



Restrictive Trade Practices under the Consumer Protection Law and the Competition Law in India – An Analysis

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ABSTRACT

Trade practices which affect consumers are characterized as unfair trade practices, restrictive trade practices, anti-competitive trade practices, etc., and they are prohibited by way of providing provisions under the concerned legislation. Particularly, the restrictive trade practices are provided under Consumer Protection Act (CPA) and Competition Act. They have been defined within the legislation. This study compares the definitions stated in various laws and conducts a comparative analysis of restrictive trade practices, anti-competitive practices, and unfair trade practices as defined by different legislations. The interpretation of these practices outlined in various legislations requires a critical examination of the remedies accessible to consumers. Attaining consumer welfare would necessitate the prohibition of restrictive commercial practices. Legislation passed over the years has addressed trade practices which are detrimental to consumer welfare. Initially, restrictive trade practices were defined under MRTP Act of 1969. Subsequently, Consumer Protection Act (CPA) of 1986 offered a different interpretation, remaining effective until 2019. The enactment of Consumer Protection Act of 2019 introduced yet another distinct definition for restrictive trade practices. Simultaneously, legislation repealing MRTP Act of 1969 was approved, and a new statute, the Competition Act of 2002, was introduced, which delineated anti-



competitive acts and mirrored definition of restrictive trade practices outlined in consumer protection statutes. It gains more significance to analyse the meaning of restrictive trade practices provided under different legislations to view the remedies for the consumers in case of violation of their rights, and therefore, the same task is handled in this article.

Introduction

The restrictive trade practices adopted by players in the market are not good for the consumers is well-known in economic system. These practices have been given meanings in the laws enacted to prohibit them. And further, it is to be highlighted here that the laws that were and are providing the provisions regarding the restrictive trade practices and remedies against them for the consumers. The consumer welfare and prohibition of restrictive trade practices are well interconnected. Relationship among consumer protection legislation or competition law was clearly defined concerning the aims of consumer protection and welfare. However, this is crucial here to explore the concept of remedies and reliefs provided by the legislation enacted for the purpose is somewhat complicated, rather than the objective of consumer protection. In this study for the said purpose, it is very significant to study the consumer welfare in terms of the point of the restrictive trade practices adopted by the producers, sellers, or service providers in the market by referring to the laws enacted for this purpose.

Consumer Welfare

Consumer welfare is, in reality, to benefit consumer from consumption of goods and access to services. The benefits of the consumer are to be understood in the manner of access to quality goods, standard goods, goods for the intended use, satisfactory services, etc, with reasonable prices. The true measure of consumer satisfaction when buying products or using services is often reflected in the amount they pay for them. Consumer welfare is the principle that backs the competition policy. Consumer welfare always stands in the low cost or price of the goods and services. The relationship between the anti-competitive practices or consumer welfare lies in concept that the loss of the consumers through the prices would result in the gain of the producers or the suppliers in the market. Therefore, the restrictive trade practice results in causing injuries to the consumers. The Supreme Court also noted that the formation of a cartel has the effect of price escalation and consumers and the public should not have to bear unwarranted



higher costs resulted out of such activity. The practice that would cause unjustified costs to the consumer is provided under the law as a restrictive trade practice.

Consumer Welfare and Fair Competition in the Market

Consumer welfare refers to idea of promoting consumer well-being and ensuring that consumers receive benefits, which includes safeguarding their rights. MRTP Act of 1969 was the law in India that had the objective to prevent market monopolies. The concept of a monopoly stands in stark contrast to an ideal economic system characterized by fair market competition. Consequently, abolishing monopolies would foster equitable competition in market, thereby positively influencing consumer welfare. Purpose of Monopolies or Restrictive Trade Practices Act of 1969, which has been repealed in 2002, was to eliminate market monopolies and establish a sound economic system devoid of concentrated economic power in a single enterprise, while also prohibiting monopolistic or restrictive trade practices. The legislation aimed to eliminate trade practices detrimental to the public and harmful to consumers. This Act of 1969 was replaced by an enactment in the year 2002. (Competition Act, 2002). Objective of Act of 2002 is to establish a commission to take action necessary for the unfair competition acts of the enterprises. It is quite significant to see that meaning of restrictive trade practices provided under different legislations comprises the law for prohibition of monopolistic or restrictive trade practices, the law for consumer protection, or the law for fair competition in the markets.

The objective behind the abolition of monopoly

The prohibition of monopoly is essential to have a good economic system that has the feature of non-concentration of money-power in one place in the market. Therefore, it should be the ultimate purpose to abolish such a practice. Such concentration of economic power in one person or concern in the market would have a negative impact on the public, which means it would cause common detriment to the public, which technically includes consumers in market sector. To prevent practices that adversely affect competition, ensure fair market conditions while safeguarding consumer interests, and to establish a commission for inquiries to completely prohibit such practices for the advancement of the market economy. Having the ultimate aim of consumer welfare, ensuring fair competition in the market by providing quality goods at justified costs, is the objective behind the competition law.

To maintain fair competition in the market, monopolistic and restrictive commercial activities must be prohibited. In the above aim as the main scope, the MRTP law enacted in the year 1969 provides for the definition of monopolies in the market and also the restrictive trade practices, and its prohibition



strategy. Similarities may be observed between these two practices, particularly in their ultimate consequence of inflicting harm on consumers through methods such as restricting or regulating production or supply of goods or services, leading to price manipulation or exorbitant pricing for these goods or services. It is important to note the provisions for restrictive trade practices established under the 1986 Act, during the enforcement of MRTP Act, or subsequent repeal of MRTP Act, leading to introduction of Competition Act in 2002, which deems anti-competitive agreements detrimental to fair competition and potentially harmful to consumers. Also, it can ascertain some similarities in the meaning of the monopoly practices, restrictive trade practices, or anti-competitive agreements, and again, to include in this cue, the new consumer protection law and its definition for restrictive trade practices.

Monopolistic Trade Practice

The concept of monopoly in the market forms a concentration of economic power in a single enterprise for a particular product or goods, or services. The term is used to mean properly that a single enterprise enjoys the business benefits by marketing its products or goods, or services in market. The effect of a monopoly is that there would be no fair competition in market for that particular product or goods or services that have a monopoly. The economic system would be severely affected by causing injury to the consumers, and this would be taken to mean that adverse to consumer welfare. The term monopolistic trade practice refers to trade practices that compel consumers to pay higher rates for goods and services through the imposition of unreasonable or excessive pricing, as well as the maintenance of such prices by limiting, restricting, or controlling distribution, production, or supply of goods as well as services. It also includes act of preventing or reducing competition that would lead to a negative impact on market competitiveness. Moreover, the trading practice restricts technical advancement by blocking the quality of goods. The restriction of capital investment adversely affects the populace or consumers as a whole. Trade practices encompass methods that degrade the quality of goods as well as services, as well as monopolistic trade activities.

Restrictive Trade Practices

Unfair, restrictive, or anti-competitive trade practices harm consumers in various ways. Restrictive trade practices can inhibit, distort, or limit competition in any way, such as by blocking capital or resource influx, manipulating prices or delivery conditions, or affecting the supply chain of goods or services, imposing unwarranted costs or restrictions on consumers. (Roy & Kumar, 2016) The meaning specifically highlights that delays in supply, which may result in increased prices for goods or services, constitute restrictive trade practices if the delay surpasses the timeframe stipulated in the agreement and



imposes conditions for the purchase, hire-purchase, or leasing of one good or service in exchange for another. CPA of 2019. Consumers can seek compensation for unfair, restricted, or unethical trading practices. Restrictive trade practices could include anti-competitive trade activities. Consequently, consumer rights include protection against restrictive trade practices. The Act clearly includes loss, harm, or injury to the consumer as a result of unfair trade practices, although it remains unclear regarding the inclusion of restrictive trade practices.

Trade practices that impede, distort, or restrict competition in marketplaces are typically classified as restrictive trade practices. The practices commonly categorized as restrictive trade practices encompass the manipulation of prices for goods or services, obstruction of capital or resource flow necessary for market-related production or manufacturing, imposition of conditions regarding the delivery or supply of goods or services, and actions that disrupt the supply flow in the market to impose unjustified costs on consumers, as well as the imposition of unwarranted restrictions on consumers regarding the purchase of goods. The consumer protection law, effective until 2019, defined restrictive trade practices as the imposition of conditions on customers to acquire one good or service in exchange for another. Trade practices that manipulate the pricing of goods, change delivery conditions, affect supply flow to impose unjustified costs on consumers, or cause delays in supply of goods as well as services to increase prices by extending delivery timelines as stipulated in agreements.

Anti-competitive Practices as Restrictive Trade Practices

The anti-competitive practices include anti-competitive agreements, abuse of dominance, and unlawful combinations as stipulated in of 2002 Act. The agreements would be anti-competitive if their purpose is contrary to fair competition. (Vahini Versha, 2022). The meaning of restrictive trade practices found under the MRTP law is, with some distinction, as given under CPA of 2019. (Reddy, 2022) and relevance of similarity between the agreements provided under the repealed Act of 1969 and the Act of 2019 was also established. (Mittal D.P., 2024). However, similarity is also there with regard to the meaning of RTPs in various legislations. As for evidencing this, to quote unreasonable prices and unjustified costs. And further aim here is to find whether a similarity exists or not between the anti-competitive practices and restrictive trade practices. The similarities in some sort are evident from the words of the statutes as limiting, controlling production, supply of goods or services, etc.

Restrictive trade practices cover tie-up sales or tying arrangements. A tie-up sale or tying arrangements is an agreement or an arrangement is the case wherein the purchaser is also required to purchase one article, with the condition that purchasing another would affect fair competition in the



market. (Reddy, 2022). Price-fixing agreements and bid-rigging arrangements exemplify restrictive trade practices, which are detrimental to consumers. Unfair contracts, as defined in the 2019 Act, also exhibit characteristics associated with excessive costs imposed on consumers due to restricted trade practices. In a 1979 judgment, *Union of India v Mahindra & Mahindra Ltd.*, concerning monopolies and restrictive trade practices, the Court noted that trade activities that restrict, reduce, or eliminate competition are classified as restrictive trade practices. The 2002 Competition Act and 2007 Competition (Amendment) Act classify RTPs as anti-competitive actions. 2017 (Chatterji). Under the Competition Law of 2002, cartels are described as agreements among businesses to refrain from competing with one another (Ramappa, 2021), and price-fixing arrangements are classified as cartels that would constitute Restrictive Trade Practices (RTP). To elaborate on the concept of a cartel, it encompasses an alliance of manufacturers, sellers, and distributors regarding the selling, pricing, or trade of goods or provision of services. Roy & Kumar (2016).

Remedies – Restrictive Trade Practices

Consumer remedies are defined under Section 39 of the 2019 CPA. The District Commission's Section 39 Findings marginal notes detail the remedies. These remedies typically address faults in goods, unfair trade practices, deficiencies in services, or claims for compensation related to product responsibility. The Commission orders the opposing party to undertake the following actions, as applicable in such situations. Consequently, it is determined that there is no immediate recourse for consumers regarding restrictive trade practices under Section. 39.

Section 27 of 2002 Competition Act offers remedies for anti-competitive agreements or dominant position abuse. Competition Commission of India may issue any of following orders: mandate cessation and prohibition of re-entering into such agreements, and mandate the cessation of such abuse of dominant position. Require agreement changes and a 10% penalty of average turnover for previous 3 financial years, and under Section 28 of Act, If an enterprise abuses its dominant position, the commission may order its division. Section 31 of the Act stipulates remedies against combinations, allowing the Commission to mandate that the combination must not be executed. Section 27(b) allows the Commission to punish producers, sellers, distributors, traders, and service providers three times their profit or 10% of their turnover for each cartel year. The informant under the Competition Act, 2002, includes consumers; nevertheless, the remedies provided by the Act are not readily accessible as compensation for consumers.



Concluding Remarks

Relying on the above analysis, it is right to conclude that restrictive trade practices, which are really averse to welfare of consumers and result in infringement of consumer rights and require consumer protection against these. The practices categorized as restrictive trade practices, unfair trade practices, or monopoly trade practices have been subject to legal scrutiny since 1969. The consumer protection law enacted in 2019 and the competition law established in 2002 are currently in effect, addressing issues related to restrictive trade practices. The competition law focuses on anti-competitive practices, which share certain characteristics with restrictive trade practices outlined in consumer protection law. This relationship can be effectively established by examining the purpose of the relevant legislation.

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