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COMPARATIVE STUDY OF THE MONOPOLISTIC RESTRICTIVE TRADE PRACTICES ACT, 1969 AND COMPETITION ACT 2002

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Abstract

Since 1991, India has undertaken fundamental economic reforms, driven by the growing recognition of the market and the private sector as pivotal forces in economic growth and development. The primary objective of these reforms has been to position the market as the key driver of economic expansion while simultaneously reducing government expenditure. By limiting direct state intervention in economic activities, these reforms aim to foster entrepreneurial dynamism, enhance business efficiency, stimulate productive investment, and promote economic growth. Additionally, they seek to ensure the availability of goods and services in ample supply at competitive prices for consumers.

However, these objectives can only be fully realized if businesses operate in a competitive environment, ensuring market efficiency across all sectors of the economy. Given that a perfectly competitive market exists only as a theoretical construct, the necessity of a dynamic competitive framework becomes evident to maintain and safeguard fair and free markets. This recognition led to the enactment of the Competition Act, 2002, which replaced the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969. The fundamental aim of this legislation is to promote and sustain market competition by prohibiting and regulating anti-competitive practices that could distort fair trade.

The Competition Act, 2002, plays a crucial role in fostering competitive markets and safeguarding consumer interests in India. Given its significance, there is a pressing need to evaluate the effectiveness of its various provisions in achieving the objectives outlined in its preamble. Such an assessment would not only help identify potential shortcomings in the Act but also provide valuable insights for policymakers to further refine and enhance the legal framework governing competition in India.

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Keywords: MRTP Act 1969, Competition Act 2002, Anti-competitive Agreements, Abuse of Dominance position.

Introduction

For over two centuries, the British East India Company exerted control over India, exploiting its vast resources for their own gain while dismantling indigenous industries such as handicrafts. Prior to independence, India lacked a structured competitive framework, relying instead on government policies aimed at equitable resource distribution. However, the World Wars played a pivotal role in accelerating India's early industrialization. Although India was not an active participant in these conflicts, it served as a crucial supplier of arms and ammunition to the British army, leading to the rise of major industrial conglomerates like Tata and Birla. Initially, this development was seen as a positive step for India's emerging economy.

Following independence, India adopted a centralized planning model, introducing five-year plans to strategically allocate resources and drive economic and industrial development. The Industrial Policy Resolution of 1956 classified industries into three categories—Schedule A, Schedule B, and Schedule C—outlining the government's predominant role in shaping industrial growth. The regulatory framework of this period was largely based on the Command-and-Control principle, with extensive government intervention in private enterprises. The primary objective was to expand the public sector, which was viewed as the cornerstone of economic progress.

This era, often referred to as the "License Raj," imposed strict regulations on private industries, requiring them to obtain government approvals for operations while enforcing high tariffs and import quotas. Despite the restrictive environment, large business houses were actively encouraged due to their substantial contributions to economic growth. However, access to licenses and approvals became disproportionately easier for these industrial giants, leading to a concentration of economic power in the hands of a few. Over time, these monopolistic entities engaged in anti-competitive practices that harmed public interest and contradicted the foundational principles of the Indian Constitution. This growing economic disparity and market distortion ultimately necessitated the enactment of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), to regulate and curb monopolistic and unfair trade practices in India.

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Review of literature

According to Vinod Dhall's 2007[2] the edited book Competition Law Today - Concepts, Issues and the Law in Practice is a collection of essays contributed by various experts on a variety of topics relating to competition law. The book seeks to provide a comprehensive view about major issues in theory and practice of competition law. The book also seeks to fill the gap in India regarding knowledge and understanding about this increasingly critical area of law. It covers the concepts, issues and the law in practice in addition to the evolution of competition law, relation of economics and competition law etc. It also covers the substantive provisions of the Indian competition law. The book is divided into four parts dealing with jurisprudential aspects of competition, explication on substantive provisions, experiences in select jurisdictions and competition law.

According to K K Sharma's book Competition Commission Cases[3] is a compendium of cases from 2009 to 2014 decided by the Competition Commission of India. The book is in tabular format. The author discusses an overview of the entire landscape of developments in competition law in relation to various sectors. The author provides a well organized arrangement of statements of facts, issues, allegations and final outcome of cases decided by the Commission in a brief and lucid manner. He also collates year-wise and section-wise cases dealt by the Commission along with reference by Director General. The book is helpful in this research to find out the approaches adopted by the Commission while dealing with cartel and bid rigging. In summary, the two acts differ in a variety of scenarios. The MRTP Act contains a lot of loopholes, and the Competition Act addresses all of the areas where the MRTP Act falls short. The MRTP Commission is simply an advisory body. On the other hand, the Commission has a range of authorities that encourage suo moto and punish enterprises that have a detrimental impact on the market.

As per Leela Kumar (2014)[4]The study says that the MRTPC's failure to combat cartels is ascribed to its lack of teeth. The "stop and desist" orders could only be enforced in court, and there was no extraterritorial jurisdiction, which was necessary for giving respect to the "effects" concept emerging from cross-border transactions.

[2] Vinod Dhall (ed.), Competition Law Today - Concepts, Issues and the Law in Practice (OXFORD University Press, New Delhi, 2007).
[3] K K Sharma, Competition Commission Cases (LexisNexis, Bahadurgarh, 2014).
[4] Leela Kumar, MRTP COMMISSION and COMPETITION COMMISSION of INDIA, SSRN Publications.

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Objective of the study

A. To explore the historical background of the Competition Law.
B. To investigate the aim and relevance of competition advocacy in establishing a competitive culture across the national economy, as well as the function allocated to the Competition Commission of India.
C. To assess the comparative operation and efficacy of India's Competition Law.

Hypothetical proposition

1) The Competition Act, 2002 undeniably constitutes a paradigm shift from the MRTP Act, 1969, and reflects India's changing economic ideology.
2) The Competition Act of 2002 is undeniably superior to the preceding MRTP Act of 1969, and it is more successful in tackling restrictive corporate practices.

Research Methodology

The researcher in this paper relied heavily on the 'Doctrinal Method' of research. The researcher primarily obtained secondary sources of material from committee reports, authoritative literature on competition law, and debates and discussions in Parliament during the start of the MRTP and Competition Bills. The researcher pursued the current investigation using the standard doctrinal technique. It is commonly acknowledged that the Competition Law is a dynamic notion that will find extended expression and surely embrace new domains as human civilization constantly attempts to evolve greater degrees of progress and economic development. Views and opinions expressed by competition law specialists in legal journals were also utilized to give further light on the wording of the Indian Competition legislation.

Historical Background

Monopolies and Restrictive Trade Practices Act, 1969

The Monopolies and Restrictive Trade Practices Act (MRTP Act) was approved by the Indian Parliament on December 18, 1969, and received presidential assent on December 27, 1969. However, it went into effect on June 1, 1970. The MRTP Act is no longer in existence in India because it was repealed and replaced with the Competition Act 2002 on September 1, 2009. The Competition Commission of India has taken over the MRTP commission.

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MRTP Act Aims and Objectives

The MRTP Act was adopted in 1969 in response to the recommendations of the Dutt Committee to prevent the concentration of economic power in the hands of a few wealthy individuals. The legislation was enacted to ban monopolistic and restrictive commercial practices. Except for Jammu and Kashmir, it covered the whole country.

The following were the act's goals and objectives

1. To ensure that the operation of the economic system are needed and it does not result in the concentration of economic power in the hands of a few wealthy people.
2. To allow for monopoly control and to ban monopolistic and restrictive commercial practices.

Overview of the 1969 MRTP Act

During Indira Gandhi's administration, the country was ruled under socialism. Large corporations came to be regarded with distrust. As a result, the government formed a number of committees, each with the goal of developing a mechanism to limit the concentration of power in the hands of a few.

Take a look at the committees that contributed shape the MRTP Act of 1969

Mr. Hazari chaired **the Hazari Committee**[5], which was formed to investigate the licencing system under the Industrial Policy. The committee discovered in its report that Big Businessmen were successful in defeating Industrial Policy restrictions in order to fulfil their own selfish objectives. Furthermore, states have grown prejudiced in issuing Industrial Licenses to large corporations.

The Subimal Dutt Committee[6] was formed to investigate the institutional design and work patterns of various business houses. The committee discovered in its research that 73 business houses controlled around 56% of the economy; hence, it proposed the MRTP Bill.

The Mahalanobis Committee[7] on Income Distribution and Standard of Living (1964) This committee, led by PC Mahalanobis, discovered a concentration of wealth and power in the hands of a few affluent businesspeople. It was also discovered that the country's economic

[5] R.K. Hazari, Industrial Planning and Licensing policy Report, Government of India, Planning Commission, 1951.
[6] INDIA & DUTT, S. (1969). Report of the Industrial Licensing Policy Inquiry Committee. [New Delhi], Dept. of Industrial Development.
[7] INDIA & MAHALANOBIS, P. C. (1964). Report of the Committee on Distribution of Income and Levels of Living. New Delhi, Government of India, Planning Commission.

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model was designed in such a way that only the rich few benefited, and that this should be changed.

The Monopolies Inquiry Commission [MIC][8] was established in 1965. Justice K.C Das Gupta presided over this committee. It discovered that there was a large concentration of power in private hands, and that industrial licensing policies and intellectual property rights were ineffective in correcting this. Furthermore, there was no law to manage and regulate the market anomalies that existed. As a result, MIC created legislation to limit monopolistic and restrictive commercial practices. This Bill was ultimately renamed the MRTP Act of 1969. The new MRTP Act was heavily inspired by its overseas counterparts, which included the Sherman Act and Clayton Act of the United States, the MRTP (Inquiry and Control) Act of 1948, and the Resale Prices Act of 1964 of the United Kingdom, among others. The following are some of the most notable elements of the MRTP Act of 1969.

The main characteristics of the MRTP Act of 1969

As previously stated, the purpose of this research is to conduct a critical examination of the MRTP Act of 1969 and Competition Act of 2002. However, we cannot properly assess a piece of law unless we comprehend the underlying ideas. As a result, it is critical to summarize the key provisions of the Act below. The Primary Aim MRTP Act went into effect on June 1, 1970. The law was enacted only for the purpose of "Achieving the highest possible production with least damage to people at large while securing maximum benefit".

Concepts Addressed by the MRTP Act

To really comprehend the breadth of their application and the practical issues that developed during their implementation, it is necessary to first understand the prominent aspects that regulate the Act. The following are the concepts addressed by the Act:

1. **The command and control approach** was mandated by the Act, which required firms with assets over Rs. 20 crores to get authorisation from the Central Government before engaging in any type of corporate restructuring or takeover. The criterion for determining the leading ventures was also established. Enterprises with more than Rs. 1 crore in assets were automatically deemed dominant.

[8] Kulshreshtha, v. D. "REPORT OF THE MONOPOLIES INQUIRY COMMISSION: AN EVALUATION." Journal of the Indian Law Institute, vol. 8, no. 3, 1966, pp. 413–427.

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2. **Monopolistic Trade Practices (MTPs)** as defined in Chapter IV of the MRTP Act, are acts performed by Big Business Houses to undermine or abolish healthy competition in the market by abusing their market position. Such methods are anti-consumer welfare.
3. **Restrictive Trade Practices (RTPs)** are market actions that obstruct the flow of money or profits. Some businesses tend to exert market control over the supply of commodities or products by restricting production or managing delivery. MRTP Act prohibits and inhibits businesses from engaging in RTPs.
4. **Unfair Trade Practices (UTP)** are enterprises' fraudulent, deceptive, misleading, or distorted representations of facts relevant to goods and services. Unfair Trade Practices are prohibited under Section 36-A of the MRTP Act (UTPs). The groundbreaking 1984 Amendment to the MRTP Act included this clause.

The MRTP Act also called for the formation of the MRTP Commission, which would serve as a regulatory entity to deal with MRTP Act violations. The MRTP Act, being India's first legislation addressing competition law concerns, appeared to be a great statute to detect defaulters at the time of its passage. However, as time passed, the wave of globalisation that invaded the nation altered the entire dynamic. In order to stay up with the changing economic climate, the existing MRTP Act needed to be modified. There were several loopholes in the law. Some of these are covered briefly below.

MRTP, Act: A Broken Law in Need of Repair

MRTP successfully regulated competition in the Indian market till 1984. However, by 1984, important revisions were necessary to bring the act up to speed with the demands of society. The following are the significant changes made to the MRTP Act. The Sachar Committee's recommendations were the basis for the 1984 Amendment. The amendment added Section 36A to the Act to protect final consumers from unfair commercial practices and allow for appropriate action to be taken against them. Thus, the Act covered claims for fraudulent ads, deceptive representation of products, and false assurances. The MRTP Act was expanded to the public sector and government-owned businesses as a result of the 1991 modification. Following this modification, private market participants were no longer obliged to get specific permissions or authorization from the government before undertaking any company restructuring. This MRTP Act modification took effect in light of the New Economic Policy, which resulted in the liberalization of the Indian economy. The License Raj, which stifled Indian economic progress, was thus eliminated. It should be emphasized that, despite the following revisions to address the MRTP Act's shortcomings, many loopholes remained, which

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prompted its removal.

Critical Analysis of the 1969 MRTP Act

The following are the reasons why the MRTP Act of 1969 failed.

1) **Excessive Government Control** - The MRTP Act exposed both small and large firms to excessive government control. Before engaging in any type of business reorganisation or acquisition, firms were required to get government clearance. Due to the presence of such intricate procedures, many businesses found it impossible to survive, harming final customers.

2) **Vague and unclear legislation** - Section 2(o) of the MRTP Act defined "restrictive trade practices" as any behavior that prevents, distorts, or restricts competition. There was no clear provision defining the various types of anti-competitive acts that would constitute offences under the Act. Cartels, bid rigging, misuse of dominance, collusion, price-fixing, predatory pricing, and other anti-competitive actions went undefined. Section 2(o) therefore encompassed all potential offenses, resulting in a wide range of interpretations by various courts in which the essential spirit of the statute was lost.

3) **Per se rule rather than Rule of Reason** - The MRTP Act included up to 14 acts that were considered prohibited by definition. The Rule of Reason was not used. Though the Supreme Court acknowledged the Rule of Reason in the Telco case, this trend was thwarted once more by the regrettable 1984 Amendment, which dictated that all specified RTPs under Section 33 be viewed as per se illegal.

4) **Dominance is harmful in and of itself** - Under the MRTP Act, dominance was considered negative regardless of whether the party misused it. There existed a mathematical method for determining dominance, which was defined as having 25% or greater market share of products or services. However, if a company obtained 20% or 23% of the market share at a certain moment, it was not deemed dominant.

5) **Export promotion at any cost** - According to Section 38 of the MRTP Act, if a project company has a strong potential for exports in the future, the authority will simply accept all of its applications under the Act without considering any anti-competitive or monopolistic shadow that it may have. Because of its overemphasis on exports, it overlooked any potential downsides that a project may have. In many situations, it resulted in higher costs than the foreign cash obtained through exports.

6) **A Voluntary Disclosure Policy** - The MRTP Act machinery was heavily reliant on voluntary disclosures made by corporations because there was no agency that could maintain a constant eye on market control and company structuring. This gave corporations a lot of

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latitude, resulting in late registrations or, in certain cases, no-registration of any changes in the company structure. This served to keep the firm out of the purview of the Act.

7) **Inefficiency of the MRTP Commission** - The MRTP Commission was established to regulate the country's anti-competitive behaviors.Despite the fact that the MRTP commission had both administrative and judicial powers, the members of the Commission were nominated by the government, casting doubt on its independence. Furthermore, the Commission was unable to carry out its tasks efficiently and effectively as a result of

a. Unnecessary delays in replacing members of the Commission.

b. The government's unwillingness to nominate members or build additional branch offices.

Furthermore, the government had the last say on a proposal, and it was up to the government whether or not to bring the subject to the Commission. Most of the time, the administration made decisions unilaterally without consulting the MRTPC's special expertise body, which was established for this reason. All of this resulted in the body becoming obsolete.

8) **No Extraterritorial Applicability** - The MRTP Act had no extraterritorial application, which meant that it could not be used to businesses outside India even if their anti-competitive behavior harmed the Indian market, unless one of the parties was of Indian origin. As a result, when it comes to activities such as international cartels, the MRTP Act was rendered ineffective.

9) **No consequences for violations** - Section 12 of the MRTP Act deals with the authority of the MRTP Commission and the sorts of orders that it can make in the event of anti-competitive behaviour. On a simple reading of the provisions, we can conclude that the Commission lacked the authority to levy punitive penalties or fines on defaulters. It can only issue 'cease and desist' orders or levy minor fines. Although jail terms were available for, they were rarely implemented.

Evolution of Competition law

Raghavan Committee

Economic liberalization of India in July 1991, however, opened, amongst other issues, a debate in India as to whether or not the growth of the SOEs was really able to measure the importance of efficiencies of enterprises and was simultaneously able to address the issues of competitiveness amongst enterprises in the markets in India. The debate became even more engaging when India decided to sign the World Trade Organization (WTO) global treaty on 1 January 1995. It was a sovereign function of the state;12 as such, several economic legislations were considered and enacted in India in respect of certain selected sectors of industries of India.

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Securities, Insurance, Telecom, Electricity, Petroleum and Natural Gas, Airports Economic Regulation, etc., were brought within the ambit of specialized statutes and the authorities so created out of these statutes were kept at arm's length from the day-to-day control of the federal government. Level-playing fields were considered a necessity between SOEs and private enterprises after 1991. Around that time, another interesting debate emerged as to whether or not the Monopolies and Restrictive Trade Practices Act, 1969 and the MRTP Commission should continue to regulate the monopolies and restrictive trade practices in India. A high-powered committee, headed by Mr S V S Raghavan (Raghavan Committee), was constituted in 1999 to assess some of the likely changes which may be necessary in combating the trade-related anti-competitive practices of the Indian enterprises in the post-1991 economic liberalization scenario and suggest/recommend a way forward including a legislative framework.

The Finance Minister in its budget speech in February, 1999 said
"The MRTP Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. The Government has decided to appoint a committee to examine this range of issues and propose a modern competition law suitable for our conditions." In October 1999, the Government of India constituted a High Level Committee under the Chairmanship of Mr. SVS Raghavan ['Raghavan Committee'] to advise a modern competition law for the country in line with international developments and to suggest legislative framework, which may entail a new law or suitable amendments in the MRTP Act, 1969. The Raghavan Committee presented its report to the Government in May 2000. On the basis of the recommendations of the Raghavan Committee, a draft competition law was prepared and presented in November 2000 to the Government and the Competition Bill was introduced in the Parliament, which referred the Bill to its Standing Committee. After considering the recommendations of the Standing Committee, the Parliament passed December 2002 the Competition Act, 2002.

The Monopolies and Restrictive Trade Practices Act, 1969 [MRTP Act] repealed and was replaced by the Competition Act, 2002, with effect from 1 September, 2009.

The Competition Act, 2002 was enacted to provide for the establishment of a Commission to prevent practices having adverse effect on competition, and to promote and sustain competition in the business environment and to protect the interest of consumers and also to ensure freedom

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of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto. The Competition Act, 2002 came into existence in January, 2003 and the Competition Commission of India (CCI) was established on 14 October, 2003. CCI consists of a Chairperson and 6 Members appointed by the Central Government. CCI functions as a market regulator for preventing and regulating anti competitive practices in the country. A Competition Appellate Tribunal was also established, which is a quasi-judicial body established to hear and dispose of appeals against any direction issued, or decision made by the CCI. The Act was subsequently amended by the Competition (Amendment) Act, 2007 and Competition (Amendment) Act, 2009. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on 20 May, 2009. Introduction of the Act was a key step towards facing competition. The Competition Act, 2002 is not intended to prohibit competition in the market. The legislation prohibits anti-competitive agreements, abuse of dominant position and regulates mergers, amalgamations and acquisitions.

ELEMENTS OF COMPETITION LAW

There are three major elements of a competition law; i) Anti competitive agreements; ii) Abuse of dominance; and iii) Merger, amalgamations and acquisitions control.

i) Anti- Competitive Agreements

Anti-competitive agreements are those agreements that restrict competition. Section 3[9] of the Competition Act, 2002 prohibits any agreement with respect to production, supply, distribution, storage, and acquisition or control of goods or services which causes or is likely to cause an appreciable adverse effect on competition in India. The term 'Agreement' is broadly defined in section 2(b)[10] of the Competition Act, 2002 and includes any arrangement or understanding or concerted action, whether or not it is formal, in writing or intended to be enforceable by legal proceedings. The agreement does not necessarily have to be a formal one and in writing or justifiable in a court of law and an informal agreement to fix prices will be hit by the provisions of the Competition Act, 2002.

Section 3(2)[11] of the Competition Act, 2002 declares that any anti-competitive agreement within the meaning of section 3(1)[12] of the Competition Act, 2002 shall be void. The whole

[9] Section 3 of Competition Act, 2002
[10] Section 2(b) of Competition Act, 2002
[11] Section 3(2) of Competition Act, 2002
[12] Section 3(1) of Competition Act, 2002

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agreement is construed as void if it contains anti – competitive clauses having appreciable adverse effect on the competition. The term 'appreciable adverse effect on competition' used in section 3, is not defined in the Act. However, the Act specifies a number of factors which the Competition Commission of India must take into account while determining whether an agreement has an appreciable adverse effect on competition or not. Agreement between rivals or competitors is termed as horizontal agreements. The most malicious form of an anti-competitive agreement is cartelization. When rivals or competitors agree to fix prices or share consumer or do both, the agreement is termed as cartel. Besides horizontal agreements, there can be anti-competitive agreements between producers and suppliers or between producers and distributors. These are referred to as vertical agreements. Vertical agreements too can undermine competition in the market.

According to section 3(3)[13] of the Act, the kind of agreements which would be considered to have an 'appreciable adverse effect on competition' would be those agreements which

1) Directly or indirectly determine sale or purchase prices;
2) Limits of control production, supply, markets, technical developments, investments or provision of services;
3) Share the market or source of production or provision of services by allocation of inter-alia geographical area of market, nature of goods or number of customers or any other similar way;

Directly or indirectly result in bid rigging or collusive bidding.

The agreements falling in section 3(3) of the Act shall be judged by 'shall be presumed rule' and onus to prove otherwise lies on the defendant.

Section 3(4)[14] provides that any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including i) Tie-in agreement; ii) Exclusive supply agreement; iii) Exclusive distribution agreement; iv) Refusal to deal; v) Resale price maintenance, shall be presumed an anti-competitive agreement, if such agreements causes or is likely to cause an appreciable adverse effect on competition in India.

[13] Section 3(3) of Competition Act, 2002
[14] Section 3(4) of Competition Act, 2002

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The agreements falling in section 3(4) of the Act shall be judged by 'rule of reason' and the onus lies on the prosecutor to prove its appreciable effect on competition in India. The section 3(5)[15] of the Act gives due recognition to the intellectual property rights, which provides that the prohibition against anti – competitive agreements shall not restrict the right of any person to restrain any infringement of, or to impose reasonable conditions as may be necessary for protecting, any rights under the Copyright Act, 1957, the Patents Act, 1970, the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Designs Act, 2000 and the Semiconductor Integrated Circuits Layout-Design Act, 2000.

Further the Competition Act, 2002 does not restrict any person's right to export from India goods under an agreement which requires him to exclusively supply, distribute or control goods or provisions of services for fulfilling export contracts. Thus any agreement for the purpose of restraining infringement of such Intellectual Property Rights or for imposing reasonable conditions for protecting such rights shall not be subject to the prohibition against anti-competitive agreements.

ii) Abuse of Dominant Position

Section 4 of the Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position. The term 'Dominant Position' includes a position of strength, enjoyed by an enterprise or group, in relevant market, in India, which enables it to –

a) Operate independently of competition forces prevailing in the relevant market; or

b) Affect its competitors or consumers or the relevant market in its favor.

The term 'Dominance' is also referred to as market power which is defined as the ability of the firm to raise prices or reduce output or does both independently of its rivals and consumers.

As per Section 2(r)[16] of the Competition Act, 2002 'relevant market' means the market, which may be determined by the Competition Commission of India with reference to the relevant 'product market' or 'relevant geographical market' or with reference to both. The Act requires that the relevant product market is to be determined by considering; physical characteristics or end-use of goods; the price of goods of services; consumer preferences; exclusion of in-house production; the existence of specialized producers; and the classification of industrial products. Further the relevant geographical market is determined by considering; regulatory barriers; local specification requirements; national procurement policies; adequate distribution facilities; transport costs; language; consumer preferences; and need for secure or regular supplies or

[15] Section 3(5) of Competition Act, 2002

[16] Section 2(r) of Competition Act, 2002

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rapid after sales services.

In short, there shall be an abuse of dominant position if an enterprise indulges into the below mentioned activities

1) Directly or indirectly imposing discriminatory conditions in the purchase or sale of goods or service, or setting prices in the purchase or sale (including predatory pricing) of goods or services;
2) Limiting or restricting the production of goods or provision of services or market therefore; or limiting technical or scientific development relating to goods or services to the prejudice of customers;
3) Indulging in practice or practices resulting in the denial of market access;
4) Making conclusion of contracts subject to acceptance by other parties of supplementary obligations, which has no connection with the subject of such contract;
5) Utilization of the dominant position in one relevant market to enter into, or protect, another relevant market.

Section 19(4)[17] of the Act empowers the Competition Commission of India to determine whether any enterprise or group enjoys a dominant position or not, in the relevant market and also to decide whether or not there has been an abuse of dominant position. Further mere existence of dominance is not to be frowned upon unless the dominance is abused.

iii) MERGER, AMALGAMATIONS AND ACQUISITIONS CONTROL

The Competition Act, 2002 uses the word combinations to cover acquisition of control, shares, voting rights and assets, and mergers and amalgamations. Section 6[18] of the Competition Act, 2002 prohibits any person or enterprise from entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be void. Further Section 6(2)[19] provides that any person or enterprise, who or which proposes to enter into any combination, shall give a notice to the Competition Commission of India, disclosing details of the proposed combination, in the form, prescribed and submit the form together with the prescribed fee within 30 days of

1) Approval of the proposal relating to merger or amalgamation, by the Board of Directors of the enterprise concerned with such merger or amalgamation, as the case may be;
2) Execution of any agreement or other document for acquisition, acquiring of control.

[17] Section 19(4) of Competition Act, 2002
[18] Section 6 of Competition Act, 2002
[19] Section 6(2) of Competition Act, 2002

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The Competition Act, 2002 also sets a threshold below which a merger, acquisition or acquiring of control is not regarded as a combination. Section 30[20] of the Competition Act, 2002 empowers the Competition Commission of India to determine whether the disclosure made to it under section 6 (2) of the Act is correct and whether the combination has, or is likely to have, an appreciable adverse effect on competition in India. Upon receipt of notice for a proposed combination, the Commission must review the combination within tight time limits or else the combination is deemed to have been approved. According to Section 31[21] of the Act, the Competition Commission of India may allow the combination if it will not have any appreciable adverse effect on competition in India or pass an order that the combination shall not take effect, if in its opinion, such combination has or is likely to have an appreciable adverse effect on competition.

The provisions of Section 6 do not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

REMEDIES UNDER COMPETITION ACT, 2002

CCI can be approached to report any unfair competition practices. CCI is also empowered to act suo-moto or on the reference.

Jurisdiction

Section 32[22] of the Competition Act, 2002 empowers the CCI to take action with respect to conduct that has occurred outside India and with respect to the parties located outside India provided that the conduct had an appreciable adverse effect on competition in the relevant market in India. In support of this provision, Section 18[23] This Act empowers the CCI to enter into a memorandum or arrangement with any agency of any foreign country with the prior approval of the Central Govt. Private enterprises as well as government owned enterprises and even government departments are covered by the provisions of Competition Act, 2002. An enquiry or complaint could be initiated or filed before the Bench of CCI if within the local limits of its jurisdiction the respondents actually or voluntarily resides, carries on business or

[20] Section 30 of Competition Act, 2002
[21] Section 31 of Competition Act, 2002
[22] Section 32 of Competition Act, 2002
[23] Section 18 of Competition Act, 2002

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works for personal gain, or where the cause of action wholly or in part arises.

Confidentiality

The Competition Act, 2002 recognizes that information received by the CCI could be commercially sensitive and its disclosure could result in harm to the business. Section 57[24] of the Act provides that no information relating to any enterprise shall be disclosed without the prior written permission of the enterprise, except in compliance with or for the purposes of this Act or for any other law for the time being in force. Thus it provides to enterprises the protection of confidentiality.

Penalties

The CCI has powers in relation to anti – competitive agreements and abuse of dominant positions. If the CCI finds that there is an unfair competition practice, which caused or is likely to cause an appreciable adverse effect on the competition in India, it may pass all or any of the following order

1) A cease and desist order, which directs the parties involved in such agreement or abuse of a dominant position to discontinue acting upon such agreement and not to re-enter such agreement, or to discontinue such abuse of a dominant position, as the case may be;
2) An order which imposes a monetary penalty, as deemed fit but that does not exceed 10% of the average turnover for the last three preceding financial years, on each party to the agreement or abuse. Provided that in case of a cartel, the CCI may impose on each producer, seller, distributor, trader or service provider included in that cartel a penalty of up to three times its profit for each year of the continuance of such agreement or 10% its turnover for each that it continues such agreement, whichever is higher;
3) An order directs that the agreement must stand modified to the extent and in the manner that may be specified in the order;
4) An order that directs compliance with its orders and directions, including payment of costs;
5) An order that directs the division of an enterprise that is abusing its dominant position to ensure that it can no longer abuse its dominance; and
6) Any order or direction as the CCI deems fit.

[24] Section 57 of Competition Act, 2002

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Further, any person may apply to the Competition Appellate Tribunal for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered by such person as a result of the enterprise

1) Violating directions issued by the CCI;
2) Contravening, with no reasonable ground, any decision or order of the CCI issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanctions, directions or exemption in relation to any matter has been accorded, given, made or granted under the Competition Act; or
3) Delaying in carrying out such orders or directions

The Indian Competition Act, 2002 is very much comprehensive and enacted to meet the requirements of economic growth and international economic developments relating to competition laws. The legislation is in synchronization with other policies such as trade policy, FDI norms, FEMA etc, which would ensure uniformity in overall competition policy.

CONSEQUENCES OF THE RECOMMENDATIONS OF RAGHAVAN COMMITTEE

Raghavan Committee inter alia recommended repealing of the MRTP Act and enacting a modern competition law to meet the challenges, if any, of trade liberalization. Article 19(1) (g) of the Constitution of India guarantees all citizens of India a right to practice any profession or to carry on any occupation, trade or business subject to the condition that the state shall in public interest impose reasonable restrictions to such freedom by enacting suitable legislation. Article 301[25] of the Constitution of India, read with Articles 302[26] and 304(b)[27] empower the Parliament to enact suitable laws to reasonably restrict freedom of trade throughout the territory of India. Thus, it emerges from the foregoing that the Parliament is empowered to impose reasonable restrictions upon enterprises from enjoying unfettered freedom of trade and commerce. Coupled with the recommendations of the Raghavan Committee and the Constitutional mandate, the Parliament enacted the Competition Act, 2002 in December 2002 which obtained the Presidential assent on 13 January 2003. The Competition Act is, thus, a legislation that imposes reasonable restrictions upon citizens and enterprises to the freedom of trade and commerce while operating in India. In view of the foregoing principles, it would be prudent to briefly examine the necessity of passing of the Competition Act in 2002. While

[25] Article 301 of the Constitution of India
[26] Article 301 of the Constitution of India
[27] Article 304(b) of the Constitution of India

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enacting the Competition Bill, the Government of India inter alia observed the following

India has, in the pursuit of globalization, responded to opening up its economy, removing controls and resorting to liberalization. As a natural consequence of this the Indian market has to be geared to face competition from within the country and outside. The Monopolies and Restrictive Trade Practices Act, 1969 has become obsolete in certain respects in the light of international economic developments relating more particularly to competition laws and there is a need to shift the focus from curbing monopolies to promoting competition.

IN 1999 to advise a new competition law for the country was assigned

1. Recommending a suitable legislative framework.
2. Changes related to legal provision in respect of restrictive trade practices.
3. Suitable administrative measures for better implementation.

Case law which shows the failure of MRTP ACT, 1969

1) **Tata Engineering and Locomotive Co. Ltd vs. Registrar of Restrictive Trade Practices Agreement**[28]

   Facts In this matter, TELCO entered into an arrangement with its dealers under which the dealers were allocated set areas within which they were required to sell Tata's automobiles. This territorial limitation was deemed a restrictive trade practices'.

   Held In this case, the Supreme Court applied the Rule of Reason for the first time in India, ruling that such geographical restrictions were not anti-competitive because they were intended to ensure fair distribution of commodities across the country. The 1984 Amendment, Section 33 of which made territorial allocation a per se RTP, undercut the good effect of this ruling.

2) **Director General of Investigation and Registration [DG (IR)] vs. Modi Alkali and Chemicals Ltd**[29]

   Facts According to an anonymous complaint received by the Commission, certain businesses have established a cartel to create virtual scarcity of commodities, and the prices of chlorine gas and hydrochloric acid have increased by 200% in the previous four months. Following an inquiry, the DG stated that there was no evidence of a cartel and that no action should be taken.

   Held Even though the word 'Cartel' was not defined in the MRTP Act, it was put down that "cartel is a group of producers who by an agreement among themselves strive to

[28] AIR 973, 1977 SCR (2) 685.
[29] Restrictive Trade Practices Enquiry No. 118 of 1994 Decided On, 01 March 2002.

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control production, sale and prices of the product to achieve a monopoly in any given industry or commodity". Despite the fact that there was insufficient evidence to hold anybody accountable in this case.

3) **Sirmur Truck Operator's Case**[30]

Facts In this situation, the corporation set high freight rates for non-member truck operators while keeping prices for members substantially lower. As a result, non-members' transportation costs soared. They claimed that it was an RTP.

Held It was determined that this constituted an RTP under Section 2(o) of the Act. The MRTPC issued a "stop and desist" order. This case, however, revealed that the Commission lacked the authority to levy penalties or large monetary fines. It's only option was to issue cease and desist orders.

4) **American Natural Soda Ash Corporation (ANSAC) vs. Alkali Manufacturers Association of India (AMAI) and others**[31]

Facts ANSAC was attempting to export soda ash to India. AMAI filed a complaint with MRTPC to prohibit the shipment of these cartelized consignments into Indian Territory.

Held The Supreme Court ruled that the MRTPC lacks extraterritorial jurisdiction and hence cannot take action against foreign cartels unless the anti-competitive arrangement involves an Indian participant. As a result, this case exposed another another flaw in the MRTP Act.

Thus, it is clear from these instances that the MRTP Act's shortcomings were unavoidable, even in the view of the Indian judiciary. This is what eventually resulted in the creation of the Current Competition Law.

Recent landmark judgments for the success of Competition Act, 2002

1) **Shamsher Kataria v. Honda Siel Cars Ltd. & Ors**[32]

Appellant had filed a complaint against Volkswagen India, Honda India, and Fiat India for violating Sections 3(4) and 4 of the Competition Act, 2002, as Original Equipment Manufacturers (hereinafter referred to as "OEMs") entered into agreements with Original Equipment Suppliers (hereinafter referred to as "OESs") and authorised dealers, which imposed unfair prices on the sale of auto spare parts and limited the free

[30] (1995) 3 CTJ 332 (MRTPC) 74 Truck Operators Union vs. Mr. S.C. Gupta & Mr. Sardar AIR 1986 SC 991 (1995) 3 CTJ 70 (MRTPC).
[31] (1998) 3 CompLJ 152 MRTPC.
[32] (2019) PL (Comp. L) June 77, June 6, 2019.

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availability of genuine auto spare parts. Were any rules broken?.In this instance, CCI issued a groundbreaking decision on car auxiliary items and services.

2) **CCI v. Google Inc.**[33]

The CCI received a complaint alleging that Google Inc. misused its dominating position in the online advertising industry by pushing its vertical search services such as YouTube, Google News, Google Maps, and so on. In other words, regardless of their popularity or relevancy, these services would display prominently in Google search results. In the absence of any particular provisions in the Competition Act, 2002, the major question was whether an administrative body like CCI has inherent authority to review or recall an order given under section 26(1). The Delhi High Court ruled that the Competition Commission of India might recall or reconsider its ruling under specific conditions, adding that this should be done selectively and not in every case when an inquiry is underway.

3) **M/s Fast Track Call Cab Private Limited v. M/s ANI Technologies Pvt. Ltd**[34]

The CCI initially believed that predatory pricing, providing more incentives and discounts to customers and drivers in comparison to revenue earned, drove existing players out of the market and created entry barriers for potential players, in violation of Section 4 of the Act. Furthermore, the quantity of resources and the consumer's reliance on the relevant market with no replacement are essential criteria to evaluate while looking for acts in violation of Section 4.

Suggestions

1. The State Monopolies, Government procurement and foreign companies should be subject to the Competition Law. The Law should cover all consumers who purchase goods or services, regardless of the purpose for which the purchase is made.
2. Bodies administering the various professions should use their autonomy and privileges for regulating the standard and quality of the profession and not to limit competition.
3. If quality and safety standards for goods and services are designed to prevent market access, such practices will constitute abuse of dominance/exclusionary practices.

[33] LPA No. 733/2014 and W.P. (C) No. 7084/2014.
[34] Case No. 6 of 2015, Order dated September 03, 2015.

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4. Certain anti-competitive practices should be presumed to be illegal. Blatant price, quantity, bid and territory sharing agreements and cartels should be presumed to be illegal.
5. Abuse of dominance rather than dominance needs to be frowned upon for which relevant market will be an important factor.
6. Predatory pricing will be treated as an abuse, only if it is indulged in by a dominant undertaking.
7. Exclusionary practices which create a barrier to new entrants or force existing competitors out of the market will attract the Competition Law.
8. Mergers beyond a threshold limit in terms of assets will require pre-notification. If no reasoned order, prohibiting the merger is received within 90 days it should be deemed to have been approved. In adjudicating a merger, potential efficiency losses from the merger should be weighed against potential gains.
9. The Competition Law should be designed and implemented in terms of principles enunciated, supra, in this Chapter.
    1. Certain anti-competitive practices should be presumed to be illegal.
    2. Agreements that contribute to the improvement of production and distribution and promote technical and economic progress, while allowing consumers a fair share of the benefits.
    3. The “relevant market” should be clearly identified in the context of horizontal agreements.
    4. Blatant price, quantity, bid and territory sharing agreements and cartels should be presumed to be illegal

Conclusion

It should also take a strong stance against anti-competitive behavior by foreign enterprises and the negative consequences for the Indian market. As a result, we may infer that we require a sound competition strategy as well as an efficient and effective competition legislation in order to tackle the challenges of globalization in Indian markets with confidence. Finally, it is important to abrogate the MRTP. The deregulation of key industries and the privatization of public companies are two major economic reforms that are heavily emphasized in the globalization-related competition policy. The issues of maintaining domestic competition and countering transnational anti-competitive corporate activities that damage the economy are posed by the opening up of the economy. In order to operate the economy on a secure course

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with continual speed, legislation enacting an efficient competition law must include both short- and long-term policy alternatives. The vast majority of these challenges are addressed by Indian competition law, which also offers guidance to other developing nations that are through a process of globalization evolution.

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