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Study of Competition Law: Indian Perspective

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ABSTRACT

The author of this article will investigate competition law in India using the Structuralist and Chicago schools of thought. The Competition Act of 2002 has been amended, and there have been numerous scholarly debates about the objectives of competition law, making it a complicated subject. The ideas of structuralism (Harvard) and the Chicago School (Chicago) are intertwined throughout its jurisprudence. One emphasises competition to avoid monopoly or oligopoly, whereas the other emphasises profit maximisation to benefit consumers. The author will look into how domestic and international courts deal with the issue of consumer welfare. The Google case exemplifies two opposing views on how things should be in the United States and the European Union.

Keywords: *Chicago School of Thought, Consumer Welfare, Judicial Interpretation, Legislative Intent, Structuralist School of Thought.*

I. INTRODUCTION

"The goal of consumer law is primarily to protect the end consumer from the market failure that may arise due to unequal bargaining power between the consumer and the seller. It is assumed that the consumer stands at a disadvantageous position in the market with respect to the seller, due to which he/she needs to be protected from the potential malpractices of the seller. It seeks to correct the consumer's position in the market with respect to the supplier, so that cost-effective and efficient transactions are ensured"[2]. "A customer is anyone who buys something for a consideration with the expectation of being partially reimbursed for their purchase in the context of competition law"[3]. The Structuralist School of Thought and the Chicago School of Thought influenced the structure of competition law. These two schools have opposing laws and rules that govern the economy of their respective markets. This school of thought rejects the notion of concentrated markets with few competitors, which allows consumers to exercise

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[2] Jenisha Parikh & Kashmira Majumdar, COMPETITION LAW AND CONSUMER LAW: IDENTIFYING THE CONTOURS in light of the case of BelaIre owners association v. DLF, 5 NUJS LAW REVIEW 249 (2012), available at http://docs.manupatra.in/newsline/articles/Upload/03E26D51-BA75-4E0A-96CF-E4421360840E.pdf last seen on 15/06/2021.

[3] S. 2(f), The Competition Act, 2002.

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their right to choose through free will and options. These are primarily because:

1. The Chicago School's approach to consumer welfare uses monopoly and oligopoly. Market structures give rise to market power for a few dominant market actors. These actors have the ability to control market price and engage in implicit collusion.
2. Chicago School believes in efficiency of a concerned service or a product, which may for above-mentioned reason can give a big enterprise a dominant position. Such an enterprise can act as a barrier to entry for small enterprises.

There are two well-known schools of interpretation used by courts and commissions around the world. The schools all have one goal in common: to protect consumers from being exploited. Scholars such as Robert Bork believe that competition law lacks tools to help small businesses achieve non-economic goals. Bork saw consumer welfare as the primary goal, and efficiency as the key to achieving it. Furthermore, even if the structure is monopolistic, he emphasises economic theory as a framework for competition law.[4] Lina M. Khan adheres to the structuralist school of thought, while promoting the market at all levels, as well as small business protection, as this aids in innovation and higher-quality products and services. This contributes to the advancement of competition law: Consumer welfare.[5] The Google case illustrates the key points of the aforementioned schools of thought[6], The main point of contention in the case was proving Google's anti-competitive behaviour. The searches were automated, and the results were displayed by the companies that dominated the market. In the preceding example, we can dissect the underlying ideologies of the Chicago School and Structuralist School of thought by interpreting their goals in two different jurisdictions: the United States and the European Union. In the United States, the search engine returns the best result for the consumer after processing the statistics through an algorithm that determines the best service or product. The above interpretation is based on the Chicago School of thought. The EU, on the other hand, observed that these practises lead to monopoly and can result in the death of the other business, leaving the consumer with no choice. Profit and efficiency are important in the Chicago School of thought. As a result, customers receive the highest-quality goods. Structuralists believe that multiple corporations should exist throughout the system to maintain competition, resulting in better products and services for customers. Students should be educated in order to cater to consumer interests.

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[4] Heyer, Kenneth. "Consumer Welfare and the Legacy of Robert Bork." The Journal of Law & Economics 57, no. S3 (2014): S19-32. Accessed April 14, 2021. doi:10.1086/676463.
[5] Lina M. Khan, Amazon's Antitrust Paradox, 126 YALE L. J. 710 (2017).
[6] Federal Trade Commission, DOCKET NO. C-4499 (2014, FTC)

In the landmark case of *Microsoft vs Commission of the European Communities*[7], Mr. Green, VP of Sun Microsystems, wrote a letter to Mr. Maritz, VP of Microsoft. Mr. Green requested that Microsoft provide them with all of the necessary information to allow Solaris to interact with Windows. Microsoft argued that everything Sun requires is already included in the MSDN Universal product, and that there are numerous ways to integrate Solaris with Windows. Microsoft stated that the information available on MSDN was sufficient. Sun filed a complaint with the European Commission regarding Microsoft's refusal to provide the requested information[8].

The European Commission launched its own investigation into Microsoft's Windows 2000 generation of client PC and work group server operating systems, as well as Microsoft's integration of its Windows Media Player into Windows client PC operating systems. Is Microsoft's behaviour anti-competitive? The European Commission determined that Microsoft's behaviour was dominant and that the company had a market monopoly. Both the court and the commission determined that Microsoft's conduct/behavior in the market was anti-competitive. According to Article 82 EC[9], Microsoft's actions benefited a foreclosure and anti-competitive market. According to the decision of the court or commission, the court sided with the structuralist school of thought in order to create equal ground for all companies in the market.

The commission's decision expands on the structuralist school of thought in competition law. Even if Solaris had interoperability issues with Windows, you'd still prefer Windows over Solaris if you had to choose, right? Why buy software that is incompatible with Windows when it is already widely used? This indicated that consumers would have fewer options for market exploration.

II. History of competition law in India

It is critical to know whether the primary objective is to protect market consumers or if it is one of several. This was a previous case in which the plaintiff was Ashoka Smokeless Coal India (P) Ltd. and the defendant was UOI[10]. The Supreme Court found that in a free market, producers can set their own prices. While "competition" is a popular word, the State must find a means to balance competing interests. People in a market-crowded marketplace can exercise their choice

[7] Microsoft v. Commission of the European Communities, T-201/04 (September 2007, European Commission).
[8] Commission of the European Communities v. Microsoft Corporation, COMP/C-3/37.92 (March 2004. Federal Trade Commission).
[9] EC Treaty, Article 82.
[10] Ashoka Smokeless Coal India (P) Ltd. v. UOI, (2007)2SCC640.

in purchase. States have to prioritise consumer benefit in a free and open economy. Historically, competition law decisions have emphasised the importance of protecting consumer interests[11].

The purpose and objective of the 2002 Competition Act, according to the preamble, is, among other things, to protect the interests of consumers[12]. In CCI v Steel Authority of India[13], the Supreme Court emphasised that the commission's primary function is to supervise and maintain healthy competition while also protecting consumer interests. The primary goal of competition law, according to the Supreme Court, is to promote competition in order to create markets that are responsive to consumer preferences. It is worth noting that the evolving trends in competition law have been toward considering or taking a conscious step toward consumer protection in order to propose a policy change. The competition commission intends to maximise market consumer satisfaction to that end. To that end, anti-competitive behaviour, abuse of market dominance, and denial of combination transactions that could harm market competition have all been prohibited under competition law for decades.

India's competition authorities have expressed their displeasure with market dominance abuse on a consistent basis. While it is permissible for businesses to achieve market dominance, such dominance must not be abused[14]. The Competition Act, 2002, Sections 4(2) and 19(4) define what constitutes dominance under Indian law. In general, Indian competition law expresses reservations about business practises that enable businesses to impose arbitrary prices or conditions on the consumption of market products, resulting in discriminatory entry barriers to maintain market share. Predatory pricing is also considered a form of abuse of dominance. While the Chicago School would undoubtedly advocate for such price reductions, India considers them anti-competitive. It exposes consumers to danger and makes them vulnerable to exploitation.

Google vs. CCI[15] is a legal battle between Google and CCI. The commission concluded that Google produced results in a "fixed position" in response to a search on the Search Engine Results Page (SERP), and that the terms of their syndication agreements for online advertising services denied consumers access to the market. This case exemplifies the structuralist school of thought. The commission ruled that Google's advertising platform was anti-competitive.

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[11] M/s Bulls Machines Pvt Ltd. v. M/s. JCB India Ltd. and M/s J.C. Bamford Excavators Ltd., Case No. 105 of 2013, (Competition Commission, 11/03/2014), MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd, Case No. 13/2009, (Competition Commission, 23/06/2011).
[12] Neeraj Malhotra vs North Delhi Power Limited, MANU/CO/0026/2011.
[13] Competition Commission of India v. Steel Authority of India, (2010) 10 SCC 744.
[14] S.4, The Competition Act, 2002.
[15] Google v. Competition Commission of India, Case Nos. 07 and 30 of 2012 (Competition Commission of India, 08/02/2018).

Combinations are taken seriously by Indian competition authorities. They intend to prevent the formation of oligopolies and monopolies. Giving the marketplace to multiple companies results in the disenfranchisement of customers, who have no market power. To prevent monopolisation of market control, competition laws establish detailed merger control regimes that require compliance. Combination transactions are scrutinised to see if they have any discernible impact on competition, which includes factors such as market outcome and consumer impact. The act of violating these control regimes is known as "gun jumping." To ensure increased compliance, the commission has pursued a number of amendments. Complying with statutorily mandated requirements promotes healthy market interaction on a larger scale. Competition authorities strongly condemn cartels. Cartels produce less in order to maximise profits, which disrupts the free market. The competition commission included a provision in the 2020 amendment bills that cartelized combinations that do not fit into the existing forms of horizontal or vertical agreements should be scrutinised by competition authorities for their effects on competition. A spoke-and-hub cartel is what it's called.

III. Legislative intent and judicial interpretation

The Supreme Court of India noted in Neeraj Malhotra v North Delhi Power[16] that the Competition Act was enacted, among other things, "to protect the interests of consumers and to ensure freedom of trade carried on by other participants in the Indian market."[17] Section 18 of the Competition Act of 2002 strengthens the provision even further. The court made a brief mention of market activities that benefit the public good. A healthy and competitive economy is one in which consumers have a free choice of real and genuine products, as opposed to fictitious substitutes, and suppliers can supply their products without impediments. In the current economic climate, consumers can expect to be well-protected.

Legislative shifts, and thus judicial reflections, are examples of new developments in the field of competition law. The Competition Law Review published a major revision to the competition law framework. Changes to the committee's structure and additional substantive law issues are among the recommendations. 45 of the 50 committee recommendations were incorporated into the 2020 Amendment Bill[18]. The proposed changes demonstrate that the commission is taking a pro-business stance. Potential changes include broadening the scope of the restrictions under Section 3 of the Act to include agreements entered into in the digital market. Prior cases left it up to the courts to determine whether or not there was anti-competitive behaviour on a case-by-

[16] Supra 11.
[17] Ibid.
[18] Competition (Amendment) Bill, 2020 (pending).

case basis. However, the commission intends to enact legislation that makes "material influence" the minimum standard. Furthermore, if penalties were specific and well-defined, investors would be aware of the potential ramifications of their decisions. The amendments eliminate ambiguity and demonstrate the competition commission's proclivity to promote ease of doing business in the Indian economy while taking into account the needs of all stakeholders. The commission's objective and ideology can be understood by mapping out the trajectory of the commission's commissions. The Competition Commission has made numerous changes to provide greater clarity and definition. The commission has consistently emphasised the importance of the country's merger control regimes. For example, under the Act, the Commission required enterprises that were entering into a combination transaction to file only one notice[19]. In 2018, the CCI enacted revised Combination Regulations that allowed parties to withdraw and refium their notifications, as well as expanded opportunities for parties to propose modifications to their combination even after receiving a show cause notice from the CCI. So far, trends indicate a favourable environment for both domestic and foreign investors[20]. It appears to be progressing toward achieving the economic goals of competition law.

The Supreme Court emphasised an important aspect of competition law in the case of Excel Corp[21]. While competition laws and policies aim to ensure efficient market operation, the ultimate goal of competition law is to "improve consumer well-being." It also emphasised the importance of discouraging and restricting anti-competitive behaviour in order to promote a “level playing field” in the market. While preserving competition, player advantages in the market are prohibited. Competition laws protect the competition process rather than individual market competitors. The case was later cited in the decision of *CCI vs Bharti Airtel Limited & Ors*[22], in which the court deliberated on the competency of a proposed merger transaction and determined that tacit collusion between combining parties would be considered to have an effect on competition and would be penalised.

Another part of Indian competition law is subject to modification under Competition Act 2020 section 3(4)(e)[23]. Included are definitions of indirect sales and the inclusion of services as Resale price maintenance. In the crucial case of RPM M/s Fx Enterprise Solutions India Pvt. Ltd v M/s Hyundai Motor India Limited[24], Hyundai did not authorise its dealers to provide discounts to

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[19] Competition (Amendment) Bill, 2016 (11/02/2016).
[20] Competition (Amendment) Bill, 2018 (09/10/2018).
[21] Excel Crop Care Ltd. v. Competition Commission of India, AIR 2017 SC 2734.
[22] Competition Commission of India V. Bharti Airtel Limited and Ors. Civil Appeal No(S). 11843 of 2018.
[23] S.3(4)(e), The Competition Act, 2002.
[24] M/s Fx Enterprise Solutions India Pvt. Ltd v M/s Hyundai Motor India Limited, 2017 Comp LR 586 (Competition commission of India).

consumers once a certain threshold was achieved. The Competition Commission of India fined Hyundai, but the National Company Law Appellate Tribunal (NCLAT) overturned the decision. Tamil Nadu Consumer Products Distributors Association v. Fangs Technology Private Limited and Vivo Communication Technology Company[25] is another case that follows the Hyundai precedent, with the product in question being Vivo smartphones. "The Informant is a Tamil Nadu society registered under the Tamil Nadu Society Registration Act of 1975. Its declared goal is to shield distributors against unethical commercial practises and rigorous consumer goods manufacturer standards." They filed a report alleging that Vivo violated sections 3 and 4 of the Act by mandating distributors to follow a minimum pricing requirement. Because VIVO lacked market strength and a monopolistic position in the market, the commission determined that the conduct did not violate sections 3 and 4 of the Act. The precedents established by the commission ignored the essential goal of competition legislation, as stated in the statute's preamble. While the RPMs are subject to the parties' agreement, consumers are liable for the delivery of linked commodities or services. "When considering whether an agreement has an appreciable unfavourable effect on competition under section 3, the Commission shall give fair consideration to the accumulation of consumer benefits," says Section 19(3)(d). The provision does not account for any of the above-mentioned scenarios. Customers were the buyers in the case of Hyundai, and they were also the buyers in the case of Vivo. Businesses may use such techniques to exploit customers in order to enhance their own interests, thus violating the primary goal of competition legislation. The following commissioners' opinions in certain cases may indicate a propensity for structuralist views. The commission allowed items to freely float in the market and protected non-dominant enterprises while focused on economic rather than non-economic goals.

IV. Evolving anti-competitive laws & consumer protection: are existing legislations adequate?

The priorities of competition legislation have evolved in response to economic needs. Consumer advantages are now viewed as a byproduct of social and economic well-being rather than the cause of it. Even in India, where consumer interests are prioritised, non-economic components of market activity are given little to no consideration. Another aspect of protecting consumer interests is regulating the behaviour of competitors. For example, if a merger improves the economy's efficiency, competition authorities will approve it (a view shared by the Chicago school of thought). When it is focused on consumer welfare, mergers will not be permitted,

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[25] Case No. 15 of 2018 (Competition Commission of India, 04 /10/2018).

even if they would increase the economy's efficiency and overall welfare. This is an illustration of why it is critical for an economy's competition policies to be carefully and precisely formulated. The term "consumer welfare" is synonymous with "consumer excess." This surplus indicates not just cost savings, but also a slew of other broad-reaching social implications, such as quality, innovation, distribution, and politics. The Chicago School approach frequently favours simple economic logic, claiming that competition law does not seek to control areas of public policy and that market efficiency is ideal. At this point, it is safe to infer that the Indian understanding of competition policy is not entirely enamoured with just economic objectives and factors in the socio-political dimensions of the market. Indian competition policy attempts to benefit consumers in the long run.

The latest 2020 amendment bill to the Competition Act, 2002 was submitted based on the CLRC Report published in 2019[26]. One should bear in mind that the Committee's composition was dominated by attorneys. Because economists are not advocating new policies, it can be seen in the overall suggestions. Also, restrictions, notably the provision for green channelling, were implemented. These were plainly placed to facilitate doing business and help support the customer base. The CLRC stresses that the Competition Authority rarely acts to fill these deficiencies. It wouldn't be a broad appraisal to claim that India has strongly emulated the US and EU and is implementing competition regulations in a similar manner. The definition of control in the 2020 law is closely linked with the rule that explained the term control in the US. In addition, the EU made it their goal to harness the influence as being essentially realisable or actualized. The Indian socio-political component is distinct; in addition, our economic systems are unique. Thus, the improvements made must be conducive to India's specific situation. There are many little firms in India, and when competition authorities play it safe, they ignore these businesses. Legislation is being written to benefit the big and powerful companies with international significance or otherwise as their central location. Indian elements and their policy requirements are at risk because of this[27]. The theories undergirding and directing India's progress are quite complex. To assert whether it is being guided by the Chicago school of thought, a structuralist school of thought, or another school, is challenging[28]. More assurance about the same could be provided, providing for individualised and individualistic Indian competition rules.

While waiting for the framework's goals to be assessed, the opinions and viewpoints of

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[26] Ministry of Corporate Affairs, Government of India, Report of Competition Law Review Committee, http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf last seen on 14/06/2021.
[27] C.F.R 2020, § 801.1(b).
[28] Council Regulation (EC), No. 139/2004., Article 3(2).

economists and government organisations are crucial. Given the current Covid-19 context and the accompanying uncertainties, the Competition Authorities should reconsider their intentions of action. The outbreak had a global impact, causing a slowdown in commercial activity and a drop in India's GDP[29]. Restoring and recovering the economy from these bleak circumstances is on the horizon. Without a doubt, these initiatives are vital, but firms' and government organisations' "comeback kid" attitude could have serious consequences for consumers. Assume that, as a result of the economic slump, competition authorities are being urged to investigate the licencing of "crisis cartels."[30] Cartels are prohibited under Indian competition rules, however given the circumstances, an exemption has been requested. Though the benefits of restoring market efficiency remain a constant focus, the longer-term repercussions on consumers and the economy's competitiveness must also be examined. Competition regulations were designed to protect competition without favouring a few individuals or groups of participants. As a result, the authors believe that a thorough examination of competitiveness issues is required as soon as possible.

V. CONCLUSION

As of present, competition restrictions in India may not be as stringent as those in the United States and the European Union. However, it appears that for Indian enterprises, business expansion is currently the favoured path. Unfortunately, India is unable to use the policies and institutions of Western jurisdictions. The global pandemic of Covid-19 has had a significant impact on India's economy.

In India, legislative intent and judicial authority in competition law appear to be shifting toward structuralist perspectives. Small businesses operate in a protected market dominated by dominant businesses. According to the principle of structuralism, this results in more good for the consumer. The competition law paradigm would bring together academics and economists with the goal of protecting and ensuring consumer welfare in India.

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[29] UNCTAD, The Trade and Development Report 2020 by U.N. Conference on Trade and Development, 3 , available at https://unctad.org/system/files/official-document/tdr2020_en.pdf , last seen on (15/06/2021)

[30] Manjushree RM, Rethink role of crisis cartels, as Indian industries face risk of overcapacity, The Print, (23/07/2020), available at https://theprint.in/opinion/rethink-role-of-crisis-cartels-as-indian-industries-face-risk-of-overcapacity/466636/ last seen on 15/06/2021.

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