

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 3

2020

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Competition Law in India and its Development

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ABSTRACT

Competition is the predecessor to success. The Competition Act, 2020 restricts the vertical and horizontal agreements that have an adverse effect on the competition in the market. Markets hopes for sustainability, profits, innovation in this effect along with a fair competition among the markets. The Competition Act, 2002 was legislated to remove anticompetitive practices among markets through preventing anti-competitive agreements and abuse of dominance being created by the big or small ventures in the market. This paper aims to study the evolution of the Competition law way back from MRTP Act, 1969 to the Competition Act, 2002 after the economic reforms in the year 1991 and present to its readers about these concepts in brief manner. Consumer awareness in the field on Competition Law is a must as many times consumers are not aware of the harmful effects of such practices and fail to realize that it is these anti-competitive practices which are keeping markets away. If markets are not competitive then this gives rise to monopolies and oligopolies which have harmful effects in the long run.

I. INTRODUCTION

“Increased competition- internal and external- helps those who are strong enough to benefit from the new opportunities. However, it can hurt those who are ill-equipped to face the challenges of competition. We must adopt concerted measures, both at the national and the international level [sic], for an equitable management of increased global interdependence of nations. At the national level, the state must be modernized to create an environment conducive to creativity and growth and also to ensure that the fruits of growth are fairly and equitably distributed.”²

In the decade of 80s and 90s when the world was looking forward to Liberalisation, Privatisation and Globalisation, India has been a crucial player, specifically due to the introduction of new economic policy which opened the Indian market to the world. The New Economic Policy of 1991 which brought Liberalisation, Privatisation and Globalisation of the Indian Economy, progressively widened the space for market forces and reduced the role of

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² Dr. Manmohan Singh, Statement at the Asian African Conference (April, 2005) available at <http://pmindia.nic.in/speech/content4print.asp?id=113> (Last visited on April 13, 2020).

Government in business and various other economic sectors. In the pursuit of globalisation Indian markets has to be geared to face competition from various players in economic industry within the country and outside.

The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act, for brief) was the competition law of India, before the Competition Act, 2002. Before the economic reform in 1991 a committee namely Sachhar Committee was set up in 1977 to consider the working of MRTP Act and that committee reviewed the working of MRTPC during the period 1970-77 and reached to the conclusion that the actual work of MRTPC was limited and mostly advisory.

Thereafter, it was perceived that a new competition law is needed because the existing Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) had become outmoded in certain respects and now the government need to shift focus from restraining monopolies to promoting competition in the Indian market.

A committee (Known as Raghvan Committee) was set up in 1999 to develop a modern competition law in line with international developments to suit the Indian conditions. The Report submitted by the Raghavan Committee on Competition Policy was discussed at length with the ally by the Standing Committee on the Competition Bill.

The new Competition Act was passed in January 2003 by the parliament and the Competition Commission of India was set up. The Competition Act states that it shall be the duty of the Commission to eradicate practices having an unpropitious effect on competition in India, and to promote and sustain competition, ensure the interests of customers and freedom of trade carried on by other stakeholders, in Indian markets.

II. HISTORICAL DEVELOPMENT:

During the era of Britishers in India, the question of wealth and economic power was never in the priority and therefore, that is why no legislative measure to check and combat the same had been taken. The Indian Government had been concerned with the control on concentration of wealth and removal of economic disparities among people and which in fact is also in congruence with the goals set out in the Constitution.

The MRTP Act, 1969 was enacted for recognising the clear mandate set out in the Directive Principles enshrined in Part-IV of the Constitution of India, namely, prevention of concentration of economic power. Indian Government made the strategy of planned economic development since the early 1950's. Since Independence in 1947 Industrial policy of India

commenced with the Industrial policy Resolution of 1948³.

The Resale Prices Act, 1964, the Monopolies and Restrictive Trade Practices (Inquiry and Control) Act, 1948, and the Restrictive Trade Practices Act, 1964 of United Kingdom, the Sherman Act and the Clayton Act of the United States of America had inspired a lot to the MRTP Act. The primary objective the Act was to curb Monopolistic, Restrictive and Unfair Trade practices, which will affect adversely to the competition in the trade and industry, apart from diminishing the consumer interest. Thus, the main purpose of the Act was to promote fair trade and fair deal in the competitive market besides promoting healthy Competition.

The preamble of the MRTP Act reads as follows “*Act to provide that the operation of the economic system does not result in the concentration of the economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.*”⁴

III. NEED FOR NEW ACT

The MRTP Act was a predecessor to the Competition Act and sought to legislate over the problems faced by the industries/markets related to restrictive and monopolistic trade practices. There are some areas of resemblances between the MRTP Act and the Competition Act. The primary difference between the ratification stems from the legislative objective. While the Competition Act is propelled to promote competition, the aim and objective of the MRTP Act was to put stop to the economic concentration and restrictive trade practices.

The substantial part of the MRTP Act was aimed around monopolistic behaviour and economic concentration. In the current changing economic situation and after economic reforms post 1991, a need for new act was felt for a change in approach towards fostering competition. In the year 1999 the then Finance Minister of India in his budget speech against this background, had made the following statement in the context of to the then existing MRTP Act.

“The MRTP Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. The Government has decided to appoint a committee to examine this range of issues and propose a modern competition law suitable for our conditions.”

A high level committee (the Raghavan Committee⁵) was set up to recommend a proper

³ The Industrial Policy Resolution defined the broad contours of the Industrial policy and delineated the role of the State in industrial development, both as an entrepreneur and as an authority.

⁴ Monopolies and Restrictive Trade Practices Act, 1969

⁵https://theindiancompetitionlaw.files.wordpress.com/2013/02/report_of_high_level_committee_on_competition

legislative framework relating to competition law for the country. It was felt that although the MRTP Act apparently had provisions regulating anti-competitive practices, in comparison with competition laws of many countries it was insufficient for promoting competition in the market trade and for reducing, if not putting an end to anticompetitive practices in the country's domestic and international trade.

IV. EVOLUTION OF COMPETITION LAWS ACROSS THE GLOBE

Competition Law is enacted to promote competition among industries. The scope, application and implementation of Competition Law may vary widely across jurisdictions. Competition laws is having a long history. The first modern body of competition law can be turned up back to the enactment of the Sherman Act of 1890 and the Clayton Act of 1914 in the United States. During the recession in 1930 where European countries started witnessing formation of many cartels, European countries started to following the United States' lead in enacting competition laws. After the end of the World War II more strict competition laws based on the US legislations were introduced in European, Asian and various other countries.

Developments of competition laws were overlooked by many countries in the move towards nationalization and industrialisation. Trying to make the economy and industry accountable through government action was in priority. In the past, Commonwealth countries had not shown interest in enacting statutory competition law. UK introduced the Restrictive Practices Act in 1956 and thereafter, Australia introduced its current Trade Practices Act in 1974.

Adoption of Competition laws have been made earlier in developing countries as compared to the developed. We can find that Argentina and Mexico adopted competition laws in 1923 and 1917 respectively. But these laws were introduced in Chile, Brazil and Colombia in the 1960s.⁶

Competition laws were enacted by less than 40 countries in the early 1990s, but later when rapid industrialization and integration entered into the world market, many other developing nations had introduced competition laws and which resulted in that at present more than 100 countries have enacted the Competition Law, and many more are in the process.⁷

V. EVOLUTION AND DEVELOPMENT OF COMPETITION LAW IN INDIA

Monopolies and Restrictive Trade Practices Act (MRTP) was enacted in 1969 by India as first competition law. The MRTP Bill was introduced in the Parliament of India in the year 1967

[_policy_law_svS_raghavan_committee.pdf](#)

⁶ Passmen Berend R., "Multilateral Rules on Competition Policy: An Overview of the Debate", Comercio Internacional Serie 2, International Trade Unit, Santiago, Chile, December 1999.

⁷ Competition Commission of India, available at <http://www.competition-commission-india.nic.in/>

and the Act of 1969 came into force, w.e.f, 1 June, 1970. However, with the changing scenario in the market, economy within and outside India, it was felt that a necessity arisen in the country to introduce a new competition law to replace the outdated law and hence the Competition Act of 2002 replaced the MRTP Act.

The MRTP Act, 1969 was enacted on the basis of socio – economic philosophy manifested in the Directive Principles of State Policy of the Constitution of India. The Act of 1969 have gone through various amendments in 1974, 1980, 1982, 1984, 1986, 1988 and 1991. The amendments which were made in the year 1982 and 1984 were based on the recommendations of the Sachar Committee, which was constituted by the Govt. of India in the year 1977 and Justice Rajinder Sachar was the chairman of the said committee.

The Sachar Committee pointed out the perspective of a consumer, where a consumer choose a product on basis of the advertisements and sales promotions which has been well established modes of modern business techniques, representations and through such advertisements the consumer should not become deceptive. The Committee also pointed that fictitious bargain was another common form of deception to the consumer and many devices were used to entice buyers into impression that they were getting something for nothing or at a very nominal consideration. The Committee recommended that an obligation need to be put on the seller to speak the truth when he advertises and also to refrain themselves from hiding any important information, to save the consumers from false or misleading advertisements.

However, with the changing scenario in the market in the country, it was felt that a necessary need to be made as a new competition law which will the MRTP Act. After introduction of new economic policy in the year 1991 and opening of the Indian market for international industries, there was a need felt to shift focus of the law from curbing monopolies to promoting competition in the Indian market as per requirement of current development. And the same was pointed out by the then Finance Minister in his budget speech in February, 1999–

“The Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. Government has decided to appoint a Committee to examine this range of issues and propose a modern Competition Law suitable for our conditions.”⁸

Indian Government formed a High Level Committee under the Chairmanship of Mr. SVS

⁸ Budget 1999-2000, Speech of Shri Yashwant Sinha, Minister of Finance, 27th February, 1999, <https://www.indiabudget.gov.in/doc/bspeech/bs19992000.pdf> Retrieved on 20th May 2020

Raghavan⁹ (popularly known as ‘Raghavan Committee¹⁰’) in October 1999, to advise the government on a modern competition law for the country in corroboration with international market standards and to suggest a new legislative framework, which may necessitate a new law or befitting amendments in the MRTP Act, 1969. The said Committee had presented its report to the Government in May 2000.

The committee among other things also noted that to fulfil the effective competition among market, competitive industries should have equal opportunities to compete for business on the basis and quality of their goods, and all the resources deployed which follows the success of the market in meeting consumer’s demand at the competitive price.

The draft competition law was prepared on the recommendations made by the Raghavan Committee, and presented on November 2000 to the Government and thereafter, the Competition Bill was placed before the Parliament, and then referred to the Standing Committee of the parliament for further recommendation. After taking account of the recommendations made by the Standing Committee, the Parliament of India passed December 2002 the Competition Act, 2002.

Accordingly, after enactment of the Competition Act, 2002, the earlier act which was the Monopolies and Restrictive Trade Practices Act, 1969 [MRTP Act] was repealed with effect from 1 September, 2009.

VI. CONCLUSION

In the phase of globalisation, liberalisation and privatisation India and the whole world was in search for replacement of competition laws to take a run with world leader countries and the old laws were bringing newer challenges and which had become obsolete within those era. Hence the new Competition Act was the necessity of the hour. The new act was in accordance with the regulation of conduct and behaviour of the relevant competitive market.

Further, the main purpose of the act is to promote a healthy competition between the enterprises/ relevant markets and protect the interest of consumers as well. Competition is extremely indispensable need as they benefits: the Consumers interest in getting vast choice of products and services, better quality and improved value for money; it benefits the enterprises/industries as tier playing field is formed and a redressal of anti-competitive practices is obtainable, the inputs are competitive priced, they have an inclination to own

⁹ https://en.wikipedia.org/wiki/S._V._S._Raghavan

¹⁰ https://www.cci.gov.in/sites/default/files/presentation_document/OECDKoreaCentreIndianCompetitionLaw14Nov2008.pdf?download=1

greater productivity and skill to compete in global markets and at last it also benefits the state as there's optimal realisation from sale of assets and there's enhanced availability of resources for social sector.

Thus, by ensuring the protection of consumers, companies, and enterprises etc. while holding competition within the market the new competition law is helping to benefit all the players within the relevant market which successively is helpful for the economy as a full.
