JETIR.ORG ISSN: 2349-5162 | ESTD Year : 2014 | Monthly Issue
JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH (JETIR)
An International Scholarly Open Access, Peer-reviewed, Refereed Journal

# Interdependence of Competition, Competition Law, and Exterminism in India

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***Abstract***: Competition law wants to achieve consumer welfare and encourage fair trade and practice in the Indian market. Law enforcement of the competition law on foreign producers can affect India's economic growth. There is also the power to pass an interim order if the commission is satisfied that it is needed until the dispute is settled. The commission can pass the ex parte order under certain conditions and also has the power to enforce the monetary penalty for the execution of his orders after conducting the proper inquiry. While making an inquiry under Section 32, the Commission has to work in accordance with sections 19, 20, 26, 29, and 30 of the Competition Act 2002. As we all know, this kind of unilateral exterritorial law may likely create a problem at the level of international relations. So, the new competition Act 2002 deals with this problem with section 18, where it is provided that the Competition Commission of India, to enforce its provisions, can collaborate with other agencies with the prior permission of the central government. In this paper, the author wants to explain concepts of Extraterritorial jurisdiction of competition law.

## INTRODUCTION

The competition law wants to achieve consumer welfare; sustainable use of natural resources leads to improved and efficient products and services through new techniques, better ways, and methods. By following its path, a consumer can get a high-quality product at a lower price; apart from that, it also encourages fair trade and practice in the Indian market. So that it also provides several choices to the consumer of the product and services. All these goals and objectives contribute to strengthening a country's economy and enhancing its growth. So, we can say that the provision and compliance of the Competition Law are very important.

Any competition regulatory or agency of any country works to mandate the provisions of the competition law of that particular country within its boundary and territory. The ingredient of this law is consumer welfare, producer welfare, economy etc., which are discussed in it, which is very common. However, the issue that arises in this law is which consumers and producers belong to which country. Firstly, a consumer may belong to its territory; on the other hand, the producer may belong to the same country or outside the territory of that country.

After Liberalisation, Privatisation & Globalisation (LPG) were implemented in India, India was globally open for trade, where cross-border transactions were essential. There is no certainty that the producer is from the same country or jurisdiction. The main issue of extraterritorial jurisdiction arises from here. When there is competition, law enforcement mandates the producer who resides within the country's limit. But no jurisdiction for the producer who does not belong to the same country. If that be the case, then does consumer welfare and producer matter at that time? They should care about the producer located in some other country. The regulatory body is concerned about the consumer, but this concern may not extend to foreign producers. If the world is a single country, it does not create an issue but is divided by political boundaries. The enforcement of the competition law of a particular country on that foreign producer is another issue of the competition law and how can we deal it in the present scenario and competing world where the plenty of restricts on trade or on the foreign producer may affect the economic growth by adversely affecting the trade policies.

In this paper, the author tries to explain concepts of Extraterritorial jurisdiction of competition law, what doctrine judicially follows at the time of dealing with this issue and what various provisions help to tackle this issue in the context of India, and what is the history of this issue in India and other countries.

## MEANING AND SIGNIFICANCE

The common nation for the jurisdictional authority of any country is to the extent of its geographical limits. For better understanding, the application of laws in that country is purely based on the domicile or ordinary residence of that country. The law is only enforced on the persons who ordinarily reside within the boundary of that country. By extending this idea, we can get the concept of extraterritorial application of the law. 'Territorial principle' is when the country makes laws affecting the conduct of persons within its territory and regulating its citizens' behaviour when they are in other territories, citizens for this purpose, including companies incorporated under its law, are called the 'nationality principle'[1]. The territorial principle has extended so that the State is recognised for having jurisdiction not only where the act originated, its territory (known as 'subject territory'), but also where the objectionable conduct originates abroad but is completed within its territory (objective territoriality')[2]. In the most straightforward words, we say someone commits a crime within our country's limits while sitting in a different country. As enforcement and in the name of punishment, we fire at him only within our country's limits, which would not affect that firing because the criminal is far from the reach of the effects of that firing.

In this era of globalisation, many states claim jurisdiction over particular acts and events. But practically, when it comes to Multi-national Companies(MNCs) and other significant corporates, it is difficult and considered a debatable question because it is complicated to count the subsidiary company from the parent company.

[1] Kanchan Modak," Extraterritorial application of the competition law in India: an analysis". *Company law journal*, 2014 p 134.
[2] *Ibid.*

By coming this factor into the issue, another issue emerges: the Competition law of India enjoys any jurisdiction over that parent company. To tackle that issue, we should see the history of the European Union (EU) and the United States (US), where competition law has existed since a very long time ago.

Trade and urge of profit-making give rise to competition. Competition is a systematic mechanism through which free and fair-trade practices can be achieved, and the customer can have the best quality goods at the lowest price. So, we can say that competition is a sine qua non for a market economy. The vital goal of competition law is not to hamper competition by practices like price cartel or price fixation agreements between producers horizontally or vertically.

Enforcing a particular country's competition provisions is tough and becomes more complicated when cross-border transactions and trade are involved. Extraterritorial applicability is nearly impossible in competition as there are many conflicts between the countries, diplomatic relations, the type of particular country's economic system, the demand for particular goods and services and the absence of proper regulatory or appellate forums etc.

When regulatory bodies apply a state's antitrust laws to the conduct done outside its territory raises several key issues.[3] "Firstly, it should be determined that one country's law extends to the country where the conduct occurs. Secondly, it should be considered that there is any real court or tribunal established in the country limits which have absolute jurisdiction to deal with the matter. Thirdly the practical problem faced at the time of hearing when there is obtaining evidence and penalties and fines is imposed"[4].

"In the age of globalisation, it is very much possible to distinguish six basic approaches towards potential solutions regarding conflicts in the competition law- firstly, an agreement on a binding universal antitrust code. Secondly, a combination of minimum standards and a mechanism called international procedural initiative. Thirdly, harmonisation of various antitrust laws. Fourth, a " There should be competition and trade plurilateral agreement" as put forward by the EU. Then a strengthening of effective networks of peers(notably enforcement agencies), and Lastly, a " plurilateral framework" combined with binding "positive comity" and dispute solution instruments."[5]

**THE CRUX OF EXTRATERRITORIALITY**

Many countries protect their consumers and firms from anti-competitive agreements and acts by initiating and applying extraterritorial laws. In simple words, one country applies its competition law on the firms and companies incorporated or established in another country but does affect the domestic market by their conduct. For example, in defining the jurisdiction of its laws, the US applies an "effects test".[6] Which is satisfied when a firm engages in anti-competitive conduct in a multi-national market that includes the US.[7] This means if any conduct is outside the territory of the US, then the US has the power to apply its competition laws to that conduct[8].

In many cases, difficulty arises when enforcing the competition law on foreign conduct, when evidence is gathered, and fines and penalties are imposed. Therefore, we can say that extraterritorial law cannot substitute the influential competition law of another country where trade in the multi-national market exists. Jurisdiction conflicts and legal uncertainty are the issues that may arise because of the extraterritorial.

The limits upon a state's jurisdictional competence and its ability to apply its competition laws to overseas undertakings- are matters of public international laws[9]. There are factors due to a considerable increase in cross-border transactions, like an increase in globalisation in the business world. Then, There is an evolution and emergence of new antitrust laws worldwide. The increasing acceptance of the principle that foreign conduct may fall within the subject-matter scope of a nation's antitrust law and within the countries court jurisdiction, where the adverse effects of the conduct are made clear on the consumers"[10].

The extraterritorial principle is based on two main elements-

1. Subject matter jurisdictions
2. Enforcement jurisdiction

First, when a state has jurisdiction, it lays down particular rules and regulations by their legislative, executive or juridical bodies[11] are known as state legislative, perspective or subject matter jurisdiction[12].

"Second, a State has jurisdiction to enforce its law, which is the power of the state to give effect to a general rule or an individual decision through substantive implementing measures, which may even include coercion by the authorities"[13] , and that is known as the State's enforcement jurisdiction.

***Subject Matter Jurisdiction(SMJ)***

SMJ is based on the "Territorial Principle" and the "Nationality Principle". When we talk about the SMJ, it is accepted by public international law that every State has the power to make laws that affect the conduct within the country's boundary (the Territorial Principle). When regulating the conduct and behaviour of the citizens who live abroad, citizen includes the firms and corporate houses under the country's law (the Nationality Principle)[14]. Here territorial principle extended up to the reasonable way states would have recognised having jurisdiction not only up to where acts originate in the territory but beyond that.

Therefore, the purpose of SMJ can be achieved by the territorial and nationality principle as they are sufficient to comprehend many infringements of Competition laws. There have been considerable increases in cases of anti-competitive in recent years. So, common law countries have traditionally been reluctant to base jurisdiction on the nationality principle or any other than the territorial one. The result is that they have sometimes pushed the territorial principle to absurd lengths to close gaps in their law enforcement system[15].

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[3] Calvin s. Goldman, Q.C and J D. bodrug (Coeditor)," competition law of Canada", *Juris publication*, volume 2, 2005, p. 13.30.
[4] *Ibid.*
[5] Alexandre S. Grewlich," Globalization and Conflicts in Competition Law: Elements of possible solutions in Jose Rive(ed)", *World Competition Law and Economic Review*, volume 24 issue 3, 2001. P. 367
[6] US department of justice and federal Trade Commission, Antitrust Guidelines for International Operations, April 1995 para 3.1
[7] *United States v Aluminum Co. of America*, 148 F2. d 416,444(2d Cir. 1945
[8] Mitsuo Matsushita, "Competition law and Policy in the context of the WTO system", *DePaul Law Review*, 1995A.
[9] Shubhya Pandey and Mohammad Umar, "Extraterritorial Jurisdiction of Competition Commission of India: Enforcement and application", *Competition Law Reports*, June 2012.
[10] *Ibid.*
[11] *Id*, p 116
[12] Richard Whish, "Competition Law ", *Oxford University Press*, 5th Edition 2003, p 426
[13] Larry Fullerton, Camelia C. Mazard, "International Antitrust Co-operation Agreements Jose Rivas(ed)", *World Competition Law and Economic Review*, volume 24, issue 3, 2001, p.405
[14]Richard Whish, "Competition Law ", *Oxford University Press*, 5th Edition 2003, p 426 Supra note 12
[15] Michael Akehurst, "Jurisdiction in International Law", brit. Y.B. Int'l L. 145, 258 (1972-1973)

***Enforcement Jurisdiction***

It is commonly recognised that if Subject Matter jurisdiction exists regarding the conduct of someone in another state, it would be practically improper to attempt to enforce the law without prior permission within the territory of the State.

It calls for proper and effective enforcement jurisdiction for bilateral, plurilateral and multilateral or all agreements. Many legal systems assist one other and support in respect of these matters e.g., "The Hague Convention on the taking of evidence from abroad. Where one estate assists another state in collecting the evidence. Part 9 of the Office of Fair Trading (the OFT) to disclose information to oversee public authorities for civil and criminal competition law investigation"[16]

The conflict of enforcement jurisdiction has arisen due to the globalisation of business affairs, which operate from different parts of the world. Collecting information and conducting investigations require the authorities to cross borders and act in alien territories. "This consistent problem is that jurisdiction rules developed in the nineteenth century are not particularly well suited to the business context or the information technology of the 21st century"[17].

The enforcement and recognition of foreign judgments are essential to private international law. Exceptions are taken by states regarding the acts of another state as an extra assertion of its laws exterritorial, providing cooperation on evidence and the enforcement of judgments. Many states and their legal system took steps to block the other nation who wanted to enforce their laws in their State.

**EFFECT DOCTRINE**

It means when domestic or local competition laws apply to foreign firms - but also to those domestic firms located outside the State's territory when their behaviour or transactions regarding provisions of services and the supply of goods produce an "effect" within the domestic territory. The firms acting from outside the territory must have appreciable and substantial harm to the competitors and the consumers within the territory. The "nationality" of firms is irrelevant to antitrust enforcement[18]. A firm's nationality is irrespective as it is covered by effects doctrine - even domestic companies acting outside the jurisdiction.[19] Where it is foreseeable that a proposed activity or concentration will have an immediate and significant harmful effect on the Community, the effects doctrine is appropriate under public international law.[20] The principle of comity also applies to the extraterritorial application of the competition law, where the states help each other to apply their jurisdiction and to take action against the firm which infringes the monopolies and restrictive laws of the affected State[21]. The effect doctrine gives regulating authorities extraterritorial jurisdiction to act, investigate, collect evidence, apprehend, restrain and penalise acts which have taken place beyond the political borders but affect the markets of the regulating nations[22].

***Doctrine in the US***

The antitrust legislation has been interpreted by US courts to limit, forbid, and punish conduct outside the territory that harms commerce within the US territory. It has led to the evolution of the effect concept in US commercial law jurisprudence. In 1909, *American Banana Case*[23], The US Supreme Court categorically declined to exercise its jurisdiction due to the grounds of the traditional territorial principle since all of the alleged wrongdoings—including the defendant's alleged attempts to convince Costa Rica's government to monopolise the banana trade—took place outside of US borders..[24]

However, in the *American Tobacco case*[25], According to the US Supreme Court, the Antitrust Act's public policy is stated in such general terms as to cover all conceivable activities that could be considered violating the law's restrictions. This case reveals a combination of gaining dominion and control over interstate commerce in tobacco using ways and manners that the Antitrust Act prohibits. This policy cannot be defeated by using disguise or subterfuge. Later in the *Sisal case*[26], Even though foreigners outside of the US entered into the disputed agreements, the US Supreme Court claimed jurisdiction over the defendants. But jurisdiction was only granted for activities that were performed or intended to be performed within the territory of the US. The territorial principle was applied more flexibly in this case.

In the *Alcoa case*[27], The Sherman Antitrust Act, Section 4, 15 U.S.C.A. was invoked by the US in action against the Aluminum Company of America and others in order to determine whether the named defendant monopolised interstate and international trade. Also, whether it should be dissolved and determine the named defendant and defendant Aluminum Limited had engaged in a conspiracy to restrain such trade.

It was held that "For the argument, we will assume that the act does not apply to agreements. Any state may impose liabilities, even upon persons not under its allegiance, for conduct outside its borders that produces effects within its borders that the State reprehends. Even intended to affect imports or exports unless its performance is shown to have had some effect upon them. As a result of what we have just said, both agreements were illegal even though they were made outside the US if they were intended to harm imports and did."[28]

Since the Alcoa case, U.S. courts have followed the new jurisdictional formula of the effects doctrine. In the *Timberlane case*[29], Before making a credible claim to extraterritorial jurisdiction over claimed anti-competitive practices, the court set down specific requirements that must be met. Although the court found that the United States has a right to assert its jurisdiction, there are particular circumstances in which it should not. Court uses a 3-part test to decide if this is an antitrust issue that the U.S. needs to get involved with. Firstly, Before the federal courts may lawfully exercise subject matter jurisdiction, there must be some effect—actual or planned (direct or substantial)—on American trade. Secondly, a more decisive proof of burden or restraint may be required to prove that the effect is sufficiently significant to produce a cognisable injury to the US and, consequently, a civil violation of the antitrust statutes. Lastly (as a matter of international comity and

[16] Richard Whish, "Competition Law ", *Oxford University Press*, 5th Edition 2003, p 426 Supra note 12 p. 431

[17] *Id.* p.490

[18] Glossary of Competition Term, Available at*:* http://www.concurrences.com/Droit-de-laconcurrence/Glossaire-des-termes-de/Effectsdoctrine (Last Visited on 02 March 2023).

[19] Ryan Paul Knott, "Extraterritoriality, the Effect Doctrine and Enforcement Cooperation through Bilateral Agreements with regard to Antitrust Law (2010)" (*Unpublished LL.M dissertation, University of Johannesburg*)

[20] Brownlie, *Principles of Public International Law* 303 (4th edn.).

[21] Pitofsky, "Competition in a Global economy", *Journal of international EconomicL law* 403 on 407(1991).

[22] *Shankar Singh Yadav,"* 'Effects Doctrine '&Competition Regulators: A Comparative Study*.", IRACST – International Journal of Commerce, Business and Management (IJCBM), Vol. 3, No. 1, February 2014*

[23] *American Banana Co. v. United Fruit* Co., 213 U.S. 347 (1909).

[24] Gautam Shahi," Effects Doctrine: Evolution and Execution", (*Unpublished project report under internship programme, Competition Commission of India)*.2007

[25] *US v. American Tobacco Co*., 221 U.S. 106 (1911).

[26] *US. v. Sisal Sales Corporation*, 274 U.S. 268 (1927).

[27] *US v. Aluminum Company of America et al*, 148 F. 2d. 416 (1945).

[28] *Id.*

[29] Timberlane Lumber Co. v. Bank of America National Trust & Savings Association. 749 F.2d 1378..

fairness), Whether the interests of and links to the U.S. -including the magnitude of the effect on American foreign commerce – are sufficiently vital, vis-a-vis those other nations, to justify an assertion of extraterritorial authority.

Also, the court provided the balancing tests -Elements to be weighed: Looking at the totality of the circumstances, like "how far something conflicts with international law or policy. The nationalities or allegiances of the parties, as well as the business headquarters or critical locations. How probable it is that any State's enforcement will lead to compliance. The proportional weight of effects on the US concerning other nations. the extent to which there is a manifest effort to harm or obstruct American trade. The relative importance of the claimed transgressions against the United States in comparison to transgressions abroad; or the likelihood of such effects."[30]

***Doctrine in EU***

The European Commission has adopted the doctrine even though the Treaty of Rome or the competition law of the European Commission (EC) is silent on extraterritorial jurisdiction. Three legal theories—the "economic entity" doctrine, the "implementation" doctrine, and the "effects doctrine"—are used to guarantee the extraterritorial application of Articles 81 and 82 of the EC based on the concepts of nationality and territoriality. According to the European Court of Justice (ECJ), the first two theories are well-established principles of EU law. It is unclear, however, whether the "effects doctrine" has the same standing in the absence of explicit acceptance by the ECJ. Yet, in most cases, the capacity to exercise subject matter jurisdiction over non-EU undertakings outside the EU will be unaffected by the "effects doctrine's" lack of official recognition by the ECJ."[31] The concept broadens the scope of subject-matter jurisdiction to include all circumstances in which the economic consequences of anti-competitive conduct taken outside the EU are immediate, foreseeable, and significant.[32]

"The Commission reiterated its position in the sixth report on competition policy, published in 1977, and came to the following conclusion: "In terms of legislation, administrative practise, and court rulings, the legal theory in this case—the "effects" theory—is based on a broad interpretation of the principle that the authorities can act against restrictions of competition when those effects are felt within the territory under their jurisdiction, even if the companies involved are based and conducting business outside the territory."[33]

The Commission and European courts have evolved and acquired this jurisdiction independently while deciding the cases having extraterritorial issues. In the *Wood Pulp Case*[34], several Finnish, American and Canadian wood pulp producers outside the EC jurisdiction formed a price cartel, and EC members charged inflated prices. As a result, 60% of the EC's consumption of wood pulp was impacted. Because these producers were exporting and selling directly to consumers in the EC through branches, subsidiaries, or agents at a price not less than two-thirds of the total shipment, the jurisdiction over them was warranted. The relevant pulp producers and trade groups had their registered offices outside the Community, and only a small number of which had some representation, such as a subsidiary, within the EC, were found to have violated Article 81 (1) EC, according to the Commission. While establishing its jurisdiction, the Commission specifically cited the impact of the agreements and practices on prices stated or charged to customers and the resale of pulp inside the EC.

In support of the effects doctrine in the appeal, Advocate-General Darmon reflected a consensus among Advocate-Generals that the doctrine ought to be codified into EC law. He stated that "no rule of international law is capable of being relied upon against the criterion of the direct, substantial, and foreseeable consequence," in particular."[35]

Again, the doctrine was discussed and affirmed in the *Gencor case*[36] concerning a merger of two South African companies, in which the territorial scope of the E.E.C. Merger Regulation (RegulationNo.4064/89) and its justification under international law were reviewed. The Court of First Instance of the European Community observed that:

"According to Wood Pulp, regardless of where the supply sources and the production facility are located, the requirement for putting an agreement into effect is satisfied by a simple sale within the Community. No one disputes that Gencor and Lonrho conducted sales in the Community both before and after the concentration. Hence, in applying the regulation in this matter to a proposed concentration notified by firms whose registered offices and mining and production operations are outside the Community, the commission did not commit an error in determining the territorial scope of the regulation. Public international law justifies adopting the regulation when it is conceivable that a planned concentration will have an immediate and significant impact on the Community."

The court concluded that "the application of the Regulation to the planned concentration was consistent with public international law" after applying the three criteria of the doctrine—immediate, significant, and foreseeable. It should be noted that although the Wood Pulp case was mentioned and the "implementation" test was used to determine the geographic extent of the E.E.C. merger regulation, the effects doctrine was used to justify jurisdiction under public international law in the Gencor Case.[37]

**HISTORY OF EXTRATERRITORIAL JURISDICTION: INDIA**

Rapid changes have taken place in the world's economy and happened in a very short period. State-controlled economics have been exposed to the global market. By that, legal and state-control monopolies have been reduced so much as they are eliminated from many countries nearly. Due to this, the domestic market of almost every country is now open for foreign investment as there is increasing global trade. WTO played an essential role in promoting international trade. This growth and development are suitable for the economy of the countries, but that growth and development open the gates for new and unknown threads for the competition law worldwide.

**SOME OF THE CROSS-BORDER ISSUES**

***Cross-Border Cartels***

Cartels are anti-competitive agreements that result when competitors fix prices, segment the market, impose uniform discounting rules, or restrict the output or manufacture of products and services. It differs from mergers and amalgamations in a relatively small number of ways, such as the fact that in the former, each entity loses its unique identity and merges into one, whereas in the latter, each party to the agreement still has an exit. Following liberalisation and globalisation, businesses have many chances to engage in price fixing and market segmentation, which are harmful to healthy competition.

[30] *Restatement (Second) of Foreign Relations Law of the United States*, s. 40
[31] Butterworths Competition Law (Loose Leaf), *Volume 3, Issue 71, para. XII/2*
[32] *Gencor v. Commission*, [1999] E.C.R. II-753, para. 90.
[33] E. Nerep, *Extraterritorial Control of Competition under International Law* 1983. P 281-282
[34] Ahlstrom v. Commission, European Court Judgment of 27 September 1988, European Court Reports 1988, p.5193.
[35] Opinion of the Advocate-General Darmon of 25 May 1988 in joined cases 89, 104, 114, 116, 117 and 125-129/85 [1988] E.C.R. 5214 para.57.
[36] Judgment of the Court of First Instance, Case T-102/96, *Gencor v. Commission*, [1999] E.C.R. II-753.
[37] *US v. American Tobacco Co.*, 221 U.S. 106 (1911).

According to the OECD report from 2000, there is a global cartel that raises the price of acid critics by 30%, and then "another global cartel that raises the price of graphite electrode by 50% in various markets for five years. It was observed that the producer of the lysine cartel had doubled the price for three years in several nations, including the US, France, Indonesia, Hungary, Italy, Japan, etc. After that global vitamin cartel came into view and fixed the exorbitant price and also divided the market, which reportedly continued for a straight decade.

There is another case of cartel held in India where a US company of making soda named American Natural Soda Ash Corporation is alleged of the cartel when he is export soda in India and also alleged for predatory pricing. After Alkali manufactures Association of India file the complaint against the US company and the MRTP commission found that in his initial inquiry and then issued an interim injunction according to which the US company is banned to export the Soda in India.

***Cross-Border Predatory Pricing***

The word "*Predatory Pricing*"[38] was not previously defined under the MRTP act; nonetheless, it is assumed and judged to be a restrictive trade practice if an agreement is made to sell goods at prices that would eliminate some competitors from the market. However, predatory pricing is "the practice of selling products or offering services at a discount from their manufacturing costs, as regulated by legislation, to lessen competition or drive out rivals."

Predatory pricing is alluring and felt cozy by the Indian consumer, but that is only for the short term and not advised for the long term. India is also a victim of cross-border predatory pricing by foreign enterprises and business houses.

There was a complaint by All India Float Glass Manufacture *case*[39] against an enterprise from Jakarta named PT Mulia industries. The allegation was that the enterprise was exporting the float glass on predatory pricing, and by doing so, he was eliminating the domestic competitor in the float glass market. The commission enquired about the same and found that there was practising predatory pricing, so it issued the interim injunction and stopped the enterprise from exporting the float classless than the cost price. This act of foreign enterprise is not suitable for competition in the Indian market nor for the public interest.

While talking about predatory pricing, we cannot forget about the famous predatory pricing event of Pepsi and coca cola. When coke re-entered the market in 1993. Provided the 300ML drink for just Rs5, and after that, it purchased the established soft drink brand 'Gold Spot' not only this, he purchased the 'Lima' and 'Thums up' from 'Parle'. By doing so, coca cola wiped out the domestic player, and his aggressive publicity created a barrier for the new entry.

***Cross-Border Abuse of Intellectual Property Rights***

Intellectual property rights are fundamental though they are intangible and invisible. There is always the need to balance IP rights and their abuse. It was held in several cases that the MRTP 1969 Act and Competition Act 2002 have sufficient jurisdiction to deal with a matter related to intellectual property right. In *Godfrey Phillips India Limited Vs. P.T.I. Private Limited and Ors.*[40] *and Manju Bhardwaj v Zee Telefilms Ltd*[41] deals which are related to the abuse of intellectual property. Apart from that *kingfisher v Competition Commission of India*[42] and *Aamir Khan Production Pvt Ltd v Union of India*[43] are some cases where the issue regarding intellectual property and the court held that the competition commission of India is very much eligible to deal with the cases and issues, which is ready to present before the copyright board. CCI has right to deal with cases involving the competition law and IPR.

There are many technology transfer agreements, and it was observed that foreign enterprises impose several competing and other kinds of hefty and onerous restrictive conditions on the parties belonging to India. In cases, cross-border enterprises also compensate the Indian parties for agreeing to non-competitive agreements.

**INDIAN LAW ON EXTRATERRITORIALITY**

Indian market of trade and competition was earlier governed by Monopolies and Restrictive Trade Practice Act 1969, which was replaced by the new competition Act 2002. As MRTP act have a very narrow scope of powers given to him in the case of dealing with the jurisdiction when an action takes place outside the jurisdiction of the Indian territory. MRTP only authorized the commission to pass an order when there is any prohibited monopolistic, restrictive act done outside the jurisdiction of India, but that does have an effect on the Indian soil or on the Indian market. Also, merger control power rested with the government of India until 1991. That is when no provision regarding mergers was mentioned in the earlier MRTP act.

At the time, when the economy was widening because of the LPG, it was felt by the Indian government that now the MRTP act was not fulfilling the objective of restricting the unfair trade practice, and also it was unable to cope with the new LPG policies. Indian government felt the need to extend the jurisdiction of MRTP beyond the Indian jurisdiction, which has already been done in many countries like the US, Canada, Germany, European Union.

It is the first case of *Jugaldas Damodar Mody Co*., where the whole transaction inquiry was taking place in Oman, and that contended that the law should be applied on the sultan has to the law from Oman. The MRTP commission then extended its jurisdiction by defining the restrictive trade practice as its clearly shows that it considers the end result of any act regardless it took outside the jurisdiction of the Indian territory. This was the time when the commission evoked the practical doctrine for the first time.

"Effective doctrine is the product of judicial intervention established in the case of *US v. Aluminium Company of America*[44], known as the *Alcoa* case."In this case, the U.S. Court of Appeals for the Second Circuit ruled that "any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders." As a result, it established a standard for the intended and actual effects on US commerce that had to be met for US jurisdiction to be asserted over the foreign company."[45] Here the court held that the corporation was violating the Sherman act so he decided that the enterprise would be restricted from exporting its product in the US. It was in 1994 when the effect of doctrine got its recognition in the US by the International Antitrust Enforcement Assistance Act.

[38] The *Competition Act 2002*. S.4(2) explanation (b)
[39] Civil Appeal Nos. 2330 of 2000, 3572 of 2000, 76 of 2002 and S.L.P.(C )No. 22549 of 2001
[40] 1990(48)ELT508(Bom)
[41] (1996) 20 CLA 229
[42] (2010) 4 Comp. LJ 557 (Bom)
[43] Writ Petition No. 358 of 2010 along with writ petition No. 526 of 2010
[44] 148 F.2d 416.
[45] Kartik Maheshwari* and Simone Reis, "Extraterritorial Application of the Competition Act and Its Impact" *Company Law Reports*, Jan 2012., vol 1, p. 145

The *Alkali case*[46] is the one where the course of the decision is changed for other cases. The commission said that because the agreement does not exist in India, the agreement could not be construed in any vacuum, and there is a relation between the Indian consumer, so a reasonable nexus was established. Here the inquiry was held, and it was found that predatory pricing was practiced, and the commission stopped the Soda company from exporting its product to India.

But the company appealed to the supreme court, and that was decided that in the MRTP act, whether in section 14 or any other section, no one gives the right to the MRTP commission to extend his jurisdiction extraterritorially. That was when the government learned that there was a need for some resort to tackle the problem of Extraterritorial jurisdiction.

"The Monopolies and Restrictive Trade Practices Act, 1969 was examined in October 1999 for the possibility of shifting the law's emphasis from preventing monopolies to fostering competition, and a committee headed by Shri S.V.S. Raghavan was appointed to make recommendations for a more contemporary competition law that would be in line with global trends. On August 6, 2001, the Lok Sabha received the Competition Bill 2001, which was then sent to the Parliamentary Standing Committee for review. The Competition (Amendment) Act of 2007 was updated after it was passed in 2002 and got the President's assent in 2003. The preamble's objectives are to establish the commission, which must eliminate practices that adversely affect competition, promote and sustain competition, protect consumers' interest, and ensure freedom of trade by other market participants in India."[47]. This was the committee who

Competition Act 2002 talks about the actions occurring outside of India yet affecting competitiveness in India. Also, defined as "A combination has taken place outside of India, or any party to the combination is outside of India, or any enterprise abusing the dominant position is outside of India, or any other matter or practice or action arising out of such an agreement or dominant position or combination is outside of India. This includes agreements referred to in section 3 that have been entered into outside of India.

Commission has the authority to look into any agreement, abuse of a dominant position, or combination if it has, or is likely to have, a significant negative impact on competition in the relevant Indian market, [and pass whatever orders it may deem appropriate in accordance with the provisions of sections 19, 20, 26, 29, 30, and 29 A (According to the Competition Bill 2022) of the Act]."[48]

Here in this section, it was told that if there is any appreciable adverse effect on the competitive market in India. Whether the conduct or agreement took place outside India, the commission has the extraterritorial jurisdiction to pass an order or any other order which he thinks fits to curb that effect from the relevant market of India.

But the main term "Appreciable adverse effect on the Indian market" does not define in the new competition Act 2002. So, in this regard, India follows the test laid down in the '*Wood Pulp*[49]' this test is very wide as it does not cover the actual adverse effect but it covers the wider perspective of likely adverse effects in the Indian market. It shows that now the competition commission of India has plenty of power to deal with any anti-competitive agreement, abuse of dominant position, or any contravention of the combination happening overseas and beyond the territory of India.

Under the regulation came in 2009, the procedure followed for the abovementioned section was according to the Code of Civil Procedure. There is also the power to pass an interim order when the commission is satisfied that it is needed until the dispute is settled[50]. He can also pass the ex parte order under certain conditions[51]. "Now that the necessary investigation has been completed, the Commission also has the authority to impose a financial penalty for carrying out his orders. The commission must follow the procedures outlined in sections 19, 20, 26, 29, and 30 of the Competition Act 2002 when investigating according to section 32."[52]

This kind of unilateral exterritorial law may likely to create a problem at the level of international relations. So, the new competition Act 2002 deals with this problem with section 18, where it is provided that the Competition Commission of India, to enforce its provisions, can collaborate with other agencies with the prior permission of the central government[53].

**CONCLUSION**

Regarding the Extraterritorial Jurisdiction of law, are there explicit provisions mentioned under the competition act 2002, regarding the power to investigate and then pass the order on that issue. It extended the jurisdiction of the Competition Commission of India beyond the territory of India. It gave him great power to adjudicate the acts and conducts that are happening or taking place outside India but have their effect on the Indian market. But this should be kept in mind that the effect must be appreciably adversely affecting the Indian market. Any other kind of effect is not considered for the use of this exceptional power. Under section 32, Commission have the power to investigate issues like anti-competitive agreement, abuse of a dominant position, and any anti regulations of combinations if they occur outside India but have an appreciable adverse effect on the Indian market. Commission has the power to pass any order he thinks deemed fit.

Thus, under the act, the commission also has the power to adopt any effective procedure for exercising its power. This gives him the great power to deal with matters outside India, and he can regulate the Indian market efficiently. Section 32 makes Commission a dynamic and effective regulatory body. It is very much similar to articles 81 and 82 of the EC treaty and likely to sections 1 and 2 of the Sherman Act.

But nowhere are some fallbacks of the power given to the commission by the Competition Act 2002, section 32 is very much like EC treaty and Sherman act, but he does not penalize as a criminal act, which is a mandate in the Sherman Act. No one doubts that the Competition act gives the commission some extreme and dynamic power to regulate the market fairly. However, the question is whether he is exercising his power effectively? .ecause we can have many examples showing the commission's effective and dynamic power is not in reality. There are many times when it came to exercising its extraterritorial jurisdictions. I felt the commission is a little helpless after having all this adequate power. Like commission does not have the power to take criminal actions against territorial or extraterritorial jurisdiction. When there is the case of cross-border cartelization, the commission does not have the power to stop its import as it tried this in a case called *Alkali case*, when the supreme court rejected the commission's contention.

Also, that case was at the time of the MRTP Act. However, right now, under Competition Act 2002, the commission still does not have this power. If the commission does that, it will violate the WTO principles because if there is a quantitative restriction, we cannot impose them except in certain circumstances.

Another lack we can see in any cross-border vertical agreement is that this agreement is necessary between the Indian and a foreign company when this anti-competitive practice is proven. Commission has the power to impose a huge penalty on the Indian country and complete the sanction, but when it comes to the

[46] *Alkali Manufacturers Association of India v America Natural Soda Ash Corporation (ANSAC) and others*, (1998) 3 Comp LJ 152 (MRTPC);(1997)5CTJ 288 (MRTPC)
[47] Shankar Singh Yadav, "Effects Doctrine '&Competition Regulators: A Comparative Study", *IRACST International Journal of Commerce, Business and Management (IJCBM)*, February 2012, Vol 3 No1, p.213.
[48] The *Competition Act 2002*, s. 32.
[49] *Supra note .34.*
[50] The *Competition Act 2002*, s 33.
[51] *Morgan Stanley Mutual Funds v Kartik Das* (1994)3 CompLJ27(SC)
[52] The *Competition Act 2002*, s 32.
[53] *The Competition Act 2002*, s 18.

foreign company, it can't simply impose the penalty on it. He needs the support of other countries governments to impose economic sanction. Further, we can say that extraterritorial jurisdiction is purely based on diplomatic relations with any country. So, there is a bright chance that if the Commission forcedly sanctioned the foreign company, he will definitely be violative of any international or bilateral treaties.

We have the ready-made solution but need to execute it flawlessly. Section 18 in the competition act provides the power to the commission to enter into any memorandum or arrangement with the prior permission of the central government with any foreign government and agency as the commission thinks fit to get the proper support to discharge its duties and function. That agency may be from a foreign country. Also, efforts are needed by the countries themselves. They do not cooperate with sharing the information, but they should cooperate with the investigation and effective application of the law.

To *resolve* the problem of extraterritorial jurisdiction. The Competition Commission of India, Needs to enter various plurilateral, Multilateral, and Bilateral Treaties, which facilitate its power to be effective and make some special regulations to exercise it.