

# CRITIQUE OF EXTRATERRITORIAL JURISDICTION AND EFFECTS DOCTRINE

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## 1. ABSTRACT

*The aim of this paper is to study the „Effects doctrine“ which comes into picture when the matter involved is of extraterritorial jurisdiction. The objective behind the same is to understand the problems which are faced by the markets in various countries to prevent anti-competitive practices.*

*The scope of this paper is very vast as almost every country uses the doctrine to prevent anti-competitive practices by other countries, which affect their markets directly. The scope of the paper is limited to a comparison of the laws in US, EU and India, by understanding various other aspects which are used by the Competition authorities such as the Competition Commission of India („CCI“) in India.*

*Even though we have come far enough to deal with anti-competitive practices, the only solution to such issues will be bilateral agreements with other countries. Hence this paper is focusing on the fundamentals of concept called effects doctrine to provide a better overview of the same.*

## I. INTRODUCTION

In a world where businesses and individuals are increasingly operating in a global scenario, the issue of the extraterritorial application of national laws is assuming progressively greater importance to deal with new issues where markets are affected by these extraterritorial practices. Traditionally, the exercise of jurisdiction by a state was generally limited to persons, property and acts within its territory.

In this paper the researcher is studying the evolution of the ‘\_Effects Doctrine‘ in the US, the EU and India to understand the concept of Effects Doctrine and extra-territorial jurisdiction efficiently. As in the globalised world, it’s easy to draft laws to regulate markets but when it

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comes to the practical implementation, the real problem arises. In addition, the researcher is also dealing with the powers and procedures followed by the CCI to deal with such cases.

## II. OVERVIEW OF EXTRATERRITORIAL JURISDICTION

To keep pace with the perpetual evolutionary process of changing, communal competition authorities must adopt regulations to deal with such issues which directly have an impact over their markets. To prevent such practices, nations are entering into bilateral agreements with other nations and groups such as the Organization of Petroleum Exporting Countries (OEPC), in this constantly developing world.<sup>2</sup> These agreements make it easy for countries to resolve such issues and provide better protection to their markets without getting involved in cumbersome legal and political processes.<sup>3</sup>

This is a matter of public international law where there are limits imposed upon the state jurisdiction and subsequently upon the country's ability to implement its laws outside its jurisdiction over undertakings which are overseas. It can be said that there are two fundamental elements to a state's jurisdictional competence.<sup>4</sup> First, a state frames laws with the help of its legislative, executive and judicial bodies to lay down general rules. This is also known as subject matter jurisdiction of the state.<sup>5</sup> Second, it becomes an issue of enforcement of these general rules, where sometimes even coercion is used by the authorities.<sup>6</sup> This is called enforcement jurisdiction of a state.<sup>7</sup>

Subject matter jurisdiction is considered as part of public international law as this concept provides power to the state to regulate its citizens within its territory. Under laws such as taxation or corporate law, even corporate entities which are registered in a country will be considered as citizens. Due to trans-border transactions and events taking place at so many different levels, it has been tried by various scholars and judicial bodies to even include the acts which are originating outside but ending within the territory of that particular state under

<sup>2</sup>Einer Elhauge *et al*, GLOBAL COMPETITION LAW AND ECONOMICS, 152 (2007).

<sup>3</sup>*Id.*, at 154.

<sup>4</sup>Elhauge, *supra* note 1, at 155.

<sup>5</sup>Joseph Drexler, THE FUTURE OF TRANSNATIONAL ANTITRUST - FROM COMPARATIVE TO COMMON COMPETITION LAW, 112 (2003).

<sup>6</sup>*Id.*

the definition of subject matter jurisdiction. Even certain connections are considered as acts being completed within the territory of a country.<sup>8</sup>

To include anti-competitive practices within the principles of territoriality and nationality, the definitions of the concepts have been widened in recent decades through various judicial decisions in the US and the UK. Examples of these practices can be, taking over a competitor or charging predatory prices within the territory of the state concerned to apply its law, or because an agreement will have been made between a foreign undertaking and firm established within the state in question.<sup>9</sup> Such practices are considered as anti-competitive practices and these examples show that they have direct effect on the concerned country's economy.<sup>10</sup>

In these cases, it is easy to apply subject matter jurisdiction over an individual who is outside the territory of the state, but the fundamental problem here is about enforcement of its laws in the territory of the other state. To prevent such practices, states have incorporated regulations, which block other states from enforcing their laws in their territory. India itself faces the problem of enforcing its judgments in the territory of other states, but as said earlier, there are a lot of jurisdictional issues involved in such cases.<sup>11</sup>

The issues of enforcement bring lot of issues along with it. It has been seen in the past that even though one state has a subject matter jurisdiction in relation to an individual in other state, but it becomes contentious once the enforcement comes into picture without the permission of that state. Here enforcement is not just about imposing penalties but also includes all other acts such as service of summons, investigation privileges etc.<sup>12</sup>

The fundamental problem for the competition authorities is collection of information of the act which took place outside its own jurisdiction.<sup>13</sup> The problem here is that laws which were framed in the 19<sup>th</sup> century to deal with issues are not well equipped to deal with issues at present where the entire globe is inter-connected and transactions are taking place at various

<sup>8</sup>Tran Van Hoa, COMPETITION POLICY AND GLOBAL COMPETITIVENESS IN MAJOR ASIAN ECONOMIES, 245 (2003).

<sup>9</sup>*Id.*

<sup>10</sup>Kerrin Vautie *ret al*, INTERNATIONAL TRADE AND COMPETITIVE POLICY: CER, APEC AND WTO, 103 (1997).

<sup>11</sup>*Id.*

<sup>12</sup>Doern, *National Institutions in a Global Market*, COMPARATIVE COMPETITION POLICY, , 25 (2001).

levels and sometimes even in more than one jurisdictions. Hence, all these laws must be modified to deal with current issues.<sup>14</sup>

Bilateral agreements and other treaties have tried to resolve this problem up to a certain extent. For example, India is signatory to the Hague Convention on the Taking of Evidence<sup>15</sup>, and hence India assists in collecting evidences for any issue which occurs in the territory of any state signatory to the Hague Convention. Similarly, private international law becomes important when it comes to the enforcement of foreign judgments in any territory. Sometimes, it comes under enforcement of foreign judgments, especially in the matter of currency conversion, e.g. *Miliango case*.<sup>16</sup> However, cooperation on evidence and the enforcement of judgments is often not provided by one state to another where the former takes exception to an attempt by the latter to affirm its law extraterritorially, and most legal systems contain restrictions on the disclosure by competition authorities, of confidential information.<sup>17</sup>

### **III. DIFFERENCE IN APPROACH OF THE USA AND EU**

#### **A. APPROACH BY USA**

The Effects Doctrine in the USA has developed through legal interpretation of antitrust laws provided by the courts in cases dealing with commercial law jurisprudence. This was to put an end to activities which were taking place outside the USA but were still affecting its market and economy. The first instance of ‘Effects Doctrine’ came into picture in 1909 when *American Banana Case*<sup>18</sup> was brought to the court. In this case all the acts which were found to be violative of laws in USA were committed outside its territory, where the Costa Rican government was influenced to monopolize the banana trade. Unfortunately, in absence of clear laws regarding enforcement of laws in jurisdiction outside US’s territory, court rejected the matter saying they have no power to impose their laws over another country or a citizen of another country.<sup>19</sup>

<sup>14</sup>Lennart Goranson, *Concepts, Issues and the Law in practice: The Efficient and Effective Competition, Authority* COMPETITION LAW TODAY, 601 (2008).

<sup>15</sup>*Id.*

<sup>16</sup>*Miliangos v. George Frank Ltd*, [1976] AC 443.

<sup>17</sup>Elhauge, *supra* note 1, at 178.

<sup>18</sup>*American Banana Co. v. United Fruit Co.*, 148 F.2d 416 (2nd Cir. 1945).

Later on, in the case of *American Tobacco*<sup>20</sup>, issue of anti-competitive practices came before the court. This time the court said that the interpretation of Anti-Trust Act is so vague that every other matter of extraterritoriality can be rejected from even admitting into the court. Here the matter was about monopolizing the tobacco industry. Hence, in this case also the matter was not dealt with Effects Doctrine and subsequently was rejected.<sup>21</sup>

Later on, with time, Supreme Court of the United States became more flexible about the territoriality principle. In the *Sisal case*<sup>22</sup>, the Supreme Court of the United States interpreted the rules more flexibly and hence, they exercised the jurisdiction in this case where the defendant was outside the US. The explanation behind it was that even though the agreements were entered into outside USA by foreigners, they have the power to exercise jurisdiction over performance and intention of the parties, which was within USA. Subsequently, the *Alcoa case*<sup>23</sup> came to the Supreme Court of the United States where the action was taken by USA against ALCOA (the Aluminium Company of America) because the defendants had entered into an agreement to conspire so that trade can be monopolized. This was considered as unlawful under the Sherman Anti-Trust Act, Sec. 4 and 15U.S.C.A.<sup>24</sup> This was the first case where the ‘Effects Doctrine’ was used to pass a decree. This gave a new start to the courts to apply this doctrine in matters affecting the USA’s markets directly from the territory outside its jurisdiction.<sup>25</sup>

With time, all these judicial precedents started laying down several different conditions to apply the Effects Doctrine. The case which brought all this together was the *Timberlane case*<sup>26</sup>. In this case, the Court came up with the list of the tests which can be used when there is any kind of dilemma about the application of the Effects Doctrine. This was to assert that the practice was anti-competitive and was affecting the market of the concerned nation. The Court expressly said in the case that they have the power to exercise jurisdiction over matters which take place outside its jurisdiction but to prevent any kind of flaw on their part, these three tests are as follows<sup>27</sup>:

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<sup>20</sup>*United States v. American Tobacco Co.*, 221 U.S. 106 (1911).

<sup>21</sup>*American Tobacco Case*, 221 U.S. 106 (1911).

<sup>22</sup>*United States v. Sisal Sales Corporation*, 274 U.S. 268 (1927).

<sup>23</sup>*United States v. Aluminum Co. of America*, 213 US 347 (1909).

<sup>24</sup>Sec. 4, U.S.C.A.

<sup>25</sup>Andrew D. Mitchell, *Broadening the Vision of Trade Liberalisation: International Competition Law and the WTO*, 24(03) KLUWER LAW INTERNATIONAL, 358 (2001).

<sup>26</sup>*Timberlane Lumber Co. v. Bank of America*, N.T. & S.A., 549 F.2d 597 (9th Cir.1976).

<sup>27</sup>*Timberlane Case*, 549 F.2d 597 (9th Cir.1976).

First requirement was that it should have some effect whether direct or indirect over American trade and business (or for this matter over any other nation which follows these rules to exercise their jurisdiction).

There cannot be every other matter regarding anti-competitive practices being dealt by the court. The injury felt by USA must be potentially large which can be brought under the category of cognizable one. In addition, there must be infringement of antitrust laws.

There must be sufficient reason with the courts in USA to exercise their jurisdiction outside their territory. Hence the anti-competitive practice must be large enough to affect even the international comity and fairness.

## **B. APPROACH BY THE EUROPEAN UNION**

The position in the European Union ('EU') is slightly complex with regard to applicability of extraterritorial jurisdiction principles. In EU, the Treaty of Rome and the competition law of European Commission ('EC') does not say much about extra territorial jurisdiction. Still, the EC has adopted it to maintain the pace with the developing world and to deal with such issues of anti-competitive practices.<sup>28</sup> The EC uses three legal concepts to deal with issues of extraterritoriality, namely, the implementation doctrine, the economic entity doctrine, and the Effects Doctrine. This was developed by implementing Articles 81<sup>29</sup> and 82<sup>30</sup> of the EC in the matters of extraterritoriality through judicial decisions.<sup>31</sup>

But in EU, the Effects Doctrine is still not recognized by the European Court of Justice ('ECJ'), hence there is always a doubt whether this doctrine enjoys the same status as other doctrines. But, at the same time, courts have established in several cases over a period of time that this non-recognition will not bar the courts to exercise their subject-matter jurisdiction over an undertaking which is outside the EU territory.<sup>32</sup> It has been said by the courts that the Effects Doctrine will be applicable in cases to deal with anti-competitive practices, to provide

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<sup>28</sup>Elhauge, *supra* note 1, at 192.

<sup>29</sup> Article 81, European Community Law (EC).

<sup>30</sup> Article 82, European Community Law (EC).

<sup>31</sup>Massimo Motta, *COMPETITION POLICY: THEORY AND PRACTICE*, 338 (2004).

<sup>32</sup>*Id.*

safety to EU consumers. They also said that the effect of such anti-competitive practice on the economy must be reasonably foreseeable, immediate and substantial.<sup>33</sup>

It may be said that despite non-recognition of the doctrine, the Commission and Courts have assumed power over extraterritorial matters with themselves.<sup>34</sup> In the *Wood Pulp Case*<sup>35</sup>, the matter was about American, Canadian and Finnish wood pulp producers coming together and forming a price cartel outside the jurisdiction of the EC and subsequently charging EC members with predatory prices. The reason for exercising jurisdiction over the defendants was that they were doing business in the EU through their agents, branches and subsidiaries situated in the EU. They charged inflated prices from the customers which lead to the loss of 60% in wood pulp market.<sup>36</sup>

Later, when the case went to appellate court, Advocate-General Darmon said that Effects Doctrine should be recognized by EC law.

He specifically said that Effects Doctrine is the most reliable rule which laid down the criteria of substantial, foreseeable and direct effect.<sup>37</sup> This doctrine was again discussed in the *Gencor case*<sup>38</sup> where the issue was about the merger of two South African Companies. In this case, the court discussed the application of merger regulations and international law to principles of extraterritorial jurisdiction.<sup>39</sup> The *Gencor case*<sup>40</sup> reiterated the three components, namely, immediate, foreseeable and substantial effect while deciding the case.

Hence, it has been observed by the researcher that both USA and EU developed their mechanism to implement Effects Doctrine through cases and interpretation of anti-trust laws. India has its CCI in nascent stage and we need a lot of changes and better implementation of Competition law. The next chapter will be dealing with CCI and how Effects Doctrine is applied in India.

#### **IV. PROCEDURES AND POWERS OF CCI (APPROACH BY INDIA)**

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<sup>33</sup> Motta, *supra* note 30, at 336.

<sup>34</sup> The 6<sup>th</sup> Report on Competition Policy, 1977.

<sup>35</sup> *A. Ahlstrom Osakeytio v. Commission Mkt. Rep.* (CCH), 491 (27th September 1988).

<sup>36</sup> *Wood Pulp Case*, 491 (27th September 1988).

<sup>37</sup> *Wood Pulp Case*, 491 (27th September 1988).

<sup>38</sup> *Gencor v. Commission*, [1999] E.C.R. II-753.

<sup>39</sup> *Gencor Case*, [1999] E.C.R. II-753.

<sup>40</sup> *Gencor Case*, [1999] E.C.R. II-753.

CCI in India assumes its powers of extraterritorial jurisdiction under Sec. 32<sup>41</sup> of the Competition Act, 2002 ('Act'). Unlike Sec. 14<sup>42</sup> of its forerunner Act i.e. Monopoly and Restrictive Trade Practice Act, 1969, ('MRTP') it provides some extraordinary powers to the Commission to investigate and pass such orders as it deems fit when it finds any anti-competitive agreement or misuse of dominant position or combination such as merger which constitutes a violation of the provisions of the Act or the party to such anti-competitive practice are outside the territory of India.<sup>43</sup>

The competition laws in neither, the USA nor the UK gives its competition authorities such tremendous power in an unequivocal manner. Sec. 32, in very clear words gives these two powers to the CCI even if the anti-competitive practice has taken place outside the territory of India or the party to such agreement is outside India. Before the 2007 Amendment Act<sup>44</sup>, CCI had power to only conduct an inquiry in such cases but the 2007 amendment of the Act made the Commission more dynamic in all respects. It broadened the scope of its powers which lead to stringent anti-competitive practices.<sup>45</sup>

If the provisions of Indian Competition law are compared with the EU competition laws or US competition law, it is clear that the Indian Competition Commission is stronger than the competition authorities of EU or USA. The reason behind this may be that we have learnt from their mistakes and made the necessary amendments. The other reason can be that Article 81 and 82 of European Community Law or the concerned provision of US competition law does not specifically authorize the commission to exercise such jurisdiction. Such exercise of extraterritorial jurisdiction in the US or the EU is judicially created power of these competition authorities and is based on three doctrines such as implementation doctrine, economic entity doctrine and Effects Doctrine as was explained in the last chapter.<sup>46</sup>

Before the Act there was no provision in the MRTP Act which discerns the extraterritorial jurisdiction of the competition authority. However in 1996, one case came before the MRTP commission which brought up the issue of extraterritorial jurisdiction of the Commission for

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<sup>41</sup>Sec. 32 of the Competition Act, 2002.

<sup>42</sup>Mitsuo Matsushita, *Competition Law and Policy in the Context of the WTO System*, Volume 44 DE PAUL LAW REVIEW 1097, 1109 (1995).

<sup>43</sup>*Id.*

<sup>44</sup>The Competition (Amendment) Act, 2007.

<sup>45</sup>The Competition (Amendment) Act, 2007.

<sup>46</sup>Motta, *supra* note 30, at 116.

the first time. The Alkali Manufacturers Association of India (‘AMAI’)<sup>47</sup>, whose members included the major Indian soda ash producers, filed a complaint claiming that ANSAC has violated several provisions of MRTP Act, 1969.<sup>48</sup>

Analysis of various factors such as Effects Doctrine and judicial precedents of US and EU courts was done.<sup>49</sup> But at that time, the doctrine in India<sup>50</sup> was at a nascent stage and hence the Commission could not take action against foreign cartels or the pricing of exports to India<sup>51</sup>, nor could it prevent imports.<sup>52</sup> Hence, the need for a specific provision in the statute itself was felt, and later on the new Act came up with such provisions.<sup>53</sup>

### A. PROCEDURE FOLLOWED BY CCI

After the amendment of 2007 in the Act, the Commission has both inquiry power as well as power to pass an order against the anti-competitive practices. The wordings of Sec. 36<sup>54</sup> before amendment lead to the assumption that the legislature were not of the view that the Commission should follow procedure laid down in the Code of Civil Procedure, 1908<sup>55</sup> (‘CPC’) as clause 1 of Sec. 36 in very clear words exempts the Commission from the procedure laid down in Code of Civil Procedure.<sup>56</sup>

Para 12 of General Regulation<sup>57</sup> 2 of 2009 provides the mode of filing of information or reference.<sup>58</sup> The commission shall within sixty days form and record its opinion of the existence of prima facie case of the contravention of the provisions of the Act.<sup>59</sup>

The commission may, if it thinks necessary, call the primary conference for the formation of opinion on the existence of prima facie case. Direction of investigation to the Director General shall be deemed to be the commencement of the inquiry under Sec. 26<sup>60</sup> of the Act. The report of the Director shall contain his findings on each of the allegations made in the

<sup>47</sup>*Alkali Manufacturers v. American Natural Soda Ash*, (1998) 3 Comp LJ 152 MRTPC.

<sup>48</sup>*The Alkali Manufacturers Association of India (AMAI) Case*, (1998) 3 Comp LJ 152 MRTPC.

<sup>49</sup>*The Alkali Manufacturers Association of India (AMAI) Case*, (1998) 3 Comp LJ 152 MRTPC.

<sup>50</sup>Sec. 14 of the Monopoly and Restrictive Trade Practice Act, 1969.

<sup>51</sup>*The Alkali Manufacturers Association of India (AMAI) Case*, (1998) 3 Comp LJ 152 MRTPC.

<sup>52</sup>*The Alkali Manufacturers Association of India (AMAI) Case*, (1998) 3 Comp LJ 152 MRTPC.

<sup>53</sup>*The Alkali Manufacturers Association of India (AMAI) Case*, (1998) 3 Comp LJ 152 MRTPC.

<sup>54</sup>Sec. 36 of the Competition Act, 2002.

<sup>55</sup>The Civil Procedure Code, 1908.

<sup>56</sup>P. J. Lloyd *et al*, PROMOTING COMPETITION IN GLOBAL MARKETS- A MULTI-NATIONAL APPROACH, 1015 (1999).

<sup>57</sup>The Competition Commission of India (General) Regulations, 2009 (No. 2 of 2009).

<sup>58</sup>Motta, *supra* note 30, at 336.

<sup>59</sup>Andrew T. Guzman, *Is International Antitrust Possible*, Volume 73 NYLU REV 1501, 1505 (1998).

<sup>60</sup>Sec. 26 of the Competition Act, 2002.

information or reference as the case may be, together with all evidences, documents, statements or analyses collected during the investigation.<sup>61</sup>

Sec. 19<sup>62</sup> of the Act gives the Commission, power to inquire into certain agreements or misuse of dominant position of the enterprise. Sec. 26 of the Act read with Para 21 of the Competition Commission (General) Regulations, 2009<sup>63</sup> gives the procedure for the inquiry in such matters.<sup>64</sup>

Except in the case where the inquiry is to be conducted against government or public officer, neither the General regulation, 2009 nor the CPC makes it mandatory to give a notice to the defendant.<sup>65</sup> So it is upon the wish of the Commission or the party to give notice to the alleged violator of the Act. However Order V of CPC and Para 22 of General Regulations, 2009 of Competition Commission gives the mode of service of summons, notices and other documents.<sup>66</sup>

Though the regulation does not give any procedure for the examination of the parties or witness but for this purpose, sub-Sec. 2 of Sec. 36 of the Act<sup>67</sup> gives the Commission the same power as the Civil Court under CPC.<sup>68</sup> The substance of such examination shall be reduced to writing by the members and shall form part of the record.<sup>69</sup> If the party or his pleader or such authorized person is unable<sup>70</sup> or does not answer any material question which the Commission thinks is necessary to answer<sup>71</sup>, the Commission may pronounce its order<sup>72</sup> against such party, if the commission thinks fit.<sup>73</sup>

## B. POWERS OF CCI

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<sup>61</sup> Lloyd, *supra* note 55, at 500.

<sup>62</sup> Sec. 19 of the Competition Act, 2002.

<sup>63</sup> Lloyd, *supra* note 55, at 245.

<sup>64</sup> William E. Kovacic, *Extraterritoriality, Institutions, and Convergence in International Competition Policy*, Volume 77 CHI-KENT L. REV., 260 (2001).

<sup>65</sup> Lloyd, *supra* note 55, at 246.

<sup>66</sup> Lloyd, *supra* note 55, at 146.

<sup>67</sup> Brendan Sweeney, *Globalisation of Competition Law and Policy*, Volume 15 MELBJIL, 48 (2004).

<sup>68</sup> *Id.*

<sup>69</sup> Order I of the Code of Civil Procedure, 1908.

<sup>70</sup> Maria Johansson, General Counsel, U.S. Federal Trade Commission, „*Extraterritorial Jurisdiction in Competition and Anti-trust Matters*”, Volume 97 ASIL PROC., 319 (2003).

<sup>71</sup> Lloyd, *supra* note 55, at 145.

<sup>72</sup> Johansson, *supra* note 68, at 309.

<sup>73</sup> FodBarneset *al*, *Evidence Remedies: Lessons from the Decision of the Cat in Tesco Plc v. Competition Commission*, 08(04) COMPETITION LAW JOURNAL, 329 (2009).

The amended Act has empowered the Commission not only to inquire into such anti-competitive practices but also to pass such orders as the Commission deems fit. Now if after inquiry under Sec. 19, 20, 26, 29 and 30 of the Act, the commission finds there is no contravention of the provisions of the Act, then it shall approve by order, such agreement or combination.<sup>74</sup>

If the Commission finds that there exists any anti-competitive agreement or abuse of dominance or combination which causes or is likely to cause appreciable adverse effect on the Indian competitive market, it shall direct the person or enterprise or group of person or enterprise to discontinue and not to re-enter such agreement or abuse of dominant position irrespective of the fact that the concerned act has been taken place outside.<sup>75</sup>

Sec. 27<sup>76</sup> and Sec. 31<sup>77</sup> of the Act give certain remedial measures which can be taken by the Commission after the completion of the inquiry procedure. Sec. 27 talks about the orders by the Commission after inquiry into agreements or abuse of dominant position whereas Sec. 31 talks about the orders of the Commission on certain combinations.<sup>78</sup>

While the Commission exercising its extraterritorial jurisdiction under Sec. 32 of the Act imposes any penalty under Sec. 27, 31 or others provisions of Chapter VI of the Act, and the party upon whom penalty has been imposed does not comply with such order of the Commission then Sec. 39<sup>79</sup> of the Act gives the commission power to proceed to recover such penalty in such manner as may be specified by the regulations.<sup>80</sup>

Now, while enforcing its order under Sec. 32 of the Act Commission may face two situations. First, the party against whom the order has been passed is ready to comply with the order of the Commission, and second, the party against whom the order has been passed is not ready to comply with the orders of the Commission.<sup>81</sup>

Where the Commission imposes any monetary penalty against such party for the contravention of the provisions of the Act, and the party is ready to comply with the orders of the Commission, the penalty shall be paid. The party who has to make payment shall give the

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<sup>74</sup> Johansson, *supra* note 68, at 309.

<sup>75</sup> Richard Whish, *COMPETITION LAW*, 745 (5<sup>th</sup> edn., 2003).

<sup>76</sup> Sec. 23 of the Competition Act, 2002.

<sup>77</sup> Sec. 31 of the Competition Act, 2002.

<sup>78</sup> Johansson, *supra* note 68, at 315.

<sup>79</sup> Sec. 39 of the Competition Act, 2002.

<sup>80</sup> Johansson, *supra* note 68, at 306.

<sup>81</sup> T. Ramappa, *COMPETITION LAW IN INDIA, POLICY, ISSUES AND DEVELOPMENTS*, 56 (2006).

notice either through the Commission or independently to the party in favour of whom the order has been passed.<sup>82</sup>

## V. CONCLUSION

India is at its nascent stage in terms of having rules and regulations for its own Effects Doctrine. Section 32 of the Act has been a major step taken by the Indian Government where CCI is especially empowered to conduct an inquiry into anti-competitive practices which have adverse effect on India, irrespective of the fact that it has taken place outside the territory of India. Despite this, the problem is about enforcement of its decisions in other territories. To take the benefits of these new rules and regulations, India will have to enter into bilateral agreements so that the anti-competitive practices can be prevented and the orders of the courts in India can be enforced easily.

The researcher on the basis of his research suggests that the Commission is at an infancy stage and therefore, it should adopt the comity principle which has been recognized and adopted by most strong competitive and antitrust authorities of the world. The researcher also suggests that the Government of India should enter into more bilateral agreements for the reciprocal enforcement of the judgments.

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<sup>82</sup>*Id.*