CHAPTER 5

CONSUMER PROTECTION UNDER MRTP ACT, 1969

5.1 INTRODUCTION

The fifth chapter of the present thesis is very important as it deals with the very important economic legislation i.e. MRTP Act, 1969. The issue of industrial monopoly has been the subject of enough controversy and thinking for years together. Appropriate Acts have been formed to prevent monopoly tendencies and unreasonable practices in all the nations. Even then industrial monopoly tendencies are continuously increasing. This fact is worth mentioning that even in the developed countries (America, Britain, France, Italy, Germany, Japan, etc.), alongwith the developing countries, industrial monopoly tendencies widely exist. Sherman Anti Trust Act (1890) and Cleton Anti Trust Act (1914) prevailing in America,
Monopoly and Restrictive Practices Act (1948) of Britain, in force are its clear proof.

So far the question of India is concerned, here the problem of industrial monopoly and restrictive trade practices is not so acute as exists in capitalist nations. Even then, after the Second Five Year Plan, of which the main objective was the rapid industrialisation and development of heavy industries, industrial monopoly tendencies have availed of wide opportunity to flourish here.

Mahalanbees Committee (1960) and Monopoly Enquiry Committee (1964) Reports are its proof. Mahalanbees Committee accepted this fact in its report that even the ten year's planning economic power has been centralised in the hands of a very small section of the population.

In this way, the Monopoly Enquiry Committee has also admitted this fact that in India, even in spite of several efforts of control, only few business houses hold the control place in economic power. Indian businessmen are not untouched with the restrictive practices. Here are many such business institutions, which time to time, are based upon undesired business practices.

On the recommendations of the Monopoly Enquiry Committee in Dec. 1969, Monopolies and Restrictive Trade Practices resolution was passed, which has been brought into force w.e.f. from June, 1970.
5.2 **OBJECTIVES OF THE ACT**

Following are the main objectives of this Act:

- To see that the activities relating to production and distribution should be conducted in such a way that the centralisation of economic power may not be possible against the public good. (Chap. III clause 20 to 30)

- To control the monopoly and restrictive trade practices, which are against public interest. (Chap. II, clause 31, 32)

- To know about the impact of these practices over the general public and take action for the improvement. (Chap. V clause 33 to 41)

Before knowing the main provisions of the Act, it is necessary to know 'what is the meaning to Monopolistic Trade practice and Restrictive Trade Practice? According to the clause 2 (1) of the MRTP Act, monopolistic trade practice means the following activities:

- To limit or minimize the production, distribution or supply of a commodity or service and by controlling in any way keeping its prices on unreasonable standard.

- To check or minimize the competition unreasonably in the production, distribution or supply of a commodity or service.
• With a view to lower down the quality of a commodity or service produced or to be distributed in India, limit the technical development or capital investment.

If anybody or institution performs any of the activities from above, then it will be deemed as attached in monopolistic activities.

In clause 2 (d) of the Act, Restrictive Trade Practice has been defined. According to it, 'Any kind of Trade practice to which competition stops in any of the following ways or there is hindrance in it or there is a restriction on it, then it will be called a restrictive trade practice:

• Any work, which presents a hurdle in the flow of capital and other resources to the production.

• Any work, which disturbs the prices or by which there is a hurdle in the free flow of commodities or the conditions of supply as a result of which the consumers have to pay more price or face the restrictions.

According to clause 36 A, "Unfair trade practice means sale or utility of any commodity or to increase its sale or for the arrangement of any service performs anyone or more work mentioned in the Act, which put the consumers to loss or damage and by which the competition is stopped."
5.3 MAIN PROVISIONS OF THE ACT

Main provisions of this Act are as follows:

1. **Distinction between monopolistic and restrictive trade practice:**

   This Act distinguishes between monopolistic trade practices and restrictive trade practices. It includes the practices of dominant undertakings in the monopoly trade practices. Resultly it shows a sign of individual behaviour of the undertaking or a oligopoly right of the group of three undertakings even, because in the market production undertaking or a group of undertakings have an important role. 

   Opposite to it, in restrictive trade practice, agreement is made by two or more undertakings to stop mutual competition, but it is not necessary to take important part by any undertaking in the market production. Secondly, the commission has a right to recommend only relating to the monopolistic practice while it has got judicial powers regarding the restrictive trade practices.

2. **Formation of Commission:**

   Under this Act, there is a provision of the establishment of a permanent judicial monopoly and restrictive trade practices commission. Chairman of this commission may be present or ex-justice of the supreme or high court
or any person, who possesses the qualification of justice of the high court. There may be the minimum 2, and maximum 9 members including the chairman in the commission.

Following are the main functions of this commission.

- Prevention of concentration of economic power and control over monopolies.
- Control of monopolistic trade practices.
- Control of restrictive trade practices.

These three duties are mentioned in clause 3, 4 and 6 of the Act.

**Prevention of concentration of economic power and control of monopolies:**

The commission has got wide powers to fulfill this responsibility. In this regard following arrangements are important:

- Prior permission of the central government for the establishment of new undertakings (CI. 22).
- Prior permission of the central government for the extension of the undertakings (CI. 21).
- Prior permission of the central government in the condition of amalgamation, integration. (CI. 23).

- Restriction on the appointment of director's (CI. 25).

- Partition of undertaking (CI. 27).

- Arrangement of punishment on breach of CI. 21,22,23,25,27.

Such undertakings, as in registered or to be registered under this Act, itself or together with inter-related undertakings, of which total assets are worth Rs. 100 crores or more, can not do any such work without the permission of the central government as, the establishment of a new undertaking, important extension, integration and amalgamation or the partition of the present undertaking.

The government, after giving due consideration, can accept or reject such application forms or can refer them to the commission for enquiry and submission of report. The government is not bound to accept the recommendations of the commission. As per provisions of the Act, so far such matters are concerned, the commission has got advisory nature only.

**Control on monopolistic trade practices:**

Clause 31 of the Act applies to it. According to this clause, if any monopolistic undertaking utilises any type of monopolistic trade practices or utilises monopolistic practices in a commodity or service, which are not
in the public interest or which minimises competition or production cost increases or there is a hike in prices, quality of the commodity is lowered down, or there is less supply of goods, then the central government can forward such cases to the commission for enquiry and report and the commission itself under clause 10 (b) of the Act can take the action in this regard.

**Control of restrictive trade practices:**

It has been described in chapter VI of the Act. With regard to such practices, the commission has not only got a right to recommend but judicial powers also. In other words, the commission is autonomous with regard to such matters.

- Parallel or regional fixation of prices.

- Allotment of mutual markets on regional basis by some companies.

- Discrimination between consumers.

- Boycott of some consumers.

- Separate contracts of complete sale and sale-oriented selling arrangement.

- Favour by the rate of discount.
3. **Appointment of Registrar and Investigation Director:**

A provision has been made in the Act for the appointment of the following officers to assist the commission in the settlement of monopolistic and restrictive trade practices:

- **Enquiry Director**: His function is to conduct preliminary enquiry of complaints regarding restrictive trade practices.

- **Restrictive trade Practices Registrar**: His function is to register the agreements of restrictive trade practices.

The commission can take action against the restrictive trade practices on the following basis:

- On making complaint by any trade or consumers union.

- On presentation of reference by the central or state government.

- On presentation of an application to the commission by the Registrar of restrictive trade practices.

- On the basis of self knowledge of the commission.
4. **Rules Regarding Registration:**

Restrictive trade practices agreements, which have been enlisted in clause 33 (i) of the Act, are compulsorily required to be registered to the registrar with in 60 days. At the time of registration, it will be necessary to inform the Registrar the names of the parties connected with the agreements and complete informations about the agreements.

If anybody violate this arrangement, he can be given monetary punishment up to Rs. 5000. Side by side, if the commission feels that a particular restrictive practice is not in the public interest, then it can order to stop or amend it.

5. On non-receipt of permission for the amalgamation or integration of companies or on declaration as unfair, the central government can order for their re-separation (Clause 24).

6. Under clauses 45 to 53 of the Act, provisions have been given regarding crimes and punishments.

7. This Act applies only to private undertakings, but if deemed necessary, the central government can apply to the government undertakings also.
5.4 MRTP COMMISSION AND ITS APPRAISAL

The Central Government, for the purposes of the Act, has set up a Commission known as the Monopolies and Restrictive Trade Practices Commission. Besides a Chairman, the Commission is to constitute by not less than two and not more than eight other members, all of them to be appointed by the Central Government. (Sec. 5(1)).

Before appointing any person as a member of the Commission, the Central Government must satisfy itself that the person does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such member. {Sec.5(3)}.

A person who is or has been or is qualified to be a judge of the Supreme Court or of a High court can only be appointed as the Chairman of the Commission. For members, the qualifications have been laid down 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", (Sec.5(2)).

Section 6 provides the terms of office, conditions of service of members, and section 7 lays down the circumstances whereby the Central Government has been empowered to remove from office any member. Further, section 8 empowers the Central Government to appoint Director General of Investigation and Registration and as many Additional, Joint,
deputy or Assistant Directors General as may be necessary and to authorise the Central Government to appoint staff of the Commission and to determine the conditions of service of the Director General etc., and of the staff of the commission. (Sec. 8).

The salaries and allowances payable to the members and the administrative expenses, including salaries, allowances and pensions payable to or in respect of other employees of the commission shall be defrayed out of the Consolidated Funds of India. (Sec. 9).

Section 10 of the Act empowers the Commission to enquire into:

(a) any restrictive trade practice:

- upon receiving a complaint of facts which constitute such practice from any trade or consumers' association having a membership of not less than 25 persons or from 25 or more consumers, or

- upon a reference made to it by the Central Government or State Government, or

- upon an application made to it by the Director General, or

- upon its own knowledge or information.
(b) any monopolistic trade practice upon a reference made to it by the Central Government or upon its own knowledge or information.

Whether or not the complaint requires to be inquired into, section 11 of the Act empowers the Director General before the issue of process in certain cases to make or cause to be made a preliminary investigation in such manner as it may direct and submit a report to the Commission (Sec.11).

For the purposes of any enquiry under the Act, the Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit. (Sec. 12).

5.5 UNFAIR TRADE PRACTICES

"Unfair Trade Practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts one or more of the following practices and thereby causes loss or injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise, namely (Sec.36A):

(a) the practice of making any statement whether orally or in writing or by visible representation which:

- falsely represents that the goods are of a particular standard, quality, grade, composition, style or model;
• falsely represents that the services are of a particular standard, quality or grade;

• falsely represents any re-built, second hand, renovated, reconditioned or old goods as new goods;

• represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

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

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

• 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 defense is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defense shall lie on the person raising such defense;

• makes to the public a representation in a form that purports to be:
  (i) a warranty or guarantee or a product or of 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 no reasonable prospect that such warranty, guarantee or promise will be carried out;

- materially mislead 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;

- gives facts or misleading facts disparaging the goods, services or trade of another person.

(b) permits the 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 the 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 or business, and the nature of the advertisement. Bargain price means:
• a price that is stated in any advertisement to be a bargain price by reference to an ordinary price or otherwise, or

• a price that a person reads, hears or sees the advertisement would reasonably understand to be a bargain price having regard to the prices of which the product advertised or like products are ordinarily sold.

(c) permits:

(i) the offering of gifts, prizes or other items with the 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, and

(ii) the 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) permits the sale or supply 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, designs, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to person using the goods;
(e) permits the hoarding or destruction of goods, or refuses 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.

**Inquiry into unfair trade practices:**

The Commission may inquire into any unfair trade practice (Sec.36 B)

(a) upon receiving a complaint of facts which constitutes such practice from any trade or consumers' association having a membership of not less than 25 persons or from 25 or more consumers;

(b) upon a reference made to it by the Central Government or a State Government;

(c) upon an application made to it by the Director General;

(d) upon its own knowledge or information.

In respect of any unfair trade practice of which complaint is made under clause (a) of section 36 B aforesaid, the Commission shall before issuing any process requiring the attendance of the person complained against, cause a preliminary investigation to be made by the Director
General in such manner as it may direct for the purpose of satisfying itself that the complaint requires to be inquired into (Sec.36 C).

The Commission may inquire into any unfair trade practice which may come before it for inquiry and, if, after such inquiry, it is of opinion that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, and, in any such case, if the commission is satisfied that necessary steps have been taken within the time so specified, it may decide not to make any order in respect of that trade practice.

However, no order shall be made in respect of any trade practice which is expressly authorised by any law for the time being in force. (Sec.36 D).

5.6 CRITICISM OF THE MRTP ACT

The most important lacuna of this Act is that, in it issues relating to concentration of economic power and monopoly are considered in a mixed form, while provisions of this Act are concerned with the regularisation of extension, amalgamation and concentration of economic power:

- Effective enterprises, whose assets are worth Rs. 5 crores or more,
• Interrelated enterprises, whose total assets arrworth Rs. 100 crores or more. It also regulates those new enterprises, which are existing and whose total assets are worth Rs. 100 crores or more.

In the above reference, the restriction is limited only to the obtaining of permission of the central government. In practice, acceptance of all the applications relating to extension, amalgamation and integration during the period of 1970 to 1987 by the central government is against the objectives of the Act.

In economic reference, monopoly means a complete control of a firm on the supply of any such commodity, of which no proper substitute commodities are available. In India, no such monopoly is found to be seen in any industry, because here the industrial development is being made on a planned basis.

If any person or company makes use of power comparatively more than his capacity, then it cannot be taken as 'monopoly'. Even then, with a view to have control over the industries, many provisions already exist, in which industrial license, import control, capital issue control act are the main. Now, if in this regard, extra restrictions are enforced, then the speed of industrialisation may be slow instead of getting fast.

If we visualise the international tendencies in this connection, then we can feel our selves in the opposite direction. In all the nations of the world, tendency of integration and amalgamation of big companies and
units, if found to be seen their aim is improvement in the competitive efficiency and increase in technical working capacity.

In this way, the matter of MRTP Act or control over industrial monopoly seems to be unreasonable in Indian context.

Under the Act, in the provisions relating to diversity and extension of companies, it seems to be difficult to maintain parity against the provisions of monopoly. There is no such nation in the world, where objective of monopoly provisions regarding diversity and extension of companies, is restriction and control over assets. It is so, because in view of setting of monopolistic power, the assets can be treated as an important factor. In this regard, working method of big companies can only be treated as a valid factor, which is working against the consumer or public interest.

This Act applies any Ion private undertakings, not on public undertakings. So it is a wrong notion that due to the public enterprises, there is no concentration of economic power. There are so many public enterprises, which are competing with the private enterprises and the objective of their activities is to earn profit. In brief, the matter of exemption to the public enterprises from this Act is completely unjustified and unreasonable.

At the time of enforcing the provisions of this Act the government has not taken into consideration their coordination with other national
economic policies. There is no exaggeration in saying that the enforcement of this Act has put the government into great difficulty.

The main problem, relating to the administration of the Act, is to know with difficulty that any particular monopoly or restrictive trade practice is against the public interest or not. The objective of this Act is to control the concentration of economic power to the limit, which is against public interest. Demarcation of such limit is a very complicated work.

The formation of this Act has been made on the British Model, instead of American Anti Trust Act, which is based on the Abuse principle. In other words, this principle does not oppose the condition of taking over the monopolistic power but it opposes the unfair work of such power.

The role of commission is also controversial. It is authorised only to enquire and recommend in connection with the monopoly practices and not to give final decision. In this way, the commission has got judicial rights relating to restrictive trade practices but the central government, if willing, can interfere in it. Resultly, the commission can not function with impartially and fully autonomy.

In short, the role of MRTA Act, relating to the concentration of economic power has been negligible. During a long period are of 18 years, its role has not only been controversial but its validity is also doubtful. Though there are many lacunae in the Act, even then its utility can
completely be denied. Economic and social equality is our main objective. This Act, after appropriate modifications, can play an important role in achieving this aim.

5.7 EVALUATION AND SUGGESTIONS

For the improvement and betterment of the working of the Act and working of MRTP Commission, the Central Government enjoys several powers. The Commission has also been given sufficient powers. The Commission as well as the Central Government has power to make rules & enforce them.

POWER TO MAKE REGULATIONS:

❖ The Commission [may [by notification]¹ make regulations² for the efficient performance of its functions under this Act.

❖ In particular, and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely :-

(a) the conditions of service, as approved by the Central Government, of persons appointed by the Commission;

¹ Substituted for "by notification in the Ottical Gazette" by MRTP (Amendment) Act, 1984, w.e.f. 1-8-1984.
² Substituted for the words "may make regulations" by the Delegated Legislation Provisions (Amendment) Act, 1983, w.e.f. 15-3-1984.
(b) the issue of the processes to Government and to other persons and the manner in which they may be served;

(c) the manner in which the special section of the register shall be maintained and the particulars to be entered or filed therein;

(d) {Omitted by the MRTP (Amendment) Act, 1984, w.e.f. 1-8-1984\(^3\)}

(e) the payment of costs of any proceedings before the Commission by the parties concerned and the general procedure and conduct of the business of the Commission;

(f) any other matter for which regulations are required to be, or may be, made under this Act.

\(^{3}\) Inserted by the Delegated Legislation Provisions (Amendment) Act, 1983

The Central Government shall cause every regulation made under this section to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the
regulation, or both Houses agree that the regulation should not be made, the regulations shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

POWER TO MAKE RULES:

❖ The Central Government may, by notification, make rules to carry out the purposes of this Act.

❖ In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form and manner in which notices may be given or applications may be made to it under this Act and the fees payable therefor;

(ab) the form and the manner in which an application for recognition shall be made under clause (n) of section 2;

(ac) Omitted by the MRTP (Amendment) Act, 1991, w.e.f. 27.9-1991.  

Prior to omission, clause (ac), as inserted by the MRTP (Amendment) Act, 1984, w.e.f. 1-8-1984, and amended by the MRTP (Amendment) Act, 1986, w.e.f. 1-6-1987, read as under:
(b) The particulars to be furnished under this Act and the form and manner in which and the intervals within which they may be furnished;

(ba) Omitted by the MRTP (Amendment) Act, 1991, w.e.f. 27-9-1991

(c) The conditions of service of members of the Commission and the Director General;

(ca) The duties and functions of the Director General;

(d) The places and the manner in which the register shall be maintained and the particulars to be entered therein;

(da) The manner in which every authenticated copy of any order made by the Commission in respect of any restrictive, or unfair, trade practice shall be recorded;

(e) The fees payable for inspection of the register and for obtaining certified copies of particulars from the register;

"(ac) the form in which an application shall be made to the Central Government under section 23 for the approval of any scheme of merger or amalgamation of an undertaking with any other undertaking;"
(f) the traveling and other expenses payable to persons summoned by the Commission to appear before it.

(g) Omitted by the MRTP (Amendment) Act, 1991, w.e.f. 27-9-1991

(h) any other matter which is required to be, or may be, prescribed.

❖ Any rule made under clause (c) of sub-section (2) in relation to the conditions of service of the members of the Commission may be made retrospectively from a date net earlier than the 1st day of January, 1986, so, however, that such rule shall not prejudicially affect the interests of any such member.

❖ Every rule made by the Central Government under this Act shall be laid as seen as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such
modification or annulment shall be without prejudice to the validity of anything previously done under that rule.