CHAPTER - I

INTRODUCTION

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, enhance quality of the product and reduce the price 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. This is the most familiar category of restrictive trade practice and it includes price fixing cartels, market sharing
agreements and agreements restricting output. Price fixing cartels are agreements among independent firms to fix a common price which is a convenient way to avoid price competition. Firms may come to an agreement to divide the total market among themselves on the basis of geographical area or class of customers. Market sharing makes each firm a monopolist in its domain. It has freedom to set prices and determine marketing practices without fear of competition. Firms may also agree among themselves to limit the total output or amount of output coming into the market at any particular time to eliminate competition.

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. Exclusive dealing arrangement is an agreement by a distributor to purchase, sell or otherwise deal only in products supplied or approved by a manufacturer. This can be used by a firm to foreclose the market outlets for competing suppliers. Tie-in arrangement is an agreement by a firm to sell one product on the condition that the buyer also purchases a different product from it. This is generally used by a firm to extend its monopoly power from 'tying product' to the 'tied product'. Resale price maintenance
refers to the practice whereby suppliers of products impose upon retail shopkeepers the prices at which their products are to be sold to the public, thus eliminating price competition at the retailers' level. The sale of similar goods and services to different buyers at different prices is generally termed as price discrimination. It may take either the form of variation in discounts, allowances accompanying a uniform price, or differences in quality of the goods and character of services rendered by the sellers. Territorial or area restriction is a restrictive trade practice wherein each distributor or dealer is assigned a particular territory or area, and the distributor/dealer is not permitted to sell the product outside the assigned territory.

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 referred to as unfair trade practices. These include practices like 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 restrictive and monopolistic trade practices. 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 USA, many legislations were enacted to control restrictive and unfair trade practices. As early as in 1890, the Sherman Act was passed prohibiting all contracts, combinations and conspiracies in restraint of trade. The Act also declared that monopolisation or attempt to monopolise or combine or conspire with any person or persons to monopolise any part of the trade of commerce among several states or with foreign nations shall be deemed illegal. The Federal Trade Commission Act was passed in 1914 by the Congress making "Unfair methods of competition in commerce and unfair or deceptive acts or practices in or affecting commerce" illegal. Federal Trade Commission was created under the Act with powers to investigate the practices of corporations and to prevent unfair methods of competition through 'cease and desist' orders. The US anti-trust laws were further strengthened by passing Clayton Act in 1914. It prohibited exclusive dealing contracts, price discrimination.
tying contracts and the acquisition of stock by competing corporations when the effect may be to 'substantially lessen competition' and interlocking of directors in large corporations which compete with each other. In 1936, the Congress also passed the Robinson Patman Act supplementing the Clayton Act by prohibiting the fixing as well as accepting of prices which discriminate in favour of large buyers and distributors and by placing the burden of proof upon the offended. Thus, three statutes namely 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 USA.

In the U.K., a number of statutes have been passed for controlling different types of restrictive trade practices namely. Monopolies and Restrictive Trade Practices (Inquiry and control) Act, 1948, Restrictive Trade Practices Act, 1956 amended by Restrictive Trade Practices Act 1968, and Fair Trading Act, 1973, Resale price Act, 1964. These legislations were consolidated in Restrictive Trade Practices Act, 1976 and the Resale Prices Act 1976. Similar statutes have been enacted in Australia, Canada, Sweden, Denmark, Japan and other industrially advanced countries.

In India, political and economic thinkers have been increasingly aware in recent years of the need for an
examination of the problem of monopoly and restrictive trade practices. In 1964, the Government of India appointed the Monopolies Inquiry Commission to inquire 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 defining the restrictive trade practice as the practice pursued by business firms which obstruct the free play of competitive forces or impede the flow of capital or resources into stream of production or of finished goods in the stream of distribution at any point before they reach the hands of the ultimate consumers has made specific mention of the various restrictive trade practices that are widely pursued by business firms in India. These practices include horizontal fixation of prices, vertical fixation of prices and resale price maintenance, allocation of markets between producers, discrimination between purchasers, boycott, exclusive dealing contracts, tie-up arrangements. The Commission was convinced that the dangers from 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 minimise these dangers. In pursuance of this
approach, it recommended passing of a legislation and setting up of an agency called Monopolies and Restrictive Trade Practices Commission (MRTPC) to investigate into restrictive trade practices and to pass necessary orders to remedy the mischief. On the recommendations of the Committee, the Government of India passed Monopolies and Restrictive Trade Practices Act in December 1969, and constituted a permanent Commission called Monopolies and Restrictive Trade Practices Commission (MRTPC) to administer the provisions of the Act. The Act came into force on 1st 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 empowers the MRTP Commission to enquire into any restrictive trade practice, upon receiving a complaint from any trade association or from any consumer of registered consumer association whether such consumer is a member of that consumer association or not or upon a reference made to it by the Central Government or a State Government or upon a reference made to it by the Director General of Investigation and Registration or upon its own knowledge or information. If after enquiry it is found that the practice is prejudicial to public interest it may order or direct that
the practice be discontinued or not to be repeated in future or declare the agreements relating thereto void or declare that it may be modified. The MRTAct Commission may inquire into the monopolistic trade practice upon a reference made to it by the Central Government or upon its own knowledge or information. If the Commission, on the basis of its enquiry, reports that the trade practice is actually operating or likely to operate against the public interest the Central Government can make any order with a view to preventing or remedying the mischief of the trade practice.

After the Act has been in force for about 14 years, it has been realised that the Act did not contain provisions for protection of the consumer against unfair trade practices like false or misleading advertisements, bargain sales, offering gifts and conducting promotional contests, hoarding or destruction of goods etc. The Expert Committee appointed by the Government of India in 1977 to review the operation of the Companies Act, 1956 and the MRTP Act, 1969 recommended that the MRTP Act should not only deal with restrictive and monopolistic trade practices but also with unfair trade practices. It specified a number of unfair trade practices in its report which it considered notorious enough to prohibit. It proposed that a separate chapter should be added to the
Act for dealing with unfair trade practices. The MRP Commission also emphasised several times the need to have legal provisions to protect the consumers from the unfair trade practices and even suggested redrafting of the preamble to the Act so as to include consumer protection as one of the objectives of the Act.

Responding to the recommendations of the Expert Committee and the views of the MRP Commission, the Government of India added provisions to curb unfair trade practices to the MRP Act by an amendment in 1964. The Act authorises the MRP Commission to enquire into any unfair trade practice and pass necessary orders to curb the same. The Commission is authorised to exercise the same powers as it is exercising now in relation to restrictive trade practices.

Thus, the present anti-trust legislation in India aims not only at regulation of concentration of economic power, but also at controlling restrictive, monopolistic and unfair trade practices, unlike in several advanced countries where there are separate legislations for the control of 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 India 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 on these aspects unlike in advanced countries where there is plethora of literature on the working of anti-trust 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 NTRP 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 and unfair trade practices.
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/judgments passed by the MRTP Commission. The orders/judgments passed by the Commission in respect of restrictive and monopolistic trade practices, since its inception to 31st 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/judgments 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 31st December, 1988 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 Report 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 the 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.
Structure of the Study:

The study is divided into seven chapters. Chapter - I is Introduction. Chapter - II gives a brief historical account of antimonopoly legislation in India together with a statement of salient features of the MRTP Act and a brief analysis of the constitution, structure and organisational set-up of the MRTP Commission. Chapter - III evaluates the restrictive trade practices policy in India. Chapter - IV assesses the approach adopted by the MRTP Commission in curbing various types of restrictive trade practices. This is done by discussing important judgements pronounced by the MRTP Commission under each category of restrictive trade practices. Chapter - V examines the provisions in the MRTP Act which aim at curbing unfair trade practices in India and assess the working of these provisions. Chapter - VI presents the experience of the Government of India and the Monopolies and Restrictive Trade Practices Commission in curbing monopolistic trade practices. Chapter - VII summarises the conclusions and policy implications of the study.