



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. IX th Semester

SUBJECT: COMPETITION LAW

SUBJECT CODE: BAL 901

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LECTURE 10

TOPIC: RELATIONSHIP WITH THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT,

Changing of Monopolies Restrictive Trade Practices Act, 1969 into Competition Act, 2000. Since 1970, the Act had been changed many times to adjust to the changing circumstances. However, particularly after the economic reforms of early 1990s, it was realized that the Monopolies Restrictive Trade Practices Act had become outdated in some respects in the light of globally economic developments relating more specifically to competition legislation and there was a concern to shift attention from controlling monopolies to enhancing competition. The Monopolies Restrictive Trade Practices Act was beyond rectification and could not fulfill the purpose of the new competitive requirement. A new law may be enacted, the Monopolies Restrictive Trade Practices Act may be repealed and replaced by the Monopolies Restrictive Trade Practices Commission. The provisions relating to unfair trade practices need not find place in the Indian Competition Act as they were included by the Consumer Protection Act, 1986.

The pending cases in the Monopolies Restrictive Trade Practices Commission may be referred to the Consumer Courts under the Consumer Protection Act, 1986. The pending Monopolies and Restrictive Practices and Restrictive Trade Practices cases in the Monopolies Restrictive Trade Practices Commission may be considered for decision by the Competition Commission of India from the level they were in emergence of Competition Act, 2002. In India, the first legislation related to competition Monopolies & Restrictive Trade Practices Act was enforced in 1969. However, the focus of this Act was more on the curbing of monopolies and the restriction of monopolistic trade practices; it was a product of the regime of licensing and controls. In the new economic era, it was found that the Monopolies Restrictive Trade Practices Act had become outdated in certain respects in the light of international economic developments relating

more specifically to competition, and there was need to shift the focus from controlling monopolies to encourage competition. This led to enactment of the Competition Act, 2002 which came on the law book in January, 2003. India has adopted the regulations, policies and reforms that give thrust to curbing any kind of monopoly and give emphasis to the competition in the market. The Constitution of India, in its essay in building up a just society, has mandated the State to draft its policy towards securing that end. Directive principles of Constitution of India.

Accordingly, after independence, the Indian Government assumed increased responsibility for the overall development of the country. Government policies were framed with the aim of achieving a socialistic pattern of society that promoted equitable distribution of wealth and economic power. However, even as the economy grew over the years after independence, there was little evidence of the intended trickle-down. Concerned with this, the Government appointed Mahalanobis Committee in October 1960. The committee find that big business houses were emerging due to the “planned economy” model practiced by the Government and recommended changes at industrial structure, and whether there was concentration. Subsequently, the Government appointed a Commission in April 1964, which reported that there was high accumulation of economic strength in over 85 percent of industrial items in India. Subsequently, a Committee was appointed look at the operation of the industrial licensing system. The report emphasized previous concerns regarding limited benefits of the licensing system. Following this, the Government, in July 1967, appointed the Industrial Licensing Policy Inquiry Committee, which felt that licensing was unable to check accumulation and suggested that the Monopolies and Restrictive Trade Practices (Monopolies Restrictive Trade Practices) Bill (as proposed by the Monopolies Inquiry Commission) be passed to set up an effective legislative regime. With this backdrop, the Monopolies Restrictive Trade Practices Act, India’s competition law, was enacted in December 1969 to check concentration of economic power, control the growth of monopolies and prevent various trade practices detrimental to public interest. It would be interesting to look the pages of history and see how the law of earlier time, which is still in force, was enacted. In 1964, when the Indian economy was in its initial stage or barely 18 years old is the Central Government made the “Monopolies Inquiry Commission” to inquiry into the extent and

effect of accumulation of economic power in few people and the presence of monopolistic and restrictive trade practices in dominant sectors of economic activity other than agriculture. The Commission produced its report with the Bill which later become the Act. The Statement of Objects and Reasons was over-ambitious. The “Monopolies and Restrictive Practices Act, 1969” was the first competition law of the country. The Monopolies Restrictive Trade Practices Act represents an era of aggressive government interventionist policy reflected unambiguously in controls, licensing, permits and promotion of public sector. The dawn of liberalization in 1991, following a financial crisis, rendered some laws inconsistent with new economic policies. One of them was Monopolies Restrictive Trade Practices Act. Monopolies Restrictive Trade Practices Act, which came into effect on 1 June 1970, was the first substantive legislation aimed at regulating free and unfettered trade. The main objective of enacting the Monopolies Restrictive Trade Practices Act was to make ensure that the economic system does not result in the accumulation of economic power to the common disadvantage, for the control of monopolies and for the prohibition of monopolistic and restrictive trade practices.

The Monopolies Restrictive Trade Practices Act regulated three types of trade practices, which hamper competition in India or are prejudicial to public interest, namely 1) Monopolistic trade practices. It would be interesting to look the pages of history and see how the law of earlier time, which is still in force, was enacted. In 1964, when the Indian economy was in its initial stage or barely 18 years old is the Central Government made the “Monopolies Inquiry Commission” to inquiry into the extent and effect of accumulation of economic power in few people and the presence of monopolistic and restrictive trade practices in dominant sectors of economic activity other than agriculture. The Commission produced its report with the Bill which later become the Act. The Statement of Objects and Reasons was over-ambitious. The “Monopolies and Restrictive Practices Act, 1969” was the first competition law of the country. The Monopolies Restrictive Trade Practices Act represents an era of aggressive government interventionist policy reflected unambiguously in controls, licensing, permits and promotion of public sector. The dawn of liberalization in 1991, following a financial crisis, rendered some laws inconsistent with new economic policies. One of them was

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The Monopolies Restrictive Trade Practices Act regulated three types of trade practices, which hamper competition in India or are prejudicial to public interest, namely 1) Monopolistic trade practices 2) Restrictive trade practices 3) Unfair trade practices. Since 1970, the Act had been changed many times to adjust to the changing circumstances. However, of late, specifically after the economic reforms of early 1990s, it was felt that the Monopolies Restrictive Trade Practices Act had become outdated in some respects in the light of globally economic developments relating more specifically to competition laws and there was a need to shift attention from controlling monopolies to promoting competition. The Monopolies Restrictive Trade Practices Act was beyond improvement and could not fulfill the purpose of the new competitive sphere. A new law may be enacted, i.e. Indian Competition Act, the Monopolies Restrictive Trade Practices Act may be changed. The provisions relating to unfair trade practices need not find place in the Indian Competition Act as they were included by the Consumer Protection Act, 1986. The pending cases in the Monopolies Restrictive Trade Practices may be transferred to the concerned Consumer Courts under the Consumer Protection Act, 1986. The pending Monopolies and Restrictive Practices and Restrictive Trade Practices cases in the Monopolies Restrictive Trade Practices Commission may be taken up for consideration by the Competition Commission of India from the level they were in. In the period following independence of India, the policy of the government was more of 'Command and Control' of economic growth in the country. Hence laws, rules, regulations were framed in accordance with the same. However, with change in economy, the law had to be amended. The 1991 amendment to the Act deleted the concept of Monopolies Restrictive Trade Practices Company and repealed almost all provisions relating to their expansion. The fact that the Act has been amended several

times since 1969-in 1980, 1982, 1984, 1985, 1986, 1988, 1991 –shows that there are many lacuna in it and that it needs to be replaced altogether by a new comprehensive law.

The policy of the government right since independence has been to pursue industrial growth without concentration of industries in the hands of a few. However, the legislation to control concentration of industries was enacted in 1969, nearly 20 years after launching planned economic development. Within 3-4 years, the enthusiasm of government diluted as can be seen from the relaxations granted for expansion and growth of large companies/business houses on a variety of grounds such as priority industries, location in backward areas, exports etc. In the 1970s especially, government has seen the conflict between objectives of rapid growth and prevention of accumulation of economic power in few hands, and government has openly given priority to growth objective. Moreover, Monopolies Restrictive Trade Practices Act did not cover many aspects. The people were more aware about the Consumer Protection Act than this Act²⁵ Monopolies Restrictive Trade Practices did not impose any penalties on unfair trade practices. There was lack of independent powers also.

The Competition Act, 2002 was established January 2003 and the Competition Commission of India was came in to existence in October 2003. The Act states that it shall be the duty of the Commission to eliminate practices having adverse effect on competition, to promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India. Thus, it gives the Commission a heavy mandate. Some of the sections of the Act were come into force on March 31, 2003 and large part of the other sections on June 19, 2003. However, the entire Act still not came into effect. In exercise of the power conferred upon it, the central government has established the “Competition Commission of India” having its head office at Delhi.

Exercise:

1. The MRTP Act, 1969 has become obsolete in certain respects in the light of International economic developments relating more particularly to _____ laws
 - a) Trade Practices
 - b) Competition
 - c) Restrictive Practices
 - d) Unfair trade

2. The thrust of MRTP Act is directed towards
 - a) Control of monopolies
 - b) Prohibition of monopolistic trade practices
 - c) Prohibition of unfair trade practices
 - d) All of the above

3. The Monopoly Restrictive Trade Practice Act was introduced in
 - a) 1870
 - b) 1911
 - c) 1969
 - d) 1996

4. Raghavan Committee (high level committee) on competition policy and law was constituted by the central government which submitted its report on
 - a) 22nd May 2002
 - b) 22nd May 2001
 - c) 22nd June 2001
 - d) 22nd April 2002

5. In case there is no fair competition then it would cause _____ in economic growth

- a) unfair practices
- b) restrictive practices
- c) inefficiency
- d) black money