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THE ECONOMIC THEORIES OF INTELLECTUAL PROPERTY RIGHT AND COMPETITION LAW

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Abstract

Most of the time, the objectives of competition law and intellectual property law overlap. Their shared goals are to advance innovation and improve consumer welfare, and both legal fields are built on efficient legal theories.

First of all, competition and innovation are complementary rather than exclusive, as noted by Fine under the heading "European Commission Competition Law on Technology Licencing".[1] *Nonetheless, there are conflicting components in the two statutory frames as well. While the primary goal of patents is to promote innovation by giving businesses a competitive edge through exclusive rights, competition law aims to eradicate any actions or behaviours that could restrict trade, which could deter businesses from making innovative investments.*

Conflicts may emerge as a result of the tension between these two diametrically opposed and distinct agendas.[2]

This paper mainly discusses about the Tandem effect between Intellectual property right and Competition Law. Further in this paper the authors will give an overview of the different theories of Intellectual property rights and Competition law with the differences between these two and also the effect of Intellectual property Laws and Competition law on the economy.

KEYWORDS

Intellectual Property (IP), Competition Law, Monopolies, Economic Growth, Consumer Welfare, Copyright, Trademark, Patent pooling and Cross-Licencing

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1 Frank L. Fine, The EC Competition Law on Technology Licensing, Sweet & Maxwell Ltd., London, 2006, p.14

[2] Competition law and Intellectual Property Rights, The Nature of Frand Defence in Patent Litigation,27-27(2011)

INTRODUCTION

In the past, intellectual property and competition law were sometimes compared to opposing poles on a magnet. Due to the seeming conflict between the two, the idea that the intellectual property rights regime creates monopolies in order to promote innovation was put forth, despite the fact that the main goal of competition law is the dismantling of monopolies. On the other hand, it has come to light that both contribute to innovation in today's technologically dynamic markets by working in tandem and in complementary ways.[3]

Since intellectual property rights ["**IPR**"] define the boundary within which rivals can exert monopolies over invention, they often counter the competitive market ideals and fair playing fields that competition laws aim to achieve. Intellectual Property Right refers to legal rights having different scopes, durations, purposes, and effects, such as patents, trademarks, and copyrights.[4]

Intellectual Property laws are monopolistic; they provide owners and creators of works produced by human intellectual creativity the only right to do so. According to competition law, they can result in market dominance or monopolies and stop commercial exploitation. Abuse of this advantage can lead to a dispute between competition law and intellectual property rights ["**IPR**"] and provide the owner an edge over the rest of the industry or sector.[5]

Intellectual property rights ["**IPR**"] are essential for a nation's development since they foster innovation and economic advancement. Strict enforcement of intellectual property rights greatly boosts economic growth in industrialized nations. Businesses frequently sell their brands for large sums of money, underscoring the significance of IPR regulations in the modern world. This study examines how intellectual property rights["**IPR**"] affect the economy, stressing how crucial it is to uphold people's rights in order to foster innovation and economic expansion.

"Intellectual property" is a word from the 20th century. Trade secrets law, copyright, patent, and trademark law are the four legal fields that make up this definition. On the other hand, the

[3] ABIR ROY & JAYANT KUMAR, COMPETITION LAW IN INDIA 502(2d ed. Eastern Law House, 2014).
[4] Jayashree Watal, Intellectual Property Rights in WTO and Developing Countries, 2001 (Oxford University Press), at 1-5
[5] Atul Patel , Aurobinda Panda, Akshay Deo & Siddhartha Khettry, Intellectual Property Law & Competition law, 6 J. INT'l COM. L. & TECH. 120-20 (2011).

notion of intellectual property has a long history. Although there has always been protection for intellectual property, formal intellectual property rules and privileges have only been in place since the 16th and 17th centuries, when copyright was first established in England and patents were first established in Venice. These regulations and privileges were imposed as a means of controlling the printing business and the specific creative good, not to protect the property rights of authors, publishers, or inventors. [6]

In the European Union, competition law has been crucial to the development of the single market. Thus, the preservation of healthy competition and the requirement for deeper single market integration are the two purposes for which European Commission competition law is implemented. There is a contention that the goals of European Commission competition law have never been clearly stated in a formal document or ruling by relevant European Union bodies. As a result, there is much discussion over the actual goals of European Commission competition law.

Etro has written extensively on this contentious topic of antitrust law and intellectual property rights in his book "Competition, Innovation, and Antitrust, A Theory of Market Leaders and Its Policy Implications." [7]

THEORIES OF INTELLECTUAL PROPERTY RIGHT AND COMPETITION LAW

Under classical theory a market is described as a self-regulating system that maintains a balance between supply and demand. Since individual buyers and sellers have little control over the market, they are unable to directly affect its price.

According to this theory, there is perfect competition in a market, which means that efficiency is automatically maximised and cannot be increased by following competition laws.

But in actuality, markets lack some of the elements necessary for ideal competition. A market that is really competitive only exists in principle; in practice, the market is influenced by a number of outside forces.

[6] Daniel Stengel & Berlin, Intellectual Property in Philosophy,90(1) Archives for Philosophy of law and social Philosophy 20,20(2004)
[7] Supra note 2 at 29.

Since granting exclusive rights to intellectual goods—that is, "propertizing" them—allows the owner to charge a price for access above marginal cost, the traditional focus of economic analysis of intellectual property has been on balancing incentives for producing such property with concerns about restricting access to it. Trade secrets are specifically prohibited from being deemed intellectual property under the economic theory of intellectual property rights ["**IPR**"] because they prevent the general public from benefiting from information that is proprietary to a particular person or group.

INTELLECTUAL PROPERTY AND COMPETITION LAW-WORKING IN TANDEM

Generally speaking, intellectual property law and competition law are seen as opposing fields. This contradiction arises from the fact that while competition law attempts to undermine market power, intellectual property law gives inventors exclusive control rights, creating a powerful market. To put it another way, competition law fights against monopolistic rights, whereas intellectual property laws strive towards their creation. But the idea that competition law and intellectual property law serve the same goal—that is, to maximize social welfare—has essentially replaced this strategy in recent years.[8]

There is an interface between intellectual property right and competition law. However, intellectual property right and competition law interact, there are two schools of thought.[9]

(i) The argument that there is a conflict between intellectual property rights ["**IPR**"] and competition law, with Intellectual property right laws providing creators and innovators with a limited monopoly, while competition law aims to eradicate monopolies and promote competition. The primary purpose of intellectual property rights ["**IPR**"] laws, according to those who hold this opinion, is to assign and protect property rights on items with economic value. However, minimizing the negative effects of monopoly power resulting from IPRs should be the primary objective of competition legislation. But in the present era, this strategy is no longer relevant and is not used.

[8] *Rishika Sugandh & Siddhartha Srivastava;* **INTERFACE BETWEEN INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW: INDIAN JURISPRUDENCE, International Journal of Law and Legal Jurisprudence Studies (Dec 20,2023,10.39 AM), https://ijlljs.in/interface-between-intellectual-property-rights-and-competition-law-indian-jurisprudence/**

[9] Allan Asher , Public Lecture, Interface between the Indian Competition Act 2002 and the IPR Laws in India (Dec 13,2023, 12.40 PM)http://www.circ.in/pdf/Backgrounder-Public_Lecture_By_Allan_Asher_29May2009.pdf.

(ii) According to the second point of view, competition law is still essential for guaranteeing economic growth and innovation. Intellectual property right and competition laws have complimentary goals in that they both seek to promote competition, innovation, and the welfare of consumers. Maintaining competition in the innovation space is critical because it guarantees the greatest possible outcome for consumers.[10]

The foundation of Indian competition law is found in Articles 38 and 39 of the Constitution, which delineate the State's obligation to advance welfare, maintain social order, and allocate communal resources for the greater benefit. This obligation resulted in the Monopolistic and Restrictive Trade Practices ["**MRTP**"] Act, 1969, which was designed to stop wealth concentration in the economy and was impacted by United States, United Kingdom and Canadian laws.[11]

FRIENDS IN DISAGREEMENT

It is common to refer to the legal systems of intellectual property rights and competition law as "friends in disagreement." In actuality, although having opposing theoretical visions, they cooperate to promote consumer welfare and maintain both static and dynamic market efficiency.

From a business standpoint, one may attempt to think of competition law as attempting to establish a boundary between legitimate business practices and IPR misuse. It is usually problematic when and how a line is crossed. One could argue that intellectual property rights are government-approved monopolies designed to protect consumers and promote innovation. As such, the whole goal of granting IPRs would be defeated by early intervention from competition law disciplines. Conversely, late-arriving competition law intervention and some IPR-related behavior may be more detrimental to market circumstances than beneficial for innovation and consumer protection.

[10] *Rishika Sugandh & Siddhartha Srivastava;* **INTERFACE BETWEEN INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW: INDIAN JURISPRUDENCE, International Journal of Law and Legal Jurisprudence Studies (Dec 20,2023,10.39 AM), https://ijlljs.in/interface-between-intellectual-property-rights-and-competition-law-indian-jurisprudence/**

[11] The Institute of Chartered Accountants of India, Competition Laws and Policies (2004), at 117-118

CONFLICT BETWEEN INTELLECTUAL PROPERTY RIGHT AND COMPETITION LAW

Intellectual property ["**IP**"] includes all works of art and literature as well as innovations, as well as names, symbols, images, and designs that are utilized for commercial purposes. Patents, copyrights, and trademarks are examples of items with commercial value that are protected by intellectual property rights, which also prevent others from using non-corporeal assets for their own benefit.[12]

Intellectual property ["**IP**"] is separated into two categories: industrial property, which includes innovations, patents, and trademarks; and copyright, which includes creative works such as plays, novels, poems, books, films, musicals, drawings, paintings, photos, sculptures, and architectural designs. Broadcasters, phonogram manufacturers, and performers are all protected by copyright laws.[13]

In order to eliminate unfair commercial practices and monopoly abuse by dominant corporations, competition law encourages market competition. It is primary goals, which are to prevent monopoly abuse and advance market health, are consumer welfare and healthy competition.

The provisions of the Competition Act, 2002 prohibits the exercise of anti-competitive agreements by the IPR holders since they are in conflict with the competition policies. Further, the Act authorizes the Competition Commission of India to penalise the IPR holders who misuse their dominant position. Furthermore, Section 45 of the Act the Commission is also authorized to penalise the parties to an anti-competitive agreement, which is in contravention of Section 3 of the Act.[14]

Intellectual property rights are a subject of competition law because of market dominance and anti-competitive implications. By lowering prices for efficient production and stifling innovation, market dominance can be detrimental to consumers. Moreover, it may hinder the rise in production and lower sustainable living standards. Firm protection can stifle innovation

[12] Atul Patel, Aurobinda Panda, Akshay Deo & Siddhartha Khettry, Intellectual Property Law & Competition law, 6 J. INT'l COM. L. & TECH. 120-22 (2011).
[13] Ibid.
[14] Ibid.

and slow the rate at which productivity increases over time.[15]

Competition law and intellectual property rights are sometimes viewed as an antagonistic marriage, with competition law opposing monopolies and Intellectual Property laws possibly encouraging them. This leads to a clash between the goals of the two laws.

Intellectual property rules and competition policy both seek to foster innovation, which in turn spurs economic growth, but they shouldn't be detrimental to the general population. In order to accomplish economic and consumer welfare and maintain the balance of both laws, competition authorities must guarantee cohabitation.

The inclination to view intellectual property as providing market power and, thus, as somewhat at odds with competition policy, has been another source of friction in the relationship between intellectual property and competition policy. For instance, in the United States, courts frequently refer to the rights granted by a patent as a "Monopoly" or "Patent monopoly". But there appears to be less of this inclination now. The European Court of Justice has emphasised that having an intellectual property right does not automatically grant one a dominant position. Furthermore, the competition authorities in the United States have made it quite evident that they "do not presume that intellectual property creates market power in the antitrust context," notwithstanding the lack of a conclusive court finding. Rather, similar to other types of property, competition authorities are now concentrating on the existence and degree of close substitutes that could limit the capacity of an intellectual property owner to wield market dominance.

IPR licencing is typically used to combine complementary inputs like workforces, distribution networks, manufacturing facilities, and other complementary or blocking intellectual property. In essence, transactions involving complementary inputs are vertical in nature; this may hold true even in situations where the licensee and licensor are rivals in the production of goods covered by the IPR.

Arrangements that would have made it easier for complementary inputs to be transferred have occasionally been disapproved of by courts or competition regulators because they believed

[15] Atul Patel, Aurobinda Panda, Akshay Deo & Siddhartha Khettry, Intellectual Property Law & Competition law, 6 J. INT'l COM. L. & TECH. 120-23 (2011).

the relationship to be horizontal. These misunderstandings might have contributed to the belief that intellectual property rights and competition law were incompatible.

In Australia, the Copyright Amendment Bill 1997 is being considered by the Australian Parliament. This Bill includes a provision that would transfer copyright ownership of working journalists' works from them to their publishers.

The proposed relocation of copyright generates competition concerns even though its reach remains unchanged.

I. POOLING AND CROSS LICENSING

In agreements known as pooling and cross-licensing, two or more owners of distinct intellectual property rights provide licences to one another. By assigning or exclusively licencing their IPRs to a separately governed organisation in a pooling arrangement, they usually accomplish this. This entity then manages the licencing of the portfolio and its individual items to the individuals who contributed the IPRs and, frequently, to third parties. These agreements could have different terms. Members of the pool may split the earnings using different formulas, have varying voting procedures or veto rights, and use the IPRs at no cost or with royalty.

For instance, two IPR owners controlling blocking patents (a vertical relationship) should be encouraged to pool or licence their respective IPRs in order to combine them. Both would be unable to exploit the technology without such a deal, which would be detrimental to society. However, what is the legal aim of the agreement if neither IPR owner requires the other to compete as efficiently as possible (especially when it comes to creating "next-generation" products)? In a situation like this, the agreement probably has the only purpose of setting prices or segmenting markets. For instance, if manufacturers X and Y establish a pool and the pool grants licences to X for use of the technology exclusively in North and South America and to Y for use of the technology exclusively in Europe and Asia, the result would be to establish each of them as monopolists in their respective regions, despite the fact that each of them could have competed globally in the absence of the pool. Likewise, in the event that licences X and Y form the pool at an extremely high royalty per use, this kind of arrangement may guarantee that their marginal costs will be so high that they are compelled to price at the joint monopoly profit-maximization level.

INNOVATION AND COMPETITION: CONFLICTS OVER INTELLECTUAL PROPERTY RIGHTS IN NEW TECHNOLOGIES

The rapid development of new technologies over the last 20 years or so—many of which are drastically different from earlier technologies—has led to a crisis in intellectual property law.[16] The biggest problem facing proponents of intellectual property theory in the future will be figuring out how to keep the coherence of the current schemes or build new ones while also making these schemes flexible enough to accommodate emerging technologies. Finding a means to balance the interests of innovators and the general public will be another significant problem.

The ethical issue that arises when someone copies someone else's idea is what makes it an intriguing and challenging problem. On the one side, there is an innovation ethic that states that it is cruel, unjust, and immoral to steal someone else's ideas and then pass them off as original, often without even giving the original author credit. Referred to as "plagarism", it is typically considered a kind of theft.[17] The law concurs with this assessment in some cases. However, there is a competitive culture that has historically supported permitting producers to create knockoffs of popular goods. When there are numerous producers of attractive goods, the public interest is served since prices are likely to be cheaper.[18]

In the *Sears-Roebuck v. Stiffel* case[19]

The company Stiffel was the first to consider producing "pole lamps." Stiffel aimed to become the sole producer of these lights, thus it pursued and acquired patents on the mechanical and design elements of the pole lighting. Despite being aware of the Stiffel patents, Sears—always a sincere rival—purposefully imitated the design of the pole lighting. In direct rivalry with Stiffel, Sears manufactured nearly identical pole lamps and offered them for sale to the general

[16] Trademark, copyright, and patent laws are a few examples of the laws pertaining to intellectual property. Every intellectual property law covers a particular area of knowledge. The intellectual property laws pertaining to literature are known as copyright law, while those pertaining to machines, methods, and compositions of matter are known as patent law. See generally Donald Chisum, Intellectual Property: Copyright, Patent and Trademark (Matthew Bender, 1980). When new types of subject matters are created, sometimes they do not fit neatly into one of the pre-existing categories. Therefore, something of a crisis can be created in the body of the law.

[17] It may be illegal and in violation of copyright to copy a book. As a rule, "anyone who violates any of the exclusive rights of the copyright owner... is an infringer of the copyright." U.S.C. Sec. 501(a) (17). "Any person who infringes a copyright will fully and for purposes of commercial advantage or private financial gain" is subject to criminal sanctions, which include jail time, a fine, and seizure of the infringing works. Section 506 of the U.S.C.

18 Pemela Samuelson, Innovation and Competition: Conflicts over Intellectual Property Rights in New Technologies, 12 STHV 6,7(1987)

[19] 376 U.S 225 [1964]

public at a lower cost. For unfair competition and patent infringement, Stiffel filed a suit against Sears.

The U.S. Supreme Court interpreted the patent system as intended to put into the public domain and open for unlimited copying all subject matters that were of a patentable sort but that failed to satisfy the invention standard of patentability, striking down Stiffel's unfair competition claims. The claims were based on imitation copying of the now unpatented pole lamps.

"Sharing in the good will of an article unprotected by patent," the Court wrote, "is the exercise of a right possessed by all—and in the free exercise of which the consuming public is deeply interested."[20]

The US Guidelines explicitly deal with the issue of distinguishing horizontal and vertical relationships by stating: "the Agencies ordinarily will treat a relationship between a licensor and its licensees, or between licensees, as horizontal when they would have been actual or likely potential competitors in a relevant market in the absence of the license." The Technology Transfer Regulation does not explicitly confront the issue, but implicitly deals with it in an analogous way in various parts of the Regulation. For example, the black list excludes licenses from the benefits of the Regulation where "the parties were already competing manufacturers before the grant of the licence and one of them is restricted . . . as to the customers he may serve."

United States v. Singer Manufacturing Co., [21]

US supreme court held that Cross-licensing IPRs as a settlement of infringement lawsuits may be contested if it reduces competitiveness amongst horizontal competitors. Usually, a task like this would have to demonstrate that there was a horizontal relationship between the pool members. Stated differently, the resolution of the patent disputes at the centre of the infringement lawsuit would essentially be the task of the antitrust challenge. Each party to an infringement lawsuit usually argues that the other was infringing and that the other could not legitimately be in the market without a licence. The IPRs would be in a blocking, or vertical, position if that claim were accurate. The parties would need to be in a horizontal position for Singer to apply: at least two pool members would need to have been able to compete without needing to get a licence for the same IPRs that the other was using.

[20] 376 U.S at 231
[21] 374 US 174 (1963)

INTELLECTUAL PROPERTY RIGHT AS AN EXCEPTION TO COMPETITION LAW

The author contended that IPR is an exception to competition law. IP law and competition law have developed historically as two distinct legal systems. Everyone has different legislative objectives and strategies for accomplishing them.[22] Furthermore, there has been much discussion over the years on the interplay between competition law and intellectual property law. Although the goals of the two sets of laws are similar—that is, to advance innovation and improve consumer welfare—there are certain issues because of how they are implemented differently.

By granting exclusive rights, IP law aims to safeguard intellectual property hence restrict competition. Therefore, from the standpoint of competition, IP protection may be criticised for granting monopoly rights that will be detrimental to the interests of consumers. On the other hand, the general tenet of competition law is that the greatest way to promote consumer welfare is to eliminate barriers to competition. Competition law can be viewed from the standpoint of intellectual property rights ["**IPR**"] as an interventionist tool that violates the rights of right holders and so impacts the fundamental principles of intellectual property law. As such, intellectual property law may jeopardise competition law and vice versa. It is acknowledged that there is conflict, but not a fundamental contradiction, between IP laws and competition laws. The objectives of competition law and intellectual property law are now widely acknowledged by academics, practitioners, and various legal systems to be complimentary and mutually reinforcing. Both sets of rules aim to foster innovation and improve consumer welfare.[23]

ECONOMY AND INTELLECTUAL PROPERTY RIGHT

Economists may have paid undue attention to the best term for intellectual property protection. Law and economics analysis may be able to guide the way to legal reforms that would be beneficial regardless of the optimal term by taking a closer look at the laws controlling intellectual property.

[22]Teven D. Anderman (ed.), The Interface Between Intellectual Property Rights (Cambridge, New York,2007).
[23]B.N. Pandey & Prabhat Kumar Saha, Competition Flexibilities in the TRIPS Agreement: Implications for Technology Transfer and Consumer Welfare, 57 Journal of the Indian Law Institute 92, 94(2015).

The high fixed to variable cost ratio of intellectual property is the root cause of the conflict between incentives and access that permeates traditional economic analyses of this type of property. The expenses of creating intellectual property are typically very high, but once they are incurred, they are fixed costs because they are not affected by the product.

If software is distributed over the Internet (including digitised musical recordings), the variable cost and thus the marginal cost are almost zero. In contrast, the costs that vary with output, that is, the costs incurred in actually providing the intellectual property to consumers, are often very low, at least relative to the fixed costs. A price equal to marginal cost is unlikely to pay total costs when filing costs represent a large portion of total costs unless marginal cost is rapidly increasing. With marginal-cost pricing, access to already-existing intellectual property would be maximised and inefficient entrants would be discouraged or driven out, but the incentive to produce the property in the first place would be diminished, if not completely eliminated.[24]

The property rights method automatically relates the creator's return on investment to the invention's (in the case of patents) or work of art's (in the case of copyrights) commercial success. However, even after accounting for the possibility of failure—the common "dry holes" in innovative and other creative activity—it might produce a return that outweighs the expenses of creation, which might lead to needless access restrictions.

Unfortunately, given the costs of the system and the existence of alternative sources of incentives to create such property, economists are unable to determine whether the current system of intellectual property rights is, or indeed whether any other system of intellectual property rights would be, a source of net social utility.[25]

Intellectual Property's Role in Economy:

- Provides exclusive rights to creators.
- Protects creator's interest and encourages research and information creation.
- Prohibits exploitation or misuse without creator's permission.

[24] Another issue is that risk aversion may lead to the underproduction of intellectual property from a social perspective because the market value of such property is frequently unpredictable. Kenneth Arrow noted this in a seminal study published in 1962. The significance of this issue is unclear, though. Diversification may minimise risk or even remove it, frequently at little expense. For example, a book publisher can achieve a typical return by releasing a number of books, some of which are hits while others perform better than expected.

[25] Richard A. Posner, Intellectual Property: The Law and Economics Approach, 19 Journal of economic Perspectives 57, 57-59(2005).

- Creates a market for inventions, motivating innovation and creation.[26]

Innovations have a positive economic impact since they lower the cost of product materials. As a result, innovation and technology updates are essential. People's interests can be safeguarded and exploitation can be deterred by a strong intellectual property rights ["**IPR**"] legislation. Such regulations must be properly enforced because lax laws might be abused and taken advantage of, which discourages innovation. IPR regulations ought to deter people from abusing their property and encourage ongoing innovation.

Property owners who possess intellectual property ["**IP**"] have the unique right to assess its fair market value and sell it to anyone. This supports developers' healthy returns and fosters innovation. But this right can also be abused, creating a monopoly in the marketplace and causing inequality and differences in the rates of production and consumption. As a result, it's critical to strike a balance between the interests of both sides when encouraging innovation.

COMPETITION LAW AND ECONOMY

In today's globalised world, competition has emerged as a key factor. While important, deregulation, liberalisation, and privatisation are insufficient to guarantee the smooth operation of markets. Due to price increases, market distortions hinder growth, prevent markets from producing effective outcomes, and mostly harm the poor. Therefore, to safeguard and promote the economy's competitive process, a strong competition legislation is required.[27]

Competition can lead to increased industry production, increased employment, and decreased consumer costs. Free trade proponents contend that on its own, it offers all the protections and rules needed for a welfare state like India. One of the fundamental requirements for a market economy to function well and be strengthened from within is effective competition. However, in today's technologically advanced society, competition is not something that just happens; rather, it is shaped by those who guarantee its protection and create the proper competition policy, which is itself a manifestation of competition culture.[28]

[26] Anubhav Mishra; The Role of Intellectual Property Rights in Economic Development (Mar. 10,2021, 12.39 PM), https://www.khuranaandkhurana.com/2021/03/10/the-role-of-intellectual-property-rights-in-economic-development/

[27] Ashok Chawla, Global Business and Competition Law in India,9, Indian Foreign Affairs Journal 173, 173(2014).

[28] 376 U.S at 231

When India adopted the concepts of globalisation, liberalisation, and privatisation in 1991—the New Economic Policy—it became apparent that new laws and institutions were required. As a result, the outdated Monopoly and Restrictive Trade Practices Act, 1969 ["MRTP"] was revised in 1991 to provide the legal system a fresh start.[29]

CONCLUSION

International forums have examined and still do so anti-competitive activities relating to Intellectual Property Right and extensive technology transfer. The anti-competitive clauses of the Trade Related Aspect of Intellectual Rights ["**TRIPS**"] agreement represent the first major step forward for developing country members of the World Trade Organization ["**WTO**"], following the failure of the draft code of conduct on technology transfer negotiations. These clauses create a framework that gives World Trade Organization ["**WTO**"], members significant latitude in modifying their national competition laws to address anti-competitive behaviour in technology transfer agreements. Furthermore, the deliberate application of Trade Related Aspect of Intellectual Rights ["**TRIPS**"] flexibilities is essential for the successful transfer of technology. By citizens of poor nations. Instead of using a rule of reason approach, a developing country member should choose a per se prohibition model in its competition statute, taking into account the country's degree of development and the institutional and economic environments. Competition legislation pertaining to intellectual property rights needs to be globalized so that there could be reduction of dominance of big brands but at the same time intellectual property rights would also be protected. Developing nations should modify their domestic anticompetitive laws to better suit the demands and environment of their communities. For developing nations hoping to promote technology transfer and consumer welfare, appropriate IPR-related competition law and policy towards technology transfer are crucial.

[29] B.S. Chauhan, Indian Competition Law: Global Context, 54 Journal of Indian Law Institute 315, 316(2012).