CHAPTER 4

M.R.T.P. 
& 
CONSUMER PROTECTION ACT 
- 
AN APPRAISAL
The main objective of this chapter is to critically examine the provisions contained in The Monopolies and Restrictive Trade Practice Act 1969 and The Consumer Protection Act, 1986. These Acts have direct bearing on consumer as these deal with trade practices effecting consumer and provide an alternate, easy and comparatively simple and inexpensive remedy. A few suggestions are made at the end of examination of each Act. Finally both the Acts are compared for better appreciation of the similarities and differences. (Refer Chart 4.1.)

4.1 MRTP Act 1969

4.1.1 Background and objectives

The Directive Principles of State Policy Contained in Part IV of the constitution form the basis for many enactments in the field of economic and social justice. These principles are like instrument of instructions but carry no legal rights and create no legal remedies. However, these being yard sticks for good governance, these can be used for political criticism. Article 39 states that the state shall direct its policy towards securing that the ownership and control of material resources of the community are so distributed as best to sub serve the common good, that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

The “laissez faire” economic policy which prevailed in India before independence continued to boost up industrialisation. Liberal licensing policy and easy availability of loans helped in growth of big business houses
and this led to concentration of economic power in the hands of a few. This was contrary to the desired goal of sub serving the common good.

The Monopoly Enquiry Commission (1964) confirmed the prevalence of monopoly in the sixties and before. It differentiated "Product-wise Concentration" and "Country-wise Concentration". The first referred to monopoly in a particular product and the second about the wealth in the hands of a few business houses. According to the enquiry commission these houses came to have a hold on the market, price structure, distribution and supply of goods and services. The advantage of competition in terms of better quality, low prices and timely availability and so on were lost and the economic system operated to the advantage of a few. The commission submitted its report in 1965. This was the basis for enactment of Monopolies and Restrictive Trade Practices (MRTP) Act. 1969.

The Monopolies and Restrictive Trade Practices (MRTP), Act, 1969 was enacted to ensure that economic system does not result in the concentration of economic power in the hands of a few and to control monopolistic and restrictive trade practices. The main objectives of the Act can be summarised as

(i) To provide that the economic system does not result in the concentration of economic power to the common detriment,

(ii) To control monopolies and

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(iii) To prohibit monopolistic, restrictive and unfair trade practices.

Originally unfair trade practices (UTPs) were not included in the Act. These were added by MRTP (Amendment) Act, 1984. However, the preamble was not amended and still does not contain UTPs.

MRTP (Amendment) Act, 1991 omitted Part A and Part C of Chap III A dealing with Restrictions on the acquisition and transfer of shares of or by certain body corporate and the schedule to the Act. This was in line with the liberalisation and globalisation efforts of the government. It was felt that the size of an undertaking was per se not detrimental to the public interest, rather in the overall interest of business and public, the larger undertakings were considered inescapable in the interest of economy of operations. Thus the main objective of the Act is regulation of monopolistic, restrictive and unfair trade practices which are prejudicial to the public interest.

Definitions

The definition of trade includes trade business, industry, profession or occupation relating to the production supply, distribution or control of goods and includes the provision of any services. Trade Practice means any practice relating to carrying on of any trade. The definition thus goes beyond mere trading and covers activities related to production supply and distribution and includes provision of services.

The definition of Goods is as given under Sales of Goods Act 1930 and includes products manufactured, processed or mined in India (ii) shares and stocks including issues of shares before allotment and (iii) imported
goods in relation to goods supplied, distributed or controlled in India. Share before allotment were included by 1991 amendment. However, MRTP commission has held that company issuing shares is only raising funds through equity. It is not a "trade practice" as obviously the company is not in the trade of shares. Hence, MRTP, Act is not applicable to shares before allotment: as issuing shares is not a "trade practice" of the company, as such MRTP is not applicable even after amendment or goods. This has been confirmed in number of cases decided by MRTPC.105

4.1.2 Main provisions

Operation of the Act

The Act provides for the establishment and constitution of MRTP commission, which is the main executory body. The Commission can enquire into any unfair (sec. 36 B), restrictive [sec. 10 (a)] or monopolistic trade practice [sec. 10(b)], the proceedings before the commission is deemed to be judicial proceeding and it is deemed as a civil court under Code of Criminal Procedures [sec. 12 (2)]. The commission can order compensation for loss or damage suffered due to unfair, restrictive or monopolistic trade practice. [sec. 12 B]. The commission can review its own orders if there is a material change in the facts and circumstances of the case. If parties to agreement themselves modified the trade practice within a

reasonable specified time, the commission may allow this without resorting to issuing of an order. [sec. 37 (2)]. The commission has the powers of High Court and can punish a person for its contempt. [sec. 13 B] Enquiry into Monopolistic, Restrictive and Unfair Trade Practices

(a) The Commission may inquire into any restrictive or unfair trade practice-

(i) Upon receiving a complaint of facts which constitute such practice from any trade association or from any consumer or any registered consumer's association, whether such consumer is a member of that consumer's association or not or

(ii) Upon a reference made to it by central or state government.

(iii) Upon an application made to it by the Director General or

(iv) Upon its own knowledge or information.

(b) Any monopolistic trade practice,

(i) Upon a reference made to it by the Central Government or

(ii) Upon an application made to it by the Director General or

(iii) Upon its own knowledge or information.

It may be noted that in the case of Monopolistic trade practice the state government can not make reference; trade associations, consumer associations or a consumer also does not have the right to make a complaint while in case of RTP and UTPs a complaint can be made by these associations/
consumer and state government can make a reference.

Regulation of Restrictive Trade Practices (RTP)

Restrictive trade practice means a trade practice which has, or may have, the effect of preventing, distorting competition in any manner and in particular as given in sec. 2 (o) of the Act. The Supreme Court has held that "any agreement restrains and binds persons or place or prices, any such agreement would not be 'per se' bad. The question is whether the restraint is such as to regulate and thereby promotes competition or suppresses competition. It will be bad if it destroys competition. Hence (a) facts particular to business (b) condition before and after restraint and (c) probable effects of restraint have to be considered " This is 'rule of reason'. In this case the territorial restrictions imposed were not held to be restrictive as the restriction ensured equitable distribution of vehicles and efficient after sale service to consumers.

However, after amendment of 1984, Illustrations given in sec. 33(1) are deemed to be 'relating to restrictive trade practices' and must be registered, unless expressly authorised by or under any law for the time being in force or has approval of central government or if the government is a party to it. After scrutiny by MRTP commission if found against public policy, these will be prohibited. Every agreement falling within one or more

107. Mahindra and Mahindra Limited versus Union of India (1979) 49 CompCas 419 (1979) 2 SCC 529.

Both the cases have been quoted from V.S. Datey: Corporate and Economics Laws and Practice, 1997 edition P-243 and 244 respectively.

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categories as given in sec 33 (1) (a) to (i) are registerable.
(Refer Fig 4.1 for regulation of RTPs under MRTP.

**Action by Commission**

If any RTP is found to be prejudicial to public interest after the inquiry by commission it may by order/direct that:

(a) the practice shall be discontinued or shall not be repeated;
(b) the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such manner as may be specified in the order.

The commission may, instead of making any order Under this section, permit the party to any restrictive trade practice, if he so applies, to take such steps within the time specified in this behalf by the commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest, and, in any such case, if the commission is satisfied that the necessary steps have been taken within the time specified, it may decide not to make any order under this section in respect of that trade practice. (Refer Fig. 4.1.1 for regulation of RTP)

A Restrictive trade practice is deemed to be prejudicial to public interest unless the commission is satisfied of any one or more of the circumstances given in sec 38 (i) (a) to (k) and is further satisfied that the restriction is not unreasonable. Necessity of meeting the requirement of the Defence of India or maintaining supply of goods and services essential
Figure 4.1
REGULATION OF RESTRICTIVE TRADE PRACTICES
UNDER MRTP ACT, 1969.

MRTPC

upon

- Reference from Central/State Govt
- Application from DGIR
- On its own knowledge and Information
- Complaint from Regd. Consumer/Trade Association or Individual Consumer

May order

Preliminary investigation

In case of Application from DGIR

Enquiry final hearing

Temp injunction may be given on application

If found prejudicial to public interest. MRTPC may

- Allow making amends within specified time.
- Issues cease and desist order
- Declare agreement as void or
- Order that the agreement stands modified as directed
- Award Compensation on application and proof of loss and injury

The appeal against the order of MRTPC lies to Supreme Court
to the community or the restriction may be reasonably necessary having regard to the character of goods etc. are some of the special circumstances given u/s 38(1). The main consideration is whether the restriction ultimately benefits the public at large or not, central government may expressly authorise and approve any Trade Practice.

A few examples of Restrictive Trade Practices (Based on decided cases)\textsuperscript{108}

Restriction on buying / Selling

Chemist Association asking its members not to deal in goods of particular manufacturer was held to be a restrictive Trade Practice. [All Chemists and Druggists Association, in re - 1984 1 Comp. L] 281]

Tie-in Sales or full line forcing

Asking customer to enter into service contract while buying goods is a Restrictive Trade Practice [In re RP Electronics - RTPE 73/86 decided on 08.05.89]

Exclusive dealing agreement

Buyer asking manufacturer not to manufacture identical goods for any other buyer without consent of buyer was held to be a restrictive Trade Practice. [DGIR v. Studds Accessories (P) Ltd. RTPE 331/1988].

Collective price fixation and tendering

Trade Association asking their members not to sale below the rates announce by it, with a threat of expulsion in the event of non compliance is a Restrictive Trade Practice. [in Madras Jewellers and Diamond Merchants Association decided on 10.05.94-(1994) 14 CLA 394 (MRTPC) = (1994) 2 CTJ 198 (MRTPC)].

Resale Price Maintenance

Any stipulation that dealer should not sale below the stipulated price is RTP and void under section 39. [Re India Cements Ltd. - RTP Enquiry 48/1985]. It has been held that every price list issued must mention the ‘price lower than those mentioned in the list may be charged’. [Rayon and Woollen Mills Ltd. v MRTPC - (1993_ 10 CLA 203. (SC) = (1993) 78 Comp. Cas. 471 (SC)].

Regulation of Unfair Trade Practices (UTPs).

Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provisions of any services adopts any unfair method or unfair or deceptive practice including any of the practice given under sec. 36A (1) (i) to (x). Thus the definition is exhaustive and not limited to the practices given under sec . 36 A (i) to (x) only. The scope was enlarged through 1991 amendment . There is no need to prove loss or damage to an individual. Society for Civil Rights Vs Colgate Palmolive (India) Ltd. (1991) 72 comp. cas. 80 MRTPC. (Refer Fig. 4.2 for regulation of U.T.P under MRTP).
REGULATION OF UNFAIR TRADE PRACTICES UNDER MRTP ACT, 1969.

MRTPC upon

- Reference from Central/State Govt
- Application from DGIR
- On its own knowledge and information
- Complaint from Regd. Consumer/Trade Association or Individual Consumer

May order

Preliminary investigation

Enquiry final hearing

In case of Application from DGIR

If found prejudicial to public interest. MRTPC may

Temp injunction may be given on application

- Allow making amends within specified time.
- Issues cease and desist order
- Declare agreement as void or
- Order that the agreement stands modified as directed
- Award Compensation on application and proof of loss and injury
- Declare any statement, information or advertisement relating to UTP shall be disclosed or published as specified.

The appeal against the order of MRTPC lies to Supreme Court
Action by Commission

If after the inquiry by commission, an UTF is found to be prejudicial to public interest or interest of any consumer or consumers generally the commission may order/direct that:

(a) the practice shall be discontinued or shall not be repeated.

(b) any agreement relating to such unfair trade practice shall be void or shall stand modified in respect there of in such manner as may be specified in the order.

(c) any information, statement or advertisement relating to such UTF shall be disclosed, issued or published as the case may, in such manner as may be specified in the order.

The commission may however, allow any trade practice to continue after an application has been received by it and necessary steps to ensure that the trade practice is no longer prejudicial to public interest or to the interest of any consumer or consumers generally, have been taken to the satisfaction of the commission with in the specified time further, no order will be made if the trade practice has been specifically authorised by any law for the time being in force.

A few examples of Unfair Trade Practices (Based on decided cases)

Using the word “University” though it was unrecognised. The word university can be used only if it is established by a Central or State Government or a deemed University under section 3 of University Grants Commission Act. A self styled unrecognised University cannot grant degrees. (MRTPC in DGIR v.Vijay Tutorials, Darbhanga UTPE No. 147
Unsubstantiated claim Assuring very high interest (above 30%) without any surety of getting that return and without any material to substantiate claim by supporting evidence. [(Bharat Plantations Ltd. In re-(1996) 2 Comp LJ 376 (MRTPC)]

Wrong Showing of Certificate of Censor

Showing certificate of censor at the beginning of video cassette is a representation that the video cassette is an exact copy of the original. This is because as per rule 33 of Cinematograph (Certification) Rule, 1983, once a film is certified, any change in the same needs approval. However, the video cassette showed censor certificate, but actually, the video cassette had distortions and shortening of film by superimposing advertisements throughout the film and film was cut at many places to accommodate more advertisements- [Mehmood Pracha v. Video Master - (1995) 16 CLA 321 (MRTPC) = (1995) 83 Com. Cas. 90(MRTPC)]

Comparative Advertising

Issuing advertisement given comparison of various products does not offend the provisions of this section if the comparison is on basis of reliable data and vital unfavourable information about his own product is not suppressed. There is no objection in comparing one’s products vis a vis those of competitors, so long as there is no false and misleading statement [Usha International Ltd. in re-(1995) 3 CTJ 36 (MRTPC)]
Mis use of Trade Mark

Supply of goods under a leading brand name though actually the goods are manufactured by another small scale manufacturer is not considered a false representation (brand owner getting the goods manufactured from another unit and selling under his brand name is quite common all over the world.)

A few examples of recent equiries / notice of enquiries
(Based on Press-Reports)

Contest which tends to distort competition

A notice of enquiry (NoE) was issued to Mafatlal for indulging in UTP by organising a contest under the caption of ‘Mafatlal fabrics school uniform winners contest’ and floating of a prize scheme from Feb. 15, 1996 to June 30, 1996. Under the scheme, a participant was required to purchase minimum three metres of fabric of any of the types given in the advertisement and submit a completed form to the retailer or dealer. It was said the contest tended to determine the consumer purchases, thus distorting competition among various manufacturers.

Prizes after Increasing Price

The MRTPC issued a notice of enquiry to Tata Tea against organising a contest (Tata Tea) “Asli Taazgi ka Asli Mazaa”. According to the application, the contest offered 825 “fabulous” prizes worth Rs. 14 lakh, including 109 early bird prizes week after week. The company had simultaneously increased the price of its tea with a view to recover the value of prizes fully or partly from the consumers. If the prize is not recovered by increases in price, then
the contest 'per se' is not considered Unfair Trade Practice.

Incurring heavy advertising cost and passing it to consumers

MRTPC issued notices of enquiry to leading cosmetic companies like Lakme, Godrej soaps, Ponds and Colgate-Palmolive for indulging in monopolistic Trade Practices. According to the notice, these companies incurred huge expenditure on advertisement adding to the cost of production of their products which were passed on to the consumers by hiking prices. With the arrival of MNCs, the competition hotting up huge amounts are spent on advertising which is ultimately passed on to consumers.

Territorial Restrictions

MRTPC ordered an enquiry against Coca-Cola Company for imposing territorial and other restrictions on its bottlers. If the company can prove that it is not against Consumer interest and rather in their interest then the restriction can not be termed as Restrictive Trade Practice. In the Case of Telco Vs registrar of Restrictive Trade agreement (1977) 47 comp. cas. 520 (1977) 2 SCC 55, the Supreme Court held that any agreement 'per se' will not be bad. The question is whether the restraint is such as to regulate and thereby promote competition or suppresses competition.

MRTPC enquiry into functioning of Public Distribution System (PDS)-FCI

A 'suo moto' enquiry was instituted by MRTPC based on the information provided by report of Comptroller and Auditor General of
India. The investigation carried by the Director General of Investigation and Registration (DGI&R), a statutory body set up under the MRTP Act, revealed that FCI had overcharged from the consumers to the extent of Rs. 10.72 crore during the period 1990-91 to 1994-95 and asked the corporation to set aside the money accrued “through these unfair trade practice” for public welfare.

Hind Lever lands up in MRTPC dragnet

The MRTPC has ordered an enquiry against Hind Lever (HLL) for indulging in restrictive trade practices by accepting security deposit from stockists of its products but showing the deposit as advance there by avoiding paying interest on it. According to commission this amounted to RTP under sec. 2 (o) (ii) of MRTP Act, 1969.

Regulation of Monopolistic Trade Practice

Monopolistic Trade Practice (MTP) is defined under section 2 (1) of the Act. MTP is deemed to be against public interest. It is ‘per se’ bad. MTP followed by any person or undertaking is an offence (sec. 32.). However, concentration of economic power by itself is not unlawful unlike Sherman Act and Clayton Act of the United States where mergers 'per se' unlawful if the market share after the merger increases from the prescribed limit. Sec 7 of Clayton Act (1914) prohibits mergers, the effect of which may be substantially to lesson competition or to tend to create a monopoly. Sec. 2 of Sherman Act (1890) prohibits monopolies and
or conspiracies to monopolise. It applies to interest and foreign commerce. Under Indian law unless the concentration of economic power is prejudicial to public interest it is not unlawful.

The Regulation of Monopolistic Trade Practices under MRTP Act, 1969 is given at Fig. 4.3. These are not discussed in detail since Consumer as an individual can not complain and MRTPC can only initiate enquiry on reference from the Government. The final order can only be passed by the Government.

4.1.3 Critical Appraisal

- The commission is located at Delhi. The Act provides for 1 chairman and a maximum of 8 members. For a large country like India there is a need to have benches of the commission located at all the metros and at state capitals. The number of members should also be suitably increased.

- The decisions of the commission are not time bound. Most of the cases take too long a time to be decided. This is particularly so because the commission refers to Civil Procedure Code (CPC) and as such its enquiries are long drawn and time consuming.

- There is no provision for advocate on record. The

Figure 4.3
REGULATION OF MONOPOLISTIC TRADE PRACTICES UNDER MRTP ACT, 1969

MRTPC upon

- Reference from Central Govt.
- Application from DGIR
- On its own knowledge and information

May order

Preliminary investigation

In case of Application from DGIR

Enquiry final hearing

Temp injunction may be given on application

The MRTPC will submit its finding to Central Govt.

If found prejudicial to public interest, Central Govt. may

- May pass appropriate order as deemed fit.
- The order may be to prevent the owner of under taking or owners of class of under takings from continuing practice
- Compensation can be awarded by MRTPC on application and proof of loss and injury.

The appeal against the order of Central Govt. lies to Supreme Court
Many a times the decision of MRTPC are stayed by High Courts under their writ jurisdiction under Article 226. There is a need for consideration whether this writ jurisdiction should be done away with by suitable amendment to the constitution.

After the amendment of 1991 the power of the commission to look into the mergers before they take place is no more there. Severance of undertaking can only be ordered if the functioning of these is against public interest. While in the U.S.A. under Sherman Act and Clayton Act mergers are 'per se' unlawful if the combined market share exceeds the prescribed limits. This was the position in India too, before the amendment of 1991. It is felt that in case of mergers and acquisitions there is a need to effectively monitor the proposed mergers at the initial stage only and allow these only if they are found to be justified in the public interest, rather than allowing them and then waiting for them to use their combined power to influence the market forces, instituting enquiry and then recommending to government for their severance.

The MRTPC has no penal powers. These are vested with the courts. "Cease and desist" order is not good enough deterrent. The commission should be empowered to award heavy penalty.

It is recommended that there should be a separate monitoring cell under DGI&R to monitor the implementation of orders of
There is a lot of overlap between the jurisdiction of MRPTC and Consumer Protection Act; this over burdens MRTPC. It is therefore recommended that the subject matters which can be better dealt with by Consumer Courts should be kept out of the purview of MRTPC.

4.2 The Consumer Protection Act, 1986

4.2.1 Background and objectives.

In India where a large percentage of population is below poverty line, the plight of consumers who are exploited due to poor quality of goods and services and high price can be well imagined. There is no law in India to regulate the price except for certain essential drugs and commodities. Under these circumstances, control by government becomes very necessary. The litigation in India is time consuming and costly. It takes very long time for a case to be finally decided; this gives rise to the demand for better laws which provide speedy and inexpensive remedy. Our constitution has provided in Art. 46 that the state shall endeavour to promote the economic interest of the weaker sections of the society and protect them from all kinds of exploitation. This obviously includes consumer exploitation and protection. As we have seen there are a number of laws providing protection to consumers but the inordinate delays and the court/legal fees discourage the consumers from taking
recourse to litigation. The Consumer Protection Act of 1986 is thus a much needed remedy for protecting the Indian consumer.

The Consumer Protection Act 1986 is a very comprehensive and most progressive law in the field of consumer protection. It can be rightly called a milestone in consumer legislation. Both 'goods' and 'services' are covered under the Act. The main objective of the Act is to provide simple, speedy and inexpensive justice to consumers. To achieve this there are provisions in the Act for the establishment and constitution of consumer councils both at the central and state levels whose main objective is to promote and protect consumer rights.

Special Features

The Act applies to all type of goods and services unless specifically exempted by the Central Government. The Act covers all sectors i.e. private, public and cooperative. Inclusion of 'services' in the Act has come as a boon to consumer who hardly had any effective remedy against the government monopolies which provide various services like insurance, railways, water supply and health services etc. In a recent trend setting judgement the National Commission indicted Army stating that its functioning "is wholly inconsistent" with the public image that it was a "model of efficiency and perfection" and awarded 8 lakhs compensations to IAF officer for his wife's death in a case of
Another encouraging feature is that for seeking redressal, the consumer does not have to pay any court fee, or hire any advocate to plead. Necessary action will be taken if he just gives a written complaint to the District Forum/State Commission or National Commission as the case may be.

The National Commission, State Commission and District Forum are required to decide complaints as far as possible, within a period of three months from the date of notice received by the opposite party where complaint does not require analysis or testing of the commodities and within 5 months if it requires analysis or testing of the commodities. The National Commission, State Commission are required to decide the appeal as far as possible within 90 days from the first date of hearing.

The principle of 'Privity of contract' on which the law of sales of goods i.e. the Sales of Goods Act, 1930 is based, stands modified under the Consumer Protection Act, 1986. The Act thus protects the interest not only of the person who is the buyer but also protects the interest of the ultimate user provided such use is made with due permission of the person who bought the goods or hired the services for consideration.

Another note worthy point is that normally it is money which establishes 'consideration' under the Sales of Goods Act; the word used in the Consumer Protection Act is only 'consideration' without any definition of the word. Thus it is not limited to money only. The 'consideration' could have been either paid are partly paid are even promised to be paid, it does not effect the status of consumer.

The Act provides an additional remedy and the provisions of the Act are not in derogation of the provision of any other law for the time being in force.

The provisions of the Act are compensatory in nature

The Act envisages establishment of the central consumer protection council, at the centre and such councils at state level. The council will have Minister Incharge of the consumer affairs in the central government as its chairman and such no. of official and non official members as may be prescribed. The state government may establish by notification a council known as consumer protection council. The minister Incharge of consumer affairs in the state government shall be its chairman and such no. of members (official as well as non-official) as may be prescribed, the main functions of the Central / State Council will be to promote and protect Consumer Rights given u/s 6. However, it may be noted that these rights are not fundamental rights and hence not justiciable and further the two important rights which appear under the 8 rights recognised by IOCU do not figure u/s 6. These are 'right to healthy environment' and 'right to basic needs'.
4.2.2 Main provisions

The consumer has been defined in sec 2(1) (d) and includes

(i) any buyer of goods or hirer or any person who avails of any services for a consideration.

(ii) any user of goods with buyer's permission or beneficiary of such services when such services are availed of with the approval of the first mentioned person.

(iii) the consideration could have been paid or promised or partly paid and partly promised, or under any system of deferred payment.

(iv) but does not include a person who obtains such goods for resale or for any commercial purpose.

The commercial purpose does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment. Thus, there are two requirements which must be met by the original buyer.

i) The goods must be bought for private use and not for commercial purpose and

ii) It must involve consideration either paid, partly paid or even promised to be paid.

Defect means

Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be
maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;

**Deficiency**

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

**What constitute a complaint**

Complaint means any allegation in writing made by a complainant that:

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader;

(ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods with a view to obtaining any relief provided by or under this Act;

(v) goods which will be hazardous to life and safety when used,
are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring manner and effect of use of such goods.\textsuperscript{112}

\textit{Restrictive Trade Practice}

Restrictive trade practice means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be services as a condition precedent for buying, hiring or availing of any other goods or services. It may be appreciated that the definition of “Restrictive Trade Practice is very much narrow as compared to MRTP Act, 1969 and covers 'tie-in sales' only.

\textit{Unfair Trade Practice}

Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including the practices given in sec.2 (r) clause (1) to (5).\textsuperscript{113}

\textsuperscript{112}This sub-clause (V) was added through 1993 amendment. the goods need not be bought, as long as it can be made out that these will be hazardous to life and safety when used and are being sold in contravention to any law, like goods which are to have ISI mark compulsorily if sold without it, it should fall within the provisions of sub-clause (V).

\textsuperscript{113}The term Unfair Trade Practice is not exhaustive but inclusive on such UTPs which are not covered u/s2 (r) clause (1) to (5) can also be challenged. The requirement of proving loss/injury has also been omitted.
**Who is a complainant**

Only the following are considered as Complainants under the Act:

(i) a consumer or

(ii) any voluntary association registered under the Companies Act, 1956 or under any other law for the time being in force; or

(iii) the central government or any state government who or which makes complaint.

(iv) one or more consumers where there are numerous consumers having the same interest.

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**Procedure for filing complaint**

The complainant or his authorised agent can file the complaint in person or it can also be sent by post. There is no court fee for filing of complaint. The complaint can be made on a plane paper and should contain the following:

- name, description and address of complaint
- name, description and address of opposite party

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114. The concept of class action complaints or complaints of public importance came into being when that was amended in 1993 by inserting sub-clause (IV). Now any group of Consumers having the same interest could file complaints and seek redressal. The pecuniary limit in this case is decided after taking into account the claims of all Consumers who file the claims as a whole. A complaint can be filed by one consumer on behalf of others or a group complaint can be filed by any one but in such cases the permission of district forum/State commission or nation commission as applicable must be obtained by filing a separate application in this regard.
The facts relating to the complaint documents if any to support the allegations
- The relief sought.
- The complaint must be required by the complaint or his authorised agent.

The procedure given under the Act for filing the complaint is very simple, there is no requirement of filing the complaint on stamp paper and there is no court fee. Any aggrieved person/authorised agent can file the complaint. There is no requirement of having a lawyer.

Where to file the complaint

The Act provides for a three-tier redressal machinery consisting of Distt. Forum, State Commission and National Commission. Where the value of goods or services and the compensation if any, claimed does not exceed Rs. 5 lacs, the complaint shall be filed in the District Forum, within the local limits of whose jurisdiction the opposite party actually and voluntarily resides or carries on business or has a branch office or personally works for gain or where the cause of action wholly or in part arises. If the value of goods or services and the compensation if any, claimed exceeds Rs. 5 lacs, but is less than rupees 20 lacs, the complaint can be filed before the state commission notified by the state government are the U.T concerned. If the value of goods or services and the compensation if any, claimed exceeds Rs. 20 lacs, the complaint can be filed before the National Commission at New Delhi.\footnote{Refer section 11 of the CP Act for jurisdiction of district forum, section 17 for State commission and section 21 for National commission.}
PROCEDURE FOR HANDLING COMPLAINTS UNDER CONSUMER PROTECTION ACT 1986

Complaints regarding
• Defect/Deficiency in goods /service
• Unfair/Restrictive Trade Practice

may be filed within two years by
• Any Consumer
• Voluntary Consumer Association
• Central/State Govt.
• A few Consumers on behalf of many consumers

in appropriate forum/commission
Where value of goods/services & compensation claimed

- does not exceed 5 lakhs
  - District forum
  - Appeal against order

- is over 5 lakhs but not over 20 lakhs
  - State Commission
  - Appeal against original order

- over 20 lakhs
  - National Commission
  - Appeal against original order
  - Supreme Court

★ to remove the defects
★ to replace goods with new goods
★ to return the price of goods or change of services to complainant compensation for loss or injury suffered by consumer due to negligence of opposite party
★ to discontinue the unfair trade practice or the restrictive trade practice or not repeat them
★ not to offer the hazardous goods for sale
★ to withdraw hazardous goods from being offered to sale
★ to provide for adequate costs to parties.
★ fine upto Rs. 10,000 for false, frivolous and vexatious complaints
Relief given by Distt. Forum

For the purposes of this section, the District Forum shall have the same powers as are vested in civil court under code of civil procedure, 1908 while trying a suit in respect of summoning and enforcing the attendance, the discovery and production of any document, the reception of evidence on affidavits, the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source, issuing of any commission for examination of any witness, and any other matter which may be prescribed.

If satisfied the District Forum may issue an order to the opposite party directing him to do one or more of the following things namely-

(a) To remove the defect pointed out by the appropriate laboratory from goods in question.
(b) To replace the goods with new goods of similar description which shall be free from any defect.
(c) To return to the complaint the price, or, as the case may be, the charges paid by the complainant.\textsuperscript{116}
(d) To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered

\textsuperscript{116}In case the complainant is not the person who has paid the price/charges, like it is the case when a registered consumer association is the complainant the price/charges will be returned to the aggrieved persons through the party to the dispute i.e. the registered consumer association.
by the consumer due to the negligence of the opposite party.

(e) to remove the defects or deficiencies in the services in question.

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it.

(g) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it.

(h) to withdraw the hazardous goods from being offered for sale.\textsuperscript{117}

(i) to provide for adequate costs to parties.

Time bound decisions

The Act provides that the cases and the appeals must be decided as far as possible within three months in the case of normal cases and within 5 months from the date of notice received by the opposite party when the case involves analysis or testing of the commodities etc. The Act thus, provides for speedy remedy

Appeals

The decisions of district fora can be appealed against in appropriate state commission, the decision of State commission at National Commission and the decision of National Commission can only be appealed at Supreme Court within a period of thirty days from the date of the order in such form and manner as may be prescribed. Provided that the State

\textsuperscript{117} The limitation of the law is that such order can only be passed against the opposite party in the dispute. A general order applicable to all other traders who are offering hazardous goods for sale can not be passed.

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Commission, National Commission and the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period. The National Commission in its order in [Hindustan Paper Corporation Ltd. Vs Dhir Copy House and another] clarified that "within 30 days from the date of the order" in the Act should be construed as "date of knowledge of the order." Thus, it is clarified that the 30 days limit is to be taken from the date of the receipt of the order by the opposite party.

Enforcement of orders

Sec. 25 provides that every order by the consumer courts may be enforced by them in the same manner as if it was decree or order made by a court in a suit pending there in, further it shall, be lawful for the Distt. forum, the State Commission or the National Commission to send, in the event of its, inability to execute it, order to the court within the local limits of whole jurisdiction:-

(a) In the case of an order against a company the registered office is situated.

(b) In the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated and there upon the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.
Imprisonment and fine if order not complied with

Sec. 27 provides that where a trader or a person against whom a complaint is made are the complainant fail are omits to comply with any order made by any of the consumer courts, such trader or person or complainant shall be punish with impressment for a term which may not be less than one month but which may extent to three years or with fine which shall not be less than Rs. 2,000/- but which may extent to Rs. 10,000/- or both. However, the consumer court may, if it is satisfied that the circumstances of any case so require impose a sentence of imprisonment or fine, or both for a term less than one month and the amount lesser than Rs. 2,000/-. The penalty provided u/s 27 is besides adhering to the judgement or orders or direction of the consumer court.

4.2.3 Critical Appraisal

Consumer friendly legislation - needs further amendments

The Consumer Protection Act is a milestone in consumer legislation. The plethora of existing laws in fact does not help consumers much, as is desired. The complicated legal procedure, court fee, advocate’s fee and the inordinate delay in getting the relief were some of the reasons which made these laws ineffective. The Consumer Protection Act is a progressive step in this direction. The Act aims to provide simple, speedy and inexpensive remedy. Any consumer can file a complaint. If we look at the definition we find it is not only the purchaser of goods or services but, also the ultimate user who uses these with permission from the purchaser can seek redressal of his grievance. A complaint can be presented in person or
by an authorized agent, it can be sent by post on plain paper. There is no court fee and no requirement of hiring the services of an advocate. All goods unless specifically exempted fall within the purview of the Act. It also includes all sectors private, public and co-operative. The area covered is 'defect' in goods and 'deficiency' in service; these terms have a very wide coverage. Restrictive (Tie-in sales only) and Unfair Trade Practices are also covered. The complaints are to be decided within a time frame, thus the Act provides a speedy justice. However, there are a few anomalies/discrepancies which need to be sorted out and certain provisions also need to be improved upon.

Definition of consumer, complainant and complaint needs clarification.

Consumer is defined as any person who,-

i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods when such use is made with the approval of the buyer, but does not include a person who obtains such goods for resale or for any commercial purpose; or

ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services, when such services are availed of with the approval of the hirer.

Thus to be a consumer one must have bought the goods or
hired the services or one must be legitimate user with the permission of such a buyer.

The definition of complainant includes a 'consumer', a voluntary consumer association registered under the Companies Act 1956 or under any other law for the time being in force or the central or any state government, which makes a complaint; one or more consumers, where there are numerous consumers having the same interest can also make a joint or representative complaint with the permission of the forum/commission.

A 'complaint' means any allegation made in writing by a complainant that among others the goods bought by him or agreed to be bought by him suffer from one or more defects [sec 2 C (ii) ] . A closer and a combined look at these three definitions of 'consumers', 'complainant' and 'complaint' bring out discrepancy i.e. a complaint which means an allegation in witting can be made in respect of "goods agreed to be bought" but a person who has agreed to buy the goods is not covered under the definition of 'consumer' and unless he is a 'consumer' he cannot be a complainant and as such he himself cannot file a complaint. To fit in within the definition of consumer he must have bought the goods, the consideration could have been paid, partly paid are even promised to paid.

The definition of consumer could be modified to read consumer is a person who buys or agrees to buy......, hires or avails of or agrees to hire or avail of....... .
Consumer Dispute - Definition

Consumer dispute is defined under sec. 2 (e) as 'consumer dispute' means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. This means that a complaint becomes dispute only when the person against whom a complaint is made denies or disputes the allegation. However, a careful reading of sec. 13 (b) reveals that when the person against whom the allegation is made omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g). If a person against whom an allegation is made does not deny or omits or fails to take any action, as per the definition of consumer dispute no dispute has arisen. On the other hand according to sec. 13 (b) in such a situation the consumer dispute can be settled. How, when there is no dispute it can be settled? This creates an anomaly which needs to be set right. In my opinion the wordings in sec. 13 (b) should be changed from "— shall proceed to settle the consumer dispute —" to "shall proceed to settle the complaint or alternatively the definition of 'consumer dispute' needs to be changed in sec. 2 (e) by adding at the end "or omits or fails to take any action to represent his case within the time given by Distt. Forum, State Commission, or National Commission" The second alternative is recommended.

Concept of Free Service

All of us are availing of number of services of different kind which are indispensable for modern living. The word 'service' has been defined in the Act sec. 2 (o) very comprehensively. 'Service' means service
of any description which is made available to potential users and includes the
provision of facilities in connection with banking, financing, insurance, transport,
processing, supply of electrical or other energy, board or lodging or both,
housing construction, entertainment, amusement or the purveying a news or
other information, but does not include the rendering of any service free of
charge or under a contract of personal services.

The main problem of consumer is with services provided by
government or government controlled agencies like railways, telecommunications, insurance, and municipalities or government hospitals etc. In the case of municipal services where no direct payment is made for a particular service or where the service has been rendered free of charge like medical facilities in government hospitals, the CDRAs do not entertain the case on the plea that no consideration has been paid. The rationale of this exemption is not very clear, after all in reality nothing is provided free of cost; the people rendering service are being paid and the government is spending money which it has collected through taxes. Just because there is no direct payment across the counter, can the user of the service be made to suffer due to negligent/inefficient service. In a welfare state it is the primary duty of the government to ensure that the required services are provided at an affordable price and when ever these are provided free these ought to be of the same standard as are being provided with charge. The main purpose of the Act is to provide simple, speedy and inexpensive justice and if this is denied on the only ground that the service was provided free of charge will mean that we are disregarding the need of those very people for whom the service was primarily created. This way we will be perpetuating inefficiency, negligence, low standard and in
competence besides showing scant regard for the users of the free service which largely constitute of the poor section of our society and these are the people who need the protection the most. In addition, in the rural areas there are hardly any private medical facilities, and the rural people perforce have to use the government hospitals /dispensaries where the treatment is free. Since government hospitals providing free medical facilities are not covered under consumer protection Act., the rural people are also unable to seek remedy in CDRAs.

Municipal services as provided by local authorities /government are not covered under Consumer Protection Act as these do not fall within the definition of service as these are being without consideration in the eyes of the law. Municipal taxes are not considered as consideration for a particular service. Only those services where a separate metering unit is fitted and bills are prepared on the basis of individual consumption come under the Consumer Protection Act. This exclusion on the basis of being free operates harshly on those who do not have adequate capacity to pay for these and on every one else where there is no alternative available like in the case of 'municipal services'.

There has been a lot of debate at various forums on the above issue and there is a demand for having a 'citizens charter' for various department and utilities. It is now at its final stage. A study group has been formed to formulate provisions for such charter for various services. The demand for amending the definition of 'service' providing that consideration shall not be a condition precedent in case of (i) health and medical services (ii) availing of mandatory services provided by the state or local authorities is gaining
This amendment and the citizen charter once come through, the plight of consumers will improve for the better. Exemption of 'services' rendered under contract of personal service are excluded under sec 2 (1) (o) Similarly under MRTP a similar exclusion is provided [sec. 2 (r)] a similar exclusion is found under specific relief Act in connection with specific performance of such contracts. The National Commission has noted that the personal service stems from a master and servant relationship, which is totally different from a lawyer client relationship or other professional or technical relationship. The National Commission agreed with Kerala state commission's observation that while a medical officer's services may loosely be called personally, it will be incorrect infelicitous and crude to describe it as 'personal service'. A contract for personal service involves a master and servant relationship and in our opinion it will be totally wrong to call the service rendered by medical doctor to his patients as personal service coming with in the exempted category mentioned in sec. 2 (1) (o).

"The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do this work". [M.S. Cosmopolitan Hospitals and another Vs. Vasantha P. Nair CLT(1) 1993 P. 101]

Appointment of President and Members

The Distt. forum consists of a President and two other
members. All of them are to be appointed by the state government under sec. 10 of the Act. The appointment is made on the recommendation of the selection committee. The composition of selection committee as given u/s 10 indicates that both the members of the selection committee are officers in the state government except the chairman. Consultation with the chief justice of the High Court has not been prescribed for the appointment of members. The possibility of appointing favourites of the government, therefore can not be ruled out. Can such a constituted forum give unpalatable decision against the government run undertakings? It is recommended that the composition of the committee should be reviewed to make it more independent of government control and the requirement of consultation with chief justice of the High Court must be considered.

No provision for second Appeal

As per sec 15, any order passed by distt. forum can be appealed against in the state commission and the orders passed by state commission in appeal can not be appealed against in the National commission. (sec 19) Only order passed by state commission in its original jurisdiction can be appealed against in the National Commission. (sec 21 (a) (I)). Thus, there is no provision for second appeal. However, National Commission can call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any state commission when it appeals to the National Commission that such state commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of this jurisdiction illegally or with material irregularity. This causes a lot of hardship to consumers. There
are many state commissions their decisions are not uniform as the decisions/orders of one state commission are not binding on the other state commissions, thus there are inconsistencies in the orders of state commissions. Different state commissions have given different decisions, at times diametrically opposite on similar issues. National commission can only settle the law provided there is a provision of second appeal. This leads to reducing the central Act (CPA) to a state Act for each state with different inconsistent interpretation for the same section of Consumer Protection Act.

For example, the Andhara State Commission held in [Koka Rajendra Prashad Vs Union of India represented by Supt. of post offices, Nellore] that post offices liable for damages for negligence (misdelivery of letter) not with standing sec. 6 of post office Act, but on the other hand Punjab State Commission held in [Ms Manpreet Kaur Vs Government of India through chief Post Master General and others] that post office is not liable to damages for negligence (late delivery of letter) in view of sec. 6 of Post Office Act.

No Provision for over ruling earlier decision

There is no provision for second appeal, and further there is no provision for bench order like in High Courts where a bad decision of a single judge can be over ruled by a division bench and division bench's decision by full bench. Thus if a bad law is laid once, on the principal of precedents it sticks as it can’t be overruled/ reversed by the same commission under Consumer Protection Act. So, non availability of second
appeal coupled with non availability of bench decision allows a bad law to continue.

**No provision for Public Interest Litigation (PIL)**

The CPA does not provide relief to unascertained/unidentified consumer. The Act no doubt authorises joint complaints with permission and also allows representative complaints by voluntary consumer association vide clause (b) of sec. 12 which reads “A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with Distt. Forum by (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not. However, the Act does not allow Public Interest litigation. The consumers must be ascertained/identified. This is evident from the provision consumer to whom the goods are sold or delivered or delivered or service provided”. There is no relief for those consumers who are neither the complainant nor ascertained in joint or representative complaints. However, at a few times the consumer courts have given relief to unascertained consumers by giving directions in their order to the opposite party. In one such case the National Commission directed Madras Metropolitan Board to give suo moto rental rebate to all subscribers in their area whose telephones were not functional for 7 days and more during the period of strike.

**Complaints of Complex Nature**

The provisions of the Consumer Protection Act are in addition
to and not in derogation of the existing laws for the time being in force [sec. 3]. The consumer courts exercise jurisdiction in respect of those cases which are triable by other courts/tribunals by virtue of this provision. However, in cases which are requiring scrutiny of voluminous documentary evidence and taking down of elaborate oral evidence, the consumer courts may refer the complainant to his ordinary remedy and decline to exercise jurisdiction [Special Machines Vs. Punjab National Bank CPR I (1990) NC]. However, the national commission had to clarify the position further as most of the state commissions and distt. forums started declining to exercise jurisdiction subsequently after this decision. It was clarified that only such cases which needed detailed investigation and were so complicated that the consumer court would not be able to decide them expeditiously such a question relating to fraud etc. should only be referred for adjudication before ordinary civil courts [Prem Singh Vs. United India Insurance Co. Ltd. I (1992) CPJ 138 (NC)] This was presumably done to dissuade consumer courts from declining to excise of jurisdiction on flimsy grounds.

**Temporary Injunction**

There is no provision under the Act to grant stay or temp. injunction during the pendency of proceeding. This is needed to be provided in the Act in the larger public interest. No doubt the purpose of the Act is to protect individual interest only but at times it becomes absolutely necessary to protect public interest at large.

**Judicial Review**

The orders of CDRAs are subjected to writ jurisdiction of the
Supreme Court and High Courts under Art. 32 and 226 respectively. Under section 17(b) the State Commission and u/s 21(b) the National Commission can call for records and pass any appropriate order in any dispute pending in District Forum or State Commission or has been decided by these where, it appears that the District Forum/State Commission has exercised a jurisdiction not vested in it or has acted in the exercise of its jurisdiction illegally or with material irregularity or has failed to exercise jurisdiction vested in it. Special Leave Petition (SLP) under Art. 136 of Constitution of India and under Art. 227 High Courts are vested with the power of judicial review. Express barring of jurisdiction of civil courts can not bar the power of judicial review.

Order under section 27

Sec. 27 arm the CDRAs with penal powers. The power extends to awarding of imprisonment or fine or both for non compliance of its orders. These orders are neither appealable nor revisable under the provisions of the Act and as such these become final at the first instance and there is no judicial review at all despite the fact that an order u/s 27 is a serious one where it affects individual's liberty. It may be noted that sec. 55 of MRTP Act, 1969 provides for an appeal in the Supreme Court against the order of MRTP commission in determining the guilt for not complying with its orders u/s 13 (2) of the Act. A provision for an appeal to State Commission / National Commission / Supreme Court as applicable will be in fitness of things particularly in the case of order of imprisonment.

Provision of copy of test report

Although sec 13 (a) provides for raising objection to the
correctness of the report or method of testing adopted, to both the parties but, there is no mention of providing copy of the report to the complainant there is a need to provide a copy of the lab test report particularly when the complainant has paid for it.

Requirement of Quorum

Sec. 14 (2) lays down that every proceeding shall be conducted by the president of the Distt. Forum and at least one member thereof sitting together, and section 18 A (inserted after amendment of 1993 ) states that "when the office of the President of the Distt. Forum or of the State Commission as the case may be, is vacant or when any such President is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed such person who is qualified to be appointed as president of the Distt. Forum or as the case may be of the State Commission as the State government may appoint for the purpose." If we read the two sections together there is an ambiguity. As per sec. 14 (2), the presence of President is a must for conducting the preceding while sec. 18 A allows proceedings to go on with someone appointed to do so, of course with requisite qualifications. Although the sec. 29 A provides that no proceedings shall be invalid by reason only if the existence of any vacancy amongst its members or any defect in the constitution thereof. There is a need to amend section 14 (2) to read "every proceeding shall be conducted by the president or any person appointed to perform his duties."
### MRTP ACT

The genesis of the Act lies in Article 39(c) of the Constitution of India, 1950 which provides that the economic system does not result in concentration of economic power to the common detriment. The main purpose of the Act is to control Monopolistic, Restrictive and Unfair Trade Practices which are prejudicial to public interest.

The focus is on controlling the entire economic system i.e., industries trade or trade practices with a view to cleaning and disciplining the entire system. The law tries to go deep into the genesis of the offending trade practice and tries to eliminate it. The Act is primarily meant to correct the entire system and not protect an individual consumer, any redressal to an individual consumer will be incidental. The only provision under the Act (sec. 12B) which provides for compensation, is offering direct relief to an individual.

The Act is in addition to and not in derogation of any other law in force. However, the principle 'special prevails over general' is applicable.

Definition of 'goods' is wider than in sales of goods Act, 1930 and includes products manufactured, processed or mined in India, shares and stocks including issues of shares before allotment and imported goods supplied distributor or controlled in India [sec. 2(7) of sales of goods Act]. Adventures are not included. Education is considered trade while issuing of shares by companies is held to be not 'trade'.

### CONSUMER PROTECTION ACT

The principle of 'caveat emptor' is no more applicable since there has been technological advancement and proliferation of goods and services. The consumer is not knowledgeable and in a position to understand and can be easily misled and exploited. He needs to be protected. In India particularly this protection is needed the most as mostly consumers are poor, uneducated and unorganised.

Under Article- of Contribution of India, 1950, the state is supposed to protect the weaker section of society against any exploitation. Consumer Protection is one such step to protect the poor consumer against the exploitation by business and industry. The United Nations adopted guidelines for protection of consumers in 1985.

The main aim of consumer protection Act is to provide quick, cheap and inexpensive justice. The Act is thus compensatory in nature and its main focus is individual consumer.

The provision for the Act are in addition to and not in derogation of any other law in force. However, the principle the special prevails over general is applicable.

The definitions of goods is as given under Sales of Goods Act, 1930.
<table>
<thead>
<tr>
<th>The definition of service covers variety of services [sec. 2(r)] but does not include the rendering of any service free of charge or under a contract of personal service.</th>
<th>The definition of service is also the same as in MRTP Act, 1969.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where ever the charges are levied the service provided even by Govt. falls under definition of 'service'. Chit fund and dealings in real estate is deemed to have been considered as service.</td>
<td>The same principle applies.</td>
</tr>
<tr>
<td>The definition of Trade Practice is quite wide and covers many practices.</td>
<td>Only 'restrictive' and 'unfair' Trade Practices and 'Trader' has been defined in the Act. The Act does not defined Trade and Trade Practices as such.</td>
</tr>
<tr>
<td>The definition of Unfair Trade Practice (UTP) u/s 36A (1) [(i) to (x)] is only illustrative. This means that the other trade practices not specifically included may also be challenged. No requirement of proving loss or injury in case of unfair trade practice.</td>
<td>In CPA too, the definition is illustrative. Any other practice not covered u/s 2(r) (1) to (5) can be challenged.</td>
</tr>
<tr>
<td>A restrictive trade practice is defined as any trade practice which has or may have, the effect of preventing, distorting or restricting competition in any manner. Its scope is very wide.</td>
<td>Here the definition is very much restricted and covers only 'tie up' sales.</td>
</tr>
<tr>
<td>Monopolistic trade practice is defined under the Act u/s. 2(i) and is deemed to be against public interest. It is 'per se' bad.</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>The Monopolistic, Restrictive and Unfair Trade Practices are controlled by MRTP commission. The commission is a quasi-judicial body but does not have any penal powers. The commission have powers of civil courts for purpose of enquiry under the Act. These include summoning and examining witness on oath discovery</td>
<td>The Consumer Protection Act provides for a three tier system of adjudication. This comprises of District Forum, State Commission and National Commission. This is also a quasi-judicial body and has limited penal powers. It has powers of civil courts for deciding consumer complaints.</td>
</tr>
</tbody>
</table>
and production of any documents, receiving evidence on affidavits calling public records, issuing commission for examination witnesses and appliances of parties [sec. 12(1)].

There is only one commission located at New Delhi. There is a provision for commission benches.

The commission can pass 'Temp injunction' u/s 12A.

The commission can award compensation on application from the aggrieved party in case loss/injury can be proved.

The commission can pass 'cease and desist' order.

The commission can allow parties to make amends i.e., if the parties to agree to modify their trade practice, the commission may, allow them to do so within a reasonable specified time. The order may not be issued in this case.

In respect of Restrictive and Unfair Trade Practices the final orders can be passed by commission after enquiry. However, in case of Monopolistic Trade Practices the commission can enquire into but the final orders can only be passed by the Govt.

No time bound decisions.

No requirement of court fee or presence of a lawyer.

Every district is having atleast one district forum and there is a state commission in every state. The National Commission is located at New Delhi. District forum, State Commission and National Commission cannot review their own decisions.

There is no power with Consumer Disputes Redressal Agencies (CDRAs) for issuing 'Temp injunction' Compensation can be awarded.

Yes, 'cease and desist' order can be passed.

No, such power exists since the Act is compensatory in nature and seeks to protect and individual consumer.

The decision can be given depending upon the pecuniary limit and the jurisdiction of the forum/commission.

The decision are time bound.

No requirement of court fee or presence of a lawyer.
The appeal against the orders of MRTPC and government lies in supreme court u/s 55.

The commission can review its own orders if there is material change on the facts and circumstances of the case.

Appeal against the decision of district forum lies with the State Commission and against the decision of State Commission with National Commission and against the decision of national commission in the supreme court.

The CDRAs have no such power.