In all democratic countries, the main aim of economic policy with respect to private business enterprises is to secure efficient economic performance from the various product and service markets of the economy. In these countries, it is generally believed that efficient economic performance can be secured by promoting and maintaining competition among business enterprises. Competition, it is argued, will result in efficient allocation of scarce economic resources, enhances quality of the product and reduces prices of the product. It is also said that it protects the consumer from exploitation and weeds out inefficiency in the business firms. As such, any policy to improve economic performance in the countries wedded to democracy should aim at prohibiting or curbing various practices and arrangements resorted to by private business enterprises to suppress or restrain actual or potential competition. These practices are generally termed as restrictive trade practices.

Restrictive trade agreements may be divided into two main categories namely, horizontal and vertical. Horizontal agreements are those between firms in the same industry and include price fixing cartels, market sharing
agreements and output restrictions. Vertical agreements are made between the firms in successive stages of production or distribution. These include exclusive dealing, tie-in sales, resale price maintenance, price discrimination, allocation of area etc.

In addition to restrictive trade practices mentioned above, unethical firms may also adopt unfair methods in selling the goods or services to the consumers causing loss to them. Such practices are generally called unfair trade practices which include misleading advertisements and false representation, bargain sale, bait and switch selling, offering of gifts or prizes with the intention of not providing them and conducting promotional contests, non compliance of product safety standards, hoarding and destruction of goods etc.

As restrictive and monopolistic trade practices restrict competition or potential competition, many countries passed legislations to control them. So also statutes have also been made to protect the consumer from the exploitation of the business firms resorting to unfair trade practices.

In the U.S.A., the Sherman Act, the Clayton Act and the Federal Trade Commission Act form the core of the Federal law to control monopoly, restrictive and unfair trade practices. In the U.K. also, a number of statutes
have been passed for controlling different types of restrictive and unfair trade practices.

In 1964, the Government of India appointed the Monopolies Inquiry Commission, to enquire inter alia into the prevalence of restrictive practices in important sectors of economic activity other than agriculture and to suggest legislative and non-legislative measures for effective curbing of such practices. The Commission was convinced that the dangers from the restrictive trade practices are not imaginary but do exist in a large measure at present or potentially. The Commission therefore felt the necessity to devise suitable public policy to avert or at least to minimise these dangers. In pursuance of this approach, it recommended passing of a legislation and setting up of an agency called the Monopolies and Restrictive Trade Practices Commission to investigate into restrictive trade practices and to pass necessary orders to remedy the mischief. On the recommendations of the Commission, the Government of India passed the Monopolies and Restrictive Trade Practices Act, 1969 and constituted a permanent Commission called 'Monopolies and Restrictive Trade Practices Commission' (MRTP Commission) to administer the provisions of the Act. The Act came into force on 1 June, 1970. The object of the Act is to curb monopolistic and restrictive trade practices
operating in Indian economic system in addition to regulation of concentration of economic power. The Act conferred wide powers on the Commission to control restrictive and monopolistic practices. After the Act has been in force for about 14 years, it has been realised that the Act did not contain provisions for the protection of the consumers against unfair trade practices. In 1977, an Expert Committee was appointed by the Government of India to suggest improvements in the Act in order to make it more effective. The Committee suggested that consumers in India should be protected not only from the effects of the restrictive and monopolistic trade practices but also from unfair trade practices. Responding to the recommendations of the Committee, the Government of India amended the Act by adding the provisions to curb unfair trade practices and this amendment Act came into force on 1 August, 1984.

Thus, at present in India the antimonopoly legislation aims at both regulation of concentration of economic power and control of monopolistic, restrictive and unfair trade practices, unlike in advanced countries where there are separate legislations for controlling concentration of economic power, monopolistic, restrictive and unfair trade practices.
The provisions of the Act which aim at controlling restrictive and monopolistic trade practices have been in operation for over 16 years now. Even though some studies have been conducted to evaluate the effectiveness of the Act in curbing concentration of economic power, there have been no comprehensive studies as far as the present author knows on effectiveness of the Act in curbing restrictive and monopolistic trade practices prevalent in Indian trade and industry. The provisions relating to controlling of unfair trade practices are only three years old. Till now, there are no studies on the working of these provisions. There is also paucity of literature in these areas unlike in advanced countries where there is plethora of literature on the working of the antitrust laws. It is in this context that the present study has been taken up to evaluate the effectiveness of the Act in controlling restrictive, unfair and monopolistic trade practices in India.

Specific objectives of the study:

The present study aims more specifically at:

1) examining the provisions of the MRTP Act, 1969 which aim at curbing restrictive, unfair and monopolistic trade practices and assessing the effectiveness of the provisions in curbing such practices;

2) assessing the approach adopted by the Indian Monopolies Commission in curbing various types of restrictive
3) identifying the main problems and limitations confronted by the MRTP Commission and the Government in curbing restrictive, unfair and monopolistic trade practices; and

4) suggesting suitable policy measures for more effectively curbing these trade practices in India through the operation of the MRTP Act, 1969.

Sources of data:

The main source of data for the study has been the orders/judgements passed by the MRTP Commission. The orders/judgements passed by the Commission in respect of restrictive and monopolistic trade practices, since its inception to 31 December, 1978, have already been published by the Government of India in three volumes. As the study period in respect of restrictive and monopolistic trade practices is 1970-84, the orders/judgements relating to the remaining period i.e., 1978-84 have been collected personally from the MRTP Commission. As the provisions relating to curbing of unfair trade practices were added only in 1984, the orders passed by the MRTP Commission in respect of these practices for the study period i.e., August 1984 to 31 December 1986 have also been collected personally from the MRTP Commission. The information contained in the Annual reports pertaining to the execution of the provisions of
The MRTP Act and Annual Administrative Reports on the working of the MRTP Commission has also been used as an important source of data for the study. Additional information has been drawn from the official publications of the Department of Company Affairs which is the main agency responsible for the administering of the provisions of the MRTP Act. Data published by the Department of Company Affairs from time to time in its monthly journal "Company News and Notes" have also been used. Books, Reports and professional journals have been extensively utilised to extract the other pertinent information.

Scope and limitations of the study:

A modest attempt has been made in this study to evaluate the efficacy of the statutory provisions for the control of various restrictive, unfair and monopolistic trade practices prevailing in trade and industry on the basis of the orders/judgements passed by the MRTP Commission. It is beyond the scope of the study to assess the effectiveness of the Act in curbing concentration of economic power. It is also beyond the scope of the study to delve into the wider variety of controls exercised by the Government to curb or eliminate trade practices which will try to suppress the competitive forces in the Indian economy. The study also does not assess the effectiveness of other
legislations which aim at the protection of the consumer interest.

MAJOR CONCLUSIONS:

Major conclusions emerging from the present study and suggestions that logically follow for effectively curbing the restrictive, unfair and monopolistic trade practices are briefly summarised below.

Organisations of the MRTP Commission:

The Monopolies and Restrictive Trade Practices Act is applicable only to private sector undertakings in India and it is not applicable to public and co-operative sector undertakings. The Act is divided into nine chapters and contains sixty seven sections.

Monopolies and Restrictive Trade Practices Commission (MRTP Commission) is an important institution under the Act assigned with the task of controlling monopolistic, restrictive and unfair trade practices. It consists of a Chairman, and not less than two and not more than eight other members to be appointed by the Central Government. The Government of India constituted the Commission in August 1970 with a Chairman and two members. However, the Government did not take proper care in filling the vacancies of the Chairman and the members. The improper constitution of the Commission
was challenged in a number of monopolistic and restrictive trade practices enquiries. The Supreme Court of India also indicted the Government of India on this account.

The Secretariat of the Commission consists of three divisions namely: (1) Administration and Technical Division, (2) Research Division and (3) Legal Division. The staff of the Commission is also appointed by the Central Government generally on deputation basis, from different departments of the Central Government. The Government never allowed the Commission to make appointments on its own, even though an expert committee suggested that the Commission should be given an autonomous status to appoint its own staff.

The Director General of Investigation and Registration (DGI & R) is another significant agency entrusted with the responsibility of maintaining a register of restrictive agreements and also for making investigations under the provisions of the Act. At present, he is also appointed by the Central Government independently without consulting the MRTP Commission with which he has a functional relationship. This practice has also been criticised. It is suggested, therefore, that the Director General of Investigation and Registration be appointed in consultation with the MRTP Commission which will ensure the independence of the office of the Director General.
The MRTP Commission has also been handicapped due to inadequate infrastructure and staff. The budget allotments are very meagre considering the heavy responsibilities it has to discharge under the provisions of the Act.

Control of restrictive trade practices in India:

The Monopolies and Restrictive Trade Practices Act adopted a system of registration of restrictive trade agreements for the detection and control of restrictive trade practices in India. It has specified different categories of restrictive trade agreements which are to be registered with the Director General of Investigation and Registration. These agreements include refusal to deal, tie-in sales, exclusive dealing, collusive price fixing, price discrimination, territorial restrictions, control of manufacturing process, boycott from trade association membership, collective discrimination and collective bidding.

The Act empowered the MRTP Commission to inquire into restrictive trade practices and if after enquiry finds that the practice is prejudicial to the public interest, it can pass 'cease and desist' orders or direct that the agreement may be modified. Under the Act the Commission has powers to pass interim injunctions also.
In the schema of curbing restrictive trade practices, the Commission has to evaluate the restrictive trade practices in terms of its effect (actual or probable) on competition in the relevant trade. Restrictive trade practices are deemed to be against public interest, unless they can be justified against certain carefully defined criteria set out in Section 38(1)(a) to (k) of the Act which are generally called 'gateways'.

The system of registration not only uncovered a wide range of hitherto unknown agreements but also proved to be an important source of enquiry against restrictive trade practices. Out of the 627 MRTP enquiries instituted by the Commission upto 31 December 1984, 211 enquiries were instituted on the basis of agreements objected to by the Director General. However, the public made little use of the register of agreements by way of making inspection of or taking copy or extracts from the register. During the 14 year period the register has been inspected on not more than six occasions by the members of the public. Thus, the registration system has served only as a sort of control and monitoring device and as a source of information regarding trade practices rather than an effective tool for giving publicity to objectionable trade practices. The existing list of registrable agreements does not cover
agreements imposing standardisation of products, sharing price information and patented processes or technical information. It does not even cover open price agreements and information agreements. It is suggested to include these agreements also in the category of registrable agreements. There is no effective statutory means at present to bring unregistered agreements to an end once they are brought to the notice of DGIR. Provisions making an unregistered agreement void and unlawful must be incorporated in the Act in order to make the registration system more effective. The staff in the Director General's Office need to be increased to ensure effective scrutiny of very large number of agreements registered.

The MRTP Commission instituted 627 restrictive trade practices enquiries and disposed of 499 enquiries during the period 1970-84. Bulk of the enquiries instituted by the Commission were either based on applications made by the Director General or on the basis of Commission's own knowledge or information. Limited number of enquiries were instituted on the basis of complaints received from consumers' associations. This suggests that the consumer movement is not yet well developed in India. The cases decided by the Commission related to different categories of restrictive trade practices. The practices of resale
price maintenance, tie-in sale, price discrimination are widely prevalent in India as they were cited in a large number of cases. The product-wise distribution of cases decided by the Commission does not suggest any discernible pattern of industry-wise prevalence of the restrictive trade practices. In a majority of the cases decided by the Commission, orders have been passed directing the respondent companies to 'cease and desist' from all alleged restrictive trade practices. The time taken by the Commission in disposing of enquiries was very long. Due to limited number of members, inadequate staff and lack of infrastructure, the Commission could not control restrictive trade practices which prevail in many regional and local markets. The Commission has also been facing difficulties in enforcing compliances with its orders. The Commission has no powers under the Act to institute enquiries against public sector undertakings which is a major inadequacy in the Indian legislation.

Out of the 499 restrictive trade practices cases decided by the commission, in only 16 cases the respondents contested before the Commission in terms of available 'gateways'. Almost all the respondents employed gateway (h) to defend their restrictive trade practices. The next major gateway employed by respondents was gateway (b) which was
employed in 11 cases. Among other gateways, Section 38(1)(a) was claimed in five cases, (c) and (f) in two cases each and (d) (e) and (g) in three cases each. Except gateway (h) no other gateway was employed individually to defend the practices. Gateway (h) was employed individually in five cases. The respondent companies in three cases succeeded in defending their practices (exclusive dealing in two cases and horizontal fixation in one case) through gateway (b) and also (h). In another ten cases also they could succeed in defending their practices (price discrimination in six cases exclusive dealing in three cases and territorial restrictions in one case) through gateway (h). In the remaining three cases relating to the practices of area allocation, restrictive clauses in the sale of know-how and tie-in sales, the respondents could not succeed in defending the practices through the gateway claimed by them. Thus in India, the restrictive trade practices which have been successfully defended have been upheld mostly under Section 38(1)(h). However, the companies which were trying to defend their agreements were not able to present and produce clear-cut and sufficiently reliable statistical and factual data to support their claim for an exit under different gateways.
Restrictive Trade Practices and the MRTP Commission:

An attempt is made to know the approach adopted by the MRTP Commission in curbing various types of restrictive trade practices by discussing important cases decided by the Commission under each category.

The Commission outright condemned the practice of collusive price fixing. It held that for proving price fixing conspiracy it is not necessary to have documentary proof. It is enough if the collusion can be inferred from the conduct of the parties and/or surrounding circumstances. It has also taken the view that where ever there is a concert or parallel action to fix prices at the same time or about the same time, competition is deemed to be lessened.

In regard to tie-in, the Commission adopted 'rule of reason' approach. It is of the view that it is necessary to study the competitive situation in the 'tied goods' market while analysing the anti competitive impact of the tie-in practice.

Exclusive dealing, according to the Commission is not per se restrictive and the anti competitive impact of exclusive dealing is to be judged on the basis of the conditions present in a particular industry/market. In the opinion of the Indian Monopolies Commission, if in an industry, each manufacturer has his own exclusive arrangements for marketing the products, the customer choice of buying any make he likes is not reduced, on the other hand
It is enhanced. If a product requires after sales service, hire purchase facility, prompt repair and supply of genuine spare parts, exclusive dealing arrangements are not only desirable but also act as a weapon of competition. Regarding discriminatory discounts, the Commission is of the opinion that it will not affect competition if the differential discounts or prices merely amount to passing on of the saving in the cost of manufacture, sales, or delivery resulting from the different quantities sold or delivered to the dealers or distributors. The Commission treated 'recommended resale price' as a restrictive trade practice unless it is clearly indicated that prices lower than those may be charged. No visible impact has been felt in India by the abolition of resale price maintenance. Many manufacturers are adopting new techniques to circumvent the provisions of the Act. It is suggested that suggestions, recommendations relating to maximum resale prices should be prohibited unless it is specifically mentioned that price lower than those suggested or recommended can be charged. This is necessary as the typical Indian consumer cannot distinguish the maximum resale price from the minimum resale price. Collective resale price maintenance should also be prohibited.
Control of unfair trade practices in India:

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 1988. 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 has objected will 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 practices mentioned in Section 36A of the Act has 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.

Control of monopolistic trade practices in India:

The main concern of this chapter is to examine the provisions of the Monopolies and Restrictive Trade Practices Act in curbing monopolistic trade practices in India and to assess how far the provisions have been able to control monopolistic trade practices in India.
The Act gives an elaborate definition to the term 'monopolistic trade practice', and empowers the Commission to enquire into monopolistic trade practices upon a reference made to it by the Central Government or upon its own knowledge or information. On the basis of enquiry, if it reports to the Central Government that the practice is actually operating or likely to operate against the public interest, the Central Government can issue orders to remedy the mischief. The Act lays down that every monopolistic trade practice shall be deemed to be prejudicial to the public interest except under certain circumstances laid down under Section 32 of the Act. The Act empowers the Commission to grant temporary injunctions against erring firms and can award compensation to the aggrieved parties.

The Central Government referred only three cases to the MRTP Commission for enquiry into monopolistic trade practices during the period 1970-84. However, these cases could not be disposed of by the Commission as the respondent companies have gone in appeal to the Supreme Court questioning the authority of the Central Government to refer the cases to the Commission. The Commission on its own initiated three more enquiries and in these cases also proceedings could not be completed due to legal hurdles. Even after removing the legal lacunae in the original Act in 1984
amendment, the Commission could not take up more cases for enquiry. Only three cases have been taken up by the Commission and the Central Government has also not referred any cases to the Commission for enquiry. Thus, it may be concluded that the efforts made by the Government and Monopolies and Restrictive Trade Practices Commission to institute enquiries against companies indulging in the monopolistic trade practices have not been successful so far.

Under the present Act the sources of enquiry for monopolistic trade practices are limited unlike in the case of restrictive and unfair trade practices where the consumer associations and DGIR can also complain against companies resorting to unethical business practices. Hence, it is suggested that the Commission should be empowered to institute enquiries on the basis of consumers' complaint and on a reference made to it by the DGIR as in the case of other two practices namely restrictive and unfair trade practices. Further, under the present Act the Commission does not have power to pass final orders in respect of monopolistic trade practices, even though it has powers to grant temporary injunctions and award compensation to the aggrieved parties. Hence it is also suggested that the Commission should be given powers to pass final orders in respect of monopolistic trade practices as in the case of other two practices namely, restrictive and unfair trade practices.