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HARMONIOUS INTERPRETATION OF THE PATENTS ACT, 1970 AND THE COMPETITION ACT, 2002

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Abstract

The paramount objective of the article is to provide an insight about the positive relationship between The Patents Act, 1970 and The Competition Act, 2002 under Indian legal provisions which are often considered to work in opposite of each other's aim but in reality they complement each other. When analysed thoroughly, their provisions regarding promotion of innovation in relation to the public welfare, they stand on the same pace. The author has compiled the relevant statutory provisions of The Patents Act, 1970 and The Competition Act, 2002 particularly about the complementary relationship between the compulsory licensing and the prohibition of Monopolistic practices, aiming to promote public welfare.

Keywords – Patents, Fair Competition, Monopolistic practices, Compulsory Licensing

I. INTRODUCTION

Patents Act, which is a part of Intellectual Property Rights (IPR) and Competition Act are often considered rival to each other because of their aim and function as Patents Act, 1970 aims to provide exclusive rights and promote innovations by providing compulsory license to the innovators in India and on the other hand Competition Act, 2002 aims to promote fair market strategies by preventing monopolistic practices. Despite their aims, There is a no conflict between the Patents Act, 1970 and Competition Act, 2002 particularly regarding the grant of compulsory license and regulation of monopolistic practices as both the Acts are complementary to each other. Their sole purpose is to boost innovation in the country taking in public interest along with harmony.

II. PATENTS ACT AND COMPETITION ACT- THE BASICS

Aim of Patent Act, 1970

Patents act is a legal framework which provides for the protection of Patent in India. It gives the exclusive right to the owner of invention for a

limited time to provide the license to other institution as per their own free will. But Compulsory licensing under this act, provides government the right to issue compulsory license to other institution. According to Oliveira, "as the objective of IP is to induce innovations that will ultimately provide better conditions for price, quality and diversity of products available to consumers, it possesses the same final goal as competition policy, which is to promote welfare"⁷³⁰

In *Novartis AG v. Union of India & Ors.*⁷³¹, the Supreme Court emphasized the role of patent law in managing the political economy of the country, citing Justice Ayyangar's report which stated, "It would not be an exaggeration to say that the industrial progress of a country is considerably stimulated or retarded by its patent system according as to whether the system is suited to it or not." Justice Ayyangar further quoted Michel, stating that " * * * Patent systems are not created in the interest of the

⁷³⁰Sanjivini Raina, *Interface Between Competition Law and Intellectual Property Laws with Special Reference to Pharmaceutical Patenting in India* (2018) (Ph.D. thesis, Jamia Millia Islamia University) (on file with INFLIBNET Centre).
⁷³¹ IR 2013 SUPREME COURT 1311

inventor but in the interest of national economy⁷³².”

Aim of Competition Act, 2002

Competition act is a legal framework that aims at promoting fair competition within the country which prevents anti-competitive agreements and abuse of dominant position that either directly or indirectly negatively impacts the competition in India, ensuring consumer welfare. It restricts monopolistic practices in market⁷³³ through following:

- i. **Anti competitive agreements** – it prevents practices that are anti competitive in nature such as directly or indirectly determines purchase or sale prices, through tie-in arrangement, exclusive supply agreements, etc and all such anti competitive agreements that affect the fair competition in the country are void.
- ii. **Abuse of dominant position** – it prevents practices where a dominant enterprise abuses its position through directly or indirectly, imposes unfair or discriminatory Condition in price or purchase or sale of goods or service, etc.
- iii. **Welfare of consumer** – the main aim of competition act to give best to consumer though controlling monopolistic practices.

III. SECTION 84 OF PATENTS ACT & SECTION 3 AND 4 OF THE COMPETITION ACT, SAME OBJECTIVE: PROMOTING FAIR COMPETITION AND PUBLIC INTEREST

Section 84 of the Patents act, 1970 keeps a check on the exclusive rights given to a patentee- by virtue of the Patents Act, 1970, particularly under Section 48 of the Patents Act, 1970⁷³⁴. It deals with the power of controller in reference to the issuance of Compulsory license and the grounds on the basis of which an

applicant can apply for a compulsory license. This ensures that the promotion of innovation is in line with the public interest. The three main objectives of Section 84 can be clearly inferred from its clause (1):

- that the reasonable requirements of the patented invention should be satisfied for the public,
- that the patented invention should be available to the public at a reasonably affordable price, and
- that the patented invention has worked in the territory of India.

Section 3 & 4 of Competition Act, 2002 ensure fair competition in the relevant market-

Section 3⁷³⁵ expressly forbids any enterprise or association of enterprises or person or association of persons from entering 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 India⁷³⁶. While Section 4 of the Competition Act mandates that no enterprise or group shall abuse its dominant position.⁷³⁷ Section 3 and section 4 of the Competition act, though with analogous objective, confers the authority on the Competition Commission of India to adjudicate whether there is a violation of Section 3 which addresses anti-competitive agreements and Section 4 which addresses the abuse of dominant position by an enterprise.

In the following para of The Raghavan Committee Report, the members had the foresee ability of identifying the challenge vis-a-vis the two spheres of the law holding that “there is, in some cases, a dichotomy between Intellectual property rights and Competition Law where The IPR endangers competition and the Competition law engenders competition. There is a need to appreciate the distinction between the existence of a right and its exercise. During

⁷³² Michel, Principal National Patent Systems vol. I, p. 15 Novartis AG v. Union of India & Ors. IR 2013 SC 1311

⁷³³ Section 3 and 4 of Competition Act ,2002 deals with Monopolistic practices

⁷³⁴ Ankit Sharma, *Section 84 of the Indian Patent Act: Compulsory Licensing Explained*, The Legal School (Mar. 10, 2024), <https://thelegalschool.in/blog/section-84-indian-patent-act>

⁷³⁵ Competition Act, Section 3 (2002)

⁷³⁶J. Sai Deepak, *Patents and Competition Law: Identifying Jurisdictional Metes and Bounds in the Indian Context*, *National law school of India Review*, 2015, Volume 27, No. 2(2015), pp 135-146

⁷³⁷ *Ibid.*

the exercise of a right, if any anti-competitive trade practice or conduct is visible to the detriment of consumer interest or public interest, it ought to be assailed under the Competition Policy/Law⁷³⁸

Regulation of Monopolistic Practices

The Patents Act also provides for the provision of compulsory licensing to other institutions if the demand and needs of innovation is not fulfilled in public interest which directly complements the competition act which ensures competition in the country so that any patent holder doesn't exploit the market through its monopoly especially in healthcare sector thus addressing public health concerns. . The Competition act plays a crucial role in regulating the rights granted by Patents act to prevent monopolistic practices so that Patent holder should not lead to anti- competitive behavior⁷³⁹. If any company is involved in anti-competitive agreements, it results in the intervention of Competition Commission and exercising its power under section 27(g)⁷⁴⁰ mandates the defendant to grant permission to applicant on reasonable terms and conditions which ensures market dynamics. So, if patent holder may exploit its power under patents act, competition commission may interfere to promote public interest.

IV. LEGAL AND ECONOMIC IMPLICATIONS

These acts' complements both legal and economic implications leading to:

- **Encouraging innovation and accessibility:** The Patents Act provides for the mechanism of compulsory licensing that helps them to be responsible towards market needs. When the provisions of patents act are combined with that of competition act's

regulatory mechanism, it provides for an environment where innovation can be protected while also ensuring that important innovations are also made accessible to public⁷⁴¹.

- **Promoting fair competition:** The competition act provisions regarding anti competitive practices ensures that dominant enterprises are unable to dominant the market by using its position to inflate the prices of invention restricting the entry of other institutions by tie in arrangements where compulsory license act as counterbalance, allowing other players in the market to provide necessary services⁷⁴².
- **Facilitating innovation and access –** the provision of compulsory license serves as a momentum for patents holder to license their innovation more freely so that innovation can have more access to the public. Both Patents and Competition Act primarily aims to promote consumer welfare. Thus, if Patent holder's practices are found to be violative or exploitive of consumers, they can seek relief under Competition Act, creating a system of checks and balances.
- **Encouragement for future Licensing –** the knowledge that both competition and patent act work hand in hand and compulsory licensing is a provision that helps both Acts to act in public welfare, although current licensing application may be rejected but in future it can be reconsidered to change its licensing policy to encourage a co-operation between patent holder and potential licensee leading to innovation with access to technology.

⁷³⁸ Raghavan Committee, *High Level Committee on Competition Policy and Law* (1999), para. 5.1.8, cited in Sanjivini Raina, *Interface Between Competition Law and Intellectual Property Laws with Special Reference to Pharmaceutical Patenting in India* (2018) (Ph.D. thesis, Jamia Millia Islamia University) <http://hdl.handle.net/10603/307714>.

⁷³⁹ **K.R. Chawla v. Union of India** (2015) W.P.(C) 181/2015, Delhi HC ruled that patent holders must consider competitive practices and consumer welfare when enforcing their rights, promoting a balanced approach.

⁷⁴⁰ Competition Act, 2002

⁷⁴¹ **M/s. V.B. Desai Financial Services Ltd. v. State of Maharashtra** (2004) 8 SCC 341 The Supreme Court acknowledged that the implementation of patent rights should be aligned with competition law to ensure consumer interests are safeguarded.

⁷⁴² **Indian Pharmaceutical Alliance v. Union of India** (2016) W.P.(C) 1139/2016. The Delhi High Court emphasized that patent laws should not obstruct the production of affordable medicines, thereby supporting the principles of the Competition Act.

If analysed with the right lenses, intellectual property rights and the competition law share common objective to boost innovation and guarantee that some of the resultant benefits trickle down to the society at large. However, the approaches that they use to achieve this objective are utterly different. Competition law strives for free markets with no place for practices which can be called restrictive business practices, so that enterprise with novel and further efficient products or processes are able to enter those markets and eventually enlarge production provided there is sufficient demand⁷⁴³. Laws relating to intellectual property rights, particularly patent legislation, grants the original inventor with exclusive rights to deal with the invention i.e., use, sell, or license the invention for a limited period of time which is 20 years as per TRIPS.⁷⁴⁴ ch5 pg 5

A balance has thus to be found between competition policy and patent rights, and this balance must achieve the goal of preventing abuses of patent rights, without annulling the reward provided for by the patent system when appropriately used⁷⁴⁵. Formed on the principles of the TRIPS agreement, the Patent Act is to be in harmony and not inconsistent with the Competition Act⁷⁴⁶.

V. EXEMPTION UNDER SECTION 3(5) OF COMPETITION ACT, 2002

Section 3(5) of Competition Act excludes the applicability of the Competition Act in respect of any agreement, which relates to restraining infringement of any patent rights, which states that: (5) Nothing contained in this section shall restrict— (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting

any of his rights which have been or may be conferred upon him under—

- (a) the Copyright Act, 1957 (14 of 1957);
- (b) the Patents Act, 1970 (39 of 1970);

The exclusion of Patents Act in Competition Act clearly depicts the complementary nature of both, neither act meant to interfere in each other's nature but only to promote innovation with healthy competition. Further section 60⁷⁴⁷ of competition act states about the position of competition act in comparison to other act which would have overriding effect over other acts. The Courts discussed about the relevance of S. 60 of the Competition Act, 2002 in **Competition Commission of India v. M/s Fast Way Transmission Pvt. Ltd. and Others**⁷⁴⁸ and remarked that “Section 60 then gives the Act overriding effect over other statutes in case of a clash between the Act and such statues to effectuate the policy of the Act, keeping in view the economic development of the country as a whole⁷⁴⁹”

VI. CONCLUSION

The US courts have observed that the Competition Law and the Intellectual property Law are aimed at encouraging innovation, industry and competition.⁷⁵⁰ Further, the European commission also observed that “inherent conflict between intellectual property rights and the Community competition rules”⁷⁵¹ Thus, a balanced approach would allow a balance between the contracts concerning patents and their impact on Competition. It has been well identified that the Patent rights and Competition policies complement each other. This balance would prevent the abuse of patent

⁷⁴³ Sonam Sharma v. Apple Inc USA & Ors [2013] 114 CLA 255

⁷⁴⁴Sanjivini Raina, *Interface Between Competition Law and Intellectual Property Laws with Special Reference to Pharmaceutical Patenting in India* (2018) (Ph.D. thesis, Jamia Millia Islamia University) (on file with INFLIBNET Centre).

⁷⁴⁵ World Intellectual Property Organization. “Competition Law and Patent Law.” *WIPO*, n.d., <https://www.wipo.int/patent-law/en/developments/competition.html>.

⁷⁴⁶ TRIPS Agreement 1994, a. 40; Novartis AG v. Union of India & Ors AIR 2013 SC 1311; R Radhakrishnan & Balasubramanian, *Intellectual Property Rights: Text and Cases* (1st edn, Excel Books 2008) 72

⁷⁴⁷ S. 60 of the Competition Act, 2002- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

⁷⁴⁸ 2018 4 SCC 316

⁷⁴⁹ Kritika Dobhal, *M/S Fast Way Transmission Case: A Wider Import for Section 4(2)(c) of the Act*, *Competition Law Observer* (July 11, 2018), <https://competitionlawobserver.wordpress.com/2018/07/11/m-s-fast-way-transmission-case-a-wider-import-for-section-42c-of-the-act/>.

⁷⁵⁰ Atari Games v Nintendo, 897 F.2d at 1576 <https://www.kirkland.com/siteFiles/News/6BC4FB931079D1FE310B4FC098D5B8A3.pdf>.

⁷⁵¹ Mansee Teotia & Manish Sanwal *INTERFACE BETWEEN COMPETITION LAW AND PATENTS LAW: A PANDORA BOX* Vol. 1 (01) E- Journal of Academic Innovation and Research in Intellectual Property Assets, pp. 12 (2020)



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rights without annulling the reward provided by
the Patent system.⁷⁵²



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