
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**COMPETITION LAWS IN INDIA: A STUDY WITH SPECIAL
REFERENCE TO THE COMPETITION (AMENDMENT) ACT 2023**- Ayushi Gurnani¹**1.1 Introduction**

Since achieving independence, India has made significant financial progress. India has become one of the fastest-growing commercial economies in the world over the years through implementing progressive financial and policy changes. Because of the emerging economic environment, which includes rapid innovation changes, globalization of the economy, advancements in trade and industry, an emphasis on international competitiveness, and by bringing existing laws into compliance with future market needs, the government has started the much-needed legislative reforms in the area of financial and business laws.

In the past, India had a command-and-control economy where the government dominated economic decisions. Due to the state's control over nearly all aspects of economic activity and its interference in every step of the business process and financial decisions made by the private sector, a market system developed in which there were no contestable competitors. This hampered the expansion of private businesses and rewarded those in the public sector. There was tremendous business growth and development as new businesses emerged as the economy began to open up. The logical conclusion was that the Indian market would need to be prepared to compete both domestically and internationally. On the other hand, increasingly complex anti-competitive practices like cartels, abuse of dominance, bid rigging, collusion, etc., supplanted simple anti-competitive acts like hoarding, monopolies, and unfair trade practices.

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Research and innovation were crucial components of the newly developing business order. However, if competition does not thrive, innovation and research cannot continue. New businesses, distribution networks, effective and sustainable markets, and anti-competitive activity would all fail if they were not stopped and penalized. Being dominant is not a bad thing; every organization aims to be dominant. However, it should be discouraged when such dominance is abused or misused. Therefore, the law of competition creates a level playing field for both established players and newcomers.

The goal of the competition law is to protect and advance competition as a way to ensure the effective use of resources in an economy, giving customers access to the highest quality products at the most competitive rates. The Competition policy, which goes hand in hand with the Competition laws, would consist of laws to achieve the objectives, which would be "to forestall activities having an unfavorable impact on competition; to advance and support competition in business sectors; to secure the benefits to consumers; and to guarantee freedom of trade carried on by different entrepreneurs in business markets in India." The nation's economic prosperity would be its main goal.

Today's globe needs to promote competition with fresh vigor and honesty, especially in developing nations with expanding economies. From an economic standpoint, the phrase "competition" can be described as a healthy workout between various producers and sellers to draw in customers and ultimately result in profit maximization, higher sales, rising turnover, and gaining a firm hold on the market. If it is carried out legally, a scenario like this can serve as motivation. Competition in a market results from the presence of numerous products that are almost identical to one another or from the presence of numerous service providers in a certain industry. Therefore, the definition of perfect competition is "a market in which all firms sell a homogeneous and perfectly divisible product, all producers and consumers are price takers, all firms have a relatively small market share, buyers and sellers have all the relevant information about the market, including the price and quality of the product, the industry is classified by freedom of entry and exit, and there are no externalities." It serves as the cornerstone for the market system's operation and the expansion of the economy. The protection of market

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competition is the goal of competition law. It consists of laws and rules that guarantee the presence of fair competition, resulting in the greatest possible welfare for consumers.

The development of competition law can be traced to the Middle Ages, when the Roman government began attempting to regulate price variations and unfair business activities. Later in Europe, kings and queens outlawed monopolies, even statutory monopolies. Modern competition law was built on the Common Law's "restraint of trade" premise. The Sherman Act, the first codified antitrust law, was introduced in the US in 1890. Following World War II, comparable competition rules were adopted in other nations, particularly the European Union. The "Monopolies and Restrictive Trade Practices Act, 1969"—which was replaced by the "Competition Act of 2002"—was the legislation in India that codified the competition law system.

Due to the shifting political and economic conditions around the world, competition law has exploded in recent years. More than 120 countries have passed laws governing competition. Malaysia recently implemented its first competition regime in 2012. Numerous activities that were regarded as monopolies or sovereign functions of any state are now subject to this law. Telecommunications, services, the energy sector, transportation, broadcasting, and postal services, among other industries, are now subject to the inspection of competition law.

An Act to control anti-competitive behavior and a policy generally referred to as "competition policy," which expresses the government's ideology on the subject of anti-competitive behaviors, make up the regime governing competition law in each given nation. The fundamental problem with a policy of competition law is that the powerful organizations on the market have an impact on consumer welfare, which reduces production, raises prices, and degrades the quality of the items on the market. This results in less innovation and fewer options for consumers. These topics—such as tax regulations or the relationship between a landlord and tenant—cannot be addressed in the codified rules but may be used in everyday life.

Market power analysis is a key component of the examination of issues in competition law and requires a thorough understanding of numerous concepts. The same criteria apply to cartels,

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predatory pricing, mergers, etc. Such economic expertise is necessary for everyone working in the field of competition law, in addition to legal process knowledge. Every system of competition law is primarily focused on these types of actions that hurt market competition. Several of these actions include:

(i) Anti-competitive Agreements: These are contracts whose goal is to limit or negatively impact competition. Unless a defense or other exemption is offered, such agreements are regarded as illegal. These cover things like horizontal agreements about market share, output restrictions, and price fixing. Vertical agreements, such as tie arrangements, sole-source contracts, etc., are also regarded as having an anti-competitive aspect.

(ii) Abuse of Dominance: The competition law also forbids firms with dominating market control or monopolies from abusing their position of power. Predatory pricing and placing restrictions on patent licenses are two examples of abuse of dominance.

(iii) Mergers and Regulations: While mergers in and of themselves are not illegal, any combination or merger that directly or indirectly eliminates competitors and gives the entity a monopoly on the market may be considered anti-competitive in nature and is therefore forbidden and subject to regulation under competition law.

Any nation's competition law regime focuses on "competition advocacy," which includes encouraging consumer welfare and knowledge in addition to dealing with the aforementioned activities. Generally speaking, "competition advocacy" is defined as "the initiative taken by the competition authority to promote common welfare of the society by creating awareness about competition law and also includes the advisory function of the authority to the government on matters relating to competition law."

It is obvious that the "Competition Law" works to create perfect competition in the market, and that perfect competition has numerous positive effects on both the market and the economy. Some of the advantages include resource efficiency, where economic resources are allocated so that consumers can purchase goods and services at fair prices, productive efficiency, which

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eventually lowers inflation, and dynamic efficiency, where innovation and new methods are promoted.

1.1.1 Issues and Challenges related with Competition Law

As was previously discussed, the goals of competition law are to prevent anti-competitive behavior and to advance consumer welfare. However, as the law works to achieve these goals, it encounters a number of problems and difficulties that must be resolved by the appropriate authority in order for the regime to operate as intended. In this chapter and the following chapters of this thesis, an effort has been made to briefly describe and demonstrate such concerns.

Combating anti-competitive practices is one of the main goals of any competition law. Anti-competitive activity prevention and prohibition are the primary goals of all competition-related laws. These actions fall under a broad category of "anti-competitive agreements" that include cartels, abuse of dominant position, mergers, and laws, among other things. While it is true that the law forbids such behavior, it is impossible to present an entire list of all actions that can be considered anti-competitive given how frequently the circumstances surrounding such behavior change. Therefore, the government must employ a flexible strategy to effectively combat such actions.

The extraterritoriality of application and enforcement of competition law outside the borders of India is a significant obstacle for any system enforcing competition law. Business development across borders has become more widespread since globalization began. The scope of anticompetitive practices has also increased as a result of this development, and in order to address these issues, the relevant authority of each country must expand its area of responsibility to include the country where the anticompetitive action occurs.

1.1.2 Origin in the World

Since a few years ago, the world economy has seen an increase in economic activity. The goal of the newly emerging global economy is to shift away from an economy where resources are centrally managed and toward one where competition and innovation are promoted. Competition

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law is a branch of the law that has grown dramatically over the past few decades. It tries to maintain and promote market competition by controlling businesses' anti-competitive behavior.

The practice of competition law has advanced significantly over time, particularly since the early 1990s. "The number of geographic areas that have embraced competition law as well as the range of economic activities presently covered by competition law have both increased. Many nations have also implemented competition law to preserve competition in their marketplaces as more and more nations have implemented economic reforms and embraced the market economy. Additionally, a lot of economic activities that were previously state monopolies or natural monopolies and were exempt from competition are now governed by competition law. Similar to this, hitherto more or less self-regulatory professions like medicine or law are now facing the effects of competition law.

India responded to the need for globalization by liberalizing its economy, removing restrictions, and moving forward. The Indian market is predicted to grow and is subject to both domestic and foreign competition. One of the first countries to pass the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, was India. With the advent of economic changes in 1991, the law was discovered to be insufficient for fostering market competition. In order to create a new competition system in India, the Competition Act, 2002 was passed by the Indian Parliament, and MRTP was eliminated.

1.1.3 Development of Competition Law in India

Since gaining independence in 1947, India has embraced and followed policies that include "Command-and-Control" legislation, norms, guidelines, and official demands during the first 50 years after that. The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), for instance, was an example of such "Command-and-Control" in Indian legislation. The transition from a "Command-and-Control" economy to one that depends on free market principles started in 1991 when extensive monetary adjustments were attempted."As is true for several countries, India's financial development has soared, and the need for an effective challenge system has also been recognized.

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1.2 Need for Development of Competition Law in India

The Act's primary goals are to safeguard consumer interests and encourage free competition in India. "Free competition" is defined by the Raghavan Committee on Competition Policy as complete flexibility to develop an ideal size without any restrictions. If a restriction is required, it should not be based on scale but rather on the strength of the competition by outlawing business activities that have an adverse effect on Indian market competitiveness. The ultimate justification for competition, lower prices, and improved quality is the interest of the consumer. Fairness is the main concern for the business owners. The following are the goals of the competition policy:-

"Competition policy, in this framework, thus becomes a tool to promote effective resource allocation, technical advancement, consumer welfare, and regulation of economic power concentration. Consequently, boosting consumer welfare should be a goal of competition policy.

In *Competition Commission of India v. Steel Authority of India*, the Supreme Court made the following observation: "According to the statements of aims and reasons, this statute is India's response to the opening up of its economy, abolishing control, and turning to liberalization. This has the logical consequence that the Indian market needs to be prepared for both domestic and foreign competition. The establishment of a quasi-judicial body was deemed necessary in order to achieve the goal of the bill, which was to maintain fair competition in India by outlawing business activities that have an adverse effect on domestic market competition. The "Competition Commission of India" (also known simply as "the Commission"), which has the authority to carry out a variety of tasks, including the passing of interim orders and even the awarding of compensation and imposing penalties, was one more goal.

1.2.1 Competition Policy

A set of regulations known as a "competition policy" direct and control the market. It is defined as actions that have a direct impact on how businesses behave and how the industrial structure is organized. It is a policy in which the government assumes responsibility for ensuring competition among the businesses but refrains from meddling with their choices about prices

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and output. The goal of competition policy is to encourage efficiency and optimize welfare, i.e., to guarantee cheap prices and excellent quality for customers, as well as fairness — a level playing field for the business owners who offer competition. According to the Raghavan Report on Competition Law, such a policy would include two, "First, entails implementing a set of regulations that improve competitiveness in regional and global marketplaces. These would include economic liberalization, lowered restrictions on foreign ownership and investment, and a liberalized trade policy. The second is legislation intended to avoid unwarranted government interference in competition law and anti-competitive business conduct."

1.2.2 Competition Advocacy

Enforcing competition law is the Commission's primary duty. Its other purpose is to encourage, support, spread, and maintain competition. Therefore, it is essential that it take part in the development of the nation's economic policies that have or are anticipated to have a direct or indirect impact on the environment for competition. Competition advocacy is the promotion of factors that will result in a competitive market structure and corporate behavior.

The role of CCI must encompass more than just upholding the law of competition. It must take a more active role in the development of the nation's economic policies, which could have a negative impact on the competitive market structure, corporate behavior, and economic performance. The CCI "needs to assume the role of competition advocate, acting proactively to bring about governmental policies that lower entry barriers, promote deregulation and trade liberalization, and promote competition in the market place," according to the CCI. The promotion of competition and the application of competition law are directly related. Without the direct involvement of the Competition Law Authority, i.e., the CCI, the goal of competition advocacy is to create the conditions that will result in a more competitive market structure and company behavior.

The Commission may advocate for competition under Section 49. It specifically states that "the Central Government may refer to the Commission for its opinion on effects of such policies on competition, apart from review of laws relating to competition, in formulating a policy on

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competition, as the case may be, and on receipt of such a referral, the Commission shall, within sixty days of making such reference, tender its opinion to the Central Government, or the State Government, as the case may be, which then may take any appropriate action." The Central Government or the State Government, as the case may be, shall not be bound by the Commission's opinion in establishing such policy. The Commission must take the necessary actions to further the cause of competition. Through this channel, it aims to spread knowledge and provide training regarding competition-related topics."

1.5.1 SIGNIFICANCE OF THE STUDY

Since 1991, India has started implementing fundamental economic reforms, many of which were motivated by the growing understanding of the crucial role that the market and the private sector play in the effective operation of economies at all stages of growth. The economic reforms' principal goal is to make the market the primary force behind economic growth and development.

1.5.2 OBJECTIVES OF THE STUDY

The main goal of this research is to critically examine the past and present Indian Competition Law regime by comparing it to the Competition Law regimes in the USA, UK, and EU in order to identify areas of overlap as well as potential challenges and conflicts that may arise in the functioning of the new Indian Competition regime as a result of shortcomings in economic policies and laws and how such challenges may be resolved.

The Competition (Amendment) Act, 2023: A Study

The Competition (Amendment) Bill, 2023 (Bill No. 185-C of 2022) was passed by the Rajya Sabha, the upper house of the Indian Parliament, on April 3, 2023. It seeks to propose significant revisions to the Competition Act 2002, India's two-decade-old antitrust statute. The aforementioned Bill was approved by the Hon. President of India on April 11, 2023, but the Ministry of Corporate Affairs has not yet given it the go-ahead to take effect.

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Highlights of the significant changes made by the Competition (Amendment) Act of 2023 include the following:

- **The Introduction of the Deal Value threshold for mergers and acquisitions (which amends Sections 5 and 6 of the Competition Act):**

According to the Amendment Act, if a company has significant business operations in India, as may be prescribed by regulations, it is required to declare any transaction with a value over Rs. 2000 Crores to the Competition Commission of India. Previously, the Competition Commission of India required the combination deals to be reported based on the asset worth or turnover. The Amendment Act, 2023 also shortens the Competition Commission of India's examination period for mergers and acquisitions from 210 days to 150 days.

- **Modifications and enlargement of the concept of cartels and anti-competitive agreements:**

By changing "Exclusive supply agreement" to "Exclusive dealing agreement," the Amendment Act of 2023 has also expanded the definition of anti-competitive agreements in order to cover the selling side of exclusive agreements as well as the purchase side. The aforementioned regulations would likewise apply to an organization, group of organizations, or individual engaged in an equivalent or comparable line of business. If it engages or wants to participate in the furthering of such agreement, it shall be deemed to be a party to such agreement (anti-competitive agreement). The Amendment Act of 2023 has expanded the definition of a cartel by including hubs and spokes, or those that participate indirectly at horizontal levels such as trade associates, consultants, or intermediaries but do not directly participate in supply or production.

- **Director General can be appointed by the Competition Commission of India (Amendment to Section 16 of the Act):**

It is important to note that the Competition Commission of India has the authority to name the Director General to help in conducting an investigation or inquiry into a violation of the

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Competition Act's provisions under the aforementioned Amendment Act 2023. The Amendment Act, 2023 also gives the Director General broader investigative authority to undertake the investigation, including the ability to question any officer or representative of the party under investigation with the prior consent of the Competition Commission of India. The Amendment Act, 2023 also gives the Competition Commission of India the authority to request the advice of experts.

Settlements and Commitments are introduced

The addition of giving settlements and making promises is one of the most important changes made by the aforementioned Amendment Act, 2023. After receiving the Director General's report, any party who is the subject of an investigation for violating the terms of the 2002 Competition Act may, but not before the Final Order has been issued, seek the Competition Commission of India for resolution. After the investigation has begun but before the Director General issues or submits the report, the concerned party may also make undertakings for revision. By offering settlement and compromise, the same will guarantee a quick resolution of the enforcement actions.

• Publication of a statement of revisions and objections

The Competition Commission of India has the authority to make a statement of objections under the Amendment Act, 2023, if it believes that a combination has had or is likely to have a negative impact on market competition. The Commission may send the affected party a statement of objections and ask them to provide a justification for the combination within 45 days. The concerned party may submit appropriate amendments to the Commission in order to mitigate the combination's negative impact on the market.

• Time limit for the Competition Commission of India to hear complaints: According to the Amendment Act of 2023, no complaints or references to the Commission may be made unless they are lodged within three years of the cause of action.

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Pre-deposit for appeals filed with the prestigious National Company Law Appellate Tribunal:

According to the Amendment Act, 2023, anyone who is unhappy with the decision made by the Competition Commission of India may appeal it within 60 days of receiving the decision. However, in accordance with the instructions of the Hon. National Company Law Appellate Tribunal, a predeposit of 25% of the fine imposed by the CCI is required.

• **The "global turnover derived from all products and services" will be used to determine penalties:**

The Competition Commission of India may levy fines under the Amendment Act, 2023, based on the global turnover derived from goods and services. After looking into the agreements or abuse of a dominating position, the Competition Commission of India may impose greater fines. Prior to this, the fines were calculated based on the relevant turnover, which was assumed to be domestic turnover. The Competition Commission of India has the authority to recover legal fees under the Amendment Act, 2023, and the costs will be credited to the Consolidated Funds of India.

Conclusion

In light of the dynamic developments in the quickly expanding Indian market, the Competition (Amendment) Act, 2023, made important changes to the Competition Act, 2002. The stated Amendment Act, 2023 will be helpful in expanding the scope of agreements to be evaluated by the Competition Commission of India by adding the Deal Value threshold limit and dilution of the threshold for control due to the expansion of the digital market. By incorporating the "global turnover" concept as part of the Amendment, Act, 2023, the reach of the penalty clauses has also been expanded, assuring accountability and transparency.

The Amendment Act, 2023 gives the Competition Commission of India more authority by giving it the right to appoint the Director General to conduct an inquiry or investigation into a violation of the law, as well as the authority to recoup the cost of attorneys' fees and consult with

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experts for their professional judgment. The addition of settlement and compromise clauses would speed up the enforcement process. By adding "intention to participate" to the definition of a cartel, the Amendment Act, 2023 seeks to enhance the scope of the Competition Commission of India's scrutiny of agreements and businesses. The Competition (Amendment) Act, 2023 attempts to update Indian antitrust regulations to reflect the evolving domestic and international markets.



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