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**COMPARATIVE STUDY ON DAWN RAIDS AND VIRTUAL DAWN
RAIDS**

- Arpitha Rachakonda, Aryan Singh Randhawa & Sakshi Jha¹

ABSTRACT

The neutrality of the economic system and the general well-being of clientele is jeopardized by an abundance of anti-competitive behaviors in a world where business enterprises and hidden agreements triumph. Competition law enforcement officials undertake an advanced probe methodology called "dawn raids" in conjunction with such instances of misconduct. This probe of dawn raids can be elucidated as a manner of conducting search and seizure searches by the regulating authorities who are suspicious of any enterprise involved in any illegal activities that may tender harm towards the balance of fair competition. These dawn raids are enforced by the Director General in India in scenarios where anti-competitive activities or techniques have been suspected to constitute a "reasonable ground of suspicion." In a bid to emphasize the significance thereof and disclose unfair practices, the study intends to analyze the framework, implementation, and judicial precedents of dawn raids as outlined by Indian competition regulations and compare it with antitrust laws dealing with dawn raids in other national jurisdictions. With the widened scope of dawn raids' applicability across various nationalities, such as the EU, Australia, the United States of America, etc., all have laid down various and stringent approaches towards the enforcement of dawn raids. Through judicial scrutiny, explicit defense privileges, and comprehensive examination of verdicts, the EU delivers safeguards. However, given the unanswered secrecy rules and changeable enforcement authorities, India's limited judicial supervision beyond preliminary authorization raises reservations regarding probable intrusion. Digital advancement additionally saddles Dawn Raids alongside extra barriers, such as cloud-based storage, remote work, and secure

¹ Students at Symbiosis Law School, Hyderabad

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digital communication. While India is still working on developing instruments of comparable type, the EU has responded by deploying out information technology experts while pondering virtual raids.

This paper addresses the vital aspects of establishing a balance while strengthening the enforcement agencies to carry out their functions swiftly alongside not enticing the parties with a lack of judicial fairness.

Keywords: Dawn raids, digital dawn raids.

INTRODUCTION

The market has always been a dynamic and an exciting place. The buyers have always looked at buying the products at the best price and getting the best deals, whereas the sellers are always competing and looking at ways to attracting attention. This competition in the market to attract consumers is not always fair and the competitors may at times use unfair tricks to do so. To maintain fair competition the government in 1966 enforced the Monopolies and Restrictive Trade Act. With the increase in technologies and the way the market has increased, the government introduced the Competition Act in the year 2002. The main aim was to ensure fair, innovative, and beneficial competition for the stakeholder.

The Competition Commission of India (CCI) has the authority to investigate unfair business practices if it believes a company is using anti-competitive practices. They can do so by the means of dawn raids. Dawn raids are surprise inspections conducted by the Competition Commission of India (CCI) at the premises of the company who are suspected to be engaging in anti-competitive practices. Through dawn raids, the Competition Commission of India (CCI) can gather crucial information regarding cartels, and other anti-competitive agreements, through emails, hard drives, documents, and other communication records. The dawn raids conducted by the Competition Commission of India (CCI) are very important and useful as the possible surprise inspection discourages companies from engaging into such anti-competitive practices and if they are they can be caught off-guard. These raids unlike the regular raids do not give the companies the time to prepare and hide or tamper with the evidence, making them highly effective. Dawn raids are the standard tool worldwide used by

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the European Commission, the US Department of Justice, UK's Competition and Markets Authority, etc.

Now in this digital age, where everything is stored or recorded digitally, the Competition Commissions around the world have started conducting virtual dawn raids as well alongside physical dawn raids. These days, accessing the internet or the cloud to store data or to communicate with others online is very simple thanks to the advancements in technology. Due to these advancements in technology, the authorities have started conducting dawn raids remotely.

In this paper, we will look into what are dawn raids, and how they are conducted in India and do a comparative analysis on dawn raids across various jurisdiction. We will further look into virtual dawn raids and how these are conducted by the authorities in various parts of the world.

RESEARCH QUESTIONS

Q1. Are dawn raids under-utilized in India, given evidentiary and procedural hurdles, compared to the EU's more aggressive model?

Q2. The process of dawn raids in India, and the lack of judicial oversight against abuse of power, post authorization

Q3. How are dawn raids adapting to the challenges of digital evidence, encrypted communications, and remote working across jurisdiction

LITERATURE REVIEW

- **Due Process Issues in Dawn Raids**, *Inter Alia*, AZB & Partners (Oct. 31, 2021), <https://www.azbpartners.com/bank/due-process-issues-in-dawn-raids/>

There are a plethora of scholarly articles dealing within the ambit of the numerous loopholes in the procedural aspects of these dawn raids, and this scholarly piece elucidates the insufficient availability of standardized processes for logging reservations during raids, which prompts queries regarding contentions over pertinent materials, seizure records, and the scale of warrants. More importantly, it highlights the speculation about the unbiased nature of

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witnesses, who are usually selected in a scattershot fashion, which limits forthrightness, in juxtaposition with the EU, where these standards are made explicit. These gaps are employed in the present research to bolster the hypothesis that India fails to utilize dawn raids in contrast to the EU because lackluster safeguards dissuade vigorous enforcement.

- Rishab Khare & Khushboo Tomar, *Advent of Dawn Raids in India: A Case of Aggressive Anti-Trust Regime*, **Mondaq** (Mar. 26, 2019), <https://www.mondaq.com/india/antitrust-eu-competition/792604/advent-of-dawn-raids-in-india-a-case-of-aggressive-anti-trust-regime>.

Under this article the judicial opinion expressed by the Supreme Court of India in the case of *M/s. Bull Machines Pvt. Ltd. v. JCB India Ltd.* elucidates on the advent of as to how the big corporations and organizations tend to leverage judicial procedures in order to regulate and minimize the entry of competitors into the market, negating competition as a whole, facilitating Section 4 of the Competition Act to be actively implemented by the CCI to authorize investigations. Dawn raids, having become invasive, necessitate meticulous compliance to procedural protective measures: the Director General (DG) must remain uninfluenced, base his assessments on plausible "reason to believe," engage in assessments in a fair manner, and utilize civil court-like jurisdiction only after the CCI has established a prima facie case.

This article also elucidates on the advent of dawn raids being compared to fishing expeditions thereby signifying the stringent requirement for a stern implementation of procedural restraints.

- **Due Process Issues in Dawn Raids**, *Inter Alia*, AZB & Partners (Oct. 31, 2021), <https://www.azbpartners.com/bank/due-process-issues-in-dawn-raids/>

Talks about the role of dawn raids in the Competition laws of India, including its enforcement, implementation and the concerns involved as a result of the lack of transparency in the procedures.

- **CCI Dawn Raids – How to Act and Contain Operations**, *India Corporate Law* (Nov. 2016), <https://corporate.cyrilamarchandblogs.com/2016/11/cci-dawn-raids-act-contain-operations/>

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Talks about the framework of dawn raids in India. It is a guide and a practical deep dive into how it pans out. It talks about the legal authorities, their role, the protocols followed and the rights and liabilities of the parties.

- **Quick Guide on Dawn Raids and Leniency in India**, Cyril Amarchand Mangaldas Thought Leadership Initiative (as of Jan. 1, 2017), https://www.cyrilshroff.com/wp-content/uploads/2017/01/Quick-Guide-on-Dawn-Raid-and-Leniency11056110_1.pdf

This is a guide into handling dawn raids in India, which provides a concise map for handling it, and managing it.

- **Strategic Insights Into Dawn Raids: A Crucial Tool In India's Anti-Competitive Investigations**, LiveLaw (Trinity Chambers) (Mar. 2023), <https://www.livelaw.in/law-firms/law-firm-articles-/competition-commission-of-india-director-general-code-of-civil-procedure-competition-act-trinity-chambers-236616>

This article gives an analysis of Section 41 of the Act, which acts as a manual on its operation. By looking into the procedural duties and the limitations, it is a strong legal manual.

- **'The Dawn of Global Hybrid Dawn Raids'** (Conventus Law) (May. 2021) <https://conventuslaw.com/report/the-dawn-of-global-hybrid-dawn-raids/>

This article talked about the rise of the hybrid dawn raids and how different jurisdictions tackled the obstacles faced during the pandemic and how they overcame them by adapting the hybrid mode for conducting dawn raids.

- Stephane Dionnet, Axel Schulz, Hendrik Viaene- **'Cooperate, Protect, And Challenge: Responding to Dawn Raids Conducted by EU Competition Authorities'**(McDermott Will & Schulte) (August 2025) <https://www.mwe.com/insights/cooperate-protect-and-challenge-responding-to-dawn-raids-conducted-by-eu-competition-authorities/>

This article talked about the French manufacturing tyre, Michelin and how the European Commission conducted a dawn raid in a hybrid mode and the challenges faced by both the parties.

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- **‘ACM has imposed a fine of 1.84 million euros for deleting WhatsApp chat conversations during a dawn raid’** (Authority for Consumers & Market)

<https://www.acm.nl/en/publications/acm-has-imposed-fine-184-million-euros-deleting-whatsapp-chat-conversations-during-dawn-raid>

This article was published on the official site of the Authority for Consumers & Market by the Netherlands Government which talked about how the Authority for Consumers and Market (ACM) had imposed a fine on a company for obstructing their investigation.

- Anushka Singh and Shashwat Awasti- **‘Antitrust Dawn Raids in India: Suggestive Measures to Prevent Fishing Expeditions’** (Jurist News) (April 2020)

<https://www.jurist.org/commentary/2020/04/singh-awasthi-antitrust-dawn-raids/>

This article talks about what are dawn raids and the legality of dawn raids and their procedures in India. It also discusses dawn raids in other jurisdictions as well.

ANALYSIS

Q1. Are dawn raids under-utilized in India, given evidentiary and procedural hurdles, compared to the EU’s more aggressive model?

Antitrust laws form a global phenomenon wherein nations across borders legislate to stimulate a competitive market for all entities and individuals, negating the presence of any individually oriented dominant business position and also governing various spectrums of mergers and acquisitions consisting of an essence of harmful competition. These anti-trust laws in India are devised under the Competition Act of 2002². Following the tenets underlying current competition laws, the Competition Act, 2002 (as amended) strives to shield Indian markets by combating anti-competitive commercial conduct in addition to

² Competition Act, 2002, Act No. 12 of 2003

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encouraging competition. In order to ascertain that competition in India is not impaired, the Act forbids anti-competitive agreements, the fraudulent use of positions of dominance by organizations, and the governing laws of mergers, amalgamations, and takeovers. A transaction that exists or is likely to have a substantial adverse effect on competition in Indian markets is expressly forbidden by the Act.

As the term suggests, “dawn raids” are those raids conducted by federal agencies in lieu that these agencies contending that enterprises actively participate in unlawful conduct against competitors. Dawn raids could transpire at any particular occasion, regardless of vacations, when companies are most unlikely to be prepped and envisioning investigative operations. Dawn raids frequently take place at the beginning of the early hours to give the Director General (DG) and their staff sufficient time to acquire evidence concerning those individuals or enterprises alleged of carrying out unlawful conduct against competitors. The procedural powers to conduct these dawn raids are enumerated under Section 41³. Before orchestrating a raid, the Director General (DG) of the Competition Commission of India (CCI) needs to acquire an authorization from a magistrate after furnishing the court with all necessary documentation and evidence of illicit anti-competitive conduct by the specific enterprise or business. The first dawn raid in India was conducted by the DG in September 2014 at JCB India Limited's facility. Indications that the corporation may have mistreated its dominant standing in the market precipitated this action. In the wake of this significant incident, the CCI subsequently implemented several analogous raids on multiple organizations that were originally subject of investigation for allegedly participating in anti-competitive practices, involving cartelization, anti-competitive agreements, and prospective abuse of dominance, amid other allegations. Provided a prevalent judicial opinion surfaced in the case of **M/s. Bull Machines Pvt. Ltd. vs. M/s. JCB India Ltd. & Anr⁴**, wherein the CCI observed and opined that major companies can take advantage of the judicial system by initiating frivolous or deceptive lawsuits in the bid to shut out competing companies. Predation through abuse of the judicial system represents what this is known as. This particular sort of maneuver is unfavorable to competition since it is more challenging to pinpoint given that it is not comparable to a conventional "anti-competitive act" (such as price-setting or cartel agreements). In this case, the CCI believed that JCB had possibly unjustly obstructed Bull's entry and declined them an equitable opportunity at the overall market by manipulating its

³ Competition Act, 2002 (12 of 2003) §41 (India)

⁴ Bull Machines Pvt. Ltd. v. JCB India Ltd., Case No. 105/2013 (Comp. Comm'n Ind. Mar. 11, 2014).

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predominant status. For preserving the constitutional rights envisaged for the citizens and all judicial entities by the constitution laid out under Article 21⁵ for privacy, there lies a liability on the DG to take prior permission from the **Chief Metropolitan Magistrate (CMM), Delhi** for searches. Despite possessing powers like that of a civil court.

On the other side of the spectrum, taking cognizance of the European Union's approach towards antitrust laws and dawn raids, which occur in lieu of violating the EU's competition laws, it can be viewed as a much more aggressive approach compared to the Indian approach. The preliminary principles behind these dawn raids by EU are based on three aspects, which postulate as to acquire convincing evidence of prospective breaches, prohibit evidence from being eliminated or obscured, and startle the organization to raise the potential for uncovering pertinent evidence. The authorization necessary for carrying out Dawn Raids has been granted under Regulation 1/2003, specifically Articles 20⁶ and 21⁷. These statutes provide the Commission authorization for visiting businesses' premises to investigate their archives, including emails, documents, and other digital information. As compared to the Indian context, dawn raids in the EU are not subjected to prior permissions from any authority and if any instance of judicial review arises, it follows through after the raid has been completed.

The European Commission has a central and a vital role to play when the matter pertains to dawn raids, as it systematically lays out the procedure for:

- Righteous Authorization for Inspection, which we witnessed under **Article 20 of Regulation (EC) No 1/2003** wherein an unannounced inspection by the judicial authority shall be deemed as lawful and within the ends of justice. Provided it must be taken into consideration that before commencing the raid, the grounds for conducting the same shall be based on some substantial pieces of evidence indicating violations either by the means of some concrete evidence or credible records and the formal notice for the raids must comprise of all vital aspects including the reasons for raid, potential violation giving rise to suspicion, and scope and duration of the same. Although a governmental audit can be undertaken by the Commission, in specific member nations, preliminary authorization from the court is necessary to ensure that

⁵ Article 21, The Constitution of India, 1950

⁶ Council Regulation (EC) No 1/2003, art. 20, 2003 O.J. (L 1) 1

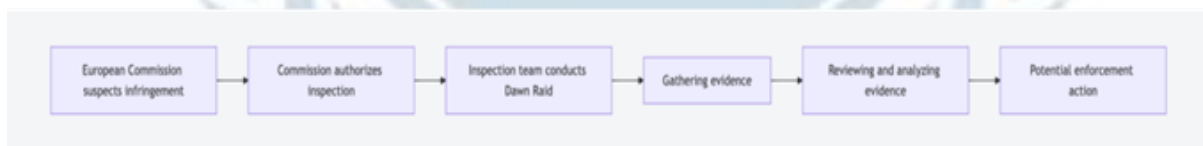
⁷ Council Regulation (EC) No 1/2003, art. 21, 2003 O.J. (L 1) 1

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essential principles under national constitutions alongside EU law are being properly safeguarded.

- The conduct by the officials is under the purview of the laws of EU competition laws wherein the entire search during the early hours of the day is carried out under the supervision of the European Commission's Directorate-General for Competition (DG COMP). For the purpose of safeguarding documentation, inspectors have the discretion to enter business properties, assess records, and seal workplaces or cabinets overnight. During the raid, they could inquire with personnel to explain any paperwork or policies.
- Upon the completion of the raid, all the collected pieces of documents, records, and evidences are thereby placed under scrutiny under DG COMP's office located at Brussels. Evidence can be assessed between enterprises, particularly in circumstances implicating cartels when several organizations have been confiscated at the same time.

Communication patterns, pricing integration, or agreements on distribution of markets are identified. The Commission starts standard procedures by submitting to the parties a Statement of Objections if documentation supports a suspected infraction. Companies have the opportunity to scrutinize the file, respond to objections, and dispute rulings before the EU's General Court and Court of Justice all throughout this stage of proceedings.



Dawn Raids are Underutilized in India?

On a comparative scale it is undeniably evident that in the Indian spectrum of dawn raids are being under-utilized as compared to EU. There can be a few critical reasons for this such as:

- There is an evident lack of a proper or a well-established standard for the parties on whom there lies a suspicion of violations, for recording their set of objections such as issues pertaining the seizure memo whereby the DG officials lie in disagreement with the parties. In order to have guarantee they refrain from planting anything, officials decline to be screened before accessing the premises. The seizure of proprietary

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content, such as personal solicitor-client communications. Authorities abusing the constraints of the investigation warrant. A potential remedy that the Parties can implement in the first place is a standardized protocol for submitting objections in writing that the DG and the Parties could be depending on at all times the duration of the hearing. This could potentially diminish the overall amount of occasions when parties pursue writ jurisdiction, which is the sole remedy simultaneously readily accessible in the High Courts for any of the abovementioned due process concerns.

- Negative feedback on "the independence" of testimony: The statute requires inspection investigators to guarantee for sure that at least two "independent and accountable" inhabitants of the area have been included as testimony in advance of executing a search of the place of business. This was created to act as a hedge against the possibility of improper utilization of powers by the officials. Although a requirement like this must be met to guarantee impartiality in the procedure in question, its genuine execution can be troublesome. One of the most controversial subjects in competition compliance is the question of legal professional privilege (LPP) during dawn raids. The entirety of what qualifies as privileged under Indian competition law is ambiguous. Failure to provide swift resolutions in the aftermath of a raid contention. Confidential exchanges between a lawyer and their client that transpire for the purpose to obtain or dispense legal advice is safeguarded under LPP. LPP has not been explicitly stated or given immunity in the context of dawn raids by the Competition Act of 2002 or the CCI's investigation rules. There is no precise legally binding guidance on how to determine, set aside, or safeguard confidential material during Director General (DG) inspections. On comparing it with EU legislations wherein LLP has been well established under the case of *AM & S Europe v. Commission* (1982)⁸ and *Akzo Nobel Chemicals v. Commission* (2010)⁹, wherein it was upheld that only communications conducted with an external independent legal advisor shall be deemed to be excluded from the searches. Confidential exchanges between a lawyer and their client that transpire for the purpose to obtain or dispense legal advice is safeguarded under LPP. LPP has not been explicitly stated or given immunity in the context of dawn raids by the Competition Act of 2002 or the CCI's investigation rules. There is no precise legally binding guidance on how to determine,

⁸ AM & S Europe Ltd. v. Comm'n of the European Cmtys., Case 155/79, 1982 E.C.R. 1575.

⁹ Akzo Nobel Chemicals Ltd. v. European Comm'n, Case C-550/07 P, 2010 E.C.R. I-08301.

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set aside, or safeguard confidential material during Director General (DG) inspections.

- During dawn raids, erroneous warrants for searching are granted. Pertaining to the competition laws in India, dawn raids are subjected to be enforced only upon receiving permission from the **Chief Metropolitan Magistrate, New Delhi (CMM)**. **When** the DG has a legitimate reason for suspecting that documents that are crucial to the investigation are likely to be compromised, altered, counterfeited, or obscured, authorization must be granted. In substance, conflicts could arise if the warrant has deficiencies like an erroneous or fragmentary location of the property; an identifiable individual missing from the directory of sanctioned personnel, an ambiguous summary of the investigation's scope, or the absence of a specific mention of seizure jurisdiction. As of right now, there is no legally binding guidance pertaining to what the parties ought to undertake in the event of such egregious inadequacies and such unattended intricacies leave a void for undermining certainty and fairness. As compared to the EU's approach wherein rather of obtaining court permits, the European Commission oversees inspection verdicts. These are comprehensive descriptions describing the officials, surroundings, and entirety. Organizations are entitled to appeal the above decisions to the General Court. Assessments often occur with minimal unexpectedness, although disagreements might be logged if the subject matter is ambiguous.

Q2. The process of dawn raids in India, and the lack of judicial oversight against abuse of power, post authorization

I. Dawn raids in India:

A dawn raid refers to an unannounced search and seizure by the investigating authorities of competition law. In India, it consists of the anti-trust entities, the Director General (DG), who is warranted to carry out this search by the Competition Commission of India (CCI). These raids, in consonance with the Competition Act (the Act) primarily relate to any antitrust agreements cause Appreciable Adverse Effects on Competition in India¹⁰ (AAEC), which are considered void. Moreover, these inspections are made without any warning and carried out

¹⁰Section 3(2), Competition Act, 2002

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at the wee hours of the day when least expected. The main objective of dawn raids is to prevent the destruction of evidence, escape accountability and to obtain any evidence that is incriminating to the enterprise.

In India, there were two significant dawn raids that were conducted on the official premises of the enterprise. The first being in the offices of JCB India Limited, and the second in the for Eveready Industries Limited,¹¹ with regards to its abuse of dominant position. This power is derived from Section 41(3) of the Competition Act, 2002. Dawn raids give the authorities the power to actively conduct search and seizure to enforce the provisions of the Act, however, the power is largely unchecked, and companies in India need to be aware of their rights and responsibilities in these cases, especially since the judiciary has a limited role in these cases, post the authorisation of the judicial warrant. Due to the manner in which these raids are conducted, the party is left with no scope to make alterations to the documents in question. Infact, the party being investigated is bound to comply with the investigating officers. This is a large loophole in the case of dawn raids in India, subject to exploitation by the investigating authorities, and this research question will be dealing with that.

II. The process of Authorisation (Pre-Raid) and the issuance of a Judicial Warrant

If the CCI, on information from various sources is of the opinion that certain parties are involved in AAEC, and a *prima facie* case exists with regards to such parties, then it can order the DG to investigate on those grounds under the provisions of Section 26(1) of the Act. The DG is authorised to conduct such a search and seizure under the purview of the Act and carries a wide spectrum of powers. However, this requires the DG to have an order in writing from the CCI. This is possible only after they have decided to carry out an inquiry. The DG has no *suo moto* cognizance in this matter.

Section 41 of the Act read with provisions of the Companies Act grants the DG the power to conduct a search and seizure. However, this power isn't granted without any conditions. The DG cannot arbitrarily raid any premises and carry out searches. Prior to this:

- A reasonable suspicion of infringement of the Act must exist, and the CCI must be in consonance with that
- There must be a mandatory authorisation from the Chief Metropolitan Magistrate (CMM), New Delhi

¹¹ CCI Dawn Raids- How to Act and Contain Operations, *India Corporate Law* (Nov. 2016)

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- The authorisation must issue a warrant to the DG in compliance with the existing provisions of law
- The warrant must be clear, have proper reasoning and mention the documents that are suspected and gave rise to such an investigation, and the reasons for the same.
- It must also mention the power to search and seizure granted to the investigating officers

This judicial authorisation is to keep a check on the powers of the investigators during the raids, and it acts as a security measure against arbitrary searches. This, however, is the only stage where the judiciary is involved. Its role ends with the authorization of the raid.

Moreover, the search and seizure as mentioned under Code of Criminal Procedure, 1973 (CrPC) [now BNSS¹²] applies to all search and seizures carried out in India, including the dawn raids carried out by the DG. The Code mandates that the search carried out must be with a judicial warrant and post the authorization by the court.

III. The Process of a Dawn Raid

Post the issuance of the warrant, the DG is empowered to carry the searches as it deems fit. The raids usually, are usually carried out in extreme hours of the day (usually outside the business hours of the enterprise), including holidays¹³. There is no prior notice sent to the parties. However, no investigation without a search warrant is permitted since they're usually conducted at the official premises or the private homes of the officials involved in the company¹⁴.

Under this section, the DG shall have all the powers held by a Civil Court the CPC, 1908.¹⁵ It is authorized to do the following:

- Enter the premises, and with assistance, search the places where documents, books and papers are kept
- Search, examine and seize the places and documents mentioned in the warrant
- Gain access to any material that may be required for the investigation including electronic records.

¹²Provisions of the CrPC are carried forward in Bhartiya Nagrik Surakshaa Sanihta, 2023

¹³ CCI Dawn Raids – How to Act and Contain Operations, India Corporate Law (Nov. 2016), <https://corporate.cyrilamarchandblogs.com/2016/11/cci-dawn-raids-act-contain-operations/>

¹⁴Due Process Issues in Dawn Raids, Inter Alia, AZB & Partners (Oct. 31, 2021), <https://www.azbpartners.com/bank/due-process-issues-in-dawn-raids/>

¹⁵ Section 36(2), Competition Act, 2002

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The DG is empowered to seize any relevant documents and files it deems fit for further investigation in the case. This may also include electronic devices and any other electronic evidence. Moreover, during the raid, the parties have certain obligations they must comply with:

- Furnishing all the evidence, testimonials and documents falling within the purview of the investigation
- Cooperation with the investigators in case of a conflict, and answer any questions and provide the requested documents

The DG is empowered to have access to and take away anything specified by the warrant that is recognised as being relevant, but it must be clearly stated in the warrant¹⁶.

In spite of this, the parties also carry certain rights in case of a raid¹⁷:

- The right to ask for the warrant/ authorisation of documents to ascertain its scope
- Ask for the record of everything that was seized or taken
- Raise an objection to any misuse of power exercised by the inspectors that go beyond their scope of authority.
- Be present during the investigations, and appoint 'shadows' to accompany the investigators during the raid

IV. Powers of the DG during a raid

The scope of the DG's powers in the case of dawn raids are very wide and as a result, may lead to its violation or misuse. Chances of jeopardizing the party's interests are pretty high, considering the minimal role played by the judiciary post the authorization of the warrant. Neither does it further supervise, nor play any role in executing it. Moreover, the number of dawn raids in India are relatively low as compared to the global scale due to the raids being challenged in the Delhi High Court for not complying by the rules or due process laid out in the CPC, which lays out strict procedures for such raids in India. Even the first dawn raid in India, in the offices of JCB India was challenged on the same grounds¹⁸. The powers carried by the DG are:

¹⁶ Quick Guide on Dawn Raids and Leniency in India, Cyril Amarchand Mangaldas Thought Leadership Initiative (as of Jan. 1, 2017), https://www.cyrilshroff.com/wp-content/uploads/2017/01/Quick-Guide-on-Dawn-Raid-and-Leniency11056110_1.pdf

¹⁷ CCI Dawn Raids – How to Act and Contain Operations, India Corporate Law (Nov. 2016), <https://corporate.cyrilamarchandblogs.com/2016/11/cci-dawn-raids-act-contain-operations/>

¹⁸ Competition Commission of India v. JCB India Ltd. and ors., 2019 SCC OnLine SC 625

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- Gaining access to the premises, homes, vehicles or any other place of the officials, at any hour of the day, including holidays
- Ask to produce documents relating to the investigation, including electronic and other relevant documents and information pertaining to the case.
- Carry out interrogation, interviews and ask questions to the people involved, only under oath
- Search and seizure of documents, computers, electronic devices and any other electronic gadgets that may serve as evidence.

Due to the power carried by the DG, and the manner in which dawn raids are carried out, there isn't much scope for the parties to freely exercise their rights, and this often leads to an abuse of power by the authorities.

V. Abuse of power by the DG

Due to the unchecked power granted to the DG, there are multiple issues involved in a dawn raid:

- The search and seizure of materials outside the scope and purview of the authorisation warrant
- Using the evidence collected for investigating, in another matter connected to the same enterprise, but for a different anti-competitive claim
- Confidential and legally concealed documents and any confidential communication made between the party and the counsel is liable for legal protection and confidentiality and isn't subject to being disclosed as per the Indian Evidence Act, 1872. However, the lack of guidelines specifying what documents can be considered confidential, and what may not, can only be decided by the DG at the time of the raid, and whether it qualifies or not rests on the discretion of the DG. This power granted to the DG can sometimes go beyond the scope of powers assigned to it and may be misused¹⁹.

VI. Post Authorisation and the limited role of the judiciary

After the authorisation of the warrant by the judiciary, it hardly plays a role in the investigation, and in the determination of the rights and liabilities of the parties. After the

¹⁹Whether the Presence of a Lawyer is Essential During a Dawn Raid by the Competition Regulators, SCC Online Blog (Jan. 18, 2023), <https://www.scconline.com/blog/post/2023/01/18/whether-the-presence-of-a-lawyer-is-essential-during-a-dawn-raid-by-the-competition-regulators/>

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authorisation done by the CMM< the judiciary doesn't let itself actively monitor the execution of the raid or even supervise it. Besides, there is no explicit judicial oversight of the evidence being gathered by the DG. The protection is granted only through proceedings that arise subsequently, wherein the parties may challenge the acquisition and usage of evidence that was obtained illegally. There exist only measures which are reactive in nature, and don't protect the parties at the face of it.

Some major issues faced by the parties involved in a dawn raid are as follows:

- **Seizure of materials that are beyond the scope of the search warrant:** during the raids, the power of decision-making is largely given to the DG, but to make the procedure fair to the party as well, transparency is required. When raids happen in the personal premises of the employees of the enterprise, a clear set of guidelines is required to indicate what falls within the purview of the investigation and what doesn't. Since the officials may use their authority to search the materials that fall outside their jurisdiction, for the search and seizure, like searching the personal materials/ belongings of the family members of the employees who don't work for the enterprise, there is a clear violation of their privacy, and may be further challenged in court. By seizing these materials, they could warrant another investigation. The lack of post authentication oversight of the judiciary gives the DG unchecked power on the investigations they carry out, with hardly any accountability while it's being done²⁰.
- **Confusion around confidentiality and such documents:** the current law doesn't specify which documents classify as legally privileged and their status, based on the laws applicable to these raids. Thus, this can be misused to the benefit of the investigators.
- **Lack of transparency:** the statements recorded, interviews and questions asked and noted by the DG must be all shared with the parties, irrespective of it being done formally or informally. But more often than not, it doesn't happen.

²⁰Strategic Insights Into Dawn Raids: A Crucial Tool In India's Anti-Competitive Investigations, LiveLaw (Trinity Chambers) (Mar. 2023), <https://www.livelaw.in/law-firms/law-firm-articles/-competition-commission-of-india-director-general-code-of-civil-procedure-competition-act-trinity-chambers-236616>

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Due to the lack of judicial oversight, the rights of the parties are often neglected and abused. The case of *Oriental Rubber Industries (P) Ltd. v. CCI*²¹ set the precedent that kept note of the arbitrary powers of the DG.

Q3. How are dawn raids adapting to the challenges of digital evidence, encrypted communications, and remote working across jurisdiction

A person, be it a businessman or the customer, always tries to find a way to make profit. The businessman will try and find a way to earn a profit while selling the product, whereas the customer will try to get a discount on the product that he/she is buying. In the market, in order to earn profit and attract a lot of customers, businesses at times resort to unfair means of practices. This in turn is harmful to other businesses in the same industry and at times the customers as well. These unfair practices include, cartels, bid riggings, price fixing, etc. which aim at preventing or reducing competition in the market, often to gain an unfair advantage, increase profits, and harm consumers or other businesses.

In order to prevent such anti-competitive practices from taking place and to protect the consumers and other businesses from such unfair practices, the Competition Commission of India (CCI) under **Section 41 of the Competition Act**²², read with **Section 220 of the Companies Act**²³, has provided the Director-General the powers to conduct dawn raids. Dawn raids are unannounced inspections by the competition authorities for suspected violations of law such as antitrust activities, fraud, etc. in order to catch suspects off guard to prevent them from tampering with the evidence. These raids allow the authorities to have instant access to physical and electronic evidence before the suspects can tamper or destroy it.

I. Dawn Raids Across India, and the European Union

In the aforementioned paragraph we saw that dawn raids are surprise inspections conducted by the Director General in order to catch suspects who are practicing anti-competitive activities. Since every single information about the company is uncovered during a dawn raid, these raids are not very common and are conducted only after obtaining a warrant from the Magistrate. The Director-General who is the investigating arm of the Competition

²¹ 2016 SCC Online Del 2438

²² Ins. by Competition (Amendment) Act, 2007

²³ Companies Act, 2013 (Ind.) §220

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Commission of India (CCI), has to remain impartial and needs to have a reasonable ground of suspicion. Only if there is a reasonable ground of suspicion can the Chief Metropolitan Magistrate provide with a warrant. Due to this reason the number of dawn raids conducted in India is not very high and the total number of dawn raids conducted in India is lower than 20. The first ever dawn raid conducted in India was the case of *M/S. Bull Machines Pvt. Ltd. vs. M/S. JCB India Ltd. & Anr.* in the year 2014. In this case the CCI observed the following:

According to the informant, JCB's bad faith lawsuit against it, which claimed that it had violated its design rights, was entirely unsubstantiated. This case came before the Hon'ble High Court of Delhi with the sole purpose of harassing the informant and to stop the launch of "Bull Smart", which would have effectively put JCB's backhoe loaders in the relevant market in competition. Additionally, in the instance of the informant, the injunction was obtained on the grounds that the informant, in the course of producing "Bull Smart", had violated JCB's registered designs and copyrights, which were obtained fraudulently.

"The predation through abuse of judicial processes presents an increasing threat to competition, particularly due to its relatively low anti-trust visibility.

In view of the allegations projected in the information and as detailed hereinabove, the Commission is of prima facie opinion that JCB by abusing their dominant position in the relevant market sought to stifle competition in the relevant market by denying market access and foreclosing entry of "Bull Smart" in contravention of the provisions of Section 4 of the Act.

Accordingly, the Commission directs the Director General (DG) to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order."

The Competition Commission of India (CCI) had directed the Director General to furnish a personal affidavit indicating the material available before it and the Director General's reasons for conducting the raid.

After this dawn raid a few more were conducted by the Director General, but the amount of dawn raids conducted in India are very miniscule as compared to the ones conducted by the European Union. The number of dawn raids conducted in Europe are very high and are showing no signs of slowing down. The European Commission is authorized by **Council**

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Regulation 1/2003²⁴ to inspect businesses suspected of violating competition law on-site. As part of this authority, the Commission may, among other things, enter any location, look through the company's books and other records, and take or obtain copies of or extracts from those books or records. In addition to the hard copies of the company books and records, the European Commission can also inspect and copy electronic data during a dawn raid. Similar to the Director General, the European Commission also has to specify their scope of investigation and cannot conduct 'fishing expeditions', i.e., the European Commission needs to have reasonable grounds for suspecting anti-competitive activities in the company.

Although the grounds and the procedure for conducting a dawn raid is very similar in India and the European Union, the reason why India lacks in conducting more dawn raids than the European Commission is that the European Union has a more established legal framework, they have greater sophistication and resources, and a more complex, data-heavy enforcement environment.

II. What Are Virtual Dawn Raids?

In today's world where everything is done digitally, the government also makes an effort to stay up to date and adjust to new developments in technology. This was most prevalent during the COVID-19 pandemic, where everything became digital. All the meetings, discussions, company records were shifted to the virtual world. The competition authorities across the globe were trying to navigate these challenges. Thus, came virtual dawn raids, which emerged post pandemic, with the competition authorities conducting inspections remotely via video calls, virtual meeting rooms, remote access to IT systems, etc. The authorities can then use these documents and evidence which were obtained virtually, to check whether the company is participating in any kind of anti-competitive practices or not.

Time-stamped messages and metadata further allow authorities to reconstruct events with precision. Technologies such as advanced data analytics, machine learning, etc., help the authorities to analyse vast datasets and uncover hidden connections that traditional or physical raids might overlook.

These days most of the companies work in hybrid mode, that is, they work physically as well as remotely. Key business documents may be stored in locations using cloud-based storage as OneDrive or SharePoint, on laptops/desktops. So, most of the company data is stored

²⁴Council Regulation (EC) No 1/2003, 2002 O.J. (L 1) 1.

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digitally, and hence in a physical dawn raid obtaining them became difficult. Now through these virtual dawn raids, accessing the company records which are stored online has become much easier and more efficient, and also leaves very little room for the company to tamper with such evidence or hide them. These raids are not only restricted to the company offices but are also extended to the employees' private homes in order to collect the data from their personal devices.

The competition authorities across all jurisdictions are trying to adapt to the rise in the hybrid and remote work environments. Hence, the authorities across several jurisdictions have started conducting virtual or hybrid dawn raids.

III. Virtual Dawn Raids Conducted in the European Union

During the pandemic, the number of dawn raids conducted in the Europe had declined due to the worldwide lockdown. This was also the time when there was a surge in the anti-competitive activities. In 2021, the commissioner for competition from the European Commission, Margreth Vestager, and Andreas Mundt, the president of the Bundeskartellamt, signaled their intention for restarting dawn raids. Mr. Mundt proclaimed "the relaxed time for carte offenders is over. We are on the road again." But during the pandemic, "on the road" could not translate to the literal meaning of it. Now the authorities had taken to conducting the raids virtually. The Financial Conduct Authority (FCA), who have powers that are similar to the ones provided to the competition authorities released a statement in October 2021 saying: "It's important that firms are prepared to take responsibility to ensure employees understand that the FCA has powers to visit any location where work is performed, business is carried out and employees are based (including residential addresses) for any regulatory purposes. This includes supervisory and enforcement visits" The competition authorities could also utilise their powers by compelling a third party to provide potentially relevant data and use other public sources. The end of 2021 saw activities from the competition authorities in France, Hungary, Norway, Poland, Spain, Portugal, Romania, and by the European Commission.

In the case of *Michelin v. European Commission (T-188/24)*²⁵ the European Commission analysed public information using AI screening tools. The General Court implicitly validated the use of AI to filter public information as the main jurisdiction for starting probes and Dawn

²⁵Case T-188/24, Michelin v. Comm'n, ECLI:EU:T:2025:686

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raids. The Commission accentuated the fact that they intend on strengthening their ex officio investigation capabilities. The case showed that the Commission is now using tools which can be used to analyse the extensive amounts of publicly available data.

In 2023, the European Commission carried out dawn raids on several fragrance companies, one of which was the International Flavors & Fragrances (IFF). An IFF employee had deleted certain WhatsApp messages from his mobile phone, which was provided by the company, during the raid, which led to the Commission imposing a fine of EUR 15.9 million, for obstructing the inspection.

A virtual hybrid dawn raid was conducted by the Italian Competition Authority (Autorita Garante della Concorrenza e del Mercato, AGCM), where the external counsel was allowed to virtually shadow the post-collection filtering process (applying search terms and doing a quick review of the documents to ensure they fall within the scope of the inspection mandate) via video call, rather than being present on-site for physical review.

These are certain instances on how the European Commission has developed and adapted to the virtual/hybrid mode of working and have now shifted from conducting just physical dawn raids to hybrid dawn raids. Here, the authorities not just raid the company in the traditional manner but may also either go to the employees' homes or go through their databases in order to find the necessary information.

SUGGESTIONS

Although the antitrust laws in India have come a long way, there is still much progress to be made. There are plenty of gaps to be filled. There must be more clarity, transparency and robustness to the process. To maintain this standard, other jurisdictions, like in the EU, have released a standard and clear set of guidelines to be followed by both parties as well as the investigators²⁶. India can follow this lead and make a clear set of guidelines helping out the parties involved in the raids, which brings in better clarity for everyone involved. This also helps in preventing further challenges. The precedent set by the international standard brings

²⁶European Commission- Explanatory Note on Commission inspections pursuant to Article 20(4) of Council Regulation No 1/2003

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in clarity, and serves as a stepping stone for newer antitrust agencies like the ones in India²⁷. Since India has also largely depended on the Competition Law of the European Union to develop its Competition laws, it does not fully cater to Indians. It forgets the gap where small players are exploited in the market as a result of rampant corruption, and illegal raids around every corner. Proper search, acquisition of information and evidence must be gathered to carry such operations. Moreover, by having sufficient provisions laid out by the CCI, the DG can be stopped from carrying out illegal raids in the garb of dawn raids. An innocent party on whom such a raid is carried out should be compensated adequately and all the material seized must be duly handed over, ensuring that such an abusive measure is not carried out in the future by the Commission.

Moreover, as a preventative measure, the CCI must publish a manual elucidating the rules and regulations and the practices to be done by the parties and the regulatory authorities, which is transparent, vigorous and thorough, and enforceable for both the parties as well as the authorities. With the current practice, only procedural aspects of a dawn raid can be challenged in a court of law, and this may negatively impact investigations by causing delays, questioning the credibility of the CCI and DG. Following the lead of the EU, as adjudged in the case of *Hoechst AG v. Commission of the European Communities*²⁸, the right to legal representation and the presence of a counsel during the dawn raid must be made mandatory. The right to having a defense, and the right against violation by the competition authorities while performing search and seizure must be strictly enforced. Taking into perspective the Samsung case in France²⁹, any evidence gathered by the authorities during the raid will be void if it prevents the party from exercising its authority. This must also be a foundational stone for most antitrust laws in India and must be enforced to protect the rights of the parties, as enshrined in our Constitution. There must be a check and balance during the raids to reduce the abuse of power, ensuring fairness.

What Steps can the Companies take to Prepare for Virtual/Hybrid Dawn Raids?

As the companies are adapting to the remote or hybrid working environment, so are the competition authorities. The companies need to make sure that they have updated procedures

²⁷ Anushka Singh and Shashwat Awasthi, Antitrust Dawn Raids in India: Suggestive Measures to Prevent Fishing Expeditions, JURIST – Student Commentary, April 25, 2020, <https://www.jurist.org/commentary/2020/04/singh-awasthi-antitrust-dawn-raids/>

²⁸ Cases 46/87 & 227/88, 1989 ECR 2859, paras 16, 41

²⁹ Cour de cassation, Criminal Chamber, 4-5-2017, n°16-81071

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to address the new challenges, and that their employees are trained in case of a dawn raid, without the core staff being there, or if the authorities want to search the employee's home. They should be made aware of the fact that they could also be called upon to assist with a dawn raid when they work from home.

The companies must make sure they have the appropriate technology on hand to completely safeguard all of the data environments that their employees use, such as mobile devices, emails, etc. They also need to be able to respond to extensive information requests involving thousands or even millions of documents in a matter of weeks or days.

The company should frame a proper IT policy, such as data retention, data access, and network permissions.

The companies should collaborate with their technological partners to create an action plan that will be followed. The regulator's technical procedures can be tracked and observed by technical partners with expertise in digital investigations and electronic discovery. This guarantees that businesses are aware of the data being gathered.

Businesses should work with their legal partners to develop or update their action plan in order to ensure a well-thought-out strategy. Legal partners can assist from the beginning of any remote morning raid by being included in the response plan. This will allow them to address any potential concerns around privilege material and the legal authority of a regulator. Staff members should get training on their legal rights during a dawn raid, as well as the restrictions of those rights, since violating the law could result in fines for obstruction.

CONCLUSION

This paper analyses dawn raids in India and other jurisdictions including the EU. It speaks in detail about the limitations of India's dawn raid system. While highlighting the drawbacks, it also makes appropriate suggestions to correct it. Although dawn raids are recognised globally as being widely effective to detect and defer AAEC, its implementation in India still leaves a lot of scope for improvement. The roadblocks faced lack judicial supervision after the warrant is issued. The dilemma around the confidentiality and legality still prevails. However, the system followed in EU has a clear set of guidelines and is backed by precedents, clearly protecting the rights of the parties.

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With digitalisation and hybrid systems of work becoming more common, many jurisdictions including the EU have started bringing in and implementing electronically structured procedures to handle E- evidence effectively. However, India still has a long way to go. It's especially concerning since it's a major roadblock to addressing modern challenges that come with new interfaces like digital encryption, cloud networks and virtual work cultures.

Thus, going forward, India needs to connect the gaps by adopting strong guidelines, developing a robust system and providing a strong judicial prevalence over the raids, and compulsorily recognising the rights of the parties as the priority. Moreover, there's a strong need for recognising the legal privileges of the parties and inculcating them in the digital sphere. These reforms help in a two-fold way. They enhance the credibility of the CCI and also ensures that the enforcement of the laws is fair and transparent and effective. This only safeguards the antitrust laws and protects its principles. In this new digital economy, the priority still remains the balance of fast enforcement coupled with the fairness in judiciary. Only then can the market integrity and public trust be maintained.

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