MEANING OF TRADE PRACTICE

'Trade Practice' is defined in the MRTP Act to mean any practice relating to the carrying on of any trade. It covers:

(i) anything done by any person which controls or affects the price charged by, or the method of trading of any trader or any class of traders.

(ii) a single or isolated action of any person in relation to any trade.

The definition is very wide as to include any practice if it has a nexus with the trade.

An illustrative list of trade practices may be given as under:

i. The terms and conditions attached to a dealership agreement (manufacturer, wholesaler, retailer), such as:

(a) the method of delivery of goods;
(b) the price to be charged by the dealer;
(c) the stipulation that the dealer shall, as a condition of purchases of a good, buy some other goods also;
(d) the stipulation that the dealer shall confine his selling activity only to certain defined area(s);
(e) the stipulation that the dealer shall not deal with the goods of competitors;
(f) the method of granting various discounts;
(g) refusal to deal except on very onerous terms.

ii. any agreement or understanding among the intending bidders in an auction sale or tender that any party or parties would abstain from auction, or would quote identical or near identical prices;

iii. the practice of fixing/varying prices of goods or services in such a manner as to eliminate a competitor or competitors; say selling below the cost of production;

iv. agreement or understanding between dealers to boycott the goods of a particular manufacturer(s);

v. the terms and conditions attached to a franchise agreement, that is, branding, royalty payment, restriction on manufacture etc.

vi. the terms and conditions of agreement with suppliers of raw material, providing for, say restriction on supplies to competitors, manner of disposal of goods (by the suppliers) not conforming to quality specification, restriction on plant and machinery, technology, etc. employed or to be employed by the supplier of goods and such other matters.

vii. various representations made in regard to quality, durability, make, performance, characteristics, comparison with competitors' products etc. either in an advertisement or in a sales talk;

viii. other promotional efforts like announcing gift schemes, prizes, lotteries, crossword puzzles etc.

ix. announcing attractive bargain sales;

x. manipulating supplies in the market as to influence a favourable price movement;

xi. taking advantage of the position of being a market leader in influencing prices of goods and services;

xii. unreasonably increasing cost of production or prices or profits only because the market is inelastic to costs/prices;

xiii. unreasonably affecting competition for goods and services by reason of market dominance;

xiv. adopting any unfair or deceptive practices.
NEED FOR REGULATION OVER TRADE PRACTICES

The buyer and the seller are free to enter into any contract for the sale or purchase of any goods or services. The relationship between the buyer and the seller, purely a contractual one, was, for long regulated primarily by the Contract Act, 1872, and the sale of Goods Act, 1930. These two enactments clearly delimited the respective rights and duties of a seller and a buyer. The underlying presumption of these two laws is that the buyer and the seller have full freedom to contract and have equal bargaining power.

The dictum that governed a sale contract was caveat emptor, meaning "let the buyer beware". This rule of caveat emptor, worked to the detriment of the buyer in a situation where the buyer had very little alternatives to choose. Also, even the enforcing of the buyer's right under a contract was fraught with certain drawbacks like long time involved in litigation, prohibitive costs of litigation, and the relatively disproportionate benefit that could ultimately be derived in the event of the litigation getting decided in favour of the buyer.

These disadvantages notwithstanding, certain special enactments were passed by the government with a view to affording a greater protection to a buyer - for instance, the Law of Weights and Measures stipulating certain disclosures on packaged commodities (which are becoming popular these days) like the year and month of manufacture, net/gross weight, batch number, date of expiry, etc. The law on Prevention of Food Adulteration also intends to protect the buyer who is essentially an ordinary consumer-having a weak bargaining power. Special control orders issued under the Essential Commodities Act, the Industries (Development & Regulation) Act, etc. also were intended to safeguard the interest of the buyers. Even these special sets of legislations had their own limitations in spite of their good intentions, in that,
their effectiveness depended upon the efficiency with which they were administered. The prosecution of offenders took a long time in view of the complex court procedures. Besides, these legislations did not afford any direct relief to the affected. Hence there was felt a need to evolve new laws to correct market failures.

There were at least two broadly perceptible tendencies noticed at the market place which needed special attention. The first, the tendency to restrict, prevent or distort competition at the market place by adoption of certain trade practices. The second, the tendency to lure the consuming public into a transaction of sale, by misleading or false representations and host of other prize/lottery schemes etc. These two tendencies required to be treated by a special set of legislations with a totally different scheme of correctional and reparatory mechanism. Keeping in view above two objectives Monopolies and Restrictive Trade Practices Act was enacted in 1969.

**PROVISIONS OF MRTP ACT WITH RESPECT TO TRADE PRACTICES**

(i) **MONOPOLISTIC TRADE PRACTICES**

The Monopolistic and Restrictive Trade Practices Act, 1969 extends to the whole of India except the State of Jammu & Kashmir. The provisions of the Act are, except otherwise provided, in addition to and not in derogation of any other law for the time being in force. Thus, the Act has no overriding effect where it is expressly provided in the Act. Further, the Act protects the specific existing provisions in certain special Acts. The effect is that, to the extent to which these special Acts contain specific provisions in respect of any banking or insurance company to that extent any provisions in the MRTP Act will not effect such companies. The Act is applicable to these companies in respect of all those matters which are not provided in the special Acts.
The Act, prior to its amendment in 1984, was designed mainly to serve three-fold purposes, firstly, to regulate concentration of economic power; secondly, to control monopolies and prohibit monopolistic trade practices; and thirdly, to curb restrictive trade practices. However, after the 1984-amendment, the scope of the Act has also been extended to control unfair trade practices.

The Act is not aimed at the prevention of growth of undertakings as such, but is designed to regulate their expansion only into specified fields for ensuring that such expansions do not adversely affect the small and medium scale undertakings and these will not be prejudicial to public interest. The objective of preventing concentration of economic power to the common detriment is sought to be achieved by the Central Government through examination and regulation (by way of approval with or without any conditions, or rejection) of proposal for substantial expansion, establishment of new undertaking, mergers, amalgamation, takeovers, etc. of the undertakings registered or registerable; under the Act. Such proposals are subjected to close scrutiny in the light of the current industrial licensing and other socio-economic policies of the Government and the criteria laid down under section 28 of the Act itself. It has also been endeavour of the Government to ensure that no unit or business group acquires a dominant or monopolistic position in the market and that unfair practices arising out of manufacturing inter-linkages are avoided. The proposals are approved after ensuring that their implementation will subserve the common good of the country as well as best interest of the national economy. In fact, the common good has mainly been the touchstone on which such proposals are based.

1. Part-C of Chapter-III and Chapter-III-A containing Section 28 to 30G have been omitted by MRTA (Amendment) Ordinance, 1991.
MEANING OF MONOPOLISTIC TRADE PRACTICE

In the Act, a Monopolistic Trade Practice means a trade practice which has or is likely to have the effect of:

(i) maintaining the prices of goods or charges for the services at an unreasonable level by limiting, reducing of otherwise controlling the production, supply or distribution of goods of any description or the supply of any services or in any other manner;

(ii) unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services;

(iii) limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed, or distributed, or any services rendered, in India to deteriorate;

(iv) increasing unreasonably -
   (a) the cost of production of any goods; or
   (b) charges for the provision, or maintenance, of any services;

(v) increasing unreasonably -
   (a) the prices at which goods are, or may be, sold or re-sold, or the charges at which the services are, or may be, provided; or
   (b) the profits which are, or may be, derived by the production, supply or distribution (including the sale or purchase) of any goods or by the provision of any services;

(vi) preventing or lessening competition in the production, supply or distribution of any goods or in the provision or maintenance of any services by the adoption of unfair methods or deceptive practices.

A study of the above definition reveals that not only the effects at the material point of time of a trade practice are relevant but also the likely effects of the trade practice.
which may bring about the end results contemplated in the definition are relevant. Unreasonableness is also one of the common denominators indicated in the definition. A situation is considered unreasonable if it defines all sense of logic and is such as to shock one's conscience. It is essential to know that adoption of unfair methods or unfair or deceptive practices with a view to preventing or lessening competition at the market place is also considered a monopolistic trade practice. The words 'unfair practice' would include all Unfair Trade Practices (discussed elsewhere). The practice would be deceptive if it is such as to injure one man while at the same time facilitating illicit benefit to another. Even a trade practice which has the potential of creating confusion would amount to deception.

**Monopolistic Trade Practice Prejudicial to Public Interest**

Once a trade practice is established to be a Monopolistic Trade Practice, the Act presumes it to be prejudicial to the public interest except in the following circumstances:

(a) such trade practice is expressly authorised by law, or
(b) the Central Government has permitted such practice.

The Central Government can so permit only if it is satisfied that such trade practice is necessary:

(i) to meet the requirements of the defence of India or any part thereof, or for the security of the State; or
(ii) to ensure the maintenance of supply of goods and services essential to the community, or
(iii) to give effect to the terms of any agreement to which the Central Government is a party.
Brief Outline of Procedure in MTP Enquiries

A complaint against a Monopolistic Trade Practice can be made by any person including a competitor in trade, either to the Central Government or to the MRTP Commission. The MRTP Commission initiates an enquiry into Monopolistic Trade Practices under two circumstances:

(i) upon a reference made to it by the Central Government;
(ii) upon its own knowledge or information.

The MRTP Commission follows a set procedure in conducting the enquiry. Full opportunity to the person complained against to explain his part of the case is ensured under the enquiry procedure. After the enquiry is over, the MRTP Commission submits its report containing its findings to the Central Government. Where the report of the Commission contains findings to the effect that Monopolistic Trade Practices prevail, the Central Government, if it is satisfied that it is necessary to take remedial action to prevent any mischiefs that may result from the Monopolistic Trade Practices, can make orders:

(i) prohibiting the owner of the concerned undertaking or the owners of the concerned undertaking from continuing to indulge in Monopolistic Trade Practice; or
(ii) Prohibiting the owners of any class of undertaking or undertakings generally from continuing to indulge in any Monopolistic Trade Practices in relation to such goods or services.

The Central Government can also pass such other orders to remedy or prevent mischiefs which result on continuation of Monopolistic Trade Practices in relation to those goods or services. In addition to these general powers, the Central Government can make orders:
(a) regulating the production, storage, supply, distribution or control of any goods by the undertaking or the control of supply of any service by it and fixing the terms of sale (including prices) or supply thereof;

(b) prohibiting the undertaking from resorting to any act or practice or from pursuing any commercial policy which prevents or lessens, or is likely to prevent or lessen, competition in the production, storage, supply or distribution of any goods or provision of any services;

(c) fixing standards for the goods used or produced by the undertaking;

(d) declaring unlawful except to such extent and in such circumstances as may be provided by or under the order, the making or carrying out of any such agreement as may be specified or described in the order;

(e) requiring any party to any such agreement as may be so specified or described, to determine the agreement within such time as may be so specified, either wholly or to such extent as may be so specified;

(f) regulating the profits which may be derived from the production, storage, supply, distribution or control of goods or from the provision of any service;

(g) regulating the quality of any goods or the provision of any service so that the standards thereof may not deteriorate.

Where the owner of an undertaking is prohibited by an order from continuing to indulge in any Monopolistic Trade Practice:

(i) the owner of the undertaking shall, within 30 days the date of receipt of such order indicate to the Central Government his or their compliance with the order, and
(ii) the Director General of Investigation and Registration shall, within 90 days from the date of such order inform the Central Government whether the order passed by it has been complied with or not by the owner of the undertaking concerned.

Penalties

The Act provides for penalty for non-compliance with the order passed by the Central Government in regard to Monopolistic Trade Practices; the penalty for such an offence is in the form of an imprisonment for a term which shall not be less than:

(i) in the case of first offence, six months but not more than three years; and

(ii) in the case of second or subsequent offence in relation to the goods or services in respect of which the first offence was committed, two years but not more than seven years, and in case where the contravention is a continuing one, also with fine which may extend to Rs. 5,000.00² for every day, after the first, during which such contravention continues. The Court may in the circumstances of a particular case, if satisfied, impose a sentence of imprisonment for a term less than the minimum term specified above. It is to be noted that no punishment attaches if a person against whom a prosecution is launched proves that he had reasonable excuse for not complying with the orders of the government.

MRTP (Amendment) Ordinance, 1991 has given powers to MRTP Commission to compound the offence, either before or after institution of proceedings.

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(ii) **RESTRICTIVE TRADE PRACTICES**

The other important objective of the Act is to promote competition by controlling monopolistic and restrictive trade practices. This is sought to be achieved through the instrumentality of the Monopolies and Restrictive Trade Practices Commission, an independent administrative body, set up under section 5 of the Act. The Commission is vested with the independent judicial powers with respect to restrictive and unfair trade practices, and with advisory powers in relation to concentration of economic power and monopolistic trade practices is vested with the Central Government.

The Central Government has been empowered by the Act to make a reference to the Commission for inquiry, if it appears to it that one or more undertakings are indulging in any monopolistic trade practices, or that such practices prevail in respect of any goods or services. If on inquiry, the Commission reports that such trade practices are actually operating or are likely to operate against public interest, the Government may pass appropriate orders to prevent or remedy the mischief. The Commission while determining whether the trade practice operates or is likely to operate against public interest, must give due regard to the economic conditions prevailing in the country and all other matters which appear in particular circumstances to be relevant. Further, the Act provides that every monopolistic trade practice shall be deemed to the prejudicial to the public interest except where:

(a) such trade practice is expressly authorised by any enactment for the time being in force; or

(b) the Central Government, being satisfied that any such trade practice is necessary:

i. to meet the requirements of the defence of India or any part thereof, or for the security of the State; or
ii. to ensure the maintenance of supply of goods and services essential to the community; or
iii. to give effect to the terms of any agreement to which the Central Government is a party.

As to restrictive trade practices, the Act envisages triple control—firstly, certain types of restrictive trade agreements have to be registered; secondly, the M.R.T.P. Commission can inquire into any restrictive trade practice and if after inquiry it is of the opinion that the practice is prejudicial to public interest, it may by order direct that the practice be discontinued or not be repeated in future, or declare the agreements relating thereto void, or direct that it be modified; thirdly, the restrictive trade practice of resale price maintenance is prohibited outrightly, since such trade practice has hardly any good impact. Trade Agreements providing for maintenance of minimum prices to be charged on the resale of goods in India have been declared void. Under certain circumstances, however, the Commission may exempt goods of any class from the operation of these regulatory provisions.

Purpose Behind Regulation Over Restrictive Trade Practices

The MRTP Act has as one of its principal objects, the prohibition of Restrictive Trade Practices. Prior to the enactment of the MRTP Act, there were many trade practices found prevalent at the market place namely.

i. horizontal fixation of prices;
ii. vertical fixation of price and resale price maintenance;
iii. allocation of markets between producers;
iv. discrimination between purchasers;
v. boycott;
vi. exclusive dealing contracts;
vii. tie-up arrangements.
These practices were obviously indulged in by leading industrial houses. The effect of these practices was to prevent new entrants and to shut out competition. The index of an efficient market is free play of the forces of demand and supply. As the practices enumerated above were not conducive at all to such free competition, there was a dire need to statutorily regulate competitive practices. The whole scheme of the MRTP Act in regard to Restrictive Trade Practices is thus aimed at correcting competitive situation at the market place as to ensure free play of competitive forces at the manufacturers-wholesalers-retailers level. The removal of clogs in the distributive channel for goods and services would in the ultimate analysis benefit the consumer in the form of competitive prices, increased choice for goods and services, better after-sale facility, etc.

Meaning of 'Restrictive Trade Practice'

The basic question is what is a 'Restrictive Trade Practice'? This is answered in the Act by means of a very exhaustive definition. This definition has two limbs - the first limb is generic and the second limb particularises certain practices.

According to the first limb of the definition of the term 'Restrictive Trade Practice', a Restrictive Trade Practice means a trade practice which has or may have the effect of preventing, restricting or distorting competition in any manner. The first limb, therefore, is predicative of the effect of a trade practices on competition, viz., whether a trade practice prevents, distorts or restricts competition in any manner;

The second limb particularises two trade practices, viz.:

(i) any trade practice which tends to obstruct the flow of capital or resources into the stream of production;
(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 as to impose on the consumers unjustified costs or restrictions.

It is essential to note that if a trade practice falls in any one of the categories mentioned above (in the particularising limb of the definition), it is not necessary to know whether that trade practice prevents, restricts or distorts competition. In other words, the legislature has desired that these two categories are restrictive in themselves without being additionally required to satisfy the test of competition. These trade practices have been particularised as restrictive in view of their impact on such vital areas of economic activity as production, supply, distribution, and prices and because of their great potential to distort competition.

Thus it is essential to clearly understand the two important limbs of the definition of the term 'Restrictive Trade Practice' before proceeding further.

Preventing, Restricting or Distorting Competition

The first limb of the definition of the term 'Restrictive Trade Practice' as already observed in the earlier paragraphs focusses on the effects of a trade practice on competition. Any trade practice which prevents, restricts or distorts competition is a Restrictive Trade Practice. Similarly, any trade practice which has the potential for distorting or restricting or preventing competition would also be a Restrictive Trade Practice. But as a matter of fact in trade and commerce there is no trade practice which does not restrain. In fact every agreement concerning trade and every regulation of trade, restrains. The true test of legality of restraints under the competition law is whether
the restraint merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or destroy competition. To determine whether a particular restraint is preventive, restrictive or distortive of competition or not, one has to consider the following three important matters:

i. what facts are peculiar to the business to which the restraint is applied?

ii. what was the condition before and after imposition of the restraint?

iii. what is the nature of restraint and what is its actual and probable effect?

(iii) UNFAIR TRADE PRACTICES

In regard to Unfair Trade Practices, the Act seeks to control various forms of unfair trade practices, such as, false representation or misleading advertising; bargain sale and bait selling; offering of gifts with the intention of not providing them and conducting promotional contests; supply of hazardous or risky products; and hoarding or destruction of goods. The M.R.T.P. Commission may inquire into any unfair trade practice and, if, after such inquiry, it is of the opinion that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, it may, by order direct that - (a) the practice shall be discontinued or shall not be repeated; and (b) any agreement relating thereto shall be void or shall stand modified, as directed.

Types of Practices Which are Considered Unfair

The provisions of the MRTP Act, in relation to Unfair Trade Practices cover the following main categories:

(a) Misleading advertisements and false representations;
(b) Bargain sale, bait and switch selling;
(c) Offering gifts or prizes with the intention of not providing them and conducting promotional contests;
(d) Supplying goods not conforming to safety standards; and
(e) Hoarding and destruction of goods.

Statutory Requirements for a Practice to be Called Unfair Trade Practice

Under the MRTP Act, a trade practice would become an Unfair Trade Practice if the following ingredients are fulfilled:

(i) The trade practice must be employed for the purpose of promoting sale, use or supply of any goods or for the provision of any services.
(ii) The trade practice must be one enumerated specifically.
(iii) By the adoption of such trade practice(s), there must be caused loss or injury to the consumers.
(iv) Such loss or injury may be, by eliminating or restricting competition or otherwise.

The specific trade practices enumerated in the Act are as follows:

(A) Misleading Advertisements and False Representations

[Section 36A(1)]

Under this heading are included practices of making any statement whether orally or in writing or by display which:

i. falsely represents that the goods are of a particular standard, quality, grade, composition, style or model;
ii. falsely represents that the services are of a particular standard, quality or grade;
iii. falsely represents any rebuilt, second-hand, renovated, reconditioned or old goods as new goods;
iv. represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods/services do not have;

v. represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

vi. makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

vii. gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of each defence shall lie on the person raising such defence;

viii. makes to the public representation in a form that purports to be:

i. a warranty or guarantee of a product or any goods or services, or

ii. a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is not reasonable prospect that such warranty, guarantee or promise will be carried out;

ix. materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the
relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made; x. gives false or misleading facts disparaging the goods, services or trade of another person.

For the purposes of the above provisions, a statement that is,

(a) expressed on an article offered or displayed for sale, or, on its wrapper or container; or
(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public;
(d) shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;
(e) shall be deemed to be a statement made to the public by the person who had caused the statement to be so expressed or contained.

(B) Bargain Sales [Section 36 A(2)]

This covers the practice of publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods, or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.
"Bargain Price" means:

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears, or sees the advertisement, would reasonable understand to be a bargain price having regard to the prices as which the product advertised or like products are ordinarily sold;

(C) Offering Gifts or Prizes with the Intention of not Providing them and Conducting Promotional Contests

[Section 36A (3)]

This covers the practice of:

(a) offering of gifts, prizes or other items with intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole,

(b) conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

(D) Supplying Goods not Conforming to Safety Standard

[Section 36A (4)]

This covers the practice of selling or supplying of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk or injury to the person using the goods.
(E) **Hoarding or Destruction of Goods [Section 36A(5)]**

This covers the practice of hoarding or destruction of goods or refusal to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

**EXEMPTIONS UNDER MRTP ACT**

The Act, prior to its amendment in 1984, exempted the public sector undertakings, Government-managed undertakings and certain trade union or other association of workmen or employees formed for their own reasonable protection from its purview. However, the M.R.T.P. (Amendment) Act, 1984 has now extended some further exemption to undertakings owned by a cooperative society and financial institution.

(A) **Public Sector Undertakings**

The public sector undertakings which are exempt from the purview of the Act are any undertaking owned or controlled by a Government Company or by Central or State Government or by any other corporation (not being a company) established by Central or State Acts. The justification for exempting these undertakings from the purview of the Act can be that the Government has an adequate control over these undertakings and are already accountable to the Parliament. But, we cannot ignore the reality that the Parliament has neither the time nor the requisite expertise to make such control effective. Besides, the Governmental and Parliamentary control is different in principle and test applicable under the M.R.T.P. Act. Moreover, the public sector undertakings are not less capable of indulging in monopolistic, restrictive and unfair trade practices that may be harmful to the general public than their private sector competitors. Further, they are not less capable of charging unreasonable prices and supplying
inferior quality of goods and services than private monopolists. It may also be noted that the public sector in India has considerably grown since the M.R.T.P. Act came into force. With their vast capital and other resources, some of the public sector undertakings in India have acquired monopolies in their respective fields. Since, the public sector undertakings are engaged in the production of the consumer or other items, the impact on the general consumer or the user of the goods and services or the trade practices in respect of such goods or services is the same whether they are produced or rendered by undertaking in the public sector or in the private sector. The beneficiary of the law is the consumer and it appears to be fair and reasonable that even undertaking owned or controlled by Central and State Governments should be under the same type of rigour and discipline where the interest of general consumers are involved.

The effect of exempting the public sector undertakings from the purview of the Act seems to be that these undertakings may indulge in monopolistic, restrictive and unfair trade practices and the M.R.T.P. Commission cannot take the cognizance of such practices despite the fact that they may be prejudicial to the public interest. Now, whether the private sector undertakings may be allowed to indulge in certain restrictive trade practices for the reason that their competitors in the public sector are also resorting to such practices. The issue came up for determination before the M.R.T.P. Commission in Alkali & Chemicals Corpn. case. In this case, the company was supplying equal quantity of utility grade along with costlier grades of low density polyethylene (LDPE) moulding powder to the customers and that was alleged to be a restrictive trade practice of tie-up sales. The company sought to justify the trade practice on the ground that a competing undertaking of the Government of India, viz., IPCL, was also 'likely to adopt similar practices' and for competing with it, it was necessary for the company
to adopt such trade practice itself. The Commission, however, agreed with this justification and observed:

"The Government undertakings are at present outside the purview of the Act. It may be that in future those undertakings may also be brought within the purview of the Act, and for that reason or even for any other, it will be open to the respondent to resort to the practice only if and so long as the IPCL adopts that practice."

Thus, leaving apart the merit of the order, the exemption to public sector is tending to benefit the private sector which may use it as an excuse for indulging in restrictive and unfair trade practices.

In view of the aforesaid discussion, it is submitted that the public sector undertakings should be brought within the purview of the Act in so far as the monopolistic, restrictive and unfair trade practices are concerned.

(B) Government-Managed Undertakings

Section 3(e) of the M.R.T.P. Act exempts from its purview any undertaking engaged in an industry, the management of which has been taken over by any person or body of persons in pursuance of any authorisation made by the Central Government under any law for the time being in force. It is thus possible that the majority equity shares may still be with the private sector while the management has been temporarily taken over under any statute of Parliament. In All India Motor Transport Congress case, the M.R.T.P. Commission dropped the proceedings against one of the respondent, Incheck Tyres Ltd. only because its management was taken over by the Central Government and, thus, under Section 3(e), it was outside the purview of the Act. In another case, the Commission had earlier passed the 'cease and desist' orders against certain restrictive trade practices indulged by the company but the
company sought exemption from reporting compliance of the order letter, when its management was taken over by the Government. It is, therefore, evident that the advantage of public sector exemption has been taken by the private sector enterprises on filmy ground that their management has been taken over by the Government. There seems to be no justification to grant such an exemption, merely because the management of an undertaking of the private sector has been taken over by the Government for a short period and may be returned back to the original owners. Moreover, by the takeover of the management, the basic nature and characteristic of the undertaking in the private sector will not change. Therefore, the exemption granted to such undertakings should be withdrawn.

(C) Trade Union and Employees' Association

Section 3(d) of the Act exempts from its purview any trade union or other association of workmen or employees, formed for their own reasonable protection as such workmen or employees. Many reasons could be given for this, the simplest perhaps is that the labour of a human being is not a commodity or article of commerce and thus, it should be immune from anti-trust legislations.

(D) Cooperative Sector and Financial Institution

The Amendment Act, 1984 has now incorporated some more exemptions by including in Section 3 the undertakings owned by registered cooperative societies and financial institutions. Thus, the cooperative societies and financial institutions are at par with the public sector undertakings as regards the non-applicability of the provisions of the M.R.T.P. Act. The rationale of incorporating these exemptions is not clear, particularly, when these undertakings, like other private sector undertakings, are also capable of indulging themselves in restrictive and unfair trade practices. For example, in
the case of Salem District Starch & Sago Manufacturers Service Industrial Cooperative Society Ltd., the respondent society was registered under the Tamilnadu Cooperative Societies Act. The Society abolished its earlier system of open-tender and adopted a sole-selling agency system. It was alleged that the change-over to the sole-selling agency system was destructive of competition in the market and was, therefore, a restrictive trade practice. But the M.R.T.P. Commission could not take any action because it was beyond the purview of the M.R.T.P. Act due to statutory exemption under clause (f) of section 3 of the Act. It is, therefore, submitted that the public sector and cooperative sector undertakings should be brought within the purview of the Act in so far as restrictive and unfair trade practices are concerned.

**Exemptions Withdrawn**

As per notification issued by Government (No.7/26/86-CLV dated 27.09.1991) under section 3 of MRTP Act, 1969, public sector companies have also been brought within the ambit of MRTP Act, in respect of monopolistic, restrictive and unfair trade practices. As per this notification following categories of organisations are no longer exempted:

(i) Any undertaking owned or controlled by a Govt. Company;
(ii) Any undertaking owned or controlled by the Government;
(iii) Any undertaking owned or controlled by a corporation (not being a company) established by or under any Central, Provincial or State Act;
(iv) Any undertaking owned by a cooperative society formed and registered under any Central, Provincial or State Act relating to cooperative societies;
(v) Any financial institution.

But exemption is still available to undertakings owned or controlled by a Government Company or the Government engaged in production of - Arms and ammunition and allied items of defence equipment; Defence aircraft and warships; Atomic Energy; Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.

In addition to above, exemption is available to the industrial units under the Currency & Coinage Division, Ministry of Finance, Deptt. of Economic Affairs, Govt. of India.