INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 1 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

IPR IN THE REALM OF COMPETITION: A CRITICAL ANALYSIS

AUTHORS - SHIVANI JOHRI* & VASVI TALWAR**, ASSISTANT PROFESSOR* & RESEARCH SCHOLAR** AT SHARDA UNIVERSITY

BEST CITATION - SHIVANI JOHRI & VASVI TALWAR, IPR IN THE REALM OF COMPETITION: A CRITICAL ANALYSIS, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (1) OF 2024, PG. 1623-1627, APIS – 3920 – 0001 & ISSN - 2583-2344.

ABSTRACT

According to WIPO, Intellectual Property (IP) refers to creations of the mind, such as inventions; literary and artistic works; design; and symbols, names and images used in commerce. It is the creative work of the human intellect. Like any other property right, it gives the owner the sole right to benefit from their creation, for a specified period. Article 27 of the Universal Declaration of Human Rights provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.[3] It promotes science, technology, art etc. and can be associated with a nation's progress in those fields and other related fields. Competition Law is the body of law that seeks to promote market competition by regulating the market. This regulation is done by monitoring any anti-competitive conduct on the part of businesses and regulating the same. The objective of competition law is to ensure that there is a fair marketplace for consumers to choose from and for producers to carry on their business. It seeks to prohibit unethical practices that are aimed at gaining a larger market share, which causes difficulty to smaller businesses and new businesses trying to enter the market.

S 3(5)(i) of the Competition Act, 2002 deals with IPR in Competition Law. The section excludes IPR from restrictive trade practices and attempts to resolve some of the contradictions. This is because intellectual property protection is, in fact, necessary as it is a prerequisite for innovation, which is why most laws, including Competition Law, gives a priority to IPR protection.

At first glance IPR and competition law are like fire and water, i.e., they operate against each other. This perception has somehow changed over time and the current belief is that they have converging notions.

Competition law is focused on limiting monopoly power and the goal is to protect and promote consumer welfare. On the other hand, IPR is focused on innovation by providing exclusivity to the owners to perform a commercial activity but this does not mean they can exert monopoly status in the market. Even though IPR grants the holder a preventive right, this right cannot be exclusive so as to grant monopoly status. This is where competition law comes in and if there is any anti-competitive practice or conduct on the part of the IPR holder, it is subjected to competition law. The Competition act, 2002 deals with IPR conflicts in a comprehensive manner.

Competition and innovation are two major components of any market economy. They are the pillars on which growth, development and efficiency are built, generated and enhanced. This research paper discusses the intersection between IPR and Competition Act.

KEYWORDS- IPR, Competition law, WIPO, Monopoly

INTRODUCTION

In recent years it has been seen that the connection between competition law and Intellectual Property Rights (IPR) is the contemporary issues. As competition law deals with an efficient mechanism to counter anti-competitive agreements, regulating mergers and acquisitions, restricting the use of dominant position etc. On the contrary Intellectual Property Rights tries to strike a balance between the rights of the owner and social interest. It helps the owner of the intangible property gets exclusive right and commercial value for his intellectual creation.

It is indicated from the above that a tassel exists between IPR and Competition law. As IPR give exclusive rights and monopoly to which competition policy disagree. On the one hand it is important to boost the spirits of the inventor and on the other hand, competitiveness in the market should also be controlled. However, they are also complementary in certain areas. IPR provides a chance for technological innovation, which in turn create more products and results in the dynamic growth of the product, which is considered one of the aims of the competition policy.

Mainly market is regulated through different system or mechanism i.e. free market operation and regulated market operation.

Economic operation of a country is operated through two mechanisms i.e. free market and regulated market. the reason behind adopting the two different mechanisms is for better working of the country market

Free Market System: – Manufacture identify how much product should be produced what will be the capital invested for invention or innovation .examples of new products and also determine the price and the product. The government has no role in it .it reject the monopolistic behaviour of the producers.

In this, there is a direct relationship between service provider or producer or manufacturer and consumer. So through this system, the manufacturer takes unfair advantage of the consumer easily for the profit and the untamed competing interest cause an unbalanced in country economy or market.

Regulated Market System:- Business, trade (buying and selling) are governed through different regulatory bodies and they are controlled by the state. It is done to prevent unfair trade practices and to prevent a monopoly. There are a check and balance for monitoring the activities of the suppliers through different legislation. It also compels the manufacturer to produce the various products that are essential for the livelihood of the public at large and for improving the economy of the nation.

Criticism-When an excessive restriction is imposed on the economy as it will prejudice the economy rigid as there will be no or minimum flexibility in operation. Where there will be less flexibility than heir will be less invention or innovation, as a result of the consumer fils to get what they want actually etc.

It can be said by analysing both the mechanism that the countries require the regulated mark as well as a free market since both of them have their advantages and disadvantages and going with the operation of Competition law and IP invention is indispensable , price needs to be stable, so that the supplier along with the buyer is able to fulfil their needs the economy should not be a rigid one but open with the regulating bodies with to keep it under control. A market without any regulating bodies will cause an unbalanced situation and once it goes out of control it is difficult to restore.

Objective

It is generally seen that IPR and competition law have conflicting objectives. The reason behind this is that IPRs, by ascertaining limits within which competitors may exercise the exclusive legal rights (monopolies) over their invention, this seems to be against static market access and level playing fields in competition rules,

specifically restricting the horizontal and vertical limits, or on the abuse of monopoly position. The word 'competition' is used in different sense by IPR and Competition law.

The connotation of 'competition' in both IPR and competition law are different. The main objective of permitting license in IPR is to encourage competition among the prospective innovators and concurrently restrict the competition in several ways and after a specified period, the rights go to the public domain ending the competition. The primary objective of competition law is to stop the abusive practices in the market, stipulate and encourage competition in the market and make sure that customers get the proper product at an affordable price with improved quality.

TRIPS regarding IPR policy and Competition Law

There are generally two approaches that have been adopted to prevent IPR abuse: compulsory licensing (an involuntary contract between a willing buyer and an unwilling seller imposed and enforced by the state) and parallel imports (goods brought into a country without the authorization of the patent, trademark or copyright holders after those goods were placed legitimately into the market elsewhere).

Preventive Measures

Two methods have been used to prevent the abuse in IPRs:-

Compulsory licensing (a contract which is involuntary between a willing buyer and an unwilling seller is enforced by the government.)

Parallel imports (goods brought into another country once they have been placed in the market elsewhere without the permission of a patent or copyright holder.)

Under Article 31 of the TRIPS Agreement provides for the grant of compulsory licenses, under the following situation:-

- In the interest of public health
- In case of national emergency
- Anti-competitive practices

Secondly, there are many inferences regarding the interlink between competition policy and IPR that requires to be taken into account. Authorities regulating competition policy should consider each case relating to IPRs with reason approach. However abuse of dominance laws could be applied to IPRs and suitable remedies taken, this will reduce high potential cost regarding reducing incentives to innovate.

Competition and Patent Law

Patent law is adjunct with competition policy which helps to establish a fair market behaviour through preventing the unauthorized making and selling of patented products which is the main objective of competition policy. Competition concern arises only when the patent owner uses their innovation in the manner that perverts the purpose of patents rights and is inconsistent with their necessary function.

Granting a right to the owner of the patent will not amount to the infringement of antitrust but abuse of the rights will amount to a violation of antitrust policies. Patent rights are given only for the particular duration of time i.e twenty years from the date of filing. If such rights are given for the unlimited period then it results in misuse of monopoly power and it will clog the competition by restricting the invention or innovation of products. A competition law comes into the picture when the exclusive rights to exclude others is given to the patent owner from entering into the market. It comes into the picture to thwart disagreeable market condition.

Comparison between IPR and Competition Law

The correlation between IP rights and Competition Law seems to be contradictory to each other but in actuality, it is not; but it assists the person to invest in a dynamic competition by restraining the rigid competition. It gives benefits to the holder to make exclusive use of his product within a particular period. During such a particular period the patent owners have monopoly power and are in a position to

dominate. Such dominance will not lead to infringement of antitrust law.

Over time and from arising different cases it results in the supplementary but not a contradicting function of both the laws. To understand the problem arising while applying an IPR and competition law, it is necessary to look into the Indian laws about competition and how it has been structured to eliminate such problems.

Indian Competition Act about Competition and IPR policy

If we take the example of a developing country like India, Section 3 of the Indian Competition Act, 2002 states: "No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India."

Section 3 of the Indian Competition Act specifies that:-

"No enterprise or association of an enterprise is allowed to make any agreement about production, distribution, supply, acquisition, storage, controls of goods or provision of services, which will have a significant adverse impact on competition within India".

In general word, it means that it restrains the enterprise or group of the enterprise to enter into any agreement relating to any activities which will hurt competition. It is limited to India.

Section 3(5): It talks about the exception. it talks that competition law does not affect the IPR rights. But if we study the Section 3(5) with Section 4 then we find that it also restrains the IP holders to abuse its dominant position and if they misuse its dominating position then competition law will come into the picture. From this, we can conclude that they are supplementary to each other rather than contradicting it.

As India is a developing country and it is still at a developing at if we talk concerning IPR regulation and Competition.

Case:- Aamir Khan Production Private Limited vs The Director-General

The Bombay High Court states that the Competition Commission of India has jurisdiction to look into the matter of competition and IPR.

Valle Peruman and others Versus Godfrey Phillips India Limited

Facts- Trademark owner misuses the trademark by manipulating, distorting. It will amount to unfair trade practices of trademarks. The court while taking into consideration the competition policy of India stated that " all kinds of intellectual property have the potential to infringe the competition.

The court also further observed that a trademark owner has the right to use his trademark in a reasonable manner subject to the conditions imposed at the time of granting a patent.

Kingfisher vs Competition Commission of India

The court held that Section 3(5) does not limit the right of the holder of IP rights to sue for infringement of copyright, trademark, patent, etc. Competition Commission of India has conferred a power to deal with all the cases that come before the Copyright Board. Thus competition law does put the bar on the application from other law.

FICCI Multiplex Association of India vs United Producers Distribution Forum

In this particular case the main question was whether the competition in the market affects the right of the copyright holder. the court observed in the above case that the right granted to the copyright holder is not absolute right but it's a statutory right under the copyright Act, 1957. The European courts of justice also held that the objective of IPR is to encourage innovation in all areas and further provide commercial gain.

Entertainment Network (India) Limited vs. Super Cassette Industries Ltd,

In this case, the supreme court observed that the charge of royalty through an issue of license for the copyright owner is not an absolute right. if the patented product is priced very high then it will directly contradict the competition law but because of this license would be cancelled.

Conclusion

After analysis, it can be concluded that IPR is a right while on the contrary Competition law is regulating body which makes the regulations regarding the production, supply, distribution and storage of goods etc. to be performed by the enterprise while operating the market. IPR is said to be some benefit given to the creator of any product or author of any script to make exclusive use of it for a specified period. We can support this by labour theory which is given by which means that a person is liable to get the benefit of all hard and labour work

It appears that these both laws are contradicting in nature but they are not as we find from the above study that both the laws are supplementary to each other and one comes into the picture when one is misused. Competition law tries to offer wide varieties to the customer and it brings the balance between the right of the manufacturer and the customers by maximizing profit with a quality product at affordable prices. IPR also allows the manufacturer to get the reward for the sole creation of the product which in turn will help the public at large. The monopoly position offered by the IPR is prima facie not violating the competition policies but misuse of the position can be violating the policies.