

# Criminalization of Cartels in India & its Legal Implications

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**Abstract - The Competition Act of 2002 prohibits cartel activity in India. Section 3(1) of the demonstration prohibits cartel planning and should be interpreted in conjunction with Section 3(3). The Cartel arrangement is considered illegal as it seeks to manipulate market conditions and establish prices, thus violating the Competition Act of 2002. A "cartel" is an organisation of manufacturers, retailers, wholesalers, retailers, traders, or service providers that, via agreements among themselves, restrict, control, or attempt to regulate the production, distribution, sale, price, or trade of goods or services. Cartels may also be referred to as "monopolies." This concept originates from the Act Concerning Competition. Cement manufacturers have been accused of participating in price manipulation by both private persons and government agencies for more than a decade now. In 2016, the Competition Commission of India (CCI) imposed penalties amounting to \$800 million on ten companies, including various subsidiaries of Holcim and UltraTech, for their involvement in price fixing. However, this ruling is currently under scrutiny and is being contested in the Supreme Court. The objective of this study is to examine the legal ramifications of cartels in India.**

**Keywords - cartel, criminalization, legal consequences, Competition Act of 2002, Competition Commission, Organisation for Economic Co-operation and Development (OECD), and National Company Law Appellate Tribunal.**

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## INTRODUCTION

A cartel refers to an organised association of producers or providers of a particular product or service that engages in collusion to manipulate prices by exerting control over the supply. In essence, a cartel refers to a group of legally independent enterprises or countries that collaborate as a unified producer, enabling them to collectively set prices for their goods and services without facing any resistance. OPEC is widely recognised as the most influential global cartel. The organisation consists of 13 oil-producing nations with the objective of standardising and coordinating their oil production and distribution. In the United States, OPEC's physical activities are protected from legal prosecution through the application of alternative laws.

Cartels negatively impact consumers due to the consequent rise in prices and scarcity, leading to consumer detriment. The OECD prioritises the goals of cartel formation and indictment in its methodology. Subsequently, it has been established that price fixing, yield limits, market share, and bid-fixing are the four most significant behaviours exhibited by cartels. Cartels employ various strategies such as supply restriction, price fixing, collusion in bidding, and market segmentation. Cartels are generally considered illegal

and are perceived as promoting anti-competitive behaviour in most situations. Customers experience negative consequences when cartels increase prices and restrict transparency.

The authority to enforce Cartel laws in India is vested in the Competition Commission of India, as per the Competition Act of 2002. Decisions made by the Competition Commission can be appealed and escalated to the Supreme Court of India via the National Company Law Appellate Tribunal (NCLAT). According to the Competition Commission Act of 2002, civil courts are prohibited from enforcing any process related to matters specified by the Commission and NCLAT under the relevant legislation.

Business consolidation occurs when multiple businesses merge or combine into a single entity as a strategic response to the concern of potentially missing out on a market opportunity. Successful companies often merge to reduce competition and capitalise on the synergistic benefits that arise from the increased scale of the merged business. Cartel members' criminal activities are progressively facing legal consequences on a global scale. Multiple prosecutions, convictions, and incarcerations have occurred. The question of whether cartels are

criminal enterprises is still debated, and their enforcement record outside the United States is generally inconsistent. Numerous concerns arise due to this situation. Why has there been such a jump in the number of criminal activities associated to cartels, and what causes have led to this growth in the number of crimes? Have proponents of stiffer criminal punishments, such as the Department of Justice in the United States, principally advocated for these changes via the methods of bilateral efforts or worldwide networks? Is there a relationship between the organic, grassroots level of national dynamics and the moral sensitivity that people have towards the action of cartels? How much of a more stringent level of enforcement is shown by the adoption of official revisions to law, and to what degree is this the case? This article addresses the issues that have been raised by taking a look at the current context regarding legalisation and enforcement in a number of various localities, including the United States of America, Europe, and other areas. This is done in an attempt to find solutions to the problems that have been raised. There has been a discernible shift towards prosecuting antitrust violations, as well as an increase in the stringency with which these laws are implemented, with national agencies interacting with one another via informal trans-governmental networks. In addition, there has been an increase in the severity of the punishments for violating these laws. It's possible that this change, together with the increased strictness with which these rules are implemented, may be considered a step in the right direction. However, it is essential to keep in mind that the legal environment that is important to anti-cartel actions is complicated, and the degree to which it varies significantly from one jurisdiction to the next varies a great deal. This is something that must be kept in mind at all times. Nevertheless, these tendencies are inconsistent, and the probability of implementing formal legislative changes is minimal due to variations in institutional settings and public perception of cartels.

### WHAT IS THE LEGAL IMPLICATION OF CARTELS?

Establishing a mutual agreement to limit control and assume responsibility for governing the object. In the realm of law, what is the impact of cartels? The Competition Act of 2002 prohibits cartel activity in India. Section 3(1) of the demonstration prohibits cartel planning and should be interpreted in conjunction with Section 3(3).

#### The Legal Framework for Cartel Prohibition

Is cartel preclusion a common occurrence and what are its legal basis and characteristics? The Competition Act of 2002 in India criminalises cartelization, which is considered a grave offence.

How have you been preparing for the restrictions imposed by the cartel?

As per Section 2(c) of the Act, a cartel refers to an association of two or more businesses that engage in

agreements to manipulate prices, limit competition, or impose restrictions on the sale, distribution, purchase, or exchange of goods or services. Sections 3(1) and 3(3) of the Act explicitly forbid the establishment of cartels.

Section 3 of the Act renders any agreement between businesses, individuals, or any combination thereof, aimed at producing, distributing, disseminating, possessing, acquiring, or managing any goods or services, or any association involving such goods or services ("AAEC") in India, prohibited and invalid.

Section 3(3) of the Act prohibits certain anti-competitive practises in India. These practises include agreements between businesses that determine purchase or offer prices, manipulate production, delivery, markets, or services, allocate geographic markets or customers, or terminate agreements. These mixtures are assumed to contain an AAEC and are therefore invalid. Knowledge can be conveyed through verbal, written, or visual means. It exhibits a disregard for legal constraints.

### WHAT ARE THE PUNISHMENTS FORCED?

The Competition Act of 2002 does not impose criminal penalties or provide official certifications for the formation of cartels. Businesses and individuals who object to the terms of the opposition fee have the option to lodge a complaint with the local law enforcement authority. Each violation may result in a fine of INR 10 million and the closure of the area for a maximum duration of three years.

### HOW ARE PUNISHMENTS NONETHELESS UP WITHINSIDE THE AIR?

India lacks a specific administrative standard or legal framework to prescribe penalties for instances of cartelization. The opposing fee should consider a positive or negative value based on the training when determining the magnitude of the penalty.

In the case of *Excel Crop Ltd v. Competition Commission of India*, the Supreme Court held that when determining an appropriate penalty, it is permissible to consider both mitigating and aggravating factors. The factors influencing cartel behaviour encompass the level and type of denial, duration of cartel activity, extent of harm caused by cartelization, underlying motivations of the firms involved, and any interactions with external non-local entities.

Section 19(1) of the Competition Act, 2002 grants the Competition Commission of India (CCI) the authority to investigate cartels that operate outside of India, as well as atypical companies that engage in cartel activities within India. Section 32 discusses this provision.

## CASE REGULATIONS

The court determined that there was no violation of Section 3 of the Act, even if information was exchanged between competitors. In this instance, the concept of calculable adverse impact on opposition (AAEC) did not influence the cost, as there was no adjustment made based on allegations of their competence.

The case study of the Rajasthan Cylinder

The Supreme Court determined that there was no evidence of any advanced offering, despite the concern about costs through the use of hiring bidders and a separate association meeting. The prevailing market practise of relying on the same estimation fixation has lost its appeal.

The Federation of Chemists and Distributors of Madhya Pradesh is an organisation representing chemists and distributors in the state of Madhya Pradesh.

The court ruled that the Competition Act of 2002 prohibits entering into arrangements that harm competition, even if they are not explicitly covered by Region 3. The burden of proof lies with the Commission to demonstrate the specific wrongdoing of the cartel, regardless of the circumstances.

The case of Indian Competition Commission v. Jeetender Gupta is a significant legal matter.

The Appellate Council determined that individuals lacking genuine interest in the subject matter are not eligible to initiate legal proceedings under the Competition Commission Act of 2020.

## DEVELOPMENT OF CARTEL LAWS IN OTHER COUNTRIES

Many countries have recently begun to impose prison sentences for crimes committed by cartels. Many countries in the European Union and other nations globally have adopted criminal penalties to address cartel behaviour. The nations listed are Australia, Brazil, Canada, Iceland, Indonesia, Israel, Japan, Korea, Norway, Russia, Thailand, and Zambia. Cartel members can face private civil damage procedures in various countries, including Australia, Brazil, Canada, Japan, New Zealand, Belgium, Germany, Ireland, the United Kingdom, and European Union member states. The countries in question are Australia, Brazil, Canada, Japan, New Zealand, and the United Kingdom. These procedures may result in monetary compensation. There is a global trend towards increasing penalties for cartels. Several countries, including the United States, the European Union, and OECD member countries, have enhanced the legal, administrative, and criminal consequences associated with involvement in a cartel. The passage of the Budget Implementation Act of Canada in 2009 resulted

in significant increases to the maximum sentences for crimes associated with cartels. The maximum prison sentence has been raised from five to fourteen years, while the maximum fine has been increased from ten to twenty-five million dollars. Currently, engaging in conspiracies related to price, market share, or production restrictions is illegal. The solution to this enquiry is 38. In Australia, the maximum penalty for offences has been raised to \$10 million or three times the value of the cartel benefit, whichever is greater. This change has occurred in recent years. If the value is unknown, the Act imposes a tax equivalent to 10% of the individual's annual income. In 2009, the Australian Parliament passed legislation criminalising specific violations of cartel agreements. This legislation established a maximum prison sentence of ten years and a fine of AUD 220,000. New Zealand is contemplating adopting similar regulations. In 2009, Japan increased the maximum prison sentence for individuals involved in cartel activities or bid manipulation from three to five years. Moreover, Japan has recently revised its leniency policy, extending the statute of limitations for crimes from three to five years. This change occurred due to a constitutional amendment.

In 2005, the accessibility of a leniency scheme was enhanced, and the maximum fine for individuals involved in cartels was increased from 5% to 10% of the sales of related goods or services. The Mexican government has implemented measures to enhance collaboration with authorities, including the imposition of criminal penalties of up to 10 years in prison. Additionally, they have been granted the power to conduct surprise inspections, commonly known as "dawn raids," at any time of the day. Switzerland, a country known for having a high prevalence of cartels in its economy, has recently enacted legislation that permits the imposition of administrative fines amounting to a maximum of 10% of a company's total consolidated sales from the previous three years. The Swiss legislation has established a leniency scheme, similar to those described in Section IV. The BRIC countries have strengthened their efforts to combat cartel activities through the implementation of stricter penalties. Brazil has become a significant participant in the battle against drug cartels in Latin America. Since 2003, Brazil has implemented reforms to its competition system, which have resulted in the consolidation of responsibilities, simplified cartel investigations, and enhanced enforcement capabilities. These reforms have empowered authorities to conduct "dawn raids" and utilise leniency and settlement programmes to combat illegal activities. Prosecutors collaborate with the entities comprising the Brazilian Competition Policy System (BCPS) to prosecute cases related to anti-cartel activities at both federal and state levels. The anti-cartel efforts of the BCPS have made significant progress since 2006. Brazil has been recognised for its vigorous efforts in prosecuting cartels, being regarded as the most active country in this regard.

Convictions have resulted in prison sentences ranging from two to five years, along with fines reaching up to \$1 million. Under Brazil's leniency programme, established in 2000, the initial cartel member to confess is granted complete immunity. In cases where law enforcement is already aware of the cartel, partial immunity is provided under the same circumstances. Brazil has a Cartel Settlement Programme that allows companies to negotiate settlements with competition inspectors if they were late in seeking leniency. Numerous agreements have been reached as a result of the settlement scheme since 2007. Brazil has been actively sharing its extensive experience in anti-cartel enforcement with Argentina, Chile, Paraguay, and El Salvador, solidifying its role as a regional leader in this area. The Brazilian government's competition authorities frequently participate in bilateral training and discussions with their international counterparts. China's anti-monopoly law was implemented in 2008, followed by additional regulations for antitrust investigations and enforcement issued by the Chinese industry and commerce administration in the summer of 2009. In China, individuals involved in cartels have faced legal prosecution for obstructing justice, despite the absence of explicit criminal penalties in the Anti-Monopoly Law. Russia implemented comparable criminal penalties for antitrust violations in late 2009, wherein specific offences can result in a maximum prison sentence of six years. In 2009, India implemented new competition legislation that imposed stricter penalties, including fines of up to 10% of a company's revenue and imprisonment for obstructing justice, following a prolonged and problematic development process. In 2009, South Africa, a prominent member of the BRICS group, established a cartel division within its enforcement agency. Additionally, it implemented measures to hold directors and managers criminally responsible for specific violations of competition law. The impact of these legal amendments is uncertain in many countries, as discussed in Part 1.

## CONCLUSION

The Competition Commission of India (CCI) was established under the Competition Act of 2002 with the purpose of enforcing India's anti-cartel regulations and imposing penalties on violators. The primary objective of the Commission for Competition is to promote and maintain fair competition by preventing monopolistic practices and fostering cooperation among market participants. Entities and individuals engaging in such risky behaviours are liable to be regulated by the anti-cartel provisions of the law. Companies that fail to comply with the recommendations of the Competition Commission of India may face criminal prosecution under the Competition Act, 2002. This Act primarily addresses the issue of organisations engaging in cartelization, which is considered a violation of the law. The Competition Commission is responsible for actively monitoring businesses to assess their engagement in fair competition, with the objective of detecting any indications of collusion. According to Section 3 of the Competition Commission Act, 2002, any agreement

involving cartelization between organisations would be considered illegal.

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