Page 978 - 990 **DOI:** *https://doij.org/10.10000/IJLSI.111948*

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 3

2024

Economic Welfare Standard & Consumer Welfare Standard: A Study of India, EU and US Competition/Antitrust Law Regime

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ABSTRACT

The consumer welfare standard (CWS) is the traditional approach to competition analysis, which focuses on consumer welfare as the primary objective of competition law. The CWS seeks to protect consumers by promoting competitive markets, which are expected to provide better products, better prices, and better quality. Under the CWS, competition law is primarily concerned with preventing anticompetitive conduct such as price-fixing, abuse of dominance, and mergers that are likely to harm competition and consumers. On the other hand, the economic welfare standard (EWS) is a more modern approach to competition analysis, which seeks to balance the interests of consumers and producers. The EWS recognizes that competition can create both winners and losers, and that the goal of competition law should be to maximize overall economic welfare. Economic welfare includes not only consumer welfare but also producer welfare, which includes profits, innovation, and efficiency gains. Under the EWS, competition law is concerned with preventing anticompetitive conduct only to the extent that it harms economic welfare. However, there have been conflicting views across various jurisdictions with respect to adoption of either the total welfare standard or the consumer welfare standard into the competition policy and regulatory regime as these two goals are not mutually exclusive. Thus, this paper studies the evolution and examines the position of welfare standards in European Union (EU), USA and India. The research is descriptive and analytical making it doctrinal in nature. The primary sources include various statutes, regulations, reports and case laws of India, EU and US antitrust/competition law regime. The secondary sources of data are inclusive of articles, blogs, journals, magazines, etc.

***Keywords**: Anti-trust regime, Competition Act, 2002, Competition policy, Consumer welfare standard, Economic welfare standard, EU, USA, India.*

I. INTRODUCTION

Competition law plays a vital role in determining the conduct of businesses whether it is a

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 [ISSN 2581-9453]

businesscontract, merger or takeover, a coordinated action, incentive to innovate or a similar pricing behavior. It plays an important role in monitoring both national and international markets. The jurisdictions of US and UK understood the importance of regulating market activities at a very early stage and hence these places have matured with respect to anti-trust laws. India, on the otherhand came up with the Monopolistic and Restrictive Trade Practices Act in 1969 with an aim to curb monopolies and any restrictive trade practices which hampered competition in the market. The aim of the erstwhile Act was limited to protecting the indigenous industries and curb monopolies. The new Act i.e., the Competition Act of 2002 however, aims to promote economic efficiency by using competition as one of the measures which can help in creating a market whichis responsive to consumer choices.[3]

The High Committee Report on Competition Law which was headed by S.V.S Raghavan paved the objective of the Competition Act. It was pointed out by the committee that the objective behindthe new Act was to maximize efficiency along with welfare. However, the concepts of efficiencyand welfare were left unexplained. There has been a lot of debate over this in foreign jurisdictionsas well and USA was a forerunner in settling the issue by laying down that economic efficiency isthe aim of anti-trust laws and it is consumer welfare which is of utmost importance.

In India, when the issue arose as to what comprises efficiency, the Act covers three aspects of efficiency, i.e.- productive efficiency, allocative efficiency and dynamic efficiency. On the other hand, with respect to welfare, it has been stated that the concept comprises of consumer welfare aswell as producer welfare.[4]

As far as European Union is concerned, one of the motivating factors for a united European Union was the presence of a common market which would lead to several economic advantages. The need of a common competition law, or to rightly say rules was felt by the framers of the EC Treaty.These have been incorporated in Article 81 and 82 of the EC Treaty which form the backbone of the anti-trust laws in EU. European Competition policy lies at the centre of the entire concept of a

Single European Market. Undoubtedly, economics has a major role to play in the competition law enquiries. Most of the concepts we read in competition law such as ‘oligopoly’, ‘monopoly’, ‘market concentration’ or ‘barriers to entry’ are basically economic concepts. It is hence obvious,that the application of competition law cannot take place properly without

[3] S.M. DUGAR, GUIDE TO THE COMPETITION LAW 126 (6th ed. 2016).
[4] Deva Prasad, *Furthering the Need to Streamline the Objective of Competition Policy and Law in India: A CriticalAnalysis*, (2014) 3 DWRTC 71.

giving due regards to economics.

In economics, consumer welfare means the 'surplus' or the 'extra benefit' that consumers would get on buying a good. It is the difference between what the clients themselves would be willing togive out of their pockets for a good and what they essentially had to pay. For an economist as stated above, there is another parameter for determining welfare which is total welfare. Total welfare is inclusive of both consumer welfare and producer surplus. According to many economists, total welfare should be regarded as the guiding light for any anti-trust law. However, that would eventually entail that in situation where producer surplus is increasing on the cost of consumer welfare, the total welfare would still increase. This line of thought if incorporated in competition laws would necessarily lead to the conclusion that supporting 'consumers' is wrong.

(A) Research Objectives

1. To have an overview about the different welfare standards, primarily- total welfare and theconsumer welfare standard.
2. To study and understand the position of welfare standard in European Union currently.
3. To examine and learn about the evolution of the consumer welfare standard in US.
4. To analyze and study the consumer welfare as well economic welfare standard under theCompetition Act, 2002 in India.

(B) Research Questions

1. Whether there is difference between economic welfare principle and consumer welfarestandard? If not, are they the same or similar?
2. Whether EU continues to follow the consumer welfare standard or have shifted towardsthe economic principle?
3. Whether US antitrust laws follow consumer welfare standard over the economic efficiency?
4. Whether both the consumer welfare standards and economic standards are embedded inthe Competition Act, 2002 in India or only the consumer welfare standard is prevalent?

(C) Research Methodology

The research is descriptive and analytical making it doctrinal in nature. The primary sources include various statutes, regulations, reports and case laws of India, EU and US

antitrust/competition law regime. The secondary sources of data is inclusive of articles, blogs, journals, magazines, etc.

II. WELFARE STANDARD FOR EC COMPETITION LAW

It is a well-accepted principle that competition is desirable. Competition in the market leads to innovation, low cost and cost efficiency. Also, markets that are competitive in nature lead to a higher level of consumer welfare in both the short term and the long term in comparison to marketsthat are not competitive. Regulators of market hence need to ensure that effective competition is maintained. In order to understand what outcomes can be derived from the existence of effective competition, an examination of various economic models can be done. Economic models of competition can be divided into three broad categories namely, 'perfect competition', 'monopoly' and 'oligopoly'. While the models of monopoly and perfect competition serve as helpful beginningpoints for examining the efficacy of competition, it is imperative to recognize that these models don't frequently occur in reality.

The protection and promotion of efficient competition is the economic objective of EC competition legislation. The only reason this is the goal is because it helps European customers[5]. So, the outcomes that competition in a particular market produces for consumers matter more than the specific shape that the competitive process takes. So, the results that a market generates determinewhether or not it is characterized by effective competition.

Now when we refer to welfare standards it is necessary to understand what are we trying to maximize. Social welfare has been of prime importance for economists. Economists have traditionally focused on social welfare. They do not prioritize between consumers and producers and so treat a one-pound gain to either of the groups as being of equal importance. However, EC Competition law does not follow the same ideology. It does not treat consumer welfare and producer welfare on an equal pedestal. In-fact, consumer welfare is valued much above producer welfare, although this is not incorporated anywhere in the statute. For example, Article 81(3) specifically necessitates that consumers receive a "fair share" of any efficiency benefits. This implies that a mere producer surplus as a result of efficiency increase is not enough.

This indicates that the EC is mostly unconcerned with the social welfare cost of monopolies sinceit is more concerned with consumer welfare than producer welfare. There is an inherent danger with the consumer welfare standard if it is not understood properly. Regulators would

[5] SIMON BISHOP & MIKE WALKER, THE ECONOMICS OF EC COMPETITION LAW 23 (2002).

achieve much less than ideal results if they treated the pursuit of consumer welfare in a totally static framework. Problems can especially occur when the quest of improving consumer welfare resultsin a mind-set or conviction that any profits made by producers must come at the expense of improving customer welfare. A regulatory focus on short term consumer welfare can be damaging to firms who invest and innovate for the ultimate benefits of consumers. Firms invest and innovatebecause they expect to be able to earn profits from doing so. They undertake risky investments andare therefore under a legitimate expectation to recover the returns in order to compensate the firmfor the risks undertaken. If regulators treat firm profitability with too much suspicion, they may betempted to remove the rewards to risky investment by forcing firms that have successfully taken risks to lower prices. If regulators do this repeatedly, firms will be deterred from investing or innovating. In short, consumer welfare needs to be maximized within a dynamic framework[6].

A related issue to the relative importance of consumer and producer welfare is the relative importance to allocative or productive efficiency. Allocative efficiency has a direct forbearing onconsumers and benefits them more than producers, but productive efficiency does not have a direct benefit for consumers. The economic objective of European Union competition legislation appears to be to promote allocative efficiency while minimizing the impact on productive efficiency, whichwould lead to an increase in overall consumer welfare.

In light of the foregoing, it can be said that the welfare standard of EC competition law is consumerwelfare rather than societal welfare. Yet, this distinction is typically not significant because maximizing both consumer welfare and social welfare call for the same results. Nonetheless, there are instances when it does matter, such as in mergers, and in these circumstances, the welfare of the consumers is the primary concern.

III. WELFARE STANDARD IN USA

The conceptualization of the US competition law began with enactment of three statutes- The Sherman Act of 1890, The Clayton Act of 1914 and the Federal Trade Commission Act 0f 1914. The 1890 and 1914 legislations were passed to prohibit antitrust policies like *'monopolization, cartels, restraint of trade, unfair competitive tactics, and mergers that might substantively diminishcompetition'*[7] and anti-competitive practices like *'price discrimination,*

[6] Michael Reynolds, *EC Competition Law- The First Experiences of Modernization*, 275, 279 COMPETITION LAWTODAY (2008)

[7] Richard J. Pierce Jr., Comparing the Competition Law Regimes of the United States and India, 29 NAT'L L. SCH. INDIA REV. 48 (2017)

exclusive dealing contracts, tying agreements, or requirement contracts."[8] The FTC Act led to the newly-established Federal Trade Commission (FTC) which gave *'power to a board of government experts to examine business conduct and prevent or reduce anticompetitive practices'*[9] and shares the enforcement ofanti-trust policies with the Department of Justice (DOJ), which can prosecute and impose penaltieson violations of antitrust laws.

With the enactment of the three-core federal antitrust laws, reflected the concerns of small businesses and the fear of the market concentration within the industry during the early 1900's. The framers of the legislation were concerned with more than 'economic efficiency and economic competition'.[10] In the case of *United States v. Trans-Missouri Freight Association*[11], the Supreme Court considered that if regulation would prevent anticompetitive consequences on smallerenterprises, the scale of a company could be a sufficient justification for regulation. Thus, they were concerned with preventing the 'bigness' and preserving and protecting *"small dealers and worthy men"*. Another ruling was issued in the case of *United States v. Aluminium Co. of America*[12], wherein the court laid down that *"great industrial consolidations are inherently undesirable, regardless of the economic results, and that antitrust law exists to put an end to greataggregations of capital and bigness was to be prevented owning to the helplessness of the individual before them."* These rulings were in line with the fifty-year-old antitrust approach that the courts had adopted. Yet they contradicted or were in conflict with an area of law meant to safeguard economic outcomes. The purchasing power of the individual consumers were reduced and the courts explicitly chose corporate welfare over the consumer welfare. Similarly, in the caseof *Brown Shoe Co. v. United States,*[13] the court emphasized that the federal antitrust legislations protect *"small, locally owned businesses"* and further solidified that the antitrust enactments protected the competitors over the competition as well as the consumers.

From 1940 to 1972, the courts adopted a subjective and ad hoc approach while clarifying that practices were believed to be per se unlawful regardless of their actual effects. Per se rules or the form-based approach were adopted to lessen the government's burden of proof in relation to a variety of actions, including boycotts of manufacturers that supplied discounters and

[8] Id., at 5.
[9]Bryce Tobin, Repealing the Consumer Welfare Standard: FTC as Central Economic Planner? 6 BUS. ENTREPRENEURSHIP & TAX L. REV. 218 (2022)
[10] Dennis W. Carlton, 'Does Antitrust need to be Modernized', 21(3) JEP 155 (2007)
[11]United States v. Trans-Missouri Freight Association, 166 U.S. 290 (1897)
[12]United States v. Aluminium Co. of America, 148 F.2d 416, 428-29 (2d Cir. 1945)
[13]Brown Shoe Co. v. United States, 370 U.S. 294, 344 (1962)

horizontal agreements distributing markets or clients.[14] Horizontal price-fixing agreements (which were classified as crimes) and vertical restraints to specific geographical areas were also mentioned. Early in the 1970s, there was intense criticism of the antitrust law's excessive activism strategy due to the idea that U.S. firms were underperforming in international markets and surrendering market share domestically.[15] However, the latter half of 20th century witnessed a shift when the Chicago School's theories rose to forefront of antitrust law. These ideologies opposed regulation based on industry structure and promoted policies that improved consumer welfare.[16] The group of scholars from Chicago school- Richard Posner and Robert Bork challenged the legality of many'Per se rule'. They sought and ultimately realized – *'an economic foundation that would serve as a principled basis for antitrust decision-making'*.[17]

1. Richard Posner notion of 'Consumer Welfare standard'

Richard Posner is an American jurist and legal scholar who has been a prominent proponent of "Chicago school" of Law and economics. He described consumer welfare standard as "lodestar that shall guide the contemporary application of the antitrust laws" in 1986.[18] His analysis of the consumer welfare standard emphasizes its flexibility, adaptability, and grounding in economic analysis. Posner argues that consumer welfare standard is an appropriate and effective frameworkfor antitrust regulation because it is based on sound economic principles. He believes that the purpose of antitrust law is to promote competition and to protect consumers from the harmful effects of market power.[19]

According to Posner, the consumer welfare standard is a good way to achieve these goals because it focuses on the impact on consumers, who are the ultimate beneficiaries of competition. Posner also argues that the consumer welfare standard is a flexible and adaptable framework that can be applied to a wide range of business practices and industries.[20] He believes that the standard can beused to assess the impact of mergers, price-fixing agreements,

[14] Roger D. Blair & D. Daniel Sokol, Welfare Standards in U.S. and E.U. Antitrust Enforcement, 81 FORDHAM L. REV. 2497 (2013).
[15]Id., at 5.
[16] William E. Kovacic, The Chicago Obsession in the Interpretation of US Antitrust History, 87 THE UNIVERSITY OF CHICAGO LAW REVIEW 2, (MARCH 2020), PP. 459-494
[17]Fred Ashton, Why the consumer welfare standard is the backbone of Anti-trust policy, INSIGHT, (Oct. 22, 2022)) https://www.americanactionforum.org (Last Visited March 31, 2023)
[18] Barack Y. Orbach, 'The Antitrust Consumer Welfare Paradox' 7(1) JCLE 133, 138 (2011)
[19]Jérôme Mathis & Wilfried Sand-Zantman, Welfare Standards in Competition Policy, INSTITUTE D' ECONOMIE INDUSTRIELLE, 17-21, (2015) (LAST VISITED APRIL 1, 2023)
[20]Neven D. & L.H. Röller, Consumer Surplus vs. Welfare Standard in a Political Economy Model of Merger Control,
INT'L JOURNAL OF INDUSTRIAL ORG., 23: 829-848 (2005)

exclusive dealing arrangements, and other types of business practices. This flexibility allows antitrust regulators to respond to newand evolving markets and to address emerging issues in competition policy.

One of the key advantages of the consumer welfare standard, according to Posner, is that it is basedon empirical evidence and economic analysis. He believes that antitrust regulation should be grounded in sound economic principles and should be supported by data and evidence.[21] By focusing on consumer welfare, the standard provides a clear and measurable goal that can be evaluated using economic analysis. Posner also argues that the consumer welfare standard is consistent with the principles of free-market economics. He believes that antitrust regulation should not be used to protect inefficient or uncompetitive firms, but should instead promote competition and consumer welfare.

a) **Robert Bork's notion of the 'Consumer Welfare' prescription**

Robert Bork was an American legal scholar who made significant contributions to the field of antitrust law. One of his most important contributions was his analysis of the consumer welfare standard, which has become the dominant framework for evaluating antitrust cases in the United States. In 1978, the Judge Robert Bork wrote "The Antitrust Paradox: A Policy at War with Itself"-that criticized the state of US antitrust law in the 1970s.[22] He developed and fostered the idea of consumer welfare to be the goal of antitrust law and litigation. He argued that the antitrust laws ineffect at the time overly shielded firms from the process of competitive natural selection. Antitrust enforcement paradoxically increased prices by defending ineffective competitors rather than competition itself.[23]

He analysed the legislative history of the Sherman Act and presented an interpretation, concludingthat Congress' primary intention was to safeguard consumers from the harm caused by cartels without weakening effectiveness. He contended that Congress prioritised consumer welfareexclusively and concluded that- *"The Sherman Act was clearly presented and debated as a consumer welfare prescription."* In 1979, the U.S. Supreme Court in the case of *Reiter v. Sonotone Corporation*[24] adopted and cited the view of antitrust laws to be a *'consumer welfare prescription'.* Thus, protected consumers over the competitors (small businesses). He explained that *"competition leads to firms to engage in conduct that benefits*

[21]Supra note 18.
[22] Supra note 15 at 2511- 2519.
[23] Christine S. Wilson, Welfare Standards Underlying Antitrust Enforcement: What You Measure is What You Get, GEORGE MASON LAW REVIEW 22ND ANNUAL ANTITRUST SYMPOSIUM: ANTITRUST AT THE CROSSROADS? (February15, 2019) https://www.democrats.senate.gov/imo/media/doc/2017/07/A-Better-Deal-on-Competition-and-Costs-
[24] Reiter v. Sonotone Corporation, 442 U.S. 330 (1979)

consumers – it drives price cuts, output expansions, research and development, and other innovative efforts."[25] This approach is sometimes called the "effects-based" approach, because it emphasizes the actual effects of businesspractices on the market, rather than their potential effects.

Bork's analysis of the consumer welfare standard has several important implications for antitrust law. First, it suggests that the government should be reluctant to intervene in markets unless thereis clear evidence of consumer harm. This means that the government should not try to protect competitors or promote economic efficiency if doing so would harm consumers. Second, Bork's analysis suggests that the government should focus on the competitive effects of mergers and acquisitions, rather than their size or market share. This means that the government should only block mergers and acquisitions that are likely to harm consumer welfare by reducing competition.Finally, Bork's analysis suggests that the government should be skeptical of claims that certain business practices are anticompetitive based on theoretical models or abstract economic theories. Instead, the government should look for concrete evidence of consumer harm before taking action.He has equated 'consumer welfare' to the 'total welfare' in the market irrespective of the short- term disadvantages faced by the consumers in form of loss of consumer wealth and has identifiedtotal welfare to protect consumers from harm even though the firms are losing their efficiencies inthe long-term.[26]

b) **Post 1970 regime**

'The Antitrust Paradox' has been cited by US courts repeatedly and adhered to since it was first published in the late 1970s, and has been regularly adopted and upheld its antitrust articulations by over a hundred courts in the US to this day.[27] During the 1980s, the economic research refutedthe earlier findings that were suspicious of concentration but now discovered rational causes of highly concentrated markets. For instance, economists came to the conclusion that some businesses were winning market battles and gaining significant shares not because of pernicious reasons but rather because they were more efficient than other businesses, and that other businesseswith sizable shares benefited from economies of scale.[28]

In a particularly important decision in Continental *T.V., Inc. v. GTE Sylvania Inc*[29], the Supreme Court relied on "economic reasoning to hold that territorial restraints on franchisees

[25] Id., at 22.
[26] Daniel A. Crane, The Tempting of Antitrust: Robert Bork and the Goals of Antitrust Policy, 79 ANTITRUST L. J. 3, (2014): 835-53.
[27] Id., at 24.
[28] Gregory J. Werden, Competition, Consumer Welfare, & the Sherman Act, 9 SEDONA CONF. J. 87 (2008)
[29] T.V., Inc. v. GTE Sylvania Inc, 433 U.S. 36 (1977)

should be evaluated under the rule of reason, recognizing that these restrictions can enable manufacturers tocompete more effectively against other manufacturers."[30] Here, the court that demonstrableeconomic effect should serve as the standard of basis to determine the rule of reason. This decisionin Sylvania marked a turning point in the US antitrust jurisprudence as aftermath effect of it, the courts increasingly inclined towards "modern economic theory to form its interpretation and application of the Sherman Act".[31]

Although the Supreme Court has acknowledged an economic approach, it has not specifically stated what welfare standard should be used. On the one hand, the Court quotes Bork, who held that the guiding principle should be economic efficiency and, consequently, total welfare. The majority of the Court's rulings, however, "arguably encourage [employment of a] consumer welfare [standard]," according to Blair and Sokol.[32]

Nowadays, there are primarily two interpretations to define "consumer welfare." One contends that the phrase should be understood to mean "consumer surplus," while the other claims that it should mean "total surplus" or "social surplus."[33] The meaning of the phrase is not made clear in the US texts explicitly. The Supreme Court has not provided any definitive direction; thus, it is upto the subordinate courts to decide whether to apply the total surplus or the consumer surplus standard. But it is commonly accepted that federal courts and enforcers in these matters use a consumer welfare standard.

IV. INDIAN PERSPECTIVE

The dynamics and objectives of competition policy differ as we move jurisdictions, however primarily there are two economic goals of competition law common to all i.e., 'economic efficiency' and 'consumer welfare'.[34] Though there is a little confusion and discrepancy whether only economic goals are to be considered or non-economic goals are also included. The S.V.S. Raghavan Committee suggested that the competition policy of India should not be affected by theconflict with other public policy initiatives rather it must serve basis for wider amplitude of economic development and growth. Therefore, it is a prerequisite for the competition policy to take into consideration the- *"industrial policy, reservation for the small- scale industrial sector, privatization and regulatory reforms, trade policy, state*

[30] A. Douglas Melamed & Nicolas Petit, The Misguided Assault on the Consumer Welfare Standard in the Age of Platform Markets, 54 REVIEW OF INDUSTRIAL ORGANIZATION, (2019)
[31]Supra note 27.
[32] Supra note 14.
[33]Marshall Steinbaum and Maurice E. Stucke, The Effective Competition Standard, 87 THE UNIVERSITY OF CHICAGO LAW REVIEW 02, (MARCH 2020), PP. 595-623
[34]Supra note 28.

monopoly policy, labour policy along with non-economic goals like environment policy, healthcare policy etc." The Hon'ble Supreme Court in the landmark judgment of *Competition Commission of India* v. *Steel Authority of India Ltd*[35] observed that: *"…main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preference. The advantages of perfect competition are three-fold: allocative efficiency, which ensures the effective allocation of resource, productive efficiency, which ensures that cost of production is kept at a minimum and dynamic efficiency, which promotes innovative practices…"* However, 'economic efficiency' cannot be the intrinsic goal ofcompetition policy, 'consumer welfare' also plays a pivotal or dominant role in the competition law. Thus, the penultimate goal of competition law *is "maximisation of aggregate welfare in a market irrespective of the distribution of surplus",* wherein the guiding principles stated by Raghavan committee is- (i) economic efficiency and (ii) total welfare. Welfare has to be construedas an objective of Competition policy to create harmonizing the conflicting situation between consumer and public interests in India.[36]

The Competition Act of 2002's language makes reference to non-economic purposes as well as economic ones, and both should be considered when interpreting the legislation and policy governing competition. The Act was passed in response to the economic growth that was occurringat the time, as is made clear in the lengthy title.[37] The preamble of the Act further states the purposeof the legislation which are: "(i) preventing practices having adverse effect on competition; (ii) promoting and sustaining competition; (iii) protecting the interest of consumer; and (iv) to ensurefreedom of trade carried on by other participant in the market."[38] It can be deduced from the abovestated purposes that competition, consumers, and competitors are key components of economic rationale for competition law. This is further established by Section 3 which explicitly prohibits entering or entertaining agreements having *"appreciable adverse effect on competition (AAEC)"*[39], a similar language is also adopted in Section 6 of the Act for the prohibition of combinations having AAEC in the Indian market.[40] Similarly, the Act allows being dominant in the market but prohibits the abuse of dominant position

[35] Competition Commission of India v. Steel Authority of India Ltd (2010) 10 SCC 744
[36]Dr. Rita P. Bansal, Role of Competition Commission of India in Protecting the Interests of the Consumers, 10 INT. J. ADV. RES. 06, (2022)
[37]Jenisha Parikh and Kashmira Majumdar, Competition Law and Consumer Law: Identifying the Contours in Light of the Case of Belaire Owners Association v. DLF, 5 NUJS L. REV. 249, (2012)
[38]Suhail Nathani and Pinar Akman, the interplay between consumer protection and competition law in India, 5 JOURNAL OF ANTITRUST ENFORCEMENT 2, (2017).
[39]Competition Act, 2002, § 3, No. 12, Acts of Parliament, 2003 (India)
[40] Competition Act, 2002, § 6, No. 12, Acts of Parliament, 2003 (India)

under Section 4.[41] It's interesting to note that all of these models were devised and created by economists rather than sociologists, and it would seem that determination would consequently depend on the results of the economic analysis.

Section 19& 20 highlights the dominant role of economic analysis which form the basis of various factors which are used and analyzed by the Competition Commission of India to determine AAECor the market power. These relevant factors enumerated under Section 19(3) and section 19(4) can be broadly categorized as *'static efficiency, allocative efficiency, productive efficiency dynamic efficiency, consumer welfare.'* Along with these economic factors, Section 19(4) sub-clause (k) devises a provision for taken into consideration social obligation and social costs while determining 'dominant position' in the relevant market.[42] This makes it evident that non-economicfactor is also considered by the legislation framers while enacting the competition law.[43] Moreover, consumer interests have been preserved and protected indirectly by the competition law in India. Consumer has been defined broadly under Section 2(f) of the Competition Act, 2002- "any personwho purchases the goods and services irrespective of whether it is purchased to be reused, resold or for personal consumption".[44] This reflects the intrinsic goal of protecting competition in the market and focusing on the overall interests of the society.[45]

V. CONCLUSION

The consumer welfare standard (CWS) is the traditional approach to competition analysis, whichfocuses on consumer welfare as the primary objective of competition law. The CWS seeks to protect consumers by promoting competitive markets, which are expected to provide better products, better prices, and better quality. Under the CWS, competition law is primarily concernedwith preventing anticompetitive conduct such as price-fixing, abuse of dominance, and mergers that are likely to harm competition and consumers. On the other hand, the economic welfare standard (EWS) is a more modern approach to competition analysis, which seeks to balance the interests of consumers and producers. The EWS recognizes that competition can create both winners and losers, and that the goal of competition law should be to maximize overall economicwelfare. Economic welfare includes not only consumer welfare but also producer welfare, which includes profits, innovation, and efficiency gains. Under the EWS, competition law is concerned with preventing anticompetitive conduct only

[41] Competition Act, 2002, § 4, No. 12, Acts of Parliament, 2003 (India)
[42]Competition Act, 2002, § 19(4), No. 12, Acts of Parliament, 2003 (India)
[43]Supra note 4.
[44]Competition Act, 2002, § 2(f), No. 12, Acts of Parliament, 2003 (India)
[45]Supra note 38.

to the extent that it harms economic welfare.

The dynamics of competition law are in resonance with new developments in the economy. Thereis a proposed shift from ensuring freedom to compete to promotion of socio-economic welfare inthe markets across jurisdictions. There have been conflicting views with respect to adoption of either the total welfare standard or the consumer welfare standard as these two goals are not mutually exclusive. Competition is an effective tool of economic policy to strike a balance betweenthe standards which fosters allocative efficiency. This goal might have to choose between efficiency and a detrimental impact on consumer welfare. This can be resolved in three ways: i) The competition policy has to cater efficiency while focusing on total welfare at the expense of consumer welfare- not at all desirous as it is ostensibly against public policy to forego consumer interest, ii) if trade-off is based on safeguarding short-term interests of consumers which in returnwould be detrimental to long-term interests of firms. This would apparently disinterest and disincentivize the firms from engaging in the market through innovation and technology, iii) middle ground between efficiency and consumer interests by prioritizing overall welfare of the economy over short-term interests of the consumers. Under this, share of an individual consumerin total welfare has to be protected.

The Competition Act, 2002, is based on the consumer welfare standard, the Competition Commission of India has recognized the importance of the economic welfare standard in its

enforcement activities. The CCI has taken a broader perspective and considered the impact of competition on overall economic welfare, rather than just consumer welfare, in some cases. However, the CWS remains the primary standard for competition analysis under the Competition Act, 2002, and the CCI's enforcement activities are primarily focused on protecting consumer welfare. Similarly, both US and EU primarily focus on the generally accepted standard of ‘consumer welfare’,

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 [ISSN 2581-9453]