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# STRENGTHENING COMPETITION LAW IN INDIA: THE CASE FOR CRIMINAL SANCTIONS AGAINST CARTELS

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## ABSTRACT

Cartel conducts severely undermines market integrity and harms consumers badly while obstructing economic efficiency with grave competition law violations. Substantial pecuniary penalties are levied in India under the Competition Act 2002, mainly for anti-competitive agreements that involve cartel formation. Unlike some jurisdictions, such as the United States, India's framework refrains from imposing draconian penalties like imprisonment on cartel behaviour. Criminal sanctions introduction implications are evaluated in this paper alongside critiques of India's cartel governance landscape and ongoing criminalization debate fervor.

India's existing regime imposes hefty monetary penalties and provides leniency incentives to unearth clandestine cartels, but the absence of criminal liability may limit deterrence somewhat. Countries like the U. S. under the Sherman Act and U. K. under the Enterprise Act have seen enhanced deterrence despite various practical enforcement issues arising afterward. Criminal sanctions pose quite a stark and highly personal menace to corporate bigwigs, beefing up compliance incentives well beyond civil penalties. Research acknowledges significant obstacles to criminalizing cartel conduct in India, nonetheless. Critical concerns include a higher burden of proof needed in criminal proceedings beyond a reasonable doubt and the risk of over-deterrent legitimate competitive behaviour. Enforcement hurdles are scrutinized closely in Ireland, Japan, the U.K., and Canada, yielding multifaceted experiences that effectively enhance understanding of such obstacles.

The paper evaluates how criminalization necessitates sweeping reforms encompassing enhancement of enforcement agency capabilities, protection of leniency incentives, and refinement of procedural safeguards. Criminalization might boost India's global clout in competition enforcement, thereby significantly facilitating international cooperation overseas. India

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must adopt a somewhat balanced, phased approach and build capacity successfully to implement such a transformative policy shift globally. Strategic institutional strengthening and robust procedural protections will be crucial in realizing the benefits of criminalization while mitigating risks to India's evolving law regime quite effectively.

**Keywords:** Cartels, Competition Law, Criminal Sanctions, Deterrence, India, Leniency Program

## Introduction

Cartels are one of the most heinous offenses against competition law, in which competitors collude to agree upon prices, restrict production, divide markets, or collude on bids to a free and fair market's detriment.<sup>3</sup> In India, the Competition Act of 2002 (the Act)<sup>4</sup>, is the primary legislation providing enforcement against anti-competitive conduct, including cartels.<sup>5</sup> Although the Act levies heavy pecuniary penalties on certain entities indulging in cartelization, it does not go the entire length of legally mandating criminal sanctions like imprisonment. This paper explores the existing regulatory framework of cartels in India, critiques the scope of the controversy around the criminalization of cartels' conduct, and analyses the likely implications of enacting criminal sanctions for cartel behaviour.

## Legal Framework for Combating Cartels in India

The Competition Act, 2002, Section 3, prohibits anti-competitive agreements like cartels by express terms, which cause an appreciable adverse effect on competition in India. The Act authorizes the Competition Commission of India (CCI) to inquire into and impose penalties on companies engaged in such behaviour.<sup>6</sup> Penalties are hefty, with the CCI authorized to order penalties up to three times the profit of every enterprise party to the cartel in each year of the length of the cartel, or 10% of turnover in each year, whichever is higher. Despite these harsh monetary penalties, the Act remains without criminal penalties against individuals or

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<sup>3</sup> Ram Kumar Poornachandran, Shreya Singh and Dhruv Chadha, 'India: Cartels' (2022) *Asia-Pacific Antitrust Review* <https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2022/article/india-cartels> accessed 5 April 2025. Global Competition Review

<sup>4</sup> Competition Act 2002, Act No. 12 of 2003.

<sup>5</sup> Competition Act 2002, s 3.

<sup>6</sup> Reuters, 'India's Ad Industry Raids Followed Tip-Offs Under Leniency Scheme, Sources Say' (21 March 2025) <https://www.reuters.com/world/india/indias-ad-industry-raids-followed-tip-offs-under-leniency-scheme-sources-say-2025-03-21/> accessed 5 April 2025.

companies involved in cartel behaviour.<sup>7</sup> This is compared to other countries like the United States and the United Kingdom, where individuals can be jailed for cartels.

### **Leniency Provisions and Their Effectiveness**

To facilitate the detection and destruction of cartels, the CCI has introduced a leniency policy under the Competition Commission of India (Lesser Penalty) Regulations, 2009.<sup>8</sup> The policy encourages cartel members to approach the authorities and submit information concerning the cartel's activities in lieu of lower penalties. The initial applicant is granted a 100% reduction in fines, while the subsequent applicants are granted up to 50% and 30% reductions, respectively.<sup>9</sup>

The leniency program has proven to be a successful tool for unearthing cartels that otherwise would have been missed due to their secretive nature. High-profile cases have demonstrated the program's effectiveness in encouraging self-reporting and complementing the enforcement efforts of the CCI.

### **Debate on Criminalizing Cartel Conduct**

The absence of criminal sanctions in the competition law regime in India has also caused doubt about the likely effectiveness of having such provisions as a deterrent to cartelization. Some advocate that the threat of imprisonment would significantly enhance compliance and deter players from entering into anti-competitive agreements. They cite foreign experiences where the imposition of criminal sanctions has led to a decrease in cartel activity.

Critics are concerned about the complexity involved in imposing criminal sanctions, especially the heavy burden of proof in criminal cases and the risk that such action would discourage applications for leniency. They argue that the current regime of substantial monetary sanctions and leniency options effectively addresses cartel activity in India.

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<sup>7</sup>Vinod Dhall, 'Act Decisively Against Cartels' *Financial Express* (New Delhi, 22 July 2020) <https://www.financialexpress.com/opinion/act-decisively-against-cartels/2092009/> accessed 5 April 2025.

<sup>8</sup> Sonam Chandwani and Tarun Jain, 'Competition Commission in India and Regulations Governing Cartels' (Mondaq, 23 September 2020) <https://www.mondaq.com/india/antitrustcompetition-law/936392/competition-commission-in-india-and-regulations-governing-cartels> accessed 5 April 2025.

<sup>9</sup> Prachi Jain, 'Leniency Plus: India's Cartel-Busting Incentive for Whistle-Blowers' (Indian Review of Corporate and Commercial Laws, 20 February 2024) <https://www.irccl.in/post/leniency-plus-india-s-cartel-busting-incentive-for-whistle-blowers> accessed 5 April 2025.

## **Arguments for Criminalizing Cartel Conduct**

### **Deterrence Through Harsher Penalties**

The primary justification for criminalizing cartel behaviour is that the threat of imprisonment is a more effective deterrent than the threat of financial penalties. Even hefty financial penalties can be seen by large firms as a cost of doing business. On the other hand, the danger of imprisonment affects the decision-makers directly accountable for engaging in anti-competitive behaviour, thereby deterring them. This aligns with the regulatory models in nations like the United States, where the Sherman Antitrust Act<sup>10</sup> imposes criminal sanctions, including imprisonment, on cartel members.<sup>11</sup>

### **Addressing the Limitations of Civil Penalties**

Under the present law, civil sanctions can be insufficient to equate to cartels' gravity and clandestine nature. These organizations are likely to carry out covert operations, making it hard to detect them and prosecuting them even harder. Section 46 of the 2002 Competition Act<sup>12</sup> offers less severe fines to organizations that come forward and make full and accurate disclosure of being involved in cartel operations. While such leniency will encourage voluntary reporting, it will not necessarily act to deter all forms of cartel operations. Having criminal sanctions imposed would strengthen the present laws by offering an additional disincentive and highlighting the gravity of the offense.

### **Aligning with International Standards**

Enforcing cartel conduct through criminal sanctions would bring India's competition regime in line with international best practices. Several countries, including Canada, have already enacted criminal penalties for cartel offenses. Canada, in 2009, added to the Competition Act per se criminal prohibitions on certain cartel conduct, which would necessitate only the establishment of the existence of a cartel agreement and not its anti-competitive effect.

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<sup>10</sup> Sherman Antitrust Act 1890, 15 U.S.C.

<sup>11</sup> Sébastien Lafrance, 'The Criminalization of Cartels: A Comparison Between India and Canada' (The Contemporary Law Forum, 23 February 2021) <https://tclf.in/2021/02/23/the-criminalization-of-cartels-a-comparison-between-india-and-canada/> accessed 5 April 2025.

<sup>12</sup> Competition Act 2002, s 46.

Adopting such international best practices could enhance India's reputation internationally and ease collaboration with foreign competition regulatory agencies.<sup>13</sup>

### **Enhancing Enforcement Efficiency**

The prospect of criminal sanctions can enhance the efficiency of enforcement instruments. The threat of criminal liability can motivate individuals within organizations to report cartel activity, thereby driving detection and prosecution efforts. Second, criminal investigations can allow law enforcement agencies greater access to more investigative resources, such as wiretaps and search warrants, essential in uncovering clandestine cartel schemes. For instance, in December 2024, the Competition Commission of India (CCI) searched the offices of leading liquor companies as part of an inquiry into alleged price collusion, which indicates the need for effective enforcement instruments.<sup>14</sup>

### **Moral and Social Condemnation**

Engagement in cartel behaviour not only damages the economy but also undermines public trust. By restricting supply and manipulating prices, cartels exploit consumers and undermine the underlying values of a free market. Criminalization of such behaviour would be an apt expression of the moral reprehensibility of such conduct and thus serve to reinforce social disapproval. This is seen in the Maharashtra Control of Organised Crime Act (MCOCA),<sup>15</sup> which harshly punishes organized crime, recognizing the severe damage caused to society by such conduct. Similarly, criminalizing cartels would emphasize their seriousness and express the legal system's commitment to upholding market integrity.

### **Judicial Recognition of Cartel Severity**

Indian judiciary has acknowledged the gravity of cartel conduct. In the case of *Nilesh Patel vs. Competition Commission of India*,<sup>16</sup> the tribunal noted that cartelization is akin to conspiracy, emphasizing the clandestine nature and adverse impact of such agreements. This recognition

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<sup>13</sup> See n 9.

<sup>14</sup> Reuters, 'India Antitrust Body Raids Pernod, AB InBev in Liquor Industry Crackdown, Sources Say' (19 December 2024) <https://www.reuters.com/world/india/india-antitrust-body-raids-pernod-ab-inbev-liquor-industry-crackdown-sources-say-2024-12-19/> accessed 5 April 2025.

<sup>15</sup> Maharashtra Control of Organised Crime Act 1999, Act No. XXX of 1999.

<sup>16</sup> *Nilesh Patel v Competition Commission of India* [2022] Comp App (AT) No. 18 of 2021 (National Company Law Appellate Tribunal, 23 December 2022).

by the courts supports the argument that cartels warrant criminal sanctions to effectively deter and punish such anti-competitive behaviour.

### **Challenges in Implementing Criminal Sanctions**

Implementing criminal sanctions for cartel conduct in India presents a multifaceted challenge, intertwining legal, procedural, and practical considerations. While the intent is to deter anti-competitive behaviour through stringent penalties, several obstacles hinder the effective enforcement of such measures.

### **High Standard of Proof in Criminal Prosecutions**

Criminal cases require proof of guilt "beyond a reasonable doubt," a more stringent standard than the "preponderance of evidence" test used in civil cases. This more rigorous requirement may make it more challenging to prosecute cartel offenses, which are usually indirect or circumstantial evidence because they are clandestine. The Competition Act of 2002, according to Section 3,<sup>17</sup> prohibits anti-competitive agreements, including cartels, but does not specify the standard of proof, thus creating uncertainty in the criminal enforcement context.

### **Potential Undermining of Leniency Programs**

Leniency programs, as outlined in Section 46 of the Competition Act, 2002,<sup>18</sup> incentivize cartel members to self-report in exchange for reduced penalties. The introduction of criminal sanctions may deter individuals from coming forward, fearing imprisonment despite the promise of leniency. This could weaken the effectiveness of such programs, which are pivotal in cartel detection and enforcement.

### **Judicial and Investigative Resource Constraints**

The Indian judicial system is already heavily overloaded with a massive pendency of cases, resulting in prolonged trial periods and tardy justice. Criminal prosecution of cartels would only contribute to the burden, necessitating expert skills and infrastructure to deliver effective legal adjudication. The Competition Commission of India (CCI) is presently a regulatory

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<sup>17</sup> Competition Act 2002, s 3.

<sup>18</sup> Competition Act 2002, s 46.

agency with quasi-judicial powers; however, a shift towards criminal enforcement would involve restructuring and augmentation of such capacities on a large scale.<sup>19</sup>

### **Ambiguity in Defining Criminal Liability**

Determining individual culpability within corporate entities poses a significant challenge. Cartel decisions are often made collectively, making it difficult to pinpoint responsibility. The Competition Act, 2002, under Section 48,<sup>20</sup> addresses the liability of directors and officers but lacks clarity on attributing criminal intent, complicating prosecutions.

### **Risk of Over-Deterrence and Chilling Pro-Competitive Behaviour**

The criminal sanction threat can cause over-deterrence, where companies shun legitimate arrangements out of fear of prosecution. This can suppress innovation and efficiency-raising agreements that are good for consumers. The Competition Act of 2002 defines certain joint ventures and efficiency-raising agreements as exceptions per se. Still, imposing criminal sanctions may obfuscate these exceptions and have a chilling effect on pro-competitive behaviour.<sup>21</sup>

### **Comparative International Challenges**

International experience confirms that such difficulties do arise. In Canada, for instance, the Competition Act<sup>22</sup> criminalizes certain cartel conduct but has been criticized due to the complexity of the nature and resource requirements of legal proceedings. Reliance on leniency programs has been unavoidable; however, criminal liability could deter other future applicants, generating similar concerns pertinent to the Indian context.<sup>23</sup>

Criminalizing cartel activity aims to enhance deterrence instruments and align with international standards; however, its enforcement in India faces significant challenges. Addressing these challenges requires a wise approach that assesses the efficacy of existing civil sanctions, the impact of leniency programs, and the strengths of judicial and investigative

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<sup>19</sup> S. Kumar, *Regulating Cartels in India: Effectiveness of Competition Law* (1st ed, Routledge India 2022).

<sup>20</sup> Competition Act 2002, s 48.

<sup>21</sup> See n 17.

<sup>22</sup> Competition Act, RSC 1985, c C-34.

<sup>23</sup> Aroon Menon, 'Reforming the Cartel Leniency Regime in India' (Bar & Bench, 12 July 2022) <https://www.barandbench.com/columns/reforming-the-cartel-leniency-regime-in-india> accessed 5 April 2025.

institutions. To successfully handle the complex issues involved in enforcing criminal sanctions against cartels in India, it is essential to institute comprehensive legal reforms, improve institutional capabilities, and introduce clear guidelines regarding the allocation of liability.

### **International Perspectives on Criminal Sanctions**

Analysis of foreign methodologies is of significant significance regarding the efficacy of penal measures in combating cartel-type crimes.<sup>24</sup> In United States law, the Sherman Act<sup>25</sup> requires punitive sanctions, with potential imprisonment of up to 10 years for participants in cartel activities. Similarly, the Enterprise Act 2002 of the United Kingdom classifies cartel activities as criminal and subject to prosecution for up to five years imprisonment. All of these systems have succeeded in discouraging cartel establishment by applying criminal sanctions.

However, their applicability to the Indian situation needs a thorough examination of the country's legal and economic climate. The success of criminal sanctions depends on strong investigation machinery, the efficacy of the judiciary, and societal perception of white-collar crime.

The criminalization of cartel conduct has been a subject of extensive debate and varied implementation across jurisdictions. While some countries have adopted stringent criminal sanctions to deter and punish cartel activities, others, like India, continue to rely primarily on civil penalties. Examining international approaches provides valuable insights into the potential benefits and challenges of introducing criminal liability for cartel conduct in India.

### **United States: A Pioneer in Criminal Enforcement**

The United States has been the leader in criminalizing cartelization in the past. Individuals and companies participating in cartelized behaviour like price-fixing, bid-rigging, and market allocation face hefty fines and possible imprisonment under the Sherman Antitrust Act.<sup>26</sup> The Department of Justice's Antitrust Division aggressively prosecutes such offenses, demonstrating the deterrent effect of criminal sanctions. The American experience shows that

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<sup>24</sup> Chambers and Partners, 'Cartels 2024: India' (Chambers and Partners Practice Guides, 2024) <https://practiceguides.chambers.com/practice-guides/cartels-2024/india> accessed 5 April 2025.

<sup>25</sup> See n 8.

<sup>26</sup> *Ibid.*

punitive sanctions can serve as a powerful deterrent to cartelization and create a culture of compliance.

### **Canada: Balancing Civil and Criminal Sanctions**

Canada follows a bifurcated model, differentiating civil and criminal provisions under its Competition Act.<sup>27</sup> Conduct involving cartels, e.g., price-fixing and market allocation, is criminal, and criminal penalties include potential imprisonment and fines. The effectiveness of the criminal penalties has, however, been questioned, given that actual imprisonment following convictions for cartel-related offenses is extremely rare. This would mean that even though there are criminal provisions, enforcement, and custodial penalties depend on many considerations, such as prosecutorial discretion and evidentiary challenges.

### **United Kingdom: Challenges in Criminal Prosecution**

The United Kingdom introduced criminal cartel offenses under the Enterprise Act 2002,<sup>28</sup> targeting individuals frequently engaging in secretive cartel operations nationwide. Successful prosecutions remain relatively limited, nonetheless. Notably, the collapse of the British Airways/Virgin Atlantic fuel surcharge case,<sup>29</sup> highlighted difficulties in proving dishonesty, which was initially required for conviction. Later changes facilitated prosecutions by removing dishonesty elements, but securing convictions remains tough.

### **Japan: Incremental Steps Toward Criminalization**

Japan amended its Antimonopoly Act in 2006,<sup>30</sup> introducing criminal investigation procedures with search powers. Japan Fair Trade Commission recently filed criminal accusations against various individuals and companies in bid-rigging schemes involving construction projects and road surveys. Criminal prosecutions remain relatively low in frequency due to a somewhat

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<sup>27</sup> See n 20.

<sup>28</sup> Enterprise Act 2002, c 40.

<sup>29</sup> Office of Fair Trading v British Airways PLC and Virgin Atlantic Airways Ltd[2012] CE/7691-06 (OFT Decision, 19 April 2012).

<sup>30</sup> Kazuhiko Takeshima, 'Endeavour to Establish a Rigorous Enforcement of the Antimonopoly Act in Japan' (Japan Fair Trade Commission, 3 May 2007) [https://www.jftc.go.jp/en/policy\\_enforcement/speeches/2000/070503.html](https://www.jftc.go.jp/en/policy_enforcement/speeches/2000/070503.html) accessed 5 April 2025.

cautious stance on enforcement of laws.<sup>31</sup>

### **Ireland: Pioneering Criminal Convictions in Europe**

Ireland notably secured Europe's first prison sentence for cartel offense back in 2006 involving price-fixing in heating oil industry. Suspended or not this sentence marked somewhat of a significant step forward in prosecuting those elusive cartel members. Later cases yielded more convictions reflecting Ireland's commitment towards toughening criminal enforcement somewhat more effectively nowadays.<sup>32</sup>

### **Comparative Insights and Considerations for India**

Experiences of jurisdictions like the U.S.S., Canada, the U.K., Japan, and Ireland offer several lessons for India: The deterrent effect of criminal sanctions serves firmly against engaging in cartel conduct via the imprisonment prospect. Detection likelihood and successful prosecution determine the actual deterrent effect.

Evidentiary challenges make proving cartel offenses beyond a reasonable doubt extremely difficult because of secretive operations. Jurisdictions face difficulties securing convictions, suggesting merely having criminal provisions isn't enough without robust investigative mechanisms.

The impact on leniency programs is significant because the introduction of criminal liability deters individuals from participating, fearing self-incrimination and harsh imprisonment. Balancing leniency incentives with the threat of criminal sanctions proves vital for maintaining program effectiveness.

Judicial capacity necessitates a robust framework handling intricate economic evidence fairly and swiftly in court proceedings. Resource constraints coupled with specialized expertise needs significantly impact criminal enforcement efforts' efficacy.<sup>33</sup>

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<sup>31</sup> Scott D. Hammond, 'Criminalization of Cartel Conduct - The Changing Landscape' (US Department of Justice, 14 May 2009) <https://www.justice.gov/atr/criminalization-cartel-conduct-changing-landscape> accessed 5 April 2025.

<sup>32</sup> *Ibid.*

<sup>33</sup> Spencer Weber Waller, 'Criminalizing Cartels: A Global Trend' (2011) 12 Sedona Conference Journal 179.

Criminalizing cartel conduct potentially enhances deterrence by aligning India's framework with global practices but poses significant obstacles. Other jurisdictions' experiences highlight the importance of a well-considered approach addressing evidentiary hurdles safeguarding leniency programs' effectiveness so the judicial system manages criminal prosecutions effectively underneath various regulatory frameworks. India should meticulously consider multiple factors to determine highly effective enforcement mechanisms against cartels in different scenarios.

### **Potential Implications of Criminalization in India**

The enforcement of criminal sanctions against cartel conduct in India can involve different sanctions:

**Deterrence:** Imprisonment may be a better deterrent than money fines, particularly for those who would otherwise view money fines as a cost of doing business.

**Leniency Program Effect:** The potential for criminal liability would discourage cartel members from reporting under the leniency program, and its efficacy in detecting cartels can be undermined.

**Enforcement Challenges:** Criminal prosecutions involve a higher level of evidence to be established ("beyond a reasonable doubt") compared to civil law ("preponderance of evidence"), which may render it more challenging for the CCI to secure convictions.<sup>34</sup>

**Judicial Capacity:** Implementation of criminal penalties can exacerbate the already substantial strain on an overburdened judicial system, producing overly lengthy intervals between case filing and adjudication.

The criminalization of cartels represents a significant shift in India's competition law regime. While competition law in India has long sought to address anti-competitive practices, the move toward criminalization of cartel conduct signals a more aggressive enforcement approach with far-reaching implications for businesses, individuals, and the legal landscape.

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<sup>34</sup> See n 7.

The evolution of India's cartel enforcement framework stems from recognizing the severe economic harm caused by cartels. Connor and Lande's work<sup>35</sup> reveal cartels generally impose hefty price hikes of 20% to 30% above competitive levels, thereby incurring significant economic losses. India's Competition Act 2002 prohibits cartels under Section 3 but has historically relied on civil penalties rather than criminal sanctions.<sup>36</sup>

Deterrence theory fundamentally underpins the rationale behind criminalizing cartel conduct with a profound impact. Wils argues in "Is Criminalization of EU Competition Law Answer?"<sup>37</sup> that civil fines alone may prove surprisingly ineffective because firms often factor them into cost-benefit analysis before engaging in cartel activity. Criminal sanctions introduce a deeply personal risk through imprisonment that corporate executives struggle somewhat desperately to transfer. India acknowledges the deterrence gap via the Competition Amendment Act 2023 Gazette of India Extraordinary Part II Section 1.<sup>38</sup>

Criminalization probably sparks a significant overhaul of compliance programs at businesses nationwide in India pretty rapidly nowadays. Jurisdictions with criminalized cartels often see significantly enhanced investment in fairly complex antitrust compliance mechanisms. Firms in India must implement robust compliance programs with regular training and internal monitoring systems, to prevent criminal liability. Section 48,<sup>39</sup> establishes key personnel liability, which gains greater significance within a regime that is criminalized slowly.

India's enforcement agencies face significant challenges due to limited institutional capacity somehow. Mehta emphasizes in "Competition Law in India"<sup>40</sup> that specialized techniques and forensic capabilities are crucial for prosecuting cartels effectively under challenging circumstances. India's Competition Commission and the Director General's office necessitate a considerable capacity boost for stringent judicial scrutiny standards.

Criminal sanctions imposed on cartel conduct have significant repercussions for India's somewhat fledgling leniency program. Bhattacharjee and Singhania note in their article,

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<sup>35</sup> John M. Connor and Robert H. Lande, 'Cartel Overcharges and Optimal Cartel Fines' (1998) 80 Tulane Law Review 653.

<sup>36</sup> Aditya Bhattacharjee, 'India's New Competition Law: A Comparative Assessment' (2008) 4(3) *Journal of Competition Law & Economics* 609.

<sup>37</sup> Wouter P.J. Wils, 'Is Criminalization of EU Competition Law the Answer?' (2005) 28(2) *World Competition*.

<sup>38</sup> Competition (Amendment) Act 2023, Gazette of India, Extraordinary, Part II, Section 1 (11 April 2023).

<sup>39</sup> See n 18.

<sup>40</sup> Mehta, *Competition Law in India: Jurisprudence and Practice* (Oxford University Press 2019).

Cartels and Leniency: Indian Experience Indian Journal of Law and Economics 2020,<sup>41</sup> that the success of leniency programs frequently hinges on the ability to offer complete immunity from liability through multiple channels. Criminal sanctions and leniency provisions necessitate delicate balancing to avoid discouraging cartel participants from being forthcoming with valuable intel. Section 46,<sup>42</sup> of the Competition Act requires significant refinement.

Criminalization tactics necessarily involve delicate manoeuvring around critical legal safeguards somehow. In *Selvi v. State of Karnataka* (2010),<sup>43</sup> a court ruling, human rights cases were profoundly impacted. Supreme Court of India emphasized protections against self-incrimination under Article 20(3) of the Constitution.<sup>44</sup> Cartel investigations frequently necessitate delicate navigation of informant testimony amidst stringent enforcement protocols and individual liberties. Practitioners must suddenly develop new expertise at the intersection of competition and criminal procedure law amid rapidly changing regulations.<sup>45</sup>

Global cooperation gains significance rapidly under extremely harsh law enforcement protocols. Effective cross-border enforcement necessitates mutual legal assistance treaties, extradition agreements, and informal cooperation networks. India's shift towards criminalization mirrors global patterns facilitating greater coordination with mature antitrust regimes such as the United States and Australia, which employ criminal sanctions for cartel conduct under Section 45 of the Competition and Consumer Act 2010 in Australia<sup>46</sup> and Sherman Act provisions.

Criminalization heaps fresh obligations onto judicial machinery daily. Courts handling criminal antitrust cases develop remarkably specialized knowledge in assessing economic evidence amidst intricate misconduct scenarios.<sup>47</sup> Indian courts face significant backlogs and must build the capacity within their institutions somehow. Specialized competition benches within criminal courts might become necessary due to increasing wrongful prosecution cases reported lately.

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<sup>41</sup> Aditya Bhattacharjea and Vikram Singhania, 'Cartels and Leniency: Indian Experience' (2020) *Indian Journal of Law and Economics*.

<sup>42</sup> See n 16.

<sup>43</sup> *Smt. Selvi and Ors v. State of Karnataka and Anr* [2010] 7 SCC 263 (Supreme Court of India, 5 May 2010).

<sup>44</sup> Constitution of India 1950, art 20(3).

<sup>45</sup> V.K. Singh, 'Constitutional Dimensions of Competition Law' (2018) *National Law School Journal*.

<sup>46</sup> Competition and Consumer Act 2010 (Cth), s 45.

<sup>47</sup> William E. Kovacic, 'Designing Antitrust Remedies for Dominant Firm Misconduct' (1999) 32(5) *Connecticut Law Review* 1145.

Business leaders will respond with fierce pushback and gradual acquiescence under intense pressure from authorities. Stephan's research in *Four Key Challenges*,<sup>48</sup> suggests that business attitudes toward cartel criminalization evolve slowly as enforcement becomes increasingly predictable. Effective advocacy notably enhances education by authorities building social consensus around the seriousness of cartel conduct via various mediums.

The criminalization of cartels in India represents significant enforcement enhancement, but success hinges mainly on implementation addressing institutional capacity. As Justice Ramasubramanian observed something rather pertinent in the case of *Excel Crop Care. v. CCI* (2017)<sup>49</sup> that competition law enforcement should balance deterrence objectives and proportionality principles. Navigating complex challenges requires multi-stakeholder engagement amidst delivering on the promise of effective cartel deterrence protecting India's competitive landscape.

## Conclusion

Cartel conduct poses a grave menace, undermining market integrity and consumer welfare and severely hampering economic growth nationwide. India's Competition Act 2002 lays crucial groundwork for battling cartelization via hefty fines and leniency programs remarkably effectively nationwide. The absence of criminal sanctions somewhat limits the full deterrent potential of the legal framework. Criminalizing cartel behaviour in India presents an opportunity to strengthen enforcement and deter egregious anti-competitive practices alongside a formidable challenge of ensuring such transformation unfolds effectively. Criminal sanctions impose personal liability and risk imprisonment on individuals behind cartel activities, which serve as quite a powerful deterrent worldwide. Criminal penalties reinforce moral condemnation of cartels and boost the credibility of competition law enforcement in jurisdictions such as the United States and Ireland. These experiences also reveal considerable practical difficulties, such as a high evidentiary burden in criminal cases and strain on judicial resources, weakening vital leniency programs for cartel detection.

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<sup>48</sup> Andreas Stephan, 'Four Key Challenges to the Successful Criminalization of Cartel Laws' (2014) 2(2) *Journal of Antitrust Enforcement* 333.

<sup>49</sup> *Excel Crop Care Limited & Others v. Competition Commission of India & Anr.* [2017] 8 SCC 47 (Supreme Court of India, 8 May 2017).

Criminalizing cartel conduct in India would necessitate a dexterous and highly calibrated approach from various angles. Adding harsh penalties without fixing underlying problems could result in messy outcomes like low conviction rates and overburdened courts. Effective criminalization demands significant bolstering of investigative capabilities of the Competition Commission of India and related enforcement bodies nowadays. Safeguarding the effectiveness of leniency programs remains crucial for detecting cartels, and any robust criminalization effort must thus be carefully calibrated. Thoughtful legal reforms, such as granting immunity from prosecution under certain conditions, can help strike a balance between deterrence and cooperative efforts effectively. India must carefully ensure that criminal sanctions target egregious cartel conduct, avoiding over-deterrence that might severely chill legitimate collaborations.

Ultimately, the success of criminalization in India will depend on legislative changes and fostering a culture of compliance within the business community. Promoting ethical business practices vigorously and strengthening internal compliance mechanisms within firms will support a robust legal framework. The criminalization of cartels significantly enhances competition law enforcement in India, aligning with global best practices and reinforcing broader economic fairness goals. Achieving such benefits demands a somewhat cautious, well-planned transition backed institutionally. India can build a robust competition regime with the right reforms that deter cartel conduct effectively and promote a fairly dynamic market economy.