



INTELLECTUAL PROPERTY VS. COMPETITION LAW

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Abstract

Intellectual Property Rights and Competition Law cross each other's path. At one side, Intellectual Property Rights provide exclusive rights to the creator while on the other side; Competition Law ensures free and fair functioning of market mechanism. The aim of both the stream is to ensure anti-competitive practices and boost of the economy.

As India is a developing country and is working on its administrative law. Indian company Micromax who has filed the case against the Microsoft India is just the starting of tussle between Intellectual Property Rights and Competition Law. There are thousands of cases arises out due to the conflict between Intellectual Property Rights and Competition Law. India has lack of case laws and jurisprudence which guide the legislative authority to form the stringent law. Moreover, India is looking the laws of US and EU and try to implement that law structure in Indian legal system.

The paper deals with the IP Laws and Competition Laws from India's Perspective and the same as with the US. The analysis of both the country shows that how government and legislative authority plays a vital role for both the stream. This paper will also show the judicial interpretation in respect to both these act. Moreover, Intellectual property rights and competition law co-exist on the same

parallel lines but it will never complement each other. There is no other way to work these two mechanisms by respecting and balancing between to each other.

Introduction

Intellectual Property Rights is a creativity that is presented to the world by the power of the mind. Intellectual Property Rights gives recognition to those people who by their artistic work, symbols, and designs create uniqueness in their work and differentiate them from others. The main agenda of this is to protect and secure the work of those intellectual who by their human intelligence has contributed something unique for the human welfare. Intellectual Property Rights try to promote each and every individual to do extraordinary in the science and technology, literature work and art that promotes creativity among other ones. The law that helps and secures the work of creativity of human intellectual is known as Intellectual Property Law.

Intellectual Property Rights are protected by different countries by their respective law and thus, serve the best interest to the creator. On the other hand, Competitive Law aid India by providing free and fair market to all the people who are engage in the sector of market. As India follows the mixed economy concept, it is of great necessary to provide a legal system that encourages free and fair market and this law helps all competitors by its preventative and stringent rule to run the market with the smooth and efficient functioning. In other words, competition law is a protective mechanism for the efficient working of the market.¹ The basic idea is to

¹ Competition Policy and Intellectual Property Rights in Developing Countries: Interests In Unilateral Initiatives And A WTO Agreement. (2019),

Retrieved from
<http://siteresources.worldbank.org/DEC/Resources/8>



stop anticompetitive behavior and to promote creativity.

But, it should be noted that Intellectual Property Rights is playing the vital role in the economy by promotion and encouraging others to invest and invent new things. Moreover, it is the duty of the state to protect and preserve the individual rights who has done invention to the nation and at the same time it is also a duty to protect the competitor rights for free and fair functioning of market forces.

IP Laws and Competition Laws in India's Perspective

There is always a great concern in India related to the discussion between competition law and intellectual property rights. At the one side, Intellectual Property Rights protect and give exclusive rights to those intellectual by giving them the legal identity of Patents, copyrights, Geographical Indication, Trademarks and many more and on the other side, Competition Law plays a significant role in the economy of any nation to run the market forces efficiently. Both the law has only one motive that is socio economic development and sustained economic growth. It is now evident from different countries approach towards Intellectual Property Rights that IP are the key and future of developed economy.

In 1991, India has created an open market policy in line with the economic liberalization of the country and with the increase in the competition in the market; India passed the Competition Act, 2002. The

[4797-1251813753820/6415739-1251814020192/maskus.pdf](https://www.supremoamicus.org/4797-1251813753820/6415739-1251814020192/maskus.pdf)

² Competition Act 2002, section 3, 4 and 5.

agenda of the Act is to avoid anti-competitive practices, not form any space of monopoly and most important is to regulate the limit of assets.² As per Article 38 and 39 of Constitution of India which mentions that each state has a sense of duty to promote its people welfare by promotion, securing and protecting the social, economic as well as political justice. Moreover, it is also the duty of the state to recognize the work by via of ownership and provide power of control in such way which serve best to its community. All these duties are tracked down in the Competition Law as well as MRTP act, 1969,³ which is influenced by US, Canadian and UK legislation.⁴

India who started its economic journey by holding the rights in her hands (government has a rights to take the decision for the welfare of the state). But soon, it was realized by the government forces that they can't control each and every market forces on their own and this realization leads to shift of public based economy to private based economy by the economic reform of 1991 that introduce with the term of Liberalization, Globalization and Privatization. India who is known for its conservative nature of economy has opened the doors to the world economy to invest and boost the economy. As India, to avoid any conflict between the competitors in the market, it has made competitive law for the efficient working of every sector of economy. By making competitive law, India tries to prevent the anti competitive practice that helps to control adverse affects on the economy and attain the best interest of both consumer and producer.

³ Jones, A., & Sufrin, B. (2008), *EC competition law* (p. 790), Oxford: Oxford University Press.

⁴ Jones, A., & Sufrin, B. (2008), *EC competition law* (p. 790), Oxford: Oxford University Press.



Moreover, Section 3 of the Competition Act provides the principle to prevent anti competitive practices among business unit. Substitution, India as a novice in the field of Intellectual Property Rights so that India is encouraging and promoting the creativity and for that India joined TRIPS agreement. The agreement work great for India in this field and achieved many intellectual claims. Moreover, TRIPS an agreement formed by the different nation on a common denominator of IP and Competition Law. TRIPS talks and adopted measured related to public interest such as health issue. Furthermore, it also shows serious concern and sense of duty related to nutrition level and other aspect of science and technology.⁵ Further, TRIPS came with the resolution that all members' state of TRIPS provides licenses of patentee during the complete the patent term. Moreover, TRIPS portend that every member state has a right to issue compulsory licenses which are of two types. First, there is a problem of overriding public interest and secondly, to avoid anti competitive manner.⁶

IP Laws and Competition Laws in the USA's Perspective

The US objective is to promote the scientific research that will help their economy to become the global leader in intellectual rights. The US is working continuously for its progress of science and by passing law related to copyrights and patents. Substitution, US is also working with its Anti-trust law for the efficient working of

their economy. US started it with the Sherman Act of 1890 and then Clayton Act of 1914. Sherman Act of US declared illegal all types of contracts, combinations or conspiracies which are in a restraint of trade or commerce among the states or territories or with foreign nations. The main objective that is required for this is that of mutual commitment and agreement for anti competitive behavior.

US have a very distinct feature in this act i.e., this act deals with both Monopoly and Conspiracy to monopoly:

Notably, that a person doing all his activities in legal way and due to that he has attain goodwill in the market can't be liable for monopoly unless he has done illegal act like prices control and exclusion of competition. Additionally, for monopoly there is required the combination of monopoly power and the intention to create monopoly; but there will be no monopoly of a person if he grows his business by implementing and conduction all the legal activities such as business tactics, schemes, superior product and subsequently he is also not liable for monopoly if the power is grown through all these activities.

Section 2 is added by US in the same act which prohibits monopoly or attempt regarding trade. Moreover, under this rule, monopoly and attempts to monopolize are judged with the reason.⁷

⁵ TRIPS (Article 8).

⁶ Compulsory Licensing under TRIPS, (2019),

Retrieved from

<http://www.cotropia.com/bio/Chapter26-- Cotropia-- PatentLawHandbook.pdf>

⁷ Roughton, A. (2008), The interface between intellectual property rights and competition policy, *Journal Of Intellectual Property Law & Practice*, 3(4), 190.



The Clayton Act of 1914 provide guidelines that prohibit illegal all types of stock merger, tying etc. in the marker because it leads to monopoly in the business. Additionally, this Act also mentions about the offences that relates to price discrimination, exclusionary conduct etc.⁸

Moreover, there has been a constant battle between Intellectual Property and Competition Policy. Prevailing to this, to prevent the constant battle between them, in 1995 antitrust guidelines was issued by Federal trade commission and department of Justice.⁹ The basic guidelines created by the federal trade commission clearly stated that IPs and competition policy are working for the common objective of promoting of science with respect to innovation and on the other hand it is also dealing with the consumer welfare.

Judicial Decision on IPR

In the case of in **Entertainment Network (India) Limited v. Super Cassette Industries Ltd**¹⁰, Supreme Court of India deals with basic question related to intellectual property protection and its competition effects on the market forces. The court with its due diligence specify that the owner of copyright has no doubt that he has a freedom on its product and it is on its discretion to use and charge on that royalty but it doesn't give him the rights to do any monopoly by the means of unreasonable terms and court strictly said that "*any transaction with unreasonable terms would*

amount to refusal". However, this right is not absolute.

In **Union of India v. Cynamide India**¹¹ Ltd and another, it was stated that it is a matter of great concern about price control on patented products and stated that especially lifesaving drugs could not fall outside the disclaimer of price control and especially it is more important when there is no substitute available in the market. Moreover, it becomes a great concern when it comes to developing countries that do not have proper resources for lifesaving drugs. The matter comes into notice because it was known that overpricing done to any patented product does not amount to violation of any competition policy.

In the case of **Hawkins Cookers Limited v Murugan Enterprises**¹², Delhi High Court stated that a company having unique mark gives him the sole right to create its business in the market with its product. As in the present case, Hawkins cookers mark of 'Hawkins' is used by defendant on its product of pressure cooker. As it was argued that, the use of gasket in the market is of different nature and the plaintiff by the mark tries to monopolize the market. So, decision was against the plaintiff as it was evident that the use is not of same nature and Hawkins cannot create monopoly with the use of its dominant position and it will be considered abuse of dominant status in the market.

These cases show that how the uses of IP are not absolute and it on the discretion on the

⁸ Ibid

⁹ IP Guidelines. (2015), Retrieved from <http://www.usdoj.gov/atr/public/guidelines/0558.pdf>

¹⁰ Entertainment Network (India) Limited v Super Cassette Industries Ltd [2008] Supreme Court of India (Supreme Court of India).

¹¹ Union of India v Cynamide India [1987] Supreme Court of India, 2 SCR (Supreme Court of India).

¹² Hawkins Cookers Limited v Murugan Enterprises [2012] High Court of Delhi (High Court of Delhi).



different authority which regulates the whole system. Moreover, they tries to balance between intellectual property and competition policy that helps to create efficient working of different market forces for the purpose of greater goods of economy.

Conclusion

As from the above discussion, it is evident that intellectual property rights has a discretion of protecting individual rights while on the other hand, competition policy cover the inapt of whole market i.e., it protect the market from dominating nature and helps in better working of the mechanism. These two policies will always be talk simultaneously, as one talk about the rights while other talks about the highest use of that rights. Authority never interfere with the intellectual property rights such as goodwill, reputation status, firm's identity etc and helps the person who has done unique for the society but on the contrary competition policy work to avoid the monopoly in the market by its rules and regulation. Notably, IP was promoted with the two incentives first, to protect the individual rights and interest on the unique product and second, to encourage the new comer to do unique and increase the competition in the market.

Moreover, there is vast difference between different laws in different countries. So, as to compare India with different countries and mainly with US and EU, India is far back from them in IPRs. The law in these countries has walked a long path by recommendation by different committee and by amendment in the law. As we compare the US policy, they have a unique law that don't present in India i.e., even intention to monopolize has also come under the inapt of law and that aid to efficient working of market forces. India has to work in many areas which of great concern

to reduce the conflict in IPR and competition policy.

There will always be heated debate on this issue with respect to individual rights over a product and its usage versus freedom of trade and commerce. It is matter of conflict for government to provide exclusive rights to one person by separating it from others or to provide freedom of trade of each and every product they want. For this, the government tries to solve the conflict between Intellectual Property Rights and competition policy by balancing both the sides. Evidentially, competition policy plays a vital role for IPR working in the market as it promotes and aid innovation but at the same time it makes laws which avoid the conflict between IP and other market competitor.
