



**The Consumer Protection Bill, 2015:
(Lack of) Rights of the Consumer to Terminate Sale Contract**

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The Consumer Protection Bill, 2015: (Lack of) Rights of the Consumer to Terminate Sale Contract

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Abstract

Consumer protection law rests on the foundations of contract law and the law of sale of goods. A consumer law has to conceptually express this foundation and the modifications it is bringing about in these laws. Without this, the law would become unclear, conflicting and confusing. The Consumer Protection Bill, 2015 is not secured in its foundation and needs revision. The paper reviews the rights of the consumer to terminate the contract and makes suggestions for revision. The suggestions, with brief comments are as follows:

1. Unfair Contract Term

The bill declares an unfair contract term to be void. The sale of Goods Act, 1930 gives the right to a buyer to terminate a contract if the supplied goods do not meet the description, are not of merchantable quality or are not fit for the agreed purpose. Ousting of these by contract terms is a deprivation of a right created by the law. This is an unfair contract term and taken to be so in other jurisdictions. The bill should give effect to this by making the following addition:

Ousting of implied conditions and warranties void: The implied conditions and warranties created for the buyer in the Sale of Goods Act, 1930 cannot be limited or excluded by contract terms. A contract term ousting the implied conditions and warranties is void.

2. Rights of the buyer to terminate a sale contract

The rational and logical way of organising the law is to mention the rights of the consumer. A consumer could approach a consumer council for the redressal of the rights. The bill does not mention the rights of a consumer. Under the Sale of Goods Act, 1930, the buyer has certain rights to terminate the contract. The followings could be introduced on the rights of the buyer to terminate a contract:

Termination of contract for breach of quality of goods. A consumer has the right to terminate the contract on the grounds of quality of goods in the following situations:

(1) The seller delivers goods which do not meet any of the express conditions in the contract or implied conditions arising from the contract. The consumer can terminate the contract within 30 days of delivery. If the contract provides a longer period for terminating the contract, the consumer can terminate the contract during the period mentioned in the contract.

(2) The seller delivers goods which do not meet any of the implied conditions created for the buyer in the Sale of Goods Act, 1930. The consumer can terminate the contract within 30 days of delivery.

(3) The buyer has a right to terminate the contract on the ground of the seller delivering goods which are in breach of express or implied condition but elects to get the goods repaired or replaced. Following this, the seller repairs or replaces the goods. The repaired or replaced goods continue to be in breach of an express or implied condition or need further repair and replacement. The consumer can terminate the contract within 10 days of the seller delivering the repaired goods or goods in replacement.

(4) The buyer does not have a right to terminate the contract but a right to repair or replacement. Following this, the seller repairs or replaces the goods. The supplied goods continue to need a repair or replacement.

Termination for delay in delivery: A consumer has the right to terminate the contract for a delay in delivery in the following situations:

(1) The contract provides for a delivery schedule. The delivery of goods on schedule is of essence to the contract and the seller fails to deliver the goods on schedule.

(2) The contract provides for a delivery schedule. The delivery of goods on schedule is not of essence to the contract and the seller fails to deliver the goods within a reasonable period of the schedule.

(3) The contract does not provide a delivery schedule. The seller fails to deliver the goods within a reasonable period after formation of the contract.

(4) The contract provides for a delivery schedule but the consumer agrees to an extension of the schedule. The seller fails to deliver within the extension period.

3. Powers of Consumer Council

A consumer can approach a Consumer Council for the enforcement of the rights. A Consumer Council should be generally vested with the powers to issue

orders and directions to enforce the rights. The specific powers should include powers corresponding with the rights of the consumer. The following could be the powers of the Consumer Council on the rights of the consumer to terminate a contract.

Powers of Consumer Council: The Consumer Council can issue orders to the consumer, trader or an opposite party for the enforcement of the rights of the consumer. The orders can include one or a combination of the followings:

1. Order the parties that the contract is terminated.
2. Order the trader to return any money paid by the consumer with or without interest.
3. Order the consumer to return the goods to the trader.
4. Order the trader to restore any benefit or money equivalent of the benefit drawn from the consumer.
5. Order the consumer to restore any benefit or money equivalent of the benefit drawn from the trader.

The Consumer Protection Bill, 2015: (Lack of) Rights of the Consumer to Terminate Sale Contract

A bill has been introduced in the Parliament to replace the Consumer Protection Act, 1986. The bill is overarching and governs all consumer contracts for goods and services. It provides, among others, on unfair contract terms, unfair advertising and product liability. Once enacted, the bill will be there for the next 25-30 years. It is important to have an effective law in place. Towards this, each aspect of the bill needs examination, scrutiny and strengthening.

Introduction to consumer law

Consumer protection law rests on the foundations of contract law, law of sale of goods and law of torts. Taking the rights of the consumer as given in these laws, it creates further rights for the consumer. While contract law and law of sale of goods are finding newer manifestations, the principles of these laws are well settled for more than 150 years. Law of torts is vigorously developing and finding newer applications but the core principles of the field is well settled for decades. A consumer law has to conceptually express this foundation. This is for these reasons. One, reaffirm the existing rights. Two, locate the additional rights which are being created for the consumer with reference to the foundational laws. Three, make it clear at each stage that the consumer law has to be read with reference to the foundational law.

In enacting the Consumer Protection Act, 1986, this aspect of consumer law was ignored. The Act was drafted in itself, without using the standard lexicon of contract law and the law of sale of goods. As a result, the CPA lacks conceptual clarity and is unhappily drafted. The bill started out as an amendment to the Consumer Protection Act, 1986 (CPA). At some stage, it was realised that the amendments were numerous. Following this, the amendment bill was turned into an original bill, to replace the CPA. This seemingly harmless act has had unintended consequences. The bill ends up heavily borrowing from the CPA in content, structure and style and ends up making all the problems its own. There may still be justification for the shortcomings in the CPA. It was the first consumer law in India, enacted 30 years back. In these 30 years, we understand all these fields and their relations much better. Casting the bill on the CPA, is to jettison the advances of knowledge in these 30 years.

Before we start out our exploration, we need to note the international connection of our laws. In the past, traders world over took their disputes to the courts for resolution. With this, the courts developed a body of law, called the common law. The common law, developed in Britain, was taken world over due to the British connection. The Indian Contract Act, 1872 was based on the British common law. The Sale of Goods Act, 1930 was drawn from the British sale of goods Act, 1893,

which was a codification of the common law. Law or torts continues to be a common law creation. As the principles are the same, the courts continue to draw from each other in understanding and elaborating them. In this, the British courts have had a pre-eminent position, particularly, in the commonwealth part of the world. The Indian courts, like their counter-parts elsewhere, routinely turn to the UK law for elaboration of the principle and its justification. Consistent with this, we will be turning to the law in the UK and court judgements for elaboration of the principles and experiences. A further reason for this is India was an economy characterised as a 'licence permit' economy. As there were limited disputes, our courts did not get to elaborate the commercial laws.

Consumer in Contract law

The bill has heavily drawn in content and style from the CPA. We could talk of the two of them together. A person becomes a bearer of rights by entering in a contract, or by virtue of family law or a law made by the legislature. For this reason, the bill defines a consumer to be a person who enters in a contract to buy goods or avail services. Once a consumer has been defined as a contracting party, the rights of a consumer come to rest on the well settled contract law and the law of sale goods.

A consumer, as a contracting party, can approach a civil court for seeking a remedy for a breach. The courts, however, are procedure bound, expensive and time consuming. Further, most consumer contracts are of small value. A consumer would rather forgo his legal rights than approach a civil court. Thus, a consumer is effectively left remediless. This is where the CPA stepped in and created a three tiered consumer forum for a consumer to seek remedy from. The forums followed simple procedures and were bound to give remedy within months.

Let us first then note the rights a contracting party if he approached a civil court. The consumer law should at least give these rights, if not create further rights. For every breach, the party who has suffered breach can claim damages to cover the loss caused by the breach. In addition, a contracting party can terminate the contract for breach of a substantial aspect of the contract. A core or substantial part of a contract is a 'condition' of the contract. On the breach of a peripheral aspect of the contract, the other party can claim damages but not terminate the contract. A subsidiary aspect of a contract is a 'warranty' to the contract. In the case of a breach of a warranty, the parties must get on with the contract.¹ In each case, the courts decided whether the term breached was a core of the contract (condition) or a subsidiary part (warranty).² With these developments, the contracting parties learnt not to leave this

¹ Wallis, Son and Wells v. Pratt and Haynes, (1911-1913) All ER Rep 989 explains the concepts of condition and warranty.

² Hong Kong Fir Shipping Company v. Kawasaki Kisen Kaisha Limited, (1962) 2 QB 26.

to chance and provided in the contract on the rights of the contracting parties to terminate the contract. Thus, a contracting party can terminate a contract as provided in the contract. If the contract has no terms on termination, the party can terminate the contract for a significant breach.

Rights of the buyer in a sale contract

With the development of the economy, specialised forms of contract developed and with them, law dealing with special contracts. The first to develop was the law of sale of goods. A sale was a contract where the seller transferred the ownership in goods to the buyer for a price. The law of sale of goods developed on the foundation of contract law. In Britain, the common law principles were codified as the Sale of Goods Act in 1893. Borrowing from this, in India, the Sale of Goods Act, 1930 was enacted. The common law recognised certain rights of the buyer in relation to the seller. In every sale contract, the buyer was taken to have the right (implied) to terminate the contract if any of the followings in relation to the quality of goods were not met. One, the supplied goods did not meet the description. Two, the supplied goods were not of merchantable quality. Goods are not of merchantable quality if these are not fit for their basic ordinary use. Three, the goods were not suitable for the agreed purpose. As a breach of a requirement gave the right to terminate the contract, it was a 'condition' of the contract. The conditions were 'implied' as these were to be inserted in a contract even if the parties were silent on it. Thus, the law calls these 'implied conditions'. Having created the right for the buyer, the law gave the freedom to the contracting parties to oust these in express terms. Section 62 of the Sale of Goods Act, 1930 provides:

62. Exclusion of implied terms and conditions. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement ...

There are two aspects of requirement for ousting the implied conditions in express terms. First, there must be a written contract. Second, the courts have ruled that as the implied conditions are given by law as a right to the buyer, these can be vacated only if it is absolutely clear and categorical that the parties want to oust it.³ Further, contract law developed with the traders. It proliferated as consumer contracts only in the post-war years. The courts made a distinction between consumer contracts and commercial contracts. In today's parlance, commercial contracts are called business-to-business contracts. In a business-to-business contract, the parties have latitude to settle on what they want for a price. Every term has a price and these get negotiated. If the buyer wants greater protection, he will be charged for it with a higher price.

³ See *KG Bominflot Bunkergesellschaft für Mineralöle mbH & Co v. Petroplus Marketing AG (The Mercini Lady)* [2010] EWCA Civ 1145; *Air Transworld Ltd v Bombardier Inc.* [2012] 1 C.L.C. 145; and *Dalmare SpA v Union Maritime Ltd*, [2013] 1 C.L.C. 59.

Alternately, if the buyer settles for something less, he will negotiate a lower price. Businessmen will have different needs and come up with varied practices to suit their needs. The courts respect the freedom of contract and do not interfere with the terms.⁴

Consumer contracts are on a different footing. These are of mass produced goods moving to the end users, for household use. The contracts are, invariably, on standard terms set by the seller and the buyer does not have the freedom to negotiate the terms. For this reason, the courts have treated it as a separate category and extended protection wherever they can. For example, the courts would never import past dealing or trade practices in a consumer contract if it is to the detriment of a consumer.⁵ The courts attempted to developed protection against unfair terms for consumers deploying the principles of contract law.⁶ Following this, the British Parliament enacted the Unfair Contract Terms Act, 1977, giving protection to consumers against unfair terms. It is evident that the law developed a valuable right for the buyer in the implied conditions. To deprive a consumer of the protection is an unfair term. The Unfair Contract Terms Act, 1977 specifically provides on it. Section 6(2) provides that in a consumer contract, the implied conditions on conformity of the goods with description, merchantability or fitness for a particular purpose cannot be 'excluded or restricted by reference to any contract term.' This has been assimilated in the UK's, the Consumer Rights Act, 2015. The Australian law, Competition and Consumer Act, 2010 also does not give the freedom in a consumer contract to oust the implied conditions.

The CPA did not have provisions on unfair contract terms. Enacted in 1986, the developments on unfair contract terms were still not in the horizon. The bill recognises that there is no place for unfair contract terms in consumer contracts. It makes provisions to declare any unfair contract term void.⁷ The definition, as it should be expected, is broad to include ousting of the implied conditions to be an unfair contract term. In fact, the definition should be re-worked to provide an exhaustive list of kinds of unfair contract terms. We can safely take it to be the

⁴ Photo Production Ltd v Securicor Transport Ltd, 1980 AC 827.

⁵ See Mccutcheon (A. P.) v. David Macbrayne Limited, 1964 1 WLR 430; Hollier v. Rambler Motors (1972) QB 2; and British Crane Hire Corporation v. Ipswich Plant Hire Limited, (1975) QB 303.

⁶ Some of the cases where the British courts attempted to develop protection against unfair terms were Levison v. Patent Steam Carpet Cleaning Co. Ltd., (1977) 3 All ER 498; J. Spurling, Ltd. v. Bradshaw, (1956) 2 All ER 121; and Photo Production Ltd. v. Securicor Transport Ltd., (1978) 3 All ER 146. The British Parliament stepped-in by enacting the Unfair Contract Terms Act, 1977.

⁷ See Section 2(42), the Consumer Protection Bill, 2015.

intention of the bill to keep the implied conditions on quality as an inviolate right of the consumer. The text of the bill, thus, should make the following declaration:

Ousting of implied conditions and warranties void: The implied conditions and warranties created for the buyer in the Sale of Goods Act, 1930 cannot be limited or excluded by contract terms. A contract term ousting the implied conditions and warranties is void.

The bill and the implied conditions

A rational basis for a consumer law is that a consumer has certain rights. A consumer can approach a court or a forum for the enforcement of the right. The CPA does not follow this basic organising principle and the bill in copying it, repeats it. It defines 'defect' and gives the power to the forum to remedy 'defect in goods'. Defect is defined as:

(11) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods and the expression "defective" shall be construed accordingly;

The provision is not stated as a right of the buyer. Even if one takes it as a right, it is a self-contained right within the bill. While Section 3 of the bill mentions that it applies in addition to and not in derogation' to the other existing laws, it opens up doubt on the scope of 'defect'. The law of sale of goods is well settled for 100 years. The three implied conditions have come to cover any grievance the buyer may have in relation to the quality of goods. This has been in the original scope of the three implied conditions as well as meaning given to the terms by the court judgements. It was said close to hundred years back, the three implied conditions are so comprehensive that the rule no more was 'caveat emptor' but 'caveat vendor'.⁸ There is no gain in jettisoning the well settled terms and introduce a new term 'defect'. If the three implied conditions put together have become inadequate in any respect, the answer is not in jettisoning the terms. It is in building on them and strengthening them. For example, the Sale of Goods Act, 1979 of the UK has replaced merchantable quality with 'satisfactory quality'. The Consumer Rights Act, 2015 has added further to the implied conditions. Thus, instead of defining 'defect' in goods, the rights of the rights of the buyer should be listed as the right to terminate the contract on breach of an implied condition.

Beyond the three implied conditions, the contract may set further standards of quality of goods and give the rights to the buyer to terminate for contract for its breach. For

⁸ Grant v Australian Knitting Mills, Ltd., [1936] AC 85.

example, a premium product comes with the term: 'The goods would be of excellent and outstanding quality and worth the money'. The contract term may provide the right to the consumer to terminate the contract if the quality is not met. This is an express term in the contract giving a right to the buyer to terminate the contract. At times, the contract may not state the right to terminate in express terms but one can infer it from the terms. For example, 'Satisfaction guaranteed- money return' implies that the buyer can terminate the contract if he is not satisfied with the goods. Thus, the buyer can have the right to terminate the contract due to express or implied terms in the contract.

Time Period for termination

Termination of a contract and durability of goods are associated. Business law developed over the centuries in a context where trade and commerce was rudimentary. The requirement of merchantability developed in a context where the parties were dealing with farm produce and basic goods.⁹ Whether the goods were merchantable or not was a matter to be judged then and there with reference to the goods delivered. With manufactured and durable goods, if these were not working or stopped working soon after being delivered, there was no difficulty in claiming that the seller had not delivered goods of merchantable quality. For example, if a radio stopped playing within days of purchase, it was clear that the seller had supplied a defective radio. The buyer was in his rights to terminate the contract and return the goods.

Difficulty arises when the goods break down after a longer period of delivery. It is retrospectively clear that the seller has delivered goods which are not of merchantable quality. Thus seen, the buyer should be free to terminate the contract. In the case of termination, however, the buyer should get back his money and return the goods in as good a condition as he got it. However, this is not possible as the buyer has used the goods. This being the case, the buyer should compensate the seller for the use he has made of the goods. This can be done by finding a value for the depreciation of the goods. Despite this, the seller will get left with used goods for which he may not find value.

Another principle of the law of sale of goods stepped-in to resolve the question. The law gives only a 'reasonable time' for a buyer to reject the goods. The basis for this was the buyer must be given time to examine the delivered goods. At the same time, the seller cannot be left in suspension forever whether the goods are being accepted or not. There must be commercial certainty. The balancing was done by stating that the buyer only has a reasonable time for rejecting the goods.

⁹ *Gardiner v Grey*, 171 ER 46 is a 1815 judgement cogently stating the principle of merchantability.

*Bernstein v Pamsons Motors (Golders Green) Ltd.*¹⁰ was a test case where all the motor car sellers wanted an answer to the question of merchantability of cars and the right of the buyer to reject. The buyer discovered serious defect in a new car after three weeks, when the car had done 225 Kms. The court noted that the reasonable time period was to 'inspect and try out' the goods 'generally rather than with an eye to any specific defect.' The court was of the view:

... to project the period further would be artificial and contrary to the general legal proposition that there should, whenever possible, be finality in commercial transactions. ... In my judgment, the nature of the particular defect, discovered ex post facto, and the speed with which it might have been discovered, are irrelevant to the concept of reasonable time in section 35 as drafted. ... The complexity of the intended function of the goods is clearly of prime consideration here. What is a reasonable time in relation to a bicycle would hardly suffice for a nuclear submarine.

Applying the principle, the court was of the view that three weeks was a reasonable time for the buyer to have examined the car and taken a decision. The buyer, thus, lost the right to reject the goods and terminate the contract. The implied condition had become a warranty and he had the right to get the goods repaired or replaced. The Indian law is identical. Section 42 of the Sale of Goods Act, 1930 gives a reasonable time for the buyer to reject the goods. Failing this, the implied condition would get turned into an implied warranty.

In the UK, however, the Sale and Supply of Goods Act, 1994 changed the thrust of 'reasonable time'. In *Clegg v. Olle Andersson*¹¹ the Court of Appeal explained it that the buyer having a reasonable time to inspect the goods was only one of the questions to be answered in deciding whether the goods were accepted. Further, the time taken in requesting for repairs or agreeing to repairs or carrying them out was not to be counted. In an earlier case, *Rogers v Parish (Scarborough) Ltd.*¹², a buyer rejected a car after six months when the car had done more than 8800 Kms. The lawyer for the seller did not consider the argument of a 'reasonable time' to be a significant one to the case. The court, allowed the buyer to terminate the contract. The Consumer Rights Act, 2015 has resolved the doubt over the 'reasonable time' by fixing it at 30 days.

As a summary to the discussion, we conclude that the buyer has a right to terminate the contract on the grounds that the supplied goods do not meet the implied conditions. However, the right of rejection has to be exercised within a 'reasonable time'. Once the reasonable time lapses, the implied condition becomes a warranty.

¹⁰ *Bernstein v Pamsons Motors (Golders Green) Ltd.*, [1987] R.T.R. 384.

¹¹ *Clegg v. Olle Andersson*, [2003] EWCA Civ 320.

¹² *Rogers v Parish (Scarborough) Ltd.*, [1987] Q.B. 933

The buyer cannot terminate the contract but has the right of getting the goods repaired or replaced. We may learn from the UK experience and settle for 30 days to be the time window for the consumer to reject the goods.

Rights of the consumer to terminate the contract

We can now simulate the different situations which may arise in a sale contract and the right of the buyer to terminate the contract. The contract may have express or implied terms giving the right to the consumer to terminate the contracts on being supplied with goods not in conformity with the contract. In addition, irrespective of the contract terms, the buyer can terminate the contract if the implied conditions given by the Sale of Goods Act, 1930 are not met. The first implied condition is that the supplied goods must be in conformity with description. This can be breached in a variety of ways. The trader sells a shirt which is only 80% cotton while the description was pure cotton. (The bill uses the term trader for a party a consumer contracts with. We will use trader and seller alternately.) A trader sends a different model of a mobile phone than the one contracted. The goods are not as represented on the webpage of an e-shop. The second implied condition is of merchantability. The goods are not fit for their basic use. Examples of this can be a computer which does not boot, washing machine in which the spin function does not work, or a mobile phone whose ring volume at the maximum is not audible. The third implied condition is fitness for a purpose. The contract may have described the purpose which the product serves, for example, a shampoo which can remove dandruff. The three implied conditions have a very wide scope. On being supplied with the goods, if the goods do not meet any of the implied conditions, the consumer has a right to terminate the contract. In this case, the trader should return any money taken from the buyer and the buyer should return the goods to the trader. The buyer will further claim damages arising from the breach.

A buyer who has the right to terminate the contract may elect not to terminate the contract. In this case, the seller will repair the goods or give a replacement. Even after repair or replacement, the goods may turn out to be in breach of an express or implied condition or continue to need repair or replacement. This could be because of the earlier defect persisting or a new one coming up. The consumer had only elected to waive his right of termination for the breach. The right to terminate is a part of the contract and continues. As the goods continue to be in breach of an express or implied condition, the consumer has the right to terminate the contract.

Then there is a situation where the supplied goods have a problem but the buyer does not have a right to terminate the contract. For example, if a car has a scratch, it meets the implied conditions but there is still a problem with the goods. The seller is in breach of the contract but it is not serious enough for the buyer to terminate the contract. In such cases, the seller will repair the goods or give a replacement. The problem may still persist. The courts in such situations, where goods even after repair are not made in conformity with the contract, take the contract as lost and give

the right to the buyer to terminate the contract. The question is how many chances should be given to the seller to repair or replace the goods? In today's time and age, giving multiple chances to the trader will only create harassment for the consumer. The trader supplying defective goods and not being able to attend to it in one repair or replacement is indicative of the intrinsic defect in the goods and the incapacity of the trader to correct it. The consumer loses trust and confidence in the seller. The consumer should be given the right to terminate the contract after one attempt at repairing or replacing the goods. Thus, after one repair or replacement, the consumer should have the right to terminate the contract. An associated question is how many days should be given to the buyer for rejecting the goods? Tentatively, the buyer could be given ten days to reject the goods.

Remedy in the Bill

The bill does not contemplate the right of the buyer to terminate the contract. In this, instead of recognising the existing rights of a buyer, it dilutes the right. The bill needs to list the rights of the buyer to terminate the contract. The District Council should have the associated powers for the enforcement of termination. A termination can take several forms. A consumer can terminate a contract but the trader can claim that the consumer does not have the right to terminate the contract. A contract could have got terminated by the conduct of the parties. A Consumer Council may need to order that the contract stands terminated. The effect of termination of a contract is to put the parties in a situation they were before the contract and give damages to the consumer for the breach of the contract. Towards this, the consumer has to return the goods to the seller in the condition he got it and the buyer any price received. The parties may have received benefits from each other. This can take varied forms. For example, the seller may have given a membership to the buyer entitling him to a 10% discount on all subsequent purchase. The benefits or its money value of the benefit will need to be restored by both the parties.

The bill should have a chapter or a heading listing the rights of the buyer. This should include the following right of the buyer to terminate the contract:

Termination of contract for breach of quality of goods. A consumer has the right to terminate the contract on the grounds of quality of goods in the following situations:

(1) The seller delivers goods which do not meet any of the express conditions in the contract or implied conditions arising from the contract. The consumer can terminate the contract within 30 days of delivery. If the contract provides a longer period for terminating the contract, the consumer can terminate the contract during the period mentioned in the contract.

(2) The seller delivers goods which do not meet any of the implied conditions created for the buyer in the Sale of Goods Act, 1930. The consumer can terminate the contract within 30 days of delivery.

(3) The buyer has a right to terminate the contract on the ground of the seller delivering goods which are in breach of express or implied condition but elects to get the goods repaired or replaced. Following this, the seller repairs or replaces the goods. The repaired or replaced goods continue to be in breach of an express or implied condition or need further repair and replacement. The consumer can terminate the contract within 10 days of the seller delivering the repaired goods or goods in replacement.

(4) The buyer does not have a right to terminate the contract but a right to repair or replacement. Following this, the seller repairs or replaces the goods. The supplied goods continue to need a repair or replacement.

The corresponding powers of a Consumer Council in relation to termination could be as follows:

Powers of Consumer Council: The Consumer Council can issue orders to the consumer, trader or an opposite party for the enforcement of the rights of the consumer. The orders can include one or a combination of the followings:

1. Order the parties that the contract is terminated.
2. Order the trader to return any money paid by the consumer with or without interest.
3. Order the consumer to return the goods to the trader.
4. Order the trader to restore any benefit or money equivalent of the benefit drawn from the consumer.
5. Order the consumer to restore any benefit or money equivalent of the benefit drawn from the trader.

Delay in Delivery of goods

We now introduce a ground for termination on which the bill is silent- refusal to deliver the goods and delay in delivery. Let us consider the following situations on delay in delivery or denied delivery. The trader, for whatever reasons, simply refuses to deliver the contracted goods. For example, an online store pre-books orders but later refuses to supply at the contracted price. In this case, there is nothing further for the parties to do. The trader is in breach of his contractual duty. The consumer can communicate to the trader his intention of terminating the contract. Or from the conduct of the parties, it can be inferred that the contract is terminated.

The second situation is where the seller does not deliver the goods on the scheduled date. In commercial contracts, delay is taken to be a core part of the contract giving the right to the buyer to terminate the contract. In other contracts, it has to be judged from the contract terms whether the time was of 'essence' for the buyer to terminate the contract. Often, in consumer contracts, it may not be of essence. Whether a washing machine is delivered on Monday or gets delivered on Wednesday is not so important for the buyer to terminate the contract. There may, however, be consumer contracts where the trader delivering the goods on schedule is a core part of the contract. In this case, the consumer has the right to terminate the contract.

The third situation is where the trader does not deliver the goods on time but promises to deliver soon. The consumer agrees to this. Thereafter, the trader fails to deliver the goods. In this situation, the consumer should have the right to terminate the contract after giving a reasonable time to the trader to deliver the goods. The fourth situation is where the buyer does not have the right to terminate the contract for a delay. The seller, however, does not supply the goods within a reasonable period. The buyer would get the right to terminate the contract. These rights follow from the Sale of Goods Act, 1930 and should be included in the bill. The provision could read:

Termination for delay in delivery: A consumer has the right to terminate the contract for a delay in delivery in the following situations:

- (1) The contract provides for a delivery schedule. The delivery of goods on schedule is of essence to the contract and the seller fails to deliver the goods on schedule.
- (2) The contract provides for a delivery schedule. The delivery of goods on schedule is not of essence to the contract and the seller fails to deliver the goods within a reasonable period of the schedule.
- (3) The contract does not provide a delivery schedule. The seller fails to deliver the goods within a reasonable period after formation of the contract.
- (4) The contract provides for a delivery schedule but the consumer agrees to an extension of the schedule. The seller fails to deliver within the extension period.

Conclusion

Consumer law builds on the foundation of contract law and the law of sale of goods. It recognises the rights of the consumer under these laws and creates further rights. A rational and logical way of organising the law is to state the rights of the consumers. This needs to be done in the language and principles of contract law and the law of sale of goods. A consumer can enforce his rights by approaching a Consumer Council. A Consumer Council should have the corresponding powers to

enforce the rights of the consumer. Following this method, we suggested changes in the bill. This is not the end but only the beginning.

Once we recognise the, several other aspects emerge. As the buyer has the right to terminate the contract, goods will need to be returned in good condition to the seller. As the goods are being returned due to the breach of the seller, the seller should bear the expenses. However, should the responsibility for arranging for the return of the goods to the trader be on the consumer or the trader? Who will bear the risk if the goods do not get delivered to the trader? There are standard terms followed in consumer contract on delivery and risk which are unfair. In some contracts, installation is an integral part of the sale. The rights of the buyer if the installation is not adequate should also be specified. All these measures will make the bill complete and comprehensive.