Chapter II

History of Competition Law and Air Transportation Sector

Introduction

In the present chapter the researcher explains the history of competition law in India and the history of competition law in the other jurisdictions. In this chapter we are going to discuss the necessity for the competition law and rationale behind the competition policy in the world countries, for our understanding we are going to analyse the need for competition law and competition law in various countries like USA, UK and lastly, we are going to study legal framework relating to competition law in India. After dealing with competition law, this chapter discusses the history of air transportation from the Vedic period and modern history of aviation sector in India. Then we move on to the budget allocation in the five-year plans adopted by Indian government and the growth of aviation sector in India from the beginning till the recent times. The above analysis helps us in understanding the overview of the competition law and aviation sector before moving forward to analyse to competition issues in aviation sector in the coming chapters. Now let us discuss the necessity for competition law in the market which lays down the foundation for understanding importance of strong competition policy in India.

2.1 Need for Competition Law

2.1.1 Competition Law facilitates Economic development and growth

Different economists tried to define the term economic development in different ways but none of the definitions are entirely satisfactory various terms were used like economic growth economic development economic progress interchangeable but some economists felt that economic development is a problem of developing economies whereas economic growth is a problem of developed economies.

Schumpeter tried to draw the distinction between economic development and economic growth. According to him, economic development is a spontaneous and discontinuous change while economic growth involves study and gradual changes over a long period of time in other words economic development involves continuous changes with frequent interruptions to the previously attained study state. Economic growth also involves changes in the stationery state but the changes are slow compared with the economic development[1]. According to Kindle Berger - economic growth means more output and economic development means both more output (changes in technical and institutional arrangements here growth involves increase in output with greater efficiency whereas economic development involves structural changes also in other words growth represents the physical changes while development represents changes in mental calibre or changes in functional capacity).[2] In brief we can say that economic growth refers to increase in total output of the economy whereas economic development includes not only growth in output but also structural changes like removing the imperfections in the market. Competition law is one of the legislations which aims at removing the market imperfections and encouraging the Competition with an aim to achieve the economic development.

When economic development takes place, investment increases and stock of capital increases and as a result productivity, national income and also per capita increases. Some economists like Simon Kuznets, Meier and Baldwin states that an increase in real national income is the most convenient single measure of economic development because a larger real national income is normally a pre-requisite for an increase in real per capita income[3]. Development takes place only when real national income increases more than the increase in population that means per capita income must be high.[4]

The obstacles to development are two types: Economic and Non-Economic

Economic obstacles are market imperfections, various circles of poverty and international demonstration effect. The non-economic factors include social institutions and cultural factors. A perfect market is essential for achieving an optimum allocation

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[1] Thanawala, Kishor. "Schumpeter's 'Theory of Economic Development' and Development Economics." Review of Social Economy, vol. 52, no. 4, 1994, pp. 353–363. JSTOR, www.jstor.org/stable/29769751. Accessed 5 May 2021.

[2] UK Essays. (November 2018), available at, https://www.ukessays.com/essays/economics/approaches-economic-development-1812.php?vref=1 (last visited on 13-05-21)

[3] Kuznets, Simon. "Quantitative Aspects of the Economic Growth of Nations: IV. Distribution of National Income by Factor Shares." Economic Development and Cultural Change, vol. 7, no. 3, 1959, pp. 1–100. JSTOR, available at www.jstor.org/stable/1151715 (last visited on 03-06-21)

[4] In chapter 3 the researcher has taken per capita income as a yard stick for economic development and accordingly it is established that per capita income and demand for air transportation is directly related because the demand for air transportation is derived.

of resources.[5] An important character of under development and backwardness is market imperfections. They appear in the form of price rigidity, immobility, ignorance of market conditions etc. The market imperfections prevent optimum allocation of resources and thus act as factors and impediments to economic development. When the country fails to utilise the resources efficiently, it keeps the country under developed. The under-utilisation might not allow a poor country to approach its production potential more closely. Market imperfections and rigidities obstruct the movement of factors between different users. The net result is the best combination of resources and is not obtained when resources are not allocated efficiently. A perfect market or pure market is essential for achieving an optimum allocation of resources. Removal of market imperfections just for achieving an optimum allocation of resources cannot be considered as important criteria. But the problem is dynamic utilisation of resources and the structural changes rather than the fine adjustments of existing resources at the margin. This means the major requirement is to push the production frontier outwards rather to surely reach a given production frontier[6]. To achieve economic growth in poor countries or developing countries Schultz felt that it is necessary to allocate efforts and capital to do three things:

- Increase the quantity of reproducible goods
- Improve the quality of people as productive agents
- Raise the level of productive odds

The removal of market imperfections is especially necessary if capital accumulation is to catch hold and if development in one sector is to be carried over to other sectors. Further market rigidities and Inflexibilities shall be reduced to the minimum so as to diffuse advance production techniques, entrepreneurial skills throughout the economy. The reduction in market rigidities would also help to direct savings from unproductive

[5] Competitive Markets: Efficiency and welfare, available at, http://www.appliedeconomics.com.au/publications/public-economics/03-201803-markets-and-government.htm (last visited on 06-06-21)

[6] The production possibility frontier (PPF) is a curve that illustrates the variations in the amounts that can be produced of two products if both depend upon the same finite resource for their manufacture. It is the point at which a country's economy is most efficiently producing its various goods and services and, therefore, allocating its resources in the best way possible.

to more productive forms of employment. This can be achieved through removing the market imperfections that is the main aim of competition policy in the country.

Competition law and policy has been a defining model for economic growth. Together, competition law and policy set a political goal for social organization and guidelines for building economic activities. Competition law is most attractive as an ideal. In this regard, it is pertinent to note the classic statement given by United States Supreme Court in *Northern Pacific Railway Co. v. United States*[7]

"The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions".[8]

Competition policy, trade and investment liberalization are complementary to each other and they lead to market integration and a level playing field. It depends upon the ability of the countries to take advantage of market opportunities depending upon the levels of technological development, endowments and culture. There was resistance from developing countries in implementing competition policies due to the weight given to short-term costs rather than long-term benefits. To address this concern, a multilateral framework involving commitments to adopt and effectively enforce competition laws and to cooperate in respect of problems arising in the interface between competition policy and economic development is necessary.[9]

Exposure to competing imports in trade increases the degrees of competition. As a result of increase in competition, competitive markets create investment opportunities and enhance the gains from investment.[10] Therefore, gains in investment will increase foreign direct investment (FDI) which will directly increase the trade. The combined effect of these policies will have impact on economic efficiency and income growth.

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[7] Northern Pacific Railway Co. v. United States, 365 U.S. 1(1958)
[8] Northern Pacific Railway Co. v. United States, 365 U.S. 1(1958) Page 356 U.S.5
[9] UNCTAD, The role of Competition Policy for development in globalising world markets, available at https://unctad.org/system/files/official-document/poitcdclpm14.en.pdf, (last visited on 03-05-21)
[10] John Davis and Ania Thiemann (2015), Competition Law and policy: Drivers of economic growth and development, 002014381_CfD_E-book_FINAL VERSION FOR WEB

As discussed earlier, they complement each other in the sense that reforms in one area will have greater positive impacts if coupled with concomitant reforms in the other two policy areas. Competition policy aims at greater economic efficiency in order to increase the welfare of society through competition law enforcement and advocacy to make markets freer and more open.[11]

Having enacted competition policies recently, many emerging economies have experienced remarkable growth rates. Notably, the "East Asian exception" has led to increasing interest in the mechanisms by which competition operates in emerging countries. In the 1980s and 1990s, East Asia – Japan first, then the four 'little tigers' of which South Korea is the largest – were used to demonstrate the value of government interventions and protection of key infant industries from foreign competition. Yet, some of the most compelling evidence that competition drives economic development and growth emerges from economic studies of these countries. Their experiences seem to suggest that effective and vigorous competition really becomes essential when an economy reaches the limits of economic stimulation, which goes with the initial mobilisation of labour from rural to urban areas and which takes place in the early development phases.

This implies that a developing country can achieve rapid economic growth even with industries that have low productivity and face little competition, because resources – labour especially – are shifting from very unproductive uses (such as ploughing with an ox) to somewhat more productive ones (working in a factory) as they move from rural to urban areas. Once the initial growth or catch-up phase has stabilised, however, competitive markets are essential to facilitate moving from middle-income to higher-income status, especially when the sources of easy input factors start to run dry. These economies also have lower rates of poverty and attract more domestic and foreign investment. Competition law or policy facilitates economic growth.

2.1.2 Competition law enhances the innovation in the market

The competition law promotes market competition, which leads to increased competition among market participants. The players' rivalry pushes them to cut costs

[11] Ibid

by using cutting-edge technology. To stay afloat in the industry, players prefer to spend more on research and development, which contributes to long-term technological advancements.

According to Schumpeter, social theorist of 20th century the business cycle is exclusively the result of innovation in the economy. Innovation does not mean invention rather it refers to the commercial applications of new technology, new material, new methods and new sources of energy.[12] The shortcomings of this theory of is that it is not tenable in a growing economy. Innovation and entrepreneurship are a product of social environment, which compels an entrepreneur to innovate or get eliminated, because of the forces of competition. Economies don't grow, they evolve. So, the most important factor that stimulates innovation and growth in the economy is competition. In case of competition, firms would have more incentive to innovate because of the need to outperform rivals with new and improved products or services rather than in a monopoly, proposed by Schumpeter.[13]

When there is no competition in the market, technological upgradation and innovation becomes stagnant since the expenditure on innovation is higher than returns. So, the monopolist is reluctant to replace old innovations with new one. Therefore, there is larger incentive to innovate in a competitive market whereas in monopoly innovation happens at a slower rate than in competitive markers, resulting in innovation falling below the socially optimising level. Hence, competitive pressures raise innovation. Microsoft Corporation in the computer software market is an interesting example of the interaction of monopoly structure and innovation (The Economist 2000).[14] Microsoft is a firm at the forefront of economies that have been increasingly knowledge-centred over the past twenty years. Microsoft has invested heavily in technology and labour to remain at the forefront of software production and have realised the benefits in the millions of software packages that have been sold. There are large economies of scale explaining the function and persistence of monopolies where costs are a major barrier to entry.

[12] Jerry Courvisanos, Stuart Mackenzie, 2014. Innovation economics and the role of the innovative entrepreneur in the economic theory, available at, https://www.cairn.info/revue-journal-of-innovation-economics-2014-2-page-41.htm 9 (last visited on at 06-06-21)
[13] Ibid
[14] Ibid

2.1.3 Competition law promotes the stability in the economy

The competition law promotes the development of the economy. but at the same time, it is evident that when the competition is increasing among the players in the market the players are tend to take more risk compared with the controlled environment. This policy may lead to a situation where the market players are unable to face the unforeseen circumstances due to the shocks in the economy. this led to instability in the economy. it is observed that when we are promoting competition in the market, there is always a possibility of shocks to be faced by the economy due to unforeseen circumstances. But these circumstances may occur once in a decade or for more than that period. The competition promotes the economic development of the economy. it is a continuous process.[15] so, we can say that though competition reduces the stability in the economy but it can be avoided with the controlling the mechanism adopted by the government, like prescribing the minimum equity share capital and maintaining the reserves in the company.[16] The above measures may help the companies to maintain the stability in during the unprecedented situations and contribute for the economic development as a whole[17].

2.1.4 Competition law facilitates the appropriate allocation of natural resources

Competition law is the one of the important legislations which aims at achieving an important object of economics. Economics is "*The study how societies use scare resources to produce valuable goods and services and distribute them among different individuals*[18]" The competition law helps the government to maintain the balance in allocation of natural resources. The Competition law helps the government in achieving the object of the economics. This is the reason why the competition law can be considered as an important economic legislation which aims at maintaining pure

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[15] BalaKistha Reddy, Aviation Corporate Laws, available at http://nalsarpro.org/Portals/23/Aviation%20corporate%20laws-2020.pdf (last visited on 04-05-21)
[16] In the subsequent chapter the researcher argues that describing unnecessary conditions for starting company hampers the development of sector, though we need to have certain minimum standards
[17] Ibid., p.12.
[18] Introduction to Macroeconomics, available at, https://www.khanacademy.org/economics-finance-domain/ap-macroeconomics/basic-economics-concepts-macro/introduction-to-the-economic-way-of-thinking-macro/a/lesson-summary-opportunity-cost-and-the-production-possibilities-curve (last visited on 04-05-21)

competition in the market. The basics for maintaining ecological balance and allocation of natural resources was very well understood by our ancestors in ancient times.

According to Atharvaveda, "*bhoomih mata putroham prithivyah* "- like a mother the earth is to be respected and protected.[19] Nature demands 'dehi me dadami te'- you give me and I give you. Without following this rule, if we exploit the nature without nurturing her in return, it will disturb the delicate ecological balance in the world[20]. It is the responsibility of state to ensure equitable distribution of natural resources in the interest and welfare of people. In Mandalayoni, in Samavyayamika Prakarna, part of Kautilya's arthasastra (kautilya declares that – 'The king should allot tax-payers' arable fields for life[21]. Unarable fields should not be taken away from those who are making them arable. He should take away from those who do not till them, give them to others. Vedas and Indian Ancient scriptures contain valuable texts highlighting the importance of natural resources by implementing the policy of conservation. The idea of sustainable living and sustainable development has more relevance today than ever before. The Encyclopaedia of Classical Indian Sciences has referred to this concept of sustainable management while describing the history of forestry in India. Supreme Court in the case Manohar lal Sharma v. Principal[22] held that the distribution of natural resources that vest in the state is to subserve the common good. In Natural Resources Allocation, the SC in the above case, the constitution bench with reference to Art 39(b), stated as follows:

"The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Therefore, this article, in a sense is a restriction on the distribution built into the constitution. The overarching

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19 KN Sharma, "Meeting Ground: Vedas and Rio", Times of India, June 05,2002.
20 Prof. Anubha Kaushik. Prof.C.P. Kaushik.et.al. (eds). Perspectives in Environmental studies.
21 Kautilya's *Arthashastra*: Book II,"The Duties of Government Superintendents", available at http://www.columbia.edu/itc/mealac/pritchett/00litlinks/kautilya/book02.htm (last visited on 06-05-21)

22 Manohar Lal Sharma v. Principal Secretary, (2014) 9 SCC 516

and underlying principle governing distribution of natural resources is furtherance of common good".[23]

In a world where resources are limited, agreeing on one thing means sacrificing another. The opportunity cost of a decision is the expense of the good or service foregone. Let's discuss the Production Possibility Frontier and how it affects social decisions. - The Production Possibility Frontier (PPF) determines the maximum number of goods that can be produced efficiently given an economy's technological knowledge and the quantity of available inputs. PPF is a menu of choices that an economy must choose from. The more a country produces now, the less capital resources it will have in the future to manufacture more consumer products.[24]

Three fundamental questions of an economic organisation in determining economic problems are what, how, and for whom. Each economy has a stock of limited resources- labour, technical knowledge, factories and tools, land, energy. When we are faced with the reality that goods are scarce relative to wants, an economy must decide how to cope with limited resources. In such a case, production efficiency comes into picture, when an economy cannot produce more of one good without producing less of another good; this implies that the economy is on PPF. In such a situation, we have to make optimum use of available resources and maintain balance in the economy.[25] Therefore, Competition Law reduces these market imperfections that stand as hindrance for balance in economy and for production efficiency, thereby moving the economy to a stable condition.

The economic principal says that when we are having the competition in the market which leads to proper allocation of natural resources among the players in the market. This is major aim of the competition law in any country. The Constitution of India provides that it is the responsibility of the state to ensure the equitable distribution of natural resources among the people in the country. Article 39 of the Constitution of India Provides that it shall be the duty of state to ensure proper allocation of natural

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[23] Manohar Lal Supra¶113
[24] Edmund Burke, The Fundamentals of Economics, available at https://issuu.com/stevenclarke9/docs/chapter_1_-_the_fundamentals_of_eco (last visited 07-05-21)
[25] Ibid

resources and the state shall ensure that the economic concentration shall not be there in the market[26].

The Economic Efficiency requires that the economy shall be in a position utilise the scare resources in the highest combination of quantity and quality of goods and services, so that we can generate the surplus while utilising the scare resources. This is facilitated by the competition policy in the country.[27]

The efficient competition policy enhances the positive externalities which creates benefits to the society as a whole by proper allocation of natural resources. Sustainable consumption can also be achieved by the competition law.[28]

Proper implementation of competition policy aims at free trade policy which in turn improves the competition in the domestic market. The free trade policy enables the foreign player to compete with the domestic player which in turn forces the domestic player to improve the quality of products to compete with the foreign policy. The free trade policy not only improves the efficiency of the domestic player but it also removes the entry barriers in the particular sector by opening the market to the world. The good competition policy shall aim at removing the entry barriers in a particular sector which enables the society allocate the natural resources in an equitable manner whereby creating the positive externalities. The positive externality benefits the society as a whole any market conditions. That's the main aim of any competition policy in the world.

2.1.5 Competition law encourages the consumer welfare

The best definition of competition as provided by Chicago School that competition may be read as designating a state of affairs in which consumer welfare cannot be increased by moving to an alternative state of affairs through the intervention of antitrust law and that, conversely, monopoly designates a situation in which consumer welfare could be

[26] Article 39, Indian Constitution
[27] Kaushal Sharma, Shankar Singham, et.al. (eds). Economies (Efficiencies)- An essential Consideration in merger analysis, available at https://www.cci.gov.in/sites/default/files/presentation_document/Final_Efficiency_Article01-Feb-2011.pdf?download= (last visited on 06-05-21)
[28] UNCTAD, "The roles of Competition policy for development in globalising world markets",15 June 1999

so improved so that to monopolise would be to use practices inimical to consumer welfare. This interpretation of competition coincides with everyday parlance as the competition for the man in the street implies low prices, innovation and choice among differing products. Competition thus equates with consumer welfare as the sole meaning thereby that antitrust law's sole goal is the maximization of consumer welfare. Consumer welfare is greatest when society's economic resources are allocated so that consumers are able to satisfy their wants as fully as technological constraints permit. Consumer welfare, in this sense, is merely another term for the economic wealth of the nation.[29]

According to Eliot G. Disner, both Chicago School and market structuralists agree on per se illegality of horizontal price fixing and related collusive activity. Such conspirators are so likely to raise prices or reduce quality that consumers will be affected adversely by anyone's measure.[30]

Competition law has a broader role and is part of the Institutional Framework for the management of the economy. It has the indirect effect of protecting consumer interest. Competition law is neither designed to, nor can it, protect all aspects of consumer interest.

The ultimate goal of competition and consumer policies is to enhance consumer well-being. The United Nations Guidelines for Consumer Protection establishes the link between competition and consumer protection and states: "Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost." [31]The secretariat's note on the United Nations set of principles and rules on competition emphasizes the importance of competition policy and law in protecting and promoting social welfare in general, but particularly the interests of consumers, in both developed and developing countries.[32] In some jurisdictions, consumer welfare or the protection of consumer interests is an explicit objective of competition law, for example in Australia, India, Indonesia, Japan, Serbia, the United Republic of Tanzania and Zambia. Some

[29] Preeti Singh, Competition Law and vis-à-vis consumer welfare 4-5-14-772pdf
[30] Ibid
[31] UNCTAD, United Nations Guidelines for Consumer Protection (New York, United Nations Publication),2003
[32] TD/RBP/CONF/10/Rev.2.

jurisdictions, such as Canada and South Africa, have gone further and defined the purpose of their competition acts as the promotion and maintenance of competition in order to, inter alia, "provide consumers with competitive prices and product choices".[33] [34]Other jurisdictions set priorities based on potential harm to consumers. For instance, the European Commission states that in applying article 82 of the Treaty establishing the European Community to exclusionary conduct by dominant undertakings, the Commission will focus on those types of conduct most harmful to consumers. The Federal Trade Commission of the United States of America "promotes competition in industries where consumer impact is high, such as health care, real estate, oil and gas, technology and consumer goods".

Competitive markets provide incentives for firms to offer quality products and services at the best prices. Some consumer policy concerns, such as product and service standards, may thereby eventually be addressed. Nevertheless, with the growing complexity of products and services, the increasing share of services in household consumption totals, the development and rapid diffusion of information and communications technology and the opportunities these offer to consumers, markets have become more vulnerable to fraudulent and deceptive practices.[35]Therefore, there is a growing need for consumer policy, which provides mechanisms to compensate for market failures and protects consumers' interests. Consumer policy interventions ensure that consumers are correctly and sufficiently informed by advertising and labelling, that they are provided with fair contract terms and obligations and that their rights are respected. Related policy instruments make consumer choice an effective element in strengthening competition and send signals to firms that misleading and deceptive practices will not go unpunished. Informed consumers, being aware of their rights, may promote competition in markets by exercising choice. For instance, some consumer protection measures adopted by the European Union, such as the Unfair Commercial Practices Directive, adopted in 2005, aim to "enhance competition on the merits and real choice by banning unfair practices such as misleading advertising" and

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[33] Canada, Minister of Justice, Competition Act, 2010, available at http://www.laws.justice. gc.ca/eng/acts/C-34/index.html (accessed 22 April 2020).
[34] 21 South Africa, Competition Act, 2000, available at http://www.compcom.co.za/the-competition-act/
(Accessed 22 April 2020).
[35] OECD, 2001, Consumer Policy Toolkit, Paris.

aggressive commercial practices. The Directive also aims at facilitating cross-border advertising in the European Union, thereby reinforcing competition in the retail sector.

There may also be tensions between competition and consumer welfare. Fierce competition may result in unethical or criminal behaviour by firms in order to obtain a relative competitive advantage vis-à-vis competitors. The objective of gaining such an advantage was the driving force behind the risky conduct of overleveraged financial institutions prior to the financial crisis in 2008. There may be situations where competitive markets do not promote consumer interests, such as in cases of externalities, particularly in environmental goods, as well as cases of common property resources, such as fisheries, and of public goods. In such cases, there is a need for Government regulation to ensure that consumer interest objectives are attained.[36]

Promotion of Interest of Consumer Welfare is the common objective of consumer protection and competition policy. The objective of competition is met by ensuring that there are sufficient numbers of producers so that no producer can attain a position of dominance. In Kautilya's Arthashastra, there are references to the concept of consumer protection against exploitation by the trade and retailer with respect to quality, short weight, measurement and adulteration of goods. Yet until the late 1970s, there was no systematic movement in the country for safeguarding the interest of consumers. But now it is widely acknowledged that the level of consumer awareness and protection is a true indicator of development of the country and progressiveness of civil society. Another significant movement in the history of world consumer movement is in 1985, when the General Assembly of the United Nations adopted a set of guidelines for consumer protection and the Secretary General of the United Nations was authorized to persuade member countries to adopt these guidelines through policy changes or law. These guidelines constituted a comprehensive policy framework outlining what governments need to do to promote consumer protection in the following areas:

(i) physical safety,
(ii) protection and promotion of consumer economic interests,
(iii) standards for safety and quality of consumer goods and services,

[36] UNCTAD, The Effects of Anti-competitive Business Practices on Developing Countries and Their Development Prospects (New York and Geneva, United Nations publication),2008. available at https://unctad.org/system/files/official-document/ditcclp20082_en.pdf (last visited on 06-06-21)

(iv) measures enabling consumers to obtain redressal,

(v) measures relating to specific areas (food, water, and pharmaceuticals); and

(vi) Consumer education and information programme.

These set of guidelines are internationally recognized basic objectives for governments of developing countries in regard to consumer welfare. Subsequently, the guidelines were expanded to include ‘sustainable consumption’ which was an important subject in the changed social, political and economic scenario. The importance of ‘sustainable consumption’ is aptly highlighted in Mahatma Gandhi’s words, ‘the rich must live more simply so that the poor may simply live’. Sustainable development is crucially dependent on sustainable consumption. Article 21 of the Constitution requires the State, inter alia, to protect life, which must be construed as including the right to a healthy and safe environment. A healthy and safe environment is inalienably linked with sustainability and promotion of sustainable consumption.

The concern in the Indian Constitution for protection and promotion of an individual’s rights, and for the dignity and welfare of the citizen makes it imperative to provide for the welfare of the individual as a consumer, a client and a customer. The rights under the Consumer Protection Act, 1986 flow from the rights enshrined in Articles 14 to 19 of the Constitution of India. The RTI, 2005 which has opened up governance processes of our country to the common public also has far-reaching implications for consumer protection[37].

Standards, which are the essential building block for quality, play a key role in consumer protection. These standards are set generally by governmental or inter-governmental bodies. Setting standards is not enough for assuring the consumer of quality. For this, governments need to establish the full quality infrastructure, embracing standardization, conformity assessment and enforcement. To strengthen the forces of competition in the market, both competition law and competition policy are required. The two complement each other. The competition law prohibits and penalizes anti-competitive practices by enterprises functioning in the market; that is, it addresses

[37] Consumer Protection and Competition Policy, available at https://niti.gov.in/planningcommission.gov.in/docs/plans/planrel/fiveyr/11th/11_v1/11v1_ch11.pdf (last visited on 08-06-21)

market failures. Sector regulatory laws mimic competition in the areas of natural monopolies. In this regard, to enhance consumer awareness there is necessity for continuing consumer awareness campaigns on a large scale to sensitize the population on basic aspects such as Maximum Retail Price (MRP), Gold Hall Marking, Indian Standard Institute (ISI) mark on products, and expiry dates[38].

Competition and consumer policies reinforce each other in achieving their goals. The traditional view is that competition policy deals with the supply side of the market while consumer policy addresses the demand side. However, there is increasing recognition that the two policies should be coordinated to facilitate a whole-market approach and that competition and consumer authorities should share information and coordinate enforcement and advocacy measures. Consumer law enforcement may thus strengthen competition by addressing unfair commercial practices. The complementary nature of competition and consumer policies has become increasingly relevant in today's complex product markets[39].

Consumer policies ensure that consumers are well informed to make rational decisions, thereby exercising choice and stimulating competition. Consumer behaviour has implications for both competition and consumer policies. Consumer's behaviour point to the importance of the demand side in activating competition in markets and making markets work for consumer welfare. Accordingly, on the demand side, policies need to ensure that consumers can access and assess necessary information to make well-informed decisions[40].

The Concept and role of competition is relatively new to the Indian business community. There is, therefore, a pressing need to increase the level of awareness about the benefits of competition and the contribution of the competitive law in this respect among the public, more particularly among the consumers. There is strong commonality between competition policy and law on the one hand and consumer protection policy and law on the other. An effective competition policy lowers entry and exit barriers and makes the environment conducive to promoting entrepreneurship

[38] Supra note 47

[39] UNCTAD, the benefit of Competition policy for consumers, available at https://unctad.org/system/files/official-document/ciclpd27_en.pdf (last visited on 09-06-21)

[40] The interface between Competition and consumer policies. June 05,2008, available at https://www.oecd.org/daf/competition/40898016.pdf (last visited on 09-06-21)

in the interest of consumers and provides space for the growth of small and medium enterprises and consequent employment expansion.[41]

The competition law facilitates the consumer welfare by enabling the consumer to satisfy their basic facilities in the market. the consumer welfare can be achieved by protecting the consumer rights which were recognised by the United Nations Guidelines on consumer protection. As per this convention every consumer has following rights[42]

- Right to Basic Needs
- Right to Safety
- Right to Choose
- Right to redress
- Right to Information
- Right to Consumer Education
- Right to Representation
- Right to Healthy Environment

According to Neo –Classical Economic Theory Production, distribution of goods and services in competitive Market maximises the social welfare. The Competition in the market facilitates the efficient allocation of natural resources resulting availability of these goods and services at lowest possible price in the market. The competition encourages the market player to attract the consumers by providing the qualitative services compared with other players in the market, this enables the consumer to exercise his right of choice[43].

*"The Supreme Court of India in the case of **CCI v. SAIL*** [44] *held that "The main objective of competition law is to promote economic efficiency using competition as*

[41]Consumer Protection and Competition policy, available at, https://niti.gov.in/planningcommission.gov.in/docs/plans/planrel/fiveyr/11th/11_v1/11v1_ch11.pdf (last visited on 06-05-21)
[42] UNCTAD, the effects of anti-competitive business practises on developing countries and their development prospectus, available at https://unctad.org/system/files/official-document/ditcclp20082_en.pdf (last visited on 06-05-21)
[43] Will Kenton, Neoclassical Economics, available at, https://www.investopedia.com/terms/n/neoclassical.asp (last visited on 05-06-21)
[44] (2010) 10 SCC 744

one of the means of assisting the creation of market responsive to consumer preferences. In short, the establishment of the competition commission of India and enactment of the competition act was aimed at preventing practices having adverse effect on competition, to protect the interest of the consumer and to ensure fair trade carried out by other participants in the market in India and for matters connected therewith or incidental thereto. Therefore, it is clear that the principal objects of the act, in terms of its preamble and statement of objects and reasons, are to eliminate practices having adverse effect on the competition, to promote and sustain competition in the market, to protect the interest of consumers and ensure freedom of trade carried on by the participants in the market, in view of the economic developments in the country".

The Supreme Court of United States speaking in favour of consumers in ***Allied Tube & Conduit Co. V. Indian Head, Inc.***[45], held that "Product standardization might impair competition in several ways. It might deprive some consumers of a desired product, eliminate equality competition exclude rival producers, or facilitate oligopolistic pricing by easing rivals' ability to monitor each other's price".

The term "Consumer welfare" is coined and defined by Judge Robert Bork, means all things that are good for consumers, such as low prices, innovation, and choice among different products. Under this definition, the consumer includes owners of firms and producers. The consumer is generally regarded as the king in the market. In simple words, "Consumer" is a broad label for any individuals or households that use goods and services generated within the economy. But there exists a difference in the way consumer is defined in the Consumer Protection Act, 2019 and the Competition Act, 2002. Under Consumer Protection Act "Consumer" Does not include who purchase the product or avail the services for commercial purpose. Whereas under Competition Act, 2002 the word consumer includes the person who purchase the goods or avails the services on commercial basis. the consumer welfare is addressed at the micro level in case of Consumer Protection Act, whereas the consumer welfare is addressed at the macro level in case of Competition Act.[46]

[45] 486 U.S.492 (1988)
[46] Haiharan Venkateshwara, "Competition Policy vis-à-vis Consumer welfare", February 06,2021