

MEDIATION IN THE WORLD OF CARS

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“The cars we drive say a lot about us.”

Alexandra Paul

ABSTRACT

Mediation in India still has long way ahead and when it comes to disputes relating to our beloved cars, and that too the luxurious ones the issues get even more serious. This paper's focuses on “Lemon Law Mediation” with giving importance to “Indian status of laws relating to new cars”. Lemon laws protect consumers who have purchased automobiles that repeatedly fail to meet standards of quality and performance. Lemon Law mediation allows those consumers and automobile dealers to avoid the lengthy and expensive litigation process by bringing them together with a neutral, third-party mediator who can help them find a solution that they can both agree upon.

Keywords: *Lemon Law, Lemon Law Mediation, RRR Concept.*

INTRODUCTION

In a court case there is usually a winning and a losing party whereas in mediation the mediator essentially helps the parties to settle down their disputes by a process of discussion and narrowing differences. The idea of bringing lemon law mediation to India is to ease the long and money wasting cases that take place for defective cars, car accidents and any other type of issue relating to cars. In 2014 Consumer Protection Act decided to be amended to ease mediation they observed that because of the large number of cases in consumer courts, the delivery of justice is painstakingly slow, which sometime goes on for years, killing the very essence of the Consumer Protection Act to deliver swift justice. Therefore, by proposing a crucial change it will help in appointing arbitrators for ensuring out of court settlement of the case. The very purpose of the amendment was to ensure that justice is delivered fast to the consumers and at their nearest point of contact and they are not made to run from pillar to post to file a basic complaint.¹ *Sushila Automobiles Pvt. Ltd. vs. Dr. Birendra Narain Prasad & Ors.* 2010 decided by the District Forum in Ranchi held the defects in the car were of minor nature and therefore it could not accede to the consumer's demand for a replacement or a refund. It merely asked the manufacturer to rectify the defects. The consumer court at the state level, to which the consumer appealed against this order, held a different view. Its verdict was that since the defects could not be rectified and the vehicle remained mostly with the dealer (for repairs), the vehicle had inherent manufacturing defects. It therefore ordered replacement of the vehicle. The National Commission however disagreed and said the car only suffered from 'minor defects' which were not 'manufacturing defects'. So the demand for replacement was not justified. This brings us to the crucial question: what are the grounds on which a manufacturer should replace a car? What constitutes a manufacturing defect?² If we have a separate forum for all these kinds of cases then the cases could be solved lot easily and justice would not be delayed. But first let's have a glance at what lemon law is?

¹ Business standards magazine last visited: 15-10-2017

² Available at <http://www.hindustantimes.com/india/how-do-we-get-defective-vehicles-replaced/story-aczfdMSVCwEETLtiQaRUGL.html>

What is Lemon Law?

In the automotive world, "lemon" refers to cars that have repeat problems or defects that substantially impair their use, value or safety. They provide remedy for purchasers of cars and other consumer goods in order to compensate for products that repeatedly fail to meet standards of quality and performance. Although there may be defective products of all sorts ranging from small electric appliances to huge pieces of machinery, the term "lemon" is most often used to describe defective motor vehicles such as automobiles, truck, SUVs, and motorcycles. Many developed countries have their very own lemon laws some of these countries are as follows:

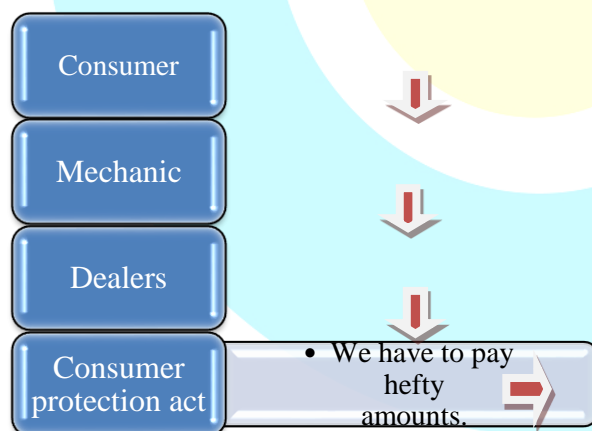
- 1) **United States:-** The U.S. has its lemon law enacted by the federal laws. It comprises of two types of warranties **express warranties** and **implied warranties**. Express warranties make specific promises about product repair, and are usually made in writing whereas implied warranties arises from the sale itself, and need not to be in writing. It has an act called as the **Magnuson-Moss Warranty Act** which was enacted in 1975. The act was enacted to protect the citizens of all states and to ensure that manufacturers honor their warranties and to reduce the chances of not misleading the consumer when it comes to the nature and scope of a warranty while making a purchase. The Act also provides that the warrantor may be obligated to pay the prevailing party's attorney in a successful lawsuit, as do most state lemon laws. A consumer may pursue relief under both a state lemon law and the Magnuson-Moss Warranty Act.
- 2) **Canada:** The **Canadian Motor Vehicle Arbitration Plan (CAMVAP)** is the dispute resolution program for Canadians who have problems with the assembly of their vehicle or with how the manufacturer implements its new vehicle warranty. CAMVAP covers new and used, owned and leased vehicles that are from the current model year and up to an additional four model years. CAMVAP is free for consumers, and hearings are held in the consumer's home community. The process normally takes less than 70 days from start to finish. Most consumers are able to handle their own case without the assistance of lawyers. The manufacturers do not use lawyers. Their representatives usually are serving or retired district parts and services representatives. An inspection of the vehicle normally is part of an arbitration hearing and the arbitrator can order a technical inspection of the vehicle at

the program's expense if doing so is required. CAMVAP arbitrators can order the manufacturer to buy back the vehicle; repair it at the manufacturer's expense; pay for repairs already completed; or pay out of pocket expenses for items such as towing, diagnostic testing, rental cars and accommodation related to the problem with the vehicle. The arbitrator can also determine that the manufacturer has no liability. CAMVAP is available in all Canadian provinces and territories.

- 3) **Singapore:** A similar "Lemon Law" was passed in Singapore's parliament on September 1, 2012, to strengthen consumer protection laws. Singapore's Lemon Law applies to all goods (including consumables and perishables) but it does not apply to services. Under the law, consumers can report a defective item within six months of delivery and it is the responsibility of the retailer to prove that the defect did not exist at the time of delivery. The consumer may have the option to request for repair or a replacement, and if that is not possible, ask for a reduction in price, or even a refund.

Whenever you find any defect in your car

Whenever you find any defect in your car what is the first thing you do?

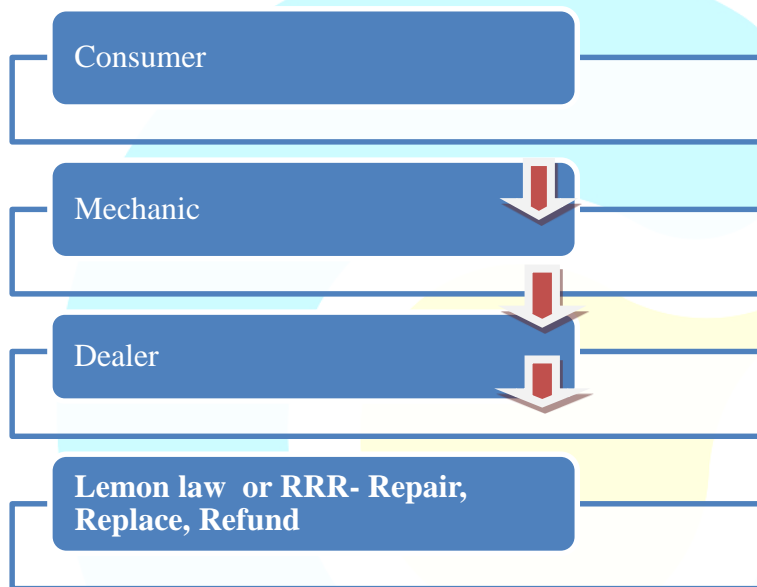


The above diagram roughly gives the idea of how a person as we can say a consumer would respond to a situation like this. The consumer would first go to his/her

- Mechanic: as the car is not working properly.

- Dealer: if the problem was more serious and the mechanic was not able to solve the problem the consumer is then said to meet the dealer of the car.
- Consumer Protection Act/Forum: the dealer further suggests the consumer to file a suit against the car company which further costs the consumer a hefty amount.

But what if we try to add an alternative:



The most distinct and specific lemon is that of California States called as the:

The Song-Beverly Consumer Warranty Act

If you purchase or lease a car in California and then discover that it has defects that substantially affect its safety, use or value, state law may help you gain satisfaction from the vehicle's manufacturer. While the law cannot help everyone with a "lemon" (a problem car), and some people may have to hire an attorney to get their cases resolved, the law does create important rights for car buyers. Even if the Lemon Law does not apply in your case, many other state and federal laws may protect you. These include laws that require truth-in-lending, prohibit deceptive practices and mandate that vehicles meet minimum safety standards. Most consumer laws provide for you to receive at least a refund and your attorney's fees. The Song-Beverly Consumer Warranty Act

(in the California Civil Code, beginning at section 1790) requires that if a manufacturer or its representative is unable to repair a purchased or leased motor vehicle to conform to its written (express) warranty after a reasonable number of attempts, the manufacturer must promptly replace or repurchase it. (The manufacturer is allowed to deduct money only for miles you drove the vehicle before you took it to a repair shop because of the defect.) To qualify for this protection, the vehicle must have been purchased or leased in California for personal, family or business use. (The Warranty Act covers up to five autos used for business and restricts that coverage to vehicles under 10,000 pounds.) The Warranty Act protects you during the entire period that the factory warranty is in effect. (Based on a 2002 court case, the Warranty Act doesn't apply to autos with optional extended service contracts.) If you buy a car with a five-year manufacturer's warranty, then you are protected for at least five years. This protection period can even be extended, because the time limit in which to bring a legal action for breach of warranty is four years from when the defect is first discovered. For example, if you discover that your vehicle is defective four years into a five-year warranty, you have an additional four years (or eight years from the date of purchase) to take legal action. If your vehicle is determined to be a lemon, you have the right to choose a refund instead of a replacement vehicle. You cannot be required by the manufacturer to accept a replacement vehicle instead of a refund. In addition, you may be able to get a refund for repairs, towing and use of a rental vehicle.

Seller challenges to presumptions

Just as the Lemon Law presumption guidelines may be subject to interpretation by a judge or arbitrator, they also can be challenged and perhaps proven not to be true. If the manufacturer can prove that it has not had a reasonable opportunity to repair your car, you may not be entitled to a refund or a replacement vehicle.

Why India does needs Lemon Law?

- In country like India where there are more numbers of middle class families so we actually need lemon law. As explained earlier lemon law is a protection shield for the consumers.
- Two biggest purchases of an Indian consumer are house and car. The middle class families in India mostly buy cars that could be use for a very long period of time and sometimes in

some families even the next generation uses the same old car, hence bringing Lemon Law to the Indian Automobile Industry will give the middle class families a strong support and remedy as such families buy car for a long term and as Consumer Protection Forum are proved to be costly and take a lot of time to provide remedy to the consumer, Lemon Law could be a “Knight in Shining Armor” for the middle class families.

- Indian Auto Market is governed by the Consumer Protection Act and several of such kinds, which simply shows that there are no dedicated laws which solely serve the purpose and issues relating to the Auto Marketing Industries. As an outcome of the practice in trade by the car to the Auto marketing Industries. As an outcome of the practice in trade by the car manufacturers to provide for a certain stipulated period of warranty along with certain conditions for the warranty to remain effective.

REPLACE, REPAIR, REFUND

Instead of thinking what will I do and whom should I approach? Why not take your car back to the place where you have purchased it. Some of us do this but do we get something?

It all boils down to the following outcome: the retailer could **Replace**, **Repair** or **Refund** the customer depending on the situation and a few circumstantial factors. Obviously the consumer would need to prove that the fault was there at the time of purchase and they will have 6 months to highlight the problem to the retailer.

Why Lemon Law Mediation over Consumer Protection Act?

- 1) The most important point to choose Lemon Law over Consumer Protection Act in India is that it's a country with a humungous amount of middle class families. And as being a middle class family member people don't want to waste money to file a case which they never even thought of having at the first place.
- 2) Five to ten lakhs are just wasted to get a compensation of merely eighty to ninety thousand from the manufacturers and dealers. The thought to bring lemon law mediation in India can be strongly countered by a counter thought that as India is a country with large number of

mediocre most people doesn't afford cars. But it's not entirely correct as the metropolitan cities have people who more than one car and it's very rare that a person in a metropolitan city do not have a car.

- 3) Hence it would be supporting if a country like India get mediation over the consumer protection act for the cases relating to motor vehicles. One more thing that relates to this issue is that even if our country's some states are not that active at buying and using used or new cars still lemon law will be a great option for them as these people will buy a car once in a blue moon due to necessity and by the help of this mediation procedure they would be able to get a compensation as much as they actually deserve without wasting a single extra penny.
- 4) As there is a new trend going on these days of buying used exotic cars like Lamborghini, Maserati, Audi, Ferrari etc. lemon law mediation is a must as it also supports and gives support to used car buyers. Big Boyz Toyz is the biggest example of this kind of trend.
- 5) If we go through the national consumer helpline we will see that the forum is more like a bee hive with various other issues related by the tag of the consumers in need but the picture much more wider than it seems to be. Getting separate lemon law mediation for only the automobile related problems will help in giving speedy justice to the consumer and could save a lot of money of the consumer.
- 6) The another important reason of having lemon law mediation is that sometimes the manufacturer is ready to compensate the consumer but the dealer between these two parties takes out his own interest and don't help in giving the remedy to the consumer which was actually promised by the manufacturer and thus it results in bad reputation of the manufacturer too.

Why Lemon Law is more helpful than the Consumer Protection Forum:

What the Government has failed to see is that providing for statutorily regulated warranties not only provides the consumers with complete information about warranty terms and conditions but it also promotes competition in the market by allowing the consumer to choose the manufacturer as per the warranties provided by it. This choice can be over and above the manufacturer product and brand image. It also strengthens the existing incentives for companies to perform their

obligations without harassing their customers by making them run after each individual parts supplier causing unnecessary delays. What is needed is an express rule whereby the manufactures are compelled to provide warranties for a stipulated period of time depending upon the nature of the goods, and further to have an express clause stating the number of repairs it may carry out before it may be obligated to replace the product. This also ensures that international manufacturers do not discriminate in their warranties which they provide abroad and those provided in India. The announcement from Maruti in 2010 that a hundred thousand AStar cars are to be recalled due to a gasket problem that had the potential to cause serious damage was a rude shock, but the recent recall by Maruti yet again of its Swift, Dzire and Ritz models cannot be tolerated. Should we as consumers always have to live under the threat and fear that our cars may not be as safe as we had believed it to be? These big companies charge consumers a hefty premium just on the basis of their brand image, in that case why should they shy away from giving the consumers complete assurance on the quality and standard of their products? Competition may result in checks, but the need for legal deterrence cannot be overemphasized. Failing to live up to the expectations of the consumer, should be made more accountable so that corporate responsibility is not merely limited to providing a certain portion of their profits towards societal development.

REFERENCE CASES

Mercedes Benz:- Mercedes Benz through its dealer sold a demo car to a customer. On learning of the same and after noticing several defects in the car the customer approached the Consumer Forum for replacement of the vehicle. On referral to the National Commission it was held that the complaints relating to the irregularity of the car had been attended to as per the terms of warranty and hence no replacement of the vehicle was allowed. However, a marginal compensation as compared to the cost of the car was allowed for unfair trade practice .But if it was covered under lemon law it could be replaced with a brand new one.

In Maruti Udyog Ltd. v. Susheel Kumar Gabgotra³, the Supreme Court on analyzing the case where after repeated repairs the manufacturer was unable to repair the defect in the car, held that

³ Maruti Udyog Ltd vs Susheel Kumar Gabgotra & Anr on 29 March, 2006

warranty was express and provided for only repair/replacement of the defective part and not the entire vehicle. Hence, only the replacement of the defective part was ordered. This case is an instance of the dilution of tort law standards that would have applied to consumer protection in India. The fact that warranties are sacrosanct in the eyes of the consumer tribunals in India is a strong argument for a higher statutory standard for these warranties. Let the law interfere where the consumer forums have fought shy of treading.

In **Jolovitz v. Alfa Romeo Distributors**⁴ a group of Italian businessmen formed Alfa Anonima Lombarda Fabbrica Automobili in June 1910. Alfa Romeo has been building racing and high performance automobiles ever since. Through the years Alfa Romeo has produced an impressive list of technological achievements and racing victories. This case is on claims for violation of the Lemon Law, violation of the Unfair Trade Practices, and breach of the implied warranty of merchantability, Jolovitz also appeals from the court's denial of his motion to reconsider the entry of summary judgment on additional claims for negligence and punitive damages. This case happened in 1990. Ultimately after seeing the overall pleadings and assertions. The court for replacement of the vehicle. On referral to the National Commission it was held that the complaints relating to the irregularity of the car had been attended to as per the terms of warranty and hence no replacement of the vehicle was allowed. However, a marginal compensation as compared to the cost of the car was allowed for unfair trade practice therefore, needed is a mandatory punitive damage awarded to the consumers for such defect in services and products so that the manufacturers feel the pinch and are accountable to their consumers. So far the Consumer Courts have only been successful in providing compensation to consumers for the manufacturing defects in the car, but what about penal deterrence? The fault here does not lie solely with the Consumer Protection Act as penal deterrence for breach of contract has not been made a part of contract law as well. It is a strange phenomenon where irreparable loss and injury for breach of contract is remedied through compensation. This begs the question; will money be adequate compensation for the loss in life because of a manufacturing defect in the car? Some questions need to be asked and the need of the hour is not just compulsory warranties enshrined in a cocoon of statutory force but rather a penal and deterring law which makes manufacturers liable as well as acts as a deterrent

⁴ <http://casedossier.blogspot.in/2015/03/saving-lemonlaw-jolovitz-v.html?m=0>

from producing defective products. Under Indian law a motor car manufacturer is not statutorily compelled to provide any warranty for the vehicles sold by it. The Motor Vehicles Act, 1988 does not require a manufacturer to provide a warranty on the cars sold by it. The Sale of Goods Act, 1930 does not obligate a manufacturer or a vendor to afford even an implied warranty for the goods which are not sold on an express description. What this effectively means is that the seller need not certify the quality of his products as long as the products are not sold on the description provided by the seller. Further, if the goods have been sold under a trade name or after examination by the buyer, there is no implied condition to its fitness.⁵ After all a person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury. Now by reading the above explanation we can clearly see that why and how much important it is to get our own personal Lemon Laws and Lemon Law Mediation.

Which is more supportive for auto mobile industry, whether it's Consumer Forum, whether it's the Product liability under the Tort Law or whether it's the Lemon law?

In India, Product liability law, also called "products liability", governs the liability of manufacturers, wholesalers, distributors, and vendors for injury to a person or property caused by dangerous or defective products. The goal of product liability laws is to help protect consumers from dangerous or defective products, while holding manufacturers, distributors, and retailers responsible for putting into the marketplace products that they knew or should have known were dangerous or defective. Product liability in India is, essentially, governed by

- a) The Consumer Protection Act, 1986
- b) The Sales of Goods Act, 1930
- c) The Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the "MRTP Act")
- d) The law of Torts

⁵ <http://www.supremecourtcases.com> Eastern Book Company Generated: Sunday, August 20, 2017.

e) Special statues pertaining to specific goods

In addition, criminal liability for injury or damage caused by defective products in India is imposed by virtue of Indian Penal Code and Prevention of Food Adulteration Act 1954

These are the number of protections a consumer gets by our Indian law but again to get these we have to file a case and have to go through the unbearable long process of justice. As these laws are a bundle of remedies that include criminal law, torts, the law of contracts etc. But if we add lemon law then this area will dominate in the matters of defected automobiles. It will be like a separate forum where only the defected automobile products will be handled. As Lemon laws offer remedies that exceed the scope of a vehicle manufacturer's warranty. The other laws and acts only give protection to the new products or the products that had an accident. But the lemon law also gives remedy to the used car owners but only if the good has a persistent defect like:

For ex. Mr X bought a car and in two months the car started having multiple issues. After approaching several mechanics, his car dealer and the consumer forum it has been a year and Mr X is still waiting for the decision of the forum. Now as Mr X had suffered a humongous amount of loss already he decided to make a smart move and sell the car. He sold his new car to a second-hand buyer Mr. A who gave a good price for the car as the car was new and was only used for a year. Now Mr. X didn't disclosed the defects that the car had and now Mr A started facing those issues too he got it checked by the mechanic from whom he got to know that the car was having these problems persistently from the beginning now Mr A has only one option that is to sue Mr. X for misrepresentation of facts as second hand goods are not covered under consumer forum but again the process would eat more money than the car itself.

Hence he starts suffering in silence. Now just imagine if India did had lemon law

- It would also cover Mr. A as a person bound to get a remedy.
- It would not take a long process.
- It could also help in settling the case out of the court. Through Lemon Law Mediation.

And it wouldn't take a hefty amount.

CONCLUSION

Bringing lemon law mediation in India would be a great step for our future as in our coming the new generation take cars as an obsession rather than a necessities whether they the new ones or the used ones this step will help the law to even more clear and strong in stating its points in future. It will also help those people who buy cars as necessity and would save their money and time by giving them speedy justice. it would be supporting if a country like India get mediation over the consumer protection act for the cases relating to motor vehicles. One more thing that relates to this issue is that even if our country's some states are not that active at buying and using used or new cars still lemon law will be a great option for them as these people will buy a car once in a blue moon due to necessity and by the help of this mediation procedure they would be able to get a compensation as much as they actually deserve without wasting a single extra penny.

REFERENCES

- 1) Business standards magazine last visited: 15-10-2017
- 2) <http://www.hindustantimes.com/india/how-do-we-get-defective-vehicles-replaced/story-aczfdMSVCwEETLtiQaRUGL.html>
- 3) Maruti Udyog Ltd vs Susheel Kumar Gabgotra & Anr on 29 March, 2006
- 4) <http://casedossier.blogspot.in/2015/03/saving-lemonlaw-jolovitz-v.html?m=0>
- 5) <http://www.supremecourtcases.com> Eastern Book Company Generated: Sunday, August 20, 2017.
- 6) <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/fair-trading-services-programs-and-resources/consultation-regulatory-reform/lemon-laws>
- 7) <http://sbr.com.sg/retail/news/what-you-need-know-about-singapore%E2%80%99s-%E2%80%9Clemon-law%E2%80%9D>
- 8) http://autopedia.com/html/LemonLaw/CA_lemonlaw4.pdf

- 9) http://www.dca.ca.gov/acp/pdf_files/lemonlaw_qa.pdf
- 10) <https://www.expertlaw.com/forums/showthread.php?t=183488>
- 11) <http://resources.lawinfo.com/auto-lemon-law>
- 12) <http://www.commongroundinc.org/lemon-law-arbitration>

