

A STUDY ON THE EMERGENCE OF CONSUMER PROTECTION ACT OF 2019

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ABSTRACT

Consumer Protection is a Socio-economic activity that is to be carried out by government and business with a prime interest of consumer satisfaction. Consumer protection has been a part of the responsibilities of the rulers in India even before independence. But a formal consumer protection law, which purely focuses on consumer protection, was enacted in the year 1986. The consumer movement that flourished in the early and middle of the 20th century made the whole world focus on formulation of strong consumer Acts. United nation guidelines were the basis for formulation of consumer protection policies and measures in many developing countries including India. Consumer Protection Act 1986 (CPA 1986), which was passed in Parliament in 1986, is considered as one of the best Acts for consumer protection among its counterparts. This paper brings out the evolution of consumer protection in India, formulation of CPA 1986 and its implementation. Keywords: Consumer Protection, Consumer Protection Act 1989, UN guidelines, Consumer Movement. Commercial organizations are well organized, better informed and have a better dominating position. The Consumer Protection Bill, 2019 was passed by the Indian Parliament on Aug 06, 2019, and later on signed by the President of India. This new act will replace the old Consumer Protection Act, 1986. Read this article to know the key features of the Consumer Protection Act, 2019. The 2019 Consumer Protection Act brings about fundamental changes to the existing 1986 legislation. But it also envisages a Central Consumer Protection Authority and vests too much power and control in this authority without proposing adequate administrative safeguards. Consumer Protection Act seeks to promote and protect the interest of consumers against deficiencies and defects in goods or services. It also seeks to secure the rights of a consumer against unfair or restrictive trade practices. Among them are the federal Federal Food, Drug, and Cosmetic Act, Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, Fair Credit Billing Act, and the Gramm–Leach–Bliley Act.

“A manufacturer of product, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable care in the preparation or putting up of products will result in an injury to the consumer’s life or property, owes a duty to the consumer to take that reasonable care”. – Lord Atkin.

KEYWORDS: *Consumer, Protection, Teleshopping, Online Shopping, Complaints*

Article History

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INTRODUCTION

The basic aim of the Consumer Protection Act, 2019 to save the rights of the consumers by establishing authorities for timely and effective administration and settlement of consumers' disputes. As per the act; a person is called a consumer who avails the services and buys any good for self-use. The new Act also covers a lot of new ground and revises the consumer protection framework to keep pace with the dramatic changes that have taken place in the last three decades.

CONSUMER

A consumer is one that buys well for consumption and not for the resale or commercial purpose. The consumer also hires service for consideration. Consumer Protection Act, 2019: Ushers In More Criminal Penalties for Corporates. Rs 1 crore. The new Act also covers a lot of new ground and revises the consumer protection framework to keep pace with the dramatic changes that have taken place in the last three decades. The Consumer Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan on July 8, 2019. The Bill replaces the Consumer Protection Act, 1986. A consumer is defined as a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, teleshopping, multi-level marketing or direct selling.

Rights of Consumers

Six consumer rights have been defined in the Bill, including the right to: (i) be protected against marketing of goods and services which are hazardous to life and property; (ii) be informed of the quality, quantity, potency, purity, standard and price of goods or services; (iii) be assured of access to a variety of goods or services at competitive prices; and (iv) seek redressal against unfair or restrictive trade practices.

Meaning and Key Features of Consumer Protection Act, 2019

Consumer Protection means protection of consumers from various unfair trade practices. The purpose of such protection is to avoid exploitation and check various business malpractices. Commercial organizations are well organized, better informed and have a better dominating position. The Consumer Protection Bill, 2019 was passed by the Indian Parliament on Aug 06, 2019, and later on signed by the President of India. This new act will replace the old Consumer Protection Act, 1986. Read this article to know the key features of the Consumer Protection Act, 2019. The 2019 Consumer Protection Act brings about fundamental changes to the existing 1986 legislation. But it also envisages a Central Consumer Protection Authority and vests too much power and control in this authority without proposing adequate administrative safeguards. Consumer Protection Act seeks to promote and protect the interest of consumers against deficiencies and defects in goods or services. It also seeks to secure the rights of a consumer against unfair or restrictive trade practices. Among them are the federal Food, Drug, and Cosmetic Act, Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, Fair Credit Billing Act, and the Gramm–Leach–Bliley Act.

The Eight (8) Basic Consumer Rights

- The Right to Basic Needs.
- The Right to Safety.

- The Right to Information.
- The Right to Choose.
- The Right to Representation.
- The Right to Redress.
- The Right to Consumer Education.
- The Right to a Healthy Environment.

OBJECTIVES OF THE STUDY

The Following Objectives Are Selected for the Present Study

- This Act aimed at getting accurate information on the Quality, Quantity, Purity, Price and Standard of the products.
- Ensures the consumer, the right to seek redressed against any exploitation.
- In order to protect the consumers from unfair trade practices.
- To know the status of consumer education, protection and awareness among the people.
- To take review of the Consumer Protection Act in India
- To study the consumer protection machineries for consumer awareness,

Consumer Protections

- To know the significant impact of consumer movement
- To know the future challenges before consumer movement.

Key Features of the Consumer Protection Act, 2019

Establishment of the Central Consumer Protection Authority (CCPA):

The act has the provision of the Establishment of the CCPA which will protect, promote and enforce the rights of consumers. The CCPA will regulate cases related to unfair trade practices, misleading advertisements, and violation of consumer rights.

The CCPA will have the right to impose a penalty on the violators and passing orders to recall goods or withdraw services, discontinuation of the unfair trade practices and reimbursement of the price paid by the consumers.

The Central Consumer Protection Authority will have an investigation wing to enquire and investigate such violations. The CCPA will be headed by the Director-General.

Rights of Consumers:

The Act Provides 6 Rights to the Consumers;

- To have information about the quantity, quality, purity, potency, price, and standard of goods or services.
- To be protected from hazardous goods and services.
- To be protected from unfair or restrictive trade practices.

- To have a variety of goods or services at competitive prices

Prohibition and Penalty for a Misleading Advertisement:

The Central Consumer Protection Authority (CCPA) will have the power to impose fines on the endorser or manufacturer up to 2-year imprisonment for misleading or false advertisement (Like LaxmiDhanWarshaYantra).Worth to mention that repeated offense may attract a fine of Rs 50 lakh and imprisonment of up to 5 years.

Consumer Disputes Redressal Commission:

The act has the provision of the establishment of the Consumer Disputes Redressal Commissions (CDRCs) at the national, state and district levels.

The CDRCs Will Entertain Complaints Related To;

- Overcharging or deceptive charging
- Unfair or restrictive trade practices
- Sale of hazardous goods and services which may be hazardous to life.
- Sale of defective goods or services

Jurisdiction under the Consumer Protection Act, 2019

The act has defined the criteria of Consumer Disputes Redressal Commission (CDRCs). The National CDRC will hear complaints worth more than Rs. 10 crores. The State CDRC will hear complaints when the value is more than Rs 1 crore but less than Rs 10 crore. While the District CDRC will entertain complaints when the value of goods or service is up to Rs 1 crore.

THE CONSUMER PROTECTION ACT, 2019

NO. 35 of 2019

An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.

The beginning of the 1990s was marked by emergence of a novel concept in consumer protection when voluntary organization in the interest of consumer education (VOICE) started conducting comparative testing of the products available in the market and publishing the results thereof for the benefits of the consumer at large. The objective behind this exercise is to enable the consumers to decide 'Best Buy' for themselves. In the year 1958, the Indian Standards Institute had arranged a convention at New Delhi. As per the resolution passed at the convention, the Consumers Association of India was established in 1959. In 1966, the Consumer Guidance Society of India was formed in Mumbai with the object to protect consumers against rising prices of essential commodities. In the same year Council for Fair Business Practices was formed by leading industrialist like, J.R.D Tata and others. The Indian Consumer Union was established in 1971. The activities of the union include offering legal advice, testing facilities, arranging lectures and seminars.

The Consumer Education and Research Centre were formed in 1978, at Ahmadabad, to guide and protect Consumer Rights. India has an ancient history of consumer protection was part of ancient culture and formed the core of its administrations. Kautilya's Arthshastra was the basic law of ancient India and the same was strengthened with provisions to protect consumers. But the introduction of boundless commercialization of activities eclipsed the old rich heritage. As in Europe, in India also the origin of the consumer movement was in the form of consumer cooperatives. Consumer Co-operative Societies like Grahak Panchayat and Government Employees Consumer Stores, etc, are also formed to protect consumers. They make their purchases directly from producers and sell them at reasonable price to members. The growth of consumer movement in India is very slow due to several reasons such as, illiteracy of Indian consumers, general attitudes of the public, lack of active support from political parties and other members of the society.

The welfare of the consumers lies in the fulfilment of their normal and legitimate expectation with regards to the goods they purchases and the services they avail. In India where all the consumer protection laws are in place, the consumers are not really aware of them and the mechanism in place to redress their grievances. Those who know the laws know that the process is very slow and cumbersome. There are a number of steps taken to protect the rural consumer but without much impact due to the prevailing socio-economic conditions of the consumers. They generally base their purchasing decisions on the advertisement campaigns and promotional strategies employed by the Organizations and also lack choice.

Consumer Exploitation

Consumers are exploited when they are cheated in any form or when not informed adequately about the product. Consumer exploitation is in many ways. They may be exploited by giving incomplete or wrong information. They may be exploited by sellers who may weigh less or measure wrongly. Sometimes, a consumer may be given low quality of goods. One of the very common and a serious problem by which a consumer may be exploited and cheated by the shop-keeper is by providing impure or adulterated goods with harmful substances. Food adulteration is a serious problem in the markets where the administrative machinery is not able to tackle this menace. As far as the service sector is concerned a large number of complaints regarding medical services, banking, insurance and electricity go unreported as the consumer is unaware of the redressal mechanism. Cases of medical negligence are common but then the consumer has no choice. The rural markets, which were earlier ignored by most of the big international market players, are now being seen as a land of great business opportunity. As the disposable income of the masses is growing, more and more corporate houses are entering into the rural markets with their new goods and products. Due to this marketing for rural consumers is becoming more complex. In India, where a substantial number of the rural people are living below the poverty line, having high level of unemployment and poor literacy level; consumer awareness continues to remain low. Several studies have shown that rural consumers are generally ignorant and also unorganised. Under these circumstances, the sellers or the manufacturers, exploit the consumers.

Consumer Protection Acts in India

It was thought that passage of the Consumer Protection Act in India in 1986 would encourage consumers to stand up for their rights and lead to an overwhelming number of disputes in consumer courts. Although a consumer movement has yet to get going in India, existence of the act has stimulated the creation of many consumer organizations across the country. The number has such organizations has more the doubled in the last few years so that there are now 600-800 organizations in the voluntary sector.³ The movement has not blossomed because not all of the organizations are active enough to make

an impact, there has hardly been any unified action which would demonstrate their strength, and there has been no active consumer participation in the movements. Consumers claim that the lack of consumer education makes them passive and apathetic, and blame consumer organizations. The majority of consumers in the country are even unaware of the existence of consumer courts to which they make take their grievances. Consumer rights organizations, however, counter that they lack sufficient funds and blame the government for their inaction. The Indian consumer movement is elitist and considers the need to focus upon rural consumers, the significant contributions that organizations have made in laying the foundations for change, the need for consumer education, the need for specialists, the particular need for consumer protection with regard to health-related products, and support by voluntary health groups.

In India, the consumer movement as a social force originated with the necessity of protecting and promoting the interests of consumers against unethical and unfair trade practices. Rampant food shortages, hoarding, black marketing, adulteration of food and edible oil gave birth to the consumer movement in an organized form in the 1960s. The movement succeeded in bringing pressure. A major step was taken in 1986 by the Indian government was the enactment of the Consumer Protection Act 1986 (COPRA). In India the main function/role of consumer court is to provide some extra privilege to the consumers and to maintain the fair practice by the seller or the service provider towards the consumer. Submitting complaint is very simple and consumer has no need to hire any lawyer.

CONSUMER PROTECTION ACT OF 2019

Consumer cheer as the Consumer Protection Act, 2019 has recently replaced the three decade old Consumer Protection Act, 1986. The new Act proposes a slew of measures and tightens the existing rules to further safeguard consumer rights. Introduction of a central regulator, strict penalties for misleading advertisements and guidelines for e-commerce and electronic service providers are some of the key highlights.

Covers E-Commerce Transactions

The New Act has widened the definition of 'consumer'. The definition now includes any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing. The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by the New Act.

Enhancement of Pecuniary Jurisdiction

Revised pecuniary limits have been fixed under the New Act. Accordingly, the district forum can now entertain consumer complaints where the value of goods or services paid does not exceed INR 10,000,000 (Indian Rupees Ten Million). The State Commission can entertain disputes where such value exceeds INR 10,000,000 (Indian Rupees Ten Million) but does not exceed INR 100,000,000 (Indian Rupees One Hundred Million), and the National Commission can exercise jurisdiction where such value exceeds INR 100,000,000 (INR One Hundred Million).

E-Filing of Complaints

The New Act provides flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer. This is unlike the current practice of filing it at the place of purchase or where the seller has its registered office address. The New Act also contains enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing. This is aimed to provide procedural ease and reduce inconvenience and harassment for the consumers.

Establishment of Central Consumer Protection Authority

The New Act proposes the establishment of a regulatory authority known as the Central Consumer Protection Authority (CCPA), with wide powers of enforcement. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations.

The CCPA has been granted wide powers to take suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses and file class action suits, if a consumer complaint affects more than 1 (one) individual.

Product Liability & Penal Consequences

The New Act has introduced the concept of product liability and brings within its scope, the product manufacturer, product service provider and product seller, for any claim for compensation. The term 'product seller' is defined to include a person who is involved in placing the product for a commercial purpose and as such would include e-commerce platforms as well. The defense that e-commerce platforms merely act as 'platforms' or 'aggregators' will not be accepted. There are increased liability risks for manufacturers as compared to product service providers and product sellers, considering that under the New Act, manufacturers will be liable in product liability action even where he proves that he was not negligent or fraudulent in making the express warranty of a product. Certain exceptions have been provided under the New Act from liability claims, such as, that the product seller will not be liable where the product has been misused, altered or modified.

Unfair Trade Practices

The New Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.

Penalties for Misleading Advertisement

The CCPA may impose a penalty of up to INR 1,000,000 (Indian Rupees One Million) on a manufacturer or an endorser, for a false or misleading advertisement. The CCPA may also sentence them to imprisonment for up to 2 (two) years for the same. In case of a subsequent offence, the fine may extend to INR 5,000,000 (Indian Rupees Five Million) and imprisonment of up to 5 (five) years. The CCPA can also prohibit the endorser of a misleading advertisement from endorsing that particular product or service for a period of up to 1 (one) year. For every subsequent offence, the period of prohibition may extend to 3 (three) years.

The New Act fixes liability on endorsers considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it becomes important for the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.

Provision for Alternate Dispute Resolution

The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them.

With the New Act all set to become the law, gone are the days, where the 'consumer was asked to beware'. A consumer is now the one who assumes to be treated like a King. Hence, it is important for consumer driven businesses (such as, retail, e-commerce) to be mindful of the changes in the legal landscape and have robust policies dealing with consumer redressal in place. Consumer driven businesses must also strive to take extra precautions against unfair trade practices and unethical business practices.

In India, we do not have one specific statute which covers the legal framework for product liability claims. Consumer cheer as the Consumer Protection Act, 2019 has recently replaced the three decade old Consumer Protection Act, 1986. The new Act proposes a slew of measures and tightens the existing rules to further safeguard consumer rights. Introduction of a central regulator, strict penalties for misleading advertisements and guidelines for e-commerce and electronic service providers are some of the key highlights.

Consumer Courts

Consumer redressal commissions, aka consumer courts, are present at the district, state and national levels to address consumer complaints. The Act has increased the pecuniary jurisdiction, which means ability of courts to take up cases depending on the value of the case, of the consumer courts. “Since access to district courts is better compared to state and national commissions, the increase in limit to Rs 1 crore of district courts will be a convenience point,” says M.R. Madhavan, Co-Founder and President, PRS Legislative Research. Another crucial change says that now the money spent on buying the product till that time will determine the value of the case as opposed to the previous parameter of total value of the purchased goods/service. “Say something is bought on discount, it’s only fair that the amount the consumer has paid is the determiner in place of the MRP,” says Madhavan. In another move, the Act allows consumers to file their complaint with the court from anywhere. This comes as a big relief as earlier they were required to file complaint in the area where the seller or service provider was located. This is a fitting move considering the rise in e-commerce purchases, where the seller could be located anywhere. In addition, the Act also enables the consumer to seek a hearing through video conferencing, saving him both money and time.

What has Changed in the New Act?

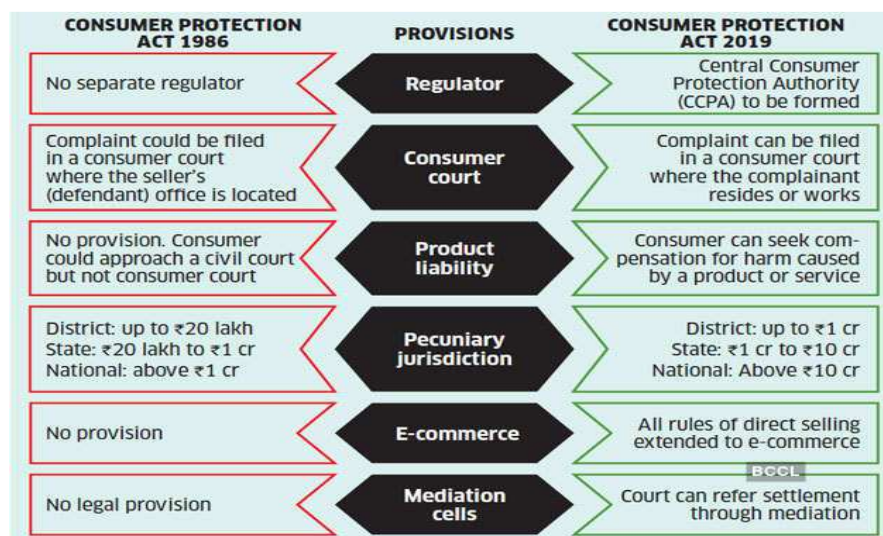


Figure 1: Consumer Protection Act 1986.

Product Liability

Separate Regulator

New Additions

The definition of “consumer” under the 2019 Act includes those who make purchases online. Endorsement of goods and services, normally done by celebrities, are also covered within the ambit of the 2019 Act. In fact, an additional onus has been placed on endorsers, apart from manufacturers and service providers, to prevent false or misleading advertisements. In contrast to the 1986 Act, the definition of “goods” has been amended to include “food” as defined in the Food Safety and Standards Act, 2006. This would also bring the meteorically rising number of food delivery platforms within the fold of the 2019 Act. Interestingly, “telecom” has been added to the definition of “services” to bring telecom service providers within the purview of the 2019 Act. But surprisingly, such inclusion has not been worded as “telecommunication service” defined under the Telecom Regulatory Authority of India Act, which would have included internet, cellular and data services.

A significant addition to the 2019 Act is the introduction of “product liability” whereby manufacturers and sellers of products or services have been made responsible to compensate for any harm caused to a consumer by defective products, manufactured or sold, or for deficiency in services. Another newly introduced concept is that of “unfair contracts” aimed to protect consumers from unilaterally skewed and unreasonable contracts which lean in favour of manufacturers or service providers.

The definition of “unfair trade practices” has been enlarged to include electronic advertising which is misleading, as well as refusing to take back or withdraw defective goods, or to withdraw or discontinue deficient services, and to refund the consideration within the period stipulated or in the absence of such stipulation, within a period of thirty days. It is now also an offence if any personal information, given in confidence and gathered in the course of a transaction, gets disclosed. All these changes signify an attempt to create more transparency in the marketplace, through legislative protection, with a view to ensure that consumer interests are above all else.

Overview

The 2019 Act continues to have Consumer Dispute Redressal Commissions at the District, State and National levels (Consumer Commissions), however the pecuniary jurisdiction, i.e. the monetary value of complaints that can be entertained, of each of these commissions have been substantially increased to reduce the burden on the State and National Commissions by encouraging consumers to approach the District Commission for complaints valued up to Rupees 1 Crore.

Furthermore, the jurisdiction of the Consumer Commissions has also been expanded to allow complaints to be made where the complainant resides or personally works for gain, as opposed to the 1986 Act where complaints had to be instituted where the opposite party resides or conducted business, or where the cause of action arose. This will ease the burden on consumers who will now be able to institute complaints at the district level where they reside and will not be compelled to travel to other parts to pursue their complaints.

Notably, the admissibility of complaints made to Consumer Commissions are to be decided within twenty-one days. Though such provision was part of the 1986 Act as well, an addition to the 2019 Act is that if the issue of admissibility of the complaint is not decided within such time, the complaint shall be deemed to have been admitted. One can't overstate what a remarkable addition this is, as it does away with the languishing of complaints at the pre-admission stage, as had become a current practice, especially at the National Commission. Regrettably, corresponding procedural amendments have not been introduced, which raise some doubts about the practical efficacy of the changes.

The 2019 Act introduces the power of judicial review, which would allow Consumer Commissions to review their orders, thereby reducing the burden faced on account of appeals being preferred to rectify errors apparent on the face of the record. In stark contrast to the 1986 Act, appeals from the State Commission to the National Commission may now only be made where they involve substantial questions of law. Appeals from the National Commission to the Supreme Court can only be made against complaints which originated in the National Commission. The period prescribed for preferring appeals has now also been made more stringent, with a view to tightening the noose regarding timely filing of appeals.

Challenges for the Future

The new legislation has created a Central Consumer Protection Authority (Authority) to inter alia “regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.” To enforce this provision, the Authority is empowered to inquire and investigate, which it does through a dedicated investigative wing set-up headed by a Director-General, analogous to the Competition Commission. Additionally, the Authority can also file complaints and intervene in matters before the Consumer Commissions.

While a laudable initiative, it is unclear on how the Authority will practically function, especially since existing District Collectors have been tasked to undertake certain functions pertaining to inquiries and investigations. There is also considerable overlap between the investigative wing and the search and seizure functions of the District Collector, which are likely to lead to a potential conflict of interest.

Interestingly, the Authority is empowered to order for recall of goods, reimburse price paid for goods and services, as well as issue directions and penalize manufacturers and endorsers for misleading advertisements. Appeals against such orders can only be preferred before the National Commission. The factors on which the National Commission may hear such appeals is unclear and one only hopes it doesn't lead to the opening of a Pandora's Box!

At this point, one is also unclear on whether matters currently pending before the Consumer Commissions will continue or if they are likely to get transferred on account of the change in pecuniary jurisdiction. This ambiguity will further add to delays.

CONCLUSIONS

All-in-all the 2019 Act is a positive step towards reformation and development of consumer laws, in the light of dynamically changing socio-economic developments. One has seen many other similar steps having recently been taken, for example, homebuyers being considered Financial Creditors under the Bankruptcy Code and the coming into effect of RERA. But the real test for the 2019 Act is in its implementation and some leeway needs to be given for it to actualize the relief for the consumers.

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