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From Crony Capitalism to Innovation & Liberty: Challenges to the Indian Competition Law Regime

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INTRODUCTION

Serving as an essential hand maiden to efficient trade, the Competition Law Policy of India aimed at reforming a rigorous legal system to one that promotes equilibrium between the producers, consumers and social interests of the nation. As opposed to the much prevalent 'License-Permit Raj' which had suggestions of crony capitalism, the new legal regime was a breakthrough from the tradition of consumer protection through countless restrictions, licenses and labyrinths of procedures causing near stagnation of research output and innovation in India. Though, the transition towards a free economy from one which prevented freedom of decision of sellers requires no regulation. However, the Competition Law Policy of India came into effect for containing the failures and distortions of market from imparting a crooked effect on the competitive spirit. Significantly, after all these years of economic reforms, India stands at the crossroads. While one road leads it to economic prosperity and glory, the other leads to social inequality. With near ignorance of the latter, it is anticipated that the day is near when the very purpose for which the reforms were started, will lose their significance rapidly and would throw the country back into the 'unionist' era.

Set in this background, the present paper analyses the varied contours of the Indian Competition Law Policy which was perceived as a panacea to all the ailments of a growing Indian economy. Also, it examines the emergence of various sectoral regulators and policy frameworks by governments both at the state and federal level which have impeded the market process and distorted competition at a sub-national level. More so, amidst the discussion focusing on trade liberalisation, the paper also delves into the concerns for a global competition policy, and which has been on the international agenda for too short a time for its significance to be appreciated. While contrasting between the past and present, the deliberations also target the Competition Law Policy in India as an active interpretational exercise which leads to suggestions towards a chicken-and-egg situation as to what came first, the law or the policy. Focus on extra-territorial application of the Indian Competition Law and its impacts are also evaluated in the backdrop of an increasing globalisation of cross-border business activities. Alongside, the unsung hurdles

which Competition Commission faces in its struggle for greater autonomy and lesser intervention from other sectoral regulators are also sought from the deliberative exercise.

Having undergone the rigours of colonial capitalism, India, in the past, had embraced a Legal framework which premised its commercial arm on the principles of 'caveat emptor' and protection of consumers. This might be both, a response to the futuristic apprehensions of the law makers as well as a stimulus to a torturous past. Regarding the protection of consumer interests to be of crucial significance and as a modality to capacitate its domestic producers, a plethora of legislations saw light of the day and regulated the reigns of economy. But, as this normative giant grew in India, it started eating away its own roots. Much evidently, its repressive nature made the native producers extremely weak in terms of innovation and development quotient – which beyond doubt are assets quintessential to strengthen the spine of any economy[1]. This gets affirmed by post-liberalisation statistical records which indicate that in the duration from 1995 to 2009, the country climbed by just one position from 12th to 11th in terms of contribution of research articles[2]. Whereas, during the same period, China climbed from 14th position to second position and U.S. continued to have the largest number of absolute researchers in the world. Moreover, since the government agencies were the repositories of large scientific data during the repressive regulatory regime, it resulted in obstacles for Indian research, making it less attractive and with scuttling research output.

Competition Law Policy and the Economic Transition

'License-Permit Raj' was the term which became a general sobriquet for this period in Indian politico-economy, which saw the rise of bureaucratic control and autocratic poitical regimes. One of its products was the Monopolies and Restrictive Trade Practices Act of 1969 which was enacted with an objective to prevent the accumulation of economic power in the hands of a few and to ensure that aspirations of a growing consumer band are safeguarded. However, as the wave of economic liberalisation went past the country, legislations such as the Act of 1969 dismantled and became obsolete. Much was also contributed by the international economic developments relating to competition law and India's commitment at international fora to liberalise trade barriers[3]. Some scholars even suggest that the economic reforms of the early 1990's unleashed an explosion of pent-up commercial energy from the Indian economic fabric when the period saw tariff ramparts being torn down[4]. The 'Licence Raj' system, as per them, did lent a way to private dynamism that was forced to compete with the world's best[5]. However, as the wave of liberalisation stretched its

span in India, each sector ranging from industry to finance and from trade to infrastructure - all stood decimated to facilitate and usher a favourable investment climate. Though this has been a heated theme for debate across times, what requires a greater attention under this paper is an assessment of this transition.

Consumer Welfare & Un-notching the Markets: Is that All?

As we trace the roadmap to a modern Competition era in India, we witness the withering away of the Trade Restrictive setup which primarily based itself on a perception that markets necessarily failed. As the reforms unfolded and the perception changed, 'License Raj' came to an end. It indeed was culmination of a period which had become an object of steamy opprobrium, a regime where the concerns were more on curbing monopoly than on promoting competition[6]. Taking a cue from this proposition, we would be at much ease as to analyse the very foundations of the modern Competition era in India. Prima facie, it might seem as a measure to discharge the onus on state for promoting welfare. But, on the contrary, equilibrium between the producers, consumers and social interests of the nation is what the Competition Act of 2002 aims at[7]. To be appropriate in terms, these aspects of economic and social planning along with an aim to regulate combinations which defeat the competitive spirit and aspiration of the Indian Consumer Band; as enshrined under Entry 20 read with Entry 21 of List III, Schedule VII to the Indian Constitution becomes the most authentic backbone for the regime in place. This is indubitably; a departure from the protectionist approach fabricated through a morass of restrictive procedures which India gripped up to, while catering to the much voiced provisions of the Directive Principles of State Policy under the Act of 1969. Thus, the march towards a free and liberalised economy mutated the much outmoded vision to one where experience of state failures and market failures has weighed in favour of the markets.

Though, a detail of this transmutation which shaped the Indian legal scenario indicates flavours of smoothness and regularity, the void which had resulted due to the incommensurate regime, remained for a decade. It was during this time that the discussions focusing on a need to have a Competition Law Policy for India commenced. One side of the debate held their focus to the issues of laissez faire and vilting away of all restrictions leaving the markets to cure their own pitfalls whereas the other wing, delved into the dialectics between the producers with unequal bargaining position and the issues concerning safeguarding of the consumers[9].

Need for the Indian Competition Law Policy: Questioning the Hypocritical Hypothesis

The commonly acknowledged perception of Competition Law policy indicates its prime objective as promotion and preservation of the competitive process in order to foster allocative efficiency which ensures the effective allocation of resources, internal efficiency which ensures that costs of production are kept at a minimum and dynamic efficiency which promotes innovative practices [10]. Much simply, it encompasses all policies which promote competition and facilitate efficient allocation of resources and those governmental measures that directly affect behaviour of enterprises and structure of the industry[11]. Consequently, it's the competition which becomes the modality to reap the outcome of efficiency under the setup.

Here, a note may be taken of the fact that though the never ending saga of policy and Law which is akin to the chicken-and-egg situation[12] has dominated the legal thought for centuries altogether, but, in the present paper we use the term Competition Law Policy so as to be more precise with respect to the intended reference due to two prime causes. One, in India, the Competition Policy of the country saw a tacit expression only in the year 2011-12, while the Competition Law was already in place after the enactment of the Act of 2002. Secondly and much evidently, since the Act of 2002 was more of a stimuli-response to an ongoing overhaul operational over the Indian Legal and economic framework at that time, it had features of a policy as well and as a result, appears much detailed than its counterparts in other nations across the globe. Even today, traces as to the veracity of this proposition can be witnessed from the provisions of the Act of 2002 which not only lays down a substantive schema but also serves as guidance to its very own implementation.

Despite having purposed for a freer economy which is devoid of any regulations or procedures and having made claims in that regard; it might seem quite dialectical to have in place a Competition Law Policy for India. However, a deeper musing into the issue would suggest that for any economy, measures like de-regulation, liberalisation and privatisation are crucial and might even be much more than desired, but they are no assurance of an efficient functioning of markets[13]. A typical illustration to this would be a case of an incumbent producer who may gain sufficient market power that might even hinder market access to new firms or producers. Complementing to this, the very potentiality of prevailing market forces to thwart the competitive spirit against the

producers with a penurious bargaining power and in order to ensure that the consumers benefit the most from such market-places, makes the Policy framework an even greater necessity. While trade policies may eliminate barriers that restrict entry and exit, it is the competition policy only which can target business conduct that reduces actual and potential competition[14]. Adding to this, the ground-reality indicates that a significant number of monopolies remain in place and are highly unlikely to be remedied by market liberalisation. Such arrangements are required to be regulated in order to preclude them from abusing their dominant position and incurring in monopolistic practices in concerned sectors[15]. This assumes an even greater significance in the current Indian scenario where the possibility of permitting private investment in certain sectors is under consideration and for those which have been in scanner for long due to evidences of cartelisation like Airlines, banks, cement and telecom sectors[16]. Thus, it becomes quite obvious that bereft of an efficacious competition policy, the new investors will not be capacitated enough to compete in the same conditions as their fellows are, at present.

In addition, a stringent Competition Law policy also bears much merit owing to the possible permutations of private arrangements between producers which may be anti-competitive in spirit and are sufficiently potent to deter market efficiency – for both the consumers, as well as fellow producers. With implications ranging from entry-exit barriers to elimination of players from a particular sector, these practices have emerged in the recent past, to be particularly harmful for small and medium size firms[17]. For instance, the ever-rising number of international cartels has distorted international trade and investment flow that calls for a pan-national coordinated competition policy[18]. Moreover, even the domestic cartels would also definitely start proliferating provided there is an absence of a body entrusted with regulation of market practices and behaviour[19]. Once, the competitive spirit is cultivated, it leads to innovation and drives the concerned sector towards its respective development goals as firms operate under a continuous fear of being thrown out of business in case they do not innovate. A befitting illustration to this effect would be from the Telecom sector where Nokia Inc. became the ace producer in India for 14 years by attending to the unique needs of every Indian customer through the distinct features on its handsets. Now, it has lost the market share to Samsung Inc. as it didn't envision the furisitc competition goals and radical innovations.

Here, we must note that the aspect of innovation is not only restricted to technology and products but also covers a firm's business model, work practices, functions, logistics, processes and principles that define any business or trade institution[21]. Dell's supply chain management,

Toyota's Global Production System, Wal-Mart's inventory management, Starbucks's re-imagining of the coffee shop have all been game-changing and revolutionary innovations in the recent past[22]. Hence, the vision of modern competition era in India to holistically club the suppression of monopolies and promotion of competition becomes crucial in the backdrop of evolution of products & companies[23]. The only alleged flip-side to promotion of such ventures that Aggarwal, Aradhna, Macro Economic Determinants of Antidumping: A Comparative Analysis of Developed and Developing Countries, 32 WORLD DEV. 1043 (2004).

Aim at innovation are Patent rights which particularly being a state-granted monopoly in the form of time-limited property rights are sought after significant amounts are invested in R&D. A reward to this endeavour comes as grant of exclusivity to the inventors over their respective inventions for a certain time so as to en-cash the first-mover advantage in the market. Though, it might be argued that patents may deter rivals and may lead to higher costs through licensing by the rights holder, most scholars approve of their existence as diluting patent rights through competition law would again be a disincentive to innovation – an aspect which is often aimed at by competition laws for a healthy economy.

Notwithstanding this, the arena which still remains most deliberated is the retail sector; where the ramparts of the old rigorous framework still stand to glory. Volumes of literature are available on themes which boast of restricting the entry of foreign players into retail. However, it gets more or less crystal clear that the prohibition on entry of foreign players into retail is only to facilitate and allow higher valuations for the existing Indian retail outlet owners at a later stage, when they can cash out[24]. Earlier, businessmen used to corner various licences, permits and quotas but now, though some thrive on of entry restrictions this nature, the others stoop on the ambiguity of Press Note 18.

Competition Era and Issues of Trade Liberalisation

The discussions on modern Competition era taking its shape in India and replacing the 'License-Permit Raj' would be parsimonious if no reference is afforded to the international trade considerations and related commitments which were made by India at the international fora. Significantly, it was a key issue and a prime cause behind the ongoing phase of transition amidst the other concernments striving to ensure and manage competition and to derive the most out of liberalisation[26]. An account of that period is illustrative to the fact that this task was all the more that the drive to open up the gates for foreign Direct Investment has now shifted the control of

establishing monopolies from the government to private players. cumbersome as the nation was not starting afresh due to various institutional mechanisms which already stood in place. Moreover, attempts at freeing and de-regulating were being taken up at a time when the global economic environment was also witnessing a transformation owing to the coming into existence of GATT (General Agreement on Trade & Tariffs) and subsequently, the negotiations to establish WTO/ITO (World Trade Organisation/International Trade Organisation)[27]. As a result, it was highly anticipated that rules of the game vis-a-vis world trade would also change once these institutions get operational with their peculiar implications on domestic policymaking[28]. In addition to this, no measures based on static welfare analysis could have proved adequate for third world countries like India[29]. In this backdrop, this section analyses the aspects of trade liberalisation and its nexus with emergence of a Global Competition Policy.

Competition Policy & Trade Policy: Foes or Amigos?

Primarily, it has been suggested that trade liberalisation nullifies the need for a competition policy as anti-competitive practices are seen to be prevalent only in an economic setup with concentrated markets[30]. A rationale behind this is that all domestic paradigms lose their potency to exercise market power due to a threat of potential competition irrespective of the share of imports in the domestic market[31]. An empirical backing to this proposition is lent by scholars who tend to find distinct degrees of convergence between domestic and international prices with the removal of trade barriers and a negative relationship between price and cost or profit margins and imports[32]. However, there are yet others who bring forth a flip side to this issue. They illustrate as to how any competition policy which encapsulated trade liberalisation as its crucial agenda, was perceived as a panacea to the ailments of any economy, mostly in the developing countries like India and the manner in which it has disappointed the legal visionaries.

This also raises questions as to the exclusivity of the two. In a time where both trade liberalisation as well as the competition policy have failed to even put it over their respective visions, neither of them could be a remedy to the other's concerns. In simple terms, a liberalised trade policy cannot stand as a substitute for a competition policy and the two must always complement each other in their purport to promote trade, market access, global economic efficiency and consumer welfare[34]. Necessarily, Competition Law and Policy is desired even where trade has been significantly liberalised. However, it is always the alignment between enforcing Competition Laws and other

liberalisation initiatives which is to be taken into account for enabling the economy yield its intended outcome.

When we gauge the Indian Transition through this perspective, it appears extremely confounding to note that India was dosed both with the economic liberalisation measures and its commitments at WTO around the same time. While the former had much to bear with the socialistic objectives of the country by promoting consumer welfare and enhancing the competitive spirit amongst the domestic producers, the latter focused on its attempt to weaken down the trade barriers and enable the country to participate equally in the global market and that too, without its protectionist cloak getting on. The late enactment of the Act of 2002 could thus, be of no significance as soon after the economic reforms in the early 1990s, the Act of 1969 proved dysfunctional and rendered the legal framework devoid of what it most crucially required then. This prevailing gap of almost a decade in essence was without any policy or a vision in place which at that instance, could have held the reigns tight and would have assimilated the Indian policy framework on some common grounds. What could have been avoided much simply was embraced with much desperation and this has indeed parked the nation to be at cross-roads in the present times. While one road leads it to economic prosperity and glory, the other ends at social inequality. With mere reforms being proposed in the existing models and an absolute ignorance as to suggestions to a remedy for the socio-political accident which eventualised, it is anticipated that the day is near when the very purpose for which the reforms were started, will lose their significance rapidly and would throw the country back into the unionist era.

The discourse above carves out in much intrinsic terms, the basic handicaps which are faced by governments in transition economies. In all such instances, the political setup must always figure out an optimal way of stitching the trade and competition policy together. In this regard, the only consideration to be borne in mind is that if the accompanying economic policies and in particular, the exchange rate strategy is not correct, the remedial nature of trade liberalisation would reverse and would raze down the market scenario to be one of a skewed playing field that disfavours domestic production and stands completely averse to competition. In addition, exploitation of the extra-territorial nature of settlement process governing trade disputes, to weed out the out-of-border anti-competitive practices, has added to the peril. More so, the interface between these two realms has also acquired much rhythm and importance owing to the deliberative exercise taking place in the WTO forums relating to the same. Recent cases at the WTO highlight issues that are relevant for countries which have either enacted or are modifying their competition policies. The

obduracy for any country, particularly the developing ones can be enormous owing to the complexities, data and resource requirements for dealing with trade disputes of such a genre through the WTO mechanism[40]. It requires an utmost degree of coordination between cells dealing in trade liberalisation issues and the authorities concerned with competition policy. However, if the settlements are struck with political support through a bilateral negotiation, it might further worsen the situation by introducing provisions such as Voluntary Export/Import restrictions which again, would be violative to the commitments of the concerned nations for trade liberalisation[41]. In addition, since almost all policy initiatives in a particular member nation to WTO can be questioned as a 'trade dispute' before WTO, it would necessarily be questioning not only a state's freedom to institute policies in place domestically but also, as to the conduct of domestic firms in organizing their activities. This was exhibited at a much clearer level in the famous Kodak-Fuji case[42] and the General case of Japanese Keiretsu[43] which accustomises us to the intensity of threats, an inter-country difference may pose to the international competition, trade and market access in the course of economic organisation. However, as far as India is concerned, the analysis leads us to some quintessential results which indicate that trade policy and its implementation must always be seen to have a concern with access to markets and therefore, to remove all artificial barriers to markets. Whereas, on the other hand, the Competition Law Policy must efficiently limit itself to prescribe the rules under which firms compete with one another in markets.

Global Markets and the clamour for Global Competitiveness

All markets have an endogenous structure where the firms through their explicit conduct not only sketch out their relevant geographic market but also do assist in shaping the design of the markets, as such. This leaves us to distinguish with much precision between the markets which haven't adhered to reciprocal liberalisation of trade and those which though, have made efforts to open up their economy, still march forth with a pseudo-protectionist approach. This seems appropriate for developing nations such as India where complementary assets relating to marketing and distribution provide some additional benefits to domestic firms vis-à-vis the Multi-Nationals. In a typical situation where the market conditions favour the latter more, inclusion of inter-enterprise linkages in trade disputes will render a double blow to the domestic players, and hence to the spirit of competition in the long run[46]. This is complemented by the widely acknowledged understanding that any competition policy does not lend itself very easily to incremental changes.

It does not therefore, comes as astonishment, that the U.S. despite its clamour for negotiating an agreement on competition issues right from the Uruguay rounds is still reluctant to pursue its anti-trust objectives through the WTO. Though, the U.S. policymakers are well aware of the fact that business practices are better covered by anti-trust regime than by trade law but they fear the dilution of long established anti-trust rules in the process of multi-lateral negotiations[48]. A similar apprehension is shared even for the government-condoned private business practices that are potent to create barriers to trade by restricting parallel importation – which might as well come under closer scrutiny[49]. Consequently, notwithstanding the acknowledgement that anti-dumping interventions and government support for parallel importing prohibitions appear as sources of contingent protection from trade and price competition, there are several political obstacles to reduce the scope of these provisions.

In this regard, it is worth mentioning that U.S. has been much proficient in giving life to these provisions in the recent past and that too, much extensively[51]. Besides, it has recently won a major case where the WTO panel has held that the provisions of the U.S. Trade Act of 1974 (which was designed to take unilateral action against the country's trade partners) violates the commitment taken by it under the WTO[52]. In this backdrop, it is highly unlikely that the U.S. would aspire to drag issues related to competition policy under the ambit of WTO deliberations. As a result, in such a scenario it does not make sense for countries like India to agree to multilateral disciplines on competition policy unless it is agreed that prohibition on anti-dumping and unilateral sanctions would follow the adoption of common competition policies[53]. This hypothesis carries much relevance in the present times when all such maladies are being proposed to be cured by emergence of a global competition policy, the confabulations regarding which has been on the international agenda only quite lately, and thus, award not much room to us for its importance to be appreciated.

Trade liberalisation in India has resulted in severe competition in the context of countries like China, Taiwan, South Korea, Malaysia and Thailand which pursue export-led growth with policies that favour exportable and importable goods production via. inter alia strategically undervalued currencies[54]. The only modality through which the domestic industry can be given a chance to respond to their challenge is to precisely follow these countries in strategically undervaluing the native currency and not just its devaluation[55].

Moving Out of the Bounds: Implications of the Effects Doctrine

As an indicia to the exposition made above, it would be purposeless to reiterate the role of the Act of 2002 in upkeeping the competitive spirit and the wave of liberalization. Its provisions while holding fast with its intent to prevent inequity and to ensure a free and ethical trade environment to the participants in the market, award the regulator i.e., the CCI (Competition Commission of India) – with powers to monitor anti-competitive behaviour taking place within the country. So also, it has been entrusted to take cognisance of an act in such connection taking place outside India but having an adverse effect on competition in country[56]. The Act of 2002 by allowing CCI to exercise extra-territorial jurisdiction has also made it possible for the regulator to take action against such anticompetitive conduct involving imports and foreign cartels which may adversely affect the Indian market[57].

As we delve into this special provision which is much akin in nature to the extra-territorial nature of the provisions dealing with settlement of trade disputes before WTO, it's observed that an increase in globalisation of business along with the global acceptance of this provision under the Act of 2002 – often referred to as the 'effects doctrine', has lead to expansion of the scope of national competition laws to cross-border business activities[58]. The principles of extra-territorial jurisdiction can be bifurcated in two parts i.e., the subject matter - jurisdiction and enforcement - jurisdiction. For the purpose of subject matter - jurisdiction, the territorial and nationality principles are sufficient to undertake a great number of infringement of competition laws[59]. Whereas, for giving effect to the enforcement – jurisdiction, it is understood that without entering into bilateral or multilateral agreements, the provisions of the Act of 2002 may not be given its due effect[60]. Thus, the CCI must endeavour to enter into bilateral or multi-lateral agreements with other competition regulators in this regard.

Notwithstanding that the effects doctrine is a common provision in the competition laws of other nations and even existed in the Act of 1969 as well, the difference in modality and efficiency with which the latter and the Act of 2002 deal with it, becomes a subject of greater relevance to us for analysing the transition. An illustration under the doctrine would mean that Country B could prosecute Country A's firm in B's own courts on the basis of the laws prevalent in B. This however, frequently runs into problems of gathering evidence and enforcing penalties and could also be interpreted as infringing the sovereignty of country A which could only be tackled through the principle of Comity of nations. Under positive comity, authorities in A will entertain complaints from B and proceed against the firm in their jurisdiction on the basis of their own laws. This has

worked reasonably well between the European Union and the United States in recent years[62]. However, it requires similar regulatory frameworks and philosophies in the two jurisdictions.

Although, the administration of the Act of 1969 while dealing with this issue exhibited a lack of technical expertise with long delays in delivering judgments making it hardly likely for India to succeed in obtaining the benefits of reciprocal positive comity. Contrary to this, the modern competition regime has remedied these deficiencies and adopts an approach much similar to the one relating to positive comity, as discussed above[63]. However, it may be noted that a reciprocal implication of this effects doctrine are absent in respect to Indian firms as many of the restrictive business practices such as export and import cartels and exclusionary vertical arrangements that restrict market access to imports are not practised on a significant scale by the Indian firms.

Moreover, during the period of transition which witnessed an almost absence of law guiding the Indian markets, much of the pitfalls of the Act of 1969 continued to haunt the economic scenario. This in turn, had a great repercussion on the perception of foreign players which has still not been reversed by the new Competition regime, operational for more than a decade now. The United States Trade Representative's (USTR) Report[64] which invariably comes down hard on any policy that impedes market access to American firms did then, ended up exonerating India on this score. Both state-owned and private Indian firms were reported to engage in most kinds of anti-competitive practices with little or no fear of reaction from government overseers or actions from a clogged court system[65]. It again hinted India to be suffering from the shackles of a slow bureaucracy and over-intervention of sectoral regulators despite having done away with its protectionist proclivity in the early 90's.

Consequently, the present legal framework needs to focus a great deal on revamping the Indian image in the global marketplace. One idea in this regard would have been to bring into force various provisions of the new Act at staggered intervals, as provided for in the Act itself, and to implement them aggressively against foreign firms, and then offer to bring them under international disciplines in exchange for suitable concessions. Now that this strategy has been met, a further analysis needs to be taken as to its implications.

Challenges to the Incumbent & the Road Ahead

Though the modern Competition era in India is much lauded for its holistic vision and has been often over-estimated to be a panacea for all glitches in the economic setup of the nation, it faces stark challenges from its very own foundation. As is well known, inter alia the rationale behind withering away of MRTPC (Monopolies & Restrictive Trade Practices Commission) was that it

lacked adequate functional autonomy[66]. A similar impediment is encountered even by CCI (Competition Commission of India) as established under the Act of 2002. It grapples with limitation over its jurisdiction in various matters and suffers from a lack of authority for the purpose of recruiting its workforce. Though several representations have been made in this regard to the government, the response from the Administrative chambers remains much cold where the control over the rules for employment of workforce rests till now.

This falls under the auspices of the legislation of 2002, which entrusts the government to take a decision on the number, qualification and salary structure of the employees to be hired and thus, leaves a little room for the Competition regulator to take a call suiting its requirements. However, scholarly opinions on this matter of immediate importance categories it to be a structural issue by emphasising the need for professionals and full-time employees well conversant withcompetition regulations to be a part of the Commission[68]. Also, much criticism is attracted with respect to appointment of officials on deputation which evidently, weakens the professional standing of the regulator. A felicitous consequence of this proposition can be witnessed in the frequency at which several orders passed by the regulator have been challenged in the courts. Notwithstanding this, yet another encumbrance to the regime in place comes from the limited powers of the Director General (Inspection), which though has the powers to conduct search and seizures under the Act of 2002, but it gets limited to only such cases where he has obtained a warrant from the magistrate in that regard[69]. This proves fatal to the fragile nature of evidences in competition matters, half of which, may not be amicable to admissibility in courts owing to an extremely wide ambit of terms like 'agreement' under the Act[70]. The conundrum becomes even more evident, if we compare the Indian Legislative setup with its European counterparts which have inspired the framework in the former. The latter do award the powers to search and dawn raids on the investigative wing for the purpose of gathering documentary evidence in a probe.

CONCLUSION

Tracing its journey between ideologies, the deliberations made above signified the major dilemma which India faced while traversing between the 'License-Permit Raj' to Competition era. Broadly, it was comprehended that the need for this transition was much voiced as the protectionist approach which India had adopted, by that time started mutating into a draconian rigour. As the investment rate started to stoop low and India's image as an unfavourable destination grew, the government took immediate measures and opened up the roof to Indian economic setup. As this allowed for a

competitive spirit to sprout from the domestic market, the increasing pressure for trade liberalisation around the same time started reversing the progression which India was about to embrace with much desperation. Despite this, the comprehensive architecture of the Competition Law regime which entered into the arena in 2002, commenced to effectually treat these pitfalls and started revamping the face of Indian economy with much strength and vigour.

Though the regime in place has been accused for alienating itself with its objective due to the dynamics with other policy frameworks in place, but, the situation can be very well improvised with regular reforms. Here, like other advanced nations, India will have to explicitly take into account the historical and the socio-economic context before contemplating or introducing any Competition Law Policy reforms. Since many of the extant distortions in the market have been caused by earlier institutions which remained operational for a long stretch, undoing the scars is no doubt a cumbersome task and would only reach closer to accomplishment as we continue express our reliance on the present structures while acknowledging the quintessence of the spirit of competition. In addition, an approach to harmonize the competition policy with other sectoral regulations can ease much of the pressure. This would be much feasible and desired as the mutual interference and interaction of all such sectoral regulators with CCI is optimum and in the recent past, has been a cause of concern for the policy analysts.

