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CATASTROPHE OF MRTP ACT AND NEED FOR THE NEW COMPETITION LAW — AN ANALYSIS

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ABSTRACT

Currently, in the Indian competition law, the Competition Act 2002 applies. Prior to then, the Act of 1969 on Monopolies and Restrictive Trade Practices was controlled principally (MRTP). In this study, the causes for its failure and eventually replacement are identified and discussed. It follows the history of the Act, summarises, and summarises the act briefly, and examines the disadvantages critically. There have been several problems, such as vagueness and ambiguities, excessive government control, 'per se' rule rather than 'rule of cause,' policy on voluntary disclosure, overwhelming export stimulation, etc.The market and how these disadvantages adversely affect the market rather than serve the aim of competition law are explored. In addition, for the goal of the same study, a few cases were considered, and the Act's incapacity court accounts were given. The conclusion is that its imprecise and powerful character led to its collapse in 1969, the Law on Monopolies and Restrictive Trade Practices.

Key terms - Competition Act, MRTP, Restrictive Trade Practices.

I. RESEARCH METHODOLOGY

This Legal Research paper follows Non-Empirical Legal research method. The legal research for this research paper contains statistics accumulated from numerous articles and publications from reliable sources which are available on the web.

II. RESEARCH QUESTIONS

This legal research paper pursues to clarify why the Monopolies and Restrictive Trade Practices, Act 1969 (herein after referred as MRTP), failed its purpose as a statute governing the competition in India.

This paper also pursues to conclude that what were the drawbacks of MRTP Act and why India felt the need for a new competition law.

III. SEGMENTS

1. INTRODUCTION

In today's global scenario, competition on the market is inevitable. It is seen in almost every economy on the planet, and Indian economies are no exception. While the government's priority in post-independence India was to support the public sector to fuel economic growth, it failed to recognise that this policy resulted in large companies and corporate institutions engaging in monopolistic[1] and restrictive[2] trade practises.Consequently, the ushering in of the "License Raj" and the consolidation of the country's economic encouragement in the hands of a few large companies, the need for anticompetitive laws became apparent, prompting the passage of the Monopolies and Restrictive Trade Practices Act of 1969, which was our country's first and finest Competition Law statute.

Competition law is the branch of law concerned with promoting and supporting, or attempting to preserve, a free and open economy through the enforcement of anti-competitive conduct by businesses. In India, this law was carried out by the MRTP until September 2009, when it was repealed by the new statute, the Competition Act, 2002.

The rationale for enacting the MRTP Act is indeed embodied in the Indian Constitution's Directive Principles of State Policy. Articles 38[3] and Article 39[4] of the Constitution state that the state shall strive to promote the welfare of the people and safeguard their economic, social, and political interests; it shall strive to distribute the nation's resources evenly to avoid unfair

[1]The Monopolies and Restrictive Trade Practices Act, 1969, §2(i).
[2]The Monopolies and Restrictive Trade Practices Act, 1969, §2(o).
[3]INDIA CONST. art. 38.
[4]INDIA CONST. art. 39.

advantage and secure the interests of all; and it shall insure that perhaps the economic system does not operate in a way that concentrates wealth.

The aim of the MRTP, as embodied in the Act, is to establish that the functioning of the market structure should not result in the accumulation of economic force to the detriment of the public, to regulate monopolies, to forbid monopolistic and unfair trading activities, and to provide for purposes relating with or relevant thereof.

India implemented its initial competition law long ago which was called the MRTP Act, 1969. The Monopolies and Restrictive Trade Practices bill was presented in the Parliament in the year 1967 and in the same year, it was submitted to the Joint Select Committee. The MRTP act, 1969 came into force w.e.f. 1 June 1970.

2. OUTLINE OF THE ACT

The enactment of the MRTP Act was based on the socio-economicviewpointpreserved in the Directive principles of State Policy (DPSP) contained in the Constitution of India.Article 38 and 39, which states, State to secure a social order for the promotion of welfare of the people and shall secure social, economic, and political justice for its people. The state's resources are disseminated prudently and efficiently in an approach that in its fairest operates the benefit of the people.

Control of monopolies, prohibition of monopolistic, restrictive, and unfair trade practices, prevention of concentration of economic power to the common detriment was the main aim of MRTP Act, 1969, has been given in the Act.

Extent of this Act's pertinency:

- Monopolistic Trade Methods: The practices commenced by Big Corporation and businesses by manipulating their market stance that obstruct or eradicate market's healthy

competition. Such activities are against consumer[5] welfare. The Monopolistic Trade Practices (MTPs) are covered under Chapter IV of the Act.

- Restrictive Trade Methods: The MRTP Act restrains and inhibits the businesses from pampering in Restrictive Trade Practices.These are the practices that impede the revenues or flow of capital in the market. Certain corporations have a tendency to dictate the supply of products in the market either by restricting the distribution or constraining production.
- Unfair Trade Methods: The provision of Unfair Trade Practices was added by the Amendment of 1984 to the MRTP Act[6]. Unfair Trade Practices is fundamentally an act of misleading, false, misrepresenting, or distorted interpretation of facts concerning the commodities and services by the businesses. The Sec 36A of the MRTP, Act, 1969[7], forbids the businesses from pampering Unfair Trade Practices.
- Control and Command Method: It states that it is compulsory for firms holding assets whose worth is greater than Rs. 20 crores to acquire a permit from the Government in advance of stepping into any kind of combination agreement, including mergers and acquisitions as well. It is given under Chapter III of the MRTP, Act, 1969, which talks about concentration of economic power.

MRTP Act, 1969, also offered for the formation of MRTP Commission, a governing authority to regulate the offences under the MRTP, Act, 1969.

3. MRTP ACT, 1969 – A FAILURE

Since 1970, the Act in question had gone through amendments and revised multiple times to prepare for the volatility in the market.

On the commendations of the Sachar Committee, the MRTP Act was amended in the year 1984. Section 36A was inserted by the MRTP (Amendment) Act, 1984[8]. It was inserted to safeguard the customers in opposition to the unfair trade methods so that an efficient lawsuit can be made

[5]The Competition Act, 2002, Section 2(f).
[6]Monopolies and Restrictive Trade Practices (Amendment) Act, 1984, Act no. 30 of 1984, §36A (August 1, 1984).
[7]The Monopolies and Restrictive Trade Practices Act, 1969, §36A.
[8]Monopolies and Restrictive Trade Practices (Amendment) Act, 1984, Act no. 30 of 1984, § 36A (August 1, 1984).

against them. Consequently, accusations contrary to deceptive ads, misrepresentation of products, deceptive guarantees came under the horizon of the MRTP Act.

The License Raj which inhibited the development of the economy of India was consequentlyeradicated by the MRTP (Amendment) Act, 1991[9]. Later the amendment, the private corporationsoperatingwasnot obliged to take permit or approval from the central government prior totaking out any combination. This Amendment to MRTP Act arose to influence in the events of the New Economic Policy of 1991 which preceded to globalisation.

However, following the 1991 economic changes, it was established that perhaps the MRTP Act, 1969 had become outmoded in certain ways in the face of global economic expansion, notably in relation to competition rules, and that there was a need to shift attention from preventing monopolies to boosting competition. The Raghavan Committee debated the problems and concluded that the MRTP Act has been out of date and will not be able to achieve the objective of a new competitive environment. A proposed legislation (Competition Act) may be adopted, the MRTP Act may be repealed, and the MRTP Commission may be dissolved. Since this Consumer Protection Act of 1986 safeguards unfair trade practises, they do not need to be included within the Competition Act.

As a response, in September2009, the MRTP Act, 1969 was repealed and replaced by the new Competition Act,2002, in an attempt to pave the way for a stronger, more competitive market.

IV. CRITICAL ANALYSIS

A. SHORTCOMINGS OF THE ACT

As discussed above, even on the heels ofvarious amendments to the MRTP Act, 1969, it even now was not barren of ambiguities and deficiencies. Some of them are:

- Intense Control of Government - The MRTP Act exposed all firms, large and small, to a disproportionate amount of government regulation.It is a complicated and time-consuming method, and many firms find it arbitrary, so they will not undertake it. Accordingly, they won't be able to stay in business. Such a clause impedes the free

[9] Monopolies and Restrictive Trade Practices (Amendment) Act, 1991, Act no. 58 of 1991.

movement of diverse market participants, therefore contradicting the aim of the laws and hurting the eventual customer.

- Imprecise and Confusing Law - The phrase "restrictive trade practises," as defined in Section 2(o) of the MRTP, encompassed any activity that limited, hindered, or impeded competition in any way. However, it failed to provide a definition that may assist in determining whether a conduct would be limiting and so constitute an offence under the Act. Furthermore, numerous key concepts linked to anti-competitive actions, such as abuse of dominance, cartels, price fixing, collusion, predatory pricing, and so on, are defined. “Section 2(o) therefore encompassed all forms of conceivable offences, resulting in a wide range of interpretations by various courts in which the essential spirit of the statute was lost.”
- Obsolescence - The vibrant effort of the trade market of India in the direction of globalized market, particularly after the NEP, 1991,directed to the MRTP Act, 1969shortlyturn intoobsolescence.
- No threshold – The regulation of the combinations was not defined anywhere in the Act.
- “Per se rule”as an alternativeto“Rule of Reason” - All the numerous infractions in the MRTP Act, 1969 were per se unlawful. Rule of reason, which was established whilst this Act was not operated in this ruling, despite the fact it was distinguished by Supreme Court in the case of Telco v. Registrar of Restrictive Trade Agreements[10].
- Dominance considered bad –In the MRTP Act, dominance was regarded harmful in and of itself, regardless of whether a party misused it or not. There used to be a specific mathematical criterion for determining the same, namely, if a firm control more than 25% of the market share in either commodities or services[11], it was called dominant. Unfortunately, this was incorrect since, even if a corporation owned, perhaps, 24 percent of the market, it would not be called dominant. This was unjust, and a massive price to pay for the additional percentage point.
- Unnecessary Export Promotion –Section 38[12] of the MRTP said that if any company endeavour had the potential to deliver large exports in the future, they would be given a free pass from all regulators and any anti-competitive acts would be monitored. There

[10]Telco v. Registrar of Restrictive Trade Agreements, A.I.R. 1977 SCR (2) 685 (India).
[11]The Competition Act, 2002, Section 2(u).
[12]The Monopolies and Restrictive Trade Practices Act, 1969, §38.

was no thought given to the negative effects or difficulties it may cause in the market, only the desire to gain money in foreign currencies. The main issue was that it frequently resulted in greater expenditure than foreign cash gained.

- Incompetent Commission of MRTP - The Act allowed for the establishment of an MRTP Commission, which might operate as a judicial and administrative entity, regulating and adjudicating anti-competitive acts in the nation. Nevertheless, even though being essentially a judicial authority, its officials were appointed by the government, expressing concern as to its impartiality, as well as other administrative flaws that harmed the organization's efficacy and efficiency, such as extended delays in appointing and replacing members, and a reluctance to build additional branches, appointing new officials, etc. Some other oddity which hindered the Commission's efficient operation was that it was ultimately up to the Government to decide whether a particular problem should be submitted to the Commission. The government used to just make judgments concerning the matter independently, without really addressing the experts designated to the Commission, thereby contradicting the central principle of the Commission.The MRTP Commission's view has become obsolete.
- No penalties - Section 12 of the MRTP Act[13], particularly defines the authority of the MRTP Commission, illustrates the various sorts of directives the Commission is empowered to issue when any anti-competitive conduct is identified, although it may not specify any sanctions. This means that the Commission lacked the authority to levy fines or penalties on violators. It would have no deterrent impact on the rest of the participants if the toughest punishment issued to defaulters was a halt and desist order. As a result, such provision was partially ineffectual.
- UncontrolledRelease Policy–There was no regulatory authority under the Act who would keep a check on the registration of the enterprises. It was up to the discretion of enterprises to disclose them voluntarily.
- No combat over International matters – The MRTP Act has solely Indian competence, with no extrajudicial effects. As just a reason, it would have no authority against businesses listed outside of India that engaged in anti-competitive actions that had the potential to damage the Market in India whether such a business had Indian origins or

[13] The Monopolies and Restrictive Trade Practices Act, 1969, §12.

entered discussions with an Indian partner. The MRTP Act was ineffective in combating multinational cartels[14].

- Unilateral nature –The MRTP Commission was regulated by the government alone. They used to unilaterally approve determinations regarding the same devoid of even discussing it with the authorities assigned to the Commission, consequently vanquishing the sole object of establishing it in the first place. The status of the MRTP Commission had come to be superfluous.

After looking at the abovementioned shortcomings, it is crystal clear that even after so many amendments, the MRTP Act was superfluous.The MRTP Act did have its flaws and was essentially failing in fulfilling the objective it was set out to achieve. Therefore, it failed, and the need of a new competition law was felt.

B. JUDICIAL STANDING

After looking at the Judicial standing of this Act would through some more light regarding the purpose of MRTP.

In *Director General of Investigation and Registration [DG (IR)] vs. Modi Alkali and Chemicals Ltd*[15],The MRTP Commission received an anonymous petition about the involvement of a cartel causing great shortages of products, and the price of chlorine gas and hydrochloric acid rose dramatically as a result. According to the Director General, there was no such cartel. The MRTP Commission, nevertheless, upon further investigation, developed a description for cartel because the Act lacks one.Though the appeal was rejected due to the absence of facts, this case is significant because it barred a new form of anti-competitive deals, exposing the lack of such provisions in the MRTP Act.

In *Sirmur Truck Operator's Case*[16], For truck operators that were not members, the organisation set higher prices, although for members, lower rates were set. As an RTP, this practise was questioned. A cease-and-desist order was issued after it was determined that this was an RTP as specified by Section 2(o) of the Act. This case was significant because it demonstrated that the

[14]The Competition Act, 2002, Section 2(c).
[15]Director General of Investigation and Registration [DG (IR)] vs. Modi Alkali and Chemicals Ltd, CTJ 2002 459 (MRTPC) (India).
[16]Truck Operators Union vs. Mr. S.C. Gupta & Mr. Sardar, A.I.R. 1986 SC 991 (India).

commission lacks the authority to impose punitive punishments, such as sanctions and fines, to stop anyone who engage in such acts, which is another flaw in the MRTP Act.

In the landmark case of *Tata Engineering and Locomotive Co. Ltd vs. Registrar of Restrictive Trade Practices Agreement*[17], The petitioner entered an arrangement with a third party that gave them fixed territory through which they could sell their goods. This geographical limit was challenged as being an RTP. The Apex Court applied the law of reason in this case, holding that it was not an RTP because the basic aim was to ensure fair distribution, undermining the per se rule for the first time in India. This judgement, however, was left ineffective after the 1984 Amendment.

Moreover, in *American Natural Soda Ash Corporation (ANSAC) vs. Alkali Manufacturers Association of India (AMAI) and others*[18], The petitioner was attempting to export their goods to India, which is permitted under the MRTP Act. The complainant lodged a lawsuit alleging that these shipments were part of a cartel. The Court's hands are tied, however, since the bill makes no provision for extraterritorial application. As a result, no remedy can be taken. Another example that brought to light a significant flaw in the new laws at the moment was this one.

Numerous loopholes were identified after these cases appeared in front of the judiciary.

V. CONCLUSION

India is considered lately as one of the world's largest economies. If the stakes are such, our legal regulation must be maintained unchanged to maintain a picture of this kind. The importance of anticompetitive legislation must not be emphasised, and our lawmakers knew the same when they voted to fully abrogate the MRTP Act and to substitute it with the Competition Act of 2002.

In our study, we can clearly see that the inconveniences and shortcomings of the Act have been quite infringing on the intent of the Act, are imprecise and static, and they cannot adhere to our

[17]Telco v. Registrar of Restrictive Trade Agreements, A.I.R. 1977 SCR (2) 685 (India).
[18]American Natural Soda Ash Corporation (ANSAC) vs. Alkali Manufacturers Association of India (AMAI) and others, CompLJ 1998 152 (MRTPC) (India).

country's New Economic Policy.It would have been counter-productive to have this type of law at the time of globalisation, in which economic prosperity and development would have been the focus. Our nation required an adequate, more extensive law that could address the demands of the modern economy and must be capable and able to respond to potential needs as the economy continues to change.

The response to this matter was largely because of its ambiguous, impotent nature and the other weaknesses, as described in the analyses, which contributed to the collapse of the MRTP Act. Finally, we may argue that the Competition Act of 2002 is a far more coherent piece of law that has succeeded in responding to current industry demands and has also given us a capable governing body to administer them. The legislature's decision to introduce the 2002 Competition Act was also very realistic.