

The Industries Development and Regulation Act of India (1951)

The Industries (Development and Regulation) Act, (IDRA), came into force from 8th May 1952 under a notification of the Central Government published in the Gazette of India.

The Act extends to whole of India including the state of Jammu & Kashmir with a view to being under Central and regulation of a number of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all India importance.

Objectives of the Act:

The Important objectives are,

(i) To Implement the Industrial Policy:

The Act provides the necessary means to the Central Government in order to implement its industrial policy.

(ii) Regulation and Development of Important Industries:

The Act brings under the control of the Central Government the development and regulation of a number of important industries listed in the first schedule attached to the Act as the activities of such industries will affect the country as a whole and, therefore, the development of such important industries must be governed by the economic factors of all India importance.

(iii) Planning and Future Development of New Undertakings:

A system of licensing is introduced under the Act to regulate planning and future development of new undertaking on sound and balance lines and may be deemed expedient in the opinion of the Central Government.

The Act confers on the Central Government power to make rules for the registration of existing undertakings for regulating the production and development of the industries specified in the schedule attached to the Act. The Act also provided for the constitution of the Central Advisory Council and Development Council.

Definitions:

Some of important definitions given in section 3 of the Act are as under:

1. Advisory Council [Sec. 3 (a)]:

It means the Central Advisory Council established under Sec. 5 of the Act.

2. Current assets and current liabilities:

Current Assets [Sec. 3(ab)]:

Current assets mean bank balance and cash. They include such other assets or reserves are expected to be realised in cash or sold or consumed within a period of not more than 12 months in the ordinary course of business such as stock-in-trade, amounts due from sundry debtor for sale of goods and for services rendered, advance tax payments and bills receivable.

They however do not include sums credited to a provident fund, and a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by a company owning an industrial undertaking.

Current Liabilities [Sec. 3(ac)]:

Current liabilities mean liabilities which must be met on demand or within a period of 12 months from the date they are incurred. They include any current liability which is suspended under Sec. 18-FB.

3. Development Council [Sec. 3 (b)]:

It means a Development Council established under Sec. 6.

4. Factory [Sec. 3 (c)]:

It means any premises, including the percents thereof, in any part, of with a manufacturing process in being carried on or is ordinarily so carried on:

(i) With the aid of power if 50 or more workers are working thereon on any day of the preceding 12 months; or

(ii) Without the aid of power if 100 or more workers are were working thereon on any day of the preceding 12 months. Further in no part of such premises any manufacturing process should be carried on with the aid of power.

5. High Court [Sec. 3 (cc)]:

‘High Court’ means the High Court having jurisdiction in relation to the place at which registered office of a company is situated.

6. Industrial Undertaking [Sec. 3 (d)]:

It means an industrial undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including the Government.

7. Notified Order [Sec. 3 (e)]:

It means an order notified in the official Gazette.

8. Owner [Sec. 3 (f)]:

In relation to an industrial undertaking, ‘owner’ means the person, who, or the authority which has the ultimate control over the affairs of the undertaking, where the said affair are entrusted to a manager or managing director, such manager or managing director shall be deemed to be the owner of the undertaking.

9. Prescribed [Sec. 3 (g)]:

It means prescribed by rules made under this Act.

10. Schedule [Sec. 3 (h)]:

It means a schedule to this Act.

11. Scheduled Industry [Sec. 3 (i)]:

It means any of the industries specified in the first schedule. The first schedule to the Act includes 38 industries engaged in the manufacture or production of any of the articles mentioned under each of the headings or sub-heading given in the schedule.

Scope of the Act:

This Act applies to the whole of India including the State of Jammu & Kashmir, The provision of the Act apply to industrial undertaking, manufacturing any of the articles mentioned in the first schedule. An industrial undertaking (also called a factory) for the purpose of the Act is the one where manufacturing process is being carried on:

(a) With the aid of power provided that fifty or more workers are working or were working on any day of the preceding twelve months; or

(b) Without the aid of power provided that one hundred or more workers are working or were working on any day of the preceding twelve months.

(c) The Act applies only on industrial undertakings. Trading houses and financial institutions are outside the purview of the Act.

Exemption from the Act:

The Act empowers the Central Government to grant exemption from this Act in certain cases section 29B of the Act provides that if the Central Government is of opinion that it would not be in public interest to apply all or any provision of this Act to any industrial undertaking, then the Central Government, by notification in the Official Gazette, may exempt any industrial undertaking or class of industrial undertakings from the operation of all or any of the provision of this Act.

For grant exemptions, the Central Government will take into consideration the small of the number of workers employed or the amount invested in any industrial undertaking or to the desirability of encouraging small undertakings generally or to the stage of development of any scheduled industry.

This section further provides that any notification as aforesaid can be cancelled by the Central Government and on such cancellation, no industrial undertaking, which was earlier exempted, shall carry on the business of the undertaking, after the expiry of such period as may be specified in the notification cancelling the exemption by the Central Government. Under the provisions of Sec. 29B, the Central Government has been issuing notifications from time to time granting exemptions.

New Economic Policies: Liberalization, deregulation, Privatization

In 20th century, there has been a wave of economic policy transformations in the developing world, with one country after another taking the liberalization cure, often imposed by the international financial institutions. This wave of reform had been preceded by a quarter century of state directed effort at economic development, during which time the goals of economic self-reliance and import substitution industrialization were the trademarks of development strategies in developing countries.

Liberalization:

Liberalization is vital element of contemporary economic policies in India and other part of world, based upon the idea that removing restrictions on domestic economic activity as well as on the trade relations with other countries that has a beneficial impact on the economy. Liberalisation is the procedure of release the economy from the dominion of excessive bureaucratic and other restrictions imposed by the State. The phrase “liberalization” infers economic liberalization. Economic liberalization constitutes one of the basic elements of the new Economic policy (NEP) which the Indian Government launched in the middle of the year 1991. Other significant aspects of the policy are Privatization of the public sector, Globalization and market friendly state. The main trust of the new economic policy is “liberalization”. The principle of this policy is that greater freedom is to be given to the businessperson of any industry, trade or business and that governmental control on the same be reduced to the minimum.

The purpose of the liberalisation was to dismantle the excessive control framework that reduced the freedom of enterprise over the years, the country had developed a system of licence permit raj'. The aim of the new economic policy was to save the businesspersons from unnecessary harassment of seeking permission from Babudom (the bureaucracy of the country) to start an undertaking. The liberalization aims to liberalize commerce and business and trade from the clutches of controls and difficulties.

The concept of Liberalization:

There is acceleration economic policy reform in the developing world in current period which is visualized as significant consequence of a changed world economic system. The economic liberalization in India refers to the current reforms in India. Liberalization is implemented for encouraging growth of private sector, simplification of policy, regulation, tax structure, facilitating Foreign Direct Investment, restructuring public sector for efficiencies, providing incentives for exports and allowing more imports, put emphasis on modernization of plants and equipment through liberalized imports of capital goods and technology, expose the Indian industry to competition by gradually reducing the import restrictions and tariffs, moving away from protection of small scale industries.

Main features of the policy of liberalisation: There are numerous features of liberalization.

1. Lessened Government control and freelance to private Enterprises.
2. Capital Markets opened for private Entrepreneurs.
3. Simplification of licensing policy.
4. Opportunity to purchase foreign exchange at market prices.
5. Right to take independent decisions regarding the market.
6. Better opportunity for completion
7. Widened liberty in the field of business and trade

Evaluation of Liberalization:

In Indian viewpoint, it is very difficult to establish that the process of economic liberalization taken up by the government of India in 1990's has really brought huge economic gains to India. The process has brought some benefits through suffers from some deficiencies.

The Gains: The liberalization process has aided the free movement of goods and services that has led to better industrial performances. Industrial organizations have now become more effective and market responsive. Country's exports are on the increase. Sectors such as information technology and computer software registered incredible advancement.

The Deficiencies:

Liberalization process has its insufficiencies also. The economic reforms including liberalization were introduced all of a sudden and proper background was not created to take their full advantage and to face their consequences.

Liberalization in India:

The Government of India began the economic liberalization policy in 1991. Even though the power at the centre has changed, the speed of the reforms has never loosened till date. The sector accounted for just one-fifth of the total economic activity within the country. The sectorial structure of the industry has changed, although gradually. Most of the industrial sector was dominated by a select band of family-based conglomerates that had been dominant historically. Post 1991, a major restructuring took place with the emergence of more technologically advanced segments among industrial companies. Currently, more small and medium scale enterprises contribute considerably to the economy. The important characteristics of the new policy may be explained under the four categories such as liberalization; Privatization of the public sector, Globalization and market friendly state. Liberalization is the freedom for the entrepreneur. The new policy permits foreign direct investment to a large extent and in huge number of industries than earlier.

To accomplish this objective, existing government regulations and restrictions on industry were removed. The major aspects of liberalization in India were as follows.

1. Abolition of licensing: New Industrial Policy'1991 abolished licensing for most industries except 6 industries of strategic significance. They include alcohol, cigarettes, industrial explosives, defence products, drugs and pharmaceuticals, hazardous chemicals and certain others reserved for the public sector. This would boost to setup of new industries and shift focus to productive activities.

2. Liberalization of Foreign Investment: Earlier prior approval was essential by foreign companies, but in present, situation automatic approvals were given for Foreign Direct Investment to flow into the country. A list of high-priority and investment-intensive industries were delicensed and could invite up to 100% FDI including sectors such as hotel and tourism, infrastructure, software development etc. Use of foreign brand name or trade mark was permitted for sale of goods.

3. Relaxation of Locational Restrictions: There was no requirement to get approval from the Central Government for setting up industries anywhere in the country except those specified under compulsory licensing or in cities with population exceeding 1 million. Polluting industries were required to be located 25 kms away from the city peripheries if the city population was greater than 1 million.

4. Liberalization of Foreign Technology imports: For business projects in which imported capital goods are required, automatic license would be given for foreign technology imports up to 2 million US dollars. No permissions would be required for hiring foreign technicians and foreign testing of indigenously developed technologies.

5. Phased Manufacturing Programmes: Under PMP, any enterprise had to progressively substitute imported inputs, components with domestically produced inputs under local content

policy. However new industrial policy' 1991 abolished PMP for all industrial enterprises. Foreign Investment Promotion Board (FIPB) was set up to speed up approval for foreign investment proposals.

6. Public Sector Reforms: There was more autonomy to the Public Sector Units through the Memorandum of Understanding restricting interference of the government officials and allowing their management's greater freedom in decision-making.

7. MRTP Act: The Industrial Policy 1991 modernised the Monopolies and Restrictive Trade Practises Act. Regulations relating to concentration of economic power, pre-entry restrictions for setting up new enterprises, expansion of existing businesses, mergers and acquisitions have been abolished.

It has been observed that India, in the period of economic reforms, is at the intersection. On one side, India is gaining economic wealth and credit, but on other side, social inequality is developed. Currently, as India is one of the fastest growing economies in the world, the social aspects have been ridden roughshod by the economic benefits.

Impact of Liberalization on Indian Economy:

1. Increase in Employment.
2. Arrival of New Technology or Development of Technology.
3. Development of Infrastructure.
4. Identity at World Level.
5. Increase Our Currency Value (INR).
6. GDP Growth.
7. Increase Consumption and Adaptation of New Lifestyle.
8. Increment in Competition.
9. Increment in Foreign Investor.

It is well recognised in management literature that liberalization entails elimination of state control over economic activities.

Deregulation: Deregulation is heated issue for many government bureaucrats and giant businesses. Since last many decades, huge number of economies, both in developed and developing countries have deregulated their banking systems.

Concept of deregulation: Management studies have demonstrated that Deregulation is the procedure to eliminate or reduce state regulations. Every industry has definite rules and regulations that must follow. These rules are created by industry associations and regulators, as well as the government. Adekanye (2002) stated that the deregulation policy was adopted in 1987 against a crash in the international oil market and the reactant deteriorating economic condition in the country due to stringent policies in the financial sector.

Deregulation occurs when the government pulls back from the industry a bit, therefore loosening

its grip on particular rules and regulations. Deregulation also means that governments do not fix prices or put in motion price controls leaving the process of determining the optimal pricing to the market forces of demand and supply. Deregulation is a trend in emerging markets or the developing countries ever since the 1990s when these markets began to globalize their economies and open them up to foreign competition as well as liberalize their economies internally so that domestic firms are able to compete freely without the heavy hand of the state. The purpose of deregulation is to permit a particular industry to raise greater competition, create a freer marketplace and expectantly enhance economic growth both within that marketplace and in general. When industries become deregulated, it gives industry's actors greater scope in which to improve their products, craft their brand and, ultimately, appeal more to customers.

Financial deregulation in India began in 1992, following the Indian economic crunch of 1991, and it is a vital element of the ongoing process of economic and structural transformation. In the Indian context, two forces can affect firm profits and determine the total impact of deregulation on firm size and profitability. First, free entry can lead to a rearrangement of factor resources from less efficient domestic firms to more efficient firms, such that revenue and size distributions become left truncated. Second, fast economic development can lead to an increase in market size, precipitating a rightward shift in the revenue distribution for the surviving domestic firms.

Advantages: When deregulation works, there are several advantages:

Deregulation offers the consumer in the form of lower prices, more providers and better products. A company that was not performing well and maintained only a small market share before deregulation would also be likely to benefit from this act. When the company faces fewer restrictions, it might be able to explore opportunities that the government had previously not allowed or severely restricted. The businesses are left to themselves to determine their operational processes and strategic imperatives without the government interfering in their working. This means that they can launch new products, fix prices according to demand and supply, expand into newer regions, acquire land and other fixed assets without having to take a thousand permissions, and finally, the businesses interact and interface with the customers directly without the state setting the agenda or the action plan. Deregulation in an emergent market economy also means that the state is at last giving full play to market forces as opposed to centralized planning those results in greater efficiencies for the businesses and more profits as well. This is the reason why many businesses welcome deregulation with open supports and encourage the governments to deregulate more sectors so that the private companies would have the chance to bring in efficacies and actualize synergies leading to a win-win situation for both the businesses and the consumers. Another benefit of deregulation is that businesses can focus on their core competencies without having to submit themselves to constant scrutiny and constant pressure from the government.

Disadvantages: It has been stated in management reports that when firms perform well on its own despite government regulations, it would definitely realise deregulation as an obstacle, as it

will make the rules negligent for its competitors. It can be said that a successful company might view deregulation as a way to allow the competition to play by fewer rules in order to give it a fairer shot. This easing of rules can also lead to a breakdown within the entire industry as different companies use this flexibility to their advantage though it can ultimately end up being to their drawback. Deregulation impacts those at the bottom of the economic ladder most as without the protective hand of the state; they might be left at the mercy of the profit-first businesses, who care more for their profits rather than social and environmental responsibility. It is said that Deregulation is a procedure in which the government reduces industry restrictions for smooth operation of business. The government removes a regulation when businesses complain it interferes too much with their ability to compete, especially with foreign companies. Deregulation to the economy will bring about a high level of competitiveness, therefore higher productivity, more efficiency and lower price of overall goods and services. Deregulation policy was designed to restructure and diversify the productivity of the economy in order to reduce dependency on the oil sector and also to achieve fiscal and balance of payment viability. Additionally, it lays the basis for sustainable non-inflationary or minimal inflationary growth rate.

Privatization: Privatization is strongly related with the phenomena of globalization and liberalization. Management scholars described Privatization as the transfer of control of ownership of economic resources from the public sector to the private sector. It means a decline in the role of the public sector as there is a shift in the property rights from the state to private ownership. Privatization is a managerial approach that has fascinated the interest of many groups of people, academicians, politicians, government employee companies of the private sector and public. It is observed that the public sector has several issues, since planning, such as low efficiency and profitability, mounting losses, excessive political interference, lack of autonomy, labour problems and delays in completion of projects. In order to overcome these issues, new industrial policy' 1991, initiated the process of privatization into the Indian economy. Another term for privatization is Disinvestment. The objectives of disinvestment were to raise resources through sale of PSUs to be directed towards social welfare expenditures, raising efficiency of PSUs through increased competition, increasing consumer satisfaction with better quality of goods and services, upgrading technology and most importantly removing political intervention.

Concept of privatization: According to Steve H. Hanke, Privatization is the process whereby the public operations are transferred to the private sector. Barbara Lee and John Nellis define the notion of privatization as the general process of involving the private sector in the ownership or operation of a state-owned enterprise. There this phrase to private purchase of all or part of a company. It covers "contracted out" and the privatization of management through management contracts leases or franchise arrangements. Privatization refers to any process that reduces the involvement of the state, public sector in economic activities of a nation.

Main objective of privatization:

The process of Privatization has been generated with the main intention of improving industrial efficiency and to assist the inflow of foreign investments.

It also wants to make the public sector undertakings strong, able efficient companies. It recommends a change in the role of the government from that of the “owner manager” to that of a mere “controller” or regular'

It also has aim to ensure proficient utilization of all types of resources including human resources.

Privatization insists on the government to concentrate on the area such as education administration and infrastructure and to give up the responsibility of looking after business and running industries. It is expected to strengthen the capital market by following appropriate trade policies.

Privatization can be of three prominent types:

1. Delegation: Government keeps hold of responsibility and private enterprise handles fully or partly the delivery of product and services.
2. Divestment: Government surrenders the responsibility.
3. Displacement: The private enterprise expands and gradually displaces the government entity.

Privatization in India:

In India, Privatization has been acknowledged with a lot of confrontation and has been dormant initially during the initiation of economic Liberalization in the country. Privatization is also one of the aspects of the new economic policy which came to take shape in the decade 1990. In India, massive Privatization was done in the decade of 1980s when Rajiv Gandhi assumed office as the Prime minister of India. The issue of Privatization in India has to be understood in the context of the relative incompetence of the public sector industries, lack of financial resources, defective competition system, and continuous labour problem.

The main aspects of privatization in India are as follows:

- 1. Autonomy to Public sector:** There was more sovereignty to selected PSUs referred to as ‘Maharatnas’(CIL, ONGC, NTPC, SAIL & IOL) and ‘Navaratnas’(BEL, HPCL, BPCL, BHEL, GAIL etc.) to take their own decisions.
- 2. De-reservation of Public Sector:** The number of industries reserved for the public sector were reduced in a phased manner from 17 to 8 and then to only 3 including Railways, Atomic energy, Specified minerals. This offers opportunities for more areas of investment for the private sector and increased competition for the public sector forcing greater accountability and efficiency.
- 3. Disinvestment Policies:** Till 1999-2000 disinvestment was done basically through sale of minority shares but since then the government has undertaken strategic sale of its equity to the private sector handing over complete management control such as in the case of VSNL and BALCO.

- Advantages of privatization:**
1. Efficiency, Absences of political interference, Quality service, Systematic marketing Use of freedom technology.
 2. Accountability.

3. Innovation.
4. Research and development.
5. Infrastructure.

Arguments in favour of privatization:

1. Privatization is necessary to revitalize the state owned enterprises.
2. Privatization is necessary to face global competition.
3. Privatization is needed to create more employment opportunities in future.
4. Helpful for mobilizing and investing resources.
5. Recognition of talents and good performance of work.

Argument against privatization:

1. Profitability alone should not become the sole yardstick to measure efficiency
2. Role of public sector undertaking from the socio-economic angle also cannot be overlooked.
3. Protection of the interests of the weaker section.
4. Price fixing policy here is not profit oriented.
5. Argument that the private sector is more efficient than the public sector is not right.

Though privatization offers some advantages to companies such as increased efficiency, it has an adverse impact on the employee morale and creates fear of dislocation or termination.

Private sector focuses more on profit maximization and less on social objectives unlike public sector that initiates socially viable adjustments in case of emergencies.

There is lack of transparency in private sector and stakeholders do not get the complete information about the functionality of the enterprise. Privatization has provided the excessive support to the corruption and illegitimate ways of accomplishments of licenses and business deals amongst the government and private bidders. Lobbying and corruption are the common issues tarnishing the practical applicability of privatization.

Privatization loses the task with which the enterprise was established and profit maximization agenda boosts misconducts like production of lower quality products, elevating the hidden indirect costs, price escalation etc.

Privatization results in high employee turnover and a lot of investment is required to train the lesser-qualified staff and even making the existing manpower of PSU abreast with the latest business practices/

There can be a clash of interest amongst stakeholders and the management of the buyer private company and initial confrontation to change can impede the performance of the enterprise.

Privatization heightens price rise in general as privatized enterprises do not enjoy government subsidies after the deal and the burden of this inflation affects the common man.

ESTABLISHMENT AND CONSTITUTION OF CENTRAL ADVISORY COUNCIL AND ITS FUNCTIONS.

- (1) For the purpose of advising it on matters concerning the development and regulation of

scheduled industries, the Central Government may, by notified order, establish a Council to be called the Central Advisory Council.

(2) The Advisory Council shall consist of a Chairman and such other members not exceeding thirty in number, all of whom shall be appointed by the Central Government from among persons who are in its opinion capable or representing the interests of -

- (a) owners of industrial undertakings in scheduled industries;
- (b) persons employed in industrial undertakings in scheduled industries;
- (c) consumers of goods manufactured or produced by scheduled industries;
- (d) such other class of persons including primary producers, as in the opinion of the Central Government, ought to be represented on the Advisory Council.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among members of the Advisory Council, shall be such as may be prescribed.

(4) The Central Government shall consult the Advisory Council in regard to -

- (a) the making of any rules, other than the first rules to be made under sub-section (3); and may consult Advisory Council in regard to any other matter connected with the administration of this Act in respect of which the Central Government may consider it necessary to obtain the advice of the Advisory Council.

7. Establishment and constitution of Development Councils and their functions

.ESTABLISHMENT AND CONSTITUTION OF DEVELOPMENT COUNCILS AND THEIR FUNCTIONS.

(1) The Central Government may, by notified order, establish for any scheduled industry or group of scheduled industries, a body of persons to be called a Development Council which shall consist of members who in the opinion of the Central Government are -

- (a) persons capable of representing the interests of owners of industrial undertakings in the scheduled industry or group of scheduled industries;
- (b) persons having special knowledge of matters relating to the technical or other aspects of the scheduled industry or group of scheduled industries;
- (c) persons capable of representing the interests of persons employed in industrial undertakings in the scheduled industry or group of scheduled industries;
- (d) persons not belonging to any of the aforesaid categories, who are capable of representing the

interests of consumers of goods manufactured or produced by the scheduled industry or group of scheduled industries.

(2) The number and the term of office of, and the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among members of a Development Council, shall be such as may be prescribed.

(3) Every Development Council shall be, by virtue of this Act, a body corporate by such name as may be specified in the notified order establishing it, and may hold and transfer property and shall by the said name sue and be sued.

(4) A Development Council shall perform such functions of a kind specified in the Second Schedule as may be assigned to it by the Central Government and for whose exercise by the Development Council it appears to the Central Government expedient to provide in order to increase the efficiency or productivity in the scheduled industry or group of scheduled industries for which the Development Council is established, to improve or develop the service that such industry or group of industries renders or could render to the community, or to enable such industry or group of industries to render such service more economically.

(5) A Development Council shall also perform such other functions as it may be required to perform by or under any other provision of this Act.

Provisions of the Act:

The Act has 31 sections. All of them can be classified into three broad categories depending upon the purposes they seek to serve:

1. Preventive Provisions:

- **Registration and Licensing:** Section 10 provides that the owner of every industrial undertaking other than the Central Government shall get his undertaking registered within a specified period, the industrial undertaking of which the Central Government is the owner. On registration, the owner shall be issued a certificate of registration containing the production capacity of the industrial undertaking and other particulars.
- **Investigation:** Section 15 empowers the Central Government to cause an investigation into an industrial undertaking on the happening of
 1. A substantial fall or likely fall, in the volume of production in respect of any article or class of articles relating to particular undertaking or an industry; or
 2. A deterioration or likely deterioration in the quality of the product which could have been or can be avoided; or
 3. A rise or likely rise (unjustifiable) in price of any article or class of articles; or
 4. When it becomes necessary to take action of the conservation of any resources of national importance which are utilised by any undertakings or

5. Where any industrial undertaking, scheduled or otherwise, is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.
- o **Revocation of Licence:** Section 10A of the Act empowers the Central Government to revoke the registration when:
 1. Registration was obtained by misrepresentation of an essential fact; or\
 2. Undertaking has ceased to be registrable by reason of any exemption granted under the Act, or
 3. Registration has become useless or ineffective.

Section 12 of the Act empowers the Central Government to revoke or amend any licence granted for establishing a new undertaking, or license granted for manufacturing a new article, on finding that the licence has, without reasonable cause failed to establish or to take effective steps to implement the licence within the time allowed.

2. Curative Provisions includes the following:

- o **Taking over management or control:** Section 18A of the Act provides that the Central Government may by a notified order authorise any person or body a person's to take over the management or to exercise control over a specified industrial undertaking if the Central Governmental is of the opinion that the concerned industrial undertaking has failed to comply with directions issued by the government.
- o **Control of supply, price and distribution of certain commodities:** Section 18FA empowers the Central Government to authorise any person or body of person with permission of the High Court concerned to take over the management or control of industrial undertakings owned by the companies in liquidation provided that the Central Government is of opinion that there are possibilities of running or restarting such undertakings for maintaining or increasing the production, supply or distribution of articles or class of articles in the public interest. The period of such takeover is to be 5 years, to be extended 6 times of two years each. No state government or local authority can take over the management or control of a scheduled undertaking.

- 3. Creative Provisions :** The Creative provisions are positive in nature and involve co-operation between the Central Government, industry, workers and consumers of goods produced by scheduled industries. Following are the specific creative measures:

Constituting Development Councils:

Central Government may by a notified order establish in respect of any scheduled industry or group of scheduled industries, a Development Council which shall consist of members who in the opinion of the Central Government are;

- (a) Person capable of representing the interest of the owners of industrial undertaking in the scheduled industry or group of scheduled industries;
- (b) Person capable of representing the interest of persons employed in the industrial undertaking in the scheduled industry and group of scheduled industries;

(c) Person having special knowledge of matters relating to the technical or other aspects of the scheduled industry or group of scheduled industries;

(d) Persons not belonging to any of the aforesaid categories who are capable of representing the interest of consumers of good manufactured or produced by the scheduled industry or group of scheduled industries.

Functions of the Council:

The Development Council shall perform the following functions as laid down in the second schedule of the Act:

1. Commanding targets of production, coordinating production programmes and reviewing progress from time to time;
2. Promoting arrangements for better marketing and helping in the division of a system of distribution and sale of the produce of the industry which would be satisfactory to the consumers;
3. Promoting standardisation of products;
4. Suggesting norms of efficiency with a view to eliminating waste, obtaining maximum production, improving quality and reducing costs;
5. Recommending measures of securing the full utilisation of the installed capacity and for improving the working of the industry particularly of the less efficient units;
6. Assisting in the distribution of controlled materials promoting arrangement for obtaining materials for industry;
7. Promoting the training of persons engaged or proposing engagement in the industry and their education in technical or artistic subjects relevant thereto;
8. Promoting or undertaking inquiry as to materials and equipment and as to methods of productions, management and labour utilisation, including the discovery and development in new materials, equipment and methods of improvement in those already in use;
9. Promoting the retraining in alternative occupations of personal engaged in or retrenched from the industry;
10. Promoting or undertaking scientific and industrial research into matters affecting industrial psychology and research into matter relating to production and consumption or use of goods and service supplied by the industry;
11. Promoting or undertaking the collection and formulation of statistics;
12. Promoting improvements and standardization of accounting and costing methods and practice;
13. Investigation possibilities of decentralising stages and processes of production with a view to encouraging the growth of allied, small-scale and cottage industries;
14. Undertaking arrangement for making available to the industry information obtained and for advising on matters with which the Development Councils are concerned in the exercise of any of their functions;
15. Promoting the adoption of measures for increasing the productivity of labour including measures of securing safer and better working conditions;
16. Advising on any matter relating to the industry (other than remuneration and conditions of employment) as to which the Central Government may request the Development Council to advise and undertaking inquiries for the purpose of enabling the Development Council so to advice.

Levy and Collection of Cess:

Section 9 of the Act provides that the Central Government may by a notified order, levy and collect a cess for the purposes of this Act on all goods manufactured or produced in any scheduled industry as may be specified in this behalf by the Central Government, a duty of excise at such rate as may be notified by the Central Government and different rates may be specified for different classes of goods, provided that no such rate shall in any case exceed two percent of the value of the goods.

The cess may be recovered in the same manner as an arrear of land revenue. The Central Government may, after collecting the proceeds of the cess, hand over the same to the Development Council which shall utilise the said proceeds for the following purposes;

(a) To promote improvements in design and quality with reference to the products of such industry or group of industries.

(b) To provide for the training of the technicians and labour in such industry or group of industries.

(c) To meet such expenses as may be necessary in the exercise of its functions and its administrative expenses.

(d) To promote scientific and industrial research with reference to the scheduled industry or group of scheduled industries in respect of which the Development Council is established.

Central Advisory Council:

Section 5 of the Act provides the establishment and functions of the Central Advisory Council. It is established for the purpose of advising the Central Government on matters concerning the development and regulation of scheduled industries.

The Central Advisory Council shall be composed of a chairman and such other members not exceeding 13 members as may be appointed by the Central Government from among the persons who are in the opinion of the Central Government capable of representing the interests of the owners of industrial undertakings covered by scheduled industries, persons employed in industrial undertakings in scheduled industries, consumers of goods manufactured or produced by scheduled industries and such other class of persons including primary producers as in the opinion of the Central Government ought to be represented on the Advisory Council.

It is made obligatory for the Central Government to consult the Central Advisory Council in regard to the making of any rules other than the first rules to be framed by the Central Government.

Other provisions:

Other provisions of the Act are as follows:

1. Power of the Central Government to provide relief to Certain Undertakings:

With an objective to maintain the proper production in any scheduled industry the Central Government is empowered to take certain actions under Sec. 18FB of the Act under this section the Central Government may examine the undertaking whose management and control have been taken over from the Industrial Disputes Act 1947, the Minimum Wages Act 1948 and the Industrial Employment (standing orders) Act 1946.

Similarly, the Central Government may suspend assurance, contracts, settlements, awards, standing orders or other instruments in force against the said undertaking. Sec 18FB is invoked to prevent fall in the volume of production of any of the said undertaking.

2. Delegation of power by Central Government:

Under the provisions of Sec. 25 the Central Government is empowered to delegate its powers under the Act by a notified order to such office or authority as may be specified by the Central Government in its notification.

The Act also provides full protection to the officer or authority acting under the provisions of the Act. No suit, prosecution or other legal proceedings can be initiated against the officer or authority.

3. Power to Make Rules:

Sec. 30 of the Act empowers the Central Government to make rules for carrying out the provisions of the Act subject to the condition of the previous publication of the rules framed by the Central Government. The rule making authority of the Central Government under sec 30 of the Act will relate to the following matters:

- (a) The constitution of the Advisory Council and the Development Councils and incidental matters relating to the appointment of members and conduct of affairs of the Advisory council and the Development Council.
- (b) The matters which may be taken into account in granting or issuing of licences and permission and the matters which require previous consultations by the Central Government.
- (c) The facilities to be provided by any industrial undertaking for the training of technicians and labour.
- (d) The collection of any information or statistics in respect of any scheduled industry.
- (e) The manner in which the industrial undertaking may be registered and the levy of a fee therefore.
- (f) The procedure to be followed in making any investigation under this Act.
- (g) The conditions which may be included in any licence or permission including the conditions on which the licences and permission may be valid or amended.
- (h) The maintenance of books, accounts and records relating to an industrial undertaking.

D. Penalties:

The Act contains penalties for contravention of the provisions of the Act and for making false statement by any person under the provisions of the Act. The penalty for contravention is imprisonment upto six months, or a fine upto Rs. 5,000 or both.

In case of continuing contravention the person may be punished with an additional fine which may extend to Rs. 500 for everyday during which the contravention continues after the conviction for first contravention. Penalty for making false statement is imprisonment upto three months or a fine which may extend to Rs. 2,000 or both.

1 [THE FIRST SCHEDULE [See sections 2 and 3(i)]

Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings, namely:—

- 1. METALLURGICAL INDUSTRIES: A. Ferrous: (1) Iron and steel (Metal). (2) Ferro-alloys. (3) Iron and Steel castings and forgings. (4) Iron and Steel structurals. (5) Iron and Steel pipes. (6) Special steels (7) Other products of iron and steel. B. Non-ferrous: 2 [(1) Precious metals, including gold and silver, and their alloys; (1A) Other non-ferrous metals and their alloys.] (2) Semi-manufactures and manufactures.

2. FUELS: (1) Coal, lignite, coke and their derivatives. (2) Mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like. (3) Fuel gases—(coal gas, natural gas and the like).

3. BOILERS AND STEAM GENERATING PLANTS: Boilers and steam generating plants.

4. PRIME MOVERS (OTHER THAN ELECTRICAL GENERATORS): (1) Steam engines and turbines. (2) Internal combustion engines.

5. ELECTRICAL EQUIPMENT: (1) Equipment for generation, transmission and distribution of electricity including transformers. (2) Electrical motors. (3) Electrical fans. (4) Electrical lamps. (5) Electrical furnaces. (6) Electrical cables and wires. (7) X-ray equipment. 1. Subs. by Act 71 of 1956, s. 7, for the First Schedule (w.e.f. 1-3-1957). 2. Subs. by Act 37 of 1962, s. 2, for item (1) (w.e.f. 16-9-1962). 31 (8) Electronic equipment. (9) Household appliances such as electric irons, heaters and the like. (10) Storage batteries. (11) Dry cells.

6. TELECOMMUNICATIONS: (1) Telephones. (2) Telegraph equipment. (3) Wireless communication apparatus. (4) Radio receivers, including amplifying and public address equipment. (5) Television sets. (6) Teleprinters.

7. TRANSPORTATION: (1) Aircraft. (2) Ships and other vessels drawn by power. (3) Railway locomotives. (4) Railway rolling stock. (5) Automobiles (motor cars, buses, trucks, motor cycles, scooters and the like). (6) Bicycles. (7) Others, such as fork lift trucks and the like.

8. INDUSTRIAL MACHINERY: A. Major items of specialised equipment used in specific industries:— (1) Textile machinery (such as spinning frames, carding machines, powerlooms and the like) including textile accessories. (2) Jute machinery. (3) Rayon machinery. (4) Sugar machinery. (5) Tea machinery. (6) Mining machinery. (7) Metallurgical machinery. (8) Cement machinery. (9) Chemical machinery. (10) Pharmaceuticals machinery. (11) Paper machinery. B. General items of machinery used in several industries, such as the equipment required for various 'unit processes': (1) Size reduction equipment—crushers, ball mills and the like. (2) Conveying equipment—bucket elevators, skip hoist, cranes, derricks and the like. (3) Size separation units—screens, classifiers and the like. 32 (4) Mixers and reactors—kneading mills, turbo mixers and the like. (5) Filtration equipment—filter presses, rotary filters and the like. (6) Centrifugal machines. (7) Evaporators. (8) Distillation equipment. (9) Crystallisers. (10) Driers. (11) Power driven pumps—reciprocating, centrifugal and the like. (12) Air and gas compressors and vacuum pipes (excluding electrical furnaces). (13) Refrigeration plants for industrial use. (14) Fire-fighting equipment and appliances including fire engines. C. Other items of Industrial Machinery: (1) Ball, roller and tapered bearings. (2) Speed reduction units. (3) Grinding wheels and abrasives.

9. MACHINE TOOLS: Machine Tools.

10. AGRICULTURAL MACHINERY: (1) Tractors, harvesters and the like. (2) Agricultural implements.

11. EARTH-MOVING MACHINERY: Bulldozers, dumpers, scrapers, loaders, shovels, drag lines, bucket wheel excavators, road rollers and the like.

12. MISCELLANEOUS MECHANICAL AND ENGINEERING INDUSTRIES: (1) Plastic moulded goods. (2) Hand tools, small tools and the like. (3) Razor blades. 1 [(4) Pressure Cookers. (5) Cutlery. (6) Steel furniture.]

13. COMMERCIAL, OFFICE AND HOUSEHOLD EQUIPMENT: (1) Typewriters. (2) Calculating machines. (3) Air conditioners and refrigerators. (4) Vacuum cleaners. (5) Sewing and knitting machines. (6) Hurricane lanterns. 1. Ins. by Act 17 of 1979, s. 3 (w.e.f. 30-12-1978). 33

14. MEDICAL AND SURGICAL APPLIANCES: Surgical instruments—sterilisers, incubators and the like.

15. INDUSTRIAL INSTRUMENTS: (1) Water meters, steam meters, electricity meters and the like. (2) Indicating, recording and regulating devices for pressure, temperature, rate of flow, weights, levels and the like. (3) Weighing machines.

16. SCIENTIFIC INSTRUMENTS: Scientific instruments.

17. MATHEMATICAL, SURVEYING AND DRAWING INSTRUMENTS: Mathematical, surveying and drawing instruments.

18. FERTILISERS: (1) Inorganic fertilisers. (2) Organic fertilisers. (3) Mixed fertilisers.

19. CHEMICALS (OTHER THAN FERTILISERS): (1) Inorganic heavy chemicals. (2) Organic heavy chemicals. (3) Fine chemicals including photographic chemicals. (4) Synthetic resins and plastics. (5) Paints, varnishes and enamels. (6) Synthetic rubbers. (7) Man-made fibers including regenerated cellulose-rayon, nylon and the like. (8) Coke oven by-products. (9) Coal tar distillation products like naphthalene, anthracene and the like. (10) Explosives including gunpowder and safety fuses. (11) Insecticides, fungicides, weedicides and the like. (12) Textile auxiliaries. (13) Sizing materials including starch. (14) Miscellaneous chemicals.

20. PHOTOGRAPHIC RAW FILM AND PAPER: (1) Cinema film. (2) Photographic amateur film. (3) Photographic printing paper.

21. DYE-STUFFS: Dye-stuffs.

22. DRUGS AND PHARMACEUTICALS: Drugs and Pharmaceuticals. 34

23. TEXTILES (INCLUDING THOSE DYED, PRINTED OR OTHERWISE PROCESSED): (1) Made wholly or in part of cotton, including cotton yarn, hosiery and rope, (2) Made wholly or in part of jute, including jute twine and rope. (3) Made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets; (4) Made wholly or in part of silk, including silk yarn and hosiery; (5) Made wholly or in part of synthetic, artificial (man-made) fibers, including yarn and hosiery of such fibers.

24. PAPER AND PULP INCLUDING PAPER PRODUCTS: (1) Paper—writing, printing and wrapping. (2) Newsprint. (3) Paper board and straw board. (4) Paper for packaging (corrugated paper, Kraft paper), bags, paper containers and the like. (5) Pulp—wood pulp, mechanical, chemical, including dissolving pulp.

25. SUGAR: Sugar. 1 [

26. FERMENTATION INDUSTRIES (OTHER THAN POTABLE ALCOHOL:)] (1) Alcohol. (2) Other products of fermentation industries

27. FOOD PROCESSING INDUSTRIES: (1) Canned fruits and fruit products. (2) Milk foods. (3) Malted foods. (4) Flour. (5) Other processed foods.

28. VEGETABLE OILS AND VANASPATI: (1) Vegetable oils, including solvent extracted oils. (2) Vanaspati.

29. SOAPS, COSMETICS AND TOILET PREPARATIONS: (1) Soaps. (2) Glycerine. (3) Cosmetics. (4) Perfumery (5) Toilet preparations.

30. RUBBER GOODS: (1) Tyres and tubes. (2) Surgical and medicinal products including prophylactics. (3) Footwear. (4) Other rubber goods. 1. Subs. by Act 27 of 2016, s. 3, for "26. FERMENTATION INDUSTRIES:" (w.e.f. 14-5-2016). 35

31. LEATHER, LEATHER GOODS AND PICKERS: Leather, leather goods and pickers.

32. GLUE AND GELATIN: Glue and gelatin.

33. GLASS: (1) Hollow ware. (2) Sheet and plate glass. (3) Optical glass. (4) Glass wool. (5) Laboratory ware. (6) Miscellaneous ware.

34. CERAMICS: (1) Fire bricks. (2) Refractories. (3) Furnace lining bricks—acidic, basic and neutral. (4) China ware and pottery. (5) Sanitary ware. (6) Insulators. (7) Tiles. 1 [8] Graphite Crucibles.]

35. CEMENT AND GYPSUM PRODUCTS: (1) Portland cement. (2) Asbestos cement. (3) Insulating boards. (4) Gypsum boards, wall boards and the like.

36. TIMBER PRODUCTS: (1) Plywood. (2) Hardboard, including fiber-board, chip-board and the like. (3) Matches. (4) Miscellaneous (furniture components, bobbins, shutters and the like).

37. DEFENCE INDUSTRIES: Arms and ammunition.

38. MISCELLANEOUS INDUSTRIES: 2 [(1)] Cigarettes. 3 [(2) Linoleum, whether felt based or jute based.] 1. Ins. by Act 17 of 1979, s. 3 (w.e.f. 30-12-1978). 2. Item "Cigarettes" re-numbered as item (1) thereof by Act 67 of 1973, s. 4 (w.e.f. 7-2-1974). 3. Ins. by s. 4, ibid. (w.e.f. 7-2-1974). 36 1 [(3) Zip fasteners (metallic and non-metallic). (4) Oil Stoves. (5) Printing, including litho printing industry.]

COMPETITION ACT, 2002

Definitions

1. “acquisition” means, directly or indirectly, acquiring or agreeing to acquire— (i) shares, voting rights or assets of any enterprise; or (ii) control over management or control over assets of any enterprise;
2. “agreement” includes any arrangement or understanding or action in concert,— (i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
3. “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;
4. “Chairperson” means the Chairperson of the Commission appointed under sub-section (1) of section 9;
5. “Commission” means the Competition Commission of India established under sub-section(1) of section 7;
6. “consumer” means any person who— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use; (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with

the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

7. “Director General” means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;

8. “enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

9. “goods” means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes— (A) products manufactured, processed or mined; (B) debentures, stocks and shares after allotment; (C) in relation to goods supplied, distributed or controlled in India, goods imported into India;

10. “Member” means a Member of the Commission appointed under sub-section (1) of section 9 and includes the Chairperson;

11. “person” includes— (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (vii) any body corporate incorporated by or under the laws of a country outside India; (viii) a co-operative society registered under any law relating to co-operative

societies; (ix) a local authority; (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

12. "price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;

13. "relevant market" means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

14. "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

15. "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

16. "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

17. "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;

1. What is Competition Act ? What are the objectives of Competition Law ?

Ans. I) Meaning Of Competition Law :- Competition refers to a situation in a market place in which firms/ entities or sellers independently strive for the patronage of buyers in order to achieve a particular business objective, such as profits, sales, market share etc. Competition is not an end unto itself, rather a means to achieve economic efficiency and welfare objectives. Free and fair competition is one of the pillars of an efficient market economy. Therefore, competition has become a driving force in the global economy. Indian economy is on a high growth path. In the recent years the Indian economy has been one of the strongest performers in the world. However, the full growth potential of the economy remains yet to be realised. Infusion of greater degree of competition can play a catalytic role in unlocking the fuller growth potential in many critical areas of the economy, which hitherto has been held back by restriction on competition in various forms.

II . Objects to be achieved & Salient Features of the New Competition Regime:

The Competition Act has been designed as an omnibus code to deal with matters relating to the existence and regulation of competition and monopolies. Its objects are lofty, and include the promotion and sustenance of competition in markets, protection of consumer interests and ensuring freedom of trade of other participants in the market, all against the backdrop of the economic development of the country. However, the Competition Act is surprisingly, compact, composed of only 66 sections. The legislation is procedure-intensive, and is structured in an uncomplicated manner. The various Objectives of the Act are as follows

I. **To check anti-competitive practices** :- The Act under Section 3(1) prevents any enterprise or association from entering into any agreement which causes or is likely to cause an **appreciable adverse effect on competition (AAEC)** within India. The Act clearly envisages that an agreement which is contravention of Section 3(1) shall be void.

II. **To prohibit abuse of dominance** :-

III. Regulation of combinations :-

IV. To provide for the establishment of Competition Commission of India (CCI), a quasi-judicial body to perform below mentioned duties:

- Prevent practices having adverse impact on competition
- Promote and sustain competition in the market
- Protect consumer interests at large
- Ensure freedom of trade carried on by other participants in the market
- Look into matters connected therewith or incidental thereto.

In simpler terms its the law which governs the market place and the functioning of enterprises in the market. Since the market affects the consumers at large its governments duty to protect the consumers. Market is regulated by CCI and its Appellate body i.e Competition Appellate Tribunal and all the appeals from COMPAT its directly to Supreme Court. It regulates any anti competitive agreement between the players in the market (Horizontal and vertical) which includes cartel, bid rigging etc., abuse of dominance and combinations.

2. What is an Anti-competitive Agreement? State the provisions of the competition act for the prohibition of Anti – competitive agreements ?

I) Meaning of Anti-competitive Agreement :- The Act under Section 3(1) prevents any enterprise or association from entering into any agreement which causes or is likely to cause an **appreciable adverse effect on competition (AAEC)** within India. The Act clearly envisages that an agreement which is contravention of Section 3(1) shall be void.

II) Prohibition of Anti- Competitive Agreements :-

The Act under **Section 3 of the Act** prohibits any agreement amongst enterprises which materialize in:

1. Tie-in arrangement :- According to the Statute it includes any agreement requiring purchaser of goods, as a condition of purchase, to purchase some other goods. In the case of *Sonam Sharma v. Apple & Ors.*, the CCI stated that in order to have a tying arrangement, the following ingredients must be present:

- **There must be two products that the seller can tie together.** Further, there must be a sale or an agreement to sell one product or service on the condition that the buyer purchases the other product or service. In other words, the

requirement is that purchase of a commodity is conditioned upon the purchase of another commodity.

- **The seller must have sufficient market power** with respect to the tying product to appreciably restrain free competition in the market for the tied product. That is, the seller has to have such power in the market for the tying product that it can force the buyer to purchase the tied product; and
- **The tying arrangement must affect a “not insubstantial” amount of commerce.** Tying arrangements are generally not perceived as being anti-competitive when substantial portion of market is not affected.

2. Exclusive supply agreement- The Act defines such agreements to include any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

3. Exclusive distribution agreement- This includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of goods.

- 4. Refusal to deal-** The Act states that this criteria includes agreement which restricts by any method the persons or classes of persons to whom the goods are sold or from whom goods are bought.

Shri Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors- Important case law on Anti-competitive Agreements

In the case of *Shri Shamsher Kataria v. Honda Siel Cars India Ltd. & Ors*³

Facts– The informant in the case had alleged anti-competitive practices on part of the Opposite Parties (OPs) whereby the genuine spare parts of automobiles manufactured by some of the OPs were not made freely available in the open market and most of the OEMs (original equipment suppliers) and the authorized dealers had clauses in their agreements requiring the authorized dealers to source spare parts only from the OEMs and their authorized vendors only.

CCI’s decision– The Commission held that such agreements were in the nature of exclusive supply, exclusive distribution agreements and refusal to deal under [Section 3\(4\) of the Act](#) and hence the Commission had to determine whether such agreements would have an AAEC in India.

The Commission held the impugned agreements were in contravention of Section 3 of the Act and remarked that the network of such agreements allowed the OEMs to become monopolistic players in the aftermarkets for their model of cars, create entry barriers and foreclose competition from the independent service providers.

The Commission further stated that such a distribution structure allowed the OEMs to seek exploitative prices from their locked-in consumers, enhance revenue margin from the sale of auto component parts as compared to the automobiles themselves

besides having potential long term anti-competitive structural effects on the automobile market in India.

5. **Resale price maintenance :-** It includes any agreement to sell goods on condition that the prices be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

3. State the circumstances where it will be presume that an enterprise is abusing its dominant position ?

I . Meaning of Dominant position

According to section 4 of the Competition Act, 2002, dominant position means the strength of an enterprise in the relevant market in India which enables the enterprise to operate independently of competitive forces prevailing in the market and to affect the consumers or competitors or the market in its favour.

In *Jai Balaji Industries Ltd v. Union of India*, the Guwahati High Court observed that supply of water to citizens is not a sovereign function of the Government. The court found that the Development Authority was neither producing DI pipes nor controlling the price of DI pipes in the market. Hence, it had no dominant position in the market. The question of abuse of a non-existent position did not arise. Section 4 had no application.

II) Identification of abusive use of dominant position [section 4(2)]

There are five kinds of abusive use of dominant position-

1. **Unfair or discriminatory trade practices**– According to this, abuse of dominant position happens when an enterprise or group directly or indirectly imposes discriminatory conditions on the sale of goods or rendering of prices or price in sale or purchase of predatory price of goods or services.
2. **Limiting production or technical or scientific development**– An abuse of dominant position happens in the market where an enterprise or group

directly or indirectly imposes conditions that limit the production of the goods or technical or scientific development resulting in the production of the goods or services.

3. **Denial of access to market, barriers to entry and expansion**– Any condition that causes denial to access to the market in any manner shall constitute an abuse of dominant position.
4. **Imposition of supplementary obligations**– when an enterprise makes the conclusion of contracts subject to an acceptance of supplementary obligations by other parties, and those obligations are such that by their very nature or according to commercial usage in that field, they have no connection with the subject-matter of the contract.
5. **Protection of other markets**– when an enterprise uses its position in a relevant market to enter into another market, then there is an abuse of dominant position.

III. Prohibition of abuse of dominant position

Section 4(1) of the competition Act, 2002 prohibits abuse of dominant position by any enterprise or group. Sub- section (1) says that no enterprise or group shall abuse its dominant position.

IV. Remedies

Once the abuse of dominant position has been established, the competition authorities can take the following measures-

1. A cease and desist order
2. Penalty which may be 10% of annual turnover
3. Direct the enterprise to take action which the authority deems fit
4. Give any other order which it may think fit
5. Divide the dominant enterprise
6. In the case of appeal to competition appellate Tribunal, the Tribunal may order for compensation to the party bearing loss.

V. Conclusion

The Competition act, 2002 was formulated as there was a need to shift the focus from curbing monopolies to promoting competition both internal and external. Thus, through its authorities the Competition Act keeps a check on the abuse of the dominant position and other malafide trade practices in the relevant market and on receipt of any complaint, it takes necessary actions and on proving of the allegations respective penalties are imposed on the defaulters.