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Beyond the Presumption: Rethinking Bid-Rigging Enforcement in Indian Public Procurement

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ABSTRACT

Public procurement accounts for a substantial share of government expenditure in India, and its integrity depends on genuine competition among bidders. Bid-rigging, where competing firms collude to predetermine or manipulate tender outcomes, distorts this process, inflates costs to the exchequer, and erodes quality and innovation. This paper examines how Indian competition law addresses bid-rigging in public procurement, with particular attention to Section 3(3)(d) of the Competition Act, 2002, which presumes an appreciable adverse effect on competition from such agreements. Using a doctrinal methodology based on statutes, case law, regulatory reports, and secondary literature, the paper explains the principal forms of bid-rigging (collusive pricing, cover bidding, bid rotation, bid suppression, market allocation, and proxy bidding); surveys the approaches of the OECD, the United States, the European Union, South Africa, and Australia; and analyses the investigative powers of the Competition Commission of India (CCI) together with the penalty, individual-liability, and leniency provisions of the Act. Landmark decisions, including Excel Crop Care, the LPG cylinder case, and the Delhi Jal Board case, are reviewed to identify trends in evidentiary standards and penalties. The paper argues that bid-rigging persists not only because of weak deterrence but also because of difficulties in detection and proof, limited institutional capacity, weak coordination between procurement authorities and the CCI, and a lack of preventive measures. It concludes that a combined strategy of detection, deterrence, and prevention, supported by data-driven screening, compliance programmes, certificates of independent bid determination, and capacity building, is needed to strengthen India's public procurement regime.

KEYWORDS: bid-rigging, collusive bidding, public procurement, Competition Act 2002, Competition Commission of India, cartel enforcement, deterrence

INTRODUCTION

One of the essential tenets of any effectively operating market is free and fair competition. Around the world, competition law has evolved with the specific goal of promoting healthy competition and giving everyone fair opportunities. This development started in 1969 and is still going strong in India today. Its goal is to eradicate anti-competition behaviour.

The purchase of products and services by the public sector is known as public procurement, and it is estimated to account for roughly 10% to 15% of global GDP and, by various estimates, between 20% and 30% of India's GDP.¹ In the event of a federal structure, such procurement is carried out by the central government, several ministries, departments, and governments at all levels. Ensuring efficiency in the supplier selection process that is, selecting the provider with the best value at the lowest price is the main goal of public procurement. The foundation of such a profession is healthy and competitive competition. This essential component is curtailed and taxpayer funds are lost as a result of bid rigging.

Bid rigging takes place when competitors, who are expected to submit independent and competitive bids in a tender, instead agree among themselves to avoid genuine competition and manipulate the bidding process for mutual benefit. Such collusion may involve fixing or predetermining bid prices, deciding not to bid against another cartel member, or even withdrawing from the tender altogether. In this setup, the cartel members act with a collective objective rather than independently, thereby suppressing competition in the bidding process. This practice secures advantages for the cartel participants while harming customers, rival bidders, and the overall market.

Section 3(3)(d)² of the Competition Act, 2002 specifically prohibits agreements between enterprises engaged in producing or selling similar goods or services at the same market level that directly or indirectly result in collusive bidding or bid rigging.

¹ World Bank, *Is Public Procurement a Rich Country's Policy?* (blog), <https://blogs.worldbank.org/en/governance/public-procurement-rich-country-s-policy>; *Public Procurement in India: Assessment of Institutional Mechanism, Challenges and Reform Initiatives*, NIPFP Working Paper No. 2017/204, https://nipfp.org.in/media/documents/WP_2017_204.pdf.

² Competition Act, 2002, No. 12 of 2003, § 3(3)(d) (India).

Eliminating competition in the public procurement process is the goal of bid rigging. Agreements to submit identical bids, to block new competitors, to avoid bidding against one another, and agreements that are geo-specific or rotation-based are a few examples.

Such agreements or actions can have negative consequences on markets by effectively eliminating competition, which is the foundation for a market to remain thriving. One type of horizontal agreement is a bidding agreement. These agreements may be made between organizations, individuals, or businesses operating in the same or related fields. It is a type of market manipulation that leads to bids that are not competitive.

Indian law provides for the creation of an impartial commission to investigate violations. The dual tenets of advocacy and enforcement are given top priority by the Commission. Eliminating such activities is the responsibility of the Competition Commission of India. It has the authority to find anti-competitive agreements and to fine the company up to 10% of its average turnover over the previous three years. Additionally, the Commission can penalize any cartel's producer, seller, distributor, and/or service provider members. It may also take action against officials or directors of any business that violates India's competition rules. Sections 19 and 26 of the Act give the Commission the authority to inquire into and investigate any alleged contravention of Section 3. In these cases, the Commission has the same authority as the nation's civil court. The Indian Constitution itself guarantees a fair and equitable market.

In the arsenal of public procurement, effective competition law and enforcement are essential weapons. Given the gravity of bid rigging and the frequently covert nature of this practice, competition law ought to outline the parameters for proving a breach. The law should be enforced by the appropriate competition authorities. The rule of law should be adhered to in this respect; the premise is and must be that businesses and persons are innocent of any violation until and unless proven differently. Naturally, the question is how it can be "proved otherwise," and as we'll see below, the odds are somewhat stacked against those who are accused of bid rigging.

RESEARCH OBJECTIVES, HYPOTHESIS AND METHODOLOGY

This paper is concerned with the question of why bid-rigging continues to affect public procurement in India even though the Competition Act, 2002 treats it as one of the most serious forms of anti-competitive conduct. Its objectives are: (i) to explain the meaning, forms, and economic and social harm of bid-rigging; (ii) to examine the statutory framework under Section 3(3)(d) of the Act, including the presumption of an appreciable adverse effect on competition, penalties, individual liability, and leniency; (iii) to compare the approaches of the OECD, the United States, the European Union, South Africa, and Australia; (iv) to analyse leading decisions of the Competition Commission of India (CCI) and the courts in order to identify trends in evidentiary standards and penalties; and (v) to identify the obstacles to effective enforcement and suggest reforms.

The paper is guided by three research questions. First, how does the Competition Act address bid-rigging, and how does the statutory presumption operate in practice? Second, what evidentiary and institutional difficulties limit enforcement? Third, what can India learn from the experience of other jurisdictions?

The hypothesis of the paper is that bid-rigging persists in Indian public procurement not only because of weak deterrence, but also because of difficulties in detection and proof, limited institutional capacity, weak coordination between procurement authorities and the CCI, and the absence of adequate preventive measures. A combined strategy of detection, deterrence, and prevention is therefore necessary.

The paper follows a doctrinal methodology. Primary sources include the Competition Act, 2002 as amended, and the decisions of the CCI, the Competition Appellate Tribunal, and the Supreme Court. Secondary sources include OECD reports, the CCI's market study on public procurement, books, journal articles, and commentary by practitioners. The comparative analysis is limited to selected jurisdictions and is meant to draw lessons for India rather than to offer a complete survey of foreign law. The paper is confined to horizontal bid-rigging in public procurement under Section 3(3)(d). It does not examine private procurement or abuse of dominance under Section 4, and it treats the anti-corruption statutes only where they bear on competition enforcement. It relies on published orders and reports and does not present original empirical data.

HISTORICAL EVOLUTION OF CARTEL REGULATION IN INDIA

The regulation of anti-competitive conduct in India has developed in stages, and understanding those stages helps to explain the present treatment of bid-rigging. After independence, competition policy was shaped by the Directive Principles of State Policy, which require that the ownership and control of material resources be distributed to subserve the common good and that the operation of the economic system should not result in the concentration of wealth and means of production to the common detriment. Following the report of the Monopolies Inquiry Commission in 1964, Parliament enacted the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act).³ The MRTP Act was concerned mainly with the concentration of economic power, monopolistic trade practices, and restrictive trade practices, and it operated in an economy governed by licensing and heavy state control. Inquiries into restrictive trade practices were conducted by the MRTP Commission, whose remedies were largely confined to orders to cease and desist. The early bid-related matter discussed later in this paper, *Swastic Laminating Industries*, was decided under this regime.

The economic reforms of 1991 changed the context. Competition came to be seen as a driver of efficiency in an open economy, and the MRTP Act, with its focus on size and control, was thought to be unsuited to that purpose. The Government constituted the High Level Committee on Competition Policy

³ Monopolies and Restrictive Trade Practices Act, 1969, No. 54 of 1969 (India).

and Law, known as the Raghavan Committee, which reported in 2000 and recommended a modern competition law directed at anti-competitive agreements, abuse of dominance, and combinations.⁴ This led to the Competition Act, 2002, which repealed the MRTP Act and, for the first time, treated cartels, including bid-rigging, as presumptively anti-competitive, with substantial monetary penalties.

The new law did not take its present form at once. After the Supreme Court's observations in *Brahm Dutt v. Union of India* on the composition of the Commission and its adjudicatory functions, the Competition (Amendment) Act, 2007 restructured the institutional framework and established the Competition Appellate Tribunal (COMPAT).⁵ The provisions on anti-competitive agreements and abuse of dominance, on which bid-rigging cases depend, came into force in May 2009. In 2017, COMPAT was replaced by the National Company Law Appellate Tribunal (NCLAT) as the appellate forum under the Act.⁶ The most recent stage is the Competition (Amendment) Act, 2023, which is discussed later in this paper.

Two points follow from this history. First, the shift from the MRTP Act to the Competition Act moved India from an approach centred on size and control to one centred on the effects of agreements on competition, supported by deterrent penalties and a leniency programme. Second, the enforcement of the Act against bid-rigging is still comparatively recent. The first decade of cases, which began after 2009, has produced the body of decisions on evidence and penalties examined in this paper, and it is against this background that the continuing difficulties in detection and deterrence should be assessed.

BID-RIGGING: MEANING AND TYPES

Public spending on goods and services accounts for a considerable portion of India's GDP. It is evidently crucial that public contracts be awarded through competitive bidding, which allows the purchasing organization to obtain the best deal.

Bid rigging is defined as "a particular form of collusive price-fixing behaviour by which firms coordinate their bids on procurement or project contracts." This distorts the procurement process and can cause serious financial (and perhaps social) harm by depriving the procuring body of the advantages of competition. Similar pricing, cover bidding, bid rotation, bid suppression, market allocation, and collective boycotts are just a few of the several ways that bid rigging occurs.

Bid rigging drains public funds and prevents more efficient firms from competing. It also weakens suppliers' motivation, which can reduce both quality and innovation that usually arise from healthy competition. Under the Competition Act, 2002, bid rigging refers to any agreement between businesses or individuals involved in similar production or trade of goods or services, where the agreement results in manipulation or suppression of competition in the bidding process. The Act's purpose is to prevent practices that harm competition, promote and sustain fair market rivalry, protect consumer interests, and safeguard the freedom of trade. Cartel formation undermines a healthy marketplace and has even been described as a "cancer" on an open economy. Such anti-competitive agreements are strictly prohibited under Indian competition law. Public procurement, in particular, is highly vulnerable to bid-rigging.

Bid rigging is usually carried out using one or more of the following tactics:

1. **Collusive pricing:** It might take the shape of identical bids or bids from colluding businesses with predetermined prices. If premeditation or a tacit arrangement between the parties is proven, it would be considered anti-competitive, even though there may be valid reasons for several parties to quote the same or comparable pricing (addressed further in the article). Consequently, it is the parties' responsibility to defend the similar offers.
2. **Cover Bidding:** purposefully sending in extremely high quotes that are unlikely to be accepted. This gives the false impression that there are many active bidders and that the bidding process is competitive. In the case of *National Insurance Company Ltd. & Ors. v. Competition Commission of India*⁷, the Competition Commission of India (CCI) and the Competition Appellate Tribunal, New Delhi (COMPAT) determined that the appellants engaged in cover bidding because they had previously met and three of the four bidders had agreed to submit higher bids in order for the other bidder to win. A modified penalty equal to one percent of their yearly turnover was levied upon them.
3. **Bid rotation:** In tenders held by the same authority or in the same sector, bidders alternate as the winners. With the tacit expectation that they will receive comparable rewards in subsequent bids, the other cartel members will raise the prices of their offers. He will do the same in a subsequent bid to guarantee B's success if A wins the offer today as a result of B inflating his bid⁸.
4. **Bid suppression:** When bidders and other colluders reach an agreement, they either stop bidding altogether or withdraw their earlier bids. In order for the predetermined winner to receive the contract, this is intended to remove competitive bids.

4 High Level Committee on Competition Policy and Law, Report (2000) (India).

5 *Brahm Dutt v. Union of India*, (2005) 2 S.C.C. 431 (India); Competition (Amendment) Act, 2007, No. 39 of 2007 (India).

6 Competition Act, 2002, No. 12 of 2003, § 53A (India) (as substituted following the Finance Act, 2017).

7 *National Insurance Company Ltd. & Ors. v. Competition Commission of India*, MANU/TA/0060/2016 (Competition Appellate Tribunal 2016).

8 *MDD Medical Systems India Private Limited v. Foundation for Common Cause and People Awareness & Others*, Appeal No. 93 of 2012 (Competition Appellate Tribunal Feb. 25, 2013).

5. **Market allocation:** Competitors divide up certain geographic regions or market segments among themselves. They decide not to fight for certain clients and markets.
6. **Proxy Bidding:** Proxy bidders simply take part in the process to guarantee that the tender is awarded to a specific participant within the allotted time frame without the procurer having to call them again. In *Nagrik Chetna Manch v. Fortified Security Solutions & Ors*⁹, the CCI noted this.

Bid rigging or collusive bidding can take several forms. Among the most widely used strategies are:

- Contracts to submit similar bids
- Arrangements for the submission of cover bids (wilfully inflated bids)
- Agreements over who will submit the lowest bid
- Agreements on shared standards for determining pricing or terms of bids
- Agreements not to bid against one another
- An arrangement to exclude outside bidders
- Agreements that assign bid winners in advance based on customer or geographic allocation, or on a rotating basis
- Agreement regarding the bids that each party may make at a goods auction or any contract that prohibits a party from placing a bid at any auction that sells products, which prevents or stifles competition

Some of these agreements include a mechanism for compensating unsuccessful bidders by allocating a specific portion of the winning bidders' income. Bid rigging in government tenders is likely to have a negative impact on both public spending and government procurement. The law takes collusive bidding and bid-rigging very seriously. The extreme treatment is reflected in the assumed approach.

ECONOMIC AND SOCIAL IMPACT OF BID-RIGGING

The harm caused by bid-rigging is both economic and social. Economically, the most direct effect is that the procuring entity pays more than it would in a genuinely competitive process. As noted above, the OECD estimates that bid-rigging raises procurement costs by 20% to 30%,¹⁰ and because public procurement forms a large share of government expenditure in India, even a small proportion of rigged tenders translates into substantial losses to the exchequer.

The harm does not end with higher prices. When contracts are allotted in advance among cartel members, efficient firms are excluded or discouraged from participating, and incumbents have little reason to improve quality, reduce costs, or innovate. Over time, this weakens the competitiveness of the entire sector and leaves the public with poorer goods, services, and infrastructure.

The social consequences are equally significant. Public money that is lost to collusion cannot be spent on health, education, or infrastructure, and the burden ultimately falls on taxpayers. Repeated manipulation of tenders also erodes public trust in the fairness of government contracting and may encourage corruption, since collusion among bidders often goes hand in hand with weak oversight within procuring agencies. These effects explain why the law treats bid-rigging as one of the most serious forms of anti-competitive conduct.

RED FLAGS AND INDICATORS OF BID-RIGGING

Because direct evidence of collusion is rare, detection usually begins with patterns in the bidding process that suggest the bids were not prepared independently. These patterns are commonly called red flags. A red flag is not proof of an agreement, but it gives procurement officials and the CCI a reason to look more closely at a tender.

The most common indicators correspond to the forms of bid-rigging described earlier. They include identical or very similar bids from different firms, a pattern in which the same firms win in turn across tenders (bid rotation), unusually high bids from some bidders that serve only to make the winning bid look competitive (cover bidding), and bidders withdrawing their offers or declining to bid without a clear reason (bid suppression). Other signs include the same bidders appearing repeatedly in the same region or product segment, a sudden drop in prices when a new or outside bidder enters, and documents from different bidders that share the same errors, formatting, or authorship.

⁹ *Nagrik Chetna Manch v. Fortified Security Solutions & Ors.*, Case No. 50 of 2015 (Competition Commission of India).

¹⁰ Organisation for Economic Co-operation and Development. (2009). *Guidelines for fighting bid rigging in public procurement*. <https://www.oecd.org/competition/cartels/42851044.pdf>

Identifying these signs requires systematic analysis of tender data rather than case-by-case review. This is why the CCI's work on screening, and the use of statistical tools by authorities such as the ACCC discussed above, are important to effective enforcement. Procurement officials, who see the bids first, are best placed to notice these signs, provided they are trained to recognise them and know when to refer a matter to the CCI.

INTERNATIONAL PERSPECTIVES ON BID-RIGGING

Bid-rigging is acknowledged by international competition authorities as a highly detrimental anticompetitive activity. Comprehensive recommendations for preventing bid-rigging have been published by the Organization for Economic Co-operation and Development (OECD). For public procurement organizations, these standards place a strong emphasis on detection methods and preventative actions. Bid-rigging is more detrimental to the economy than other cartel practices, according to the OECD. According to their research, bid-rigging raises procurement expenses by 20% to 30% worldwide¹¹. India's approach to bid-rigging regulation under the Competition Act of 2002 has been impacted by these findings.

Bid-rigging is considered a per se violation of antitrust laws in the United States. Bid-rigging is illegal under the Sherman Antitrust Act and is punishable by up to ten years in prison. Between 2010 and 2020, the U.S. Department of Justice successfully prosecuted 237 bid-rigging cases and collected fines totalling more than \$2.9 billion¹². The "plus factors" theory was created by American courts to identify collusion using circumstantial evidence. The CCI's evidentiary standards in bid-rigging proceedings have been impacted by this methodology. The Supreme Court considered bid-rigging in aluminum phosphide tablet tenders in *Excel Crop Care v. CCI*¹³, where its principal contribution was to hold that penalties must be calculated on relevant turnover, a point examined in the section on landmark cases.

Article 101¹⁴ of the Treaty on the Functioning of the European Union concerns bid-rigging under EU competition law. A strong leniency program implemented by the EU has been successful in identifying cartel activities. Complete immunity from fines may be granted to first informants. India's leniency provisions under Section 46¹⁵ of the Competition Act were influenced by this strategy. In the "Car Batteries" case, which involved bid-rigging in automotive supplier bids, the European Commission levied fines totalling €110 million¹⁶. According to ECJ doctrine, it is illegal to exchange competitively sensitive information prior to placing a bid. The CCI's approach to information sharing in tender procedures has been influenced by this norm.

Specific rules against bid-rigging for public infrastructure projects have been established by South Africa. R1.5 billion was retrieved from companies that participated in World Cup stadium tenders through their Construction Fast-Track Settlement Program¹⁷. This methodology targets industry practices by combining structural solutions with punitive actions. Indian defence procurement has partially adopted South Africa's certification requirement for independent bid determination. The rules on facilitating activities issued by the Competition Commission of South Africa offer important insights for India's developing law on hub-and-spoke agreements in bid-rigging.

The competition authority in Australia is credited with developing data analytics methods for identifying bid-rigging trends. Algorithmic screens are used by the Australian Competition and Consumer Commission (ACCC) to spot questionable bidding trends. Their "Marker Analysis" approach looks at bid submissions' statistical improbabilities¹⁸. Similar screening mechanisms for government e-procurement platforms have been introduced by the CCI. Cartel whistleblowers in Australia are protected from criminal prosecution under the country's immunity policy.

South Korea offers a further example of data-driven enforcement. The Korea Fair Trade Commission has developed a bid-rigging indicator analysis system (BRIAS), which uses data from the country's electronic procurement system to flag suspicious bidding patterns for investigation. The Korean experience suggests that when tender data are collected centrally and in a standard format, screening can be done systematically rather than case by case. This is a useful lesson for India's e-procurement platforms, such as the Government e-Marketplace (GeM) and the Central Public Procurement Portal.

11 Organisation for Economic Co-operation and Development. (2009). *Guidelines for fighting bid rigging in public procurement*. <https://www.oecd.org/competition/cartels/42851044.pdf>

12 U.S. Department of Justice, Antitrust Division. (n.d.). *Criminal enforcement trends chart through fiscal year 2020*. Retrieved September 8, 2025, from <https://www.justice.gov/atr/criminal-enforcement-fine-and-jail-charts>

13 *Excel Crop Care Ltd. v. Competition Commission of India*, (2017) 8 S.C.C. 47 (India).

14 Treaty on the Functioning of the European Union, art. 101, Oct. 26, 2012, 2012 O.J. (C 326) 47.

15 Competition Act, 2002, No. 12 of 2003, § 46 (India).

16 European Commission. (2017, February 8). *Antitrust: Commission fines car battery suppliers €110 million in cartel settlement* [Press release]. https://ec.europa.eu/commission/presscorner/detail/en/IP_17_246

17 Competition Commission of South Africa. (2018). *Annual report 2017/18* (p. 42).

18 Australian Competition and Consumer Commission. (2019, December). *Ex-post review of ACCC merger decisions* (p. 87).

LEGAL AND REGULATORY FRAMEWORK IN INDIA

India's competition law framework is set out in the Competition Act and the Regulations made under it. The key provisions of the Act came into effect in May 2009. Enforcement of the Act is overseen by the Competition Commission of India (CCI), which is supported by the Director General (DG) in conducting investigations into suspected violations and submitting reports for the CCI's consideration. Based on these findings, the CCI may take appropriate action. Parties aggrieved by certain orders, directions, or decisions of the CCI can appeal to the National Company Law Appellate Tribunal (NCLAT), which replaced the Competition Appellate Tribunal (COMPAT) in 2017, and further appeals may be filed before the Supreme Court of India.

Under Section 3(1) of the Act, no individual, enterprise, or association of enterprises is permitted to enter into agreements concerning goods or services that have, or are likely to have, an appreciable adverse effect on competition (AAEC) within India.

There is no term definition for an AAEC. Nonetheless, the Act's Section 19(3)¹⁹ outlines the six criteria that the CCI must take into consideration when assessing whether an agreement includes an AAEC: (a) putting up obstacles to new competitors entering the market; (b) forcing out current rivals; (c) preventing competition by preventing entry into the market; (d) accumulating benefits for customers; (e) enhancing the production or distribution of goods or services; and (f) advancing technical, scientific, and economic development through the production or distribution of goods or services.

According to Section 3(3)²⁰ of the Act, there is a presumption of an AAEC in the event of four different kinds of agreements, as well as other choices or practices, such as cartels, involving individuals involved in the same or comparable trade of products or services. The agreement that (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment, or the provision of services; or (c) shares the market or source of production or provision of services by allocating the geographical area of the market, the type of goods or services, the number of customers in the market, or any similar manner is covered by this provision, which places the burden of rebutting the presumption on the parties involved, or (d) causes bid rigging or collusive bidding, either directly or indirectly.

"Bid rigging" is defined in the explanation of Section 3(3) as follows: "any agreement, between the enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding." It should be mentioned that actions beyond the definition of "bid rigging" may be included in a "bid rigging" lawsuit. In fact, the CCI has created agreements governed by Section 3(3)(a), (b), and (c), as well as (d), in a number of the bid rigging cases reported.

Section 27²¹ of the Act gives the CCI the authority to take one or more actions in cases where it has determined that there has been a breach. It has the power to issue a "cease and desist" order, impose monetary penalties on the parties, mandate that the agreements remain unchanged, order the businesses in question to follow any further orders it issues and follow any instructions it may give, including paying costs, or issue "such other order or issue such directions as it may deem fit."

Under Section 27(b) of the Act, the CCI is empowered to levy a penalty of up to 10% of the average turnover of an enterprise for the preceding three financial years. In the case of cartels, however, the penalty may be harsher, allowing the CCI to impose on each participant either up to three times their profit or up to 10% of their turnover for every year the cartel operated, whichever is higher. Nonetheless, in all bid-rigging matters decided so far where penalties were imposed, the CCI has consistently applied the "standard" approach of up to 10% of average turnover over the last three years, despite explicitly classifying bid-rigging as cartel conduct.

Once it is proven that a company has committed a breach, individuals can also be held liable under Section 48²² of the Act. Anyone who was in charge of and responsible for the company's business operations will be presumed guilty unless they can show that they were unaware of the violation or had taken all reasonable steps to prevent it. Similarly, directors, managers, secretaries, or other officers may also face liability if the breach occurred with their consent, involvement, or due to their negligence. Earlier bid-rigging cases did not establish individual liability, but in two recent matters²³ the CCI clarified that the accountability of persons managing the businesses at the time of the violation was being pursued through separate proceedings. This suggests that individual responsibility is expected to play a greater role in future cases.

Under Section 19²⁴ of the Act, the Commission is empowered to examine any alleged violation of Section 3(3), which prohibits bid rigging. If the Commission finds a prima facie case of such contravention, it may direct the Director General to conduct an investigation and submit a report. In carrying out this function, the Commission possesses the powers of a Civil Court under the Code of Civil Procedure, including summoning and examining

19 Competition Act, 2002, No. 12 of 2003, § 19(3) (India).

20 Competition Act, 2002, No. 12 of 2003, § 3(3) (India).

21 Competition Act, 2002, No. 12 of 2003, § 27 (India).

22 Competition Act, 2002, No. 12 of 2003, § 48 (India).

23 *In re Bio-Med (P) Ltd.*, 2015 SCC OnLine CCI 91, 2015 Comp. L.R. 649 (Competition Commission of India 2015); *In re Sheth & Co. (Bomb Containers)*, 2015 SCC OnLine CCI 95, 2015 Comp. L.R. 715 (Competition Commission of India 2015).

24 Competition Act, 2002, No. 12 of 2003, § 19 (India).

individuals under oath, compelling the production of documents, and admitting evidence by way of affidavit. Similarly, the Director General, while conducting investigations, is vested with civil court powers in addition to the authority to carry out search and seizure operations.

If a party to a cartel makes a true, complete, and essential disclosure that results in the cartel's dissolution, Section 46²⁵ of the Act gives the Commission the authority to impose a reduced penalty on that party. However, the party may not obtain the leniency if it is discovered throughout the investigation that they have not met with the condition on which a lighter punishment was imposed, that their disclosure is not essential, or that they have provided false evidence.

EVIDENTIARY STANDARDS AND REBUTTING THE PRESUMPTION

Section 3(3) of the Act raises a presumption that an agreement of the kind listed in it, including one that causes bid rigging or collusive bidding, has an appreciable adverse effect on competition.²⁶ Once the existence of such an agreement is established, the burden shifts to the parties to show that the agreement does not have that effect. The presumption therefore lightens the CCI's task of proving harm, but it does not remove the need to prove that an agreement existed in the first place.

In practice, that is the harder step. Since bid-rigging agreements are seldom recorded in writing, the CCI often has to rely on circumstantial evidence such as identical bids, communication between bidders, and conduct that departs from what independent firms would do. The Supreme Court has made clear that similarity of prices alone is not always enough and that something more is needed to show genuine coordination.²⁷ This 'plus factors' approach, borrowed from American jurisprudence, asks whether the parallel conduct can be explained only by an agreement or whether it has a legitimate independent explanation.

The accused parties, for their part, may try to rebut the case against them by showing a commercial reason for the similar bids, such as common input costs, industry price norms, or the small size of the units involved, as argued in the *Swastic Laminating Industries* case discussed below. A defence of this kind succeeds only if it is supported by evidence and explains the conduct convincingly. The *Excel Crop Care* decision also shows that, once a violation is established, the Supreme Court expects penalties to be justified and calculated on a proper basis, namely relevant turnover.²⁸ Taken together, these principles seek to balance effective enforcement against fairness to the parties.

ROLE OF THE COMPETITION COMMISSION OF INDIA (CCI)

An important role in controlling bid-rigging is played by the Competition Commission of India. The CCI is India's main competition regulating body, having been established under Section 7²⁹ of the Competition Act, 2002. The Commission has a dual mandate that includes advocacy and enforcement duties.

The CCI is instructed by Section 18³⁰ to stop practices that hurt competition and raise awareness of it. This all-encompassing mandate makes it possible to counter bid-rigging in government procurement using a variety of strategies. The Commission's responsibilities go beyond simple decision-making to encompass market research and prophylactic measures.

The CCI has strong investigation capabilities that are essential for exposing secret bid-rigging schemes. After receiving information or suo moto cognizance, Section 26³¹ gives the Commission the authority to order the Director General to conduct investigations. When conducting investigations, the Director General has authority similar to that of civil courts. These include of conducting dawn raids, calling witnesses, and demanding the production of documents. In the case of *Competition Commission v. Steel Authority of India Ltd.*³², the Supreme Court explained the structure of the Commission's inquiry under Section 26, in which the Commission first forms a prima facie opinion and the Director General then investigates and reports. This structure allows evidence to be collected in a systematic way before any adjudication. These abilities are crucial for identifying complex bid-rigging methods intended to avoid regulatory attention.

In order to handle particular difficulties in bid-rigging instances, the Commission has created specialized investigating methods. It looks for questionable bidding trends that can indicate collusion using economic research tools. These consist of checking for rotation patterns, simultaneous withdrawals, and

25 Competition Act, 2002, No. 12 of 2003, § 46 (India).

26 Competition Act, 2002, No. 12 of 2003, § 3(3) (India).

27 *Rajasthan Cylinders and Containers Ltd. v. Union of India*, (2020) 16 S.C.C. 615 (India).

28 *Excel Crop Care Ltd. v. Competition Commission of India*, (2017) 8 S.C.C. 47 (India).

29 Competition Act, 2002, No. 12 of 2003, § 7 (India).

30 Competition Act, 2002, No. 12 of 2003, § 18 (India).

31 Competition Act, 2002, No. 12 of 2003, § 26 (India).

32 *Competition Commission of India v. Steel Authority of India Ltd.*, (2010) 10 S.C.C. 744 (India).

identical pricing structures. The CCI used statistical research to find unlikely pricing correlations in the Builders Association of India v. Cement Manufacturers Association case³³. Specialized cartel investigation units with knowledge of public procurement have been formed by the Commission. These teams use industry-specific expertise to identify symptoms of collusion relevant to a given sector. Through experience accumulation and worldwide collaboration, the CCI's investigative sophistication has steadily grown.

One of the CCI's primary responsibilities under the Competition Act is to adjudicate bid-rigging complaints. Hearings are held by the Commission to give accused violators a chance to raise defences. It balances enforcement efficiency factors with natural justice concepts. The Supreme Court has recognised that the Commission performs adjudicatory functions alongside its regulatory and advisory roles³⁴. This trait necessitates upholding procedural justice while preserving the adaptability necessary for specialized adjudication. The Commission gives well-reasoned rulings after reviewing the available data and applying the rules of competition to cases of bid-rigging. These orders establish jurisprudential norms that direct future market conduct in addition to resolving particular cases.

COMPETITION (AMENDMENT) ACT, 2023: RECENT DEVELOPMENTS

The Competition (Amendment) Act, 2023 made several changes to the enforcement framework that bear on bid-rigging and cartels generally.³⁵ Among the most relevant are the introduction of a settlement and commitment mechanism, the extension of the leniency framework through a 'leniency plus' option, the linking of penalties to global turnover, and the express extension of the presumption in Section 3(3) to parties that are not engaged in identical or similar trade but participate in the agreement, which is aimed at hub-and-spoke arrangements.

These changes are significant for bid-rigging in several ways. The leniency plus option gives a cartel member that is already under investigation an incentive to disclose a second, separate cartel, and this may help uncover bid-rigging in other tenders. The provision on facilitators addresses cases in which an intermediary, a trade association, or a consultant coordinates the bidders without bidding itself. It is also relevant to the information-sharing concerns raised in the Delhi Jal Board case. It should be noted, however, that the settlement and commitment mechanisms are generally not available for cartel conduct under Section 3(3), so their direct effect on bid-rigging is limited.

The amendment shows that the legislature is moving towards a stronger and more modern enforcement regime, but its real effect will depend on how the CCI applies the new provisions and how the courts interpret them in future bid-rigging cases.

LANDMARK CASES ON BID-RIGGING IN INDIA

Excel Crop Care Ltd. vs Competition Commission of India³⁶

Excel Crop is an example of bid rigging in the industry of popular insecticides called aluminium phosphate tablets. The Food Corporation of India complained to the CCI that Excel Crop and three other companies had engaged in cartel-like behaviour by quoting the same prices in tenders for a number of years. The COMPAT upheld the CCI's finding of a violation of Section 3(3)(d). On the subject of penalties, however, the COMPAT stated that CCI had repeatedly neglected to justify the kind of penalties levied and decided that, given the particular instance and its unique circumstances, relevant turnover for the particular products, rather than average turnover had to be taken into account. Going a step further, the Supreme Court ruled that only pertinent turnover might be taken into account for a general punishment. The Supreme Court determined that sanctions based on total turnovers would result in unfair circumstances, particularly when multiproduct enterprises were involved.

Kerala Insurance Scheme Case³⁷

The commission discovered instances of bid-rigging in insurance tenders, which is against the country's competition regulations. The Competition Commission of India punished the parties after taking suo moto cognizance of the issue. By examining the bidding patterns, meeting minutes, and email exchanges, the degree of bidding process manipulation was evaluated. It was decided that there was sufficient evidence to establish both the opposite parties' involvement in anti-competitive agreements and a legal infringement.

33 *Builders Association of India v. Cement Manufacturers Association*, Case No. 29 of 2010 (Competition Commission of India Aug. 31, 2016).

34 *Competition Commission of India v. Steel Authority of India Ltd.*, (2010) 10 S.C.C. 744 (India); *Brahm Dutt v. Union of India*, (2005) 2 S.C.C. 431 (India).

35 Competition (Amendment) Act, 2023, No. 9 of 2023 (India).

36 *Excel Crop Care Ltd. v. Competition Commission of India*, (2017) 8 S.C.C. 47 (India).

37 *Cartelization by public sector insurance companies in rigging the bids submitted in response to the tenders floated by the Government of Kerala for selecting insurance service providers for Rashtriya Swasthya Bima Yojna v. National Insurance Co. Ltd. & Others*, Suo Moto Case No. 02 (Competition Commission of India 2014).

Essel Shyam Communication Limited Case³⁸

The Commission learned that ESCL and Globecast (the Lesser Penalty Party) exchanged price-sensitive and commercial information, leading to bid-rigging of bids for the acquisition of broadcasting services for a number of sporting events in 2011–2012. Both parties acknowledged their involvement in bid-rigging and the existence of a cartel in this area after reviewing the DG investigation reports, the parties' submissions, and the arguments. All of the cartel's participants were penalized by the Commission. Globecast received a 100% cut, while ESCL received a 30% reduction. A payment of Rs. 22.36 crore was due to ESCL.

Re, Swastic Laminating Industries Case³⁹

In response to a government department's tender for supply blankets, a number of small-scale businesses provided identical quotes. A single tiny unit was unable to deliver the enormous quantity required for the tender. When compared to other parties' quotes, these units' pricing were the most affordable. The small-scale units argued that this was advantageous to both the government and the small-scale units, who were dependent on this large tender for their survival. If any one of the units offered lower rates, the other units' offer would be turned down, which would lead to the closure of the units and widespread unemployment in that area.

Re: LPG Cylinder Manufacturers v. Competition Commission of India⁴⁰

An important turning point in Indian competition law regarding bid-rigging was the LPG Cylinder case. The CCI looked into 45 cylinders makers who supplied Indian Oil Corporation with collusion. Throughout several tender rounds, manufacturers' offers were essentially the same, with only minor price variations. Penalties totalling ₹165 crores were levied by the Commission for this deliberate bid rigging.

The ruling made it clear that there is a significant presumption of collusion when similar price bids are provided without any economic basis. The CCI's readiness to enforce severe sanctions for bid-rigging in public procurement was demonstrated by this case. The Competition Appellate Tribunal changed the penalty computations according to pertinent turnover while maintaining the CCI's conclusions.

Re: Delhi Jal Board Chemical Case⁴¹

The Delhi Jal Board chemical supply case dealt with the sharing of information that made bid-rigging easier. Prior to filing their bids, seven chemical suppliers exchanged commercially sensitive bid information. WhatsApp chats with pricing information and allocation discussions were used as evidence. Bid-rigging was determined by the CCI to be the communication of information about intended bidding conduct. For this behaviour, the Commission levied fines of ₹18 crores. Even in the absence of clear allocation agreements, this judgment broadened the definition of bid-rigging law to cover pre-bid information sharing. It proved that the competitive bidding process is undermined by information sharing that makes competitors more transparent.

CHALLENGES IN REGULATING BID-RIGGING

Fundamental barriers to bid-rigging enforcement operations are detection issues. Collusive agreements usually take place in private with little record keeping.

Advanced cartels use coded language and encrypted communications to talk about bid agreements. Getting concrete proof of agreements between rivals is extremely difficult for the Competition Commission. Though they rarely offer concrete evidence, statistical analyses of bidding trends may imply collusion⁴². A significant reliance on circumstantial evidence and economic conclusions is required to meet this evidential burden. The task of proving the existence of an agreement frequently necessitates substantial investigative resources that are out of proportion to the staffing level.

There are difficult evidentiary issues when attempting to prove collusion as opposed to parallel corporate activity. Similar pricing decisions may be independently made by businesses operating in comparable market conditions. It takes advanced economic analysis to distinguish between coordinated bidding and lawful parallel activity. In the Rajasthan Cylinders case⁴³, the Supreme Court underlined the necessity of proof that goes beyond price similarities. Companies usually use industry price norms or comparable input costs to support identical bids. Competition authorities must prove "plus factors" that show real coordination in order to use this argument. These variables could include questionable communication styles or actions that go against personal financial interests.

38 *Cartelisation by broadcasting service providers by rigging the bids submitted in response to the tenders floated by Sports Broadcasters v. Essel Shyam Communication Ltd. & Others*, Suo Moto Case No. 02 (Competition Commission of India 2013).

39 *In re Swastic Laminating Industries*, RTP Enquiry No. 81/1984 (Jan. 31, 1986).

40 *In re LPG Cylinder Manufacturers v. Competition Commission of India*, Suo Moto Case No. 03 of 2011 (Competition Commission of India Oct. 6, 2012).

41 *In re Delhi Jal Board Chemical Case*, Suo Moto Case No. 03 of 2016 (Competition Commission of India Jan. 15, 2019).

42 Competition Commission of India. (2019). *Market study on public procurement in India: Spotting the red flags* (p. 67).

43 *Rajasthan Cylinders and Containers Ltd. v. Union of India*, (2020) 16 S.C.C. 615 (India).

Complexities in jurisdiction arise from the intersection of public procurement laws and competition law. Procurement officials frequently lack the competition knowledge required to identify patterns of collusion. The procurement procedures when bid-rigging first appears are not directly supervised by the CCI. Early identification of collusive arrangements is hampered by this institutional gap. Regulations pertaining to public procurement usually prioritize procedural adherence over competitive results⁴⁴. Monitoring inconsistencies are caused by the disparate procurement practices maintained by various government agencies. Sector-specific procurement laws and the Competition Act are still not fully integrated. Sophisticated cartels may take advantage of the enforcement loopholes created by this regulatory heterogeneity.

Activities of industry associations lead to ambiguities in the execution of bid-rigging laws.

Tactic cooperation can be facilitated by legitimate information exchange via trade associations. It might be difficult to distinguish between appropriate industry coordination and anticompetitive collusion. It is possible for standard-setting operations to facilitate suspect bid alignment while also lawfully harmonizing product requirements⁴⁵. Determining whether information exchanges turn into bid-rigging facilitation is a challenge for the CCI. Meetings for the entire industry provide rivals a chance to coordinate their bid tactics. These difficulties necessitate a deeper examination of association operations than a cursory check of paperwork.

DEBARMENT AND PRIVATE ENFORCEMENT

Penalties imposed by the CCI are not the only consequences that bid-rigging can attract. Two further tools, which sit outside the CCI's own penalty powers, can add to deterrence: administrative debarment by procuring entities, and claims for compensation by those who suffered loss.

The CCI has no power to bar a firm from future tenders. That power lies with the procuring authorities. The General Financial Rules, 2017 contain a code of integrity for public procurement that prohibits collusive and anti-competitive conduct by bidders, and they permit a procuring entity to debar a bidder from participating in its procurement for a limited period.⁴⁶ The Central Vigilance Commission has also promoted the use of Integrity Pacts in major contracts. Debarment is an administrative sanction and must respect natural justice. The Supreme Court has held that a person cannot be blacklisted without being given notice and an opportunity to respond.⁴⁷ The difficulty is that there appears to be no settled mechanism by which a finding of bid-rigging by the CCI leads to the consideration of debarment by the affected procuring entities. A firm penalised in one tender may therefore continue to bid in others. A formal link between CCI orders and procurement decisions, with procedural safeguards, would strengthen deterrence without duplicating the CCI's functions.

Compensation is the second tool. Section 53N of the Competition Act allows the Central Government, a State Government, a local authority, an enterprise, or any person to apply to the NCLAT for compensation for loss or damage caused by a contravention, on the basis of a finding of the Commission or an order of the appellate tribunal.⁴⁸ Because the provision names governments and local authorities, it is directly available to the public bodies that are the usual victims of rigged tenders. Such claims, however, appear to have been rare in practice. Quantifying the overcharge in a particular tender is difficult, and the OECD estimate that bid-rigging raises procurement costs by 20% to 30% can serve only as a general benchmark, not as proof of loss in a given case.

Other jurisdictions place greater weight on private enforcement. In the United States, a person injured by an antitrust violation may recover treble damages,⁴⁹ and the European Union has a directive that makes it easier for victims of cartels to claim damages.⁵⁰ If India is to use public money more effectively, procuring entities should be encouraged to pursue compensation after a finding of bid-rigging, and tender documents could include clauses that make the consequences of collusion, such as forfeiture of bid security and liability for damages, clear to bidders in advance. Debarment and compensation, together with the penalty and leniency provisions of the Act, would complete the combined strategy of detection, deterrence, and prevention that this paper recommends.

44 Organisation for Economic Co-operation and Development. (2016). *Fighting bid rigging in public procurement: Report on implementing the OECD recommendation* (p. 32).

45 *Builders Association of India v. Cement Manufacturers Association*, Case No. 29 of 2010 (Competition Commission of India Aug. 31, 2016).

46 Ministry of Finance, Department of Expenditure, General Financial Rules, 2017, rr. 151, 175 (India).

47 *Erusian Equipment & Chemicals Ltd. v. State of West Bengal*, (1975) 1 S.C.C. 70 (India).

48 Competition Act, 2002, No. 12 of 2003, § 53N (India).

49 Clayton Act § 4, 15 U.S.C. § 15 (United States).

50 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, 2014 O.J. (L 349) 1.

PREVENTIVE MEASURES AND COMPLIANCE

Enforcement alone cannot solve the problem of bid-rigging, since investigations are resource-intensive and begin only after public money has already been lost. Preventive measures aim to make collusion harder to organise and easier to detect before a contract is awarded.

On the side of procurement authorities, the OECD Guidelines recommend designing tenders so as to encourage participation and reduce the opportunities for bidders to coordinate.⁵¹ In practice, this means defining requirements clearly, avoiding unnecessary restrictions on who may bid, keeping tender information confidential, using e-procurement platforms that create a record of bids, and requiring each bidder to submit a certificate of independent bid determination. Training procurement officials to recognise red flags and to report them to the CCI is equally important.

On the side of firms, compliance programmes serve to educate employees about the risks of discussing bids with competitors and to create internal channels for reporting concerns. The leniency provisions of Section 46 add a further incentive, since a firm that discovers collusion within its own organisation can disclose it and receive a reduction in penalty. The CCI's advocacy work, through awareness programmes for procurement agencies and industry, supports both sets of measures.

SUGGESTIONS AND RECOMMENDATIONS

The analysis in this paper supports a number of recommendations, which follow from the hypothesis that a combined approach to detection, deterrence, and prevention is needed.

First, to improve detection, the CCI and procurement bodies should adopt data-driven screening of tender data, particularly on e-procurement platforms, to identify patterns such as bid rotation, identical pricing, and simultaneous withdrawals. The CCI should continue to strengthen its specialised cartel investigation capacity and to promote the use of leniency by making the process better known and more predictable.

Second, to strengthen deterrence, penalties should be applied consistently and in proportion to the gravity of the conduct, and the CCI should make fuller use of the individual liability provisions so that the persons responsible for collusion also face consequences. Clear reasoning for penalty calculations, in line with the approach of the Supreme Court in *Excel Crop Care*, would also make decisions more robust on appeal.

Third, to promote prevention, certificates of independent bid determination should be made a standard part of public tenders, and firms that regularly bid for public contracts should be encouraged to adopt competition compliance programmes. Procurement rules should be reviewed so that they place greater weight on competitive outcomes and not only on procedural compliance.

Fourth, to improve institutional coordination, a formal channel should be established between procurement agencies and the CCI for referring suspected cases, together with regular training for procurement officials. Building the capacity of procurement agencies would help close the institutional gap between competition law and procurement practice identified earlier in this paper.

CONCLUSION

Over the past 20 years, bid-rigging regulations under the Competition Act of 2002 have undergone significant change. Because bid-rigging is presumed to have a significant negative impact on competition, Section 3(3)(d) specifically targets it. Because of this presumption, the responsibility is shifted to the alleged violators, creating a reversal onus. The legal system offers a strong basis for dealing with different forms of bid-rigging. These consist of market allocation systems, bid rotation, and cover bidding, which are common in government auctions. The thorough legal framework strikes a compromise between procedural fairness considerations and enforcement effectiveness. For the regulatory regime to continue to be legitimate and successful, this balance is still necessary.

India faces several persistent hurdles in effectively tackling bid-rigging. The covert nature of collusive arrangements makes detection inherently difficult, while evidence collection is complicated by the sophisticated concealment methods cartels employ. The sheer scale of public procurement at different government levels far exceeds current regulatory capacity, and limited resources constrain the Competition Commission of India (CCI) from adequately overseeing this vast domain. In addition, weak coordination between competition authorities and procurement officials reduces enforcement efficiency. Addressing these systemic obstacles requires more than legislative reform; it demands institutional measures.

A comprehensive strategy combining detection, deterrence, and prevention is essential. International experiences provide useful guidance—OECD guidelines offer structured frameworks for identifying and curbing collusion, the United States employs criminal sanctions that serve as strong deterrents, and Korea's use of advanced detection technologies highlights the role of innovation in spotting suspicious procurement patterns. India's Competition (Amendment) Act, 2023, incorporates some of these global best practices, including an expanded leniency framework through a 'leniency plus' option and provisions aimed at hub-and-spoke arrangements, although its settlement and commitment mechanisms are generally not available for cartel conduct

⁵¹ Organisation for Economic Co-operation and Development. (2009). *Guidelines for fighting bid rigging in public procurement*. <https://www.oecd.org/competition/cartels/42851044.pdf>

such as bid-rigging. Continued alignment with international standards, adapted to India's context, would further reinforce its regulatory system. Special attention is also needed for cross-border cooperation, given the growing globalization of procurement markets.

Prevention serves as an essential counterpart to detection and enforcement in addressing bid-rigging. Measures such as mandatory certificates affirming independent bid preparation help create psychological disincentives for collusion. The use of e-procurement platforms not only increases transparency but also generates valuable data for analysing bidding patterns. Designing procurement processes around competition principles further reduces susceptibility to manipulation. The CCI's advocacy programs raise awareness among both procurement officials and market participants. Compared to resource-heavy investigations, these preventive strategies provide more cost-effective solutions. Their success, however, depends on effective coordination across multiple government departments and levels. Ultimately, prevention delivers greater economic gains than relying solely on punitive action after anti-competitive harm has occurred.

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