Consumer protection is one of the important tools of economic welfare of human beings. It is necessary to ensure that every buyer of goods and service receives full worth of his money. He should not be defrauded or cheated. With the rapid increase of urban population and expansion of middle class households in India the necessity of consumer protection has further increased. Now people are buying more consumer goods than before. If a person gets a defective television set or a refrigerator, he loses considerable amount of money. Every consumer has following rights:

(i) Right to safety;  
(ii) Right to be informed;  
(iii) Right to choose; and  
(iv) Right to be heard.

A study of consumer protection movement in various countries reveals that consumer movement got momentum with the economic and industrial growth of the country. Consumerism in identifiable form started only in the United States. Legislations aimed at protection of consumers were enacted as early as in the first decade of the present century. In the 1930 main focus of consumer groups was directed towards increasing the supply of information to consumers. Federal Trade Commission Act is the principal legislation in the field of consumer protection. In 1973 powers of Federal Trade Commission were enlarged.

In United Kingdom, the origin of all laws aimed at consumer protection can be traced to the blessings that common law conferred on the cartels between the First and Second World Wars. In England the legislation directly concerning consumer protection is 'The Fair Trading Act, 1973'. In addition, Government has enacted various other
statutes for protection of consumers. Local government is the enforcing agency of these laws. There are also government sponsored bodies for consumer protection. The National Consumer Council is a non-statutory independent body established in 1975 for this purpose. Voluntary organisations are also active in England to safeguard the cause of consumers.

In Canada, serious effort for consumer protection was made only in 1969, when Combines Investigation Act was passed. In 1974 and 1975 some provinces passed comprehensive enactments to check unfair trade practices by industry and business. In Japan, before World War II, there was no policy to control restrictive or unfair business practices. In 1947, an Act concerning prohibition of private monopoly and maintenance of fair trade was enacted. In 1977 an amendment to the Antimonopoly Act of 1947 was passed to strengthen the provisions against anticompetitive practices. In Australia, consumer protection is markedly American in its roots. Various statutes have been passed by Parliament and State legislatures. Australian parliament passed 'The Restrictive Trade Practices Act' in 1974. Misleading advertisements and other deceptive practices have been declared offence and there are provisions of imposing fines in the laws.

In Republic of Korea consumer protection is regulated through 'Monopoly Regulation and Fair Trade Law'. The law provides for establishment of a Fair Trade Commissions. The law also provides for liability for damages and award of compensation to any person injured by the acts of an entrepreneur in violations of the provisions of the law.

New Zealand is perhaps the country where consumer movement has made a very strong base. In 1959 a Consumers' Council was established. Then in 1966 a Consumers' Institute
was added to the Council. Institute's principal aim is to educate the public of the relative advantages and disadvantages of the different available brands or models of products. Institute also publishes useful literature. Latin American Countries have also moved to the direction of consumer protection in line with United States. Producers are made liable when harm to consumers can be shown.

In India, Consumer Movement is at its infancy stage. In the absence of an effective forum to fight the evil and in the absence of a powerful organisation to resort to mass agitation the consumer continues to be the helpless victim. The policy of the State and Central Governments is not oriented towards securing at least consumer goods at a reasonable price. Today it is the sellers' market for consumer goods and not the buyers' market. Malpractices of adulteration are rampant. Those who indulge in the practice of adulteration are able to offer the goods at a lower price.

Ignorance of Consumers, lack of effective consumer organisations are primarily the main causes for the situation today. Mass education of the consumer is the necessary first step and that can be undertaken only by organisations which can influence and shape public opinion. In a developing society like ours with the bulk of its people illiterate and still suffering from abject poverty, the battle for consumer protection has to be fought at different fronts and simultaneously by a variety of agencies.

History of legislations directed towards consumer protection would show that over the years several enactments have been brought on the statute book which seek to protect consumers. Even before independence there were certain laws which sought indirectly to protect consumers. Under the law of Torts, a manufacturer owes a duty to the ultimate
consumer to take reasonable care. Indian Contract Act, 1872 contains certain provisions which safeguard interests of persons who enter into a contract. For example, Act provides that when a person has been induced to enter into a contract by misrepresentation, he may rescind the contract. Similarly, Indian Sales of Goods Act, 1930 contains certain provisions which protect consumers' interest. Some of the examples are buyers' right to examine the goods, buyer not liable to accept the goods of wrong quality, buyer not bound to accept delivery in instalments, existence of certain implied terms and conditions although not spelled out clearly in the agreement.

To regulate market practices of agricultural products 'The Agricultural Produce (Grading & Marketing) Act was passed in 1937. The Act provides for grading and standardisation of agricultural commodities, regulation of markets and market practices, market research and surveys.

After independence the stray provisions of consumer protection in various statutes do not have any real impact. Therefore, while drafting Constitution some thought was given to protect consumers. One of the goals of the Constitution epitomised in the preamble is doing economic justice to all the people. Further Article 39 proclaim that ownership and control of material resources of the community are so distributed as best to subserve the common good. It further enjoins a duty on the State to prevent concentration or wealth to the common detriment.

Indian Standard Institution (ISI), now known as Bureau of Indian Standards (BIS), was incorporated in 1947. Bureau Safeguards consumers' interest through various measures such as formulation of standards, certification and quality assurances, guarantee for the quality. A Consumer Affairs Department has been set in (BIS) to create quality
consciousness among the common consumers with the ultimate aim of providing consumer protection. In order to check malpractice of food adulteration, in 1954, 'The Prevention of Food Adulteration Act' was passed. The Act contains several provisions which watch the interest of consumers such as establishment of Central Food Laboratory to which food samples can be referred, prohibition of import, manufacture or sale of adulterated food. The Act was further amended in 1976. The criminal liability has been extended to all those who manufacture articles for sale or distribution or engage themselves in the process incidental to the manufacture of an article of food to be used for the purpose of adulteration. The Act has been further amended in 1986 giving due recognition to consumer organisations for representing on behalf of consumers.

The most significant of the laws that enables the government to deal effectively with trading activities that are adverse to the consumer is the Essential Commodities Act, 1955. The ECA initially dealt with two classes of essential commodities - basic, non-perishable commodities and daily consumption perishable commodities. The powers conferred on the Central Government under the Act are of a general and particular nature. The Standards of Weights and Measures Act, 1956 was enacted to enforce a uniform system of weights and measures throughout the country. The Act lays down standards not only for mass and length, but also for time, temperature, electric current and luminous intensity. The legislation regarding weights and measures has been amended in 1976. Further, to provide for the enforcement of the standards of weights and measures 'The Standards of Weights and Measures (Enforcement) Act, 1985' has been enacted. The Act has been further amended in 1986 authorising a recognised consumer organisation to file a complaint before the Court.
Trade and Merchandise Marks Act, 1958 functions as an assurance to the customer that all goods bearing that 'trade mark' will always be of the same high quality that the customer expects of goods bearing that trade mark. Under the 'Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980', the Central Government, State Government and specified officials of the Government have been empowered to order detention of a person who is found to be acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community.

MRTP Act 1969 was enacted initially to restrict monopolistic and restrictive trade practices. But provisions of this Act were found inadequate to safeguard the interest of consumers. Hence comprehensive provisions restricting 'unfair trade practices' were incorporated in 1984. Now, several provisions regarding monopolistic trade practices have been deleted in 1991. This has been done to facilitate implementation of new liberal industrial policy and paving the way for entry of multinationals into India.

Consumer Protection Act, 1986 was another landmark in the legislative history of India to protect consumer interest. The scope of this legislation is very wide. Further, redressal machinery has also been envisaged under the Act at district level. Upto 18th December, 1991, 351 district forums and 27 state commissions had started functioning.

Voluntary Consumer Associations play an important role in consumer protection. The general aim of a consumer organisation is to serve and advance the interests of consumers. Further, effectiveness of statutory provisions aimed at consumer protection would be greatly diminished if the consumers are not aware of their rights and remedies. Legislative recognition has been provided by various
statutes. A voluntary consumer organisation can seek recognition under MRTP Act. Such recognised consumer organisation may represent any consumer, whether its member or not, for seeking redressal under MRTP Act and other legislations. A recognised consumer organisation may file complaint before district, State or National Consumer Forum under Consumer Protection Act, 1986.

Before introduction of chapter on unfair trade practices in MRTP Act in 1984, Consumer Associations protected consumer interest by filling writ petition in various High Courts. Consumer Education and Research Society, Ahmedabad has done a commendable jobs in this direction.

Trade and industry may also play an important role in protecting consumer interest. Self regulatory measures may be adopted by business houses in this direction. This may be done by ensuring regular supply of goods and services maintaining good industrial relations and providing quick and efficient customer service. Chambers of Commerce and Industry have started some actions in this direction. Some of the developments are - (i) establishment of consumer-business forum comprising the representatives of consumers and business, (ii) Consumer grievance cells, (iii) Consumer Affairs Cell. It shall be in the interest of business itself to redress consumers' complaints and grievances at the earliest.

MRTP Act 1969 regulates three types of trade practices— (i) Monopolistic Trade Practices, (ii) Restrictive Trade Practices, and (iii) Unfair Trade Practices. Various provisions of Monopolistic Trade Practices have been deleted by MRTP Act by restricting RTP and UTP. The definition of RTP under MRTP Act has two limbs. According to first limb, a RTP means a trade practice which has or may have the effect of preventing, restricting or distorting competition in any manner. The second limb covers two particular
trade practices - (i) any trade practice which tends to obstruct the flow of capital or resources into the stream of production, and (ii) any trade practice which tends to bring about manipulation of prices or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner so as to impose on the consumers unjustified costs or restrictions. MRTP Act has given a comprehensive definition of Unfair Trade Practice (UTP). As per the definition certain specific activities have been treated at UTP. These are - (i) Misleading advertisements and false representation, (ii) Bargain Sale, Bait and Switch Selling, (iii) Offering gifts or prizes with the intention of not providing them and conducting promotional contests, (iv) supplying goods not conforming to safety standards, and (v) Hoarding and destruction of goods.

In India, being a developing country, consumers need more protection than those in developed country. During this study this was found that various organisations indulge in unfair trade practices to dupe the consumers. Misleading advertisements and false representations were found having been committed by - (i) Educational Institutions, by using the word 'University', misrepresenting that they are recognised by Government, by falsely claiming that they are affiliated to a foreign university, (iii) False claims for miraculous cures, and treatment of disorders, baldness, weight reduction, cure for infertility, lucky stones to cure and dupe the consumers, (iii) False claims with regard to Foreign Collaboration/Foreign Brand names, (iv) Baseless claims in prospectus inviting subscriptions to shares and debentures, and (v) misleading guarantees and poor after sales service.

Second category of unfair trade practice which was found prevalent was with respect to Bargain Sales. Consumers
lured by falsely claiming discount rates and quality of goods. Third category of unfair trade practices was found with respect to unfair gift schemes, contests, lottery and games of chance. In several cases prices of the goods were increased before announcing scheme. While examining cases filed before it MRTP Commission found several contests unfair such as 'Made for each other contest of ITC', Bata bubblegummers contest, Trigard tooth brush contest, Pan Parac contest, Avon Cycles contest, Meco Murphy prize contest, Man of the Year contest of India Book House etc. Fourth category of UTP i.e. violation of prescribed standards was found with respect to non-compliance with safety standards, non-compliance of packaging rules and non-compliance of advertisement standards. The last category of UTP has not been detected so far in practice in India. This may be due to the reason that these practices are of secret nature and character and difficult to be detected.

Various categories of RTP's have been covered under MRTP Act. There are fourteen categories of such practices, which have been treated restrictive in nature. These are -

(i) **Refusal to deal** - this includes - (A) Collective agreements in the nature of a cartel among sellers not to sell goods to a particular person or class of persons and amongst the buyers not to purchase goods from a particular person. (B) Bilateral agreements between Seller/manufacturer and the buyer that the latter will sell the goods only to a particular person or class of persons and not to others. (C) Any agreement between the manufacturer and the supplier of the raw material that the former shall purchase raw material only from the latter and not from any other supplier.

(ii) **Tie up Sales and Full line forcing** i.e., forcing consumers to take one or more other product or
services. This affects buyers' independent judgement and supresses competition.

(iii) **Exclusive Dealing** is an arrangement whereby a manufacturer or supplier requires his dealers to deal exclusively in his products and not in the products of his competitions. An exclusive dealership arrangement may not be objectionable if it does not prevent or restrict competition.

(iv) **Concert in prices** and terms and conditions of purchase and sale. This includes two activities, (A) an arrangement between two or more persons to tender for the supply or purchase of goods or services at prices or on terms agreed or arranged between, (B) as to the prices which any of them bids at an auction sale of goods. The object of these arrangements is to protect suppliers against the powerful position enjoyed by the buyers.

(v) **Discriminatory Dealings** - The discrimination may be made by charging different prices from different buyers or by granting discriminatory discount, allowance or rebate to different buyers.

(vi) **Resale Price Maintenance** - The arrangement of resale price maintenance may be contractual or may consist in a policy of withholding supplies of goods from dealers who do not maintain the specified prices. This practice kills the price competition. During this study it was found that this RTP has been adopted by means of, (A) joint advertisement by the dealers of a product for sale on uniform terms, (B) circulation of price lists without specifying minimum and maximum prices, (C) an agreement with dealers that they shall not sell at a price exceeding recommended price after adding thereto local taxes, octroi and other levies if any. In some cases fixing of minimum prices may be justified considering the nature of the goods or the industry producing such goods. MRTP
Commission can grant exemption if it is satisfied that harmful effects would result if such exemption is not given.

(vii) Territorial Restriction/Restriction or withholding of output or supply - Manufacturers or suppliers may agree among themselves to eliminate competition by limiting, restricting or withholding the output or supply of any goods or the provisions of any services. One way is to fix and allot to the members percentage quotas of an annual turnover or total production. The practice of territorial restriction is normally adopted in conjunction with exclusive dealing. While examining various clauses of agreement by MRTP Commission this category of RTP was found in several cases.

(viii) Controlling Manufacturing Process - Agreements to restrict the employment of any method, machinery or process in the manufacture of goods fall under this category. During the course of this study a typical case came to light with regard to manufacture of footwears where an agreement between small scale manufacturer and a leading shoe company reserved the right with the company for selection of moulds, prohibited manufacturer from purchasing raw materials from parties other than approved by the company.

(ix) Boycott - This may be in the form of an agreement for the exclusion from any trade association of any person carrying or intending to carry on in good faith the trade in relation to which the trade association is formed. Such RTPs were found by MRTP Commission by LPG Distributors' Association.

(x) Agreements having the effect of eliminating competition - The practice of predatory pricing involves price cutting with the intention of eliminating competition by driving out the competitors of the market. Generally, practice is indulged by a dominant or
financially strong undertaking. But whenever products are sold at rates lower than the market rates to government, they are normally treated to be in public interest. Any person complaining of 'predatory pricing' has to prove that the competitor is trying to perpetuate his dominance and that he himself had to reduce his prices.

(x) **Restriction on Class/Number of Supplies from whom goods may be bought** - This clause was introduced in MRTP Act in 1984 through amendment. The idea is to see that restriction on the class or number of wholesellers, producers or suppliers does not injure competition in any manner.

(xii) **Absence from bids in an auction** - If intending bidders in an auction come to any agreement in regard to the bids in an auction, it works to the detriment of not only auctioneer but also to competition among the bidders.

(xiii) **Other notified agreements** - In addition to the agreements enumerated above, any other trade practice may be notified by government being in the nature of restricting trade practice. The object of this provision is to give government enabling powers to notify any other practice as RTP in future, in the light of the experience gained.

(xiv) **Residuary Agreements** - Section 33(i)(I) deems every agreement which is intended to enforce the carrying out of any such agreement mentioned in sections 33(1)(a) to 33(1)(k) to be an agreement relating to RTP. This is a logical provision in the MRTP Act.

MRTP Act requires that all agreements in the nature of RTPs should be registered with the Director General and Investigation. But Act provides that agreement is not registrable if it fulfills following conditions:
(i) If agreement is expressly authorised by or under any law for the time being in force; or
(ii) If agreement has the approval of the Central Govt.; or
(iii) If a government is a party to such agreement.

MRTP Act further provides that failure to register any registrable agreement entails punishment with fine which may extend upto Rs. 5,000.00 and where the offence of non-registration is a continuing one, with further fine which may extend upto Rs. 500.00 per day till the agreement is registered. The purpose of deeming these agreements to be restrictive is to shift the onus in an enquiry on to the person complained against, of proving the non-restrictive character of the agreement by resorting to specific 'gateways' provided in the Act. One of the gateways which may be noted is that restriction does not directly or indirectly restrict or discourage competition at the market. It would all depend upon facts and circumstances. Hence this gateway requires to be explored fully while defending any trade practice before the MRTP Commission in any enquiry.

MRTP Commission is empowered to enquire into any restrictive trade practice. Such enquiry may be conducted on the complaints of any trade association or consumer association on reference by the Central Government, on the application of Director General or upon its own knowledge and information. If Commission after the enquiry is of the opinion that the RTP is prejudicial to public interest, it may pass 'cease and desist' order. Further, if parties agree, pre-enquiry settlement may be made. Commission is empowered to authorise the D.G. or any officer of the Commission to make an investigation to find out whether its orders have been or being complied with. In case of non-compliance of orders, imprisonment and fines may be imposed. On the whole MRTPC is doing a good job
by way of providing redressal against many consumer grievances. A few years ago it was a big victory for the Commission when it forced a scooter manufacturing company to refund booking advances. There has been manifold increase in cases processed during the year. Therefore, it is necessary that commission should either open up additional branches or increase the size of its working staff.

Consumer Protection Act, 1986 has brought new dawn of hope for the consumers. The Act has provided for comprehensive redressal machinery at National, State and district levels. District consumer forum can consider the cases where the value of goods or services and the compensation, if any, claimed is less than Rs. One lac. The complaint can be filed by the consumer himself or a recognised Consumer Association. Act also provides establishment of State Consumer Disputes Redressal Commissions. State Commission may consider the case where value of the goods exceeds Rs. One lac but does not exceed Rs. Ten lacs. Further, appeals against the orders of district forum may be filed before the State Commission. The highest authority to settle consumer disputes under the Act is an independent body—the National Commission. This may consider the cases when value of goods or services exceed Rs. Ten lacs. Further, appeal against the order of State Commission may be filed before National Commission.

A perusal of the decisions given by National and State level Commissions and District Forums shows that very effective work has been done by these organisations. In a typical case National Commission was so much concerned with the medical negligence that legalistic angle was forsaken and a suggestive judgement was given to award compensation to the family of the patient. It appears that all States have not recognised the importance of consumer
grievance redressal and Supreme Court had to intervene and give directions that every district should have consumer forum within two months. Even this order of Supreme Court was not complied with and on 22nd October, 1991, Supreme Court had to issue contempt notices to several state governments. This indicates that all State Governments are not serious and have not fully appreciated the necessity of providing relief to consumers.

SUGGESTIONS

From the present study, the following points emerge for simplification and strengthening the law and procedure of consumer protection:

The government has been working towards protecting the interests of citizens and has introduced various legislations for this purpose. The Monopolies and Restrictive Trade Practices Act, 1969, was one step in this direction. The MRTP Act as originally enacted has two principal objectives: to curb monopolistic and restrictive trade practices. To this was added another chapter in August 1984, to prevent unfair trade practices. The Act has been further amended in 1991.

Whereas the provisions regarding monopolistic and restrictive trade practices touch only a small section of the people, those relating to unfair trade practices concern the whole society.

This sudden change has resulted in new problems which the MRTP Act is not suited to handle. The law has to be amended in order to meet the challenge of this new situation. A new system has to be evolved to provide principles and to lay down norms which would adequately deal with the problems that arise in a highly industrialised economy such as ours.
(1) To start with, it is important that some of the definitions under the MRTP Act are revised and amended. The words "services" and "goods" are the pivot around which the jurisdiction of the Commission revolves. It is, therefore, necessary that the definitions of these be reexamined and rationalised. The definition of the word "services" at present includes the provision of banking, financing, insurance, transport, processing, information, facilities etc. It is debatable whether in the existing circumstances the MRTP Commission can authoritatively decide cases relating to immovable properties where builders offering services like providing flats, plots etc. are engaged. It is common knowledge that there are unethical trade practices being indulged in by some builders and persons engaged in real estate activities. Therefore, the definition of services ought to be enlarged to include the services provided by builders.*

(2) With a view to avoid restrictive trade practices prejudicial to public interest, Section 33(1) provides for the types of agreements, containing RTPs, to be registered with the Director General, Investigation and Registration. At present, there is no effective provision to deal with persons who fail to get such agreements registered. Under the Act, severe penalty clause must be provided against organisations which fail to get such agreements registered.

(3) The power to award compensation is conferred under section 12-B of the Act. However, the provisions relating to this suffer from many lacunae. For example, the MRTPC does not have the power to grant compensation on its own. Therefore, suo moto powers ought to be provided to the Commission to grant compensation under this section. The language of Section 12-B ought to be suitably amended to make it a self-contained section

* As per MRTP (Amendment) Act, 1991, dealing in Real Estate has been included in the definition of 'Services'.

which should enable the Commission to try cases of unfair and restrictive trade practices independent of the notice of enquiry which might have been separately issued under the Act. To illustrate - if a notice of enquiry has been issued in a case and an application for compensation has also been moved by a consumer, the disposal of the application for compensation should not be postponed till the original enquiry is completed, as is the practice at present.

(4) These days, the dockets of courts are so congested that early hearing of no case is possible. Therefore, the securing of an interim order from the court has become very important. It is in this connection that Section 12-A, which has been inserted with effect from August 1984, has to be welcomed. It gives the Commission the powers to immediately grant relief to consumers by restraining unfair trade practices as well as restrictive trade practices pending the decision of an enquiry before it. However, the high expectation raised by the incorporation of this definition have not been exactly fulfilled because there is no statutory remedy available under the MRTP Act against an order under Section 12-A. No appeal lies to Supreme Court against such order. A statutory remedy to appeal against an order passed under Section 12-A ought to be made available under the Act.

(5) It is also imperative that the MRTPC be made a court of records (with power to punish for contempt of order). In the absence of such powers, it has become difficult to implement the orders passed by the Commission. It is obvious that if the orders passed by the Commission are not implemented, the whole purpose of bringing to a culprit to book is lost. Thus, the Commission should have the powers of a court.
(6) The final orders of the Commission ought to be passed within a time-bound programme if the Act is to serve any purpose. At present, enquiries instituted under the Commission go on for one to three years. Earlier, it was expected that MRTPC would give quick and effective relief. Therefore, the Act should provide for a maximum period during which enquiry must be completed.

(7) It is also necessary to introduce a new provision under the Act to enable traders to seek advance adjudication on whether or not a trade practice falls under the definition of an unfair or restrictive trade practice. Any person, on his own volition, should be able to apply and seek clearance from the Commission with regard to any trade practice. This will reduce litigation to a considerable extent and ensure protection of both consumers' and traders' interests. Such provisions already exist under other enactments; for example, under the Sales Tax Act of almost all States, a trader can apply to the department and seek adjudication in advance on a disputed tax matter.

(8) With the enactment of the Consumer Protection Act, there is an overlapping of jurisdiction. It is time to clearly identify the areas which come under the Consumer Protection Act and those which come under the MRTP Act. Availability of multiple forums has already created confusion in the minds of the public.

(9) There is a great controversy regarding the scope and extent of applications of Section 4 of the Act. Which does not debar the application of other laws. The Section says that the provisions of the MRTP Act shall be in addition to and not in derogation of any other law in force. What does this provision mean? Take the case where a consumer has gone to National Consumer Disputes Redressal Commission and obtained some relief. Does it mean that he can come again and take recourse
to the provisions of MRTP Act to claim further damages?
Furthermore, what happens if he files a subsequent suit in a civil court? Or for that matter, what would be the position if a person files a civil suit first, gets some compensation, and again applies to the MRTP Commission for further compensation?

(10) With regard to promotion of sale, there should be no need to prove that practice results in promotion of sale. This should not be an essential ingredient for holding a practice as unfair.

(11) Actual loss or injury also should not need to be proved.

(12) It should issue guidelines about UTPs, and educate traders in holding bargain sales, or organising promotional contests/schemes in conformity with legal requirements. Consumers should be similarly educated about their rights.

(13) The Commission should have autonomy to appoint its own regular staff. The present system of borrowing officers on deputation should be discontinued.

(14) Section 12(2)(f) of the Act may be amended to the extent it refers to the Criminal Procedure Code (CrPC), 1898 which has already been repealed long back by section 484 of CrPC, 1973.

(i) Working of MRTP Commission to be Streamlined and Strengthened
As per MRTP Act, MRTP Commission should consist of a Chairman and minimum two and maximum eight members, since its constitution in August 1970, MRTP Commission has been manned, for most of the time, by a bare statutory minimum strength i.e. Chairman plus two members: rather for long durations the Commission has remained with alone member and without even
chairman. The tendency on the part of Central Government is not promptly filling the vacancies of chairman and members came in for severe criticism by the Supreme Court in Mahindra & Mahindra Vs. Union of India. While delivering judgement, the court observed: "It is obvious from these two sub-sections of section 5 that the legislature clearly contemplated that the Commission must have a chairman who would provide the judicial element and there must be at least two other members who would provide expertise in subjects like economics; law, commerce, administration, so that there could be a really high powered expert commission competent and adequate to deal with the various problems which come before it. It, however, appears that the Central Government paid scant regard to this legislative requirement and though the office of chairman fell vacant as far back as 9 August, 1976, it failed to make appointment of chairman until 24 February, 1978. Of the two other members of the Commission one had already resigned earlier and his vacancy was also not filled with the result that the Commission continued with only one member for a period of about 18 months. This was a most unfortunate state of affairs, for it betrayed total lack of concern for the proper constitution and functioning of the Commission and complete neglect of its statutory obligation by the Central Government we fail to see any reason why the Central Government could not make necessary appointments and properly constitute the Commission in accordance with the requirements of the Act. It is difficult to believe that legal and judicial talent in the country had become so improvised that the Central Government could not find a suitable person to fill the vacancy of chairman for a year and half. Moreover, it must be remembered that the appointments, after all have to be made from whatever legal and judicial talent is available and the situation is not going to improve by waiting for a year or two; a new star is not going to appear in the legal firmament within such a short time and the appointment can not be held up
indefinitely. Indeed, it is highly undesirable that important quasi-judicial administrative posts should remain vacant for long period of time, because apart from impairing the efficiency of the functioning of the statutory authority or the administration, inexplicable delay may shake the confidence of the public in the integrity of the appointments when made."

It appears that even after such adverse comments by Supreme Court, Government did not realise the importance of MRTP Commission in public interest. After the sad demise of Mr. Justice G.R. Luthra, the Chairman of the Commission, it acted as one man commission for a considerable time. Again Supreme Court had to intervene as a result of a petition by a Delhi advocate. It was only in the last week of October 1990 that new Chairman and vacant posts of members were filled in.

(ii) Need for more Benches of the Commission
After the amendment in MRTP Act in 1984, which incorporate provisions relating to unfair trade practices, temporary injunctions and suits of compensations, the work load of the commission has multiplied and it takes considerable time to resolve a complaint. Therefore, for early disposal of cases, there is an urgent necessity of setting up of more than one Bench. As present as there is only one court room, it is not possible for two Benches to hear cases simultaneously on the same day. Further, Benches of the Commission should be set up in other cosmopolitan areas such as Bombay, Calcutta and Madras and later at each State Capital.
Consumer Protection Act Needs Revamping

On examining various provisions of the Act and rules made thereunder, following deficiencies have been located:

(1) States are not administratively bound to initiate the functioning of the Act.

(2) Despite required legislation being passed, the law is approachable by all. It is here that media could intervene and assist in developing the consumer protection culture by providing necessary information.

(3) The Consumer Protection Act envisages the setting up of State and District Forums for speedy redressal of consumer grievance. The presidents of the State Commission and District Forums are required to be judges of High Court and District Court respectively. The other members who constitute majority of these bodies are to be non-judicial persons of eminence. While appointing these persons due care should be taken so that they are not influenced by the presidents of their respective Commissions and Forums and decisions are not highly legalistic and conservative.

(4) The definition of 'Consumer' as per Section 2(1) of the Act is defective. As per definition the word 'Consumer' does not include a person who obtains goods for resale or for commercial purposes. This creates hardship in certain cases e.g. a widow buying a sewing machine for earning money through tailoring.

Media to assume its responsibility

Media can play an important role in highlighting consumer grievances. Dailies should highlight and publicise complaints through their complaints columns. A number of them do so already but these columns have to be regularised and pressure put on the editors for their follow up. Media could act as catalyst in bringing together the manufacturers
and the users leading to a consonance of interest. There is a need for newspapers to screen misleading advertisements before publishing them and to maintain ethical standards.

Need for Consumer Education

A national consumer institute should be established to educate consumers and make them aware of their rights. All the legislations shall become useless unless these are invoked by enlightened consumers. Media, particularly T.V., can play an important role in this direction. Since T.V. has reached to the villages, its educational programme should include consumer education programme as a regular feature. Further, consumer protection should be included in the university syllabi to create more awareness among masses.