

---

## **IPR AND COMPETITION LAW – A COMPARATIVE STRUCTURE WITH INDIA AND EUROPE**

*Author: Surya. A. Nair from CSI College for Legal Studies, Kottayam, Kerala (Mahatma Gandhi University)*

### **ABSTRACT**

This Research Paper is aimed at highlighting about IPR and Competition law. Patent law forms a part of Intellectual Property Law, they are termed as a right which is guaranteed to an inventor. Even the term utility comes under the purview of “Patent”. It obstructs others from selling, marketing, making, using etc. of already invented products. There is an absence of international patent, whenever the patent owner is in need of protection, different patents are to be filed in each country. When it comes to Trademark, they are made to protect the phrases, symbols, logos etc. Whereas competition law is being introduced in order to curb unfair trade practices in and around the world. Significant articles under Intellectual Property Rights Agreement are pointed out briefly. Each countries possess their own competition law as their statutory body. So, this research papers derives how both these laws are interlinked with each other.

BRILLOPEDIA

**KEYWORDS:** Patent, Competition law, Intellectual Property Law, Trademark, Inventor.

### **INTRODUCTION**

The connection as well as relation between competition law and Intellectual Property Rights (IPR) are still in debate. Whatever the competition policies disagree with, the Intellectual Property Right exerts some dominance power over it. IPR which introduces new products and innovations which results in enhancing the economic growth thus forming the central agenda of competition policies and laws. Both competition laws and IPR are considered as two arms of laws which strive to enhance and promote consumer satisfaction, regulating market, enhancement of technological improvements etc. Section 3(5)(i) of the Competition Act, 2002 deals with Intellectual Property Rights (IPR) in Competition Law. The section points out that the term IPR is excluded from restrictive trade practices.

**OBJECTIVE OF STUDY**

This research paper stress upon following objectives and they are:

- To study the co- extensive relation between IPR and Competition law.
- To study and examine the impact of IPR and Competition in various countries.
- To understand the judicial aspects of two laws.
- To understand the impact of Section 3 of the Competition Act, 2002.
- To understand the recommendations in resolving the conflict between the two laws.

**RESEARCH QUESTION**

To examine the co- relation between IPR and Competition law.

**HYPOTHESIS**

The hypothesis made by the researcher about the possible outcome is:

Despite the fact that many judicial precedents have shown that there arise many disputes in regard to their conflict on one hand and co- relation on other hand. Thus, in order to ensure the economic upgradation as well increasing the innovation both the common objectives of these laws must be comprehended equally. Giving stress to Section 3(5)(i) words usage must be given emphasized.

**METHODOLOGY**

This research is based on secondary method of writing mainly. This research paper has undergone government reports, law journals and also the Bare Act for specifying the appropriate sections also. Through the secondary source of method estimations and differentiations are well specified in this research paper.

## **REVIEW OF LITERATURE**

1. EC Competition Law and Intellectual Property Rights: The Regulation of Innovation- Steven D. Anderman: This book is touched on the areas of European law. Intellectual property and EC competition law is stressed upon here mainly. It thus emphasis on EC treaties and agreements. EC Competition law forming a statutory body in regulating the mechanism of IPR. It is mainly recommended for students and other scholars in European parts
2. The Intellectual Property Rights & Competition Law - A Comparative Analysis- K.D. Raju: This book revolves around the conflict between the two laws and objectives focused by the laws. MRTP Act 1969, Competition Act 2002, TRIPs, market issues, guidelines of CCI on regulating IPR.

## **WHAT IS IPR AND THEIR SIGNIFICANCE**

This branch of law IPR refers to “Intellectual Property Rights” which preserves the rights of those who brings out their original innovations in the market field. Those holders of right are the reals inventors who possess actual possession and control over it. So, these laws exclude other external agents and third parties from exercising the rights over the IPR holders. Mainly IPR covers trademarks, patents, and copyrights etc. They are discussed below:

### ❖ TRADEMARK

From the word itself it denotes that it’s a mark which differentiate goods and services introduced by one innovator or enterprise from another innovator or enterprise. They come under the purview of Intellectual Property Rights. They even provide legality to words, symbols, logos etc of goods and services.

Four important types of trademarks include:

- a. Generic mark
- b. Descriptive mark
- c. Suggestive mark
- d. Arbitrary and fanciful mark

### ❖ PATENTS

Patents are those which forms as a part of technical innovation. Those rights which prevent others from using the inventions for commercial purposes upto 20 years. Approving patents in India rest upon The Indian Patent Office governed by Indian Patents Act, 1970. This act being amended in 2000s thus complying with the Agreement on TRIPS i.e., Trade-Related Aspects of Intellectual Property Rights.

Various types of Patents include:

- a) Utility patents
- b) Design patents
- c) Plant patents

### ❖ COPYRIGHT

Mainly two terms which includes copy as well as right. It means right to copy. Here only the particular authorized person is having the right to reproduce and distribute the product. Originality, creativity, and fixation are 3 important elements covered under the term copyright. The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses.

BRILLOPEDIA

### COMPETITION LAW AND NEED OF IT

Competition law is enforced in India in order to curb unfair trade practice etc. These laws are mainly enforced to protect the interest of customers, business entities etc for their existence. Competition Act, 2002 was enforced in order to protect the consumers, ensuring freedom of trade and regulating market customs etc.

Major aims of the Competition Act, 2002:

- To remove unfair trade practices.
- To ensure freedom of trade.
- To prohibit the dominance in the market.
- To prohibit mergers, amalgamation etc.

### **LINKAGE BETWEEN COMPETITION LAW AND IPR**

During the historical times there existed a contradiction between both Competition law and Intellectual property law. Competition law which discourages monopoly whereas Intellectual property rights supports and encourages them. If there is any presence of anti- corruptive practices or conduct on the part of IPR holder there operates the competition law, thus resulting in co- existence with each other. IPR conflicts are maintained under Competition Act, 2002. IP equalizes both the interest of competitors, inventors, creators etc. As both sides of a coin IP policies exert a negative influence upon competition laws too. Both the laws possess similar objectives but their ways to achieve them are varied in nature.

### **TRIPS IN RELATION TO COMPETITION AND IPR POLICY**

The term TRIPS refers to Trade- Related Aspects of Intellectual Property Rights. It is defined as an international agreement, which are being administered by World Trade Organization (WTO). It lays down some form of minimum standards and criteria in regulating Intellectual property rights. They also restrict the usage of abusive power of intellectual property right holders. When it comes to competition law it regulates anti- competitive licensing etc.

### **IMPORTANT ARTICLES ENSHRINED UNDER TRADE- RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS AGREEMENT**

- Article 8.2 of Trade- Related Aspects of Intellectual Property Rights Agreement states about the prevention of abusive influence on the intellectual property rights of the holders.
- Article 31 of Trade- Related Aspects of Intellectual Property Rights Agreement states about the grounds of granting compulsory licensing which included national emergencies, national interest, interest of public health etc. These grounds vary as to different national laws too.

- Article 40 of Trade-Related Aspects of Intellectual Property Rights Agreement states about the conditions in granting compulsory licensing in order to preserve the legally bounded holders.

### **INDIAN COMPETITION ACT, 2002 ABOUT IPR AND COMPETITION POLICY**

Most of the cases present in India which highlights about the conflict regarding IPR and Competition law. Competition Commission of India thus stand as the statutory body in resolving the conflicts between the two laws i.e., Intellectual Property Rights and Competition Law. Intellectual Property Rights laws should not be applied in isolation to competition law because none of the Intellectual Property Rights laws highlights with the reference to competition law.

- ❖ Section 4 of the Indian Competition Act, 2002 states that an enterprise should not misuse their dominant position.
- ❖ Section 3(5)(i) of the Competition Act thus gives protection to IPR and excludes them from other forms of restrictive trade practices.
- ❖ Section 2 (r) of the Act defines about relevant markets, those markets which are to be determined by the commission.
- ❖ In order to fix the relevant market for the IPR certain factors have to be taken in to consideration which is defined under *Section 19(7)* of the Act. When it comes to healthcare sector, both the patents and trademarks have a significant feature of fixing and determining the relevant markets.

### **COMPARATIVE ANALYSIS WITH EUROPEAN NATION**

#### **❖ EUROPEAN COMPETITION LAW AND INDIAN LAW**

European competition law promotes and maintains the European Single market by the way of regulating anti-competitive strategies. TFEU known as the Treaty on the Functioning of the European Union which is one of the Treaty in European market which keeps an eye on the market functioning etc. As compared to EU, horizontal as well as vertical agreements are

absent in Indian law. But both the EU laws as well as Indian laws effects are similar in nature.

- ❖ Below mentioned are the significant provisions under the Competition law in Europe:
  - a) Ban on anti-competition agreements enshrined under Article 101 of the Treaty on the Functioning of the European Union (TFEU). Later on, Temporary Framework Communication was introduced in order to increase the hospital medicine production. It was highly demanded after the out- break of Covid-19.
  - b) Prohibition of abuse of dominant positions enshrined under Article 102 of The Treaty on the Functioning of the European Union (TFEU). Holding a dominant position is not at all a violation of European Union (EU) laws, but the fact is those dominant position must not hamper the market scenario.
  - c) Prohibition of State aid enshrined under Article 107 of The Treaty on the Functioning of the European Union (TFEU).

#### ❖ EUROPEAN UNION AND INDIAN PATENT LAWS

Section 2(1)(j) of the Indian Patents Act, 1970 defines about the term “invention”. For carrying out an invention there requires a specific mode as per Indian law whereas in European law there does not require any specific mode for invention. SPCs known as Special Protection Certificates are granted through Regulation (EC) No 469/2009 by the European patent system. But the similarity exists in the manner regarding the duration of publication of patent application i.e., after 18 months. Granting of patent requires long- lasting and time taking process under both Indian and European laws. Industrial use, novelty and non-obviousness are the three major specification for patency under Indian and English laws.

### **CASE LAWS**

#### 1. Valle Peruman and others Versus Godfrey Phillips India Limited<sup>1</sup>

In this case, trademarks were manipulated by the Trademark owners. Thus, amounting to unfair trade practices trademarks. The significance of competition policy was emphasized and

---

<sup>1</sup>1986 AIR 806, 1985 SCR Supl. (3) 123

pointed out that “all kinds of intellectual property have the potential to infringe the competition”.

The Court further observed that even the Trademark owner has the right to use the trademarks within a reasonable manner, also competition can be infringed all types of IPR including Trademarks.

2. Aamir Khan Production Private Limited vs The Director-General<sup>2</sup>

In this case it was observed that, the cases related to Intellectual Property Rights and Competition law comes within the ambit and the jurisdiction of Competition Commission of India (CCI). It was also held that Intellectual Property Rights (IPR) are those rights which are statutory in nature but not sovereign in nature.

3. Entertainment Network Limited v. Super Cassette Industries Ltd<sup>3</sup>.

In this case it was observed that there existed a right upon copyright owners to have full monopoly in the market. This right being absolute in nature even causing hindrances in the market and violation of competition laws. Contradicting the competition law was resulted from the high -priced patented product.

4. Kingfisher v. Competition Commission of India<sup>4</sup>

In this case it was held that Section 3(5) does not exert a limit or barrier upon the Intellectual Property Right holders right to sue upon the infringement of copyright, patents, trademarks etc.

5. FICCI Multiplex Association of India vs United Producers Distribution Forum<sup>5</sup>

In this case the right granted to the copyright holder is not absolute right in nature but it's a statutory right emphasized under the copyright Act, 1957. Even the European court of justice have also stressed that- the objective of Intellectual Property Right is commercial gain and introduction of new innovations.

---

<sup>2</sup>18 August, 2010

<sup>3</sup>16 May, 2008

<sup>4</sup>(BOM)-2010-3-261

<sup>5</sup>25 May, 2011

### **SUGGESTIONS/ RECOMMENDATIONS**

Following are some of the recommendations or suggestions in order to mitigate the conflict existing between the two laws i.e., Intellectual Property Rights and Competition Law:

- 1) Currently there is an absence of provisions in the regard of misuse of Intellectual Property Rights while hampering the competition in the market. So, it just solely rests upon the law- makers to amend the legislation as well as bringing a concern over the misuse of Intellectual Property Rights on the competition law.
- 2) A deep-depth must be given to Section 3(5) of the Act with regard to conflict between the both the laws i.e., Intellectual Property Rights and Competition law.
- 3) The difficulties and other means of hardships faced by the different stakeholders like consumers, business entities, CCI etc. by inferring the guidelines formulated by the European Union and US.
- 4) Most importantly the overlapping between the two laws and must be reduced to a great extent, and a harmonious relation must exist between Intellectual Property Rights and Competition law.
- 5) Compulsory license must be granted in cases of refusal to deal.
- 6) In order to reduce the anti- competitive effects existing in the market, the grounds mentioned under the TRIPS (Trade- Related Aspects of Intellectual Property Rights) agreement must be taken into consideration.

### **CONCLUSION**

Thus, Research Paper concludes from the above provisions, interpretation, judgements, and various enactments depicts that both the laws must complement with each other. Intellectual Property Rights on one hand protect the rights of IP holders whereas competition laws strive to protect the interest of consumer welfare from anti- competitive environment. Competition Commission of India (CCI) serves as the statutory body in resolving the conflicts and overlapping between the two laws as well as serving as the regulator in the competitive

economy. Most importantly there exist a similarity between the both the laws with regard to the object but the difference exists in the manner how they achieve it. From the inference it can stated that IPR being a right and Competition law being a legislation.

### **REFERSNCES**

- 1) <https://www.legalserviceindia.com/legal/article-7101-competition-law-and-ipr-a-critical-analysis.html#:~:text=Competition%20law%20is%20focused%20on,monopoly%20status%20in%20the%20market.>
- 2) <https://www.legalserviceindia.com/article/1307-Competition-Law-and-Intellectual-Property-Laws.html>
- 3) <http://www.legalservicesindia.com/article/889/Competition-Law-vis-a-vis-IPR-rights.html>
- 4) <https://indiankanoon.org/doc/91660613/>
- 5) <https://indiankanoon.org/doc/1313927/>
- 6) [https://ec.europa.eu/competition-policy/antitrust\\_en](https://ec.europa.eu/competition-policy/antitrust_en)
- 7) <https://www.legalserviceindia.com/legal/article-1814-competition-law-in-india.html>
- 8) [https://www.wto.org/english/tratop\\_e/trips\\_e/intell\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intell_e.htm)
- 9) <https://www.newindianexpress.com/opinions/2021/sep/16/the-intersection-of-ipr-and-competition-law-2359297.html>
- 10) <http://www.cnlu.ac.in/2021/CIRF/1%20Mansee%20Teotia%20and%20Manish%20Sannwal.pdf>