CHAPTER V

CONTROL OF UNFAIR TRADE PRACTICES IN INDIA

The aim of this chapter is to enumerate the provisions in the MRTP Act which aim at controlling unfair trade practices in India and to evaluate the operation of these provisions by analysing the orders passed by the MRTP Commission during the period 1984-86.

The policy towards unfair trade practices is of very recent origin in India. Until 1977, the problem of unfair trade practices has not attracted the attention of the Government and hence there was no specific policy towards curbing unfair trade practices. In 1977, the Government of India constituted a Committee of distinguished experts to review the Monopolies and Restrictive Trade Practices Act, which was enacted in 1969 with the objective of curbing monopolies and restrictive trade practices. The MRTP Act did not contain provisions to curb unfair trade practices in India. This deficiency was pointed out by the Expert Committee when it submitted its report in 1978 recommending that consumers in India need to be protected not only from the restrictive business practices, but also from practices which are resorted to by trade and industry to mislead or dupe consumers. The Committee specified a number of unfair trade practices which it considered notorious enough to
It suggested that the MRTP Act should not only deal with monopolistic and restrictive trade practices but also with unfair trade practices. It proposed that a separate chapter should be added to the Act to deal with unfair trade practices. The MRTP Commission which administers the provisions relating to monopolistic and restrictive trade practices also emphasised the need for legal provisions to protect consumers from unfair trade practices and even suggested redrafting of the preamble to the Act to include consumer protection as one of its objectives. It said:

"the Act as it stands is not structured to effectively protect the consumers from profiteering, interruption in the flow of goods and services, adulteration, inferior quality of goods and services, hazardous goods, lack of information or of misinformation about goods and services. As a developing country, our country's biggest problem is the perennial shortage of various types of consumer and industrial goods. As a result, sellers' market situations frequently arise in respect of various goods. In such a situation, the existing legislation relating to restrictive trade practices is of limited use. What the Act has to provide is to protect the consumers from hoarding, profiteering, etc. It is necessary therefore that the preamble should first be suitably modified so as to include consumer
protection as one of its principal aims and objects.¹

Stressing the need to have a unified legislation to control all types of trade practices, the Commission observed:

"one of the important instruments of achieving economic and social justice is a comprehensive consumer protection legislation which is absent in our country. Although, the Commission has been receiving considerable number of complaints, it has been unable to be of any assistance because of lack of jurisdiction to deal with them. The trend in most of the countries where there is a well developed antitrust legislation, is to have unified legislation with provisions regarding unfair and restrictive trade practices and entrust enforcement through a single agency. The reason behind this is that many of the unfair trade practices represent unfair methods of competition and the amplitude of antitrust legislation is not only to promote mere competition but fair competition."²

MRTP Act amended:

Responding to the recommendations of the Expert Committee and the views of the MRTP Commission, the

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¹. Ninth Annual Report on the working of the MRTP Commission for the period from January 1 to December 31, 1979, p.89.

². Ibid., p.95.
Government of India amended the MRTP Act by adding provisions to curb unfair trade practices. The Act defines unfair trade practice as a trade practice by a person who for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, employs one or more of five broadly classified unfair practices and thereby causes loss or injury to the consumers of such goods or services, by eliminating or restricting competition or otherwise. The five types of practices are: false representation, bargain sale, gifts and promotional contests, inadequate safety standards and hoarding and destruction of goods 3.

False representation:

The types of representations which are illegal when false are: (1) that the goods are of a particular standard, quality, grade, composition, style or model; (ii) that the services are of a particular standard, quality or grade; (iii) that any re-built, second hand, renovated, reconditioned or old goods are new goods; (iv) that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, or benefits; (v) that the seller or the supplier has sponsorship or approval of affiliation; (vi) that there is a certain need for, or usefulness of, certain goods or services; (vii) that any warranty or guarantee of

3. MRTP Act, Section 36A.
the performance, efficacy or length of life of a product
or of any goods is provided. The Act also condemns making
public representation in a form that purports to be warranty
or guarantee of goods or a promise to replace, maintain
or repair an article or any part thereof or to replace or
continue a service, if such warranty or guarantee is materially
misleading or there is no reasonable prospect for carrying
out being materially misleading in respect of prices, and
finally, giving false or misleading facts to disparage
the goods, services or trade of another person.

**Bargain price:**

The Act condemns advertisements for supply at a
bargain price of goods or services that are not intended
to be offered or supplied at the price for a period and
in quantities that are reasonable, having regard to the
nature of the market in which the business is carried on,
the nature and size of the business and the nature of the
advertisement.

**Offering gifts and conducting promotional contests:**

The Act also condemns offering gifts, prizes or
other items with the intention of not providing them as
offered, creating the impression that something is being
given or offered free of charge when it is fully or partly
covered by the amount charged in the transaction as a whole, or conducting any contest, lottery, game of chance or skill for the purpose of promoting the sales.

**Product safety standards:**

This offence is defined as supplying goods which do not comply with standards prescribed by competent authorities relating to performance, composition, contents, design, construction, finishing or packaging to prevent or reduce the risks of injury to the person using the goods.

**Hoarding:**

Another offense is hoarding, or destruction of goods or refusal to sell the goods or not make them available for sale except at exorbitant prices.

**Machinery for administering the provisions:**

The Act authorises the MRTP Commission to inquire into any unfair trade practice (a) upon receiving a complaint of facts which constitute such practice from any trade or consumers' organisation having a membership of not less than twenty-five persons or from twenty-five or more consumers, or (b) upon a reference made to it by the Central Government or a State Government; (c) upon an application made to it by the Director General or (d) upon its own knowledge or information⁴. The Act also authorises

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⁴ MRTP Act, Section 36B.
the Commission to order preliminary investigation by the Director General in respect of any unfair trade practice of which complaint is made by consumers or consumer associations for the purpose of satisfying itself that the complaint is substantial\textsuperscript{5}. After an inquiry, the Commission is authorised to issue orders about discontinuing the practice, voiding the agreement or carrying out specific modification and conditions relating to the practice or agreement\textsuperscript{6}. The Commission is authorised to exercise the same powers as it is exercising now in relation to restrictive trade practices\textsuperscript{7}. The Commission, under the Act, has powers to issue temporary injunctions, award compensation to any person suffering loss or damage from any unfair trade practice, enforce its own orders and investigate whether an order made by it has been complied with. The inquiry proceedings before the Commission are deemed to be judicial proceedings.

Control of unfair trade practices-Indian experience

With a view to analysing the Indian experience of curbing the unfair trade practices, all unfair trade practices inquiries made by the MRTP Commission from 1 August, 1984 to

\textsuperscript{5} MRTP Act, Section 36C.  
\textsuperscript{6} MRTP Act, Section 36D.  
\textsuperscript{7} MRTP Act, Section 36E.
31 December, 1986 have been studied. A classified summary of 142 orders passed by the Commission during the period is given in Table - V.1. Out of 142 total cases decided by the Commission, in 57, the Commission after obtaining an undertaking from the respondents concerned that they would not indulge in unfair trade practices in future, issued orders under Section 36D(2). In 11 cases, the Commission could not make out any unfair trade practice. The Commission passed interim injunctions in fifteen cases restraining the undertakings from engaging in unfair trade practices. Thirteen cases have been closed or terminated by the Commission as the complainants themselves were satisfied with the steps taken by the respondent firms to redress the grievances. Another eight cases have been dropped because the respondents withdrew the schemes which were considered to be unfair. In fourteen instances, the Commission found that the allegations did not fall under the provisions of the Act. In three, the Commission decided that the alleged unfair trade practices were not prejudicial to public interest. In five, the application for passing interim injunction was dismissed. It vacated the injunction earlier granted in two cases and ordered preliminary investigation in three cases. Only in eight cases did it issue 'cease and desist' orders.
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<tr>
<th>Case Description</th>
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<tr>
<td>1. Cases in which the Commission passed orders under section 36D(2)</td>
<td>57</td>
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<td>2. Cases in which the Commission passed interim injunctions</td>
<td>15</td>
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<td>3. Cases in which the Commission vacated the injunctions earlier given</td>
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<td>4. Cases in which the Commission could not make out any U.T.P.</td>
<td>11</td>
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<td>5. Cases in which the Commission could not proceed further as the complainants themselves satisfied with the steps taken by the respondents</td>
<td>13</td>
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<td>6. Cases in which the Commission could not proceed further due to withdrawal of schemes which were considered to be unfair or due to non location of the respondent</td>
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<td>7. Cases in which the Commission found that the alleged practice did not attract the provisions of the MRTP Act</td>
<td>14</td>
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<td>8. Cases in which the Commission ordered preliminary investigation</td>
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<td>9. Cases in which the Commission rejected applications for passing interim injunctions</td>
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<td>10. Cases in which the Commission passed 'cease and desist' orders</td>
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<td>11. Cases in which the Commission decided that the alleged practice is not prejudicial to public interest</td>
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<td>12. Cases in which the Commission felt that there is no justification to prosecute the respondents for alleged violation of the undertaking given</td>
<td>2</td>
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<td>13. Cases in which the Commission dismissed review applications of the respondent companies</td>
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Ninety two cases were instituted by the Commission on the basis of a complaint made by a consumer or of its own knowledge or information and nineteen were based on complaints from consumer associations. Thirty one inquiries were based on the references made by the Director General of Investigation and Registration. No inquiry was instituted on a reference made by the Central or the State Governments.

Out of the cases disposed of by the Commission, forty pertained to textile products, twelve to TV sets and electrical goods, eight to food products seven each to automotive, footwear and pharmaceutical products, two to books and the remaining fifty nine to various other types of consumer products.

In 42 cases, the allegations pertained to 'bargain price', in 54 to 'false representation' in 36 to 'offering of gifts and conducting promotional contests' and in six to supply of substandard products. The allegations in the remaining four cases were found not related to unfair trade practices.

In order to assess the approach of the MRP Commission in curbing unfair trade practices, cases decided under each category of unfair trade practice mentioned in Section 36A of the Act have been studied and the findings are given below. A complete list of the cases is provided in the Appendix - II.
False representation:

Advertisements in newspapers representing that the product is manufactured in technical collaboration with a reputed foreign company, when there is no such collaboration attracts section 36A(1) of the Act. Advertisements in newspapers representing that the products are made to international standards, because only the company has the imported equipment for it constitute an unfair trade practice. Similarly advertisements claiming that vital components imported from a reputed foreign company are used in producing a particular product when they are not actually imported and used constitute false representation. An advertisement given by a medical foundation representing that by getting diet treatment from the organisation before pregnancy, a woman could give birth to a boy or a girl at her own choice is prima facie an unfair trade practice. Procuring of goods from another manufacturer and supplying it under its own brand name does not constitute unfair trade practice so long as the quality or the standard which the said goods are represented to possess are not allowed to deteriorate in any way. Similarly a delay in the replacement of a defective

9. UTPE No.14 of 86, Order dated 1-7-86.
10. UTPE No.29 of 85, Order dated 24-6-85.
11. UTPE No.93 of 86, Order dated 4-7-86.
12. UTPE No.60 of 84, Order dated 14-12-84.
part or in attending to after sales service can not be regarded as a refusal on the part of the company to carry out the promise as spelt out from the warranty and hence does not attract Section 36A(1) (viii) of the Act. This section is also not applicable if the allegation pertains to failure to repair the product subsequent to the warranty period.

An advertisement issued by a typewriter manufacturing company announcing that the typewriter will cost only Rs. 19,995 inclusive of all duties and taxes when actually a customer has to pay Rs. 23,500 in order to put the typewriter to its proper use (the extra charges cover the prices of Daisy Wheel-cum-ribbon and tape) can be regarded as unfair trade practice causing loss or injury to the customer by restricting competition. Explaining the effect of such practice, the Commission observed "such misleading advertisement particularly as respects its price will attract a customer to the respondent's product and once being lured will passively accept whatever price is quoted for the so-called accessories. A customer is thus duped into purchasing the machine may it be for a higher price, a situation that

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13. UTPE No.12 of 84, Order dated 19-12-84.
14. UTPE No.18/86, Order dated 14-8-86.
15. UTPE Ho.26 of 85, Order dated 12-8-85.
Another interesting enquiry on 'false representation' was conducted by the Commission. A company manufacturing and marketing medicines issued an advertisement stating that the use of 'Ridake paracetamol tablets' was the safest way to clear headache as it did not have the side effects like 'aspirin' which causes 'erosive gastritis with occult and overt gastro-intestinal bleedings and gastric ulcer'. For supporting the aforesaid assertion that the side effects were caused by 'aspirin', reliance in the advertisement was placed on an editorial which appeared in a British medical journal known as 'The Lancet'. The Director General (Investigation and Registration) argued before the Commission that the company has made misrepresentation in as much as it highlighted that part of view of the British medical journal which deals with the side effects of 'aspirin' but suppressed the view of the said journal to the effect that 'Paracetamol' adversely affects the liver, and in that way the company indulged in unfair trade practice within the meaning of Section 36A(1)(i). The Director General also contended that the company had been guilty of an unfair trade practice within the meaning of Section 36A(1)(x) of the Act by disparaging 'aspirin' by highlighting the view of the British journal regarding its side effects and extolling the quality.
of 'Ridake'. The Commission, agreeing with the arguments of the Director General, passed an interim injunction restraining the company from issuing such advertisement to avert injury to the consumer\textsuperscript{16}.

The NRTF Commission also restrained a company manufacturing chemicals and fertilizers from making misleading representation about the prospects of its new venture, namely public issue of 13,50,000 equity shares of Rs. 10/- each for each at par. The company issued an advertisement claiming that the investment in the shares of the company would fetch about 26 per cent pretax-return which was guaranteed by the Government. The DGIR's case was that this assertion was made by the company to allure the gullible investors to subscribe to its equity shares and so attracted 36A(1) of the Act. The DGIR pointed out that no documentary evidence had been produced by the company in support of its claims. The Government did not also guarantee the rate of return and the assertion was based on its own calculations taking into account the subsidy which it was eligible to for setting up a plant in the backward district as well as the capital subsidy of Rs. 15 lakhs as also price retention scheme. The Commission agreed with the arguments of the DGIR and restrained the company from issuing such advertisement

\textsuperscript{16} UTPE No. 35 of 1986, Order dated 2-6-1986.
claiming that 26 per cent pre tax return was guaranteed by the government. However, the Commission ordered that it might issue advertisements that under price retention scheme the SSP industry was allowed 11 per cent post tax return and that the investors could expect a particular percentage of pre tax return but not that the same had been guaranteed by the government\textsuperscript{17}.

**Bargain price :**

In all the cases which pertain to bargain price, the allegation was that the respondents issued advertisements in newspapers offering 50 per cent or more discounts on the sale of items, mostly textile and footwear. Investigations made by the Additional Director General revealed that in most cases, the actual discount offered was below 50 per cent. They also revealed that the discount was given only in the case of sale of old, out of fashion or shop soiled items. The Commission held that the advertisements were misleading as the customers got an impression that they would get good stuff at advertised discounts. The Commission observed "in the absence of an indication in the advertisement as to the quality of goods offered on discount and duration of the discount sale which is required to be reasonable, having regard to the nature of the market in which the business

\textsuperscript{17.} UTPE No. 215 of 85, Order dated 17-12-1986.
is carried on and the nature and size of business, the provisions of Section 36(A) (2) would be attracted. However, where the discount offered is large enough to prove the genuineness of the bargain price and if the sale has continued for a longer period and the quantities offered for sale at bargain price are appreciable, it does not give rise to an unfair trade practice as defined in Section 36A(2) of the Act.

A discount scheme introduced by a manufacturer of fans offering off-season discount of Rs. 45/- with reference not to the current price but with reference to an imaginary future price, and which in the present inflationary conditions would generally be higher than the prices prevailing at the time of announcement of the discount scheme was held to be an unfair trade practice by the Commission and it passed an interim injunction restraining the respondents from continuing the practice.

The Commission gave certain guidelines which are to be kept in view while giving advertisements announcing discount sales by the firms. These are:

i) The period of discount shall invariably be mentioned which should be reasonable.

ii) The normal price of the items broadly categorised should be indicated so that the customers may be aware of the original price and bargain price at which articles of particular categories would be available.

iii) The quality of the article at which the maximum and the minimum discount would be available should also be mentioned as far as possible. If the sale is during off-season it may be so indicated.

The Commission also decided that it could not proceed against the publisher of the newspaper in which a misleading bargain sale was announced as the publisher was not involved in the trade of selling the product on discount as advertised.

Offering of gifts and conducting promotional contests:

According to the Commission, a gift scheme sponsored by the dealers of products for the purchasers can not be described as unfair trade practice, if the product is new and if there is no price rise either during the period of gift scheme or in the months preceding it. Offering of gift can not also be considered an unfair trade practice.

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22. UTPE No.67 of 85, Order dated 31-1-1986.
23. UTPE No.46 of 84, Order dated 31-12-1984 and
   UTPE No.36 of 85, Order dated 10-7-1986.
when the cost of gift offered with the sale is negligible when compared with the cost of the item. 24

A gift scheme introduced for selling fans was considered by the Commission an unfair trade practice as the introduction of the scheme synchronised with the escalation of price of the fan. 25 So also a scheme for distribution of gifts, on the basis of lottery for those consumers who purchase a fan from the manufacturer along with a gift coupon for Rs. 13/- was considered an unfair trade practices as the amount paid for getting coupon might have been included in the price of the fan. 26

A gift scheme introduced for selling transistors and tape recorders was considered by the Commission as unfair trade practice as date of increase in prices of the products was too close to the date of start of the scheme. 27

Three leading companies dealing in consumer goods have been restrained by the MRTF Commission from carrying on promotional contests as the practice was prima facie an unfair trade practice. One company contended before

24. UTPE No.8 of 85, Order dated 13-6-1985.
25. UTPE No.45 of 86, Order dated 1-5-1986.
27. UTPE No.6 of 85, Order dated 9-10-1986.
the Commission that mere conduct of a contest should not be construed as an unfair trade practice as long as there is no proof that such a contest causes any loss or injury to the consumers. The Commission observed that this issue will be decided in the course of inquiry. However, a contest organised by a publisher of newspaper to pick up the ideal World XI cricket team using the form available in an issue of the paper was considered to be not prejudicial to public interest, even though it promoted the business interest of the publisher as the loss to the consumer was very nominal (purchase of the copy at 50 paise) on the other hand, it served the public interest as it encouraged youth to participate in a healthy pastime and add to the national prestige by helping to achieve victories in international competitions.

An interesting enquiry on conducting lotteries was conducted by the Commission. A company manufacturing cycles organised a scheme offering bumper lucky prizes to the persons who would purchase cycles during the period 5 August 1984 to 15 October, 1984. The lucky prizes would be determined by draw of lots. The Director General argued before the Commission that the company increased prices of bycycles prior to and during the period of contest thereby covering

29. UTPE No.50 of 85, Order dated 12-3-1986.
the cost of prizes either partially or fully and thus indulged in unfair trade practice. The company denied this and contended that the prizes were given away from the resources of the company and of its dealers and their cost had not been recovered from the consumers. It further submitted that the increase in the prices of cycles became necessary as a consequence of an increase in the steel price and there was no nexus between the price increase and the lottery scheme. The Commission after examining the statements of the witnesses and price increases made by other cycle manufacturing companies held that the practice was not hit by Section 36A(3)(a) of the Act. However it decided that it was within the ambit of Section 36A(3)(b) in as much the respondent company had admitted having conducted the lottery. Then the Commission examined whether the conduct of lottery was against the interest of the consumers from a broader consideration governing our economic policy. The Commission posed a more fundamental issue that whether the trade practice of resorting to contests, lotteries and similar methods, which are increasingly being adopted by industry and trade is in the right direction from the point of view of the healthy development of marketing techniques in this country, particularly in relation to promoting consumer and public interest. The Commission held that the trade practice was against the public interest on three grounds.
Firstly, the conduct of lotteries, contests etc., tends to induce consumers to buy products on considerations other than quality and price. When the essential considerations of quality and price are lost sight of, consumer and public interest suffers. The conduct of lotteries and contests is thus inconsistent with the basic principles of sound market development.

Secondly, the practice of offering prizes by lottery tends to encourage the gambling instinct leading to unnecessary avoidable and excessive purchases by consumers for the purpose of gaining entry into the lottery. Such avoidable and excessive purchases are a real loss to the consumer. As only a few ultimately win prizes, the bulk of the consumers end up as in every gamble, suffering losses. The gain of the few is therefore at the expense of many. Instead of protecting consumer interest, lotteries and contests are clearly prejudicial to consumer and public interest.

Finally, it has a deleterious impact on competition in as much as extraneous considerations other than quality and price tend to determine consumer preferences and purchases thereby distorting competition. Better products tend to be obscured and inferior products gain preference in consumer choice merely because of the opportunity the latter provide to enter a contest. Interfering with healthy competition,
contests and lotteries ultimately result in loss to the consumer.

Accordingly the Commission passed a 'cease and desist' order\textsuperscript{30}.

Product safety standards:

The MRTP Commission held that manufacturing and selling of 'Nutan' brand kerosene wick stoves by any company without ensuring that such stoves conformed to approved specifications and were inspected and cleared for sale by the Indian Oil Corporation, which designed the stove amounted to unfair trade practice within the meaning of Section 36A(4) of the MRTP Act\textsuperscript{31}. However, it held that the packaging of tomato ketchup in quantity of 400 grams contravening the standard of weights and Measures (Packaged Commodities) Rules 1977, can not attract Section 36A(4) as it would not involve any risk of injury to the person using the goods\textsuperscript{32}. Similarly the Commission rejected an application for interim injunction against a company which was alleged to be contravening the provisions of the weights and Measures Act, 1978 as the defect (size of the letters in the label which is affixed to the bottle is not in accordance with the rules), did

\textsuperscript{30} UTPE No. 43 of 84, Order dated 10-9-1986.
\textsuperscript{31} UTPE No. 11 of 84, Order dated 20-5-1986.
\textsuperscript{32} UTPE No. 16 of 86, Order dated 6-10-1986.
not cause much inconvenience to the public\textsuperscript{33}.

From the above analysis, the following points emerge.

- Even though, under the Act, the Central and the State Governments as well as the Director General can make applications for inquiry against business organisations indulging in unfair trade practices, no initiative was taken by those agencies to make use of this provision. However, consumer associations, especially those operating in cities like Delhi, played an active role in complaining against companies indulging in unfair trade practices. This is in contrast with their role in initiating inquiries in respect of restrictive trade practices. Very few restrictive trade practices inquiries were initiated on the basis of complaints made by consumer associations.

- Most of the cases investigated so far by the Commission relate to the practices of 'bargain price', 'false representation', and offering of gifts.

- Almost all cases relate to the products which are generally used by consumers.

- In a majority of cases, actions against false or misleading advertising were dropped when the Commission received written assurance that statements to which it had objected would no longer be made.

\textsuperscript{33} UTE No. 73 of 86, Order dated 5-8-1986.
Questions to Ponder:

There are quite a few points that require particular mention in relation to the control of unfair trade practices in India.

Too many definitions... Too many loopholes:

Is it necessary to define the term 'unfair trade practice' for controlling unfair trade practices? Definition of a term is important, no doubt, but too many descriptions in the enactment lead to too many loopholes, because unethical companies tend to seek approaches which may not fall under exact purview of definitions. Hence the law should be broad in meaning so as to take care of not only the defined violations but also various other violations of the spirit of the law. Thus, too many descriptions in defining the unfair trade practices are likely to lead to excessive litigation. It would be better if the MRTP Commission is given power to define and prescribe unfair trade practice rather than extend the scope of the definition, whenever a new method is invented by businessmen to cheat consumers.

Right of individual consumers ignored:

Is it prudent under Indian conditions to prescribe that a complaint against a company indulging in unfair trade practice should come from either twenty-five consumers or
a consumer body having twenty five members? An individual consumer in India may find it very difficult to collect 24 other consumers to join him in a group complaint. Even the consumers' organisations are not well prepared to receive the complaints of individual consumers, process them and make a complaint to the Commission. Therefore, it is necessary that the MRTP Commission should be able to institute an inquiry even if the complaint is made by a single consumer, after preliminary investigation is made by the Director General of Investigation. It is to be noted that under the existing legislation it is mandatory on the part of the Commission to refer the complaint made by the consumers/ consumer association to the Director General for preliminary investigation to satisfy itself that the complaint justifies full inquiry. The MRTP (Amendment) Act, 1986 makes it mandatory for the MRTP Commission to probe into complaints from an aggrieved consumer. This will make the MRTP Commission an effective instrument of consumer protection in India.

Should Public Sector Units be exempted?

Is it appropriate to exempt public sector undertakings from the purview of the provisions relating to unfair trade practices? A large number of products are manufactured and marketed by public sector undertakings in India. There is every possibility that these undertakings may adopt unfair
methods of promoting sales. The Sachar Committee suggested that the provisions relating to unfair and restrictive trade practices should be made applicable to public sector undertakings. Hence, it is necessary to bring the public sector undertakings also under the purview of the MRTP Act in matters relating to unfair trade practices.

Small-sized Commission ... Too many tasks:

Is the Commission's existing machinery adequate for effectively discharging the functions assigned to it under the Act? The Commission at present has to advise the Government on matters relating to concentration of economic power. It has to make enquiries and pass orders in matters relating to monopolistic, restrictive and unfair trade practices. A small-sized Delhi based organisation may not be able to perform effectively all the functions now delegated to MRTP Commission. From the beginning, the Commission's size was restricted to three members by the Government, even though the Act prescribed a maximum of nine members. It is necessary to increase the size of the Commission so that it can divide the work relating to the different aspects of its responsibilities. The Commission might be able to protect the consumer better if there were regional benches linked with the Regional Directors of the Company Law Board. The Commission's research and administrative wings need to be strengthened.
Can the Commission's eye reach There?

Is it possible for the Commission to keep a watch over the unfair trade practices prevailing in each and every part of the country without the help of the State Governments especially when the consumer awareness is lacking? Under existing law, any State Government can refer a case relating to unfair trade practice for inquiry to the Commission. In order to play a role in curbing unfair trade practices, every state government should set up a trade practices body for obtaining information regarding unfair trade practices prevailing in that State.

It is too early to say whether the provisions have achieved valuable results. In developing countries, it takes time for institutions like the MRTP Commission to adjust themselves to the needs of the economy. Similar institutions have served a useful purpose in other parts of the world and there is no reason why such institutions should not be able to play their part in helping the people of developing countries to secure social justice.

SUMMARY:

Responding to the recommendations of the Expert Committee, and the views of the MRTP Commission, the Government of India amended the MRTP Act by adding provisions
to curb unfair trade practices in August 1984.

The Act gave an exhaustive definition to the term 'unfair trade practice' and identified certain practices as unfair trade practices. They are false representation, bargain sales, offering gifts and conducting promotional contests, inadequate safety standards and hoarding and destruction of goods. The Act authorised the MRTP Commission to enquire into unfair trade practices and to pass necessary orders to curb them.

The MRTP Commission has enquired and disposed of 142 cases relating to unfair trade practices since the introduction of provisions in the Act in August, 1984 to 31 December, 1986. In a majority of the cases the actions against false or misleading advertising were dropped when the Commission received written assurance that statements to which it had objected would no longer be made. Most of the cases investigated so far by the Commission relate to the practices of bargain sale, false representation and offering of gifts. Almost all cases relate to the products which are generally used by the consumers. No initiative was taken by the State and Central Governments to make applications for enquiry against business organisations indulging in unfair trade practices. However, consumers, associations played an active role in complaining against companies indulging in unfair trade practices.
Cases decided by the MRTP Commission under each category of unfair trade practice mentioned in Section 36A of the Act have been studied in order to assess the approach of the MRTP Commission in curbing unfair trade practices.

It is felt that, instead of giving a definition to the term 'unfair trade practice' in the Act, it is better if the MRTP Commission is given power to define and prescribe unfair trade practice so that there is no need to extend the scope of the definition whenever a new method is invented by businessmen to cheat the consumers. It is also suggested that the MRTP Commission should be able to institute an enquiry even if the complaint is made by a single consumer, as it is very difficult in India for an individual consumer to collect 24 other consumers to join him in a group complaint. This suggestion has been incorporated in the MRTP (Amendment) Act, 1986, and it is hoped that this will make MRTP Commission an effective instrument of consumer protection in India.

Public sector undertakings which are at present outside the scope of the Act, should also be brought under the purview of the Act because they may also adopt unfair methods of promoting sales. The size of the Commission should be increased and its research and administrative wings need to be strengthened. In order to play a role in curbing unfair trade practices, every State Government should set up a
trade practice body for obtaining information regarding unfair trade practices prevailing in that state.

It is too early to say whether the provisions have achieved valuable results. In developing countries, it takes time for institutions like the MRTP Commission to adjust themselves to the needs of the economy. Similar institutions have served a useful purpose in other parts of the world and there is no reason why such institutions should not be able to play their part in helping the people of developing countries to secure social justice.