

INTELLECTUAL PROPERTY RIGHTS VS. COMPETITION LAW IN INDIA'S DIGITAL AGE: BALANCING INNOVATION AND MARKET DYNAMICS

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Abstract

The conflict between life and technology has persisted throughout history, with technology being essential for sustaining and advancing life. One of the most prominent sectors that has witnessed high levels of intervention is the innovation in online mediums through artificial intelligence. This article discusses the complexities of harmonizing legal frameworks to foster innovation while ensuring fair market practices. Intellectual property rights foster creativity and innovation by giving exclusive rights to artists and innovators. Competition law aims to maintain market equilibrium by prohibiting monopolistic activities and encouraging fair competition. The confluence of these objectives is essential for an efficient online economy, but it raises substantial legal and regulatory issues. The article explores the conflicts and synergies between intellectual property rights and competition legislation in India's technological environment, examining how technological advances influence market dynamics and the legal ramifications of these innovations. It also discusses the interplay of intellectual property rights and competition law in India's digital economy, the main conflicts and possible remedies, and the essential legislative and legal reforms to balance innovation and market fairness. The authors propose legislative and policy reforms adapted to India's unique digital ecosystem to strike a balance between supporting innovation and ensuring dynamic market competition.

Keywords: Intellectual Property Rights, Competition Law, Digital Age, Innovation, Market Dynamics

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1. Introduction

Artificial Intelligence (AI) has a significant inception in the digital age, ensuring data security and privacy has become a critical concern globally, including India. The rapid advancement of technology has transformed various sectors globally - media, technology, healthcare, and finance. In India, the emergence of AI provides new opportunities and difficulties, notably within Intellectual Property (IP) and Competition Law. AI systems develop novel solutions and creative substance, and existing IP frameworks are inputted to the test. Simultaneously, AI's influence on market dynamics requires current competition laws. In tackling the issues, it is imperative to establish a stringent framework of Intellectual Property Rights (IPR) and Competition Laws. This introductory section provides an overview of the intersection of these fields, focusing on the implications for electronic media in India. The article analyses India's progress in the influence of AI on competition law, focusing on its role in market dynamics and anti-competitive behaviour. It also examines merger control in AI-driven companies and regulatory concerns for authorities. Furthermore, data protection needs to be addressed by reviewing primary and secondary legal sources emphasizing privacy and security issues. The digital age has ushered in an age of global interconnectedness in which ideas, information, and technologies may easily traverse borders. It emphasizes the importance of consistent and adaptable IP legislation that successfully balances the requirements of artists, inventors, consumers, and the general public. Countries and regions grapple with the regulatory implications of emerging technologies leading to an urgent requirement for thorough research to inform policymakers, legal practitioners, and stakeholders about the challenges and opportunities that await them.

Against this backdrop, this study seeks to dive into the complex dynamics of how developing technologies affect IPRs by investigating the challenges and possibilities and it intends to pave the path for informed policy choices, legislative changes, and industry strategies that promote innovation, safeguard creative efforts, and assure the continuous evolution of IP in a technologically changing world.

The objective is to assess the interconnection between IP Law and Competition Law in the context of AI in India. Further, it highlights the issues that AI poses to present legal frameworks, evaluate the efficacy of existing legislation, and make suggestions for policy and legal change. The present study takes a doctrinal strategy involving qualitative

analysis. It involves analysis of legal texts, scholarly literature, and policy papers. Legal precedents concerning technology-related companies and sectors have been examined to indicate the practical repercussions.

2. Legal Framework of Intellectual Property Rights and Competition Laws in India

Competition law emphasizes the value of free markets, despises monopolies, and attempts to create a competitive environment that encourages consumer choice. It aims to create an environment that values consumer rights, open trade, and efficient resource allocation. IP rules, in a nutshell, create monopolies. Further there is a contrast between IPR and Competition Policy. The sooner discourages competition, whereas the contrary encourages it.¹

2.1. Enduring Conflict Between IPR and Competition Law

Among other IPRs, patents and competition law has been an area of debate for some time. Patents may lead to cupidity, fraud, and disagreements among inventors, as well as interminable lawsuits. The underlying legal concept does not allow such outcomes. The Economist's condemnation of patents was widely accepted at that moment, despite its harsh tone. Adam Smith, a century ago, described them as "necessary evils" to be used sparingly, and other economists have subsequently expressed similar misgivings. Patents grant temporary monopolies on beneficial discoveries.²

After the Singapore Ministerial Declaration of 1996, a Working Group on the Interaction of Trade and Competition Policy was established in 1997.³ This working group discussed the competition regulations governing all current World Trade Organisation (WTO) agreements. Some argued that safeguarding technology through IPR can promote research and development (R&D). Members were directed, however, to

¹ Vijay Kumar Singh, "Competition Law and Policy in India: The Journey in a Decade" 4 *NUJS Law Review* 527 (2011).

² Patent Sense, "Patent sense - How the system works" *The Economist* (October 22, 2005), available at: <https://www.economist.com/special-report/2005/10/22/patent-sense> (last visited on July 15, 2024).

³ World Trade Organisation, *Ministerial Declaration on Trade in Information Technology Products* WT/MIN(96)/16 (December 13, 1996).

consider enacting regulations to regulate anti-competitive conduct relating to the use of IPRs.⁴

According to the findings of the Parliamentary Standing Committee, every kind of IPR can impact competition policy. IP provides owners exclusive rights to engage in productive or commercial activities, but not to monopolize an economy or society. Encouraging and appreciating human ingenuity requires IPRs. The creator has the right to prevent others from utilizing their works, including inventions and designs. However, there is a need to restrict and prevent anti-competitive activity that may arise in the exercise of IPRs.⁵ When exercising a right, any anti-competitive trade activity or activity that harms consumer or public interest ought to be addressed under competition law.⁶ The Competition Act failed to fully address the issue between IPRs and competition law. However, some argue that the lack of exemptions for IPR was intentional and that Section 3 of the Competition Act, 2002 provides sufficient protection.⁷

2.2. Historical Perspective of Intellectual Property Law

IPRs are legal rights regulating the application of creativity and innovation. IP mandates an alternate and more perplexing arrangement of rules for theft and proprietorship since these lines are frequently considered to be more indistinguishable and harder to demonstrate than with actual property.⁸

At the point when actual belongings are taken into consideration, the casualty encounters a deficiency of property or riches and the cheat benefits. In any case, developments and innovative work can lose esteem essentially using encroachment. On the off chance that the survivor of licensed innovation robbery has rights to a melody or a patent for creation, they do not need to lose that tune or development to encounter harm. All things being equal, just the presence of a copycat, or a contender available, can drive

⁴ World Trade Organisation, *Report of the Working Group on the Interaction between Trade and Competition Policy* (WT/WGTCP/4, Nov. 30, 2000).

⁵ Department-Related Parliamentary Standing Committee on Home Affairs, “93rd Report on the Competition Bill, 2001” (Parliament of India, Rajya Sabha, 2002).

⁶ Government of India, “Report of High-Level Committee on Competition Policy and Law” (Raghavan Committee, 2000).

⁷ Raju Mohammad and Mohammad Nazmi Newaz, “Intellectual Property Rights Commercialization: Impact on Strategic Competition” 8 *Business and Management Review* 22 (2016).

⁸ Sankalp Jain, “Competition and Intellectual Property Rights: Interface and Interdependence in Indian Context”, available at: <http://dx.doi.org/10.2139/ssrn.3677720> (last visited on August 24, 2024).

down the estimation of the first maker's work and lead to a loss of benefits.⁹ IPR has a significant impact on a country's economic advancement considering that it promotes an elevated level of competitiveness and stimulates industrial and economic progress. IPR has various benefits. It is intangible, which means it protects ideas, creations, information etc. and these are protected from being exploited in an unauthorized manner, making it available for commercial usage, and generating revenue from such IP. IP is a property right that the inventor can use as they see fit, subject to certain conditions.¹⁰ The inventor has the right to sue for infringement under IPR.¹¹

As technology advances at a rapid rate, many changes and new terminology are being introduced to widen the scope of IPR. IPR is classified into two modes: copyright and industrial property. Copyright property encompasses the original literary, dramatic, musical, creative works, cinematograph films, music, and audio-visual works, while industrial property includes patents, trademarks, industrial designs, geographical indications, and so on.¹²

There are four principle classes of IP law in India.: Trademark, Patent, copyrights, and licenses.

2.2.1. Copyright

Copyright protects artists' rights to their creative and literary creations. As previously noted, IPR can be owned by both an organization and an individual, similarly, copyright can be held individually or by an organization.¹³ While copyright registration is not compulsory by law, creators have the choice to do so. As a result, even if the work is not registered, it is protected under copyright law. By virtue of the Copyright Amendment Act of 2012, rights of the authors and artists were strengthened, electronic creations were better protected, and concerns with digital rights management and technical protective measures were addressed.

⁹ Lalit Jajpura, Bhupinder Singh, *et.al.*, "An Introduction to Intellectual Property Rights and their Importance in Indian Context" 22 *Journal of Intellectual Property Rights* 32 (2017).

¹⁰ World Intellectual Property Organisation, "What is Intellectual Property?", *available at*: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf (last visited on July 20, 2024).

¹¹ *Supra* note 9 at 11.

¹² Yug Bhatia, "Intellectual Property Rights and The Digital World" 1(3) *International Journal of Legal Science and Legal Innovation* 1-6 (2019).

¹³ Elizabeth Verkey, *Intellectual Property: Law and Practice* 18 (Eastern Book Company, Lucknow, 2015).

2.2.2. Trademark

It is a mark placed on a product or service to identify it from other choices available. It contributes to maintaining high quality, standardization and distinctiveness.¹⁴ These privileges are provided for a limited time but can be extended as needed by paying the renewal fee. These rights apply solely in the nation where they are filed.¹⁵ The Trademarks (Amendment) Act of 2010 allowed accession to the Madrid Protocol, which facilitated international registration of trademarks.

2.2.3. Patents

It is a privilege awarded on a certain product or service invention based on its unique ability to achieve something.¹⁶ To secure a patent, one must establish that their idea is unique. A patent grants the originator the authority to decide how others can utilize their product.

In India, a patent is granted for 20 years; nevertheless,¹⁷ different nations give patents for varying periods. The Patents (Amendment) Act of 2005 introduced product patents in all disciplines of technology, including medicines and agrochemicals, and followed the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

The regulatory framework governing IPRs in India has changed dramatically, influenced by historical developments, current statutes, and crucial changes. This framework is critical for safeguarding the rights of creators and innovators while also fostering economic growth and technical improvement. As India continues to integrate into the global economy, its IP policy must adapt to new problems and possibilities in the age of digitization.

2.3. Evolution of Competition Law

The beginning of competition law may be traced back to the ancient Roman Empire, in addition to various American antitrust measures, including the Sherman Act of 1890¹⁸ and the Clayton Act of 1914.¹⁹ However, the notion of competition law received

¹⁴ *Id.* at 13.

¹⁵ *Supra* note 13 at 12.

¹⁶ *Supra* note 12.

¹⁷ *Id.* at 12.

¹⁸ Sherman Anti-Trust Act, 1890, 15 U.S. Code §5(1).

¹⁹ Clayton Antitrust Act, 1914 (Chapter 323 of the 63rd Congress; 38 Stat. 730).

a considerable boost following World War II. Articles 81 and 82 of the 1957 Treaty of Rome included the competition law rules established by the European Community. Since more than a hundred nations have enacted competition rules, any company looking to develop abroad cannot afford to ignore them. With the introduction of Liberalisation, Privatisation, and Globalisation reforms by Hon'ble Prime Minister Manmohan Singh in 1991, India opened its market to foreign companies, resulting in competition within and beyond the market. This necessitated the enactment of the Competition Act of 2002,²⁰ which established rigorous legislative parameters for the execution of justice in corporate conflicts. It has been shown that a strong and equitable competitive system boosts economic efficiency. The Competition Act was passed by the Indian Parliament in 2002, and the President signed it into law in January 2003. On October 14, 2003, the government established Competition Commission of India (CCI) to carry out the Act's objective.

2.3.1. Suggested Modifications to New Regulations

The Amendment Act has introduced the Deal Value Threshold (DVT) as a new jurisdictional benchmark for determining the notifiability of transactions in India. The CCI will now assess deals with a global deal value of more than INR 2,000 crore (about USD 244 million) and the party having substantial business operations in India. This is necessary due to the constantly changing digital industry, where traditional measurements may be inadequate. However, the draft rules do not specify transitional measures for transactions that have been signed but not closed before the implementation of the final rules, which could be problematic for transactions that do not meet other jurisdictional thresholds. The transaction's value includes consideration for non-compete fees, commercial arrangements within the last two years, interconnected transactions, options, and securities, and any unforeseen circumstances.²¹

The Draft Merger and Acquisition Regulations further shows that if 10% of the target enterprise's worldwide user/subscriber/customer base, gross merchandise value

²⁰ The Competition Act, 2002 (Act 12 of 2003).

²¹ Tarusha Mathur and Shreya Pandey, "Key Changes in Combination Regulations under Competition (Amendment) Act, 2023" *Lawrbit* (February 14, 2024), available at: <https://www.lawrbit.com/article/key-changes-in-combination-regulations-under-competition-amendment-act-2023/> (last visited on August 01, 2024).

(GMV), or revenue in the last 12 months/last financial year is in India, the target would be considered to have significant business operations.²²

India's competition law structure is affected by international standards and practices, drawing parallels with jurisdictions such as the United States (US), the European Union (EU) and other sophisticated competition regimes. The Indian Competition Act closely follows the ideas of EU competition law, notably in its approach to anti-competitive agreements and abuse of dominance. However, the Indian structure includes distinct aspects, such as the leniency program, which is more closely related to the US model. In comparison to these jurisdictions, India is still building its enforcement and jurisprudence. Nonetheless, the CCI has been proactive in learning from foreign experiences and collaborating with other competition authorities on a multifaceted and bilateral basis, intending to foster an atmosphere of competition that promotes creativity and customer satisfaction.²³

The legislative foundation of competition law in India has changed dramatically between the Monopolies and Restrictive Trade Practices (MRTP) Act²⁴ and the present Competition Act, reflecting the country's transformation to a market-oriented economy. The Competition Act of 2002, with several revisions and regulations, establishes a strong system to combat anti-competitive behaviour and foster market competition. While India's framework has its characteristics, it is also affected by international norms and practices. As India continues to integrate into the global economy, more improvements and adaptations to antitrust laws are going to be required to handle new issues and maintain a balanced and competitive market environment.²⁵

3. The Digital Age: Technological Advancements and Market Dynamics

Technological advancements have resulted in higher worldwide living standards and economic growth in new nations. The digital marketplace, which uses the internet to

²² Lakshay Sukhija, "Demystifying Killer Acquisition in the Digital Industry: Can Deal Value Threshold be the Panacea", *available at*: <https://www.icle.in/resource/demystifying-killer-acquisitions-in-the-digital-industry-can-deal-value-threshold-be-the-panacea/> (last visited on October 22, 2024).

²³ Makam Ganesh Kumar, "A Comparative Analysis of the Competition Act in India and Other Jurisdictions' Competition Laws: Assessing Frameworks, Similarities, and Best Practices" (June 27, 2023), *available at*: <http://dx.doi.org/10.2139/ssrn.4493345> (last visited on July 05, 2024).

²⁴ The Monopolies Trade and Restrictive Practices Act, (Act 54 of 1969).

²⁵ Competition Commission of India, "Market Study On E-Commerce in India: Key Findings and Observations (2020).

conduct electronic trade, is critical to the economy and jobs. The digital market economy is cyclical, with successful enterprises frequently being replaced by newer ones. Large-scale data collection and analysis have become commonplace, possibly affecting anti-competitive impacts. Network consequences in multidimensional markets include an increased trend in users benefitting consumers on one side.

Cab aggregation interfaces, including Uber and Ola, entice clients by offering huge driver databases and reducing wait times. Because of its quick revenue growth, the company or interface with the greatest market share will end up being most effective in the future. Using financial resources to give incentives to customers is an efficient strategy to gain market dominance. Many internet businesses have employed big discounts, cash-back incentives, and other promotions to attract new customers and develop the network effect.

However, many businesses suffered significant losses over a few decades. The subject matter of these discounting strategies and the length of time they used have created considerable barriers to competition. Capital has evolved into a competitive instrument throughout time, prompting concerns about whether the market would eventually reward the player who, although having the least creative product or service, can acquire more finance and attract more consumers in the early phases of development by utilizing subsidies. The government's Foreign Direct Investment (FDI) instructions, issued in March 2016, focused on e-commerce companies' pricing practices.²⁶ The automatic foreign investment route would only be open to e-commerce sites that avoided subsidies and were identified. The CCI recently raised these issues in a few situations.

In *Fast Track Call Cab* case,²⁷ the CCI issued a *prima facie* ruling in April 2015, mandating a thorough inquiry into allegations that Ola participated in unfair competition in Bengaluru after obtaining significant money from various investors. Regarding the CCI's denial in *Meru Travels Solutions* case,²⁸ the Competition Appellate Tribunal directed the CCI's Director-General to launch a similar investigation into Uber's monopoly in the radio taxi market in Delhi NCR. Uber later appealed the case to the

²⁶ Aakash A. Kamble, Dr. Shubhangi Walvekar, "Policy Regulations in E-commerce Sector – Critical Analysis of FDI Guidelines for Market Place Model" 8(3) *Journal of Commerce & Management Thought* 409-421 (2017).

²⁷ *Fast Track Call Cab Pvt. Ltd v. ANI Technologies Pvt. Ltd.*, Case No. 6 & 74 of 2015.

²⁸ *Meru Travel Solutions Private Limited v. Uber India Systems Pvt. Ltd. and Ors.*, Case No. 96 of 2015.

inclusion. These technical improvements have also accelerated the creation of digital products and services, resulting in new income streams and market prospects. Digital markets differ greatly from traditional markets because they enable traders to make investments more in innovation and technological advancement. Developing the marketplace is critical for influencing competition and compliance barriers as it assists in determining when a company has a dominant position or essential marketplace dominance, establishes a framework for merger control and ex-post competitive evaluation, and determines whether ex-ante regulatory action is required. The features defined through the proper market definition are commonly utilised to undertake competition effect evaluations.³¹

Establishing a market is essential for competition law authorities to address issues in online markets using procedures established for traditional commodities or services. Yet, finding relevant markets is difficult due to many platforms, free online services, and constantly shifting marketplace borders.

Competition law authorities commonly fail to distinguish between two-sided transaction markets and non-transaction markets, which require separate consideration in market determination.³² Consumers are drawn to e-commerce platforms because their products are free, reducing the requirement for competition. Standard pricing-based Small but Significant Non-Transitory Increase in Price (SSNIP) tests are unsuccessful since they ignore the interdependence of product prices across multisided platforms. Demand-side substitutability is not always an accurate predictor of whether digital services are competitors.

Marketplace recognition devices produce a consistent depiction of the appropriate market space, making it more difficult for competition authorities to comprehend the dynamic and expanding nature of digital marketplaces. Establishing competitive limits necessitates a detailed evaluation of business models and externalities across many platforms.

³¹ Dhairya Jain, “Enhancing Merger Control Jurisdiction: Addressing Regulatory Gaps in India’s Competition Landscape” 9(1) *Indian Competition Law Review* 15-26 (2023).

³² Harshit Upadhyay and Sanigdha Budhia, “Delineating Relevant Market for Multisided Platforms: Transaction vs. Non-Transaction Platforms” *IndiaCorpLaw* (October 26, 2022), available at: <https://indiacorplaw.in/2022/10/delineating-relevant-market-for-multisided-platforms-transaction-vs-non-transaction-platforms.html> (last visited on July 25, 2024).

3.2. Digital Abuse of Dominance

Digital dominance is a complicated notion that might be difficult to prove when competition authorities overestimate market power. To maintain a strong position in digital markets, one must possess market power and a thorough grasp of functioning independently. The current technique of defining dominance is based on the consumer welfare test, which considers whether greater or lesser prices have advantages or disadvantages for consumers. This standard, however, is unsuitable for the digital economy due to rapid price fluctuations and personalized pricing offered by computers.

Once a digital corporation has acquired a dominant position, the next stage is to determine if its actions are anti-competitive. In today's fast-paced digital environment, distinguishing between anti-competitive behaviour and traditional commercial strategy is tough. For instance, Google dominates the most profitable areas of the Internet, giving it the impression of a monopoly. This monopoly is the result of outstanding services and not coercion or anti-competitive behaviour.

Anti-competitive strategies are rival relationships based on foreclosure or leverage, causing harm to competitors and customers. Digital firms compete by creating new business strategies and expanding into new markets. A successful foreclosure method in digital marketplaces is a pre-emptive merger when the purchasing corporation is already building equivalent technology solutions.

Amazon and Apple have expanded vertically into upstream and downstream businesses, directly competing with app developers and dealers. This growth improves their capacity to gather more information and profits, establishing them as guardians of web businesses and application markets. However, dominating platforms can use their position to engage in violent and discriminatory behaviour. Amazon, for example, expanded to offer music, audiobooks, and other consumer items, and created and sold its brands that compete with other merchants.³³ Spotify filed a complaint with the European Commission in 2019, claiming that Apple limits freedom and stifles innovation, giving it an unfair advantage and disadvantaging other app developers. The European Commission launched an official investigation into Apple in April 2021 and submitted a Statement of

³³ Megha Rani Ahuja and Ganesh Kumar, "A Study of Technological Advent and its impact on Competition in India", *available at*: <https://www.epw.in/engage/article/study-technological-advent-and-its-impact> (last visited on October 22, 2024).

Objections, claiming that Apple had exploited its dominant position.³⁴ The European Commission fined Google €2.42 billion in 2017 for providing its products and services with an “unfair competitive advantage,” alleging that Google undermined merit-based competition in comparison shopping platforms, violating European Union competition laws.³⁵

4. Interplay Between Intellectual Property Rights and Competition Law

In the past decade, there has been an enormous rise in competition and IP laws in India. The first seeks to eliminate anti-competitive practices in the market, whereas the second grants monopolies to IP owners. Combining these two rules creates tension since they appear diametrically opposing to one another. In today’s technologically driven world, IP Law and Competition Law are increasingly seen as “two sides of the same coin.”³⁶

4.1. Coalition of IP and Competition Laws: Need and Conflict

The fast expansion of research and development by commercial and public organizations has resulted in significant structural and qualitative changes in the existing economic system. Intellectual property, which includes trademarks, copyrights, and patents, is critical for protecting the economic interests of enterprises that export goods. These rules have a significant impact on a free market since they impose limits on technology-driven industries.

Developed countries, such as the United States, already have antitrust laws, such as the Sherman Act of 1890 and the Clayton Act of 1914, that provided the groundwork for many European antitrust laws. India’s Competition Act was passed in 2003, combining and implementing the Competition Act 2002. Provisions relating to anti-competitive agreements and abuse of dominant position went into effect in May 2009, increasing the power of the CCI and the Competition Appellate Tribunal.³⁷

³⁴ *Ibid.*

³⁵ European Commission Press Release, “Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison-shopping service (June 27, 2017), available at: http://europa.eu/rapid/press-release_IP-17-1784_en.htm (last visited on October 20, 2024).

³⁶ OECD, “Competition Policy and Intellectual Property Rights – Key Findings, summary and notes”, available at: https://www.oecd.org/en/publications/competition-policy-and-intellectual-property-rights_49d5957f-en.html (last visited on October 25, 2024).

³⁷ The Competition Act, 2002 (Act 12 of 2003), s. 4.

An efficient market has a large number of customers and sellers, homogenous products, flawless information, and total flexibility to enter or quit the market without any obstacles or constraints. These components help to create a highly competitive and efficient market in which pricing and quantities are completely decided by market forces. Inevitably there is a tension between IP laws and competition laws, since one seeks to produce economic value via invention and award monopolistic power, whilst the other seeks to facilitate the use of existing resources and assist entrepreneurs in entering and existing. Both the laws possess similar objectives, but they are achieved in different ways. The motto should be to strike a balance between IP and competition rules to accomplish economic progress and consumer welfare at the same time.³⁸

4.2. Balance of interest between owners and public at large

The scope of competition law varies from case to case, and the distinctive character of IP determines the interplay between IPR and competition law. This offers an appropriability dilemma, as different parties may be able to access and exploit the same information or invention without lessening its worth. This raises crucial questions about how to achieve a balance between stimulating innovation through IPR protection and supporting market competitiveness.

IP laws seek to invent, innovate and introduce new technology, whereas competition law fosters a healthy, consumer-friendly market. However, some features of these two laws appear to clash and numerous scientists and economists have proposed various rules to resolve such discrepancies.³⁹

These principles include:

- i. In cases where social well-being is in jeopardy, only competition law should meddle;
- ii. Monopolistic markets can be as important as competitive markets that need constant research and innovation;
- iii. Competition law aims to create a consumer-friendly environment, while IP laws aim to protect the creator's interest.

³⁸ Ashley Roughton, "The Interface Between Intellectual Property Rights and Competition Policy" 3 *Journal of Intellectual Property Law & Practice* 270-271 (2008).

³⁹ Aurobinda Panda, Atul Patel, *et. al.*, "Intellectual Property Law & Competition Law" 6 *Journal of International Commercial Law and Technology* 120-131 (2011).

The argument over unfair commercial practices and IP protection has prompted several debates at international forums, including WIPO. Unfair competition has been acknowledged as a necessary component in protecting industrial property.⁴⁰

Individuals have a degree of monopoly on their intellectual creations due to IP. When paired with a possible combination of companies or individuals, the extent of monopoly in a certain market expands significantly. Consequentially, there is a need to limit unlawful conduct, prevent the possibility of misuse, investigate the influence of intellectual property on combinations, and determine how much regulation may be applied.⁴¹

4.3. Role of Intellectual Property in Combination

In a combination or merger, all IPRs are shared by the involved firms, raising the possibility that the merged entity would achieve a dominant position in the market. This might lead to market power abuse, since the merged business may restrict competition, limit customer choice, and engage in anti-competitive behaviour. To avoid potential misuse, a critical assessment of the implications of intellectual property rights in combination is required.

The issue whether IP licenses represent the acquisition or transfer of assets during a combination has been also debated upon. Combinations are void if they are expected to have an appreciable adverse effect on competition in the relevant market, for which CCI must evaluate the considerations listed in Section 20(4) of the Act. When engaging in a combination, there is a legislative need to inform the CCI, which must approve the combination before it may take effect. The CCI then guarantees that the combination is declared void or that specified adjustments are made before final authorization to enhance competition and reduce anti-competitive activity.

There is an urgent need for an examination to investigate the influence of patents during a merger and the regulation of the same. The transfer of IP takes numerous forms, and it is the CCI's responsibility to determine whether these transfers may effectively be

⁴⁰ Arpad Bogsch and Ladas Stephen, "Patents, Trademarks, And Related Rights: National and International Protection" 24 *The American Journal of Comparative Law* 143-146 (1976).

⁴¹ Lokesh Vyas and Umang Sethi, "The Future of Intellectual Property Rights – an End to Monopoly?", available at: <https://blogs.kcl.ac.uk/kslr/2020/12/18/the-future-of-intellectual-property-rights-an-end-to-monopoly/> (last visited on October 02, 2024).

considered part of a merger. The CCI emphasizes that if IP is nonexclusive, it is not considered an acquisition, otherwise, such a transfer is considered an asset purchase and must be reported to the CCI.

4.4. Conflict and Convergence

The contradiction between IPR and competition law is most visible in situations when exclusive rights given by IPR result in anti-competitive activity. For example, patent holders may engage in patent thicketing, which involves creating a complex web of overlapping patents to prevent rivals from entering the market. Similarly, evergreening techniques, in which modest changes to current goods are patented to extend exclusivity, can delay the arrival of generic competitors, so keeping prices high and limiting customer access.

In contrast, convergence occurs when both IP and competition law collaborate to promote innovation and consumer welfare. For example, IP protection can promote investment in R&D by granting a temporary monopoly, yet competition law can prohibit the misuse of this monopoly, ensuring that the advantages of innovation are generally available. Licensing agreements, especially in technology and medicines, demonstrate this confluence. When done appropriately, licensing may facilitate the spread of innovative technology while retaining incentives toward creation.

In the digital economy, this interaction is very complicated. Network implications and data control frequently provide digital platforms with enormous market power.⁴² While their ideas propel the industry forward, their dominance might lead to anti-competitive behaviour. Major technology companies, for example, may utilize their patents to prevent smaller competitors from entering the marketplace or engage in predatory pricing to preserve market dominance. Competition law must guarantee that IPRs do not result in market bankruptcy, while IP laws must change to reflect new types of innovation and market activity.⁴³

⁴² Vedika Mittal, Shehnaz Ahmed, *et. al.*, “Systematizing Fair play: Key Issues in The Indian Competition Law Regime”, available at: <https://vidhilegalpolicy.in/research/report-on-systematizing-fairplay-key-issues-in-the-indian-competition-law-regime/> (last visited on October 10, 2024).

⁴³ Salil K. Mehra, “Antitrust and the Robo-Seller: Competition in the Time of Algorithms” 100 *Minnesota Law Review* 1323 (2016).

5. Challenges and Issues in Balancing IP and Competition Law

The interaction between competition law and IPR in India is complex due to inherent difficulties. IP rights are intended to encourage innovation by giving exclusive rights to innovators and creators, but they may lead to monopolistic conduct that impedes competition. Achieving the correct balance is difficult.

Patent law and antitrust restrictions are critical components of IPRs. Patents offer holders the exclusive right to create, use, and sell their innovations for a set length of time, usually 20 years following the time of applying. Antitrust laws are in place to discourage anticompetitive activity and encourage fair competition. In the realm of patents, unconditional, unilateral refusals to license (meaning the patent holder refuses to license their technology to anybody) are widely regarded as within the patent holder's rights.⁴⁴ However, conditional refusals to licenses that create competitive damage may be considered antitrust violations.

Copyright law gives artists exclusive rights to their creative works for a limited time, which might result in a monopoly on certain content. Competition law may apply when copyright holders utilize copyright claims to discourage fair use or impede competition, particularly in circumstances involving the transformative use of copyrighted works. Under trademark law, the holder has exclusive rights to use a certain trademark in connection with specified products or services.

In India, competition law and IPR overlap in various situations. Businesses with large IP portfolios, particularly in medicines and technology, might use their dominating positions to dampen competition. The CCI is devoted to investigating suspected anti-competitive activity by big companies in the technology industry.⁴⁵ As India's economy and technology advances, the relationship between competition law and IPR will remain dynamic, with emerging technologies like AI, biotechnology and digital platforms posing new difficulties and possibilities.

⁴⁴ The 8 SEPs comprise of Adaptive Multi-Rate (Indian Patents IN203034, IN203036, IN234157, IN203686, IN213723), 3G (Indian Patents IN229632, IN240471) and Edge Technology (Indian Patent IN241747).

⁴⁵ *Ibid.*

5.1. Data Privacy and Security

Data has become a valuable asset in the age of digitization, posing new issues for balancing IP and competition law. Companies having considerable data assets can use them to obtain a competitive advantage, potentially leading to anti-competitive behaviour. For example, powerful digital platforms might utilize their access to enormous amounts of customer information to dampen competition and protect their market dominance. Furthermore, data privacy and security concerns emerge, since user data security must be weighed against the desire to stimulate innovation and competitiveness. Regulatory frameworks must guarantee that data privacy rules complement, rather than clash with, intellectual property and competition regulations. The General Data Protection Regulation (GDPR) in Europe establishes a precedent, highlighting the significance of data privacy.⁴⁶

5.2. Digital Personal Data Protection Act, 2023

India is experiencing a rapid transformation in its digital ecosystem, characterized by an unprecedented surge in data generation and usage. As digital interactions become more complex, the issue of data privacy has become a major concern. In response to this, the Indian government has introduced the Personal Data Protection Bill (PDP) to address the growing need for comprehensive data protection. This legislation aims to create a strong framework for safeguarding personal data, ensuring that individuals' digital rights are protected while building trust in India's expanding digital landscape. This analysis delves into the provisions of the PDP Bill, data categorization, and its implications for businesses, consumers, and the wider digital ecosystem.

5.2.1. Increasing Significance of Data and Privacy in the Digital Era

Data has emerged as a fundamental element of contemporary economies, fuelling innovation, shaping business strategies, and influencing governance. However, the rapid expansion of data has also raised significant concerns regarding privacy and security, particularly as incidents of data breaches and misuse become more prevalent. The PDP Bill seeks to tackle these issues by implementing rigorous standards for data

⁴⁶ GDPR.EU, "What is GDPR, the EU's new data protection law?", *available at*: <https://gdpr.eu/what-is-gdpr/> (last visited on October 22, 2024).

processing and creating a legal framework that emphasizes accountability and transparency in data management.

5.2.2. *India's Data Protection Evolution*

Over the last decade, India's approach to data protection has undergone considerable transformation. The Supreme Court's affirmation of privacy as a fundamental right in the 2017 Puttaswamy judgment laid the groundwork for the formulation of comprehensive data protection laws.⁴⁷ The introduction of the PDP Bill represents a crucial milestone in this evolution, demonstrating the nation's dedication to aligning with international data protection norms. The regulations aim to protect personal information, ensuring that digital data is managed responsibly and securely by both businesses and governmental organizations.

The Digital Personal Data Protection Bill (DPDPA) is India's significant legislative effort to regulate personal data handling, as the country currently lacks a dedicated data protection law. The need for such legislation arose from growing data privacy concerns, prompting the government to form a Committee of Experts in 2017, led by Justice B. N. Srikrishna. Their findings led to the framing of the Personal Data Protection Bill 2019, which was presented in December 2019 but retracted in August 2022 after review. A Draft Bill was published for public feedback in November 2022, culminating in the introduction of the Digital Personal Data Protection Act (DPDPA) in August 2023.

The DPDPA emphasizes principles like data minimization, purpose limitation, storage limitation, and data accuracy to ensure responsible data processing and individual privacy. It grants data principals rights to access, correct, and delete their data, promoting transparency. The Data Protection Board of India will oversee enforcement and address grievances.

5.2.3. *Key Areas under DPDPA, 2023*

- i. **Data as a Market Resource:** In the contemporary digital landscape, data has emerged as a crucial asset that can significantly influence market dynamics. Organizations possessing extensive data repositories, particularly those with

⁴⁷ Vrinda Bhandari, Amba Kak, *et. al.*, "An Analysis of Puttaswamy: The Supreme Court's Privacy Verdict" 11 *IndraStra Global* 1-5 (2017).

robust IP holdings, can utilize their data control to establish a competitive advantage. This scenario may foster monopolistic behaviours, such as limiting access to essential data, which can obstruct the entry of new market players.

The DPDPA, 2023 delineates the parameters for the collection, processing, and storage of personal data, mandating that businesses adhere to equitable and transparent data management practices. This regulatory framework has the potential to mitigate anti-competitive conduct by larger entities that depend on data-centric innovation, ensuring that they do not unjustly accumulate personal data.

- ii. **Data Portability and Market Accessibility:** A significant mechanism through which data privacy legislation can alleviate competition-related issues is by facilitating data portability. When users can seamlessly transfer their data between service providers, it diminishes the entry barriers for emerging firms and fosters a competitive environment.

The DPDPA incorporates measures that bolster user autonomy over their data and enhance transparency. Nevertheless, its effectiveness in enforcing data portability is somewhat constrained, which may allow dominant digital entities with substantial IP assets to maintain their competitive edge over smaller rivals that lack comparable access to data.

- iii. **Data Monopolization and Anti-Competitive Conduct:** Companies with substantial IP rights can leverage personal data to solidify their market supremacy. For example, technology giants that possess IP rights for digital platforms can amalgamate this with user data to offer tailored services, thereby deepening consumer reliance on their ecosystems. The DPDPA stipulates that data must be processed for legitimate purposes, and any misuse of personal data is subject to regulatory oversight.

Although the DPDPA establishes a framework for equitable data utilization, it does not explicitly confront issues related to data monopolies or anti-competitive practices. However, it does lay the groundwork for potential regulatory actions.⁴⁸

⁴⁸ Koushik Banerjee, “The Future of Data: How the PDP Bill Shapes India’s Digital Ecosystem” *available at*: <https://www.mondaq.com/india/privacy-protection/1518940/the-future-of-data-how-the-pdp-bill-shapes-indias-digital-ecosystem> (last visited on October 20, 2024).

5.2.4. Role of Green Channel Regulations in Compliance

The green channel mechanism established by the CCI aims to streamline the merger and acquisition (M&A) process for transactions unlikely to generate substantial competition issues. This regulation holds particular significance for enterprises heavily invested in IP-driven innovation.

5.2.5. Influence of Green Channel Regulations on IP and Competition

- i. **Facilitating M&A Approvals:** In rapidly evolving industries such as technology, pharmaceuticals, and media, where IP assets are of paramount importance, the capacity to swiftly consolidate businesses through M&As is essential. The green channel permits automatic approval for transactions that do not threaten competitive dynamics, thereby accelerating the process for compliant organizations.
- ii. **Effects on Innovation:** The faster clearance procedure promotes innovation by allowing firms to quickly integrate new technology or IP assets without lengthy regulatory processes. It is especially useful for startups or small businesses looking to scale their technologies to big ones.
- iii. **Ensuring Adherence to Competition Law:** Although the green channel accelerates approvals, it simultaneously ensures that businesses adhere to competition regulations. Companies need to conduct self-assessments to determine if their transactions qualify for the green channel and are held responsible for any misrepresentation of their eligibility.
- iv. **Influence on Market Dynamics:** In sectors driven by IP, where innovation and competition are closely intertwined, this compliance mechanism aids in preventing anti-competitive mergers while promoting market efficiency. Nonetheless, the CCI must monitor the utilization of this mechanism by larger firms, as improper use could lead to an undue concentration of power.
- v. **Risk of Market Concentration:** There exists a potential risk that large corporations with extensive IP portfolios may exploit the green channel to enhance their market dominance through acquisitions, thereby diminishing

competition. The CCI must remain vigilant in evaluating the broader implications of such activities.⁴⁹

5.2.6. Enforcement and Compliance Issues

Enforcement and compliance add an element of complexity to balancing IP and competition legislation. Effective enforcement necessitates strong regulatory agencies with the competence and resources to handle complicated cases including intellectual property and competition concerns. In India, the CCI plays an important role in this respect, although it confronts resource and competency issues, especially in quickly growing areas such as technology. Furthermore, guaranteeing compliance with both IP and competition regulations could prove difficult for firms, particularly medium-sized enterprises (SMEs), which may lack the capacity to negotiate the complicated regulatory environment. Automating enforcement processes and establishing straightforward regulations could help these issues, making sure regulatory frameworks promote rather than impede innovation and competition.⁵⁰

6. Clash of the Titans: IPR vs. Competition Law

In India's digital age, IP protects innovation, while competition law promotes fair markets. These two forces frequently fight yet coexist, one pulling and pushing against the other. The issue continues in India's draft Digital Competition Bill 2024, which, echoing the Indian Competition Act of 2002, allows IP to be used as a defence against anti-competitive accusations. But the tale thickens: when intellectual property rights and competition law collide, who will prevail? Both are unique laws, and the solution is anything from straightforward. The answer is still ambiguous, as Indian courts have taken varying positions throughout time. As a result, the current proposal measure has two sides: it creates new legal landscapes while also generating new issues.

⁴⁹ Impana Halgeri and Bokka Ashwika, "Merger Control in Developing Nations: Is Green Channel Taking India Through the Correct Route?" *RMLNLU Law Review Blog* (2024), available at: <https://rmlnlulawreview.com/2024/08/29/merger-control-in-developing-nations-is-green-channel-taking-india-through-the-correct-route/> (last visited on October 19, 2024).

⁵⁰ Gaurav Bansal, "India: CCI looks to build a culture of compliance through rigorous cartel regulation" *Global Competition Review* (March 10, 2023), available at: <https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2023/article/india-cci-looks-build-culture-of-compliance-through-rigorous-cartel-regulation> (last visited on October 12, 2024).

6.1. Rule of Law

Chapter III, Section 7(5)(d) of the Bill requires Systemically Significant Digital Enterprises and their Associates to meet specific obligations. The legislation allows the CCI to consider factors that may impede compliance, such as the need to protect existing IPRs. Under the Competition Act of 2002, IPR can be used as a defence against anti-competitive agreement allegations, but this flexibility does not apply to abuse of dominance cases. Thus, while reasonable restrictions to protect rights under Section 3(5) are exempted from anti-competitive provisions, Section 4 regarding abuse of dominance does not offer similar exemptions. Therefore, enterprises can defend against anti-competitive charges using IPR but lack the same defence for abuse of dominance accusations.

6.2. Clash of IP and Competition Law

The Indian judiciary has fluctuated between prioritizing IPR and enforcing competition law. In *M/s HT Media Ltd. v. M/s Super Cassettes Industries Ltd.*⁵¹, the CCI asserted its jurisdiction over the anti-competitive use of IPR, criticizing the Copyright Board's ineffectiveness in promoting competition. In *FICCI v. United Producers/Distributors Forum*⁵², the CCI clarified that Section 3(5) of the Competition Act is not absolute, allowing IPR holders to impose reasonable conditions without overriding the Act. This confirms the CCI's authority over anti-competitive activities involving IPR.

6.3. Legal Issues Related to IPR Under the Bill

Major technology firms are concerned about the implications of the Bill on IPR, particularly regarding the concentration of innovation among a few dominant companies due to high market entry barriers. This consolidation limits competition and diversity, potentially stifling overall innovation.

A key challenge posed by the Bill is determining whether IPR or competition law should take precedence, leading to potential legal disputes. Tech firms may use IPR defences to justify anti-competitive practices, while regulators may struggle to prioritize

⁵¹ Case No. 40 of 2011.

⁵² Case No. 01 of 2009.

competition law amid strong IPR protections. Conversely, enforcing IPR regulations could be difficult if competition issues are deemed more pressing.

Addressing these issues is essential for fostering a competitive digital economy. A balance must be struck between enforcing competition laws to curb anti-competitive behaviour and protecting IPR to promote innovation. Clarifying the relationship between these legal frameworks and establishing clear guidelines will help avoid regulatory uncertainty and ensure fair market dynamics for all digital ecosystem participants.⁵³

7. Conclusion and future scope

Emerging technologies, including AI, blockchain, and the Internet of Things (IoT), will impact the future of IP and competition laws. AI-driven innovation necessitates reconsidering patentability criteria since AI-generated ideas cross the barriers between traditional IP concepts. Blockchain technology, because of its decentralized nature, challenges existing legal frameworks and necessitates new approaches to IP and competition law. The widespread use of IoT devices creates data privacy and security concerns, demanding strong regulatory frameworks to assure fair competition and defend customer interests. Future studies should look at the effects of future technologies on IP and competition law, such as AI and IP law, blockchain and decentralized innovation, data-driven competition, and cross-border issues.

Finally, the digital era brings possibilities and difficulties for the intersection of IP and competition law. Legal and legislative frameworks must evolve to encourage innovation while sustaining competitive marketplaces. Navigating the intricacies of the online economy will require an integrated approach that includes IP and competition regulations, handles evolving technology, and engages a wide range of stakeholders. Policymakers can build a vibrant and inclusive digital future by encouraging innovation, protecting consumer interests, and ensuring fair competition.

⁵³ Muskkaan Verma, "Clash Of The Titans; IPR vs. Competition Law In India's Digital Age" *Naik Naik & Co.* June 5, 2024.