



SSRJ LEGAL CONSULTANTS



LEX LAUREATE ...pro et contra
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Date:18.12.2017

Ref. No.:1712/APMALO/01

To

AUTOMATIVE PARTS MERCHANTS ASSOCIATION
10, VARDAN HOUSE, CHABI GANJ, KASHMERE GATE
DELHI-110006

Dear Sir

Sub: Legal Opinion regarding your query

Query: An alleged letter No. RT-11021/38/2017-MVL, dated 7th December, 2017, signed by Priyank Bharti, Director (MVL), on a letterhead of Govt. of India, Ministry of Road Transport and Highways, circulated on social media with a message that the Central Government has banned the Crash Guards/ Bull Bars on Motor Vehicles. You have sought Legal opinions:

1. Whether the Crash Guards/ Bull Bars have been barred as per the letter?

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2. Whether this letter is a notification?
3. Whether fitment of Crash Guards/Bull Bars is in contravention of Section 52 of the Motor Vehicles Act, 1988?
4. Whether the fitment of Crash Guards / Bull Bars attract penalty under Section 190 and Section 191 of the Motor Vehicle Act, 1988? If yes, what is the penalty?
5. Whether the decision of Govt. of India is correct in taking action against the fitment of Crash Guards/ Bull Bars?
6. Whether manufacturing and sale of Crash Guards/ Bull Bars, illegal, as per the letter?
7. What is the fine/penalty/punishment for fitting a Crash Guard/ Bull Bar in Motor Vehicles?
8. How this notification can be challenged?
9. What legal action can be taken to save our trade, which has crores of people associated with it?
10. Any other Legal Advice.

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Opinion: From the factual information made available to us by you, the following are advisable:

Before everything, the first step is that the authenticity of the document be got verified by filing an RTI with the Transport Ministry as the same was not traceable on the official website of the Ministry of Road Transport & Highways, Govt. of India. The link of the website is <http://morth.nic.in>. Therefore, firstly you need to find out whether the letter is genuine and authentic or not.

1. In reply to your question No. 1, it is advised that the authenticity of letter be verified first. Having said that, if the letter is genuine, even then it is not imposing any bar on Crash Guards/ Bull Bars, but it has been stated that the Bull Bars/ Crash Guards were already unauthorized, however, there is no law, rule, by-law pertaining to Bull Bars/ Crash Guards in the laws related to Motor Vehicles. The letter, even if genuine, is merely a recommendation to all State

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Governments to take action against Bull Bars/ Crash Guards, if the states intend to do it. The use of word 'may take action' is a recommendation and not a direction.

2. In reply to your query no. 2, it is again advised that the authenticity of the letter be verified first, and even if the letter is correct, it is a departmental letter within the Central Transport Department to State Transport departments, and **this letter is not a NOTIFICATION.**
3. In reply to your query no. 3, **it is opined that the fitment of Crash Guards / Bull Bars is not in contravention with Section 52 of the Motor Vehicles Act, 1988.**

For understanding the query, the Section 52 of the Motor Vehicles Act, 1988, is reproduced herein:

[52. Alteration in motor vehicle.—(1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer:

Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof, of a vehicle for facilitating its operation by different type of fuel or source of

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energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:

Provided further that the Central Government may prescribe specifications, conditions for approval, retrofitment and other related matters for such conversion kits:

Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.

(2) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notification, and permit any person owning not less than ten transport vehicles to alter any vehicle owned by him so as to replace the engine thereof with engine of the same make and type, without the approval of registering authority.

(3) Where any alteration has been made in motor vehicle without the approval of registering authority or by reason of replacement of its engine without such approval under sub-section (2), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of registration may be entered therein.



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(4) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(5) Subject to the provisions made under sub-sections (1), (2), (3) and (4), no person holding a vehicle under a hire-purchase agreement shall make any alteration to the vehicle except with the written consent of the registered owner.

Explanation.—For the purposes of this section, “alteration” means a change in the structure of a vehicle which results in a change in its basic feature.].

After carefully perusing the entire section, it can be legally interpreted that the section deals with alteration with the details mentioned in the RC (Registration Certificate) only.

As far as the Bull Bars/ Crash Guards are concerned, the fitment of the same cannot be termed as an Alteration/Modification in the Motor Vehicle. The crash guards/ bull bars are accessories of the motor vehicles and **therefore the fitment of the Crash Guards / Bull Bars is not in contravention with Section 52 of the Motor Vehicles, Act. 1988.**

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4. In reply to your query no. 4, please read the contents of para no. 3, and since the fitment of crash guards/ bull bars are not in contravention with law, and since there is no law, rule, or bye-law, for the regulation/use/fitment of crash guards/ bull bars, therefore the same shall not attract any penalty. To be more elaborate, the Section 190 deals with penalties in case when a motor vehicle is being run on roads in defective condition, which is known to the driver/owner, for example if one knows that his car has brake issues and he still drives the same with the knowledge that it may cause an accident, penalty under section 190 will be attracted. As far as section 191 is concerned, it is a penalty against the sellers of motor vehicles, if they know the vehicles are not in confirmation with law. **It is clarified that the fitment of Crash Guards/Bull Bars does not attract any penalty under Sec. 190 and Sec. 191 of the Motor Vehicle Act, 1988.**
5. With respect to your query no. 5, it is advised that an RTI be filed with the Ministry of Road Transport and clarification be sought whether the letter is genuine or not and secondly if the letter is

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genuine, it may also be asked as to what is the basis of the letter. It shall be asked that how and under what law, rule, bye-law, etc. it has been suggested that Bull Bars/ Crash Guards are in contravention of law. We have researched on the subject-matter, and we have not come across anything which could be the basis of the proposed action of Central Govt., (if the letter is genuine), and it is advised that if the letter is genuine, a Writ Petition can be filed against the Ministry to get the letter quashed.

6. **It is clarified that manufacture and sale of Bull Bars/ Crash Guards is not illegal.** Even if the letter is genuine, there is nothing against the manufacturing or sale of the crash guards/ bull bars.
7. Your query no. 7 is identical to query no.4, please read para no. 4 above for the same. It is again opined that there can be no penalty/fine for fitment of Crash Guards/ Bull Bars, as no law has been violated.
8. It is clarified in the reply to query no.2 that even if this letter is genuine, this is not a notification. You are advised to file RTI and seek information and then you can send a representation to the

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concerned Ministry for recalling their letter and if the ministry does not take any action on your representation, you can file a Writ Petition under Article 226 of the Constitution of India, before any High Court.

9. The first step is to get the verification whether the letter is genuine, and or not and then you can move under Writ Jurisdiction before any High Court within whose jurisdiction the Trade is being run or even before Hon'ble Supreme Court of India, for protection of your constitutional rights under Article 19 (1) (g) and Article 21 of the constitution of India.

10. There is no other legal advise, in the matter. First check the authenticity of the letter and thereafter, the next course of action shall begin.

Conclusion: The law on Motor Vehicles has been evaluated and it has been found that there is no provision regarding the Bull Bars/ Crash Guards, and the letter, even if genuine, has no legal backing, and therefore is liable to be quashed. In case, the government wishes to bring an action against the bull bars/ crash guards, an

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amendment/addition is required in the law that is in force today and cannot make legislation with letters such as the one under consideration here, if the same is authentic.

With Best Regards

KAMESHWAR GUMBER

ADVOCATE, SUPREME COURT OF INDIA

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