

LEGALFOXES LAW TIMES

AN ANALYSIS OF BID RIGGING IN INDIA WITH REFERENCE TO U.K, USA, AND EU.

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1. Introduction

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1.1. Introduction to the subject

The explanation to the term 'bid-rigging' is defined under sub-section (3) of Section 3 of the Competition Act, 2002 (as amended) defines;

The Competition Act, 2002, helps in improvising, fostering modern competition laws. It protects anti-competitive agreements in India, which are practiced by different enterprises. The Competition Act's main objective is to prohibit anti-competitive agreements, abuse of dominant position by enterprises, and have regulation in mergers, amalgamations, and acquisitions, etc. It has a scope to ensure that there is no adverse effect on Competition in India.

Bid-rigging or collusive bidding is one of the horizontal agreements that shall be presumed to harm competition under Section 3 of the Act.

Bid-rigging is generally an illegal act/ practice in which the competitive parties collude with one another as to who wins the bid in the process. Bid-rigging is a form of anti-competitive collaboration and is a form of market manipulation; in a free market, when competitors collude with each other, it might result in a rigged price that is higher than what has been stipulated in the market. Bid-rigging is harmful because the consumers and taxpayers tend to pay more forcibly higher fees and procurement costs.

My thesis is about Bid-rigging's adverse effect in India and various countries like the UK, the USA, the EU, etc. I am giving an overview of bid-rigging under the Competition Act, 2002; how it has developed throughout these years, and will provide purview case laws regarding Bid-rigging.

This research, in the end, will help you understand the meaning of Bid-rigging and how the Competition Commission in India has taken *suo moto* cases pertaining to this subject; it will also help you understand the various forms of bidding rigging and will give you a complete overview of how Bid-rigging is varying in other countries along with case laws and will look into the impact that these precedents have made, nor will foresee suggestions accordingly.

1.2 Statement of the problem :

Bid-rigging has become a common issue in India and how it is a fraudulent scheme in procurement auctions, which results in non-competitive bids, and this will be supervised by corrupt officials too. Bid-rigging is most likely known as price-fixing, where the bidders are called in the market to bid. 'Share the spoils' has been a synonym for bidders who oppose the government, which is illegal. The expected outcome of this paper is to give a better outlook on Bid-rigging in India with reference to UK, USA, and EU. And what measures can be taken in light of the after-effects of Bid-rigging in India? What other alternatives can be scrutinized, Whether any new sections can be included in the Competition Act,2002 pertaining to the penalization of Bid-riggers? Or Whether Competition Act,2002 requires an amendment? etc. The spotlight of this paper will be supported by various other relevant topics including the Indian Penal Code 1860 (IPC)and how the Competition Commission in India (CCI) may pass *inter-alia*

under Section 27 of the Competition Act, 2002 and interim order Under section 33 of the Act, and initiatives to improvise this type of illegality.

1.3 Research Questions :

1. What are the ramifications of Bid-rigging in an Anti-competitive agreement?
2. What are the measures taken by the Government Pre-Competition Commission and Post-Competition Commission in India under the Act?
3. What are the interim measures taken by CCI?
4. What measures taken to intercept Bid-rigging, and what course of action must be followed?
5. Whether Competition Act, 2002 requires an amendment and whether there should be a special provision pertaining to penalization ?

1.4 Research Objectives :

- To give an overview of how public procurement is easily manipulated and preventive measures to avoid the same.
- Details about how other bidders must be aware of the bid-riggers.
- It provides suggestions under the Competition and amalgamates it, preventing monopolistic competition amongst the companies.
- Interpreting Section 3(3), Section 27, and Section 33 of the Competition Act, 2002.
- How Government contracts are regularly handed over to one bidder through public-auction/ public tender which will ensure public procurement, which in turn maximizes the economy and efficiency of Government Procurement.
- This research tries to highlight the impact and misuse of laws by the companies who try to make it a monopolistic competition in regards to the following Acts;
 - Competition Act, 2002
 - Indian Penal Code 1860

1.5 Research Methodology :

For the research on the topic '*AN ANALYSIS OF BID RIGGING IN INDIA WITH REFERENCE TO U.K, USA, AND EU,*' the researcher adopts a Doctrinal Research. The

objectives of this research type were adopted for greater accuracy and to facilitate a more profound analysis of the topic. There is an adequate field-based study on the subject matter and sufficient matter on the nature and scope of the applicability of laws, especially in the context of India and various countries like the UK, USA, and EU. This research looks into multiple books and materials available online. As the chosen topic is still out for various deliberations, analytical research helped to critically analyze various materials available online to solve the research problem and to prove the hypothesis.

1.6 Literature Review :

1. David Imhof, '**DETECTING BID-RIGGING CARTELS WITH DESCRIPTIVE STATISTICS,**' Journal of Competition Law & Economics, Volume 15, Issue 4, December 2019, Pages 427–467.

<https://doi.org/10.1093/joclec/nhz019>

The author deals with how bid-riggings were made with descriptive statistics and how it negatively affects the variance of bids, as illustrated by the coefficient of friction and by kurtosis statistic. He later mentioned how the bidders manipulate the proposals to secure themselves from the cartel and win the contract. An asymmetry mechanism, a skewness statistic are all defined under this journal. How the percentage differentiates between first and second lowest bidders. Finally, he mentions the behavior of how firms have changed between the cartel and post-cartel periods.

2. Sakshar, '**Bid rigging- unethical means for profit gains,**' July 31, 20202

<https://www.lexology.com/library/detail.aspx?g=0f310866-214f-4145-a951-9876f7061755>

The authors talk about the basis of Bid-rigging under the Competition Act, 2002. And it also states about the different suppliers involved in the Composite Brake Blocks (CBBs), which involved the Bid-rigging cartel during 2009-2017. Considering the current pandemic situation, these suppliers' firms were not penalized for this particular issue. Hindustan Composite Limited was one of many firms that were involved in this bid-rigging arrangement. The Competition Commission in India (CCI) held these opposition parties and their respective officials. They had

indulged in an anti-competitive act in the CBBs market utilizing pre-price determination, market allocations, and coordinating bids to manipulate the bidding process during the stipulated time. These were concluded under provisions of section 3(1) of the Competition Act, 2002.

3. Robert Clark, Decio Coviello, Jean-François Gauthier, Art Shneyerov, '*Bid Rigging and Entry Deterrence in Public Procurement: Evidence from an Investigation into Collusion and Corruption in Quebec*,' *The Journal of Law, Economics, and Organization*, Volume 34, Issue 3, August 2018, Pages 301–363.

<https://doi.org/10.1093/jleo/ewy011>

The author investigates the collusion and corruption concerning cartels in public procurement auctions. The allegations made from bid-rigging, market segmentation, complementary bidding, and bribes to bureaucrats, and where, in 2009, a police investigation was also mentioned by the author.

4. Aditya Bhattacharjea, Oindrila De, '*Anti-cartel enforcement in India*,' *Journal of Antitrust Enforcement*, Volume 5, Issue 2, August 2017, Pages 166–196, <https://doi.org/10.1093/jaenfo/jnx001>

An overview of the legal framework and case law pertaining to anti-cartel enforcement in India. Certain enforcements were made under the Monopolies and Restrictive Trade Practices Act (MRTP), which was established under 1969 to 2009. This author also gives a significant critique of specific case laws under this statute up to the end of 2016. But it was also stated that individual decisions have been remanded, reversed, or modified on appeal. The author finds the antitrust regime as insufficient attention to deterrent penalties, price transparency, and the collusion-facilitating role of vertical restrictions and government policies.

5. *Rajasthan Cylinders v. Competition Commission: A guiding tool for Bid Rigging cases*

<https://www.barandbench.com/columns/rajasthan-cylinders-cci-competition-commission-bid-rigging>

In this case law, the SC has decided to contribute to the developing jurisprudence of competition law. This decision is significant as India has a vast diversity of market situations. In India, many

suppliers/sellers exist in various locations that supply goods/services to a limited number of buyers. Many such suppliers will be servicing the government dominated/controlled business such as mining and transportation of minerals, steel sector, railways, etc. There are many cases of such suppliers having been investigated and charged for indulging in anti-competitive practices by the Commission, and their issues are pending at various forums.

6. M.M.Sharma, '*Getting Rid of Bid Rigging in Public Procurement*,' 17 November 2015.

<https://www.mondaq.com/india/cartels-monopolies/444024/getting-rid-of-bid-rigging-in-public-procurement>

The author mentions how the jurisprudence of CCI talks about the cartel and how bid-rigging is still evolving and how public procurement in India constitutes about 30% of GDP, with a total annual expenditure of around Rs. 15-20 lakh crore, and that the Union Government alone in the range of Rs.2.5-3 lakh crore. The author states how corruption is the most vulnerable activity and especially in the government field.

1.7 Chapterization

Chapter 1: Introduction

- Introduction to the subject
- Statement of Problem
- Research Questions
- Research Objectives
- Research Methodology

Chapter 2: LITERATURE REVIEW

Chapter 3: HISTORICAL APPROACH OF BID-RIGGING

Chapter 4: CONCEPTUAL MEANING OF BID-RIGGING

Chapter 5: ISSUES CONCERNING BID-RIGGING

Chapter 6: COMPARATIVE ANALYSIS OF THE LEGAL FRAMEWORK RELATED TO
BID-RIGGING IN OTHER JURISDICTIONS

Chapter 7: JUDICIAL PERSPECTIVE (WITH CASE LAWS)

Chapter 8: CONCLUSION AND SUGGESTIONS



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