Chapter-5
ROLE OF M.R.T.P. COMMISSION

(i) STRUCTURE AND ORGANISATION OF MRTP COMMISSION

The government's decision on the report of Monopolies Inquiry Commission (M.I.C.) (1965) was contained in a Resolution which was placed before both the houses of Parliament on 5th September, 1966. The resolution proposed the establishment of a permanent statutory body with mandatory judicial powers in respect of restrictive trade practices, but in departure from the M.I.C. recommendations, with mere advisory powers relating to concentration of economic power and monopolistic trade practices, resting the final decision with the Central Government.

In accordance with the above resolution, the Monopolies and Restrictive Trade Practices Bill, 1967, was introduced in the Rajya Sabha on 18th August, 1967. After the Joint Committee of Parliament submitted its Report, the measure was finally placed on the Statute book on 27th day of December 1969, and came into force with effect from 1st June, 1970.

Constitution of the M.R.T.P. Commission

Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969, deals with the establishment and constitution of the permanent body. Section 5(1) of the Act provides that the Central Government shall establish, by notification in the official gazette, a commission to be known as the Monopolies and Restrictive Trade Practices Commission consisting of a chairman and not less than two and not more than eight members to be appointed by the Central Government. As per Section 5(2) of the Act, the chairman has to be a person who is, or has been or is qualified to be a Judge of the Supreme Court or of a High Court and the members of the M.R.T.P. Commission have to be persons of ability,
integrity and standing, who have adequate knowledge or experience of or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. In pursuance of Section 5 of the Act, the Central Government established the M.R.T.P. Commission with a chairman and two members in August 1970.

(ii) **FUNCTIONS OF MRTP COMMISSION**

MRTP Commission have enormous powers under the M.R.T.P. Act. Whilst the Act itself is to break the concentration of economic power to the common detriment, it would be interesting to note how the Commission acts with respect to the administration in checking the growth of giant enterprises as well as in the prohibition of the restrictive/unfair and monopolistic trade practices. Consumers and their associations, could lodge a complaint before the Commission only with respect to restrictive/unfair trade practices. However, a monopolistic trade practice shall be enquired into by the Commission upon its own knowledge or upon a reference received from the Central Government. The Central Government is empowered to appoint the "Director General" to assist the Commission in making a preliminary investigation into any restrictive/unfair trade practices.

The M.R.T.P. Commission has been set up in pursuance of the provisions of Chapter-II of the M.R.T.P. Act.

The role of the Commission with respect to monopolistic, restrictive and unfair trade practices is enumerated below:

The Commission will enquire into a monopolistic trade practice:

(a) on being referred to it by the Central Government; or
(b) upon its own knowledge and information.
The Commission may enquire into any restrictive or unfair trade practice:

(A) If a complaint is received from:
   1. any trade or consumers' association with a membership of not less than 25 persons; or
   2. from 25 or more consumers.

(B) If an application is made to it by the Director General of Investigation and Registration or any Additional, Joint, Deputy or Assistant Director General of Investigation and Registration (hereinafter referred to as "Director General" for brevity).

(C) If a reference is made to it by the Central Government or State Government.

(D) Suo moto upon its own knowledge or information.

(iii) SPECIAL POWERS OF MRTP COMMISSION RELATING TO RESTRICTIVE AND UNFAIR TRADE PRACTICES

(1) The Commission shall, for the purposes of any inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

   (a) the summoning and enforcing the attendance of any witness and examining him on oath;
   (b) the discovery and production of any document or other material object producible as evidence;
   (c) the reception of evidence on affidavites;
   (d) the requisitioning of any public record from any court or office;
   (e) the issuing of any commission for the examination of witness.
(2) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860), and the Commission shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) The Commission shall have power to require any person:

(a) to produce before, and allow to be examined and kept by, an officer of the Commission specified in this behalf, such books, accounts or other documents in the custody or under the control of the person so required as may be specified or described in the requisition, being documents relating to any trade practice, the examination of which may be required for the purposes of this Act, and

(b) to furnish to an officer so specified such information with respect to the trade practice as may be required for the purposes of this Act or such other information as may be in his possession in relation to the trade carried on by any other person.

(4) For the purpose of enforcing the attendance of witnesses the local limits of the Commission's jurisdiction shall be the limits of the territory of India.

(5) Where during any inquiry under this Act, the Commission has any grounds to believe that any books or papers of, or relating to any undertaking in relation to which such inquiry is being made or which the owner of such undertaking may be required to produce in such inquiry, are being, or may be, destroyed, mutilated, altered, falsified or secreted, it may, by a written order, authorise any officer of the Commission to exercise
the same powers of entry, search and seizure in relation to the undertaking, or the books or papers, aforesaid as may be exercised by the Director General while holding a preliminary investigation under Section 11.

Power of the Commission to Grant Temporary Injunctions—Section 12A

(1) Where, during an inquiry before the Commission, it is proved whether by the complainant Director General, any trader or class of traders or any other person, by affidavit, or otherwise, that any undertaking or any person is carrying on, or is about to carry on, any monopolistic or any restrictive, or unfair, trade practice and such monopolistic or restrictive, or unfair trade practice is likely to affect prejudicially the public interest or the interest of any trader, class of traders or traders generally or of any consumer or consumers generally, the Commission may, for the purposes of staying or preventing the undertaking or, as the case may be, such person from causing such prejudicial effect, by order grant a temporary injunction restraining such undertaking or person from carrying on any monopolistic or restrictive, or unfair, trade practice until the conclusion of such inquiry or until further orders.

(2) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall, as far as may be, apply to a temporary injunction issued by the Commission under this section, as they apply to a temporary injunction issued by a civil court, and any reference in any such rule to a suit shall be construed as a reference to an inquiry before the Commission.
Power of the Commission to Award Compensation—Section 12B

(1) Where, as a result of the monopolistic or restrictive, or unfair, trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government or any State Government or any trader or class of traders or any consumer, such Government, or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused.

(2) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission make an application, under that sub-section, for and on behalf of, or for the benefit of the persons so interested, and thereupon the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.

(3) The Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other person, as compensating
for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair, trade practice carried on by such undertaking or other person.

Where a decree for the recovery of any amount as compensation for any loss or damage referred to in sub-section (1) has been passed by any court in favour of any person or persons referred to in sub-section (1) or, as the case may be, sub-section (2), the amount, if any, paid or recovered in pursuance of the order made by the Commission under sub-section (3) shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set off.

Enforcement of the Order made by the Commission

Under Section 12A or 12B - Section 12C

Every order made by the Commission under section 12A granting a temporary injunction or under section 12B directing the owner of an undertaking or other person to make payment of any amount, may be enforced by the Commission in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction,

(a) in the case of an order against a company, the registered office of the company is situated, or
(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 thereupon 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.

Orders of Commission may be Subject to Conditions, etc. - Section 13

(1) In making any order under this Act the Commission may make such provisions not in consistent with this Act, as it may think necessary or desirable for the proper execution of the order, and any person who commits a breach of, or fails to comply with, any obligation imposed on him by any such provision shall be deemed to be guilty of an offence under this Act.

(2) Any order made by the Commission may be amended or revoked at any time in the manner in which it was made. This power of the Commission is an independent power, which has nothing with the appellate power under section 55.

(3) An order made by the Commission may be general in its application or may be limited to any particular class of traders or a particular class of trade practice or a particular locality.

Power of the Commission to cause investigation to find out whether or not Orders made by it have been complied with - Section 13A

(1) The Commission may, if it has any reasonable cause to believe that any person has omitted or failed to comply with any order made by it under this Act or any obligation imposed on him by, or under, any order made by the Commission under this Act, authorise the Director General or any officer of the Commission to make an investigation into the matter and the Director General, or the officer so authorised, may for the purpose of making such investigation, exercise all or any of the powers conferred on the Director General by Section 11.
(iv) ROLE OF DIRECTOR GENERAL OF INVESTIGATION AND REGISTRATION (D.G.I.R.)

After the 1984 amendment to the M.R.T.P. Act, a new office of the Director General of Investigation and Registration (DGIR) was created which started functioning in the premises of the M.R.T.P. Commission and the DGIR could suo moto bring action against unfair and restrictive trade practices. Owing to the initiative taken by the DGIR, instances after instances of unfair trade practices and restrictive trade practices being indulged in by companies were reported for action by the MRTP Commission irrespective of the fact whether the companies belonged to the MRTP group or not.

On receipt of complaint/information, the DGIR investigates the matter and submits report to the MRTP Commission and an appeal against its order only lies to the Supreme Court. The MRTP Commission may initiate enquiry proceedings on its own or on the basis of Report submitted by the Directorate General. The enquiry before the Commission is an open enquiry and if the Commission after enquiry is satisfied that the complaint reported upon by the Directorate General is genuine, the Commission may pass a 'cease and desist' order. The Complainee also has an option to come with an "Unconditional Undertaking" under Section 36D(2)/37(2) of the Act stating that it would not persist in the impugned Trade Practices before the MRTP Commission passes a Cease and Desist Order.

The Commission also can grant under Section 12B of the Act suitable monetary compensation to the aggrieved party for loss or injury sustained. This is an important provision introduced in the Amended Act in August 1984. The said provision has, however, not been widely used so far by the general public.
The MRTP Commission also has the power to grant interim injunction (even ex-parte) in appropriate cases involving matters of grave public concern.

There is no prescribed form or fees for filing complaints with the Directorate General. Even a complaint/information can be forwarded on a postcard to the Directorate General giving the following particulars:

(i) Name and address of the Complainant;
(ii) Name and address of the Complainee; and
(iii) The subject matter of the complaint, details of complaint along with documentary or whatever evidence is in possession of the complainant.

In the course of enquiry proceedings launched before the MRTP Commission on behalf of the Complainant, the Directorate General engages its own Advocates to argue the case and to fight it out. The Advocates thus engaged are paid for by this Directorate General. If the complainant or any other witness is required to be present before the M.R.T.P. Commission in the course of enquiry proceedings, he is paid to & fro First Class Train Fare along with daily allowance at the prescribed Government rates. It would thus be seen that the Complainant/Informant is not put to any monetary or other inconvenience or hardship by giving the Complaint/Information. In fact Complainant/Informant is treated as a privileged person by the Directorate General. This office as such desires that the general public should not hesitate to take advantage of the facilities and services provided by this Directorate General for redressing their day-to-day grievances as Consumer/Buyers. This Directorate General also has suo-moto powers - in other words this Directorate General can on its own initiate action and when any Unfair or Restrictive Trade Practices are noticed by it. The Directorate General itself can take action on noticing any Unfair and/or Restrictive Trade Practices anywhere in the country, even without awaiting a formal complaint from aggrieved parties.
POWERS OF THE DIRECTOR GENERAL OF INVESTIGATION & REGISTRATION

Investigation by Director General before issue of process in certain cases—Section 11

(1) Where any complaint is received by the Commission from any association under sub-clause (i) of clause (a) of Section 10, it may, before issuing any process requiring the attendance of the person complained against, by an order, require the Director General to make, or cause to be made, a preliminary investigation in such manner as it may direct and submit a report to the Commission to enable it to satisfy itself as to whether or not the complaint requires to be inquired into.

(2) The Director General may, upon his own knowledge or information or on a complaint made to him, make, or cause to be made, a preliminary investigation in such manner as he may think fit to enable him to satisfy himself as to whether or not an application should be made by him to the Commission under sub-clause (iii) of clause (a) of Section 10.

(3) For the purpose of conducting the preliminary investigation under sub-section (1), or sub-section (2), as the case may be, the Director General or any other person making the investigation shall have the same powers as may be exercised by an Inspector under sub-section (2) of Section 44.

(4) Any order or requisition made by a person making an investigation under sub-section (1), or sub-section (2), shall be enforced in the same manner as if it were an order or requisition made by an Inspector appointed under Section 240 or Section 240A of the Companies Act, 1956 (1 of 1956), and any contravention of such
order or requisition shall be punishable in the same manner as if it were an order or requisition made by an Inspector appointed under the said Section 240 or Section 240A.

Power of Director General to Obtain Information—Section 42

(1) If the Director General has reasonable cause to believe that any person is a party to an agreement subject to registration under Section 35, he may give notice to that person requiring him within such time, not less than thirty days, as may be specified in the notice, to notify to the Director General whether he is a party to any such agreement and, if so, to furnish to the Director General such particulars of the agreement as may be specified in the requisition.

(2) The Director General may give notice to any person by whom particulars are furnished under Section 35 in respect of an agreement or to any other person being a party to the agreement requiring him to furnish to the Director General such further documents or information in his possession or control as the Director General may consider expedient for the purpose of, or in connection with, the registration of the agreement.

(3) Where a notice under this section is given to a trade association, the notice may be given to the secretary, manager or other similar officer of the association and for the purposes of this section any such association shall be treated as a party to an agreement to which members of the association, or persons represented on the association by those members, are parties as such.
(4) If the particulars called for under sub-section (1) or sub-section (2) are not furnished, the Commission may, on the application of the Director General,

(a) Order the person or, as the case may be, the association to furnish those particulars to the Director General within such time as may be specified in the order, or

(b) authorise the Director General to treat the particulars contained in any document or information in his possession as the particulars relating to the agreement, or

(c) in case the Commission is satisfied that the failure to furnish the particulars is wilful, make an order restraining, wholly or partly the parties to the agreement from acting on such agreement and from making any other agreement to the like effect.

Penalty

Penalty for Contravention of Order made by Commission Relating to Unfair Trade Practices - Section 48C

If any person contravenes any order made by the Commission under Section 36D, he shall be punishable with imprisonment for a term which shall not be less than six months but may extend to three years and with fine which may extend to ten lakh rupees. However, court may impose a sentence of imprisonment for a term less or than the minimum term specified above.

Penalty for Offences in Relation to Furnishing of Information—Section 49

(1) If any person fails, without any reasonable excuse, to produce any books or papers or to furnish any information, required by the Director General under

Section 11, or to furnish any information required under Section 43, or to comply with any notice duly given to him under Section 42, he shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to one hundred rupees for every day, after the first, during which such failure continues.

(2) If any person, who furnishes or is required to furnish any particulars, documents or any information:

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
(b) omits to state any material fact knowing it to be material; or
(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Penalty for Offence in Relation to Orders under the Act - Section 50

(1) A person who is deemed, under Section 13, to be guilty of an offence under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to Fifty Thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to Five Thousand rupees for every day, after the first, during which such contravention continues.

(2) If any person contravenes, without any reasonable excuse, any order made by the Central Government under Section 31, or any order made by the Commission under Section 37, he shall be punishable with imprisonment for a term which shall not be less than,

(a) in the case of the first offence, six months but not more than three years, and
(b) in the case of any 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 either case, where the contravention is a continuing one, also, with fine which may extend to Five Thousand rupees for every day, after the first during which such contravention continues:

Provided that the court may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment for a term lesser than the minimum term specified in this sub-section.

(3) If any person carries on any trade practice which is prohibited by this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Five Thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to Five Hundred rupees for every day, after the first, during which such contravention continues.

Penalty for Offences in Relation to Re-sale Price Maintenance – Section 51

If any person contravenes the provisions of section 39 or section 40, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Five Thousand rupees, or with both.

Offences by Companies – Section 53

(1) Where an offence under this Act has been committed by a company, every person who, at the same time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the Commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purposes of this section –

(a) "company" means a body corporate and includes a firm or other association of individuals; and
(b) "director" in relation to a firm, means a partner in the firm.

MRTP (Amendment) Ordinance 1991 has introduced a new provision under section 53A. Under this provision, Commission has been empowered to compound any offence under section 48C or section 50 of the MRTP Act.
Director, an Independent Statutory Authority

The Director of Investigation is an independent statutory authority appointed by the Central Government in consultation with the Monopolies & Restrictive Trade Practices Commission for making investigations for the purposes of the Act. In this connection, it is pertinent to mention that the legislature have taken adequate care to safeguard the independence of the Director, even though he has to carry out investigations in such manner as the Commission may direct under the Act. The power to appoint him and make provisions with respect to his conditions of service is vested with the Government. But at the same time there is a provision in the Act for consultation by the Government with the Commission at the time of his appointment. From the mode of appointment of the Director prescribed in section 8 of the Act, it is clear beyond doubt that it was the intention of the legislature to carry out investigations for the purposes of the Act by a senior officer impartially and independently. It is relevant to mention here that the statutory definition of the Director available at clause (c) of section 2 of the Act deliberately excludes "Additional Director, Joint Director, Deputy Director or Assistant Director" from the definition. This clearly indicates what the legislature had in their mind. They never wanted a subordinate officer to be clothed with the powers of the Director.

Nature of Investigating Powers

Although section 8 of the Act provides for the appointment of the Director for making investigations for the purposes of the Act, there is no reference anywhere in the Act about any investigations by the Director except the preliminary investigation contemplated in section 11 of the Act. The word 'investigation' appearing in the marginal note against sections 31 and 37, obviously refers to judicial investigation or 'inquiry' by the Commission. The investigation by the Director and investigation by the Commission should not be equated as they differ in several respects. The
investigation by the Commission is a judicial investigation while as the investigation by the Director is not so. Section 12 of the Act confers on the Commission the powers of the Civil Court for the purposes of judicial investigation by it. But the Director does not have any such judicial powers. In fact the investigation by the Director, as the Act rightly describes, is a preliminary investigation which is a prelude to the judicial investigation by the Commission.

Procedure of Investigation

Clause (a) of section 10 of the Act provides how inquiries into restrictive trade practice may be initiated by the Commission. Sub-clause (i) of clause (a) provides for inquiries upon receiving a complaint of facts which constitute a restrictive trade practice from any Trade or Consumers' Association having a membership of not less than twenty-five persons or from twenty-five or more consumers. Sub-clause (ii) provides for inquiries pursuant to references made by the Central Government or a State Government. Sub-clause (iii) provides for inquiries upon an application made to it by the Registrar of Restrictive Trade Agreements. Provision has been made in the Act in sub-clause (iv) for suo moto inquiries by the Commission upon its own knowledge or information.

Mandatory Investigation

Section 11 of the Act makes it mandatory for the Commission, before issuing any process requiring the attendance of the person complained against, to cause a preliminary investigation to be made by the Director in such manner as it may direct for the purpose of satisfying itself as to whether or not the complaint requires to be inquired into. Even if the complaint itself spells out a restrictive trade practice and is supported with facts justifying an inquiry forthwith, the Commission cannot institute an inquiry straightaway on the basis of the complaint without referring the
same to the Director for preliminary investigation. If the Commission, without referring the complaint to the Director institutes an inquiry straightaway, that inquiry will not be a proper inquiry under the provisions of the Act and will be void and as such the orders passed by the Commission will not be binding on the parties concerned.

Justification for Preliminary Investigations

One may wonder as to why a complaint received by the Commission under sub-clause (i) of clause (a) of section 10 has been singled out for a preliminary investigation by the Director. The answer to this is quite clear. The other sources of inquiries provided in section 10 are responsible and reliable sources. The Central Government or a State Government or the Registrar of Restrictive Trade Agreements will not come before the Commission with a fabricated or frivolous complaint with the intention of harassing somebody. In a suo motu inquiry too this will not happen. As far as a complaint under sub-clause (i) of clause (a) of section 10 is concerned, it need not necessarily be always genuine. It is not difficult in these days to get the signatures of 25 consumers to make a complaint. The possibility of mushroom trade associations indulging in black mailing can not also be ruled out. Even one man can play the mischief by putting in the names of 25 fictitious persons and their signatures. In such circumstances, if the Commission straightway starts an inquiry, without first properly verifying the veracity of the allegations made against a person, innocent persons may often suffer. That is why, the preliminary investigation by the Director has been made a statutory requirement in respect of the complaints received by the Commission under sub-clause (i) of clause (a) of section 10 of the Act. This preliminary investigation by the Director, apart from saving innocent persons from black mailing by few persons also helps to save the precious time of the Commission being wasted over fictitious complaints. An inquiry before the Commission is a laborious and time consuming proceeding, it must be remembered.
Scope of Preliminary Investigation

It is relevant to note the word 'preliminary' used as a prefix to the word investigation in Section 11. The Director, unlike the Commission, is not a court of inquiry as the scope of the preliminary investigation by him is confined to seeing whether there is a prima facie case made out for a judicial investigation by the Commission. There is no uniform opinion about the scope of the preliminary investigation contemplated in section 11 of the Act. Some persons hold the view that the scope of preliminary investigation by the Director is confined to the verification of the facts contained in the complaint and his investigation in every sense and cannot go beyond the matter complained of. According to them, a preliminary investigation under Section 11 must be directly confined to the facts as set out in the complaint. The scope of investigation is firstly to ascertain whether the facts stated in the complaint are correct or not and secondly to ascertain whether on those facts a restrictive trade practice can be spelt out within the meaning of clause (o) of section 2 of the Act. As every restrictive trade practice is presumed to be prejudicial to the public interest unless otherwise proved it is for the person complained against to prove that the particular restrictive trade practice is not detrimental to the public interest. So the question of an investigation by the Director as to the effects of a restrictive trade practice does not arise at all.

There is yet another school of thought which does not share these views. They feel that the scope of preliminary investigation contemplated in Section 11 is wide and comprehensive enough to cover an investigation by the Director not only into all the facts stated in the complaint but also into all the facts stated in the complaint but also into all other factors which have a bearing on the question whether the complaint is competent and maintainable and requires
to be inquired into. According to them there is nothing to restrict the ambit or the scope of the preliminary investigation to be made by the Director only to the question as to whether the facts complained of constitute restrictive trade practices. They feel that the ambit of the preliminary investigation under section 11 is co-extensive with the determination of every question which has a bearing upon the issue whether the complaint requires to be inquired into. Consequently in order to ascertain whether the complaint requires to be inquired into, the Director must necessarily go into and investigate every aspect of the question including the competency of maintainability of the complaint in order to enable the Commission subsequently to satisfy itself about the said question. The intrinsic evidence in Section 11 of the Act and its scheme indicate that the question of the Commission applying its mind and satisfying itself that the complaint requires to be inquired into arises only after the preliminary investigation has been carried out by the Director. This involves an investigation by the Director not only of the facts complained of, but of the complaint itself.

In this connection, it is relevant to know as to what is meant by 'fact' as the section refers to complaint of facts. A full bench of the Commission in one of its recent judgement had clarified this. According to the interpretation given by the Commission the word fact as it is used in section 10 is in contradiction to the word "inference". The complaint should, therefore set out the basic facts on which the allegation is founded. The fact would connote something which according to the complaint has already happened or is happening. It would exclude all imagination or something which has not happened or is not happening. Fact is not merely a state of mind or a perception. Facts, are something which are objective and which can be ascertained or established without the assistance of the person alleging or refuting
the facts. "Facts have to be distinguished from inferences that can be drawn from the facts or from the evidence which supports the facts or proves the facts". It is from this point of view that the facts stated in a complaint have to be investigated into.

Whatever may be the true interpretation of the scope of the preliminary investigation by the Director under section 11, the Director has been entrusted with a very high responsibility. Any indifference or complacency on his part will adversely affect the genuine interests of the complainant or the persons complained against, as the case may be. Precisely, that is why the Act provides for an independent statutory officer to conduct investigations in a fair and impartial way for its purposes of the Act.

Admissibility as Evidence

Section 11 of the Act clearly states that the object of the preliminary investigation by the Director is for the purpose of satisfying the Commission that the complaint received by it under sub-clause (i) of clause (a) of section 11 requires to be inquired into. Beyond this, the Act says nothing about the preliminary investigation report. Section 11 of the Act does not require that a copy of the report of the Director should be furnished to the persons complained against. Once the Commission on the basis of the Director's report decides to institute an inquiry the purpose of the report is exhausted. Even if the Director's report categorically establishes restrictive trade practices indulged in by the person complained against the Commission cannot pass any order only on the basis of that report without instituting an inquiry under the provisions of the Act in the matter. In the inquiry the person complained against is given ample opportunities to defend himself and to refute the allegations levelled against him. The Director's report cannot be treated as an evidence in the inquiry proceedings without
bringing it on record and giving an opportunity to the party concerned to rebut it, if the party so desires. The Regulations made by the Commission provide that the Reports of the Director and any other material or evidence collected by him are to be treated as confidential and also prohibit the disclosure of the same, to any party except in so far as is provided in the Regulations. Regulation 21(2) provides that the Report of the Director and any evidence or other material collected by the Director or any part of such report, evidence or material may, at the discretion of the Commission, at any stage of an inquiry be brought on record for the purposes of the inquiry and the Commission shall communicate the parts of the report, evidence or material brought on record to the parties concerned and give them an opportunity to rebut the material so brought on record. This Regulation is in conformity with rules of natural justice. 4

In an inquiry instituted by the Commission under sub-clause (i) of clause (a) of section 10 read with section 37 of the Act, the Commission passed an order to the effect that the Respondents are not entitled to a copy of the preliminary investigation report except in the circumstances stated in Regulation 21(2) of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974. In this case the Respondents, after entering appearance, in response to the notice of inquiry issued by the Commission, moved an application before the Commission praying that the Commission should furnish them a copy of the report submitted by the Director. One of the grounds for making such a prayer was that in respect of complaints under sub-clause (i) of clause (a) of section 10 of the Act, preliminary investigation by the Director is mandatory and therefore, the report is the foundation of the jurisdiction of the Commission. In this context the Commission observed "it is true that section 11 makes it compulsory that a complaint received by the

Commission under section 10(a)(i) should be referred to the Director for preliminary investigation. It, therefore, follows that if the Commission had not referred the complaint to the Director for preliminary investigation but had ordered an inquiry straightaway the jurisdiction of the Commission may have been affected. But there is no grievance on the ground that complaint was not so referred or that the report of the Director was not obtained. But furnishing a copy of the report to the persons complained against would depend upon the law of the land including the Regulations made by the Commission and it cannot be said that not furnishing a copy of the report of the Director to the person complained against whether rightly or wrongly would affect the jurisdiction of the Commission to hold an inquiry... It may at worst be a wrong decision on a point of law. But every wrong decision on a point of law does not affect the jurisdiction of the deciding Tribunal".

Another ground on which the copy of the report of the Director was claimed was that the Commission has used the report for satisfying itself that the complaint requires to be inquired into and, therefore, natural justice requires that a copy of the report be furnished. The Commission's observations on this line of argument were as follows. "We have no doubt and in fact a catena of judgement of the Supreme Court has decided that where Civil rights or parties are affected rules of natural justice must be read into a statute whether they are expressly provided for or not. But they apply when the Statute or the Rules and Regulations framed thereunder do not expressly or by necessary implications exclude them. We must now find out what the rules of natural justice are and whether they require that a copy of the report used by the Commission for the purpose of satisfying itself that the complaint requires to be inquired into should be furnished to the person against whom the inquiry is ordered. This also depends upon the express
provisions of the Statute and Regulations made under it...

We have noticed above that Regulations 21 of the 1974 Regulations provides that the report shall be confidential and shall not be disclosed to any party except when the same or parts of it are used in the inquiry against the Respondents in which case the report or the parts used must necessarily be furnished to the parties. It is, therefore, clear that the Regulations not only do not provide for furnishing a copy of the report to the parties at this stage but expressly prohibits such course. These Regulations are statutory provisions. In case of conflict between rules of natural justice and statutory provisions the latter must prevail. 4

Apart from the preliminary investigations stated above, provision has been made in Regulation 35(1) to make use of his services to study and investigate and report or furnish information on any trade practices as may constitute or or contribute to monopolistic or restrictive trade practices existing in any trade or are alleged to have been practised by any producer, distributors or dealers. The Regulation further provides for making use of his services for investigation and study in respect of applications or references received by the Commission under Chapter-11 of the Act and Section 61 of the Act. The scope of Regulation 35(1) is very wide so as to enable the Commission to ask the Director to investigate and study not only individual cases but also detailed aspect of trade and industry in the country.

The Act prohibits resale price maintenance on goods sold in India. But section 41 of the Act empowers the Commission to exempt particular classes of goods from the operation of sections 39 and 40 which deal with resale price maintenance. In this respect, if the Commission so desires. It can ask the Director to investigate and report the matter.

The scope of the preliminary investigation and study or investigation under the Regulations is confined to the scope of the reference received by the Director from the Commission. The purpose of the preliminary investigations under the Regulations is to enable the Commission to take a decision whether there is a prima facie case warranting a judicial inquiry into the matter. The law does not empower the Director to start suo motu investigations and as such he cannot go beyond what he has been asked to investigate and report.

The duties and functions of the Director do not exhaust with the preliminary investigations into the restrictive trade practices and monopolistic trade practices or a general study and investigation provided in Regulations 35(1) and 47(1). The Regulations have assigned him with the duty of conducting monopolistic and restrictive trade practices inquiries before the Commission under Chapter-IV and VI of the Act. According to Regulation 25(1), the Director is entitled to appear in all inquiries under Chapters-IV and VI of the Act except in those inquiries instituted on the basis of the applications filed by the Registrar of Restrictive Trade Agreements under sub-clause (iii) of clause (a) of section 10. Even in the inquiries instituted on the Registrar's application, the Director is entitled to appear in such matters as arise out of the preliminary investigation made by him or any other officer of the Commission. In effect, he plays the role of a public prosecutor in the inquiry matters before the Commission. It will not be improper to call him custodian of public interest in the monopolistic and restrictive trade practices inquiries as he looks after the interest of the unrepresented aggrieved public before the Commission.
Inquiry Different from Trial

It may be mentioned that Section 12 of the Act does not make an inquiry before the Commission under sections 10 and 37 a 'trial' as in a suit. An inquiry is different from a trial. The Commission in one of its judgement had clearly stated as to how an inquiry before it is different from a trial. Even though the Director has been entrusted with the onerous task of protecting public interest in the inquiries it is doubtful whether the Director can be treated as a party before the Commission in terms of the existing provisions of law. The doubt arises because of the fact that he has been given only the right of appearance and not the right of appeal against the orders. Ordinarily, under the existing provisions of law a party to a judicial proceeding has a right of appeal against the order. But the Director does not seem to have any such right of appeal. In these circumstances, instead of calling him a "party" to the proceedings it will be more appropriate to consider him "as the person authorised for the carriage of proceedings before the Commission."

To sum up, the Director in his capacity as an independent statutory investigating authority and as the prosecutor in the case of monopolistic and restrictive trade practices inquiries is entrusted with the onerous task of looking after the public interest and has a prominent role to play in the proper administration of the MRTP Act.

(v) CRITICAL REVIEW OF THE WORKING OF MRTP COMMISSION

(1) As to Constitution of MRTP Commission

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 in 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. 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 atleast 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 9th August 1976, it failed to make appointment of chairman until 24th 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 appointments cannot be held up indefinitely. Indeed, it is highly undesirable that important quasi-judicial administrative posts should remain vacant for a 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.

(2) **Need for more Benches of the Commission**

After the amendment in MRTP Act in 1984, which incorporates 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. At 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.
(iii) As to Working of MRTP Commission

An analysis of the working of MRTP Commission during the three years (1986, 1987 and 1988) shows the following:

For the purpose of analysis the cases dealt by the MRTP Commission have been classified into four parts:

i. Complaints and Enquiries relating to Restrictive Trade Practices;

ii. Complaints and Enquiries relating to Unfair Trade Practices;

iii. Injunction Applications under Section 12A of MRTP Act;

iv. Compensation Applications under Section 12B of MRTP Act.

Table-1

RESTRICTIVE TRADE PRACTICES (MRTPC)

<table>
<thead>
<tr>
<th>Year</th>
<th>Particulars</th>
<th>Opening Balance</th>
<th>Cases Recd./ Instituted</th>
<th>Cases Disposed-off</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>Complaints</td>
<td>189</td>
<td>550</td>
<td>198</td>
<td>537</td>
</tr>
<tr>
<td></td>
<td>Enquiries</td>
<td>179</td>
<td>229</td>
<td>125</td>
<td>283</td>
</tr>
<tr>
<td>1987</td>
<td>Complaints</td>
<td>537</td>
<td>1376</td>
<td>584</td>
<td>1329</td>
</tr>
<tr>
<td></td>
<td>Enquiries</td>
<td>283</td>
<td>1665</td>
<td>1130</td>
<td>818</td>
</tr>
<tr>
<td>1988</td>
<td>Complaints</td>
<td>1329</td>
<td>1639</td>
<td>747</td>
<td>2221</td>
</tr>
<tr>
<td></td>
<td>Enquiries</td>
<td>818</td>
<td>480</td>
<td>456</td>
<td>842</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>3335</td>
<td>5939</td>
<td>3240</td>
<td>6030</td>
</tr>
</tbody>
</table>

Restrictive Trade Practices

Under this head the Commission seeks to bring about a control over practices which may have adverse effects on competition. Such practices are sought to be controlled through the following:

(1) Registration of specified trade agreements.
(2) Restraining persons from indulging in restrictive trade practices through inquiries conducted by the Commission and,
(3) Prohibition of maintenance of minimum resale prices.

Table-1 shows that even though the number of complaints filed with the MRPTC is increasing rapidly each year, the Commission is unable to keep pace with it. As a result, the number of pending cases has been mounting over the year. The situation seems to be worse in the area of inquiries. Number of inquiries completed has fallen during the period 1987 to 1988. The Commission ought to find ways and means to expedite its process. Further, since there is no reason for us to believe that there has been a fall in the unfair trade practices in business, the Commission should also look into why the number of inquiries instituted by it has fallen in the year 1988 as compared to the previous year.

Unfair Trade Practices

A trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts one or more of the means mentioned in Section 26A(1) of the Act, such as falsely representing that the goods are of a particular standard, quality, grade, composition style or model, falsely representing any rebuilt, second hand, renovated, reconditioned or old goods as new goods, etc., is said to be unfair trade practice.
Table-2
UNFAIR TRADE PRACTICES (MRTPC)

<table>
<thead>
<tr>
<th>Year</th>
<th>Particulars</th>
<th>Opening Balance</th>
<th>Cases Recd./ Instituted</th>
<th>Cases Disposed-off</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>Complaints</td>
<td>96</td>
<td>333</td>
<td>144</td>
<td>315</td>
</tr>
<tr>
<td></td>
<td>Enquiries</td>
<td>89</td>
<td>256</td>
<td>87</td>
<td>258</td>
</tr>
<tr>
<td>1987</td>
<td>Complaints</td>
<td>315</td>
<td>1549</td>
<td>513</td>
<td>1351</td>
</tr>
<tr>
<td></td>
<td>Enquiries</td>
<td>258</td>
<td>512</td>
<td>155</td>
<td>615</td>
</tr>
<tr>
<td>1988</td>
<td>Complaints</td>
<td>1351</td>
<td>1626</td>
<td>704</td>
<td>2273</td>
</tr>
<tr>
<td></td>
<td>Enquiries</td>
<td>1615</td>
<td>427</td>
<td>277</td>
<td>765</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>3724</td>
<td>4703</td>
<td>1880</td>
<td>5577</td>
</tr>
</tbody>
</table>

Under this head, the number (Table-2) of complaints received and inquiries instituted by the Commission has been increasing sharply over the years but the disposal process is comparatively very slow as in the case of Restrictive Trade Practices, resulting in a large backlog at the end of a year.

Injunction/Compensation

Under Section 12A, the Commission may grant a temporary injunction restraining an undertaking or person from carrying on any monopolistic or unfair practice if ample proof in this regard, is provided by the complainant. Section 12B empowers the Commission to award compensation to any person body or Government in the event of any loss or damage having been caused to it by the party concerned.

It is observed from Table-3 and 4 that whereas the number of applications under Section 12A and B has increased over the year, rate of redressal is once again, lagging far behind.
Table-3
INJUNCTION APPLICATION UNDER SECTION 12A (MRTPC)

<table>
<thead>
<tr>
<th>Year</th>
<th>Opening Balance</th>
<th>Cases Recd./ Instituted</th>
<th>Cases Disposed-off</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>7</td>
<td>71</td>
<td>33</td>
<td>45</td>
</tr>
<tr>
<td>1987</td>
<td>45</td>
<td>116</td>
<td>97</td>
<td>64</td>
</tr>
<tr>
<td>1988</td>
<td>64</td>
<td>161</td>
<td>135</td>
<td>90</td>
</tr>
<tr>
<td>Total</td>
<td>116</td>
<td>348</td>
<td>265</td>
<td>199</td>
</tr>
</tbody>
</table>

Table-4
COMPENSATION APPLICATION UNDER SECTION 12B (MRTPC)

<table>
<thead>
<tr>
<th>Year</th>
<th>Opening Balance</th>
<th>Cases Recd./ Instituted</th>
<th>Cases Disposed-off</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>104</td>
<td>63</td>
<td>102</td>
<td>65</td>
</tr>
<tr>
<td>1987</td>
<td>65</td>
<td>1992</td>
<td>369</td>
<td>1686</td>
</tr>
<tr>
<td>1988</td>
<td>1686</td>
<td>2865</td>
<td>873</td>
<td>3678</td>
</tr>
<tr>
<td>Total</td>
<td>1855</td>
<td>4920</td>
<td>1344</td>
<td>5429</td>
</tr>
</tbody>
</table>

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 of people who decided not to buy its scooter, with a high rate of interest. The Commission's report for year 1987 observes that now scooter and motor car companies are prompt in refunding booking advance. This however, is unfortunately not the case. Hundreds of frustrated people still keep complaining in this respect every month, in the Investors' Column of The Times of India daily, and like publications. Therefore, it would be in fitness of things if the Commission issues a general directive to all such companies to refund booking advance within five to six weeks or reasonable time.
The MRTPC Report for 1987 also mentions that there has been a 9-fold increase in cases processed during the year as compared to the previous year. But even this pace cannot be termed speedy or sufficient enough. Perhaps, the Commission should either open up additional branches or increase the size of its working staff. Only then will it find time to clear backlog and pursue inquiries on its own, as well.

(iv) Free Legal Aid Cell

A free legal aid cell on All-India basis had been set up at New Delhi for the benefit of the consumers. The Cell, a voluntary body of advocates and accountants, provided free legal aid to the consumers. Chapters of the cell have also started working at Bangalore, Kottayam, Chandigarh, Jaipur, Tripura and several other places to render free legal aid to the consumers.

(v) Corridor of Complaints

In 1987 Directorate had set up a corridor of complaints at its New Delhi office where as many as 25 companies and parties had kept their complaint boxes. Each week, a responsible official of the company collected the complaints and attended to them and reported back to the Directorate.

In 1987, a total of 4200 individual complaints were sorted out through these complaint boxes. Most of these were about the delay in repayment of deposits by the manufacturers of two-wheelers.