

## **CARTELS VIS-À-VIS COMPETITION LAW: JUDICIAL ANALYSIS**

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### **Introduction:**

Cartel is a formal or informal agreement among number of firms in an industry to restrict competition. These agreements may provide for setting minimum prices, setting limits on output or capacity, restrictions on non-price competition, division of markets between firms either geographically or in terms of type of product, or agreed measures to restrict entry to the industry to create a monopoly in a given industry. Usually cartels involve an agreement between business men not to compete with one another and they can occur in any industry and can involve goods or services at the manufacturing, distribution or retail level.<sup>1</sup> In this process, industries form combinations of this type to control sales and prices. These restraints are also known as anti-competitive, anti-trust, monopolies, trade combinations, restrictive trade practices, restraint of trade or competition law.

Generally cartels are formed by the industrial undertakings in the same line of business. The basic characteristic of cartel is that the combining enterprises concentrate on production according to the limits of output fixed by the cartel keeping in view the market conditions and to restrain or regulate the distribution of output for maintaining returns or the selling price of certain commodities by restrictive trade or marketing practices. Such trade combinations are used to be challenged in the courts on the ground that they are unlawful conspiracies as these agreements between firms have the potential of restricting competition. Business Houses encourage cartels because there are numerous advantages but law discourages cartels as they are presumed to be against public interest.

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1 Each of the agreement is prohibited by the Competition Act 1998 in UK and Article 81 of the Treaty of Rome. In addition the Enterprise Act 2000 makes it a criminal offence for individuals dishonestly to take part in certain specified cartels, essentially those that involve price fixing, market sharing, limitation of production or supply, or bid rigging.

## **Historical perspective of cartels:**

The practice of cartels or business combinations has so much historical importance. Combinations are common and they fall into two main categories; those concerned with the regulation of terms of employment,(service cartels) and those concerned with the regulation of trading terms and conditions(trade cartels). In both cases the law relating to such combinations is closely associated with that of conspiracy.<sup>2</sup> The history in brief about the cartels is legislation in England to control monopolies and restrictive practices were in force well before the Norman Conquest.<sup>3</sup> In 1561 a system of Industrial Monopoly Licenses, similar to modern patents had been introduced into England. But by the reign of Queen Elizabeth I, the system was much abused and used merely to preserve privileges, encouraging nothing new in the way of innovation or manufacture.<sup>4</sup> Three characteristics of monopoly were identified by the court and these are (1) price increases (2) quality decrease (3) the tendency to reduce artificers to idleness and beggary. In 1623 Parliament passed the Statute of Monopolies, which for the most part excluded patent rights from its prohibitions, as well as guilds.<sup>5</sup>

Modern Anti-trust law begins with the United States legislation of the Sherman Act of 1890 and the Clayton Act of 1914. The American term ‘anti-trust’ arose not because the US statutes had anything

2 By the beginning of the nineteenth century the individual was made free to contract as to the terms of his employment and establishing his right to associate for the purpose. Not only that, the concept of ‘collective bargaining’ has become the order of the day in labour management relations and significantly the restrictive practices in this field have reached immense proportions.

3 The Doomsday Book recorded that fore steel i.e. forestalling, the practice of buying up goods before they reach market and then inflating the prices, was one of three forfeitures that King Edward the Confessor, and could carry out through England. But concern for fair prices also led to attempts to directly regulate the market. Under Henry III, an Act was passed in 1266 to fix bread and ale prices in correspondence with corn prices. A fourteenth century statute labeled forestallers as oppressors of the poor and the community at large and enemies of the whole country. Under King Edward III the Statute of Laborers 1349 fixed wages of artificers and workmen and decreed that foodstuffs should be sold at reasonable prices. Around the 15th century Europe was changing fast. The new world had just been opened up, overseas trade and plunder, was pouring wealth through the international economy and attitudes among businessmen were shifting.

4 When a protest was made in the House of Commons and a Bill was introduced, the Queen convinced the protesters to challenge the case in the courts. This was the catalyst for the Case of Monopolies or Darcy v. Allen. The plaintiff, an officer of the Queen's household, had been granted the sole right of making playing cards and claimed damages for the defendant's infringement of this right.

5 From King Charles I to King Charles II monopolies continued, especially useful for raising revenue. Then, in 1684, in East India Company v. Sandy's it was decided that exclusive rights to trade only outside the realm were legitimate on the grounds that only large and powerful concerns could trade in the conditions prevailing overseas. In 1710 the New Law was passed to deal with high coal prices caused by a Newcastle Coal Monopoly.

to do with ordinary trust law but because the large American corporations used trusts to conceal the nature of their business arrangements. Big trusts became synonymous with big monopolies. The perceived threat to democracy and the free market from these trusts led to the passing of Sherman and Clayton Acts. These laws, in part, codified part of American and English common law of restraints of trade.<sup>6</sup> However, recently there has been a wave of updates especially in Europe to harmonise legislation with contemporary competition law thinking. The European Community has seen healthy competition as an essential element in the creation of a common market free from restraints on trade. In accordance with this many countries enacted competition laws and for example Competition Act 1998 was passed by England and Competition Act 2002 was passed by India.

The problems of these cartel agreements were succinctly expressed by Adam Smith long backas "A monopoly granted either to an individual or to a trading company has the same effect as a secret in trade or manufactures. The monopolists, by keeping the market constantly under-stocked, by never fully supplying the effectual demand, sell their commodities much above the natural price, and raise their emoluments, whether they consist in wages or profit, greatly above their natural rate."<sup>7</sup> He also pointed out that "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary."<sup>8</sup> By the latter half of the nineteenth century it had become clear that large firms had become a fact of the market economy.<sup>9</sup>

6 Evidence of the common law basis of the Sherman and Clayton Acts is found in the Standard Oil case, where Chief Justice White explicitly linked the Sherman Act with the common law and sixteenth century English statutes on engrossing. As the Sherman Act did not have the immediate effects its authors intended, the Clayton Act of 1914 was passed to supplement the Sherman Act. It was after the First World War, Countries began to follow the United States' lead competition policy. After World War II, the Allies, led by the United States, introduced tight regulation of cartels and monopolies. The United Kingdom introduced the Restrictive Practices Act in 1956.

7 Smith (1776) Book 1, Chapter 7 Para 26

8 Ibid Chapter 10 Para 82 Smith also rejected the very existence of corporations, not just dominant and abusive corporations.

9 Ibid Chapter 5 Para 107

John Stuart Mill observed "Again, trade is a social act. Whoever undertakes to sell any description of goods to the public, does what affects the interest of other persons, and of society in general; and thus his conduct, in principle, comes within the jurisdiction of society... both the cheapness and the good quality of commodities are most effectually provided for by leaving the producers and sellers perfectly free, under the sole check of equal freedom to the buyers for supplying themselves elsewhere. This is the so-called doctrine of Free Trade, which rests on grounds different from, though equally solid with, the principle of individual liberty. Restrictions on trade, or on production for purposes of trade, are indeed restraints; and all restraint, qua restraint, is an evil."<sup>10</sup> Bork argued that both the original intention of anti-trust laws and economic efficiency was the pursuit, only of consumer welfare, the protection of competition rather than competitors.<sup>11</sup> The common theme is that government interference in the operation of free markets does more harm than good.

## **Cartels: Business Organisations**

Business organisations frequently enter into agreements to regulate the production and marketing of the commodities manufactured by them and also to maintain prices and standards in relation to those commodities. Most laws make a distinction between horizontal cartel and vertical cartel agreements between firms. Horizontal agreements refer to agreements among competitors and vertical agreements refer to agreements relating to an actual or potential relationship of buying or selling to each other. A distinction is also drawn between cartels-a special type of horizontal agreements- and horizontal agreements; other horizontal agreements and vertical agreements; vertical agreements between firms in a position of dominance and other vertical agreements. A distinction should also be made between illegal practice of price cartelization and price leadership. The illegal price cartelization should

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10 Mill: Treatise on Liberty (1859) Chapter V Para 4 When only one or a few firms exist in the market, there is no credible threat of the entry of competing firms. Hence, prices rise above the competitive level either to a monopolistic or oligopolistic equilibrium price. Production is also decreased resulting in decreasing social welfare. Sources of this market power are said to include the existence of externalities, barriers to entry of the market, and the free rider problem. Markets may fail to be efficient for a variety of reasons, so the exception of intervention of competition laws to the rule of laissez faire is justified.

11 Bork Robert H.: The Anti-trust Paradox: (1978) New York Press p. 405 Hence, only a few acts should be prohibited, namely cartels that fix prices and divide markets, mergers that create monopolies, and dominant firms pricing predatorily, while allowing such practices as vertical agreements and price discrimination on the grounds that it did not harm consumers.

be curbed and punished whereas a perfectly legitimate economic and business behavior of a competitor in price cartelization should be exempted.

Horizontal agreements are agreements between two or more enterprises that are at the same stage of the production chain and in the same market. In law the following kinds of horizontal agreements are often presumed to be anti-competitive. These are: agreements regarding prices; agreements regarding quantities; agreements regarding bids; agreements regarding market sharing. The presumption is that such horizontal agreements and membership of cartels lead to unreasonable restrictions of competition and may be presumed to have an appreciable adverse effect on competition. Vertical agreements on the other hand are agreements between enterprises that are at different stages or levels of the production chain in different markets; this would be an agreement between producer and a distributor. Vertical restraints on competition include tie in arrangements; exclusive supply agreements; exclusive distribution agreements; refusal to deal; resale price maintenance. Generally vertical agreements are treated more leniently than horizontal agreements as these are slightly reduce competition than agreements between firms in a buyer-seller relationship. These are like all other agreements in restraint of trade, *prima-facie* void at common law but combinations not amounting to contracts in restraint of trade are lawful as every individual has the right of combining with others in a common course of action.

There is another view that there should be competition and at the same time there should not be ruinous competition among the enterprises and the doctrine of restraint of trade should not be employed in the suppression of cartels because a cartel agreement would come before the courts only on the failure of the parties to perform it. The Privy Council while accepting the ruinous competition argument, said “it can never ... be of real benefit to the consumers of coal that colliery proprietors should carry on their business at a loss or that any profit they make should depend on the miners’ wages being reduced to a minimum... Where these conditions prevail, the less remunerative collieries will be closed down, there will be great loss of capital, miners will be thrown out of employment, less coal will be produced and prices will consequently rise until it becomes possible to reopen the closed collieries or open other seams. The consumers of coal will be affected in the long

run and the colliery proprietors do not make fair profits or the miners do not receive fair wages. There is, in this respect... of interest between all members of the public.”<sup>12</sup>

Public interest was considered paramount importance and hence, the natural and necessary consequences of the contract of combination or monopoly or attempt to monopolise are the evils in fact ensured. The courts in England virtually not excluded the possibility of holding a case ‘contrary to the public interest’ if it was calculated to produce a pernicious monopoly, i.e. a monopoly created to enhance prices to an unreasonable extent.<sup>13</sup> Conclusion of a contract with conditions to regulate price or output can be a restriction on economic freedom.<sup>14</sup>

The trading freedom of a member of society in trade combinations was discussed in many cases but it was held that an attempt to eliminate competition altogether was void.<sup>15</sup> However, the real interest to be consulted in such agreements is that of the public because present century economic theory demanded an attitude of neutrality to a free play of economic forces. The position adopted by the

12 Att. Gen. of Common Wealth of Australia v. Adelaide Steamship Co. (1913) A.C. 781 at pp. 809,810  
The economic fallacy of this argument was highlighted in this case is this : “granted the oversupply of coal due to the opening up of the Maitland field, the most satisfactory way of reducing the excess capacity from the point of view both of prices to the consumer and the allocation of capital, was to continue competition to the point where the highest-cost producers to make fair profit; but the sale agreement adopted by the colliery owners and approved by the privy council, kept all the collieries in operation and ensured excessive profits to the low-cost producers; thus both keeping prices above their natural level and working capital.” William H. Good Hart: The Yarn Spinners’ case and the Sherman Anti-Trust Act L Q R Vol. 75. 253 at pp. 260,261

13 Att. Gen of Common Wealth of Australia v. Adelaide Steamship co 1913) A.C. 781 at p. 796. The court observed “The whole subject may someday have to be reconsidered; there is at present growth for assuming that a contract in restraint of trade, though reasonable in the interest of the public if calculated to produce that state of things which is a pernicious monopoly, that is to say, a monopoly calculated to enhance prices to an unseasonable extent --- the monopolies in the popular sense of the word are more likely to arise, and if they do arise, are more likely to lead to prices being unreasonably enhanced in countries where a protection tariff prevails than in countries which there is no such tariff.”

14 Evans (J) & Co v. Heath Cote (1918) 1 K.B. 418.Scrutton L.J. held that the plaintiff was bound not to sell except to five named firms, which were under no obligation to buy from him and the plaintiff had no power to withdraw from the agreement. In this case the court was ready to apply the principle of contrary to public interest against such an insignificant agreement which of course had been beneficial as between the parties themselves. However, this decision was later reversed on Appeal but with no unanimity thus, evidencing judicial conflict on the point with almost equal force.

15 Mc Ellistrim v. Ballymacelligott Co-operative Agriculture and Dairy Society Ltd (1919) AC 548. It was held that if a member joined the society young enough and lived long enough, would be precluded for a period of sixty years or more from selling his milk in the market; this arrangement was unreasonable between the parties because the society was not entitled to impose a lifelong embargo upon the trading freedom of its members though it was entitled to protection to ensure stability in the supply of milk. In this case it was found that the obligation of a member to allocate all his milk to the society was for his life, subject to obtain the sanction of the committee to a transfer of his shares which is a very difficult one.

common law sometimes has been regarded cartels as being not injurious to the public and in some cases even as positively beneficial.

Trade combination agreements are in most cases freely negotiated and they are entered into for the purpose of avoiding undue competitions and carrying on trade without excessive fluctuations or uncertainty.<sup>16</sup> The courts are not sympathetic to a trader entered into a restrictive agreement with other traders and attempts to escape from his obligation on the plea that he has imposed an unreasonable burden upon himself.<sup>17</sup>

In Cartel agreements the parties can be regarded as the best judges of what is reasonable between them. The reasonableness depends on the concept of equality of the members of the combination. When a person has to preclude himself from earning his living without choice, the law will not take equality principle; but in the case of commercial agreements entered into between two firms or companies for regulating their trade relations, the law adopts a somewhat different attitude. In such cases the courts' prime consideration is the interest of the public.<sup>18</sup> The same principle would apply where the restraint was contained in a contract between employers which indirectly prejudiced their employees' opportunities of finding work.<sup>19</sup> It is now well settled that the courts will view restraints seriously which are imposed between equal contracting parties for the purpose of avoiding drastic competition and carrying on trade without excessive fluctuations and uncertainties.<sup>20</sup> Generally, the court will always protect the public from the creation of

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16 Bartley and District Co-operative Society Ltd. v. Windy Nook and District Industrial Co-operative Society Ltd. (1960) 2 Q.B.1 In this case it was held that the co-operative society Ltd. was simply a combination of traders. Hence, the court cannot say that these agreements are unreasonable between the parties and infact; the courts can say that they are unreasonable if such agreement contains no provision for voluntary withdrawal.

17 English Hop growers v. Dering (1928) 2 K.B. 174. This plea sounds peculiarly ill in the mouth of a man of business who has negotiated on an equal footing with the other members of the combination. If the restraint is reasonable in the interests of the parties it will be enforceable though it involved some injury to the public; See Attorney General of Australia v. Adelaide Steamship Co. (1913) AC 781 at p. 796 per Lord Parker

18 North Western Salt Co. v Electrolytic Alkali Co. Ltd (1914) A.C. 461 at p. 471.

19 Kores Manufacturing Co. Ltd v. Kolok Manufacturing Ltd. (1959) Ch. 108.

20 English Hop growers v. Dering (1928) 2K.B 174 at pp. 180,181. However, Scrutton L.J. clarified that there was nothing unreasonable in Hop growers combining to secure a steady and profitable price, by eliminating competition amongst themselves, and putting the marketing in the hands of an agent with full power to fix prices and hold up supplies; the benefit and loss being divided amongst the members.

monopoly by a combination of buyers or sellers.<sup>21</sup>

These approaches led to number of actions which have arisen out of agreements within a particular trade or industry, where the parties agreed to observe a certain price or a production quota, or to form a pool or to employ one or other of the many methods adopted in modern economic life in the common interest. However, these actions are purely contractual, and some court decisions highlighted a definite movement from the protection of individual economic freedom to the legitimate purposes of group control. But, it is difficult to follow a particular line because the decisions avoid any conscious appreciation of the social and economic issues involved and contain haphazard and improvised excursions in the economic theory.<sup>22</sup>

Recently due to globalization Competition Act 1998 was enacted in England and many countries followed the same and India is one among them. These enactments intended for promoting competition in the interest of consumer welfare differentiating public interest from consumer welfare. Often consumer interest and public interest are considered synonymous. But they are not and need to be distinguished. In the name of public interest many governmental policies are formulated which are either anti-competitive in nature or which manifest themselves in anti-competitive behavior. If the consumer is at the fulcrum, consumer interest and consumer welfare should have primacy in all governmental policy formulations. Consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. Consumers are affected by pricing policies financing practices quality of goods and services and various trade practices. They are clearly distinguishable from manufacturers who produce goods and whole sellers or retailers who sell goods.

Public interest on the other hand is something in which society as a whole has some interest not fully captured by a competitive market. It is an externality. However, there is a justifiable apprehension that in the name of public interest governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumers.

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21 ibid at p. 185. Per Sankey, L.J the courts have to consider not only the interests of the contracting parties but also the interests of the public and the public interests always susceptible to influences of current views of public policy.

22 Bellshill & Mossend Co-operative Society V Dalziel Co-operative Society (1960) AC. 832

The asymmetry arises from the fact that all producers are consumers but all consumers are not producers as well. What is desirable for them in one capacity may be inimical in the other capacity. In general it can be stated that buyers want competition and sellers monopoly. The economists say that in a society there are too many such divergent interests and therefore the resolution is best left to markets without government intervention. They are all too conscious of the possibility of abuse of the expression public interest by vested interests.

In many cases public interest may be significantly divided and what might consider clearly in the public interest by one party may be seen as less important by another. The complexity of the public interest approach to competition policy may produce significant tension between different stake holders. Implementation of competition policy to serve different interest groups may not be conducive to maintaining or promoting effective competition. In other words though the public interest approach to competition policy permits the consideration and balancing of different economic, social and political objectives the independence with which the policy can be administered can easily become constrained.

Hard core cartel behaviour between competitors is the most serious form of anti-competitive behaviour. Two sets of competition rules apply in parallel in the United Kingdom. Anti-competition behaviour which may affect trade within the UK is specially prohibited by chapters I and II of the Competition Act 1998 and Enterprise Act 2002. Article 81 and 82 of the European Community Treaty prohibited the anti- competitive behaviour extends beyond UK to other European Union member States. Both UK and EC competition law prohibit agreements and concerted business practices which appreciably prevent, restrict or distort competition or have the intention of so doing and which affect trade in the UK or the EC. The Enterprise Act 2002 is a major milestone in the development of competition and consumer law.<sup>23</sup>

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23 The Act building on previous legislations creates a clearer and sharper frame work for markets and enterprise. Markets that work well are good for consumers and all the fair-dealing businesses that serve them well. The market inquiry regime in the UK is a powerful instrument which enables competition issues to be examined in a way that does not require the focus to be exclusively on the conduct of the market players. It needs to be applied with a proper sense of the general application of Articles 81 and 82 by authorities throughout the EU and the need to pursue a common competition objective. There is plenty left for national authorities like Competition Commission to do and plenty of scope for application of national competition law in UK. (Peter Freeman, UK Competition Law after Modernisation; Lord Fletcher Lecture 15<sup>th</sup> March 2005)

## Cartels: Labour and Services Associations

Agreements between workers binding them to regulate their work in accordance with the decision of some outside body or otherwise, containing the free right to dispose of labour are, at common law, subject to the doctrine of restraint of trade. This is based upon the same principles of agreements between employers to regulate the acquisition of labour.<sup>24</sup> However, Scrutton L.J. stated “I take the Mogul case as deciding that a combination to do acts, the natural consequences of which was to injure another in his business, was not actionable if those acts were not otherwise unlawful such as assaults or threats of assault, and were done in furtherance of the trade interests of those combining. I understand Quinn v. Leatham to decide that a combination to injure another in his trade and business, but not in furtherance of the trade interests of those combining, but out of spite against a person injured is actionable.”<sup>25</sup> Where the predominant purpose of the combination was the legitimate promotion of the interests of the persons combining and since the means employed were neither criminal nor tortious in themselves, the combination was not unlawful.<sup>26</sup>

A combination of two or more persons willfully to injure a man in his trade is unlawful and if it results in damage to him, is actionable and if the real purpose of the combination is not to injure another but to

24 Hornby v. Close (1867) L.R. 2Q.B. 153. A trade association which had a rule that no member should employ an employee who had left the service of another member until two years had elapsed from the end of his employment. Chitty J. struck down the rule as being in unreasonable restraint of trade because it could have the effect of preventing former employees of any member from finding new work with in the industry in which they were employees as the number of employers bound by the rule being so great. Mineral Water bottle Exchange and Trade Protection Society v. booth (1887) 36 Ch.D. 465 (CA).An association which laid down regulations to be observed by the members there of, while carrying on their respective business were enforced among the members with certain amount of indirect coercion, although it was agreed that any member should be at liberty to withdraw from the association at any time on giving notice provided they were prepared to face the consequences of being a non-member. Mogul Steamship Co. Ltd. v. McGregor, Gow & Co. (1892) A.C. 25, at pp. 59, 60. Coleridge C.J in the court of first instance, while up holding a principle that a wrongful and malicious combination to ruin a man in his trade might be a ground for action, yet he held that the defendants had not crossed the line which separated the reasonable and legitimate selfishness of traders from wrong and malice. Mogul Steamship Co. Ltd. v. McGregor, Gow & Co. (1887) 21Q.B.D. 544. This decision was up held by the court of Appeal by a majority. Lord Esher M.R. however, dissented that it was indictable conspiracy (1889) 23 Q.B. 10 59 However, this decision was upheld unanimously by House of Lords.(1892) A.C. 25. It was the other way round in Quinn v. Leathem (1901) A. C. 495.

25 Ware and de Freeville Ltd. V Motor trade Association (1921) 3 K. B. 40, C.A.at p. 67 All these dicta thus, laid down through the series of cases dealt with, approved by the House of Lords again in Crofter Hand Woven Harris's Tweed Co. v Veitch(1942) AC 435 per Viscount Simon L.C. without structurally changing them to any noticeable extent.

26 Ibid.

forward or defend the trade of those who enter into it; then no wrong is committed and no action will lie, although damage to another ensues as propositions of law.<sup>27</sup> Where the manufacturers of similar products agreed that neither would employ any employee who had employed by the other over the preceding five years was in fact an indiscriminate attempt to prevent workers moving to higher paid jobs. It amounts to do indirectly what could not be done by direct covenant with individual employees.<sup>28</sup> Where the interference with the employee's interests by employers who attempted to regulate labour by imposing mutual restrictions upon the re-employment of former employees were struck down as being employer-employee covenants in disguise or as being contrary to the public interest.<sup>29</sup> The agreement might have improved the workers' right to offer their labour so as to obtain the best terms for themselves. Former colleagues could perhaps work for the covenanter so long as they took the initiative to seek employment with him. On the other hand, a non-recruitment covenant may affect the worker's position more seriously, as it prohibits their active recruitment by the potential employers with the best information about their skills.

Agreements between employers could be held in unreasonable restraint of trade because they produced results which would have been in unreasonable restraints between employer and employee.<sup>30</sup> Employees should be as entitled as the employers as the agreement affected them just as closely as the employers. Since the law considered their freedom to seek employment to be an important public interest it should encourage them to defend it and not to leave its protection to the employers who had shown every intention of disregarding it.<sup>31</sup>

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27 Sorrel v Smith (1925) AC 700 per Lord Cave L.C. The decision seems obviously right, not only from a legal point of view but also from the attitude of judicial neutrality towards economic groups struggling for enforcement of their economic aims in a state which has itself no active economic policy to a right, balance of strength between the contending groups, proprietors and retailers. G.M. Sen; *Freedom of contract and social change*: First edn. 1977 at pp. 186-188.

28 Kores Manufacturing Co. Ltd. v Kolok Manufacturing Co. Ltd. (1959) Ch. 108. Public policy cannot allow third parties to restrict by contract a person's freedom to work for whom he wishes; however, that the governments' ban on employment was upheld by the courts in the interest of the nation John Tillstrom; *Contract Law in perspective*: 2<sup>nd</sup> edn. at pp. 188-89.

29 Kores Manufacturing Co. Ltd. v Kolok Manufacturing Co. Ltd. (1959) Ch. 108. See also Esso Petroleum Co. Ltd. v Harper's Garage (Stour Part) Ltd. (1968) A.C. 269 at pp. 300, 319.

30 See the judgments of Mineral Water Bottle Exchange and Trade Protection Society v Booth (1887) 36 Ch.D. 465 and Kores Manufacturing Co. Ltd. v Kolok Manufacturing Co. Ltd. (1959) Ch. 108. These two cases however were between employers.

31 Some support for this view was derived from observations made in *Boulting v Association of Cinematograph, Television and Allied Technicians* (1963) 2 W.L.R. 529; See also notes by R.W. Ride out: *Trade Union Membership, The 1890 Style*: M.L.R. vol. 26 p. 436. This principle does not conflict

The rules of the foot ball associations were also considered as agreement between employers, but they were considered to affect the employees' freedom of employment as if an agreement between employer and employee.<sup>32</sup> The restraint of trade doctrine did apply to the 'retain and transfer system' operated by football clubs in relation to professional players and it was in unreasonable restraint of trade.<sup>33</sup> A similar decision was reached in *Greg v. Insole* and it was held that the cricket authorities had sufficient interest in the organisation of the game at test and county level to justify the imposition of reasonable restraints on the players.<sup>34</sup> The Common Law courts have held invalid a rule of the Jockey Club preventing a woman from holding a trainer's license.<sup>35</sup> A rule of the pharmaceutical society restricting the types of goods in which the members might deal was also held invalid.<sup>36</sup>

Every professional body has its own ethical code which seeks, *inter alia*, to promote its welfare, interests and status. The rules or principles which aim at achieving these objectives very often involve restraint of trade. Can an ethical rule which is arbitrary and capricious be challenged on the ground that the doctrine of restraint of trade apply to professional bodies.<sup>37</sup> But it is questionable the basis upon which a person who is not a member of the relevant professional body and a party to the restrictive agreement can challenge it.<sup>38</sup> To what extent should the doctrine of restraint of trade be extended to professions which are not engaged in trade for example legal profession or medical professions? Restraint of trade doctrine would apply to all the rules and principles of professional bodies but, these restraints are justified either by preventing undesirable operations by the members or to protect them in their livelihood, and to prevent the public with whom they have to

with such cases as *Mogul S.S.Co.Vs Mc Gregor, Gow & Co.* (1892) A.C.25, which would at most prevent the plaintiff from recovering damages for conspiracy

32 *Eastham Vs New Castle United Foot Ball Club Ltd.* (1964) Ch. 413.

33 *Eastham Vs New Castle United Football Club Ltd.* (1964) Ch. 413 at P. 432.

34 *Greig v Insole* (1978) IWLR 302 At the same time it was also held that the restraint in question – a test and county ban on any player playing for the Parker organisation – was far too wide to be justified.

35 *Nagle v Fielden* (1966) 2 Q.B. 633

36 Pharmaceutical Society of Great Britain v *Dickson* (1970) AC 403. The doctrine may even apply to the rules of professional bodies where the members do not technically engage in trade.

37 Pharmaceutical Society of Great Britain v *Dickson* [1967] Ch. 708. The Court of Appeal dismissed this decision. The Court of first instance declared that such a rule would operate as an unjustified restraint of trade. The Courts have declared that they have jurisdiction to declare a rule invalid if it is arbitrary and capricious. It is valid if it is reasonable in the interests of the profession and also reasonable in the interests of the public; but it is invalid if it is unreasonable. per Lord Denning M.R.

38 *R. v Disciplinary Committee of the Jockey Club, ex parte Agar Khan* (1993) I.W.L.R. 909.

deal being deprived of efficient and honorable service.<sup>39</sup> Where there is unlawful discrimination or the restriction seeks to prevent those subject to the rules from dealing with a non-party, there may be a remedy.<sup>40</sup>

Restrictive agreements relating to the supply of services are subject to the doctrine of restraint of trade on the same principles as are restrictive agreements relating to the supply of goods.<sup>41</sup> Hence, in England service 'cartels' like those relating to goods must be registered and are subjected to scrutiny by the Restrictive Practices Court to determine whether or not they are in the public interest. The rules of professional bodies in principle also fall within the scope of the Restrictive Trade Practice Act although certain professional services, such as those of lawyers, doctors, surveyors and architects are expressly exempted. The common law doctrine of restraint of trade extends to cover the rules of professional bodies though in this area the field has largely been left to modern legislation for promoting competition or prohibiting certain forms of discrimination. The doctrine may even apply to the rules of professional bodies where the members of those bodies do not technically engage in trade.<sup>42</sup>

However, a profession enjoys certain monopoly rights of practice in the designated field and the body administering the profession enjoys considerable autonomy in its administration. These monopoly rights and autonomy should be used for regulating quality of the profession, the standard of entry and discipline and accepted norms of performance. They should not be used to limit competition. Professions should not be denied normal opportunities of associations and promotion to preclude opportunities for growth and development. Professional bodies should not utilize their rights of autonomy to counter the normal challenges of global integration.

Generally, Trade unions are, to a large extent, protected from the doctrine of restraint of trade. A rule of a union is enforceable though it is in restraint of trade.<sup>43</sup> Where rules of a union impose unjustifiable

39 *Dickson v Pharmaceutical Society of Great Britain* [1967] 2 W.L.R. 718 at p. 734 per Danckwerts L.J.

40 *Cutsforth v Mansfield Inns Ltd.* (1986) I.W.L.R. 558.

41 *Collins v Locke* (1879) 4 App. Cas. 674.

42 Anson's Law of Contract 27<sup>th</sup> edn. at pp. 380,381

43 *Farnaus v Film Artists' Association* (1964) AC 925. the House of Lords held that the agreement constituted by the rules of the association was one which related or was directed to the purposes of the union. Hence, it could not be challenged on the ground that it was in unreasonable restraint of trade and

restraints on members and others as to the payment to members superannuation benefits, have been held also to be unenforceable.<sup>44</sup> But where such rules of a union imposed no restrictive obligations on the members and a rule which provided for the payment on strike and those who took part in an authorised strike was held to be enforceable at common law as it was no more than an insurance of the members against the consequences of a strike.<sup>45</sup> An agreement among traders to regulate the wages and hours of employment of their workers for one year in accordance with the decision of the majority has been held to be against public policy and unenforceable at common law.<sup>46</sup> A rule of a trade protection society that no member should employ an employee who had left the service of another member without the consent in writing of his previous employer till after the expiration of two years was held invalid at common law.<sup>47</sup>

## **Indian Experience**

In India, before enacting M.R.T.P. Act, 1969, the only legislation worth mentioning to curb the evil effects of monopolies and restrictive trade practices was the Indian Contract Act, 1872. Section 23 of the Act provides, *inter alia*, that the consideration or object of an agreement is unlawful if the court regards it to be opposed to public policy and is void and section 27 provides subject to the specific exception provided therein, every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

the appellant's exclusion was upheld. See also *Edwards v Society of Graphic and Allied Traders* (1971) Ch. 365; *Associated News Paper Group Ltd. V Wade* (1979) I WLR 697, 710.

44 *Miller v Amalgamated Engineering Union* (1938) Ch. 669.

45 *Gozney v Bristol trade and provident Society* (1909) 1 K.B. 901

46 *Hilton v Eckersley* (1856) 6 E & B. 47.

47 Mineral Water Bottle Exchange and Trade protection Society v Booth (1887) 36 Ch. D. 465; Davies Vs Thomas (1920) 2 Ch. 189 at p.195; Trade protection agreement is an agreement by which a number of firms and companies in a particular trade or industry, sometimes the whole of those firms and companies, agree to act together for the protection of their mutual trading interests. These trade protection agreements are in practice very complicated documents. The members of the association by virtue of an agreement are bound by the agreement to observe those terms and conditions and in consequence other people are unable to deal with members except on those terms and conditions. Again some of these agreements establish what is known as a pool and quota system under which each trader is given a quota based on his turnover for the previous year or a previous period of years. If in the ensuing period his output exceeds his quota he must put his profits or a proportion of them into a pool for the compensation of other members who have been less fortunate. On the other hand if his output is less than his quota he is entitled to draw compensation from the pool. There is another type of agreement called redundancy scheme. It should be noticed that these schemes though arise out of the agreement between the members themselves; they do affect members of the public in their operation. RA East wood: Trade protection and Monopoly: Current Legal Problems 1950 at p.100

Relying on those provisions the courts in India have almost consistently held that agreements having their object for the creation of monopolies are void as opposed to public policy.<sup>48</sup> But, such a general provision would not be adequate in any sense to protect the society at large from the devastating effects of such ‘pernicious monopolies’ practiced by the trade and business in general. Very rarely such cases get the attention of the judicial tribunals and even in such cases where they come before them, the public interests are not represented as such. Hence, the courts in India have begun to take a flexible view of this concept.<sup>49</sup>

As regards restrictive trade practices adopted by trade combinations, the attitude of the courts is still more uncertain and unhappy from the point of public interest.<sup>50</sup> Such trade agreements in the view of the courts so far seemed to be that they need not be against public interest. It was difficult in those days to predict with any certainty what attitude the courts would take in respect of each of such trade agreements, possibly because there was no specific legislative or judicial definition of what ‘public policy’ or ‘public interest’ meant.<sup>51</sup> In India, with only a fragmentary code of Contract law the principles of English law in these areas are followed.<sup>52</sup> Nonetheless, although the sanctity of contract has very much been eroded since then, and does not occupy such an exalted position as it was, it is still a factor which considerable weight would always be given by the common law of contract while talking problems of monopolies and restrictive trade agreements.

In India whatever restrictions are sought to be imposed on the citizen’s right to do business or profession they will have to stand the test of reasonableness and of the interest of general public. After all, the

48 See *Somu Pillai v. Municipal Council, Mayavaram*, (1905) 28 Mad .520; *Mahadhiraja v Yasin Khan* (1937) 17 Pat.255; *Dt Board Jhelum v Hari Chand*, AIR (1934) Lah 474;

49 *Niranjan Shankar Golikari v Country Spg. & Mfg.Co.*, AIR (1967) S.C. 1098;

50 *Bholanath Shankar Das v Lachmi Narain*, (1930) 53 All.316 it was held that a combination among traders in a particular place which brought profits for them and indirectly damaged their trade rivals was not bad in law. So also it had been held that an agreement in the nature of a trade combination for mutual benefit and for the purpose of avoiding competition is not necessarily unlawful even if it may damage others. *Daulat Ram v Dharma Chand* AIR (1934) Lah.110 Likewise when the scheme of the agreement was to limit competition and keep up prices that does not necessarily bring them within the terms of either section 27 or make them against public policy under section 23 of the Contract Act. *Fraser & Co. v the Bombay Ice Mfg. Co. Ltd.*, (1904) 29 Bom.107; Followed in *Kuber Nath V Mahil Ram* (1912) 34 All.587

51 *Khemchand Manekchand v. Dayaldas Bassarmal*, AIR (1942) Sind 114; *Pallipati Ramalingaih v Nagulagunta Subbarami* AIR (1951) Mad.390

52 *Irrawady Flotilla Co. v Bugwandas*, (1891)18 I.A. 121(P.C)

public interest is also the interest of every subject of the realm, and while, in these exceptional cases, the private citizen may seem to be denied what is to his immediate advantage. He, like the rest would suffer, if the needs for protecting the interest of the country as a whole are not ranked as a prior obligation.<sup>53</sup>

Cartels are common and they fall into two main categories; those concerned with the regulation of terms of employment, and those concerned with the regulation of trading terms and conditions. In both the cases the law relating to such combinations is closely associated with that relating to conspiracy. Combinations of the former type were to a greater or lesser extent made the individual free to contract as to the terms of his employment and establishing his right to associate for the purpose. Not only that, the concept of 'collective bargaining' has become the order of the day in labour management relationship and significantly the restrictive practices in this field have reached immense proportions.<sup>54</sup>

The Allahabad High Court laid down the following propositions:<sup>55</sup>

- (1) Every person has a right to a free course of trade and to conduct his business upon his own lines even though it results in an interference with the business of another person to his detriment.
- (2) If a person or a combination of persons unlawfully procures a breach of contract, the matter is actionable, provided that damage accrues there from.
- (3) Malice in the sense of spite or ill feeling is not the gist of the action. An action that is legal in itself does not become illegal because it prompted by an indirect or sinister motive.
- (4) Even though the dominating motive in a certain course of action may be the furtherance of one's business or of one's interest, one is not entitled to interfere with another man's method of earning his living by illegal means. Illegal means may either be means that are illegal in themselves or that may become illegal because

53 *Cooverjee v Excise Commissioner* AIR (1954) S.C.220: *K.K. Narula v State of Jammu & Kashmir*, AIR (1967) 3 S.C. 1368

54 Report of the Indian Monopolies Inquiry Commission.1965, p.2.However, the MRTP Act 1969 has not attempted to deal with the restrictive trade practices of organised labour as agreements and combinations of the above types do not appear to be common in India. Pollock & Mulla. "The Indian Contract & Specific Relief Acts" 9td Ed. (1972) p.289.

55 *Bholanath Shankar Das v Lachmi Narain* AIR (1930) All.83 at p.89.

of conspiracy where they would not have been illegal if done by a single individual.

- (5) An unlawful interference with the business of another person with intent to hurt that person is actionable, provided that damage results from the interference. A lawful interference by unlawful methods with the same object and producing similar results is equally actionable. However, a significant part of the judgment emphasizes that even acts which are lawful if done by individuals, might become unlawful if done by a combination.

The makers of the Indian Constitution being aware of the potential dangers of Concentration of Economic power, laid down certain principles in Article 39 (b) and (c) of the Constitution, to impress upon the governments of the Country about the need of fighting this danger. It says: "The State shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

It can be said that what is directed to be guarded against is, not concentration of economic power *per se*, but concentration to the common detriment; this in substance is the philosophy of the MRTP Act. The ways and means of the trade and industry are many and are liable to vary from time to time. The Act seeks to prevent all concentration of economic power injurious to public interest by giving very wide powers to the Central Government to control all future substantial expansions or amalgamations of already established undertakings of the above categories, the establishment of any new undertakings by them, and also the power to compel the division of any such undertakings wherever found necessary. As a general observation it might be said that there is nothing new about monopolies and restrictive trade practices.<sup>56</sup>

Due to new liberalized policy it was felt that MRTP Act 1969 has

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56 They are as old as trade itself. And as a matter of fact even legislation against them prevailed from time immemorial. Dated back from some centuries before Christ, recording regulations to prohibit merchants and producers from making collective agreements to influence the natural market prices of goods by withholding them from trade were prevalent in India and the experience of the past shown that the key to the problem lies in the wise regulation of monopolistic and restrictive trade practices rather than in their absolute prevention.

become obsolete in some respects in the light of International economic developments, more particularly relating to competition laws. Shifting of focus from curbing monopolies to promoting competition has become necessity in the globalised and liberalized Indian economy which is witnessing cut throat competition. In the pursuit of globalization India has opened up its economy by removing controls and resorting to liberalisation. Hence, Indian market has to face competition from within and outside the Country. To provide institutional support to healthy and fair competition and to take care of the needs of the trading, industry and business associations there is requirement of better regulatory and adjudicatory mechanism.<sup>57</sup>

In that direction comprehensive and effective legislation has come up in recent years in almost every country for regulating these practices so far as they become a depictable menace to society at large and India has also fallen in line with them. Recently, it also enacted Competition Act, 2002, to fulfill the country's obligations under the World Trade Organisation Agreements. It is the country's first comprehensive law dealing with unfair competition or anti-trust issues. The Act's clearly-stated objective is not only to prevent practices which have an adverse effect on competition, but also 'to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade'. The Govt. of India amended the Act in 2007 and also in 2009 to bring full operation of the Act to achieve the objectives of the Act. Draft competition policy 2011 is also circulated through website to elicit the views of the public. It is intended to promote competition in the liberalized economy.

Under sec. 2(c) of the Indian Competition Act 2002 the term cartel is defined as including "an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services." So cartel is regarded as the most pernicious violation of competition law and is subject to the severest penalties.

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57 The necessity of enacting Competition law was aptly stressed by the then Finance Minister Chidambaram who said "A world class legal system is absolutely essential to support an economy that aims to be world class. India needs to take a hard look at its commercial laws and the system of dispensing justice in commercial matters."

In general cartels are agreements which are formed in secrecy between firms in direct competition with one another in the relevant market which result in profits due to an unreasonable increase of prices by the cartel at the cost of exploitation of the customers. These create an unfavourable effect on the market and are against the ethos of free and fair competition. Under sec. 3 of the Act cartels are treated as anti-competitive agreements. Sec. 3 (1) says “no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.” Any agreement contravening that provision shall be void.

A wide range of agreements will be presumed to have an appreciable adverse affect on competition. Under sec. 3 (3) of the Act these are defined as “any agreement entered into between enterprises or association of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) share the market or source of production or provision of services by way of allocation of geographical area of market or type of goods or services or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding.”

Three essential factors have been identified to establish the existence of a cartel, namely agreement by way of concerted action suggesting conspiracy; the fixing prices and the intent to gain a monopoly or restrict or eliminate competition.<sup>58</sup> Parities of prices coupled with a meeting of minds has to be established to prove cartel. The test for concerted practice is that the parties have co-operated to avoid the risks of competition and this has culminated in a situation which does not correspond with the normal conditions of the market. Such collusion is illegal by law and however, there is very thin line of distinction between legitimate co-operation and illegitimate collusion. The existence of

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58 ITC Ltd. v MRTC Commission (1996) 46 Comp Cas 619

cartels depends on the peculiarities of the dynamics of each market.

Some of the notable features of the market that favour collusive behavior are: inelastic demand of the goods, small numbers of players in the market; higher barriers to entry; stable demand. The most crucial ingredient of cartelization behavior is collusive manipulation of prices by the competitors. Sometimes manufacturers raise their prices to match the leading players. Such a practice cannot be termed as cartelization. If a given competitor is placed in a price leadership position, the, if the price leader alters the price of its goods or services for reasons such as an increase in the cost of production or changes in the demand and supply position most of the other competitors may follow suit. This cannot be said to be illegal because the behavior of market participants is not based on any prior discussion or understanding. In India more evidence is required to support a cartel prosecution. Determination of the existence of a cartel by direct evidence is a Herculean task for the competition authorities.

In India cartels have been alleged in various sectors namely cement, steel, tyres, trucking, family planning device (copper T) etc. India is also believed to be victim of oversees cartel in soda ash, bulk vitamins, petrol etc. All these tend to raise the price or reduce the choice of consumers. The business houses are affected most by cartels as the cost of procuring inputs is enhanced or choice is restricted making them uncompetitive, unviable or be satisfied with less profits. It is in this backdrop that cartels are considered as most serious competition infringements and supreme evil of anti-trust and the most egregious violations of competition law.

It is increasingly recognized more than ever before that competition in markets promotes efficiency, encourages innovation, improves quality, boosts choice, reduces costs, leads to lower prices of goods and services. It also ensures availability of goods and services in abundance of acceptable quality at affordable price. It is also a driving force for building up the competitiveness of the domestic industry; businesses that do not face competition at home are less likely to be globally competitive. Competition ensures freedom of trade and prevents abuse of economic power and there by promotes economic democracy. Thus competition in markets is benign for consumers, business houses and economy as a whole. So many countries either enacted competition

laws of their own or modernized the existing competition law and revamped the competition authorities. There are sectoral regulators created by law and their powers may be in conflict with competition commission and these bound to hurt consumers. Therefore a formal mechanism for coordination between the Competition Commission and the sectoral regulators is of key importance and should be made mandatory through suitable provision in the Competition Act and sectoral laws.

In India the Competition commission is more of regulatory in nature than adjudicatory, but the adjudicatory functions have to be manned by persons trained in law. The Supreme Court suggested that there may be two bodies; one with expertise i.e., advisory and regulatory and the other adjudicatory. There may be an Appellate body and the Supreme Court's jurisdiction always remain high; but the jurisdiction of High Courts under Article 226 to review the Appellate body's decision still a question to be decided. However, Competition Appellate Authority has been created for making appeals over the decisions of Competition Commission but still writ jurisdiction lies with High Courts and Supreme Court.

## **Conclusion**

Competition Law is also known as restraint of trade doctrine, anti-trust law, anti-competitive law, Law of Monopolies, and Trade combinations law and restrictive trade practices law etc., Cartel agreements are also within the scope of Competition Law. The original intention of anti-trust laws is economic efficiency, pursuit of consumer welfare, through protection of competition rather than competitors. Public interest was considered paramount importance in matters of anti-competitive contracts and present competition policy promotes consumer welfare concept. Trade combination agreements are in most cases freely negotiated and they are entered into for the purpose of avoiding undue competitions and carrying on trade without excessive fluctuations or uncertainty. The position adopted by the common law has been to regard some cartels at least as being not injurious to the public and in some cases even as positively beneficial. In Cartel agreements the parties can be regarded as the best judges of what is reasonable between them. Generally, the court will always protect the public from the creation of monopoly by a combination of buyers or sellers.

The scope of a Competition Law extends to labour and services associations' agreements also. Employers may attempt to regulate labour by imposing mutual restrictions upon re-employment of former employees. It is contrary to the public interest as public policy cannot allow third parties to restrict by contract a person's freedom to work to whom he wish. The rules, bylaws and regulations of associations and of professional bodies are considered as agreements between employers and affect the freedom of employee's employment and the courts have jurisdiction to declare a rule invalid if it is arbitrary and capricious. The rules of trade protection societies are in practice very complicated documents; the members of the associations by virtue of an agreement are bound by the agreement to observe those terms and conditions and in consequence other people are unable to deal with members except on those terms and conditions; they do affect members of the public in their operation.

The attitude of the courts in India is still more uncertain and unhappy from the point of public interest as a combination among traders in a particular place which brought profits for them and indirectly damaged their trade rivals was not bad in law. Whatever restrictions are sought to be imposed on the citizen's right to do business or profession will have to stand the test of reasonableness and of the interest of general public. Detriment to the public interest' is the common denominator. The concept of 'collective bargaining' has also become the order of the day in labour management relationship and significantly has reached immense proportions. Hard core cartel behaviour between competitors is the most serious form of anti-competitive behaviour.

India enacted Competition Act, 2002 and it is the country's first comprehensive law dealing with unfair competition or anti-trust issues and it should deal with anti-competitive practices particularly cartelization, price-fixing and other abuses of market power and should regulate mergers. The objective of the Competition Act is not only to prevent practices which have an adverse effect on competition, but also 'to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade'. Competition Act is truly reflective of the changing economic conditions. Competition commission should act as a watch-dog for the introduction and maintenance of competition policy. It should promote the introduction of the required changes in the policy environment and should perform a pro-active

advocacy function for competition.

Agreements that contribute to the improvement of production and distribution and promote technical and economic progress while allowing consumers a fair share of the benefits should be dealt with leniently. The relevant market should be clearly identified in the context of horizontal agreements. Blatant price, quantity bid and territory sharing agreements and cartels should be presumed to be illegal. Predatory pricing will be treated as an abuse only if it is indulged in by a dominant undertaking. Exclusionary practices which create a barrier to new entrants or force existing competitors out of the market will attract the competition law

The State monopolies, government procurement and foreign companies should be subject to the Competition Law. The Law should cover all consumers who purchase goods or services regardless of the purpose for which the purchase is made. Bodies administering the various professions should use their autonomy and privileges for regulating the standard and quality of the profession and not to limit competition.

The competition law should be designed and implemented in terms of competition policy of the State which is dynamic. This Act is a step in right direction to harmonise the Competition policy with International trade and policy and hope that Cartels which hamper economic growth will be controlled with the introduction of this new legislation.