

Where are our Lemon Laws?

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.

As an outcome of the practice in trade by the car manufacturers, it has become common for automobile manufacturers to provide for a certain stipulated period of warranty along with certain other conditions for the warranty to remain effective. However, most manufacturers, who are now not much more than assemblers, try to wash their hands of defects reported under warranty by directing owners to their proprietary brand owner and suppliers or original equipment manufacturers. However, such would not be the case if there is an express and clear warranty provided by the manufacturers to its buyer.

What is noteworthy here, is that in spite of the power having been provided to the Central Government under Section 110(1)(p) of the Motor Vehicles Act, which talks about making rules for "warranty after sale of vehicle and norms thereof" no rules till date have been provided for. No such responsibilities have been tied down upon the car manufacturers so that the customer stays protected.

Despite the high number of cases seen in the Consumer Courts and motor accidents with respect to car warranties, the Government has been lackadaisical in its approach in providing for regulated motor warranties. Even though a redressal forum exists for manufacturing defects but the lack of statutory regulated compulsion to provide motor warranties may in the future create legal lacunas for the seller/manufacturer to escape from.

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's 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.

This advocacy by the author is a reflection of the "Lemon Laws" as is seen in the federal laws of the United States of America known as the Magnuson-Moss Warranty Act, popularly known as the "Lemon Law". The Magnuson-Moss Warranty Act provides protection for consumers who lease or buy motor vehicles. The law requires that if the manufacturer or its representative such as an authorised dealer, is unable to service or repair a motor vehicle to meet the terms of an express written warranty after a reasonable number of repair attempts, the manufacturer is required promptly and compulsorily to replace the vehicle or return the purchase price to the lessee or buyer. In furtherance to these the Lemon Laws also prescribe standards for wording these warranty conditions. They prescribe that the warranty conditions attached to the product must not be misleading or confusing to the consumer.

What is interesting to know out here is why this law has been called the "Lemon Law". Tracing its history it was found that a seminal paper, "The Market for "Lemons": Quality, Uncertainty and the Market Mechanism (1970)" written by George Akerlof, analysed the market transactions in "used cars". He said that in the market there are two types of cars, one the bad car or the lemons, the other the good car or the cherries. Here the seller has the distinctive advantage of knowing whether the car is good or bad. Hence, an asymmetric situation has been created with the seller having an advantage over the buyer, who is unable to distinguish between a good car and a bad one. Ultimately, the buyer ends up buying a bad car at the same price as a good car thus disrupting the market balance where the incentive for the seller is to only sell the bad cars. A situation could therefore arise where there will be no trade equilibrium because of the sellers wanting to sell only bad cars and the buyers not willing to purchase any cars leading to a complete breakdown of the markets. The conclusion to be drawn from this is that such a breakdown of the markets can be avoided by manufacturers/ sellers providing compulsory guarantee with their cars, so that even if the buyer has bought a lemon he will always be protected, thereby avoiding disruption of trade equilibrium situation.

This discussion becomes important also in light of the recent recalls by car manufacturers around the world for the defective parts used in the cars. We have already seen the world's biggest car manufacturers "Toyota" and "Honda" the test of quality and having to recall most of its top models in America, but now we have to live with the fact that Maruti too has been guilty of the same defective quality bug. The announcement from Maruti in 2010 that a hundred thousand A-Star 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 overemphasised. 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.

Even though Indian consumer law was born out of tort law, in 9 cases out of 10 the Consumer Forums are hesitant to look beyond the standard terms and conditions of the warranty while awarding compensation. A review of Consumer Forum decisions over time seem to suggest that once the fact of defect is established a rough and ready strict liability standard is applied in spite of the "reasonable diligence" or negligence standard that the Consumer Protection Act, 1986 imposes. However, the application of the strict liability standard works only up to the point of ascertainment of defect. Once it is established that a defect exists, the Consumer Forums tend to take a step back and refer to the terms of warranty for the product limiting their orders according to these terms. This is a step back because the tort standard is more liberal in the remedies that it allows to victims of defective goods as compared to a contractual limitation of liability that producers' warranties usually are. More often than not the manufacturers' warranties in India cover only repair or replacement of the defective product component. In *Maruti Udyog Ltd. v. Susheel Kumar Gabgotra*¹, the Supreme Court on analysing the case where after repeated repairs the manufacturer was unable to repair the defect in the car, held that 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 another recent case, premier luxury car manufacturer 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.² 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?

The US laws for these very reasons provide the right penal deterrence by allowing injunction proceedings for deceptive warranty, non-compliance with requirements, or violating prohibitions along with affording compensation where required. It even got the US Government to enact the Motor Vehicle Safety Bill of 2010, thereby tightening its grip on car manufacturers and pushing for more responsibility. What has the Indian Government done in this regard in light of the recent recalls by Maruti?

Today, our world is slowly moving towards an era where oil could be more valuable than gold or diamond. Car manufacturing companies are desperately trying to manufacture hybrid cars which can run on more eco-friendly and easily available compounds than just pure fuel. Brazil is a case in example which has been for a long time now importing only those cars which have the capacity to run on a blend of gasoline having 20% to 25% hydrated ethanol content. For this engines need to be specially manufactured and many other modifications need to be carried out in order to offset this new blend of fuel. India too has been toying with this idea for sometime now to introduce gasoline-ethanol blends containing 20% to 25% ethanol. In such a case do we have a proper mechanism in place to monitor such changes in engine makeup? Do we have the right laws in place to protect our citizens in case the cars are unable to sustain the new fuel blend?

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 from producing defective products. 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.

- (2006) 4 SCC 644.

- "₹2 Lakhs Imposed on Merc India for Selling Used Car", 6-2-2011 Economic Times.