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Exploring the Nexus between Constitutional Law, Trade and Competition Law in Healthcare and Pharmaceutical Industry in India

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ABSTRACT

The globalised and increasingly inter-dependent markets of today are built on a fundamental premise: "Trade can make everyone better off". This premise has been codified as Professor Gregory Mankiw's 'Fifth Principle of Economics'. The renowned economist while illustrating this principle emphasises on the nature of competition as not merely a consequence of trade but a factor that constantly nurtures trade. Fair Trade that makes everyone better off is, sine quo non of fair competition. Hence "Fair Competition for Greater Good" is the central philosophy of the Indian Competition Act, 2002. By vitalising this philosophy, the Indian State has taken upon itself the duty of enhancing the scope of the Constitutionally recognised Right provided in Article 19(1)(g). This includes the duty to both provide scope for fair competition by removing all obstacles that hinder it and to not impose restrictions that deter such competition. While the duty on the Indian State enhanced by the Competition Law is taking its baby steps of evolution, the duty of providing adequate healthcare has been enshrined in the Constitution for more than seven decades now. The Right to Health is an inherent part of the Fundamental Right of Right to Life and is a key to welfare. This right is both facilitated and marketed for profits by the healthcare and pharmaceutical industries. This paper analyses the role of the Indian State and the Healthcare and Pharmaceutical Industry in the betterment of the society. The plausibility of tweaking the applicability of Competition Law to not just benefit producers but also consumers is discussed herein, under the lens of Constitutional Law. The effect of imposing adequate regulations on the said industries in enabling them to share the State's onus of providing right to health is discussed as policy suggestions.

Keywords: *Competition, trade, healthcare, pharmaceutical, Constitution, consumer welfare, producer welfare.*

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I. INTRODUCTION

The recent Covid-19 crisis has resurfaced many socio-economic problems of systems around the world. One such problem, demanding exigent attention, is that of affordable healthcare. Providing affordable healthcare is often perceived as a Constitutionally prescribed, states' welfare obligation, outside the preview of Trade and Competition laws. However, the plausibility of analysing the nexus amongst Constitutional law, Trade and Competition laws, might enable pragmatic law and policy making.

The C.C.I. and the M.R.T.P. Commission, in cases such as *Vedant Bio Science v. Chemists and Druggists Association of Baroda*[3], *Santuka Associates case*[4], *Ms Peeveear Medical case*[5], amongst others have purely applied the provisions of M.R.T.P. Act and/or the Competition Act to adjudicate upon the (il)legitimacy of the actions of the Respondents. In other words, due analysis of these judgments reveal that strict interpretation of the abovementioned laws have been enforced with no adequate insight into the welfare oriented consequences on the market.

Even in adjudication of the more celebrated cases, such as *the Novatis*[6], welfare oriented intention of providing affordable pharmaceutical drugs, were only a secondary consideration. The Courts' primary focus was on upholding the object of modern day incarnation of trade law i.e. Intellectual Property laws.

A well refined tool for balanced law and policy making, with adequate trade regulations, not devoid of social welfare is the need of the hour. This paper attempts to view healthcare and pharmaceutical industry under the lens of Constitutional law, Trade and Competition laws and provide policy suggestions for the betterment of the society.

II. CONSTITUTIONAL CONNOTATION OF THE RIGHT TO HEALTH

The very first instance of global recognition of right to health was under the Universal Declaration of Human Rights, 1948. Article 25 of the Declaration grants the right to a standard of living adequate for the health and well-being to humans[7]. The recognition of this right was augmented by the International Covenant on Economic, Social and Cultural Rights, 1966, where for the first time; equal recognition was given to both physical and mental health

[3] [2012]111 C.L.A. 446(C.C.I.) (India).
[4] [2013]Comp.L.R. 223(C.C.I.) (India).
[5] Ms Peeveear Medical Agencies v A.I.O.C.D. & Ors, [2014]Comp.L.R.10(C.C.I.) (India).
[6] Novartis Ag v. Union of India, (2013) 6 S.C.C. 1 (India).
[7] *Article 25*, Universal Declaration of Human Rights (August 1st, 2020, 10:27 PM), http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

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under the ambit of right to health (Article 12)[8]. The World Health Organisation, established in 1946, defined "health", as *a state of complete physical, mental and social wellbeing and not merely the absence of disease*[9].

In India, right to health is an issue of fundamental importance, and the responsibility to protect, respect and fulfil the right to health lies not only with the medical professionals but also with public functionaries such as administrators and judges[10]. The first health policy in India was formulated in 1946, where a detailed plan for health development was presented in the "Report of Health Survey and Development Committee" to the Government of India[11].

The Constitution of India guarantees "the right to life and liberty" under Article 21, where the term 'life' does not focus on the mere survival or animal existence of individuals but emphasises on living with human dignity, giving a wider connotation including the right to better standard of life, livelihood, leisure and hygienic conditions at workplace[12]. Therefore, right to health is inalienable.

In the case of *Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & Ors*[13], the Supreme Court held that the right to live with human dignity enshrined under Article 21 is substantiated by the Directive Principle of State Policy under Part IV of the Constitution, especially Article 39 (e) and (f), Article 41, Article 42 and Article 47. Furthermore, in the case *CESC Ltd. vs. Subash Chandra Bose*[14], the Supreme Court upon relying on international instruments, concluded that right to health is a fundamental right but it was in the case of *Consumer Education and Research Centre vs. Union of India*[15], the Supreme Court for the very first time held that *'the right to health is an integral fact of a meaningful right to life.'*

III. TRADE AND COMPETITION IN THE HEALTHCARE AND PHARMACEUTICAL SECTOR IN LIGHT OF ARTICLE 19(1)(G)

The fundamental right to trade and commerce is guaranteed under Article 19(1)(g) of the

[8] *Article 12*, United Nations. International Covenant on Economic, Social and Cultural Rights (August 1st, 2020, 10:43 PM), http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf.
[9] Preamble to the Constitution of the W.H.O. as adopted by the International Health Conference (Official records of the W.H.O., no 2, P. 100).
[10] Seema, *Right to health in India law and practice*, Chapter 4, p.160, Shodhganga,(2015) (August 3rd, 2020, 11:22AM) http://hdl.handle.net/10603/40578.
[11] Government of India. Report of the Health Survey and Development Committee, Volume I, Volume II and Volume III, 1946 . (August 1st, 2020, 11:02 PM), http://www.nhp.gov.in/directoryservices-and-regulations/committees-and-commissions/bhorecommittee1946.
[12] Bandhua Mukti Morcha v Union of India & Ors A.I.R 1984 S.C. 802 (India).
[13] (1981) 2 S.C.R. 516 (India).
[14] A.I.R. 1992 S.C 573, 585 (India).
[15] A.I.R. 1995 S.C. 922 (India).

Constitution of India with reasonable restrictions[16]. The reasonable restriction need not be only the grounds of public order but also on the grounds of economic and social policy. Therefore, it is important to note that the import or export carried on by an agency affects the economic policy of the State[17].

The right to trade envisaged under the Constitution could be expanded to an international level in light of Art. 51 of the Constitution. International trade classifies as a trade agreement between two or more nations and this is more complex than the domestic trade owing to various factors such as the difference in currencies and regulation of trade by national laws[18]. The trades which occur on the international level are conducted under the World Trade Organisation (W.T.O.) and the General Agreement on Trade in Services (G.A.T.S.). The aim of these establishments is, to create a favourable environment for trade, thereby promoting efficiency and economic growth. This is achieved by allowing the States to make binding commitments to reduce trade barriers[19].

India is a part of the G.A.T.S., thereby invariably a member of the W.T.O. since 1995. Being a member, India was at a brink of collapse when the economic reforms had begun, right until 1991. Since 1991, India's foreign trade policy has been more liberal owing to non-intervention of political issues with trade.

On the advent of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) the pharmaceutical industry in India is further tweaked to suit globalized standards of patent regulation. The then new Patent law in India was criticised for providing unbalanced market advantage to patent holders.

With the rise in liberalization and privatization, the trade agreements and practices saw a new turn as the Indian economy experienced a turbulence owing to the competition in the market. The process of globalization led to the Indian enterprises facing the heat of competition amongst domestic players as well as global giants. Therefore, there was a dire need for a level-playing field and an investor-friendly climate, and this void was filled by the Indian Competition Act of 2002.

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[16] State Trading Corporation of India v. C.T.O., A.I.R. 1963 S.C. 1811 (India).
[17] Shiv Rajan v. Union of India, A.I.R. 1959 S.C. 556 (563) (India).
[18] Smriti Chand, *The Meaning and Definition of Foreign Trade or International Trade Explained!*, (August 3rd, 2020, 01:17 PM) https://www.yourarticlelibrary.com/foreign-trade/the-meaning-and-definition-of-foreign-trade-or-international-trade-explained/5972#:~:text=ADVERTISEMENTS%3A-,The%20Meaning%20and%20Definition%20of%20Foreign%20Trade%20or%20International%20Trade,gross%20domestic%20product%20(GDP).&text=Every%20country%20has%20only%20limited%20resources.
[19] T.P. Bhat, *India: Trade in Health Services*, Working Paper 180, March 2015, p.6, Institute for Studies in Industrial Development.

In this current pandemic situation, the utmost focus of the Competition Act is required upon the Healthcare and Pharmaceutical Sector. The healthcare sector is the backbone of a Nation, despite it being a developed, developing or least developed nation. The Competition Act provides for monitoring anti-competitive practices in all trade sectors including that of healthcare and pharmaceutical sectors. It aims to curb both horizontal as well as vertical anti-competitive agreements[20].

Competition plays a key role in the healthcare sector as it aims to provide for a mechanism with the potential for reducing the costs for healthcare. The healthcare sector in India operates in light of five basic criterion i.e., 1) availability of supply, 2) price, 3) quality, 4) ability to pay, and 5) access to proper and affordable consultations[21]. There are challenges to fulfil these criterions owing to factors ranging from poverty to corruption and market malpractices.

The pharmaceutical sector consists of industries that are most prone to anti-competitive practices owing to the numerous agreements and joint venture agreements a company enters into at each stage of the manufacturing process i.e., the R&D phase and/or the Marketing and Promotion phase.

IV. ANTI-COMPETITIVE PRACTICES IN HEALTHCARE AND PHARMACEUTICAL SECTOR

The most common anti-competitive practices in the healthcare and pharmaceutical sector are predominantly in the nature of collusive agreements such as cartels, tie-in agreements, exclusive supply and distribution agreements, refusal to deal, resale price maintenance; and in the form of price fixing and abuse of dominance. The formation of a cartel is the biggest form of collusion under the anti-competitive practices as it is an agreement between competing enterprises not to compete or to restrict competition. The outcome of these agreements often results in the boycotting of a manufacturer's product till a favourable margin is arrived at, and thereby implementing higher prices for the consumers. Hence, directly or indirectly affecting the purchase or sale prices of the product.

Further, anti-competitive practices of such nature entice the doctors and pharmacists to promote and sell their brand in return for a commission or higher margin, respectively. These practices of providing kickbacks to doctors and pharmacists could be deemed as anti-

[20] *Section 3*, The Competition Act, 2002, No 12, Acts of Parliament, 2003 (India).
[21] P. Syamjith, *Impact of the competition act in the regime of health care sector with special reference to medicine a socio legal analysis*, Chapter III, p.79, Shodhganga(2016), (August 7th, 2020, 04:12 PM) http://hdl.handle.net/10603/148915.

competitive in nature[22]. Their actions invariably put the consumers at a position of vulnerability as they are very often not the decision-makers, but are guided by the instructions from the doctors, while the doctors and pharmacists may prescribe them irrational combination of drugs, or mislead them into purchasing more expensive medicines, leading to medical complications or even death.

These practices require the intervention of the Competition Act, to deter and penalize such behaviour, thereby ensuring a level-playing field for all players in the market. The plausible solution to deter the formation of such anti-competitive agreements would be 'mandatory generic prescription'. This would aid in drawing a possible nexus between the doctors and the pharmaceutical companies as the prescription made would be the generic name of the drug instead of promoting a particular brand.

V. COMPETITION IN THE HEALTHCARE AND PHARMACEUTICAL SECTOR IN LIGHT OF DIRECTIVE PRINCIPLES OF STATE POLICY

One of the determining factors for a welfare state is health. The importance given to the health of an individual shows the quality of care provided by the State, thereby making it a fundamental right. Right to health has been one of the grey areas for the courts in light of enforceability. Despite the presence of provisions under D.P.S.P. i.e, Art. 39 (e) and (f), Art. 42, Art. 43 and Art. 47, the court has interpreted and recognised health as an integral part of Art. 21 i.e., right to life, thereby extending its applicability to every individual.

Health and pharmaceutical sector plays a major role in upholding the right to health of an individual. This sector has to keep a check and examine quality of drugs and medicines produced and marketed in India[23], and provide for a healthy climate for affordability and availability of the healthcare facilities[24], without hampering the healthy competition of the market. A healthy competition in this sector aids in increasing the efficiency of the enterprises, thereby providing a wider choice to the consumers at a comparatively lower price. This practice enhances the welfare of the consumer by making them open to better quality products at a lower price. Fair competition is beneficial for the consumers, producers, distributors and the society as a whole as it induces economic growth by way of optimum utilization of resources available.

[22] P. Syamjith, *Impact of the competition act in the regime of health care sector with special reference to medicine a socio legal analysis*, Chapter III, *p*. 80, Shodhganga(2016), (August 8th, 2020, 02:11 PM) http://hdl.handle.net/10603/148915.
[23] Drug Action Forum v. Union of India, (1997) 6 S.C.C. 609 (India).
[24] State of Punjab v. Ram Lubhaya Bagga, (1998) 4 S.C.C. 117 (India).

Any form of anti-competitive practices in this sector would lead to a serious and futile consequence to the end consumer, hampering his welfare. The anti-competitive behaviour in this sector has a serious implication on the health delivery system thereby depriving the consumers from their access to healthcare. Further exacerbating, such behaviour opens the gates to market distortions and skewed competition norms, leading to practices such as market concentration, price fixing and lack of freedom in consumer choice.

The consumers are very often not competent enough to make decisions and thereby are guided by the instructions of the doctors and pharmacists. In such scenarios, the manipulation of the consumer by the doctors and pharmacists, by misleading them into purchasing more expensive medicines, favouring their personal ulterior motives by promoting /selling the drugs and medicines deprives the patients from availing the best possible healthcare, thereby depriving their right to health.

VI. PECULIARITY OF THE HEALTHCARE INDUSTRY AND ROLE OF COMPETITION LAW IN BALANCING CONSTITUTIONAL RIGHTS

The perception of health and healthcare systems in the capitalised, globalised world today, are increasingly professed to be business ventures[25] and not merely welfare measures of the State[26]. Hence, the role of governments in balancing the right to accessible healthcare enshrined in Article 21 of the Constitution[27] and the right to trade, business and practice of profession enshrined in Article 19(1)(g) of the Constitution[28] is crucial.

In order to propagate and sustain this balance, the Government must take into account the peculiar nature of the healthcare industry and the role of parties involved in the same. For instance:

1. Information asymmetry

The healthcare industry is plagued with information asymmetry between the service provider i.e. the hospital/medical professional and the patient. This information asymmetry triggered by the possession of specified technical knowledge with the former and the lack of same with the latter leads to total dependency of the patient on the service provider. Consequentially, the

[25] Robert Pearl, M.D., *5 Tips For Breaking Into The Business Of Health Care*, The Forbes, July 17, 2014. (August 12th, 2020, 12:04 AM) https://www.forbes.com/sites/robertpearl/2014/07/17/5-tips-for-breaking-into-the-business-of-health-care/#442643951107.

[26] INDIA CONST. art 38, art 39, art 41, art 47.

[27] Vincent v. Union of India, (1987) 2 S.C.C. 16 (India), *Paschim Banga Khet Mazdoor Samity and Ors., vs. State of West Bengal*, 1996(4) S.C.C. 37. (India).

[28] Dr. Y.P. Singh And Ors., Etc. vs State Of U.P. And Ors. A.I.R. 1982 All 439 (India) – Right to practice medicine as a profession was recognised under Article 19 (1)(g) but was subject to reasonable restrictions.

decision made by the patient does not spring from his/her ability to make a free choice but from immense trust on the service provider. The patient is unaware about the effects, consequences, cheaper alternatives or brand equivalents of the drugs prescribed to him/her. Lack of reliable sources to verify brand equivalents are also inadequate. It is remarkable that the Central Drugs Standard Control Organisation (C.D.S.C.O.) under Directorate General of Health Services, Ministry of Health & Family Welfare, Government of India, publishes online, the standard approved drugs for sale; however, the information is merely aimed at discouraging sale of counterfeit drugs and not at providing a platform for patients/medical professionals to make comparative choices on brand equivalents.

It is noteworthy that projects of Non-Governmental Organisations such as MedGuideIndia[29] aim at providing a platform for drug brand comparison, however a more reliable source approved by the government, is essential to eliminate undue market advantage certain drug manufacturers avail owing to possession of several years of patent rights, thus taking away from market entrants, a level-field to play.

2. Inability of Consumers to make a "rational choice"

In service industries such as the healthcare industry, the jurisprudential roots of Competition Law needs to be tweaked adequately to suit specialised, life altering needs of the consumer. In other words, policy makers must take into consideration the possibility of enhancing "rational choice" on the side of the consumers and not merely aim at regulating service providers. For instance, a patient more often than not, chooses service providers based on urgency and need. A road accident victim does not have the liberty of time in his/her hands to make a "rational choice" to opt a hospital or medical professional but simply relies on emotions to tend to his/her urgent needs. If that is the case, the question arises as to what is the role of government in facilitating "consumer-side rational choice"? The answer to that question lies in analysing how the Constitution perceives "rational choice".

The Constitution of India, with respect to fundamental rights, such as in question herein, is rather sceptical on the Doctrine of Waiver which enables a rational adult to waive off his/her rights/privileges. For instance, in *Muthiah v.CIT*[30], the Court held that it is not open to a citizen to waive off any of the fundamental rights conferred by Part III of the Constitution. These rights are not merely for the benefit of the individual but as a matter of policy for the benefit of the general public. In the case of *Gian Kaur v. State of Punjab*[31] it was upheld that

[29] MedGuideIndia, *About us*, (August 15th, 2020, 11:22 AM) http://www.medguideindia.com/about-us.html.
[30] A.I.R. 1956 S.C. 269 (India).
[31] A.I.R. 1996 S.C. 946 (India).

one does not have the right to waive off his/her right to life. These decisions implicate that when right to health and associated fundamental rights are in question, the State is to take up a "protective" approach rather than an "enabling" approach. In other words, ideally, it is the duty of the State to step up and protect the health of citizens and not merely rely on the citizen's ability to make rational choices. Therefore, the State has an inherent duty to make Competition policies keeping in mind, not just market equilibrium but the citizenry also.

3. Role of Patents

The Indian Patent Law has always sought to strike a fair balance between incentivising innovation and social utility. This Act of balance in the field of healthcare, translates the Constitutional balance of right provided under Article 19(1)(g) and Directive Principles of State Policy, framed in order to promote social welfare[32].

This act of balance can also be traced back to Patent Law in India prior to 2005 where only process patents were allowed. The landmark, *Novatis Case* in which the Supreme Court upheld the Patent Officer's rejection of *Novatis'* attempt to patent *imatinib mesylate* in beta crystalline form is also an instance of prioritising balance between competition, consumer welfare and incentive for innovation. Loon Gangte, an Indian activist living with HIV, regional coordinator, South Asia, of the International Treatment Preparedness Coalition (I.T.P.C.) opines that, *"Despite all the pressure from various fronts, from 'big pharma' and countries of their origin, at negotiations in trade deals, Indian courts have upheld the underlying principles of Section 3(d)[33] and attempts by multinational firms to evergreen their medicines. This has kept costs of life-saving drugs low."*[34]

VII. Is 'welfare' antithetic to 'fair competition'?

Although the healthcare industry in a welfare state is the primary responsibility of the State, encouraging fair competition for players may have positive effects on the market and benefit consumers. For instance[35]:

1. When the providers of healthcare such as doctors have, and exercise market power. This will assist to effectively bring down the prices including healthcare expenditure.

[32] Constituent Assembly Debates, Vol VII, 19th Nov, 1948, speech by Mr. Damodar Swarup Seth, (August 17th, 2020, 07:56 PM) https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-19.
[33] *Section 3(d)*, The Patent Act, 1970, No. 42, Act of Parliament, 1974 (India).
[34] Patralekha Chatterjee, *Five Years After The Indian Supreme Court's Novartis Verdict*, Intellectual Property Watch (2018), (August 19th, 2020, 11:23 AM) https://www.ip-watch.org/2018/05/20/five-years-indian-supreme-courts-novartis-verdict/
[35] Deepika Prakash, *A study of the anti-competitive agreements in the Indian healthcare delivery services*, Chapter 1, p.8, Shodhganga(2018) (August 19th, 2020, 09:12 PM) http://hdl.handle.net/10603/213873.

2. When healthcare providers have market powers with inefficiencies in their operations. Then, competition provides them the incentives for efficiency and innovation and other, more efficient providers can offer the same services or products to consumers at lower prices or higher quality or both.
3. When healthcare providers are not adequately responsive to key decision makers preferences such as patient's choice. In such a case, introduction of competition may increase their responsiveness and accommodate heterogeneity in patients' characteristics and preferences.
4. When there is lack of innovation, competition by means of new market players may drive both product and process innovation. By process innovation it means the ability to provide the existing products and services at a lower cost and by product innovation, new markets of innovated products and services to be made.

The C.C.I. in multiple instances has also tried to implement competition laws in the healthcare industry, for instance, the C.C.I. approved the proposed combination of Max Healthcare, Radiant Life Care and KKR Group-backed Kayak Investments Holding[36]. While assessing the relevant product market, the total number of hospitals, total number of relevant operational beds and number of procedures (volumes) for secondary, tertiary and quaternary procedures separately, in Delhi were taken into consideration. The combination was only approved after due satisfaction that, since the market for quaternary procedures such as transplants of heart, liver, lungs, etc. are at a very nascent stage in India, they were not likely to give rise to competition concerns, thereby providing scope for fair competition.

Adequate means have been taken by the government to propagate welfare measures as well, for instance the *Jan Aushadi Scheme*. The question of positive price discrimination affecting competition is unarguable as the State has the power to conduct welfare measures. This yet again, is an instance of fine balance of Constitutional rights and mandates.

VIII. POLICY SUGGESTIONS AND CONCLUSION

In conclusion, the following policy suggestions are hereby highlighted to find a common ground of action between Constitutional Law, Trade and Competition Laws, which benefits consumers as well as competitors:

[36] Press Trust of India, *CCI clears Radiant Life Care-Max Healthcare merger*, The Economic Times, March 13, 2019, (August 19th, 12:05 AM) https://cfo.economictimes.indiatimes.com/news/cci-clears-radiant-life-care-max-healthcare-merger/68391970

1) Prescription of generic drug name as a mandate

Mandating medical practitioners to prescribe medicines under their generic drug name and not their brand names, enables fair competition amongst drug manufacturers while simultaneously providing consumers the ability to make choices after due comparison.

2) Minimizing information asymmetry

Adequate measures need to be taken by the Government to minimize information asymmetry between the patients and service providers of the healthcare industry. An online app/website enlisting brand equivalents of drugs, providing the consumers to make a more informed choice is suggested.

3) Incentivising market entrants to combat advantages gained by market dominator through patents

Patents are a necessary evil in the Pharmaceutical industry. It provides the patent holder with a market advantage which consequentially discourages market entrants. New market entrants can be incentivised by the government by tax reductions or subsidies to benefit the larger public as fair competition results in fair pricing ranges.

4) Integration of Government welfare schemes with private players in the market

In re: cartelization by public sector insurance companies case[37], a primary issue discussed was whether public sector insurance companies could use the mask of "state responsibility" to defend the allegations of cartelisation. The Insurance Companies submitted that each of them was wholly owned by the Government of India and controlled and managed through the Department of Financial Services in the Ministry of Finance. Hence, they constituted a single economic entity and that therefore, an allegation of cartelisation was unsustainable against them. The C.C.I. however, disapproved this argument and held that the Public Insurance Companies had to "compete" with the Private Insurance Companies in order to offer better services to consumers.

The authors believe that certain welfare measures can be demarcated and involve private companies in the welfare process. In the era of mandatory CSR practices, welfare is not merely a function that the government must "monopolise". A classic example of integration of private players in welfare measures is the *Jan Aushadi Scheme* which provides opportunity for private players to contribute as well. More such schemes are welcome.

The authors also suggest that owing to the peculiar nature of healthcare and pharmaceutical

[37] Suo Moto Case No. 02/2014 (C.C.I.) (India).

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industry specialised laws need to be framed and enforced to regulate competition in the said sector. The adjudicatory mechanism followed by the C.C.I and COMPAT must also be inclusive of upholding Constitutional rights enshrined under Article 21 and Article 19, while deciding upon anti-competitive agreements in the healthcare and pharmaceutical industry.

Social welfare, contrary to common belief need not be antithetical to fair competition. Laws and policies balancing the two aspects are the need of the hour in a developing nation like India.

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