

Rep. by Act.....17.....of 1988, S. 2 & Sch. I

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES  
(AMENDMENT) ACT, 1984

No. 30 OF 1984

[21st May, 1984.]

An Act further to amend the Monopolies and Restrictive Trade Practices Act, 1969, and the Companies Act, 1956.

BE it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Monopolies and Restrictive Trade Practices (Amendment) Act, 1984.

Short  
title and  
com-  
mence-  
ment.

(2) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any amendment made by any provision of this Act to the commencement of the Monopolies and Restrictive Trade Practices (Amendment) Act, 1984 shall be construed as a reference to the commencement of that provision.

PART I

AMENDMENTS TO THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT,  
1969

54 of 1969 2. Throughout the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the principal Act),—

Substitu-  
tion of  
certain  
expres-  
sions.

(a) for the expressions "Director" and "Registrar", wherever they occur, the expression "Director General" shall be substituted, and such consequential changes as the rules of grammar may require, shall be made for the purpose of effecting such substitution;

(b) for the words "by notification in the Official Gazette", wherever they occur, the words "by notification" shall be substituted.

<sup>1</sup>1st August, 1984 *vide* Notification No.

Amend-  
ment of  
section 2.

3. In section 2 of the principal Act,—

(1) for clause (c), the following clause shall be substituted, namely:—

‘(c) “Director General” means the Director General of Investigation and Registration appointed under section 8, and includes any Additional, Joint, Deputy or Assistant Director General of Investigation and Registration appointed under that section;’;

(2) in clause (d),—

(a) in the proviso, for the words “relevant year”, wherever they occur, the words “relevant period” shall be substituted;

(b) for *Explanation IV*, the following *Explanation* shall be substituted, namely:—

“*Explanation IV*.—In determining, with reference to the features specified in sub-clause (ii), (iii) or (iv), as the case may be, the question as to whether an undertaking is or is not a dominant undertaking, regard shall be had to—

(i) the average annual production of the goods, or the average annual value of the services provided, by the undertaking during the relevant period; and

(ii) the figures published by such authority as the Central Government may, by notification, specify, with regard to the total production of such goods made, or the total value of such services provided, in India or any substantial part thereof during the relevant period.”;

(c) for *Explanations V* and *VI*, the following *Explanations* shall be substituted, namely:—

‘*Explanation V*.—In determining the question as to whether an undertaking is or is not a dominant undertaking in relation to any goods supplied, distributed or controlled in India, regard shall be had to the average annual quantity of such goods supplied, distributed or controlled in India by the undertaking during the relevant period.

*Explanation VI*.—For the purposes of this clause, “relevant period” means the period of three calendar years immediately preceding that calendar year which immediately precedes the calendar year in which the question arises as to whether an undertaking is or is not a dominant undertaking.’;

(3) after clause (d), the following clause shall be inserted, namely:—

‘(da) “financial institution” means,—

(i) a public financial institution specified in or under section 4A of the Companies Act, 1956;

(ii) a State Financial, Industrial or Investment Corporation;

(iii) the State Bank of India or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;

(iv) a nationalised bank, that is to say, a corresponding new bank as defined in section 2 of—

(i) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; or

(ii) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;

(v) the General Insurance Corporation of India established in pursuance of the provisions of section 9 of the General Insurance Business (Nationalisation) Act, 1972;

(vi) the Industrial Reconstruction Corporation of India; or

(vii) any other institution which the Central Government may, by notification, specify in this behalf;

(4) for clause (e), the following clause shall be substituted, namely:—

'(e) "goods" means goods as defined in the Sale of Goods Act, 1930, and includes,—

(i) products manufactured, processed or mined in India;

(ii) shares and stocks;

(iii) in relation to goods supplied, distributed or controlled in India, goods imported into India;'

(5) after clause (ee), the following clause shall be inserted, namely:—

'(ef) "group" means a group of—

(i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or

(ii) associated persons.

*Explanation.*—For the purposes of this clause—

(I) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

(II) "associated persons"—

(a) in relation to a director of a body corporate, means—

(i) a relative of such director, and includes a firm in which such director or his relative is a partner;

(ii) any trust of which any such director or his relative is a trustee;

(iii) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;

(iv) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;

(b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and

(c) in relation to the trustee of a trust, means any other trustee of such trust;

(III) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;

(6) in clause (g),—

(a) for the word "one-third", wherever it occurs, the word "one-fourth" shall be substituted;

(b) for sub-clause (iii), the following sub-clause shall be substituted, namely:—

"(iii) where the undertakings are owned by bodies corporate,—

(a) if one body corporate manages the other body corporate, or

(b) if one body corporate is a subsidiary of the other body corporate, or

(c) if the bodies corporate are under the same management, or

(d) if one body corporate exercises control over the other body corporate in any other manner;"

(c) in sub-clause (vi), for the words "group of persons", the words "by the same group" shall be substituted;

(d) in *Explanation I*,—

(i) in the opening portion, for the words "two undertakings, owned by bodies corporate", the words "two bodies corporate." shall be substituted;

(ii) in clause (iv), for the brackets and words "(whether independently or together with the relatives of such directors) one-third of the directors of the other; or", the brackets

and words “(whether independently or together with relatives of such directors or the employees of the first mentioned body corporate) one-fourth of the directors of the other; or” shall be substituted;

(iii) in clause (vi), for the words “same body corporate or bodies corporate belonging to a group, holding not less than one-third of the equity shares”, the words “same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares” shall be substituted;

(iv) in clauses (vii) and (viii), for the words “with respect to any matter relating to”, the words “in relation to” shall be substituted;

(da) in *Explanation IV*, for the words “public financial institutions”, the words “financial institutions” shall be substituted;

(e) the *Explanation* below the *Illustration* shall be omitted;

(7) in clause (i),—

(a) in sub-clause (i), for the words “maintaining prices”, the words “maintaining the prices of goods or charges for the services” shall be substituted;

(b) after sub-clause (iii), the following sub-clauses shall be inserted, namely:—

“(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 unfair or deceptive practices;”;

(8) for clause (j) and the *Explanations* thereto, the following clauses shall be substituted, namely:—

(j) “notification” means a notification published in the Official Gazette;

(ja) “owner”, in relation to an undertaking, means an individual, Hindu undivided family, body corporate or other association of individuals, whether incorporated or not, or trust (whether public or private or whether religious or charitable) who or which owns or controls, the whole or substantially the whole of such undertaking, and includes any associated person who is a constituent of a group and who has the ultimate control over the affairs of such undertaking;”;

(9) clause (n) shall be omitted;

(10) to clause (q), the following proviso shall be added, namely:—

“Provided that, after the commencement of the Monopolies and Restrictive Trade Practices (Amendment) Act, 1984, there shall be included in every scheme of finance, the estimated capital outlay which would be needed to give effect to the scheme;”;

(11) in clause (r), for the words “banking, insurance, transport”, the words “banking, financing, insurance, transport, processing” shall be substituted;

(12) for clause (v), the following clause shall be substituted, namely:—

“(v) “undertaking” means an enterprise which is, or has been, or is proposed to be, engaged in the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, either directly or through one or more of its units or divisions, whether such unit or division is located at the same place where the undertaking is located or at a different place or at different places.

*Explanation I.*—In this clause,—

(a) “article” includes a new article and “service” includes a new service;

(b) “unit” or “division”, in relation to an undertaking includes,—

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;

(ii) any branch or office established for the provision of any service.

*Explanation II.*—For the purposes of this clause, a body corporate, which is, or has been, engaged only in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate shall be deemed to be an undertaking.

*Explanation III.*—For the removal of doubts, it is hereby declared that an investment company shall be deemed, for the purposes of this Act, to be an undertaking;”;

(13) in clause (w), the words “or for renewals, or diminution in value” shall be omitted;

(14) in clause (x), for the words “sells the goods to any person for the purpose of re-sale”, the words “sells the goods, either in bulk or in large quantities, to any person for the purposes of re-sale, whether in bulk or in the same or smaller quantities” shall be substituted.

4. After section 2 of the principal Act, the following section shall be inserted, namely:—

Insertion  
of new  
section  
2A.

“2A. If any question arises as to whether,—

Power of  
Central  
Govern-  
ment to  
decide  
certain  
matters.

(a) two or more individuals, trustees, associations of individuals, firms or bodies corporate or any combination thereof, constitute, or fall within, a group, or

(b) two or more undertakings are inter-connected undertakings within the meaning of this Act, or

(c) two or more bodies corporate are under the same management,

the Central Government or where the Board of Company Law Administration, constituted under section 10E of the Companies Act, 1956, is, by notification, authorised so to do by the Central Government, that Board, shall decide such question, after giving to the persons concerned a reasonable opportunity of being heard.”

1 of 1956

5. In section 3 of the principal Act,—

Amend-  
ment of  
section 3.

(i) after clause (e), the following clauses shall be inserted, namely:—

“(f) any undertaking owned by a co-operative society formed and registered under any Central, Provincial or State Act relating to co-operative societies,

(g) any financial institution.”;

(ii) after clause (g), as so inserted, the following *Explanation* shall be inserted, namely:—

“*Explanation.*—In determining, for the purposes of clause (c), whether or not any undertaking is owned or controlled by a corporation, the shares held by financial institutions shall not be taken into account.”

6. In section 6 of the principal Act,—

Amend-  
ment of  
section 6.

(i) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(3A) Where any such casual vacancy occurs in the office of the Chairman of the Commission, the seniormost member of the Commission, holding office for the time being, shall discharge the functions of the Chairman until a person appointed to fill such vacancy assumes the office of the Chairman of the Commission.

(3B) When the Chairman of the Commission is unable to discharge the functions owing to absence, illness or any other cause, the seniormost member of the Commission, if authorised so to do by the Chairman in writing, shall discharge the func-

tions of the Chairman until the day on which the Chairman resumes the charge of his functions.”;

(ii) in sub-section (7), for the words “every member”, the words “every other member” shall be substituted;

(iii) in sub-section (8), for the words “Any member”, the words “The Chairman or any member” shall be substituted.

Substi-  
tution of  
section 8.

7. For section 8 of the principal Act, the following section shall be substituted, namely:—

Appoint-  
ment of  
Director  
General,  
etc., and  
staff of  
the Com-  
mission.

“8. (1) The Central Government may, by notification, appoint a Director General of Investigation and Registration, and as many Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration, as it may think fit, for making investigation for the purposes of this Act and for maintaining a Register of agreements subject to registration under this Act and for performing such other functions as are, or may be, provided by, or under, this Act.

(2) The Director General may, by written order, authorise one of the Additional, Joint, Deputy or Assistant Directors General to function as the Registrar of agreements subject to registration under this Act.

(3) Every person authorised to function as the Registrar of agreements and every Additional, Joint, Deputy or Assistant Director General shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

(4) The Central Government may provide the staff of the Commission and may, in addition, make provisions for the conditions of service of the Director General, Additional, Joint, Deputy or Assistant Director General and of the members of the staff of the Commission.

(5) The conditions of service of the Director General or any Additional, Joint, Deputy or Assistant Director General or of any member of the staff of the Commission shall not be varied to his disadvantage after his appointment.”

Substi-  
tution of  
section  
11.

8. For section 11 of the principal Act, the following section shall be substituted, namely:—

Investi-  
gation  
by Direc-  
tor Gen-  
eral be-  
fore  
issue of  
process  
in certain  
cases.

“11. (1) Where any complaint is received by the Commission 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, 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."

of 1956.

9. In section 12 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment of  
section 12.

"(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."

10. After section 12 of the principal Act, the following sections shall be inserted, namely:—

Insertion  
of new  
sections  
12A, 12B  
and 12C.

"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.

Power of  
the  
Commission  
to  
grant temporary  
injunctions.

o. 1908

(2) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 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.

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, 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.

5 of 1908.

(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 compensation 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.

(4) 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, or any other law for the time being in force, be executable for the balance, if any, left after such set off.

5 of 1908.

Enforcement of the order made by the Commission under section 12A or 12B.

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.”.

11. After section 13 of the principal Act, the following section shall be inserted, namely:—

“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.

(2) On the conclusion of the investigation, the Director General, or, as the case may be, the officer so authorised, shall submit to the Commission a report of the investigation to enable the Commission to take such action in the matter as it may think fit.”.

Insertion  
of new  
section  
13A.  
Power of  
the  
Commis-  
sion to  
cause in-  
vestiga-  
tion to  
find out  
whether  
or not  
orders  
made by  
it have  
been  
complied  
with.

12. In section 14 of the principal Act, for the words “monopolistic or restrictive trade practice, or both, relating to the production, supply,” the words, “monopolistic, restrictive, or unfair, trade practice, relating to the production, storage, supply,” shall be substituted:

Amend-  
ment of  
Section  
14.

13. In section 18 of the principal Act, in clause (c) of sub-section (1), the following shall be inserted at the end, namely:—

“and subject to any general or special direction given, or condition imposed, by the Commission, a member, to whom any powers or functions are so delegated, shall exercise such powers or discharge those functions in the same manner and with the same effect as if they had been conferred on such member directly by this Act and not by way of delegation and any order or other act or thing made or done by such member in pursuance of the power or function so delegated shall be deemed to be an order or other act or thing made or done, by the Commission”.

Amend-  
ment of  
section  
18.

14. In section 19 of the principal Act, after the words “a restrictive trade practice”, the words “or an unfair trade practice, as the case may be,” shall be inserted.

Amend-  
ment of  
section  
19.

15. In section 20 of the principal Act,—

(i) in clause (a), for the words “its own assets”, wherever they occur, the words “the assets of such undertaking” shall be, and shall be deemed always to have been, substituted;

(ii) in clause (b), and in the *Explanation*, for the words “its assets”, wherever they occur, the words “the assets of such undertaking” shall be, and shall be deemed always to have been, substituted.

Amend-  
ment of  
section  
20.

Amendment of section 21.

16. In section 21 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “where an undertaking”, the words “where the owner of an undertaking” shall be substituted;

(ii) for the words “expand its activities”, the words “expand the activities of such undertaking” shall be substituted;

(iii) for the words “it shall”, the words “such owner shall” shall be substituted;

(iv) for the words “its intention”, the words “his intention” shall be substituted;

(b) in sub-section (2),—

(i) for the words “no undertaking”, the words “no owner of an undertaking” shall be substituted;

(ii) for the words “any proposal for its substantial expansion”, the words “any proposal for the substantial expansion of such undertaking” shall be substituted;

(c) in clause (a) of sub-section (3), for the words “call upon the undertaking”, the words “call upon the owner of the undertaking” shall be substituted;

(d) for sub-section (4) and the *Explanation* thereto, the following sub-section and *Explanations* shall be substituted, namely:—

“(4) Nothing in this section shall apply to any undertaking in so far as the expansion is effected by the replacement, renovation or modernisation of the whole or any part of the machinery or other equipment of the undertaking or by the installation of any balancing equipment, and if as a result of the expansion so effected, the increase in the licensed capacity of the undertaking does not exceed, in the aggregate, twenty-five per cent. of its licensed capacity before any expansion thereof.

*Explanation I.*—For the purposes of this sub-section “balancing equipment” means any equipment or device needed for removing any production bottleneck, and includes the installation of any equipment or device in the tool room, ancillary services or inspection department where such installation has a bearing on the quantum and quality of production to be achieved.

*Explanation II.*—For the purposes of this sub-section, the increase in the licensed capacity shall be deemed to be in addition to, and not in derogation of, the increase in the licensed capacity which may be made without the approval of the Central Government under the provisions of sub-section (2), read with the *Explanation* below that sub-section.

*Illustration*

The owner of undertaking X, having a licensed capacity of 10,000 units, proposes to make an expansion of the undertaking by the replacement, renovation or modernisation of the whole or any part of the machinery or other equipment of such undertaking or by the installation of any balancing equipment, and thereby to increase the licensed capacity of such undertaking to 14,999 units.

UNRECORDED

The increase in the licensed capacity of undertaking X, being below 5,000 units, the proposal for the expansion of undertaking X would not, by virtue of the combined operation of this sub-section and the *Explanation* below sub-section (2), require the approval of the Central Government under sub-section (2).

*Explanation III.*—References in this sub-section to licensed capacity shall, in relation to any undertaking which does not have any licensed capacity, be construed as references to production, storage, marketing, supply, distribution or control of goods, or provision of services, by, or the value of the assets of, such undertaking, as the case may be.”

17. In section 22 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

Amendment of  
section  
22.

“(1) No person or authority, other than Government, shall, after the commencement of this Act, establish—

(i) any new undertaking which, when established, would become an inter-connected undertaking of an undertaking to which this Part applies; or

(ii) add any new unit or division to an undertaking to which this Part applies,

except under, and in accordance with the previous permission of the Central Government:

Provided that except where as a result of the establishment of new undertaking, unit or division, an undertaking would come into existence to which clause (b) of section 20 would apply, no permission shall be required if the new undertaking, or, as the case may be, the new unit or division, when established, would not produce the same goods or provide the same services in relation to which the undertaking—

(a) of which such new undertaking would be an inter-connected undertaking, or

(b) to which such new unit or division is proposed to be added,

is a dominant undertaking.

(1A) No owner of any undertaking to which clause (a) of section 20 applies, shall establish, except under, and in accordance with, the previous permission of the Central Government, any new undertaking for the production, storage, supply, distribution, marketing or control of any article, or for the provision of any service, for which there is no licensed capacity, and no such permission shall be granted by that Government unless the articles which are proposed to be produced, stored, supplied, distributed, marketed or controlled, or the services which are proposed to be provided, by such new undertaking are different from the articles produced, stored, supplied, distributed, marketed or controlled, or, as the case may be, services provided, by the first mentioned undertaking and the provisions of sub-sections (2) and (3) shall apply to the establishment of such new undertaking as they apply to the establishment of a new undertaking or any new unit or division referred to in sub-section (1).”;

(b) in sub-section (2),—

(i) for the words “new undertaking”, wherever they occur, the words “new undertaking, unit or division” shall be substituted;

(ii) for the words “establishment of such undertaking”, the words “establishment of such undertaking, unit or division” shall be substituted;

(iii) the words “of establishing any undertaking” shall be omitted;

(iv) for the words “the scheme of finance”, the words “the value or quantity of goods that may be produced by the new undertaking, unit or division, the scheme of finance” shall be substituted;

(c) in sub-section (3), in clauses (a), (e) and (d), for the words “new undertaking”, the words “new undertaking, unit or division” shall be substituted.

Amend-  
ment of  
section 23.

18. In section 23 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Notwithstanding anything contained in any other law”, the words “Notwithstanding anything contained elsewhere in this Act or in any other law” shall be substituted;

(ii) for the words “under this Act”, the words “under this section” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) (a) If the owner of any undertaking to which this Part applies frames a scheme of merger or amalgamation of such undertaking with any other undertaking to which this Part applies, or

(b) if any scheme of merger or amalgamation is proposed between two or more undertakings, and, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of section 20 would apply, the owner of the undertaking referred to in clause (a), or as the case may be, the framers of the scheme referred to in clause (b), shall, before taking any action to give effect to such scheme, make an application to the Central Government in the prescribed form with a copy of the scheme annexed thereto, for the approval of the scheme.”;

(c) in sub-section (3), for the words “such inter-connected undertakings as are not dominant undertakings and as produce the same goods”, the words, brackets, letters and figures “inter-connected undertakings which produce the same goods or provide the same services, and none of which is a dominant undertaking, if as a result of such merger or amalgamation, there does not come into existence any undertaking to which clause (a), or clause (b), of section 20 would apply” shall be substituted;

(d) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) If the owner of an undertaking to which this Part

applies, proposes to take over the whole or part of any other undertaking, such owner shall, before giving effect to the proposal, make an application in writing to the Central Government in the prescribed form for approval of the proposal specifying therein information regarding the inter-connection of such other undertaking with any other undertaking or undertakings, the scheme of finance with regard to the proposed take over and such other information as may be prescribed:

Provided that nothing in this sub-section shall apply to the take over by the owner of an undertaking, which is not a dominant undertaking, of any other undertaking which is also not a dominant undertaking, if both the undertakings produce the same goods or provide the same services, unless as a result of such take over, an undertaking would come into existence to which clause (a), or clause (b), of section 20 would apply.”;

(e) in sub-section (5), after the words “approved by the Central Government”, the words, brackets and figure “under sub-section (8)” shall be inserted;

(f) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) (a) On receipt of an application under sub-section (2) or, as the case may be, sub-section (4), the Central Government may, if it thinks fit, call upon the applicant to satisfy it that the proposed scheme of merger or amalgamation, or, as the case may be, the proposed take over, and the scheme of finance relating thereto, is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial to the public interest in any other manner and that it is expedient in the public interest so to do, and if the Central Government is satisfied, after giving the applicant a reasonable opportunity of being heard, that it is necessary so to do, it may, by order, accord its approval to the proposal for such merger or amalgamation or, as the case may be, such take over;

(b) if the Central Government is of opinion that no such approval as is referred to in clause (a) can be given without further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing, as it may think fit, report to the Central Government, its opinion thereon.”;

(g) after sub-section (8), the following *Explanation* shall be inserted, namely:—

*Explanation.*—For the purposes of this section, “take over”,—

(a) in relation to an undertaking owned by a body corporate, means the acquisition of not less than twenty-five per cent. of the voting power in relation to such body corporate;

(b) in relation to any other undertaking, includes the acquisition or control of management thereof, whether by the acquisition of the ownership of the undertaking or under any mortgage, lease or licence or under any agreement or other arrangement.”;

(h) sub-section (9) shall be omitted.

Amendment of section 24.

19. In section 24 of the principal Act,—

(i) for the words “the undertaking concerned”, the words “the owner of the undertaking concerned” shall be substituted;

(ii) for the words “to divest itself”, the words “to divest himself” shall be substituted.

Amendment of section 25.

20. In section 25 of the principal Act, in sub-section (4), for the words “partners of any firm which is an undertaking within the meaning of this Act”, the words and brackets “partners of any firm or the members of the managing or executive committee (by whatever name called) of any other association of individuals, whether incorporated or not, owning an undertaking within the meaning of this Act” shall be substituted.

Amendment of section 26.

21. In section 26 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Every undertaking”, the words “The owner of every undertaking” shall be substituted;

(ii) for the words “at the commencement of this Act”, the words, brackets and figures “at the commencement of the Monopolies and Restrictive Trade Practices (Amendment) Act, 1984” shall be substituted;

(iii) for the words “for its registration as such undertaking”, the words “for the registration of such undertaking as an undertaking to which that Part applies” shall be substituted;

(b) in sub-section (3), for the words “Any undertaking”, the words “The owner of any undertaking” shall be substituted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) For the removal of doubts, it is hereby declared that nothing contained in this section shall apply to an undertaking which was registered under this section before the commencement of the Monopolies and Restrictive Trade Practices (Amendment) Act, 1984 and, accordingly, fresh registration, under this section, of such undertaking shall not be necessary.”

Insertion of new sections 27A and 27B.

22. After section 27 of the principal Act, the following sections shall be inserted, namely:—

Power of the Central Government to direct severance of inter-connection between undertakings.

‘27A. (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, the Central Government may, if it is of opinion that the continuance of inter-connection of an undertaking (hereafter in this section referred to as the principal undertaking) with any other undertaking to which Part A of this Chapter applies, is detrimental to—

(a) the interests of the principal undertaking; or

(b) the future development of the principal undertaking; or

(c) the steady growth of the industry to which the principal undertaking pertains; or

(d) the public interest,



refer the matter to the Commission for an inquiry as to whether it is expedient in the public interest to make an order for the severance of such inter-connection on one or more of the grounds aforesaid, and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon and shall, where it is of opinion that the severance of the inter-connection of the principal undertaking with any other undertaking ought to be made, include in its report a scheme with respect to such severance, providing therein for the matters specified in sub-section (2).

(2) Where, in any such report, the Commission recommends the severance of any such inter-connection, the scheme with respect thereto shall provide for the following matters, namely:—

(a) the manner in which, and the period within which, the severance of such inter-connection is to be effected;

(b) the appropriation or transfer of any share or other interest held by the owner in, or in relation to, the principal undertaking, in the other undertaking or the termination of any office or employment in such undertaking, which may be required for effecting the severance of such inter-connection;

(c) compensation, if any, payable for the severance of such inter-connection; and

(d) such incidental, consequential and supplemental matters, as may be necessary to secure the severance of such inter-connection.

(3) If the Commission so recommends, the Central Government may, notwithstanding anything contained in any other law for the time being in force, by an order in writing, direct the severance of inter-connection between the undertakings, as far as may be, in accordance with the scheme included in the report of the Commission.

(4) Where the Central Government makes, or intends to make, an order for any purpose mentioned in sub-section (3), it may, with a view to achieving that purpose, prohibit or restrict the doing of anything that might impede the operation or making of the order and may impose on any person such obligations as to the carrying on of any activities or the safeguarding of any assets, as it may think fit, or it may, by order, provide for the carrying on of any activities or safeguarding of any assets either by the appointment of a person to conduct, or supervise the conduct of, any such activities or in any other manner.

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the severance of inter-connection between undertakings shall not be entitled to claim any compensation for such cesser.

*Explanation.*—For the purposes of this section, “inter-connection” means inter-connection of an undertaking with any other undertaking in any manner specified in clause (g) of section 2.

REPEALED

Manner  
in which  
order  
made  
under  
section  
27 or  
section  
27A  
shall be  
carried  
out.

27B. (1) Where in any report made by it, whether under section 27 or section 27A, the Commission recommends that the division of any trade of any undertaking or division of any undertaking or undertakings or of inter-connected undertakings, or, as the case may be, the severance of inter-connection between two or more undertakings, is to be effected by—

(a) the disinvestment by any person holding any share in the body corporate owning such undertaking or undertakings; or

(b) the sale of the whole or any part of such undertaking or undertakings, or, of any part of the assets thereof,

the Central Government may, in its order under the said section 27 or section 27A, specify that such disinvestment of shares or the sale of the whole or part of the undertaking or undertakings or of such assets, as the case may be, shall be effected within such period and in such one or more of the following methods as may be specified in such order, namely:—

(i) by directing the person holding such shares to make a public offer for the sale of such number of shares held by him in the body corporate owning the undertaking or undertakings, as may be specified in the order; or

(ii) by directing the body corporate owning the undertaking to make further issue of equity capital to the members of the public except to the person who is directed to disinvest the shares held by him in such body corporate; or

(iii) by directing that the sale of the undertaking or any part thereof, or, as the case may be, of such assets, be made by public auction; or

(iv) by such other prescribed method as the Central Government may specify:

Provided that the Central Government may extend on its own motion or on the application of the person concerned and for sufficient cause, the period specified as aforesaid in any order made by it under section 27 or section 27A by another order.

(2) Every order of the Central Government referred to in sub-section (1), shall have effect notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in the memorandum or articles of association of the body corporate owning the undertaking.

(3) Where any person who has been directed to do so by an order referred to in sub-section (1), omits or fails to disinvest any share or block of shares specified in the said order, the body corporate in which such shares are held shall not permit such person or his nominee or proxy to exercise any voting or other rights attaching to such share or block of shares.

23. After Chapter III of the principal Act, the following Chapter shall be inserted, namely:—

Insertion  
of new  
Chapter  
III-A.

‘CHAPTER III-A

RESTRICTIONS ON THE ACQUISITION AND TRANSFER OF SHARES OF, OR BY,  
CERTAIN BODIES CORPORATE

30A. The provisions of this Chapter shall apply to the acquisition or transfer of shares or share capital by, or to, an individual, firm, group constituent of a group, body corporate, or bodies corporate under the same management, who or which,—

Applica-  
tion of  
Chapter.

(a) is the owner in relation to an undertaking to which Part A of Chapter III applies, or

(b) would be, as a result of such acquisition or transfer of shares or share capital, the owner of an undertaking to which Part A of Chapter III applies, or would apply.

30B. (1) Except with the previous approval of the Central Government, no individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, or a private company which is a subsidiary of a public company, if the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity shares already held in the company by such individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, exceed twenty-five per cent. of the paid-up equity share capital of such company.

Restric-  
tions on  
the  
acquisition  
of certain  
shares.

(2) Where any individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management (hereafter in this Chapter referred to as the acquirer), is prohibited, by subsection (1), from acquiring or agreeing to acquire except with the previous approval of the Central Government, any share of a public company or a private company which is a subsidiary of a public company, no—

(a) company in which not less than fifty-one per cent. of the share capital is held by the Central Government; or

(b) corporation (not being a company) established by or under any Central Act; or

(c) financial institution,

shall transfer or agree to transfer any share to such acquirer unless such acquirer has obtained the previous approval of the Central Government for the acquisition, or agreement for the acquisition, of such share.

**REPEALED**  
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*Monopolies and Restrictive Trade  
Practices (Amendment)*

[ACT 30

Restric-  
tion on  
transfer  
of shares.

30C. (1) Every body corporate, or bodies corporate under the same management, holding, whether singly or in the aggregate, ten per cent. or more of the nominal value of the subscribed equity share capital of any other company, shall, before transferring one or more of such shares, give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

(2) Where, on receipt of an intimation given under sub-section (1) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may by order, direct that--

(a) no such share shall be transferred to the proposed transferee:

Provided that no such order shall preclude the body corporate or, bodies corporate from intimating, in accordance with the provisions of sub-section (1), to the Central Government its or their proposal to transfer the share to any other person, or

(b) where such share is held in a company engaged in any industry specified in the Schedule, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(3) Where a direction is made by the Central Government under clause (b) of sub-section (2), the share referred to in such direction shall stand transferred to the Central Government or to the corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body corporate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (4).

*Explanation.*—In this sub-section “market value” means, in the case of a share which is quoted on any recognised stock exchange, the value quoted at such stock exchange on the date immediately preceding the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the Court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as is estimated by the Central Government or the corporation, as the case may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the Court.

REPEALED

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the date of receipt by it of the intimation, given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

30D. No body corporate, or bodies corporate under the same management, which holds, or hold in the aggregate, ten per cent., or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refused unless the Central Government is of opinion that such transfer would be prejudicial to the public interest.

Restriction  
on the  
transfer of  
shares of  
foreign  
companies.

30E. (1) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block of shares and—

Power  
of the  
Central  
Govern-  
ment to  
direct  
companies  
not to  
give  
effect to  
the  
transfer.

(a) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee, to exercise any voting or other rights attaching to such share or block of shares, and

(b) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transferor to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is made by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired, and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person to whom such share or block of shares stands or stand retransferred.

(3) If the refund referred to in sub-section (2) is not made within the period of thirty days from the date of the direction referred to in sub-section (1), the Central Government shall, on the application of the person entitled to get the refund, direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.

(4) The person to whom any share or block of shares stands or stand retransferred under sub-section (2) shall, on making refund under sub-section (2) or sub-section (3), be eligible to exercise voting or other rights attaching to such share or block of shares.

30F. Every request made to the Central Government for according its approval to the proposal for the acquisition of any share referred to in section 30B or the transfer of any share referred to in section 30D shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

Time with-  
in which  
refusal to  
be commu-  
nicated.

REPEALED

Nothing in sections 30B to 30E to apply to Government companies, etc.

30G. Nothing contained in section 30B [except sub-section (2) thereof] shall apply to the transfer of any share to, and nothing in section 30C, section 30D or section 30E shall apply to the transfer of any share by,—

(a) any company in which not less than fifty-one per cent. of the share capital is held by the Central Government;

(b) any corporation (not being a company) established by or under any Central Act;

(c) any financial institution.

Amendment of section 31.

24. In section 31 of the principal Act,—

(a) in sub-section (1), for the words "one or more monopolistic undertakings are indulging in any monopolistic trade practice", the words "the owners of one or more undertakings are indulging in any practice, which is, or, may be, a monopolistic trade practice" shall be substituted;

(b) to sub-section (1), the following proviso shall be added, namely:—

"Provided that where the Commission receives any information, or comes to know, that the owner of any undertaking is, or, the owners of two or more undertakings are, indulging in any trade practice, which is, or may be, a monopolistic trade practice, or that monopolistic trade practices prevail in respect of any goods or services, it may on its own motion, and notwithstanding that no reference has been made to it by the Central Government under this sub-section, make an inquiry into the matter.";

(c) in sub-section (2), after the words "or is likely to operate against the public interest," the words "it shall make a report to the Central Government as to its findings thereon and on receipt of such report," shall be inserted;

(d) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) If any such report contains a finding of the Commission to the effect that the owner of any undertaking is, or, the owners of two or more undertakings are indulging in any monopolistic trade practice, or that monopolistic trade practice prevails in respect of any goods or services, and the Central Government is satisfied that it is necessary to take steps to remedy or prevent any mischiefs which result or may result from such monopolistic trade practice, and that such monopolistic trade practice does not fall within any of the exceptions specified in section 32, it may, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, make such orders as it may think fit,—

(a) prohibiting the owner of the concerned undertaking or the owners of the concerned undertakings, as the case may be, from continuing to indulge in such monopolistic trade practice; or

(b) prohibiting the owners of any class of undertakings or undertakings generally, from continuing to indulge in any monopolistic trade practices in relation to such goods or services, and

may also make such other orders as it may think fit to remedy or prevent any mischief which results, or may result, from the continuation of monopolistic trade practices in relation to the goods and services aforesaid.”;

(e) in sub-section (3),—

(i) for the words “Any order made by the Central Government under this section may include an order”, the words, brackets, figure and letter “Without prejudice to the generality of the powers conferred by sub-section (2A), any order made by the Central Government under this section may also include an order” shall be substituted;

(ii) in clauses (a) and (b), for the words “production, supply”, the words “production, storage, supply” shall be substituted;

(iii) after clause (e), the following clauses shall be inserted, namely:—

“(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.”;

(f) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Whenever any order is made by the Central Government under sub-section (2A) prohibiting the owner of any undertaking or class of undertakings or undertakings generally from continuing to indulge in any monopolistic trade practice,—

(a) the owner of any undertaking or the owners of undertakings of any class, as the case may be, shall, within thirty days from the date of receipt of such order (or within such further time as the Central Government may, on sufficient cause being shown, allow) communicate to the Central Government his or their compliance with the order; and

(b) the Director General shall within ninety days from the date of such order (or from the expiry of the further time allowed by the Central Government) inform the Central Government, whether the order made by it has been complied with, and where the Director General has any reason to believe that any such order has been, or is being, contravened by the owner of any undertaking, he shall inform the Central Government about the particulars of the owner of such undertaking to enable that Government to take such action, under this Act, as it may think fit.”.

**REPEALED**

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*Monopolies and Restrictive Trade Practices (Amendment)*

[ACT 30

Substitution of section 32.

25. For section 32 of the principal Act, the following section shall be substituted, namely:—

Monopolistic trade practice to be deemed to be prejudicial to the public interest except in certain cases.

“32. For the purposes of this Act, every monopolistic trade practice shall be deemed to be 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,

by a written order, permits the owner of any undertaking to carry on any such trade practice.”

Substitution of heading and insertion of sub-heading in Chapter V.

26. In Chapter V of the principal Act,—

(i) for the heading, the following shall be substituted, namely:—

“RESTRICTIVE TRADE PRACTICES AND UNFAIR TRADE PRACTICES”;

(ii) below the said heading, the following word, letter and sub-heading shall be inserted, namely:—

“PART A

*Registration of Agreements Relating to Restrictive Trade Practices”.*

Amendment of section 33.

27. In section 33 of the principal Act,—

(a) in sub-section (1),—

(i) in the opening portion for the words “Any agreement relating to a restrictive trade practice falling within one or more of the following categories shall be subject to registration”, the words “Every agreement falling within one or more of the following categories shall be deemed, for the purposes of this Act, to be an agreement relating to restrictive trade practices and shall be subject to registration” shall be substituted;

(ii) after clause (j), the following clauses shall be inserted, namely:—

“(ja) any agreement restricting in any manner, the class or number of wholesalers, producers or suppliers from whom any goods may be bought;



(j) any agreement as to the bids which any of the parties thereto may offer at an auction for the sale of goods or any agreement whereby any party thereto agrees to abstain from bidding at any auction for the sale of goods;";

(b) in sub-section (2), for the words "production, supply", the words "production, storage, supply" shall be substituted.

28. Section 34 of the principal Act shall be omitted.

Omission  
of section  
34.

29. In *Explanation I* to section 35 of the principal Act, for the words "production, supply", the words "production, storage, supply" shall be substituted.

Amend-  
ment of  
section  
35.

30. In Chapter V of the principal Act, after section 36, the following Part shall be inserted, namely:—

Insertion  
of new  
Part B in  
Chap-  
ter V.

#### 'PART B

#### *Unfair Trade Practices*

36A. In this Part, unless the context otherwise requires, "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:—

Definition  
of unfair  
trade  
practice.

(1) the practice of making any statement, whether orally or in writing or by visible representation 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 re-built, 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 or 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 such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of 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;

(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.

*Explanation.*—For the purposes of clause (1), 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,

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;

(2) 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 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.

*Explanation.*—For the purpose of clause (2), “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 reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

~~REPEALED~~

(3) permits—

(a) 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,

(b) 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;

(4) 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, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) 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.

36B. The Commission may inquire into any unfair trade practice,—

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

(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; or

(d) upon its own knowledge or information.

Inquiry into unfair trade practices by Commission.

36C. In respect of any unfair trade practice of which complaint is made under clause (a) of section 36B, 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.

Investigation by Director General before an issue of process in certain cases.

36D. (1) 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, it may, by order direct that—

Powers which may be exercised by the Commission inquiring into an unfair trade practice.

(a) the practice shall be discontinued or shall not be repeated; and

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

(2) The Commission may, instead of making any order under this section, permit any party to carry on any trade practice, if it so applies and takes such steps within the time specified by the Commission as may be necessary to ensure that the trade practice is no longer 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 under this section in respect of that trade practice.

(3) No order shall be made under sub-section (1) in respect of any trade practice which is expressly authorised by any law for the time being in force.

36E. Without prejudice to the provisions of section 12A, section 12B and section 36D, the Commission, Director General or any other person authorised in this behalf by the Commission or Director General, may exercise, or perform, in relation to any unfair trade practice, the same power or duty which it or he is empowered, or required, by or under this Act to exercise, or perform, in relation to a restricted trade practice.

Power relating to restrictive trade practices may be exercised or performed in relation to unfair trade practices.

Amendment of section 37.

31. In sub-section (4) of section 37 of the principal Act,—

(i) for the words "a monopolistic undertaking is indulging in restrictive trade practices", the words "the owner of any undertaking is indulging in monopolistic trade practices" shall be substituted;

(ii) the words "with regard to any monopolistic trade practice" shall be omitted.

Amendment of section 38.

32. In sub-section (1) of section 38 of the principal Act,—

(i) in clause (g), the word "or", occurring at the end, shall be omitted;

(ii) after clause (h), the following clauses shall be inserted,—

"(i) that such restriction has been expressly authorised and approved by the Central Government;

(j) that such restriction is necessary to meet the requirements of the defence of India or any part thereof, or for the security of the State; or

(k) that the restriction is necessary to ensure the maintenance of supply of goods and services essential to the community."

Amendment of section 39.

33. In the proviso to sub-section (3) of section 39 of the principal Act, for the words "trade mark by a licensee under any such licence", the words "trade mark or by a licensee of patent or trade mark" shall be substituted.

Amendment of section 43.

34. In section 43 of the principal Act, for the words "call upon any undertaking", the words "call upon the owner of any undertaking" shall be substituted.

Amendment of section 44.

35. In section 44 of the principal Act, in sub-section (1), for the words "or restrictive trade practice", the words "or restrictive, or unfair, trade practice" shall be substituted.

36. In section 45 of the principal Act,—

Amend-  
ment of  
section 45.

(i) after the words "he shall be punishable", the words "with imprisonment for a term which may extend to five years, or" shall be inserted;

(ii) for the words "rupees one lakh", the words "rupees one lakh, or with both" shall be substituted.

37. In section 46 of the principal Act,—

Amend-  
ment of  
section 46.

(i) after the words "he shall be punishable", the words "with imprisonment for a term which may extend to five years, or" shall be inserted;

(ii) after the words "rupees one lakh," the words "or with both," shall be inserted.

38. In section 47 of the principal Act,—

Amend-  
ment of  
section 47.

(i) for the words "two thousand rupees", the words "five thousand rupees" shall be substituted;

(ii) for the words "two hundred rupees", the words "five hundred rupees" shall be substituted.

39. In section 48 of the principal Act,—

Amend-  
ment of  
section  
48.

(1) in sub-section (1),—

(a) after the words "he shall be punishable", the words "with imprisonment for a term which may extend to three years, or" shall be inserted;

(b) after the words "five thousand rupees," the words "or with both," shall be inserted;

(2) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) If the owner of any undertaking, to which Part A of Chapter III applies, fails without any reasonable excuse, to make an application under section 26 for the registration of the undertaking as an undertaking to which that Part applies, then—

(a) where the undertaking is owned by a company,—

(i) the company shall be punishable with fine which may extend to one thousand rupees, and where the offence is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such failure continues, and

(ii) every officer of the company in default shall be punishable with imprisonment for a term which may extend

to two years or with fine which may extend to one thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such failure continues;

(b) where the undertaking is owned by a firm, every partner of such firm; or where the undertaking is not owned either by a company or by a firm, every person who owns or controls the undertaking, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such failure continues.”.

Insertion of new sections 48A, 48B and 48C.

40. After section 48 of the principal Act, the following sections shall be inserted, namely:—

Penalty for contravention of order made under section 27B or for possession of property sold to any person under section 27B.

‘48A. Any person or body corporate who or which,—

(a) being required by any order of the Central Government referred to in sub-section (1) of section 27B to effect disinvestment of any shares or sale of the whole or any part of any undertaking or undertakings by any method referred to in that sub-section, omits or fails to do so; or

(b) having in his possession, custody or control any property or assets or any part thereof which have been sold to any person in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B (hereinafter in this section referred to as the “purchaser”), wrongfully withholds such property, assets or part thereof from the purchaser; or

(c) wrongfully obtains possession of any property, assets or any part thereof or retains any property, assets or any part thereof, which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B; or

(d) withholds or fails to furnish to the purchaser, any document in his possession, custody or control relating to the property, or any part or assets thereof, which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B; or

(e) fails to deliver to the purchaser the property, or any part or assets thereof which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B, or any books of account, registers and other documents in his possession, custody or control relating to such property, or any part or assets thereof; or

(f) wrongfully removes or destroys any property or assets which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B; or

(g) prefers any claim, in relation to the property, or any part of assets thereof which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B, which he knows, or has reason to believe, to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to ten thousand rupees.

48B. (1) Any person who acquires any share in contravention of the provisions of section 30B shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(2) (a) Every body corporate which makes any transfer of shares without giving any intimation as required by section 30C, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 30C has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(3) (a) Every body corporate which makes any transfer of shares in contravention of the provisions of section 30D, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 30D has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(4) (a) Every person who transfers any share in contravention of any order made by the Central Government under section 30C, or gives effect to any transfer of shares made in contravention of any direction made by the Central Government under section 30E, or who exercises any voting right in respect of any share in contravention of any order of the Central Government referred to in sub-section (1) of section 27B or in contravention of any direction made by the Central Government under section 30E, shall be punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine.

(b) If any company gives effect to any voting or other right exercised in relation to any share held in contravention of an order of the Central Government referred to in sub-section (1) of section 27B or in relation to any share acquired in contravention of the provisions of section 30C, or which gives effect to any voting right in contravention of any direction made by the Central Government under section 30E, the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Penalty for acquisition or transfer of share in contravention of section 27B, 30B, 30C, 30D or 30E.

Penalty for contravention of order made by Commission relating to unfair trade practices.

48C. If any person contravenes any order made by the Commission under section 36D, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both.

Amendment of section 49.

41. In sub-section (1) of section 49 of the principal Act, for the words "to furnish any information", the words and figures "to produce any books or papers, or to furnish any information, required by the Director General under section 11, or to furnish any information" shall be substituted.

Amendment of section 50.

42. Section 50 of the principal Act shall be re-numbered as sub-section (1) thereof, and—

(a) in sub-section (1) as so re-numbered,—

(i) for the words and figures "If any person contravenes any order made under section 13 or section 31 or section 37", the words and figures "A person who is deemed, under section 13, to be guilty of an offence under this Act" shall be substituted;

(ii) for the words "six months", the words "one year" shall be substituted;

(b) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(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 two 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 five years,

and, in either case, where the contravention is a continuing one, also with fine which may extend to five hundred 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."



43. After section 52 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 52A and 52B.

“52A. If any person contravenes, without any reasonable excuse, any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act, he shall be punishable with fine which may extend to one thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to one hundred rupees for every day, after the first, during which such contravention continues.

Penalty for contravention of any condition or restriction, etc.

52B. If in any application, return, report, certificate, balance sheet, prospectus, statement or other document made, submitted, furnished or produced for the purpose of any provision of this Act, any person makes a statement,—

Penalty for making false statement in application, returns, etc.

(a) which is false in any material particular, knowing it to be false, or

(b) which omits to state any material fact, knowing it to be material,

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.”

44. In section 55 of the principal Act,—

Amendment of section 55.

(a) for the words and figures “any order made by the Central Government under Chapter III”, the words, brackets, letters and figures “any decision on any question referred to in clause (a), clause (b) or clause (c) of section 2A, or any order made by the Central Government under Chapter III” shall be substituted;

(b) for the words and figures “section 13 or section 37”, the words, figures and letter “section 13 or section 36D or section 37” shall be substituted.

45. In section 56 of the principal Act, for the words “Presidency Magistrate or a Magistrate of the first class”, the words “Court of Session” shall be substituted.

Amendment of section 56.

46. Section 58 of the principal Act shall be omitted.

Omission of section 58.

47. In section 60 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment of section 60.

“(3) The provisions of sub-section (2) relating to the disclosure of information shall not extend to the disclosure of the source of such information, except where the disclosure of such source is required by any court, tribunal or other authority.”

48. In section 61 of the principal Act, for the words “restrictive trade practices”, the words “restrictive or unfair trade practices” shall be substituted.

Amendment of section 61.

~~REPEALED~~

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*Monopolies and Restrictive Trade  
Practices (Amendment)*

[ACT 30

Amend-  
ment of  
section  
66.

49. In section 66 of the principal Act, in sub-section (2), clause (d) shall be omitted.

Amend-  
ment of  
section  
67.

50. In section 67 of the principal Act, in sub-section (2),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) 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;”;

(ii) after clause (b), the following clause shall be inserted, namely:—

“(ba) the particulars which may be required to be specified in any intimation to the Central Government with regard to the transfer of shares;”;

(iii) after clause (c), the following clause shall be inserted, namely:—

“(ca) the duties and functions of the Director General;”;

(iv) in clause (d), the words “by the Registrar” shall be omitted;

(v) after clause (d), the following clause shall be inserted, namely:—

“(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;”.

Insertion  
of  
Schedule.

51. After section 67 of the principal Act, the following Schedule shall be inserted, namely:—

‘THE SCHEDULE

(See section 30C)

PART I

1. Aircraft.
2. Air transport.
3. Arms and ammunition and allied items of defence equipment.
4. Atomic energy.
5. Coal and lignite.
6. Generation and distribution of electricity.
7. Heavy castings and forgings of iron and steel.
8. Heavy electrical plant including large hydraulic and steam turbines.
9. Heavy plant and machinery required for iron and steel production, for mining, for machine tool manufacture and for such other basic industries as may be specified by the Central Government.
10. Iron and steel.
11. Mineral oils.
12. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.

DISAPPEARED

13. Mining and processing of copper, lead, zinc, tin, molybdenum and wolfram.
14. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.
15. Railway transport.
16. Ship-building.
17. Telephones and telephone cables, telegraph and wireless apparatus (excluding radio receiving sets).

PART II

67 of 1957.

1. Aluminium and other non-ferrous metals not included in Part I.
2. All other minerals except "minor minerals" as defined in section 3 of the Mines and Minerals (Regulation and Development) Act, 1957.
3. Antibiotics and other essential drugs.
4. Basic and intermediate products required by chemical industries such as the manufacture of drugs, dyestuffs and plastics.
5. Carbonisation of coal.
6. Chemical pulp.
7. Ferro alloys and tool steels.
8. Fertilizers.
9. Machine tools.
10. Road transport.
11. Sea transport.
12. Synthetic rubber.

PART II

AMENDMENTS TO THE COMPANIES ACT, 1956

1 of 1956.

52. In the Companies Act, 1956,—

- (a) in section 2, clause (18A) and the *Explanation* thereto shall be omitted;
- (b) sections 108A to 108H shall be omitted;
- (c) Schedule XIII shall be omitted.

Omission of section 2(18A), sections 108A to 108H and schedule XIII.