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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEMON LAWS AND THE EQUIVALENT INDIAN APPROACH: AN EVALUATION

AUTHORED BY - JANAVI MANISEKAR & RIKASHA SHAJAKAN

ABSTRACT:

India is a country that has the third largest road network in the entire world. As a subsequent result, the number of automobile users is high. The absolute number of vehicles as of 2022 accounted for almost 326 million¹. About 60 percent of the populace in India prefers to travel or commute by road. With the increased use of automobiles in the country, the laws protecting such consumers are comparatively weak. A lot of thought is put into it before a person buys a new automobile, may it be motorcycles, cars, SUVs, trucks, vans, caravans, and in some cases boats. But when the person is stuck with defective automobiles, they tend to think that they have to bear with those defects. However, this is not the case. Yet, protection against automobile defects is not sternly adhered to in India. Defective automobiles, purchased with a warranty are eligible to be replaced in case the defect cannot be fixed through services through product liability. Several judgments in India stand as proof of this fact. Nevertheless, strict laws which ensure guaranteed and speedy recovery like the one in the United States and many other countries – The Federal Lemon Law will make a huge difference to the Indian Consumer Market. Lemon laws are a prescribed set of rules and regulations to protect consumers against defective consumable goods, particularly automobiles purchased. Every state in the United States has slightly distinguished rules from the others but is governed by Federal Lemon Law overall. This article focuses on undermining the need for Lemon laws in India or simply an upgrade of the already existing consumer laws.

INTRODUCTION:

In India, buying a new car is a dream for many. But when such a dream car turns out to be faulty, the level of disappointment is indescribable. Dealers and manufacturers have the responsibility to provide consumers with perfect products. They have the legal and moral obligation to be held liable for any flaws in the product i.e. the automobile purchased from them. The automobiles might be manufactured in such a way they may retain some defects

¹ STATISTA, <https://www.statista.com/> (last visited May 10, 2023).

which might turn dangerous to the driver at unexpected times such as failure of brakes, non-deployment of airbags, deployment of airbags at the wrong time, forceful exertion of airbags than what is prescribed, issues with seatbelts that might turn perilous and other technical defects. Such 'out-of-order' issues in the automobile may disturb the consumer's daily routine while commuting to work or terrible accidents resulting in fatal injuries. These defective automobiles are called 'lemons' worldwide. A lot of countries have lemon laws to administer the automobile industry. The US Congress has passed the Magnuson-Moss Warranty Act to regulate and control warranties given to consumers and makes sure that they are being upheld by manufacturers and dealers. Each state in the United States has certain perspectives on its lemon laws and they differ accordingly. Many more countries have passed lemon laws for the welfare of their automobile market. But, in India, lemon laws or any law that is relatively as strict as lemon laws does not exist. This article will further help in understanding what lemon laws are, the different forms of lemon laws in different countries, what legal protection Indian automobile consumers have in case there are stuck with faulty automobiles, whether the Indian consumer community needs laws like lemon laws with examples of how Consumer Redressal Commissions have upheld the rights of consumers of automobiles.

LEMON LAWS:

The shielding of the consumers against deficient products or goods, especially when the goods are automobiles like cars, trucks, SUVs, vans or recreational automobiles is the main objective of the Lemon laws. No consumer needs to endure or put up with a defective automobile or any other product for that matter. Lemon laws are supported under the guise of different legislations passed by different countries. It varies by country. When a consumer is stuck with a deficient vehicle, and if a such vehicle cannot be redeemed to its supposed 'perfect' condition through a decent number of tries of services with the automobile centers, it must be replaced or recalled by the manufacturer. This is the essence of Lemon laws. This law is primarily enacted in every state of the US and every state's law differs by some distinct points specifically built on the particular needs of each state. The term 'lemon' refers to 'defective products.' The fundamental federal law that ensures protection against 'lemons' is the Magnuson-Moss Warranty Act of 1975. This Act covers only those products that have a supported warranty attached to the product when purchased. As per the jurisdiction of the consumer or product, the aggrieved consumer may approach the suitable authority and seek a remedy for their purchase of the defective product. The authority may even direct the parties towards arbitration proceedings

depending on the case. Lemon laws impose a strict degree of responsibility on the manufacturer to provide proper goods to the consumers without possible manufacturing faults that might end up in potential fatality to the consumers.

LEMONS?

There are many theories to answer the question as to why these defective products are called 'lemons.' In the 1900s, the term 'lemon' was used by Americans to denote something that is of no worth. Sooner, a defective-worthless car was denoted a lemon. Apart from the Americans, the British also used the word 'lemon' to denote a product of deficient quality. A theory is that when people end up with a 'lemon' they tend to get frustrated and their face creases and gets corrugated like when they bite into a lemon². Another theory revolves around the appearance of the fruit. It looks smooth, glossy, and polished but as a person tries tasting it, he experiences a sour taste for which he did not sign up. It is in this way a defective new car is metaphorically compared to a lemon. New cars which are defective with manufacturing defects look new, gleaming, and exciting to the consumers but only when they are put to use, the consumers are up for disappointment. Lemon laws find their trace in the Magnuson-Moss Warranty Act of 1975 which granted absolute protection to consumers of products with a warranty. It ensured that no manufacturer was able to escape liability after selling a defective product along with a warranty with loopholes.

LEMON LAWS IN DIFFERENT COUNTRIES

LEMON LAWS IN CALIFORNIA

Consumer protection laws in California and other United States provide remedies for people who have purchased any defective car. These laws are known as Lemon Laws. California Lemon Law excludes consumable goods like fruits, vegetables, clothes, and cosmetics. In California, a manufacturer is required to substitute consumer goods or refund the buyer's cash if it cannot be fixed after a manageable number of attempts. The rule covers many types of vehicles that include cars, trucks, sport utility vehicles (SUVs), vans, and motorcycles. Leased vehicles, previously owned vehicles, and financed vehicles are also covered under California Lemon laws. This lemon law also covers used and new cars under warranty.

² Niranjana N., *Need for Lemon Laws – A comparative Study*, 3 JLSR 2, (2022).

According to California lemon laws, the producer of consumer goods must –

- create sufficient repair facilities in California so that consumers can easily obtain the facilities they need.
- Make sure that the time it takes to fix the damaged products is no longer than 30 days.
- Be limited to a set number of efforts to correct the defective products.
- provide a replacement or refund to the consumer, less the value of any trouble-free use.
- Pay the appropriate legal and other costs incurred by the consumers.

A Manufacturer of a warranted vehicle must replace or repurchase the vehicle, pay the consumer's incidental and consequential damage, and cover the consumer's reasonable attorney's fees and losses if the vehicle cannot be fixed after a reasonable number of repair attempts. Depending on how serious the defect is, a different number of attempts may constitute a reasonable number. In general, safety-related defects will need fewer attempts to be repaired than non-safety-related defects.

Valid requisites for a vehicle to include in the Lemon laws -

1. The car must have been acquired with an explicit warranty that is still in effect.
2. The Lemon Law only applies to "consumer goods," not to cars obtained from private sellers.
3. The car must have been subjected to multiple attempts at repair by the manufacturer or dealer.
4. The issue with the vehicle must be regarded as material, which means that it significantly affects how well it works.
5. Consistent wear and tear or improper vehicle maintenance by the owner cannot be the cause of the problems.

Monetary compensation is provided by the California lemon laws to protect people from defective products.

The California lemon laws provide the following types of remedies to lemon vehicle owners: Reordering of the defective vehicle, Restoration of the defective vehicle, Cash Settlement, and Payment of Reasonable Attorney Fees, and Costs to the Consumer. A vehicle owner may be able to pursue civil fines over an automobile manufacturer if the automobile manufacturer deliberately broke California's lemon legislation. The civil penalties can be as much as two times the amount of the actual damages. The defects in the vehicles must be covered under the

vehicle's service order. The California Lemon law only applies to used cars that are still covered by warranties. The warranty can be the one that originally accompanied the car when it was brand-new. A certified vehicle's warranty could also be a brand-new or extended one. Additionally, California's lemon legislation does not apply to vehicles sold privately by an individual instead of a dealer. It makes no difference if the car is still covered by the warranty. Unfortunately, as the rule only applies to consumer goods, it does not apply to vehicles that are sold privately by an individual.

California Lemon Law's Time Limit for Filing a Claim - First, the problems with your car must have happened when it was still under warranty. Unfortunately, you probably will not have a claim under the lemon law if the issue or difficulty arises after the warranty period. Second, there is a deadline for submitting a claim under the California lemon law regulations. You typically have four years whichever is earlier from the date of defect discovery to submit your court complaint under the Lemon law statute of limitations.³

LEMON LAWS IN SINGAPORE

In 2012, a "lemon law" was established by the Consumer Protection (Fair Trading) Act (CPFTA) Part III, permitting customers to file claims against defective items they had just purchased within six months. According to Lemon Law, a seller is obligated to fix, swap out, refund, or lessen the price of a defective product. All consumer goods, including automobiles, household appliances, furniture, digital devices, and a host of other items, are covered by Singapore's Lemon Law. Any business selling consumer goods in Singapore is subject to it.

Conditions when a vehicle is ineligible under lemon laws –

1. The Lemon law does not provide protection for the customer who altered any part of the product that caused damage to the vehicle.
2. The damaged vehicles that are misused do not come under lemon laws.
3. The vehicles that are damaged due to the repair process does not cover under the Lemon laws.

³ *California Lemon Laws / The Lemon Law Experts, THE LEMON LAW EXPERTS, <https://lemonlawexperts.com/california-lemon-law-rules/>*

Even if you are a consumer who has bought damaged goods, the lemon law could not be applicable if -

- You harmed the item by abuse, unauthorized repair, improper storage, or handling.
- The flaw resulted from regular wear and tear.
- Before making the purchase, you were either notified of the problem or it was clear enough to notice before making the buy.
- Although the item is not broken, after buying it, you decided you no longer wanted it.
- You discovered that the goods did not fulfill a specific purpose you had in mind for them, but you did not tell the seller about this purpose in advance.

Within six months after the date your defective product was delivered, you may file a claim under the lemon law. The lemon law presumes that any flaws you discover within this time were present when you originally acquired the merchandise. So that the lemon law is inapplicable, the seller is therefore required to establish that the product was not defective when it was delivered to you. As a result, warranties that are shorter than six months are effectively revoked under the Lemon laws. This implies that if the product has a one-month guarantee, the seller can rely on it to provide you with a refund if something goes wrong with it during that time. But if you kept the item for no more than six months before it broke down, one can still utilize the lemon law to force the vendor to pay you after the one-month guarantee expired. The assumption that a fault was present when you initially acquired the product is only valid up to its estimated shelf-life, not for the full 6 months, in the event of perishables with a predicted shelf-life of a maximum of six months, such as food. Normal wear and tear that continues past the anticipated shelf life is not regarded as a defect. Additionally, as long as you can demonstrate that the flaw existed on the day the goods were handed over, you may file a lemon law claim even if you had the item for at least six months before it broke down.⁴

LEMON LAWS IN THE PHILIPPINES

There are occasionally certain flaws that get past quality control and end up in the hands of a client. This is true of cars entering the Philippine automobile market. Having a "lemon" unit, however, can be a real hassle because it will necessitate frequent trips to a repair center to

⁴ MAKING LEMON LAW CLAIMS FOR DEFECTIVE ITEMS IN SINGAPORE (Sept. 21, 2021), <https://singaporelegaladvice.com/law-articles/lemon-law-claims-defective-items-singapore/>

address a persistent issue. To fully protect consumers' rights against company and trade practices that are misleading, unfair, and harmful to consumers and the general good, RA 10642, also known as the Philippine Lemon Law, was passed in response to this. This law helps to safeguard your consumer rights and went into effect in 2014. It includes a broad spectrum of passenger cars, including small and big SUVs, hatchbacks, sedans, and crossovers. It is crucial to remember that this regulation does not currently apply to heavy machinery, buses, delivery trucks, or motorcyclists. It covers owners of brand-new vehicles acquired in the Philippines within 12 months after the date of delivery, to quickly explain how the law may safeguard your consumer rights. Additionally, it includes the first 20,000 kilometers of use following the date the vehicle is delivered to the customer, or the first 12 months, whichever is earlier. This gives the owner the authority to report any non-conformity with the distributor's or the vehicle's manufacturer's standards or requirements. The complete history of each vehicle that needs to be returned for repairs should be made public so that the dealer can resell it. If not, and the dealer doesn't comply, the new customer risks receiving Php 100,000 in damages, which would be an unnecessary insult. Any civil or criminal liability they or the responsible officer may face under current law is not affected by this sum. The dealer may demand reimbursement for the costs of any repairs made to non-problematic parts if they can demonstrate that the vehicles are not defective. Once more, the Philippine Lemon Law offers a level playing field for both the manufacturer and the customer. However, the judgment can be appealed for reconsideration after 15 days if neither the sellers nor the buyers are happy with it. It will be necessary to review some cases to confirm incorrect decisions and eventually overturn them. When the item is being repaired at the dealer's shop, the dealer is required to offer temporary transportation or an allowance in place of it. If the customer wins the battle against the dealer, they can choose any higher or similar model, but it will cost them more money. They can return the item and receive a complete refund, including any damages.⁵

POSITION IN INDIA:

Before 2019, there was no separate statute for automobiles-product liability. Any consumer aggrieved by a defective automobile can approach the court of law with the provision of product liability under the Consumer Protection Act of 1986. The Consumer Protection Act is a shield against all defective products. It exhibits holistic legislation comprising goods and

⁵ Joey Deriquito, *What you need to know about the Philippine Lemon law* | Autodeal, AUTODEAL (Jan. 12, 2022), <https://www.autodeal.com.ph/articles/car-features/what-you-need-know-about-philippine-lemon-law#:~:text=This%20is%20why%20the%20RA,consumers%20and%20the%20public%20interest.>

services as mentioned in the statute. A defect, according to the Consumer Protection Act of 2019 can be understood as deficiency, imperfection, or fault in the quality, feature, amount, nature, worth, authenticity, capacity, and standard which the seller is obligated to maintain and regulate as promised in the agreement or otherwise a contract. There is no equivalent procedure to lemon laws in India before 2019. After the Amendment, there has been some protection for consumers against defective vehicles.

The **Motor Vehicles Act of 1988** is the key legislation in charge of the automobile sector in India. This legislation is supported by the **Central Motor Vehicles Rules of 1989**. Both MVA and CMVR are administered by the Ministry of Road Transport and Highways as it is the sole regulating body of the Indian automobile industry. The Motor Vehicles Act overlooks to register new automobiles and their licensing. Further, it oversees emission limits of vehicles and other regulations. The Central Motor Vehicles Rule 126 governs the procedure for the accreditation of vehicles by a testing agency⁶. It requires the manufacturer to provide a prototype of their automobiles and obtain an accreditation certificate for the same, on satisfying the requirements. Chapter V of the Central Motor Vehicles Rules (CMVR) supervises the ‘Construction, Equipment and Maintenance of Motor Vehicles.’ Standing Committee on Implementation of Emission Legislation (SCOE) directs regulations for emission limits and on the other hand, the Central Motor Vehicles Rules-Technical Standing Committee (CMVR-TSC) guides the Ministry of Road Transport and Highways (MORTH) on safety regulations of automobiles as to guidelines regarding standards of automobiles to be followed. Both these Committees ensured that there is proper participants of industry stakeholders in the Ministry.

Although there are exhaustively regulating provisions for emission controls and safety standards of the automobile industry, there is an absence of proper legislation to make manufacturers accountable for manufacturing deficiency and the subsequent recall of the same from the market or consumers in India. There are a few legislations under which the aggrieved consumers of the automobile industry can seek protection. They are the **Consumer Protection Act of 2019**, the **Indian Contract Act of 1872**, and the **Sale of Goods Act of 1930**. They may even refer to common law principles like negligence under torts⁷.

⁶ Central Motor Vehicles Rules, 1989, Rule 126, 1989 (India)

⁷ Huzefa Tavawalla and Vivek Kathpalia, *India: Auto Recalls & Product Liability in India*, MONDAQ (May 05, 2023, 3:20 PM), <https://www.mondaq.com/>.

The primary statute automobile consumers refer to be sheltered is the Consumer Protection Act of 2019. If a person satisfies to be a 'consumer' under Section 2(d) of the Act, he/she may very well file a complaint against a deficient automobile.

Preceding the 2019 Amendment to Consumer Protection Act and the Motor Vehicles Act, the guidelines for recall was the Voluntary Code on Vehicle Recall of 2012 regulated by the Society of Indian Automobile Manufacturers (SIAM). This emphasized a voluntary recall of the auto manufacturers in case of a defect identified without incurring any cost to the consumers. However, no penalty was enforced on the part of the manufacturers if they did not comply with the same. This led to a lack of strict administration of recalls.

THE MOTOR VEHICLES (AMENDMENT) ACT, 2019:

Section 110A:

An inclusion of 110A to the Primary Motor Vehicles Act of 1988 was made to empower consumers who were aggrieved because of defective automobiles⁸.

Section 110A (1) gives power to the Central Government to order or direct the manufacturer to recall the automobile if it is proven to have the following defects:

- An error or defect that causes harm to the environment or any one of the individuals mentioned namely the driver, occupants of the automobile, or other road users.
- A defect that has been alerted by a specified number of users, a testing agency, or any other source which may deem fit.

Section 110A (2) grants power to the Central Government to order a recall of automobiles by the manufacturer of any of the variants if any specific part of the automobile is defective.

Section 110 (3) instructs the automobile manufacturer to indemnify the consumer with the full cost of the vehicle according to any agreement signed with or to replace the defective vehicles.

Section 110 (4) provides a chance for the manufacturers themselves to intimate any defect that they may find in the automobiles manufactured by them and proceed with recall processes so that they can escape the penalty for the same.

⁸ The Motor Vehicles (Amendment) Act, 2019, § 110A, No. 32, Acts of Parliament, 2019 (India).

Section 110 (5) directs an investigation officer to examine, receive documents, and examine a person on oath on this subject matter for the exclusionary functioning of cases relating to defective automobiles.

Section 110 (6) grants power to the Central Government to make any other rules to protect the environment, driver or occupants of vehicles, and other road users from deficient vehicles.

The Amended Rules regarding the vehicle recall procedure are established by the Ministry of Road Transport and Highways which states that a person aggrieved of a defective automobile or any other person as deemed fit by the Central Government must file an application to the Designating Officer regarding the defect through the Vehicle Recall Portal⁹. There may be cases where the Designating Officer can file a Suo moto case because there is a defect in the automobile and such defect is a 'design defect' in all vehicles of the model which has been made accessible to consumers.

The Designated officer, on receiving the complaint application or institution of the suo moto process provides the importer or manufacturer or a retrofitter of the vehicle with a show cause notice to substantiate the charges made against him. Such a response must be supplied within 30 days of the notice. The Designated officer will begin his investigation on the suspected 'defective automobile' within 30 days after the receipt or non-receipt of the response from the manufacturer. In the case where the Designating Officer is satisfied that the automobile is defective, he may inform the same to complainant and direct the manufacturer to produce documents relating to the sale of the vehicle of the same sort and other documents, thus initiating the recall of the vehicle.

There is an option of appeal to the High Court if the decision of the Designating Officer is not satisfactory to any of the parties. Such an appeal must be made within 90 days of the notice of action.

⁹ Sidharth Sethi and Avinash Das, *Legal Regime Concerning Vehicle Recalls in India – A Primer*, BW LEGAL WORLD – BW BUSINESSWORLD (May 07, 2023, 7:43 PM), <https://bwlegalworld.businessworld.in/>.

THE CONSUMER PROTECTION ACT, 2019:

Section 20:

The 2019 Amendment Act has created a specific provision for the recall of defective automobiles upon the satisfaction of the Central Authority i.e., the Central Consumer Protection Authority (CCPA) that the vehicle is indeed defective under the purview of the vehicle being 'goods.'¹⁰ On such a decision, the authority may issue a recall of the vehicle observing it to be dangerous, and thereupon direct for the refund or compensation of the price for the vehicle. All through the process the CCPA must follow the rules as mentioned in the Motor Vehicle Amendment Act of 2019.

CONCLUSION:

Lemon laws mandate the manufacturers to take back the deficient automobiles which have manufacturing defects or any other difficulties which have arisen out of the negligence of the manufacturer. By doing so, he is liable to reimburse the price of the product or provide a non-deficient vehicle given a warranty for the purchase. If it is the case where all the automobiles have a design defect that may result in dangerous circumstances to the owner, driver, or occupants of the vehicle, or the environment or other users of the public road, the manufacturer must realize the effect and a compulsory recall of all automobiles with such defect takes place. In India, the rules about defective automobiles are still not as effective as lemon laws in other countries. The Amendment Rules and provisions had taken the procedure of recall through authorities a notch up the scale but it is still not mandatory for the manufacturers to take back the defective automobiles without rigorous procedure. The recall procedure is still voluntary but it is indeed an improvement from the previous state of rules for the process. Indian recall regime is anticipated to advance to a level that is at par with other countries and adopt laws that are as effective as lemon laws.

¹⁰ The Consumer Protection Act, 2019, § 20, No. 35, Acts of Parliament, 2019 (India).