

# COMPETITION LAW IN INDIA

SRINIVASAN PARTHASARATHY



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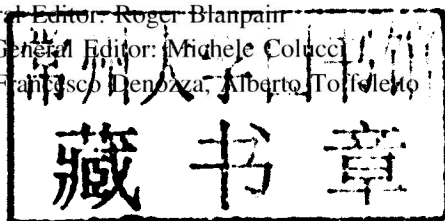
**Srinivasan Parthasarathy**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Competition Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editors: Francisco Denzola, Alberto Tolledo



**Wolters Kluwer**  
Law & Business

*Published by:*  
Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*  
Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
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*Printed on acid-free paper.*

ISBN 978-90-411-3651-0

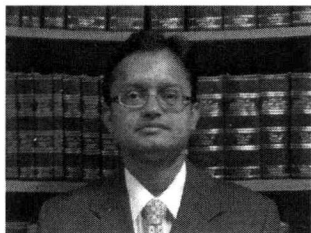
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Printed in Great Britain.

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**The Author**

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# List of Abbreviations

AAEC	Appreciable Adverse Effect on Competition
BIFR	Board for Industrial and Financial Reconstruction
CAT	Competition Appellate Tribunal
CAT Salary Rules	Competition Appellate Tribunal (Salaries and Allowances and other Terms and Conditions of Service of the Chairperson and other Members) Rules, 2009
CAT Selection Committee Rules	Competition Appellate Tribunal (Term of the Selection Committee and the Manner of Selection of Panel of Names) Rules, 2008
CCI	Competition Commission of India
CCI Advocacy Rules	Competition Commission of India (Return on Measures for the Promotion of Competition Advocacy, Awareness and Training on Competition Issues) Rules, 2008
CCI Annual Accounts Rules	Competition Commission of India (Form of Annual Statement of Accounts) Rules, 2009
CCI Annual Report Rules	Competition Commission of India (Form and Time of Preparation of Annual Report) Rules, 2008
CCI Employees Rules	Competition Commission of India (Number of Additional, Joint, Deputy or Assistant Director-General, other Officers and Employees, their manner of Appointment, Qualification, Salary, Allowances and other Terms and Conditions of Service) Rules, 2009
CCI Salary Rules	Competition Commission of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and other Members) Rules, 2003
CCI Secrecy Rules	Competition Commission of India (Oath of Office and of Secrecy for Chairperson and other Members) Rules, 2003
CCI Selection Committee Rules	Competition Commission of India (Term of the Selection Committee and the Manner of Selection of Panel of Names) Rules, 2008
Companies Act	Companies Act, 1956
Competition Act	Competition Act, 2002
Contract Act	Indian Contract Act, 1872
CoP Regulations	The Competition Commission of India (Determination of Cost of Production) Regulations, 2009
CP Act	Consumer Protection Act, 1986
CPC	Code of Civil Procedure, 1908

## List of Abbreviations

CrPC	Code of Criminal Procedure, 1973
DG	Director General
Draft Combination Regulations	The Competition Commission of India (Combination) Regulations – in draft form prepared by the CCI
Electricity Act	Electricity Act, 2003
Experts Regulations	The Competition Commission of India (Procedure for Engagement of Experts and Professionals) Regulations, 2009
FEMA	Foreign Exchange management Act, 1999
FERA	Foreign Exchange Regulation Act, 1973
GATS	General Agreement on Trade in Services
General Regulations	The Competition Commission of India (General) Regulations, 2009
ID Act	Industrial Disputes Act, 1947
IDR Act	Industries (Development and Regulation) Act, 1951
Insurance Act	Insurance Act, 1938
IPC	The Indian Penal Code, 1860
IRDA	Insurance Regulatory and Development Authority of India
IRDA Act	Insurance Regulatory and Development Authority of India Act, 1999
Lesser Penalty Regulations	The Competition Commission of India (Lesser Penalty) Regulations, 2009
Meetings Regulations	The Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009
MIC	Monopolies Inquiry Commission, 1964
M RTP Act	Monopolies and Restrictive Trade Practices Act, 1969
M RTPC	Monopolies and Restrictive Trade Practices Commission
OGL	Open General License
PNGRB	Petroleum and Natural Gas Regulatory Board
PNGRB Act	Petroleum and Natural Gas Regulatory Board Act, 2006
Raghavan Committee	High Level Committee on Competition Policy and Law
RBI	Reserve Bank of India
RoC	Registrar of Companies
SEBI	Securities and Exchange Board of India
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
SSI	Small Scale Industries
SSNIP	Small but Significant Non-transitory increase in Price
Takeover Regulations	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997
TDSAT	Telecom Disputes Settlement Appellate Tribunal
TRAI Act	Telecom Regulatory Authority of India Act, 1997
TRIPS	Trade Related Aspects of Intellectual Property Rights
WTO	World Trade Organization

# General Introduction

## §1. GENERAL BACKGROUND OF THE COUNTRY

### I. History

1. The sub-continent of India, stretching from the Himalayan mountains in the North and extending up to the seas (confluence of Bay of Bengal, Arabian Sea and the Indian Ocean) in the South was originally known to the Hindus as Bharata – Varsha, or the land of Bharat, a famous king of the ancient tradition. Subsequently, the name popularly used was Bharat, and the same is recognized by the Constitution of India in stating, 'India, that is Bharat'. Vishnu Purana, one of the ancient texts in India contains a verse that makes a reference to Bharata – Varsha.<sup>1</sup> When translated from the original text in Sanskrit, the verse reads 'The country that lies north of the ocean and south of the snowy mountains is called Bharata – Varsha; there dwell the descendants of Bharata.'<sup>2</sup>

1. R.C. Majumdar, H.C. Raychaudhuri & Kalikinkar Datta, *An Advanced History of India*, 4th edn (India: Macmillan India Limited, 1978).

2. *Vishnu Purana* Ch. II, 3.1.

2. While ancient India was much larger in size than the present-day landmass, the predominant course of Indian history can be determined to a great extent by its geography of the current day. This seem to be true for many modern countries, partly due to their ability to withstand the impact of outside invasions and partly due to the fact that after a part of the geographical territory is lost, the occupants of such territories do not seem to be too inclined to preserve or protect the ancient heritage associated with those territories. This may also be seen from the lost heritages in the territories that were originally part of Bharat i.e., India.

3. From time to time, different parts of India were ruled by many rulers, some of them of native origin and some of them being invaders or settlers from outside. As it happened with many countries in the past, some invaders from outside were not too kind to the local population and practices, and this resulted in conflicts from time to time.

4. Some of the notable dynasties or empire that ruled parts of India since the fourth Century BC were the Mauryan Empire, the Khushana Dynasty, the Gupta Dynasty, the Chalukyas of Badamni (in present-day State of Maharashtra), the Pal-lavas of Kanchi (in the present-day State of Tamil Nadu), the Palas (dominated the

Eastern and Northern part of India), the Senas (who ruled Bengal), the Pratiharas (who ruled Central India), the Rashtrakutas (present-day State of Karnataka), the Cholas (who ruled over peninsular India as well as large parts of Sri Lanka and Maldives), the Vijayanagar Empire (Southern part of India, principally the present-day State of Karnataka).

5. While India was home to many faiths, India also accepted and assimilated faiths that came from outside, including Judaism, Christianity and Islam. The initial entry of Islam into South-Asia came in the first century after the death of Prophet Muhammad. The Umayyad caliph in Damascus had reportedly sent an expedition to Baluchistan and Sindh in 711 AD led by Muhammad bin Qasim. He captured Sindh and Multan. Three hundred years after his death Sultan Mahmud of Ghazni, led a series of raids against Rajput kingdoms and rich temples in the western part of India, and established a base in Punjab for future incursions. In 1024, the Sultan set out on his last famous expedition to the southern coast of Kathiawar along the Arabian Sea, where he is said to have ransacked the city of Somnath and its renowned temple.<sup>1</sup> That is said to be the beginning of the iconoclastic practices of various subsequent rulers, who did not tolerate the ancient and traditional beliefs and practices, the evidence of which may be seen in many parts of India even now. Notable among the subsequent rulers in parts of India were the Delhi Sultanate, the Slave Dynasty, the Khilji Dynasty, the Tughlaq Dynasty, the Sayyid Dynasty, the Lodhi Dynasty and the Bahmani Kingdom.

1. <[http://india.gov.in/knowindia/ancient\\_history.php](http://india.gov.in/knowindia/ancient_history.php)>.

6. It can be seen that since the eighth century AD, some parts of the country were under the sovereignty of rulers that came from outside of the country, and some continued under native rulers. The imperial Mughal dynasty became extinct with Bahadur Shah II who was deported to Rangoon, Burma (Myanmar) by the British on suspicion of assisting the first revolt against the British in 1857. He is said to have died there in 1862.

7. The period between 1857 and 1947 was principally the period of the struggle for freedom from British rule,<sup>1</sup> and finally India attained independence on 15 August 1947.

1. Though there were some small settlements that were under the control of French and Portuguese.

## II. Other Information

8. India is the largest democracy and the seventh largest country in the world, extending over 3,287,263 square kilometres. Lying entirely in the northern hemisphere, the mainland extends between latitudes 8° 4' and 37° 6' north, longitudes 68° 7' and 97° 25' east, and measures about 3,214 kilometres from north to south between the extreme latitudes and about 2,933 kilometres from east to west between the extreme longitudes. It has a land frontier of about 15,200 kilometres. The total



length of the coastline of the mainland, Lakshadweep Islands, and the Andaman and Nicobar Islands is 7,516.6 kilometres.<sup>1</sup>

1. <<http://india.gov.in/nowindia/profile.php>>.

9. The following is some information available from the Census Data for the year 2001:<sup>1</sup>

- (i) The population of India was slightly above 1 Billion, with approximately 51.74% comprising males. Of the total population, 72.2% lived in rural areas and 27.8% in urban areas, and 59.9% of the population were in the age group of 15 to 59 years.
- (ii) The number of States in India was twenty-eight and the number of Union Territories<sup>2</sup> was seven.
- (iii) The literacy rate in India was 64.8%.
- (iv) Of the total population, persons professing Hindu faith constituted a majority with 80.5%, Muslims at 13.4% and Christians, Sikhs, Buddhists, Jains and others constituted the rest.

1. <[www.censusindia.gov.in](http://www.censusindia.gov.in)>.

2. Union Territories are centrally administered regions, even though some of them have legislature.

10. Indian Standard Time is five hours and thirty minutes ahead of GMT. The climate of India can broadly be classified as tropical monsoon. But, in spite of much of the northern part of India lying beyond the tropical zone, the entire country has a tropical climate marked by relatively high temperatures and dry winters. There are four seasons, namely, winter (December–February), summer (March–June), South-west monsoon season (June–September) and post monsoon season (October–November). Severe winters are experienced in the northern parts, though not in the southern part. The mainland comprises four principal regions, namely the great mountain zone, plains of the Ganges and the Indus, the desert region, and the southern peninsula.

## §2. ECONOMIC SYSTEM

11. The economic system of India has been a mix of centrally planned and market driven systems. It does not necessarily fit into any of the defined economic systems. After attaining independence in 1947, the then Prime Minister was convinced that a centrally planned economy was the best form that would suit India. This was partly due to his personal convictions as well as the system followed by the erstwhile Soviet Union. This also resulted in the Planning Commission of India being set up by a resolution of the Government of India in March 1950, to pursue the declared objectives of the Government 'to promote a rapid rise in the standard of living of the people by efficient exploitation of the resources of the country, increasing production and offering opportunities to all for employment in the services of the community'.<sup>1</sup>

1. <<http://planningcommission.nic.in>>.