses, on-line application for registration etc. have been put in place. The States are prepared to implement the scheme by upgrading the infrastructure and soft-ware developments.

The Ministry of Road Transport and Highways has been facilitating computerization of all Transport Department Offices established under section 213 of the Motor Vehicles Act 1988 and functioning under the control of the respective State Governments in the country.

The works relating to inspection of vehicles and issue of registration certificates (RC), driving test and issue of driving licenses (DL), issue f permits, collection of taxes and fees have been fully computerized by National Informatics Centre (NIC). NIC is a part of Government of India functioning under the Ministry of Information and Technology. They are developing software applications for all departments of the Central Government and the State Government.

NIC have developed the application softwares called “VAHAN” for vehicle registration related works and “SARATHI” for driving license related works.

The compilation of data pertaining to registration of motor vehicles and driving licenses issued in all States in the State Register and National Register is being monitored by NIC. They are conceptualized to capture the functionalities as mandated by the Motor Vehicles Act, 1988 as well as State Rules with customization in the core product to suit the requirements of all States.

NIC have recently released the upgraded version of application software ‘Parivahan’. It is being implemented successfully in all the offices of Transport Department.

Once the required infrastructure and interconnectivity are provided the object of eliminating bogus licenses, creation of centralized data base for licenses and vehicles could be achieved effectively by the Department officials themselves.

The object of the proposed amendment i.e. “for facilitating the public” is effectively carried out by the officers of Motor Vehicle Department in accordance with the provisions of Principal Act itself. The manner and format in which electronic forms and documents shall be filed, created or issued and the manner or method of payment of any fee or charges for filing, creation or issue of any electronic document may also be incorporated in the Principal Act itself under the appropriate sections. There is no justification to provide an amendment as Section 211-A for that purpose.

A careful reading of the proposed amendment in section 211-A, would reveal that there is hidden schedule behind this provision to enable the Central Government to make rules or regulations requiring the general public to file applications or documents by electronic mode only and that too with the authority or body or agency owned or controlled by the Central Government.

The amendment is silent on the question why the general public should not file applications or remit the fees to the Motor Vehicles Department officers who are statutory authorities appointed under section 213 of the Motor Vehicles Act.

Obviously, there is suppression of fact, why the general public should go to authority or body or agency owned or controlled by the Central Government when there is a well established statutory department of the States and who would be the said authority or body or agency.-

When the above fact was clarified with the Ministry of Road Transport and Highways as directed by the Hon’ble Deputy Chairman, they have replied that:

*“the new section is to provide for electronic filing of all documents. This will help in citizens’ facilitations. Central Government may provide for payment mechanism, however, it will not retain any fee and the same will be remitted to the States on real time basis.”*

The Ministry has not clarified why the general public should be forced to file documents by electronic mode only with the authority, body or agency owned or controlled by the Central Government and not with the officers of Motor Vehicle Department.

The Ministry has not clarified why Central Government should take over the powers of the States to provide for payment mechanism, and why the general public should be forced to remit the fees, taxes etc. with an authority, body or agency to be nominated by Central Government for the purpose. Thus, the Ministry has accepted the fact that the hidden schedule behind this amendment is to empower the Central Government to take over the powers of the States to levy and collect fees and taxes and entrust the functions to a private person/body called public servant or public authority in the place of the Motor Vehicles Department.

The clarification of the Ministry is silent on the aspect as to why the Central Government is not enthusiastic to upgrade the infrastructure facilities now in place in Motor Vehicle Department to achieve the object of this amendment and why they prefer to constitute a body or agency.

To sum up, the proposed amendment section 211-A is redundant by virtue of the existing provisions in each Chapter in the Principal Act which may provide for electronic mode for filing documents, remitting fees, and issuing licenses, registration and permits etc.

By this amendment, the powers of the State to levy and collect fees and taxes on motor vehicles as protected in the Constitutional provisions will be taken away by the Central Government. Therefore section 211-A shall be deleted.

(c.) Impact on State revenue

The Ministry of Road Transport and Highways have clarified that:

*“the new section 211-A is to provide for electronic filing of all documents. This will help in citizens’ facilitations. Central Government may provide for payment mechanism, however, it will not retain any fee and the same will be remitted to the States on real time basis.”*

The Ministry has not clarified why the general public should be forced to remit the fees, taxes etc. with an authority, body or agency to be nominated by Central Government for the purpose. Thus, the Ministry has accepted the fact that the hidden schedule behind this amendment is to empower the Central Government to take over the powers of the States to levy and collect fees and taxes.

Therefore the proposed amendment in section 211-A will take away the powers of the State to levy and collect fees and taxes on motor vehicles. Only a meager amount of the revenue collected by the Central Government through the agency/body would be apportioned to the States. This will have a serious impact on the State revenue resources.

(d). Impact on Motor Vehicle Department

The Ministry of Road Transport and Highways has been facilitating computerization of all Transport Department Offices established under section 213 of the Motor Vehicles Act 1988 and functioning under the control of the respective State Governments in the country.

The works relating to inspection of vehicles and issue of registration certificates (RC), driving test and issue of driving licenses (DL), issue f permits, collection of taxes and fees have been fully computerized by National Informatics Centre (NIC). NIC is a part of Government of India functioning under the Ministry of Information and Technology. They are developing software applications for all departments of the Central Government and the State Government.

The Ministry of Road Transport and Highways have clarified that:

*“the new section 211-A is to provide for electronic filing of all documents. This will help in citizens’ facilitations. Central Government may provide for payment mechanism, however, it will not retain any fee and the same will be remitted to the States on real time basis.”*

The clarification of the Ministry is silent on the aspect as to why the Central Government is not enthusiastic to upgrade the infrastructure facilities now in place in Motor Vehicle Department to achieve the object of this amendment and why they prefer to constitute a body or agency.

The existing provisions in each Chapter of the Principal Act and especially section 211 may be suitably amended provides for provide for electronic mode for filing documents, remitting fees, and issuing licenses, registration and permits etc. with the existing Motor Vehicle Department offices. Therefore the proposed amendment section 211-A is superfluous and not in public interest and it should be deleted.

(e) Impact on road safety and general public

The present legislation enables the common man to file documents or applications or remit fees and taxes in any of the offices of Motor vehicles Department. Filing of documents and remitting fees etc. by electronic mode is being implemented in a phased manner with the technical expertise of National Informatics Centre, New Delhi. The system is working effectively. The object of the Bill would be achieved when the infrastructure facilities in the offices of Motor vehicles Department are upgraded and the data centres are interconnected to a common electronic platform. A common man will have to be given the option to switch over to the electronic mode till such time the facilities are upgraded. It is not in public interest to force a common man to file application or document or remit fees by electronic mode only at the agency/body to be nominated by the Central Government. It is commonly seen that, the service charges/processing fees charges by such agencies/bodies are manifold than the actual application fees levied by the Government. Therefore the amendment in section 211-A shall be deleted in public interest.

(f). Case Laws:-

(i).Rulings of the Hon’ble Madras High Court in Para 52 of its judgment in the case of V.Guruviah Naidu and Brothers vs State of Madras reported in AIR 1958 MAD 158 are reproduced as hereunder:-

*“…So far we have considered only the provisions as to registration and licensing and not the fee charged on the licenses. In this context we derive assistance from the fact, that in each of the three lists in Schedule VII the entry relating to the levy of fees, List I, Item 96, List II, Item 66 and List III, Item 47 is to be read as an adjunct to every legislative power including the entries conferring the power to levy particular taxes. We are inclined to read this as an indication that the Constitution-makers conceived of fees being leviable in the course of the levy or collection of taxes, and surely this would certainly include fees for licences. We should not be understood as saying that the fees levied for the licences which are the machinery for the enforcement and collection of a tax are not "fees" but are virtually taxes and that they need not satisfy the test of reasonableness laid down in the cases we have quoted at the beginning of this judgment.”*

In view of the above findings when these are no principles on which taxes on mechanically propelled vehicles has been laid down by the Parliament under Entry 35 of Concurrent List, the Entry 47 of List III regarding the levy of fees in respect of matters on mechanically propelled vehicles would not become the occupied field for Parliament to make laws as now proposed under section 211A (Clause 89)

This is a settled issue as per the judgment rendered by our Hon’ble Supreme Court in the case between “*State of Uttarpradesh Vs Vam Organic Chemicals Ltd., AIR 2003, SC 4650 and also in another case in Jindal Stainless and another Vs State of Haryana and others”*

(ii). It is pertinent to note that reasoning is the soul of an amendment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. The Hon’ble Apex Court has observed in a case WP Civil No 210 of 2012 [Namit Sharma Vs Union of India] as follows:-

*“In order to examine the constitutionality or otherwise of a statute or any of its provisions, one of the most relevant considerations is the object and reasons as well as the legislative history of the statute. It would help the court in arriving at a more objective and justful approach. It would be necessary for the Court to examine the reasons of enactment of a particular provision so as to find out its ultimate impact vis-a-vis the constitutional provisions.”*

**(5). Representation/Suggestions:-**

The existing section 211 of the Principal Act empowers the Central Government as well as State Governments to levy fees in respect of applications etc. falling in their respective areas, and also grant exemptions in public interest in accordance with the rules framed by them. The existing provisions in the Central Motor Vehicles Rules 1989 and the State Rules specify the Forms, the method of filing documents and mode of payment of fees etc. The system is working effectively.

The object of enabling the public to file documents and remit fees and taxes by electronic mode may be carried out by amending the relevant provisions in Central Motor Vehicles Rules and the State Rules to accommodate the electronic process of all documents as suggested to the Ministry.

The very purpose of facilitating the public as stated by Ministry of Road Transport and Highways in its reply to Hon’ble Deputy Chairman, Rajya Sabha can be successfully met out by a simple amendment to existing section 211. The following amendment is suggested for consideration:

In section 211 of the Principal Act, after the words “statistics or copies of documents or orders” the following words shall be inserted viz, #”**either in documents or in electronic forms**”#

It is relevant to take into consideration the observation of the Hon’ble Supreme Court of India in its judgment dated 24.8.2017 in Writ Petition (Civil) No. 494 of 2012. There is a clear directive to privacy as a fundamental right. The nine-judge Constitution Bench has given the ruling that right to privacy is “intrinsic to life and liberty” and it inherently protected under the varius fundamental freedoms enshrined under Part III of the Indian Constitution. The Hon’ble Supreme Court has expressed its apprehension that both the Government and service providers collect personal data like mobile numbers, bank details, addresses, date of birth, sexual identitities, health records, ownership of properties and taxes without providing safeguards from third parties and such collection and use of data and personal information is the risk falling in the hands of private players and service providers. The Hon’ble Suprme Court has repeatedly aked the Government whether it has plans to set up a ‘robust data protection mechanism.. The Government have informed that they have constituted a committee of experts led by former Supreme Court Judge, Justice B.N. Srikrishna to “identify key data protection issues, recommend a framework to secure personal data in an increasingly digitized economy, to addres privacy concerns and build safeguards against data breaches and suggest a draft protection Bill.”

In the light of above judgement, the proposal under section 211-A Ministry to compel the people to file any form, application or any other documents and remit fees and taxes under the provisions of Motor Vehicles Act with any private body or agency in electronic form will run counter to the judgment and affect the privacy and fundamental rights of the public.

It is prayed that section 211-A may be deleted.

**10. Objection against insertion of new section 215-A**

**Clause 91**

[page 42 Lines 6 to 13]

Insertion of new section 215-A

**(1).The object of new section 215-A**:

The Bill No 214 of 2016 containing 89 clauses was introduced in the Lok sabha on 09.08.2016 with the object of making amendments to the Principal Motor Vehicles Act 1988.The amending Act was titled as “Motor Vehicles (Amendment) Act 2016”. In Clause 89 of the Bill it has been proposed to insert sections 215-A, 215B and 215 C in the Principal Act.

In The Notes annexed to the Bill 214 of 2016 it is stated as follows:-

*“Clause 89 seeks to insert new provisions, viz., sections 215A, 215B and 215C in the Act.*

*Section 215A enables the Central and State Governments to delegate any power or function to any person or group of persons*

*and*

*authorise such person or group of persons to discharge any of the powers, functions, or duties conferred under the Act.*

*Section 215B enumerates the rule making powers granted to the Central Government under this Chapter.*

*Section 215C enumerates the rule making powers granted to the State Government under this Chapter.”*

In the ‘Memorandum regarding Delegated Legislation’ which is Annexed to the Bill it is stated as follows:-

“...*Clause 89* of the Bill *proposes to empower the Central Government to make rules for the purposes of carrying out the provisions of the proposed legislation. The matters in respect of which the rules may be made have been enumerated in the proposed new sections 215B and 215C in the Act..”*

When the Bill 214 of 2016 was under consideration before the Lok Sabha, the Ministry of Road Transport and Highways published a list of modifications on 05.04.2017. The Bill No. 214 of 2016 was renumbered as 214C of 2016 with 92 clauses. The title of the Bill was named as ‘Motor Vehicles (Amendment) Bill 2017”. It was introduced in the Lok Sabha on 07.04.2017 and passed on 10.04.2017.

Clause 89 in the original Bill No. 214 of 2016 was renumbered as clause 91 in the new Bill 214 C of 2016 and the words **“to any person or group of persons** ” were substituted by the words **“ to any public servant or public authority**”.

No statement of reasons and objectives or Memorandum regarding Delegated Legislation were annexed to the Bill 214 C of 2016.

**(2). Contents of Section 215-A:-**

The proposed amendment in section 215-A is as follows:-

Insertion of new sections 215A, 215B and 215C.

Power of the Central Government and State Government to delegate.

After section 215 of the principal Act, the following sections shall be inserted, namely—

"215A. (*1*) Notwithstanding anything else contained in this Act the Central

Government shall have the power to delegate any power or functions that have been conferred upon it by the Act to any public servant or public authority

and

authorize such public servant or public authority to discharge any of its powers, functions and duties under this Act.

(*2*). Notwithstanding anything else contained in this Act the State Government shall have the power to delegate any power or functions that have been conferred upon it by the Act to any public servant or public authority

and

authorise such public servant or public authority to discharge any of its powers, functions and duties under this Act.

**(3). Grounds for objection for insertion of section 215-A**

**(a). Reasons and objects are not transparent**

Insertion of Section 215-A, 215-B and 215-C was originally proposed in clause 89 of Bill No.214 of 2016. After renumbering of Bill 214 of 2016 as Bill No. 214 C 2016 the said amendment was proposed under clause 91. The words **“to any person or group of persons** ” wherever they occur in clause 89 were also substituted by the words **“to any public servant or public authority**” in clause 91.

The object and reasons for substitution the the words **“to any person or group of persons** ” by the words **“to any public servant or public authority**” have not been spelt out clearly.

No statement of reasons and objectives or Memorandum regarding Delegated Legislation were annexed to the Bill 214 C of 2016.

The procedure for constitution of such public servant or public authority, their qualification, the service conditions, powers and functions have not been made clear.

The question whether such public servant or public authority will be constituted as autonomous bodies to be conferred with statutory powers or they would function as an outsourcing agency under the control of the officers appointed under section 213 of the Motor vehicles Act 1988 is also not made clear.

Thus the proposal to delegate the powers of the Central Government and State Governments to private persons named as public servant/public authority is an excessive delegation of power without any restriction.

On a clarification sought for by the Hon’ble Deputy Chairman of Rajya Sabha the Ministry has given its comments that the powers of Central Government and State Governments could be delegated to public servant as per section 21 of Indian Penal Code and to public authority as per Section 2(h) of Right to Information Act, 2005.

But the Ministry has not given any valid reasons and objects for the necessity to delegate all powers of the Central and State Governments under the provisions of Motor Vehicles Act 1988 including rule making powers to the said public servant / public authority.

The Ministry has failed to justify why the powers of Central Government and State Governments should be delegated to the said public servant/public authority when the Motor Vehicle Department established under section 213 for the purpose of carrying into effect of the provisions of the said Act is in existence.

The Ministry has also failed to demarcate the areas in which the powers and functions of the officers of Motor vehicles Department which is already in place and the public servant/public authority to be nominated are to be exercised.

Thus there is no transparency in the proposal to delegate the powers of Central Government and State Governments to private persons or groups of persons even though they could be given the nomenclature as ‘public servant’ or ‘public authority’.

**(b). Constitutional validity:-**

The explanation of the terms ‘public servant’ and ‘public authority’ and the method of constitution of such authority has not been clearly stated in the Bill 214 C of 2016.

The proposal to delegate the powers of Central Government and the State Governments to public servant/public authority and to authorize them to exercise statutory powers under the Motor Vehicles Act 1988 is against constitutional provisions. Parliament cannot enact such a legislation to empower the Central and State Governments to re-delegate their powers to a public servant or public authority.

The Bill 214 of 2016 was originally introduced in the Lok sabha with 89 sections with the title “Motor Vehicles (Amendment) Act 2016”. On 10.4.2017 the Bill No. 214 of 2016 was withdrawn in its entirety. No corrigenda to the original bill 214 of 2016 was published. A fresh bill renumbered as Bill No. 214 C of 2016 with 92 clauses was introduced in Lok sabha with the title “Motor Vehicles (Amendment) Act 2017”.

Major changes have been made to various provisions in the Bill 214 of 2016. Clause 89 in Bill 214 of 2016 was renumbered as clause 91 in bill 214 C of 2016 and the words **“to any person or group of persons** ” were substituted by the words **“ to any public servant or public authority**”. No statement of reasons and objectives or Memorandum regarding Delegated Legislation were annexed to the Bill 214 C of 2016

Therefore the bill 214 C of 2016 has to be treated as a Fresh Bill. But the Parliamentary Procedure have not been followed before moving the fresh Bill in the Lok sabha.

**(c). Definition of public servant:-**

The Ministry has clarified to the Hon’ble Deputy Chairman of Rajya Sabha that the powers of Central Government and State Governments could be delegated to public servant as per section 21 of Indian Penal Code and the same could be delegated to public authority as per Section 2(h) of Right to Information Act, 2005.

Therefore it is obvious that the object of the Bill is to delegate the powers of the Central and State Governments to the public servant defined in section 21 of IPC and the public authority defined in section 2(h) of the Right to Information Act 2005.

It is pertinent to note that the Indian Penal Code [Act No 45 of 1860] referred to by the Ministry will not meet the requirement of Article 14 of the Constitution of India.

It is understood that the IPC is amended by States to their requirements. Entry 1 in List III (Concurrent List) in Seventh Schedule of the Constitution of India authorises both the Parliament as well as the State Legislatures to legislate on criminal law including all matters in the IPC.

In section 21 of the above IPC which is read out in the comments of Ministry, 12 items have been incorporated to define the term ‘Public Servant’ In Sl.No.12 the bodies viz, “University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the Constitution of India or constituted by the Government and a local authority" have been included.

This clause is a State amendment made by State of Rajasthan vide Rajasthan Act, 1993 (4 of 1993) with effect from 11th February 1993. The said amendment is as follows:-

**State of Rajasthan:**

**Amendment of Section 21, Central Act, 45 of 1860.-**

In Section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860), in its application to the State of Rajasthan, after clause twelfth, the following new clause shall be added, namely:

***“Thirteenth*.-**

**Every person employed or engaged by any public body in the conduct and supervision of any examination recognized or approved under any law.**

*Explanation:-* The  expression **“Public Body”** includes-

1. a University, Board of Education  or other  body, either established  by or under a Central or State Act or under the provisions of the Constitution of  India or constituted by the Government; and
2. a local authority.”

[Rajasthan Act, 1993 (4 of 1993) received the assent of the President on the 9th day of January 1993 and was published in Rajasthan State Gazette dated 11.02.1993 Pt.4(Ka), Extraordinary page.213].

The full text of the State amendment is not shown. From the serial No. 12 of the comments from Ministry for section 215-A it is obvious that not only a person employed by a body but also a person engaged by a body will become public servant. By virtue of the above explanation even a casual labourer engaged by the said Body will become public servant.

In serial No.11 it is said as “Every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government:”

The full sub clause is not fully exhibited in the above comments of the Ministry. The full version of the sub clause is as follows:-

“**Every person--**

1. **in the service or pay of the Government or remunerated**

**by fees or commission for the performance of any public duty by the Government;**

1. **in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]**

In its comments, the Ministry has suppressed the class of the persons who are in the service of a Government Company as defined in section 617 of the Companies Act 1956 [which is repealed as sub section(45) of section 2 of the Companies Act 2013 (Act No 18/2013)].

However it could be understood that section 215-A is intended to delegate to powers of the Central and State Government to the class of the persons who are in the service of a Government Company also as defined in sub section (45) of section 2 of the Companies Act 2013 (Act No 18/2013)

Therefore the ‘public servant’ referred to in section 215 could be a casual labourer employed or engaged by the Institution or Body covered by Section 21 of the Indian Penal Code, 1860 or he could be a person appointed in a Government company as defined in section 617 of the Companies Act, 1956. The statutory powers now being exercised by the officers of Motor vehicles Department which has been established under section 213 of the Motor vehicles Act 1988 cannot be delegated to such public servants.

**(d). Definition of ‘public authority’**

Regarding the term Public Authority the Ministry has commented that the word “Public authority” has been defined by section 2(h) of Right to Information Act 2005 which is as follows:-

*2(h). "public authority" means any authority or body or institution of self- government established or constituted—*

1. *by or under the Constitution;*
2. *by any other law made by Parliament;*
3. *by any other law made by State Legislature;*
4. *by notification issued or order made by the appropriate Government,*

*and includes any—*

1. *body owned, controlled or substantially financed;*
2. *non-Government organisation substantially financed,*

*directly or indirectly by funds provided by the appropriate Government;*

The Ministry has also given a comment as “it can be seen that no private person or agency can be delegated with any powers of the Government.”

But on the contrary, as per section 2(h)(d)(ii), the non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government is also a Public authority. The Ministry’s comment is not transparent in this aspect.

The Right to Information Act 2005 referred to by the Ministry is a Central Act No.22 of 2005. The main object to enact this Act is to provide for practical regime and ensure the rights of the citizens to get information from authorities. Under the provisions of the Act, any citizen may request information from a “public authority” (a body of Government or “instrumentality of State”). The said Public Authority is required to give reply to the citizen seeking information expeditiously or within thirty days. The State Government has, by laws, formed the authorities of all departments as Public Information Officers to perform the duties of Public Authority.

The officers of Motor vehicle Department appointed under section 213 of the Motor Vehicle Act 1988 are also designated as ‘Public Authority’ for the purpose of Right to Information Act 2005 and they are also performing the duties right from the implementation of Right to Information Act 2005.

The Right to Information Act 2005, which was referred by the Ministry in its comments, has defined competent authority vide section 2(*e*) as that ***"competent authority" means—***

1. *the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;*
2. *the Chief Justice of India in the case of the Supreme Court;*
3. *the Chief Justice of the High Court in the case of a High Court;*
4. *the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;*
5. *the administrator appointed under article 239 of the Constitution;*

Upon examination of the meaning of public authority referred in the comments of the Ministry, it may be seen that the term ‘public authority’ includes two different types of Bodies. One is a Body which has been created by a Statute. The other is a Body which has already been in existence and it is going to be governed in accordance with the provisions of a Statute.

Therefore the ‘public authority’ referred to in section 215-A is not an authority constituted under the statute. Powers now being exercised by the Officers of the Motor Vehicles department which has been consitituted under section 213 of the Motor vehicles Act 1988 cannot be delegated to such an authority.

**(e). Central and State Governments cannot re-delegate their powers to public servant or public authority:-**

The points for consideration is:-

whether the Parliament can enact a law to enable the Central and State Governments to re-delegate the statutory powers conferred upon them under the Motor Vehicles Act 1988 to the public servant and public authority referred to by the Ministry?

It is pertinent to note that there is a vast difference between the conditions governing the appointment of a Government Servant by a statutory department and the engagement of a person by a Body to act as a public servant or public authority

A Government servant is a person who is a member of a service or who holds a civil post under the Union or is employed by the State Governments under the proviso to Article 309 of the Constitution.

Whereas the category of public servants has wider scope and it enlarged so as to include the office bearers of companies or societies receiving any financial aid from the Government.

By virtue of above scope of public servants, a question arises whether the protection given under section 197 of Criminal Procedure Code could be made applicable in respect of the employees or office bearers Government Companies, who are not removable from office save by or with sanction of Government.

Section 197 of Cr. P.C, refers to the term “affairs of the Union, of Central Government/State Government”. By misinterpretation of this provision the Government have proposed to bring the Government companies within its fold as the instrumentalities of the Government through corporate veil, having separate judicial identity to exercise the powers and functions envisaged in the Motor Vehicles Act.

The Ministry has misguided the Hon’ble Members of Parliament by quoting State Amendments in the provision of Central Act with malafide intention.

The Hon’ble Apex Court in the case of Mohd. Hadi Raja vs. State Of Bihar And Another observed as ***“'Public Servant' has not been defined in the Code of Criminal Procedure. But Section 2 [Y] of the Code of Criminal Procedure provides that the words used in the Criminal procedure Code but not defined in the Criminal Procedure Code but defined in the Indian Penal Code shall be deemed to have the same meaning attributed to them in the Indian Penal Code.***

***Section 21 of the Indian Penal Code defines 'public servant' and therefore, the expression 'public servant' will have the same meaning in the Criminal procedure Code,.... “***

***Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 by liberally construing the***

***provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by Court.”***

As per the above observation of the Hon’ble Apex Court it is abundantly clear that the public servants mentioned in section 215-A cannot be equated with Government servants appointed under section 213 of the present Motor Vehicles Act 1988.

Further *The Hon’ble Supreme Court of India has given a ruling in the case of State Of Himachala Pradesh Vs. Rahesh ChanderSood reported in AIR 2016 SCC 5436 (page 66) as follows:-*

*“****the employees of Corporate bodies are independent identities. The State Government has a master-servant relationship with civil servants of the State only. It has no such direct or indirect nexus with the employees of corporate bodies….”***

The comments given by the Ministry with regard to public servant are not appropriate answer but diverts the clarification by giving details of definition in the IPC that too by hiding some part of definitions with ulterior motivation.

As public servant and Government servants are having different definitions in the Indian Penal Code, the responsibility assigned to a Government Servant cannot be assigned to a Public Servant.

Regarding Public authority the Ministry has commented that the word “Public authority” has been defined by section 2(h) of Right to Information Act 2005. The public authority referred by the Ministry is a not a duly constituted authority under the Motor Vehicles Act. The Ministry in its comments has not made it clear before the members as to how the Central Government is going to control over the public authority / public servant.

In a recent issue the Apex Court has asked the Centre to either come up with legislation or implement the new guidelines to give more teeth to authorities for regulating the activities and utilisation of grants by over 32 lakh voluntary organisations or non-governmental organisations in the country.

The Constitution of Indian empowers Legislature to make laws for the country. One of the significant legislative functions is to determine a legislative policy and to frame it as a rule of conduct. Obviously such powers cannot be conferred on other institutions.

If, as said in the proposed new section 215A, all powers and functions are to be delegated by the Governments to such Public Authority mentioned in section 2(h)(d)(ii) of the Right to Information Act 2005 it will be an abdication of its essential function as assigned to it by Constitution or have made excessive delegation of that power to some other body. If such delegation would be made as said in proposed new section 215A, such delegated legislation will enable Public authorities mentioned in section 2(h) to make and amend laws thus resulting in overlapping of functions.

Too much-delegated legislation is proposed to be given to private person or bodies who are not representatives of the people. It will be against the spirit of democracy. Delegated legislation is subject to less Parliamentary scrutiny than primary legislation. Therefore Parliament will lose control over delegated legislation. When the powers of the Government are delegated to a Body called public servant or public authority through the Act of Parliament, such Delegated Legislation will have the potential to be used in ways which the Parliament has not anticipated. This can lead to inconsistencies in laws.

***(f). Recommendation of Parliamentary standing committee:-***

The Lok Sabha referred the Bill No.214 of 2016 to Parliamentary Standing Committee on Transport, Tourism and Culture for consideration and reporting to Rajya Sabha. On 08.02.2017 the Parliamentary Standing Committee submitted its Report No. 243 to the Rajya Sabha. In its report the Standing Committee has offered the following recommendations with regard to sections 215-A, 215-B and 215-C among other things:-

*“..317. A number of States has opposed the idea of inserting new section 215 A and said that this is a proposal to delegate power of enforcement to private agency. It will create a menace and panic for vehicle operators. Anti-social elements and criminals will loot operators openly. Enforcement of Act and Rules and checking of vehicles should be entrusted with transport and traffic department only.*

*318. The matter was taken up with the Ministry of Road Transport and Highways. The Ministry has informed the Committee that there is no intention to delegate these powers to private*

*agency. Ministry has assured the Committee that necessary changes would be made to permit such delegation only to a* ***public servant or a public authority****.-*

*“The Committee notes that Section 215 A provides for delegation of powers, functions and duties conferred under the Act to any person or group of persons.*

*The Committee observes that this is quite ambiguous and there are chances of misuse of powers. The Government has already assured the Committee that any delegation of powers, functions and duties under the Act will be made only to a public servant or a public authority.*

*The Committee notes that the scope of public authority and public service is having wider connotations and it is a matter of interpretation.*

*The Committee, therefore, recommends that powers, duties and functions under the Section 215A may be delegated only to a Government servant or Government authority.*

*The Committee thinks that the words to be substituted carry wider meaning and suggests that while applying the provisions it should be interpreted in letter and spirit…”*

**(g). Impact on State powers**

The newly inserted section 215A provides that the Central Government as well as the States shall have the power to delegate **any power or functions that have been conferred upon it by the Act to any public authority/public servant.** The said section alsoauthorizes such public authority/public servant to discharge any of its powers, functions and duties under this Act.

By virtue of this amendment, the public authority/ public servants are going to be given statutory protection. As a result, the Central Government as well as the States will be deprived of their powers to take policy decisions, to evolve social welfare schemes, and also the powers to make rules under this Act.

Public Servant and Public Authority are not duly constituted bodies under the Statute. So they cannot be delegated with statutory powers under the Motor Vehicles Act 1988. Only the Motor vehicles Department constituted under section 213 of the Motor Vehicles Act 1988 by the State Governments is the statutory body competent to appoint officers to carry out the provisions of the Act.

**(h) Impact on State revenue**

The proposed amendment in section 215-A specifies that the Central Government as well as the State Government shall have the power to authorize any public servant or public authority to discharge any of its powers, functions and duties under the Act.

The Ministry has clarified that “public servant” are persons defined as per section 21 of Indian Penal Code and “public authority” are defined as per Section 2(h) of Right to Information Act, 2005 and they can be delegated with the powers and authorized to discharge any of the powers,functions and duties under the Act.

Thus it is obvious that the persons employed or engaged by a body or agency or company will perform the functions and duties under the Act. The functions and duties will include receipt of documents, processing, collection of fees and taxes on electronic platform as directed by the Central Government. The revenue so derived would be credited into the Central Government Fund. By this way, the Central Government will encroach upon the powers of the State to levy and collect fees and taxes on motor vehicles through its officers of Motor Vehicles Department. This will have a serious impact on the revenue resources of the States.

**(i). Impact on Motor Vehicle Department**

The Transport Department is established by the State Government under section 213 of the present Motor Vehicles Act 1988 to enforce the provisions of the law. The officers of Transport Department have been appointed in accordance with the laid principles such as minimum qualifications etc. for such appointments vide Central Government Notification S.O. 443(E) dated 12.06.1989. They are statutory authorities ppointed under Article 309 of the Constitution.

The powers to stop the motor vehicles, the powers of inspection, search, seizure and detention exercised under the Act are serious restrictions. That will have an impact on the fundamental rights of the operators of motor vehicles guaranteed under Article 19(1)(g) of the Constitution.

These powers can be considered as reasonable restrictions only when they are exercised properly in the interests of general public. They should be reasonable both from substantive as well as the procedural standpoint. Such power should therefore to be entrusted with competent authorities only.

The Public authority/Public servant are not competent authorities appointed under any statute. They cannot be entrusted to exercise the powers and functions of the Motor Vehicles Act. Only the authorities of Motor Vehicles Department which has been established by the State Governments under section 213 of the Motor Vehicles Act 1988 are statutory authorities to perform the duties and functions under this Act.

If the Public authority/Public servant are delegated with all the powers of the Central and State Governments and authorized to discharge any of its powers, functions and duties under this Act, the existing Motor Vehicles Department constituted under section 213 would be scraped as having no powers to function in the electronic platform.

**(j). Impact on road safety and general public**

The powers to stop the motor vehicles, the powers of inspection, search, seizure and detention exercised under the Act are serious restrictions. That will have an impact on the fundamental rights of the operators of motor vehicles guaranteed under Article 19(1)(g) of the Constitution.

These powers can be considered as reasonable restrictions only when they are exercised properly in the interests of general public. They should be reasonable both from substantive as well as the procedural standpoint. Such power should therefore to be entrusted with competent authorities only.

Any orders passed by the authorities of Motor Vehicles Department is appealable. As such the authority passing any order under the Act must be a competent authority to pass such orders, It is essential that the statutory powers are delegated only to Government authorities and not to public authorities/public servant.

The proposal to empower the public authorities/public servant to discharge the powers and perform the duties and functions under the Motor Vehicles Act is opposed to public interest.

**(4). Representation/Suggestions:-**

The proposed amendments in sections 211-A and 215-A are interrelated. The Ministry has stated that the object for insertion of section 211-A is to provide for filing of documens, forms, applications etc. in electronic format. Contrary to the said object and reasons, one more provision viz. such filing of documents, forms, application and remittance of fees and taxes shall be made with any office, authority, body or agency owned or controlled by the Central Government or State Goverments in electronic format has been inserted. The provisions in section 211-A have been strongly opposed with a request to delete tha same.

The provisions in section 215A is a sequence to give effect to the provisions in section 211-A. It is intended to enable the Central and State Governments to delegate their powers and functions to any person or group of persons called ‘public servant’ or ‘public authority’.

As already stated, compelling the people to file documents, applications etc. in electronic format together with personal details with any kind of private agency will affect their privacy and fundamental rights. The judgment of Hon’ble Supreme Court of India rendered on 24.08.2017 is squarely applicable to the case of section 215-A also.

The Government have informed before the Hon’ble Suprme Court that they have constituted a committee of experts led by former Supreme Court Judge, Justice B.N. Srikrishna to “ identify key data protection issues, recommend a framework to secure personal data in an increasingly digitized economy, to addres privacy concerns and build safeguards against data breaches and suggest a draft protection Bill.”

Therefore delegation of powers, functions and duties under the provisions of Motor Vehicles Act 1988 to private person or body or companies owned or controlled Central and State Governments by designating them as ‘public servant’ or ‘public authority’ would be againt the spriti of the above said judgment of the Hon’ble Supreme Court.

Hence the proposed amendment of inserting 215A shoule be withdrawn.

**11. Objection against insertion of new section 215-B**

**Clause 91**

[page 42 Lines 15 to 24]

Insertion of new section 215-B

**(1).The object of new section 215-B**:

The Bill No 214 of 2016 containing 89 clauses was introduced in the Lok sabha on 9.8.2016 with the object of making amendments to the Principal Motor Vehicles Act 1988.The amending Act was titled as “Motor Vehicles (Amendment) Act 2016”. In Clause 89 of the Bill it has been proposed to to insert sections 215-A, 215B and 215 C in the Principal Act.

In The Notes annexed to the Bill 214 of 2016 it is stated as follows:-

*“Clause 89 seeks to insert new provisions, viz., sections 215A, 215B and 215C in the Act.*

*Section 215A enables the Central and State Governments to delegate any power or function to any person or group of persons*

*and*

*authorise such person or group of persons to discharge any of the powers, functions, or duties conferred under the Act.*

*Section 215B enumerates the rule making powers granted to the Central Government under this Chapter.*

*Section 215C enumerates the rule making powers granted to the State Government under this Chapter.”*

In the ‘Memorandum regarding Delegated Legislation’ which is Annexed to the Bill it is stated as follows:-

“..*Clause 89* of the Bill *proposes to empower the Central Government to make rules for the purposes of carrying out the provisions of the proposed legislation. The matters in respect of which the rules may be made have been enumerated in the proposed new sections 215B and 215C in the Act..”*

When the Bill 214 of 2016 was under consideration before the Lok Sabha, the Ministry of Road Transport and Highways published a list of modifications on 05.04.2017. The Bill No. 214 of 2016 was renumbered as 214C of 2016 with 92 clauses. The title of the Bill was named as ‘Motor Vehicles (Amendment) Bill 2017”. It was introduced in the Lok Sabha on 07.04.2017 and passed on 10.04.2017.

Clause 89 in the original Bill No. 214 of 2016 was renumbered as clause 91 in the new Bill 214 C of 2016 and the words **“to any person or group of persons** ” were substituted by the words **“ to any public servant or public authority**”.

No statement of reasons and objectives or Memorandum regarding Delegated Legislation were annexed to the Bill 214 C of 2016.

**(2). Contents of Section 215-B:-**

**Clause 91.** After section 215 of the principal Act, the following sections shall be inserted,namely:—

"215A.(*1*) …………

(*2*) ……………..

215B. (*1*). The Central Government may make rules for the purposes of carrying into effect, the provisions of this Chapter.

(*2*). Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*). the use of electronic forms and means for the filing of documents, issue or grant of licence, permit, sanction, approval or endorsements and the receipt or payment of money as referred to in section 211A; and

(*b*). the minimum qualifications which the Motor Vehicles Department officers or any class thereof shall be required to possess for appointment as such, as referred to in sub-section (*4*) of section 213.

215C. (*1*) ……………..

(*2*) ………………..

**(3). Grounds for objection**

(a). Constitutional validity:-

Under the Constitution, the Parliament has the power to make laws, the Executive is responsible for implementing the laws and the Judiciary is the body interpreting the laws.

Subordinate legislation can only be framed under a Central or State Act if the Act gives powesr to the Governments to make rues.. However, certain functions and powers cannot be delegated to the Government. These include framing the legislative policy, exceeding the scope of the delegating Act, retrospective effect of rules, etc.

There are broadly three mechanisms to ensure that the rule making process complies with the above, i.e., parliamentary scrutiny, public consultation and judicial scrutiny.

Parliament has the power to oversee rules at various levels:

(a) during the debate on the Act;

(b) statutory motion to discuss rules;

(c) Question Hour; and

(d) Committee on Subordinate Legislation.

The relevant departmentally related standing committee of Parliament while examining the Bill may also make recommendations regarding the scope of delegated legislation. The main purpose of the Committee is to oversee whether the power delegated by Parliament to the Government is being properly exercised.

After the Committee has submitted its report, the Government is required required to give its response. Based on this response, the Committee prepares an Action Taken Report on the status of the implementation of its recommendations.

The Bill 214 of 2016 to make amendment to the Motor Vehicles Act 1988 was referred to the Parliamentary Standing Committee on Transport, Tourism and Culture. In its Report No 243, submitted to the Rajya Sabha the Committee has given the following recommendations:-

*“Para 319: Insertion of Section 215B grants rule making powers to the Central Government. And insertion of section 215C grants rule making powers to State Governments*

*Para 320: Section 215-A speaks about the delegation of any power to any person or group of persons to discharge any of its powers, functions and duties under this Act by the Central and State Governments.*

*The Committee notes that Section 215 A provides for delegation of powers, functions and duties conferred under the Act to any person or group of persons. The Committee observes that this is quite ambiguous and there are chances of misuse of powers. The Government has already assured the Committee that any delegation of powers, functions and duties under the Act will be made only to a public servant or a public authority.*

*The Committee notes that the scope of public authority and public service is having wider connotations and it is a matter of interpretation.*

*The Committee, therefore, recommends that powers, duties and functions under the Section 215A may be delegated only to a Government servant or Government authority..”*.

Without taking into consideration the above recommendation of the Standing Committee, the Ministry has proceeded to make further amendments in sections 211-A, 215-A, 215-B, and 215 C among other sections. In section 215A, 215 B, 215 C, the words ‘ any person or groupd of persons” have been substituted by the words “ public servant” or “public authority”

The Ministry has not complied with the observation of the Standing Committee. In stead of substituting the said words by “Government servant or Government authority of the Motor Vehicle Department constituted under section 213 of the Act” the Ministry has chosen to insert the words “public servant” or “public authority”

In the provisions of present Act itself, powers have been been conferred upon the Central and State Governments to make rules for the purpose of carrying into the provisions of the Act including mechanism for making applications and remittance of fees and tax by electronic mode.

Therefore insertion of Sections 215-B and 215-C on the ground that rule-making powers are not available under this Chapter and so sections 215 B and 215 C will only provide for rule-making powers is contrary to the facts. Therefore insertion of section 215B and 215 C are not warranted and they should be deleted.

(b). Impact on State powers

To justify the insertion of sections 215B and 215 C the Ministry has commented that “*section 215B and section 215C only provide for the rule making powers to the Central Government which were not available earlier. This will only help in effective implementation of the section 213 of the Act in addition to the facilitating the electronic filing of forms and documents.“*

The comments of Ministry seems to be an attempt to conceal the real intentions for the proposing Amendment of new sections 215A, 215B and 215C.

The present Motor Vehicles Act 1988 is a re-enactment of the laws on Motor vehicles in India. This enactment was made mainly to take into account the changes in the road transport technology, pattern of passenger and freight movements, development of the road network in the country and particularly the improved techniques in the motor vehicle management.

To make it relevant to the modern day requirements various committees like National Transport Policy Committee, National Police Commission, National Road Safety Council, Committee on Low-powered- two wheelers, as also the Law Commission have gone into different aspects of road transport.

The present Motor Vehicles Act 1988 [Act 59 of 1988] has been enacted with effect from 1.7.1989 be repealing the erstwhile Motor Vehicles Act 1939. Before enacting the present Act a Working Group was constituted in January 1984 which took out the suggestions and recommendations by various bodies and institutions like CIRT, ARAI and other transport organizations including the manufacturers of motor vehicles and the general public. The Motor vehicles Act 1988 has been subsequently amended on several occasions. Amendment Act 54 of 1994 was enacted for the purpose of introduction of newer type of vehicles, for providing adequate compensation to accident victims, to protect consumers’ interest in transport sector, to enhance road safety standards, to control the carrying of hazardous chemicals, to ensure pollution control, to enhance penalties etc.

Amendment Act 27 of 2000 was enacted for the purpose of reducing pollution caused by motor vehicles, to enable the use of eco friendly fuel including LPG and to confer powers on the Central Government to allow alteration of motor vehicles for specified purposes.

Amendment Act 39 of 2001 was enacted to call back the exemptions permitted for CNG operated vehicles so as to bring these types of vehicles also under the terms and conditions applicable to all other vehicles.

The present Central Motor vehicles Rules, 1989 was framed vide G.S.R. 590(E) dated 02.06.1989,in exercise of the powers conferred by Sections 12, 27, 64, sub section (14) of section 88, sections 110, 137, 164 and 208 read with section 211 of the Motor Vehicles Act, 1988 (59 of 1988) by the Central Government which came into effect from 01.07.1989.

Likewise the Tamilnadu State has framed the Tamilnadu Motor Vehicles Rules, 1989 vide G.O. Ms.No 1169 Home (Tr-VII) dated 01.07.1989 in SRO A-78 (b-1) 1989 under the powers conferred by sections 28, 38, 65, 95, 107, 111 and 138 read with section 211 of the Motor Vehicles Act 1988 (Act 59 of 88). All other states have also framed the respective state rules.

The Section 211 is contained in the Chapter XIV “Miscellaneous” of the Principal Act. The said section 211 enables the rule - making power combined with other rule-making powers in various sections for levy of fees as mentioned above. Further sub section (4) of section 213 also empowers the State Government to make rules to regulate the discharge by officers of the motor vehicle department of their function. Besides,

From the above provisions, it could be seen that the Central as well as the State Governments have been concerred with ample powers to make rules under various Chapters of the Act.

Therefore the comment of the Ministry that the Central and the State Governments are not having such powers earlier is nothing but suppression of fact. The Ministry has misled the Hon’ble Deputy Chairman, Rajya Sabha by saying that the Central and the State Governments are not having such rule-making powers earlier

The reference of the Ministry to section 213 to justify the insertion of sections 215B and 215C for the purpose of effective implementation has no relevance.

By amending the existing section 211 by inserting the words “electronic format documents” in appropriate places it would be suffice for implementation of section 213 with facilitation of electronic forms and documents.

Therefore the proposed amendments in sections 215 B and 215 C should be deleted as they are irrelevant.

(c). Impact on Motor Vehicle Department

The Ministry has commented that “*section 215B and section 215C only provide for the rule making powers to the Central Government which were not available earlier. This will only help in effective implementation of the section 213 of the Act in addition to the facilitating the electronic filing of forms and documents. “*

Section 215 B is intended to empower the Central Government to make rules with regard to ” the use of electronic forms and means for the filing of documents, issue or grant of licence, permit, sanction, approval or endorsements and the receipt or payment of money as referred to in section 211A” and also to prescribe “ the minimum qualifications which the Motor Vehicles Department officers or any class thereof shall be required to possess for appointment as such, as referred to in sub-section (*4*) of section 213”

The existing Section 213 already contains provisions empowering the Centarl and State Goverrnments to make rules for the purpose of this section. There is no necessity to insert another amendment in sections 215 B and 215 C. The insertion of section 211-A has already been opposed on various grounds. Therefore the reference to section 211-A in section 215 B and 215 C is irrelevant.

Therefore proposed amendments by insertion of sections 215 B and section 215 C shall be deleted.

(d) Impact on road safety and general public

*The Parliamentary Standing Committee has observed as follows:-*

*Section 215 A provides for delegation of powers, functions and duties conferred under the Act to any person or group of persons. The Committee observes that this is quite ambiguous and there are chances of misuse of powers. The Government has already assured the Committee that any delegation of powers, functions and duties under the Act will be made only to a public servant or a public authority.*

*The Committee notes that the scope of public authority and public service is having wider connotations and it is a matter of interpretation.*

*The Committee, therefore, recommends that powers, duties and functions under the Section 215A may be delegated only to a Government servant or Government authority..”*.

On the contrary the Ministry has proceeded to make further amendments in sections 211-A, 215-A, 215-B, and 215 C among other sections. In section 215A, 215 B, 215 C, the words ‘ any person or groupd of persons” have been substituted by the words “ public servant” or “public authority”

The Ministry has not complied with the observation of the Standing Committee. In stead of substituting the said words by “Government servant or Government authority of the Motor Vehicle Department constituted under section 213 of the Act” the Ministry has chosen to insert the words “public servant” or “public authority”

In the provisions of present Act itself, powers have been been conferred upon the Central and State Governments to make rules for the purpose of carrying into the provisions of the Act including mechanism for making applications and remittance of fees and tax by electronic mode.

No public interest is involved in the proposal to make amendments by insertion of sections 215 B and 215 C. They should be deleted.

(e). Case Laws:-

The case law between State of West Bengal Vs. Union of India AIR 1963 SC 1241 projects that the statement of object and reaons may be used for the limited purpose of understanding the background and the antecedent state of affairs leading to the legislation. It can be referred to for the limited purpose of ascertaining the conditions prevailing at the time. It also brings out the purpose, the extent and the urgency to take remedial measures against evils for the introduction of the Bill.

In another case law between State of UP. Vs. Babu Ram Upadhyaya AIR 1961 SC 751, it is observed that as and when the rules are made by an the authority conferred with powers under the statute, they are deemed to be a part of it, and have the some force and effect as if these provisions were included in the stature. However, the rules that are framed in exercise of the statutory powers should be consistent with the provisions of the Principal Act.

**Representation/Suggestions:-**

The Central and State Governments have already been conferred with powers under various Chapters in the Principal Act to make rules. Powers have been vested under section 211, 213 and 215 also to make rules for purpose of carrying into effect the said provisions. Therefore there is no necessity to insert sections 215 B and 215 C. The comments of the Ministry that “sections 215 B and 215 C only provide for the rule making powers to the Central and State Governments which were not available earlier” is not correct.

Sections 211-A and 215-A have already been demanded to be withdrawn. Sections 215B and 215C are interconnected to those sections. Hence the proposed sections 215B and 215C may be deleted as irrelevant.

**12.Objection against insertion of new section 215-C**

**Clause 91**

[page 42 Lines 25 to 39]

Insertion of new section 215-C

**(1).The object of new section 215-C**:

Section 215 B proposes to delegate powers to Central Government to make rules under this Chapter. Section 215 proposes to delegate powers to Government to make rules under this Chapter. Since the provisions are identical the notes submitted for section 215 B may be adopted for this section 215 C also.

**(2). Contents of Section 215-C:-**

**Clause 91.** After section 215 of the principal Act, the following sections shall be inserted,namely:—

"215A.(*1*) …………

(*2*) ……………..

215B. (*1*) ……. .

(*2*)…….

215C.(*1*). The State Government may make rules for the purposes of carrying into effect, the provisions of this Chapter other than the matters specified in section 215B.

(*2*). Without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*). the use of electronic forms and means for the filing of documents, issue or grant of licence, permit, sanction, approval or endorsements and the receipt or payment of money as referred to in section 211A;

(*b*). the duties and functions of the officers of the Motor Vehicle Department and the discharge thereof, the powers to be exercised by such officers (including the powers exercisable by police officers under this Act) and the conditions governing the exercise of such powers, the uniform to be worn by them, the authorities to which they shall be subordinate as referred to in sub-section (*3*) of section 213; and

(*c*). such other powers as may be exercised by officers of the Motor Vehicles Department as referred to in clause (*f*) of sub-section (*5*) of section 213.

**(3). Grounds for objection**

(a). Constitutional validity:-

Since the provisions in sections 215 B and 215 C are identical the notes submitted for section 215 B may be adopted for this section 215 C also.

(b). Impact on State powers

Since the provisions in sections 215 B and 215 C are identical the notes submitted for section 215 B may be adopted for this section 215 C also.

(c.) Impact on State revenue

Since the provisions in sections 215 B and 215 C are identical the notes submitted for section 215 B may be adopted for this section 215 C also.

(d). Impact on Motor Vehicle Department

Since the provisions in sections 215 B and 215 C are identical the notes submitted for section 215 B may be adopted for this section 215 C also.

(e) Impact on road safety and general public

Since the provisions in sections 215 B and 215 C are identical the notes submitted for section 215 B may be adopted for this section 215 C also.

(f). Case Laws:-

Since the provisions in sections 215 B and 215 C are identical the notes submitted for section 215 B may be adopted for this section 215 C also.

**(4). Representation/Suggestions:-**

Since the provisions in sections 215 B and 215 C are identical the notes submitted for section 215 B may be adopted for this section 215 C also.

The proposed section 215 C should be deleted.

---

**13.Objection against omission of section 44 and substitution by a new section 44**

**Clause 18**

[page 7 Lines 31 to 38]

Omission of existing section 44

and substituting it by a new section 44

The Bill No 214 of 2016 containing 89 clauses was introduced in the Lok sabha on 09.08.2016 with the object of making amendments to the Principal Motor Vehicles Act 1988. The amending Act was titled as “Motor Vehicles (Amendment) Act 2016”.

When the Bill 214 of 2016 was under consideration before the Lok Sabha, the Ministry of Road Transport and Highways published a list of modifications on 05.04.2017. The Bill No.214 of 2016 was renumbered as 214C of 2016 with 92 clauses. The title of the Bill was named as ‘Motor Vehicles (Amendment) Bill 2017”. It was introduced in the Lok Sabha on 07.04.2017 and passed on 10.04.2017.

In Clause 18 of the Bill it has been proposed to substitute the existing section 44 in the Principal Act by a new section 44. The said clause 18 and its contents in the original Bill No. 214 of 2016 have been retained as clause 18 in the new Bill 214 C of 2016 also.

.

**(1).The object of omission of section 44 and substitution by new section**

In the notes annexed to the Bill it is stated that Clause 18 seeks to amend section 44 of the Principal Act to remove the requirement of the production of a motor vehicle before the registering authority at the time of registration.

No remarks have been offered in the “MEMORANDUM REGARDING DELEGATED LEGISLATION” for the reasons of substituting the existing section 44 by a new sections..

No statement of reasons and objectives or Memorandum regarding Delegated Legislation were annexed to the Bill 214 C of 2016.

**(2). Contents of new Section 44**:-

In the Bill 214 C of 2016 the following amendment has been proposed in section 44 of the Principal Act:-

**Clause 18.** For section 44 of the principal Act, the following section

shall be substituted, namely:—

"44.(1) Subject to such terms and conditions as may be prescribed by the Central Government in this behalf, a motor vehicle sold by an authorized dealer shall not require production before a registering authority for the purposes of registration for the first time.

(2). Subject to such terms and conditions as may be prescribed by the State Government, a person in whose name a certificate of registration has been issued shall not be required to produce the vehicle registered or transferred before a register authority.".

**(3). Recommendation of the Parliamentary Standing Committee** Clause 18

71. One stakeholder suggested that amendment in section 44 is inappropriate. Provision should be made for appearance of buyer and seller before the registering authority.

72. The Ministry has replied that this has been included as per the recommendations of the GoM, which were made after great deliberation on their part. Some States like Delhi have successfully implemented similar process.

73. This would reduce corruption and provide a much-needed relief to the customers. This also streamlines the process of registration and clamps down on the practice of using new vehicles in their unregistered state.

74. The requirement of production of a new vehicle does not add any value to the entire process. Rather this acts as a tool for harassment.

**75. The Committee notes that Delhi which is having the largest vehicular population is implementing the same scheme effectively. However, the Committee was informed that Delhi has implemented the scheme because it has inadequate officers to manage the vehicle registration whereas in many other States they have required infrastructure to deal with the vehicle registration. The Committee, therefore, recommends that this proposal in Clause 18 shall be made optional for the States to decide on the basis of the infrastructure and manpower available and the Committee further recommends that it should not be made as mandatory to be followed by all the States. The Committee also recommends that it may be implemented in such a way that the regional and local needs are effectively addressed and the dealers may not be able to manipulate the system or vehicle configurations to suit their needs.**

(**4). Grounds for objection**

Definition of Dealer and his present responsibilities:-

With regard to the object of the proposed section 44 the Ministry has stated in its comments to the Hon’ble Deputy Chairman, Rajya Sabha as follows”-

*“the Registering authority remains with the State Government. The dealers have been entrusted with additional responsibilities to ensure immediate registration before the delivery and to provide better service to the citizens. The allotment of registration number shall still be done by State RTO*.”

The Ministry has not taken into consideration whether any statutory responsibility with regard to the regulation of motor vehicles is conferred upon a ‘dealer’ under the present Motor Vehicles Act 1988 except selling the vehicles. The Ministry has not proposed to confer powers upon a ‘dealer’ to perform the statutory duties and functions as Registering Authority.

The Ministry has failed to appraise the definition of the term “dealer” as specified in sub section (8) of section 2 of principal Act. A perusal of the aforesaid definition would indicate that the definition of dealer under the Act is an inclusive definition. It includes wide range of persons under the ambit of “dealer”.

As per this definition any person who is engaged in the following trade/business/activity is defined as a dealer:-

a. In building bodies for attachment to chassis; or

b. in the repair of Motor Vehicles; or

c. In the business of hypothecation, leasing or hire-purchase of Motor Vehicles;

The term ‘dealer’ includes persons involved in carrying on any business or trading activity and transactions effected by them relating to a motor vehicle whether in the course of business or not .

So the defined dealers are involved in activities for profit. Procuring motor vehicles from manufacturers and selling them to purchasers is a transaction with profit motive.

The overall volume of growth in all automotive markets in India is in the upward trend. Manufacturer and dealers are to be fraternity alike. They are having a professional, performance-based partnership to develop their business. Effective and mutually beneficial collaboration with dealers requires optimized processes on the side of manufacturer. To name just a few areas, production, stock management and forecasting need to be constantly improved and closely aligned by the manufacturer. Close liaison and more benefits extended by the manufactured to dealer only will help improve market demands for their products and to ensure maximum order fulfillment with minimum stock.

As a consequence, Indian dealers, whether they are representing Indian Companies or Foreign Companies will be under significant pressure.

Lesser Sales activity and lesser earning by after-sales services would coincide with higher costs and investments. Therefore the manufacturers would be driven by the need to expand network coverage and to prepare for the next phase of growth as well as to comply with demanding manufacturing standards.

This is the actual position of manufacturer-dealer relationship in motor vehicle oriented commercial activities. In this back drop, a dealer who is engaged in the businss of selling and service of new Motor vehicles on behalf of the manufacturers is now going to be entrusted with additional responsibilities to register the vehicles as stated by the Ministry.

Under the Law an obligation is cast upon the owner to register the vehicle and obtain a registration certificate. An application for registration has to be submitted by the owner or by any person on behalf of an owner.

The dealers have already been assigned the responsibility under rule 42 of the Central Motor Vehicles Rules, 1989 that they should not make delivery of a vehicle to the purchaser without registration, whether permanent or temporary with the registering authorities. When a dealer submits an application, he is acting on behalf of the owner of the vehicle, he facilitates the obtaining of a registration certificate, he acts for and on behalf of the purchaser. So, sufficient responsibility has been already fixed on the dealer to this extent.

Further as per the new section inserted as 182A, a manufacturer who fails to comply with the provisions of chapter VII or the rules and regulations made thereunder is punishable with imprisonment for a term upto one year or with fine which may extend to Rupees one hundred crores. This punishment is the major punishment found in offences and penalties chapter.

(a). Constitutional validity:-

The registering authorities appointed under section 213 are “Authorities” within the meaning of Article 12 of the Constitution and they are accountable to the accuracies of the registered documents. Where as the dealers cannot come under the purview of Article 12 of the Constitution.

If allowing an unsafe vehicle to be driven in a public place is dangerous, it is more dangerous to allow the registration of a new motor vehicle without proper physical inspection by the statutory authority. As per the Constitutional provisions, a duty is cast upon the Central as well as the State Governments to protect the right of the people to live in a safe manner. The proposed amendment in section 44 runs counter to the Constitutional provisions and so it should be deleted in public interest.

(b). Impact on State powers:-

The existing Section 41(4) of Motor Vehicle Act, 1988 reads as follows:-

“(4). In addition to the other particulars required to be included in the certificate of registration, it shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by notification in the Official Gazette, specify.

The type of a motor vehicle shall, therefore be determined on the basis of the design, construction and use. Specification of the type of motor vehicles as “transport vehicle” and “non transport vehicle” are to be determined on the basis of the construction and use of vehicle as specified in Government of India Notification No. S.O.1248(E) dated 05.11.2004.

If the necessity to produce the vehicle before the Registering Authority for registration is dispensed with, the powers of the Registering Authorities to inspect the vehicles will be taken away.

As per the comments of the Ministry the statutory registering authority will be allowed to continue to sign the documents without proper physical inspection of the vehicle. As a result, that authority is held solely responsible for accountability and accuracy of the technical specification and roadworthiness of the vehicles.

Thus the powers of the Stated to control and regulate the movement of motor vehicles in public places and ensure public safety will be taken away.

(c.) Impact on State revenue

Presently, the fees and taxes for the purpose of registration of new motor vehicles are being received by the Dealers from the purchasers and remitted in the office of the Registering Authorities upon inspection and certification of roadworthiness. The revenue thus collected is credited into the Consolidated Fund of the State.

If the production of vehicle before the Registering Authority for registration is dispensed with, then the dealers will collect the fees and taxes on their account only. The Ministry has not made it clear whether the revenue due to the State Governments by way of registration of new motor vehicles will be collected by the authorites appointed by the State Governments. Thus the proposes section 44 will have serious impact on State Government revenue.

(d). Impact on Motor Vehicle Department:-

The statutory powers and functions to physically inspect the new vehicles and register them is being done hitherto by the existing authorities of transport department established by the State Government under section 213 of the Motor vehicles Act 1988.

By the proposed section 44 it has been proposed to dispense with the requirement of production of motor vehicles before the competent authorities for registration.

While clarifying the object behind this amendment, the Ministry has commented that *“the Registering authority remains with the State Government. The dealers have been entrusted with additional responsibilities to ensure immediate registration before the delivery and to provide better service to the citizens. The allotment of registration number shall still be done by State RTO.”*.

By virtue of the relationship between manufacturer and dealers they would always make all attempts to promote their business activities and improve their production, sales and service. Even though they separate business entitirtes, they have the common object of improving their sales target. So they will get rid of the compliance of provisions of the Act and rules in manufacturing of vehicles.

The Ministry has not proposed to confer powers upon a ‘dealer’ to perform the statutory duties and functions as Registering Authority.

The present competent authorities would be reduced to the level of ministerial cadre by making them to assign registration number and sign the registration certificate automatically based on the particulars furnished by the dealers in the applications prepared by themselves.

As such the statutory the statutory registering authority has been allowed to continue to sign the documents without proper physical inspection of the vehicle. But that authority is held solely responsible for accountability and accuracy of the technical specification and roadworthiness of the vehicles etc.

(e) Impact on road safety and general public

Registration of new motor vehicle has to be regulated according to the statutory provisions under section 45 of the Act. The registering authority is entitled to refuse registration when he has reason to believe about the genuineness of the vehicle, about the mechanical defective, or fails to comply with the requirements of this Act and rules made thereunder.

This kind of verifications could be done only by a competent authority appointed under section 213 of the Act. The competent authorities are appointed under Article 309 of Constitution of India. The principles of prescribing required minimum qualifications for the competent authorities for such appointments have also been provided in Central Government Notification S.O.443(E) dated 12-06-1989.

So, the skipping of production of vehicle for physical inspection for the purpose of registration will ultimately result in the registration of vehicles which are mechanically defective and not in road-worthy condition. This will in turn make adverse effect on road safety.

The proposed section 44 specifies that *“Subject to such terms and conditions as may be prescribed by the Central Government in this behalf, a motor vehicle sold by an authorized dealer shall not require production before a registering authority..”.*

But the Bill is silent on the points viz, what are all the terms and conditions, by what authority the Central Government is empowered to reserve such powers with it, how the object of road safety is going to be ensured by this proposal.

Further a registering authority can issue a certificate of registration only after being satisfied with all statutory compliances, not only the compliance of the provisions pertaining to construction and equipments but also other traffic control regulations. .

State rules made under the enabling provision of Section 111 of the Motor vehicles Act 1988 have also to be complied for safe traffic. Hence a

certificate of registration cannot be issued merely on the basis of Type Approval Certificates which are issued on inspection of random test pieces i.e. proto type of a particular make of vehicles.

From the case law furnished the importance of physical inspection of vehicles by competent registering authorities could be ascertained. Without physically inspecting the vehicles for registration is totally against road safety as the type approval certificates issued are based on random inspection of vehicles.

The provisions under Sections 72, 74, 76, 77 and 88 (11) read with State and Central Rules are pertaining to construction of motor vehicles for specified types of use. Under these provisions, necessary permits would have to be obtained form the Regional Transport Authority. For registration of motor vehicles falling under this category the above provisions are also to be complied with.

If it is proposed to dispense with the production of the vehicle before the Registering Authority for the purpose of registration, then there would be operational incompatibility and irreconcilability in enforcing the provision of Section 44.

The sub section (4) of section 2 defines “certificate of registration” means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV; Without verifying the compliance of a vehicle with the provisions of Act and rules a vehicle cannot be duly registered.

If allowing an unsafe vehicle to be driven in a public place is dangerous, it is more dangerous to allow the registration of a new motor vehicle without proper physical inspection by the statutory authority.

Therefore the proposed amendment in section 44 will have serious impact on road safety and hence it should be deleted.

(f). Case Laws:-

From the case law furnished below the importance of physical inspection of vehicles by competent registering authorities could be ascertained. Without physically inspecting the vehicles for registration is totally against road safety as the type approval certificates issued are based on random inspection of vehicles.

The Hon’ble Apex Court has observed as follows in CA No 2446/07 between Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala versus. M/s K.T.C. Automobiles:-

*“----Clearly, mere mentioning of engine number and chassis number of a motor vehicle in the invoice of sale does not entitle the intending purchaser to appropriate all the goods, i.e. the motor vehicle till its possession is or can be lawfully handed over to him by the dealer without violating the statutory provisions governing motor vehicles. Such transfer of possession can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and register-able motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration.”*

**(4).Representation/Suggestions:-**

The proposed amendment in section 44 shall be deleted for the following reasons:-

(i). The amendments are against the principles of sub section 2(b) of Section 65 of the Motor Vehicle Act, 1988.

(ii). Only if the vehicles are physically inspected by the competent authority appointed for that purpose, any mechanical defect, or non compliance of regulations could be noticed and registration of such vehicles could be refused.

(iii). Otherwise, any number of mechanically defective vehicles, vehicles which are not roadworthy and unsafe vehicles are likely to ply in public places endangering the safety of the public.

(iv). The proposal to dispense with the production of the vehicle for inspection by the competent authority will not be in public interest. It only an added benefit to manufacturers to relieve them from the clutches of “recall of vehicles”.

(v). As per sub section (4) of section 2 “certificate of registration” means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter IV. So, without inspecting the vehicle the certificate that a vehicle complies with the provisions of Act and rules cannot be given and so it cannot be registered.

Hence the proposed amendment to substitute existing section 44 of the Act by the new section 44 with an object to remove the requirement of the production of a motor vehicle before the registering authority at the time of registration should be withdrawn.

**14. Objection against insertion of a new sections**

**66-A, 66-B and 88A**

**Clause 29**

[page 11-Lines 10 to 44]

Insertion of new section 66A and 66B]

**Clause 33**

[page 13 -Lines 10 to 36]

Insertion of new section 88-A

The Bill No 214 of 2016 containing 89 clauses was introduced in the Lok sabha on 09.08.2016 with the object of making amendments to the Principal Motor Vehicles Act 1988. The amending Act was titled as “Motor Vehicles (Amendment) Act 2016”.

When the Bill 214 of 2016 was under consideration before the Lok Sabha, the Ministry of Road Transport and Highways published a list of modifications on 05.04.2017. The Bill No. 214 of 2016 was renumbered as 214C of 2016 with 92 clauses. The title of the Bill was named as ‘Motor Vehicles (Amendment) Bill 2017”. It was introduced in the Lok Sabha on 07.04.2017 and passed on 10.04.2017.

In Clause 28 of the original Bill 214 of 2016 it was proposed to insert a new provision as section 66-A and 66-B. In Clause 32 it was prposed to insert another new section 88-A in the Principal Act.

The said clauses 28 and 32 in the original Bill No. 214 of 2016 have been renumbered as 29 and 33 respectively and the contents have been retained in the Bill No. 214C of 2016.

.

**(1).The object of insertion of sections 66-A, 66 B, and 88A:-**

In the notes annexed to the Bill 214 of 2016 it is stated as follows:-

(i). Clause 28 seeks to insert new provisions, viz., sections 66A and 66B in the Act.

(ii). Section 66A seeks to empower the Central Government to develop and implement a National Transportation Policy.

(iii). Section 66B seeks to provide that permit holders shall not be disqualified from applying for a licence under a scheme for the transportation of goods and passengers made under the provisions of chapter V of the Act nor shall such permit holder be required to surrender the permit on being issued such a licence

(iv)*.* Clause 32 seeks to insert a new section 88A in the Act to empower the Central Government to modify permits and make schemes for inter-state transport of goods and passengers*.*

No remarks have been offered in the “MEMORANDUM REGARDING DELEGATED LEGISLATION” for the reasons of insertion of the said sections 66-A, 66 B, and 88A,

No statement of reasons and objectives or Memorandum regarding Delegated Legislation were annexed to the Bill 214 C of 2016.

**(2). Contents of new Section 66-A, 66-B and 88-A**

The contents of the new sections 66-A , 66-B and 88-A as inserted in Bill 214C of 2016 are as follows**:-**

**Clause 29.** After section 66 of the principal Act, the following sections shall be inserted, namely:—

**Section 66A**. (*1*). The Central Government may develop a National Transporation Policy consistent with the objects of this Act in consultation with State Governments and other agencies with a view to—

(i). establish a planning framework for passengers and goods transportation within which transport bodies are to operate;

(ii). establish a medium and long term planning framework for all forms of road transport, identify areas for the development of transport improvement infrastructure across India in consultation with the authorities and agencies related to ports, railways and aviation as well as with local and State level planning, land holding and regulatory authorities for the delivery of an integrated multimodal transport system;

(iii). establish the framework of grant of permits and schemes;

(iv). establish strategic policy for transport by road and its role as a link to other means of transport;

(v). identify strategic policies and specify priorities for the transport system that address current and future challenges;

(vi). provide medium to long term strategic directions, priorities and actions;

(vii). promote competition, innovation, increase in capacity, seamless mobility and greater efficiency in transport of goods or livestock or passengers, and economical use of resources;

(viii). safeguard the interest of the public and promote equity, while seeking to enhance private participation and public-private partnership in the transport sector;

(ix). demonstrate an integrated approach to transport and land use planning;

(x). identify the challenges that the National Transportation Policy seeks to address;

(xi). address any other matter deemed relevant by the Central Government.

**Section 66B**. No person who holds the permit issued under this Act shall—

(*a*). be disqualified from applying for a licence under the scheme made under sub-section (*3*) of section 67 or sub-section (*1*) of section 88A by reason of holding such permit; and

(*b*). be required to get such permit cancelled on being issued a licence under any scheme made under this Act.".

**Section 88-A**

**Clause 33.** After section 88 of the principal Act, the following section shall be inserted, namely:—

"88A. (*1*). Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, modify any permit issued under this Act or make schemes for national, multimodal and inter-State transportation of goods or passengers, and issue or

modify licences under, such scheme for the following purposes namely:—

(*a*) last mile connectivity;

(*b*) rural transport;

(*c*) improving the movement of freight, and logistics;

(*d*) better utilisation of transportation assets;

(*e*) the enhancement to the economic vitality of the area, especially by enabling competitiveness, productivity and efficiency;

(*f*) the increase in the accessibility and mobility of people;

(*g*) the protection and enhancement of the environment;

(*h*) the promotion of energy conservation;

(*i*) improvement of the quality of life;

(*j*) enhancement of the integration and connectivity of the transportation system, across and between modes of transport;

(*k*) such other matters as the Central Government may deem fit:

Provided that the Central Government may, before taking any action under this sub-section consult the State Governments.

88-A(*2*). Notwithstanding anything contained in sub-section (*1*), two or more States may make schemes for the operation within such States for the inter-State transportation of goods or passengers:

Provided that in the event of any repugnancy between the schemes made by the Central Government under sub-section (*1*) and schemes made by two or more States under this sub-section, the schemes made under sub-section (*1*) shall prevail.

**(3). Recommendation of the Parliamentary Standing Committee**

**124. The Committee agrees that the insertion of new Section 88 A would empower the Central Government to make schemes for national, multimodal and inter-state transport of passengers and goods but the Committee suggests that the views of State Governments may be solicited before making any type of improvements in this direction.**

**(4). Grounds for objection**

**(a) Constitional validity:-**

A combined reading of clause 29 and clause 33 clearly shows the intention of parallel operation of existing permit system as well as newly introduced ‘license system’ in the control of transport vehicles throughout the country.

The Ministry in its comments, in serial No 15, for sections 72 & section 74 which are the outcome of the new amended sections of 66A & 88A, has stated as “ the proposed provision has been introduced help States strengthen rural transportation and the provision would also **help create employment for poor sections of the society.**

An important issue in section 66A, 74, and 88A is that “the Central Government will be empowred to make modification of any permit issued under this Act, or make schemes for the transportation of goods and passengers and issue license under such scheme for the promotion of development and efficiency in transportation i.e. last mile connectivity etc.

It is pertinent to note that in the banner of last mile connectivity, the Delhi Metro Rail Corporation Limited invited Expression of Interest (EoI) in the title of **FIRST & LAST MILE CONNECTIVITY TO AND FRO THE METRO STATIONS BY E-RICKSHAW,** from the interested Operators / Agencies to Procure, Operate and Maintain e-rickshaw and / or to provide / install e-charging infrastructure at the selected metro stations duly following the General Terms and Conditions attached with this EoI. In the objectives it was said as “**To provide convenience to the passengers by way of first & last mile connectivity with availability of eco-friendly feeder services at the metro stations.”**

The main requirement for applicant is **“To provide co-ordinate & dedicated services, fleet operators of e-rickshaws shall have a minimum fleet size of 100 e-rickshaws operating in NCR region.”**

From the above, it is not clear how the proposed new amendments in sections 66-A, 66 B and 88-A are going to **help create employment for poor sections of the society** as commented by the Ministry.

Hence the objections and reasons to “**help create employment for poor sections of the society” and “to provide last mile connectivity and rural transport”** are not truly reflected in the said amendments.

There is no doubt that transport sector is a trade and business carried out by common public. Constitutionally, legislative power relating to trade and commerce is restricted.

In the first place, by Article 14 of the Constitution guarantees equality before the law and equal protection of the laws.

Secondly, Article 19, *inter alia*, guarantees to every citizen the right to carry on any trade, business or profession, subject to reasonable restrictions, which may be imposed in the interest of the general public.

It is not merely an element of discrimination (between one group and another) that is material. The restriction must also be reasonable and in the interest of the general public.

Indian States are empowered to legislate on trade and commerce for subjects under the State list, entry 26 (subject to the Concurrent list, entry 33).

But Article 303(1) of the Indian Constitution declares that neither the State legislature nor the Parliament shall have power to make any law, giving or authorizing the giving of any preference to one State over another or making, authorizing or the making of any discrimination between one State and another by virtue of any entry relating to trade and commerce in any of the lists in the Seventh Schedule.

The Ministry has, in the comments for the insertion of new section 66A, stated as if the protection given to the State Transport Undertakings is fully retained in Chapter VI of the Motor vehicles (Amendment Bill).

But the real fact is that the Motor vehicles Act (Amendment) Bill 2016 seeks to destroy the relationship between the Union and the States.

It is apparent that the hidden agenda of the proposed amendment Bill is to eliminate the monopoly of the States to carry on transport business as conferred under Article 298 read with Article 19(1) (g) (6) (ii) of the Constitution. This provision enables the Authority to acquire by itself to make schemes to promote companies which are not agencies or instrumentalities of the States.

The hidden agenda of the Central Government is to transfer the entire Transport System to the Companies throughout India leaving no scope for the survival of the State Transport Undertakings run by the States.

Therefore the proposed section 88A is totally unconstitutional for the reason that it would encroach upon the exclusive rights of State Transport Undertakings to operate passenger service under the scheme which is given protection under Sl.No.125 of Ninth Schedule of Constitution under Art. 31-B.

(b). Impact on State powers

The proposed amendment to insert a new Section 66A postulates the constitution of Transport Bodies with power to establish the frame work for grant of permits and schemes. It seeks to enhance private participation and public - private partnership in the transport sector. Such a proposal will totally upset the present inter - state operation schemes of State.

By insertion of proposed new section 88A the rights of the State Transport Undertakings are denied. The Central Government is to be vested with the powers to make schemes.

By virtue of proposed new section 215A the intention of Central Government is obviously to delegate those powers and functions under section 88A to any Public Authority / Public Servant to discharge any of its powers which include the powers under section 88A. This provision has not been made transparent with open mind.

However, if the Central Government has any real intention to run and operate Transport undertakings by itself the Central Government may publish schemes etc., under section 108 in relation to inter-state routes.

The condition precedent to empower the Central Government to make such a scheme is that the service to be operated by a corporation or company on inter-state route should be owned or controlled by the Central Government.

**Therefore it is obvious that the Central Government can make schemes only if they are going to run and operate transport undertakings and such schemes shall be in relation to inter-state route alone, and not otherwise as proposed under section 88A.**

(c.) Impact on State revenue

As per the existing provisions of Motor vehicles Act 1988 the powers to control transport vehicles by grant of permits on all areas and routes is conferred upon the States. The proposal under sections 66-A, 66 B and 88A to introduce a ‘licence system’ for operation of public service vehicles by the Central Government. Such a system will run in parallel to the ‘permit system’ which is now within the powers of the States. The proposed amendment will empower the Central Government to make schemes not only on inter-state routes but also within the states. Such a policy has been devised in such a manner that ‘ the intention is to provide last mile connectivity”..

As per the proviso to section 88-A , in the event of any repugnancy between the schemes made by the Central Government under sub-section (*1*) and schemes made by two or more States under this sub-section, the schemes made under sub-section (*1*) shall prevail. The result would be that the powers of States to control and regulate the movement of public service vehicles by grant of permit and levy of taxes and fees will be taken away by the Central Government.

This will have a serious impact on the revenue resources of the States.

(d). Impact on State Transport Undertakings and Motor Vehicle Department

The Tamilnadu State Transport Corporation (TNSTC) is the largest Government bus transport corporation in India having a fleet strength is 22646 buses. Near about a staff strength of 114401 drivers / conductors / hidden employees 26882 number of technical and administrative staff are serving. The corporation serves major sector of the population of Tamilnadu from the rural to urban areas including remote villages & Ghat areas. The travel occupancy ratio of TNSTC buses is 76.84 (%) during 2016-2017.

For the welfare of employees of TNSTC the Government has implemented the following schemes viz, formation of medical and engineering colleges and polytechnics and reservation in admission for wards of employees, cash less master health check up facility to the employees of more than 45 years of age, health insurance coverage to employees and their family members, family benefit fund, free uniform, washing allowance, free travel pass to family members upto 5000 km per year, holiday home facilities at tourist centers, 20% bonus, amenities to the crew at all depots and terminal points of bus services, perpetual refresher training to drivers to update their knowledge and skill including simulator driving training.

On the social welfare side, the schemes such as free bus pass to all the Students, concessional bus passes are also in force. For the effective implementation of the nationalized bus transport service the State of Tamil Nadu has formulated scheme under section 99 of the Act and also enacted Tamil Nadu Motor vehicles (Special Provisions) Act 1992 [Act 41 of 1992] to partially permit the existing private operators to continue their services and to freeze the issue of fresh stage carriage permits to private operators on and after 30.06.1990.

Thus operation of bus services by the State Transport undertakings is a social welfare scheme and it deserves to be continued in public interest.

Currently, States issue permits to private bus operators to run only on specific routes and in scheduled timings. If the proposed amendment to the Motor Vehicles Act is done, operators would not be bound by such restrictions. It is a hidden part that how the government would regulate the bus operations with the uprising of a large number of operations without any regulation and conditions for operation. Waiving any condition for operation of buses by private sector will severely hit the operation of services by State Transport Undertakings in rural area where the traffic potential is less.

It is worthwhile to note that the Transport Research Wing of the Ministry of Road Transport and Highways compiles data covering physical and financial performance of State Transport Undertakings (SRTU) on an yearly basis. In its review report on the performance of State Road Transport Undertakings (passenger service) for the period April 2014-March 2015 the following recommendations have been given:-

**CONCLUSION GIVEN IN THE REVIEW REPORT**

1. The review of performance of 46 reported SRTUs during the financial year 2014-15 reveals that there are only three net profit making SRTUs viz. Odisha, Uttar Pradesh and Punjab State Bus Stand Management Co.
2. The present report also shows that the collective loss of the 46 reported SRTUs is of the order of Rs. 10,81,016 lakh, indicating an increase of net loss by 6.2 per cent over the last year i.e. 2014-2015.
3. However for undertaking an objective evaluation of the performance, various critical factors are to be kept into consideration that SRTUs are also discharging public sector functions of providing connectivity to locations which may not be attractive to operations or plying on socially obligatory routes with uneconomic fares, delay in revision of fares, higher fixed cost, limited flexibility as regards manpower/staff and higher level of taxation under Motor Vehicle Tax and Passenger Tax etc.
4. Identification of areas of concern/hurdles and systematic removal of problems through adopting appropriate strategies are the main challenges for revival of SRTUs.
5. As most of the SRTUs have failed to generate investible surpluses over a period of time, the need is to provide support in the form of ‘flow of funds’ mainly for fleet modernisation, replacement of over-aged buses, up gradation of bus infrastructure/bus terminals, stops etc.

Thus the review report emphasizes that though the physical performance the State Transport Undertakings prevails over the financial Performance and its services should be strengthened.,

(e) Impact on road safety and general public

The proposed amendments to permit the participation of more private sector operators will ultimately result in unhealthy competition in operating passenger services. The tendency of private operators will be to concentrate on areas where there is high traffic potential and high profit making opportunities. This will definitely lead to offences of over speeding which will become a very serious cause for road accidents. The public in low traffic potential areas have to face the hardship of non availability of public transport facilities. The object of ‘providing last mile connectivity or public transport system to rural areas’ are not going to be achieved by the proposed amendments.

**(4). Representation/Suggestions:-**

This proposed amendment nullify the schemes formulated and approved by the State Government under the existing provision of Section 100 (3) of the Motor Vehicles Act 1988 if there is any repugnancy between the schemes made by Central Government and by States.

Neither the Central Government nor the State Government could formulate schemes unless they have any intention to run and operate their vehicles either within the region or on interstate routes as the case may be. In the present Bill, the object to empower the Central Government to frame scheme for the benefit of private operators would run counter to the Article 19(1)(g)(6)-(ii) of the Constitution of India. Further it will contravene the provision of Section 108 of the Motor Vehicles Act 1988.

As such the proposed amendment of inserting new sections 88A , 66A and 66B should be withdrawn.

**15. PRAYER:**

The Motor Vehicles (Amendment) Bill 2017 [Bill No.214C of 2016] proposes to make major changes in certain provisions in the Motor Vehicles Act 1988. Particularly the amendments proposed in sections 44, 66A, 66B, 88A, 211A, 215A, 215 B and 215 C have serious impacts on the public safety and encroach upon the State powers. These provisions are unconstitutional. Therefore they are objected to. It is prayed that these provisions may be deleted.

We humbly pray that the Hon’ble Chairman and Members of the Select Committee may be pleased to appraise the reasoning putforth in the memorandum in support of our objections. We hope that, in the larger interest of the States and the general public, the Committee will recommend to the Government to issue an official amendment to the above provisions in the Motor Vehicles (Amendment) Bill to rederess our grievances. We also request an opportunity of hearing in this regard.

Thanking you all Sirs,

Bangalore,

.08.2017.

(Ashfaq Ahamed)

President,

All India Federation of

Motor Vehicles Department

Technical Executive Officers’ Association.