CARTELIZATION IN ESSENTIAL SECTORS IN INDIA: ASSESSING THE DOWNSTREAM IMPACT ON CONSUMER WELFARE

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ABSTRACT

Cartelization remains a profound threat to the competitive structure of markets, particularly in important sectors with direct implications for the welfare of Indian consumers. Despite the breath-taking legal and institutional advances that India has started to undertake to regulate anti-competitive conduct, cartel stickiness lingers in susceptible sectors such as cement, fertilizers, pharma, and food supply chains reflecting systemic and enforcement problems. These sectors, due to their criticality, inelasticity of price, and rare supply chains, provide the most conducive arrangement for collusion, price-fixing, bid-rigging, and market division arrangements. The downstream effect of such practices is acute: it not just inflates the consumer price but also undermines access, constricts quality, suppresses innovation, and increases economic inequality, primarily prejudicing the poor. This working paper investigates the legal, economic, and institutional impacts of cartelization in India, using case studies and evidence, to assess how collusive practices in critical markets erode consumer welfare. It examines the regulatory responses by the Competition Commission of India (CCI) and other sectoral regulators, highlight the weaknesses in its detection mechanisms and the enforcement tools at its disposal. Drawing from international approaches and comparative case law, it proposes a renewed combination of competition policy and consumer protection, using digital approaches and enhanced transparency. Finally, it proposes a multi-pronged approach to enhance deterrence, to bolster market contestability, and to empower Indian consumers in India’s important sectors.

Keywords: Cartel Behavior, Market Dominance, Price Fixing, Essential Commodities, Bid Rigging.

1. Introduction

India's economy over the last two decades has evolved into a model of liberalized market, with remarkable growth in segments such as infrastructure, food processing, pharmaceuticals, and energy. While economic growth has had an upside, it has also shown the weaknesses in the system, especially as manifested through cartelization in important goods and services. Cartelization, which means colluding between market members to fix price for a given product, divide up markets, or restrict production, is most damaging to the competitive market. For important industries - industries that are important to the public, such as cement, fertilizers, medicines, and transport - whilst cartelization is a violation in terms of the law, it has a serious effect on product affordability, availability and subsequent consumer quality of life.[1]

Such key industries are also inelastic in demand and possess rare substitutes and hence are the most natural candidates for conspiracy. Competition Commission of India, the competition law enforcer, established by the Competition Act, 2002, has found in the overwhelming majority of cases which show this trend. From price co-ordination in the cement sector to bid-rigging in government tenders and manipulation in the fertilizer chain, cartel activity has continued, usually concealed behind complex supply arrangements and poor detection mechanisms. Based on empirical evidence by the OECD and the World Bank, this kind of anticompetitive behavior is capable of increasing prices in developing nations by up to 49%, causing disproportionately greater damage to the lowest income deciles of the population.[2]

These implications of cartel impacts are especially severe in India as poorer households pay a greater proportion of their households budget on food, health, shelter, and petroleum. Price increases in these categories that are cartel-induced provide economic stressors in addition to social inequality generators at a broader scale. For example, excessive urea and other fertilizer prices have affected small farmers, increased food prices, and decreased total supply through restrictive supply mechanisms. Drug cartels similarly restrict access to cheaper drugs in Tier-II and Tier-III countries at the expense of public health by using exclusive contracts for

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[1] Pradeep S. Mehta et al., *Cartels: The Major Challenge, in Competition and Regulation in India, 2007* 87 (CUTS Int'l 2007); see also John M. Connor, *Price Effects of International Cartels in Markets for Primary Products,* in Trade, Competition, and the Pricing of Commodities 61, 62–65 (Simon J. Evenett & Frédéric Jenny eds., CEPR 2012).

[2] Organisation for Economic Co-operation and Development (OECD), *Cartel Sanctions Against Individuals: Recent Trends and Policy Challenges, OECD* Competition Policy Roundtable Background Note 3–4 (2016), https://www.oecd.org/daf/competition/cartel-sanctions-against-individuals.htm.

wholesale supplier or distributor arrangements.[3] The patterns of harm are not a coincidence - they are a clever misuse of essential supply chains, and lead to negative outcomes for consumers.

Significant limitations to regulatory enforcement ability in India include limitations in resources, overlapping jurisdictions and ability to establish provable evidence. Though the CCI has levied extremely large fines, critics of the regulatory framework opined that the fines would be inadequate as a deterrent considering the profit-incentives in collusive practices. Besides, the secretive nature of cartels' agreements, usually orchestrated through informal gatherings or online messaging, makes it difficult to gather evidence. The overdependence of the CCI on leniency programs and dawn raids, though innovative, remains underexploited based on fear of reprisals and poor whistleblower protection.[4]

Comparative jurisdictions offer important insights. The broad leniency program of the European Union is supported by data analytics and interagency collaboration. The United States penalizes cartel members with criminal penalties and the potential for imprisonment under the Sherman Act.[5] Additionally, these models highlight the significance of proactive detection, complete whistleblower protection, and other severe sanctioning mechanisms where Indian competition law enforcement is still lagging.

The purpose of curtailing cartelization in important sectors is not only to restore the integrity of the marketplace; but to also safeguard rights of consumers and economic justice. This research paper tries to critically examine both the nature, structure, and effects of cartel conduct in important sectors in India with a focus on the downstream effects for consumers. Using a doctrinal-empirical approach, the study combines landmark cases, scholarship on policy and industry data to investigate the complex relationship between cartel conduct and consumer welfare.

[3] Competition Commission of India, *Builders Ass'n of India v. Cement Mfrs. Ass'n & Ors*., Case No. 29 of 2010, Order (June 20, 2012); CUTS Int'l, *A Step Ahead: Competition Policy & Regulation in India: 2007* 90–99 (2007).
[4] Susanna Fellman & Martin Shanahan, *Beyond the Market: Broader Perspectives in Cartel Research*, 68 Scand. Eco. Hist. Rev. 195, 198–201 (2020), https://doi.org/10.1080/03585522.2020.1820902.
[5] U.S. Dep't of Justice, *Antitrust Division Manual,* Ch. III: Criminal Enforcement 3–5 (5th ed. 2020), https://www.justice.gov/atr/antitrust-division-manual.

2. The Conceptual and Legal Framework of Cartelization

2.1 Theoretical Foundations of Cartel Behavior

Cartels are generally explained by microeconomic theory and industrial organization. From a neoclassical economics view, firms in oligopolistic industries rely on one another and share a common goal of coordinating their actions to maximize profits together. This coordination can lead to lower production levels, increased prices, and reduced consumer benefits. The economic model suggests that cartels form to increase profits by limiting competition through tactics such as fixing prices, restricting output, or dividing market shares.[6]

Yet, the wider cartel literature indicates that motivations can go beyond profit. Sometimes, cartels form as a defense against economic difficulties, to keep markets stable with government support to ensure predictability in vital industries.[7] Also, trust among cartel members, industry groups, and repeated business dealings help keep them working together over time. Cartelization in most instances serves as a means of preserving the status quo rather than solely extracting economic rents.[8]

2.2 Defining Cartelization under Indian Competition Law

India's Competition policy is governed by the Competition Act, 2002. Section 2(c) is a definition of an understanding between businesses within the same or related fields like manufacturers, suppliers, or sellers meant to curb competition or dominate the manner in which goods and services are produced, sold, or priced.[9] Section 3(1) prohibits agreements that damages competition, while Section 3(3) presumes agreements to be detrimental, so it shifts the burden of proof to the alleged person.[10]

In contrast to the Monopolies and Restrictive Trade Practices Act (MRTPA), 1969, which was unclear and weakly enforced, the 2002 Act empowers the Competition Commission of India

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[6] Margaret C. Levenstein & Valerie Y. Suslow, *What Determines Cartel Success*? 44 J. Econ. Lit. 43, 51–53 (2006).

[7] Susanna Fellman & Martin Shanahan, *Beyond the Market: Broader Perspectives in Cartel Research*, 68 Scand. Econ. Hist. Rev. 195, 199–203 (2020).

[8] The Competition Act, No. 12 of 2003, § 2(c), *India Code* (2003).

[9] Pradeep S. Mehta et al., *Competition and Regulation in India, 2007* 99–100 (CUTS Int'l 2007).

[10] CUTS Int'l, *A Step Ahead: Competition Policy & Regulation in India: 2007* 95–97 (2007).

(CCI) to investigate, punish, and deal with cartel activities. It allows the CCI to work with international regulators to deal with cartels affecting Indian markets.

2.3 CCI's Investigative Instruments and Enforcement Systems

The CCI has the ability to proceed with "suo motu" cases, or it may take proper action based, the information received from any consumers, competitors or any government agents. The Director Genera (DG) is the investigatory wing of the CCI's authority, which is responsible for compiling evidence, interviewing witnesses and providing recommendations. The principal challenge to the enforcement of cartels is that they are notoriously secretive in nature. The cartel agreements are almost never in writing and take place in spoken networks, thus making them much harder for regulators to detect.

To help offset this problem, the Act has a leniency regime in Section 46 that allows the first cartel member to come forward (and who provides information worthy of a valuable disclosure) to receive a lower penalty. This incentivizes whistleblowing and helps to create turmoil from within the cartel. The category of leniency allowed in India was also based at least in part on some best practices from the dissimilar experiences in both the EU and US and further was provided for, as suggested by the Parliamentary Standing Committee's recommendations of full amnesty to the first disclosing member and then lesser penalties to subsequent co-operators. At this point in time while the provisions have been put in place and can be used by the CCI, what we can fully expect is the very minimal successful practical application of this provision - due to potentially retaliation, and a lack of a reasonable expectation of confidentiality, for posters who are already aware of it.

Yet another instrument suggested—but not properly integrated—is the authority to conduct dawn raids, i.e., surprise searches of business premises for documentary and digital evidence. While effective in jurisdictions such as the EU, Indian law lacks express statutory authority to carry out such raids. There has been ongoing advocacy for incorporating such powers, with experts contending that the lack of search-and-seizure powers impedes successful prosecution.

2.4 Comparative Analysis: India, EU, and US

The enforcement methodology for cartels applied in India has similarities to world's best practice but is short form of the complete suite of investigative powers. In contrast, the United

States treats hard-core cartels as a criminal activity under the Sherman Antitrust Act. The fines imposed by the US Department of Justice (DOJ), alongside potential jail time, are serious, and the US leniency program is considered the most effective leniency program worldwide. The European Commission (EC) has significantly increased administrative fines too, and has good leniency mechanism, supplemented by its ability to conduct dawn raids, and access cross-border cooperation through the European Competition Network.

The CCI's fine assessment ability is limited to 10% of turnover or three times profit for each year of the cartel's continuance, which is regarded as much more soft deterrent. Further, absence of criminal liability and restrictions on conducting dawn raids restrict its bite. Nevertheless, India has made strides in attacking cartels in sectors such as cement, fertilizers, and automobiles with a number of high-penalty decisions over the last ten years.

However, institutional strengthening is needed urgently. The following have been suggested as measures for empowering the CCI: compulsory training in forensic economics, increased digital monitoring capability, coordination with taxation and audit authorities, and international cooperation. Enforceability, particularly in critical sectors, will not only be dependent on legislative powers but also on the political will and institutional autonomy of the CCI.

3. Critical Sectors in India Vulnerable to Cartelization

3.1 Defining 'Critical Sectors'

Critical sectors are those that are cornerstones of daily life and economic strength such as agriculture, drugs, transport, energy and construction staples like cement. These sectors in the Indian context are characterized by high consumption numbers, supply-side pressure from transaction costs, few substitutes, and extensive government involvement. These characteristics make them geographically not only economically important, but structurally more susceptible to cartel behavior.[11] Demand for these necessities is typically inelastic, allowing producers and middlemen to charge supra competitive prices without lowering real demand.

Data on cartel cases at both the national and global levels have shown that necessity sectors

[11] World Bank Group, *A Step Ahead: Competition Policy for Shared Prosperity and Inclusive Growth* 14–16 (2016), https://documents.worldbank.org.

have a disproportionately high incidence of cartel cases. According to a survey by the World Bank, cartel activity was highest in food, fertilizers, transport, and pharma sectors in low-income countries, particularly where price visibility and regulatory oversight were weak.[12] This has meant in India, a series of high-impact enforcement cases and complaints across sectors like cement, fertilizer marketing and outlet retail of pharmaceuticals.[13]

3.2 Structural Features Driving Cartel Vulnerability

The vulnerability of these industries is not coincidental but based on certain economic infrastructure and regulatory frameworks. **Product homogeneity** is one of the prime movers, in which absence of differentiation facilitates coordination among firms in agreeing on uniform pricing.[14] The cement industry, for example, handles highly homogenous products, making it possible for coordination over price and supply without detection. Similarly, the distribution of generic drugs in India involves standardized medicines, simplifying collusive pricing arrangements among distributors.[15]

Another structural requirement is the **high concentration**—there are few players with big market shares. For instance, in 2012, the top ten cement companies held more than 70% of India's cement capacity, allowing for the conditions under which the notorious Builders' Association case arose. The **fertilizer sector** provides a similar analogy: there are relatively few companies that dominate importation and distribution of important inputs such as urea and potash, underpinned by government subsidies that further skew market entry and transparency.

Barriers to entry also exist. These include licenses that are required by regulations, capital requirements, and vertical integration. For industries such as pharmaceuticals and agri-inputs, companies tend to dominate both production and distribution channels, in effect dissuading new entrants. According to Levenstein and Suslow, vertical control of key supply chains not only facilitates collusion but can also serve as a means of punishing defectors and enforcing observance of tacit understandings.

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[12] Massimo Motta, *Competition Policy: Theory and Practice* 146–48 (Cambridge Univ. Press 2004).

[13] Simon J. Evenett & Frédéric Jenny eds., *Trade, Competition and the Pricing of Commodities* 112–14 (CEPR 2012).

[14] Margaret C. Levenstein & Valerie Y. Suslow, *What Determines Cartel Success?* 44 J. Econ. Lit. 43, 49–50 (2006).

[15] Organisation for Economic Co-operation and Development (OECD), *Fighting Bid Rigging in Public Procurement* 9–10 (OECD Guidelines 2009).

3.3 Cartelization via Supply Chains and Intermediaries

Within core sectors, collusion is typically **intermediated by middlemen** and **off-the-record supply networks**, particularly in rural and semi-urban areas. Such actors, usually organized through trade associations, enable implicit coordination in market and price. In India, this trend has been typical in the pharmaceutical supply chain, with drug wholesalers and retailer associations being found to have ensured homogeneous prices across states by limiting the exchange of competition.

The **involvement of government subsidies and procurement** complicates matters. For example, state health schemes and the public distribution system (PDS) buy huge amounts of medicines and food. When such tenders are collusive, for instance, fertilizer tender bid-rigging or hospital buying, besides causing an inefficient use of government finances, it directly harms poor beneficiaries.

Global case studies also confirm this mechanism. The South African bread cartel and Zambian fertilizer cartel used posted pricing, frequent communication, and coordination through association to enforce price signals and maintain cartel discipline. India also has the same characteristics in grain and fertilizer markets with intense reliance on import benchmarks and port handling controls by a few private operators.

3.4 Case for Targeted Enforcement in Essential Markets

Lacking such structural characteristics, peripheral industries **do not deserve priority antitrust attention**. Enforcement is still undermined by split regulatory regimes, sectoral exemptions, and poor information flows. The Competition Commission of India (CCI) is most at a loss when it must contend with collusion at the intersection of state subsidies, procurement rules, and industry-specific price controls. In the case of pursuing suspected fertilizer cartels to prosecute, for example, initiatives tend to be counter to greater government interests in farm productivity and food security.

In addition, **informal character of contracts** and **absence of traces** in the virtual world render traditional detection methods useless. In extremely informal sectors—like regional pharma retailing or state distribution food—collusion is typically without paper, through oral understandings or implicit agreements supported by membership standards. Such issues demand not only more effective investigation equipment but also official collaboration and information-exchange between the CCI and sectoral authorities like the Drug Controller General of India, the Fertilizer Ministry, and State Procurement Boards.

4. Case Studies of Cartelization in Core Sectors

4.1 Builders Association of India v. Cement Manufacturers (Cement Cartel Case)

The Indian cement sector has traditionally shown traits that favor cartel behavior. The rivalry among territories is restrained due to the structure of the oligopolistic market, the homogenous product, and the extremely high cost of shipping that hinders competition among territories. A major case managed by the Competition Commission of India (CCI) involved 11 top cement companies and the Builders Association of India (BAI). The claims included price coordination, production limits, and creating artificial shortages.[16]

In its investigation, the CCI found that companies attempted to disguise using the Cement Manufacturers' Association (CMA) to facilitate exchanges of information about production and price. They engineered production cuts at the same time that prices were boosted at retail levels and demand was growing. The Commission imposed a total fine of over ₹6,300 crore in 2012.[17] This case represented a turning point in Indian competition regulation, showing the CCI to be willing to move aggressively against hard-core cartels in critical industries. In addition, it showed how even highly structured industry groups could be weapons of collusion if not properly regulated.

The spillover effect downstream was substantial: increased input prices were transferred by infrastructure developers to consumers, resulting in real estate, housing and public infrastructure project price hike.[18] This illustration highlights social externalities of cartel activities beyond immediate price consequences.

4.2 Pharmaceutical Distribution and Trade Association Cartelization

In pharmaceutical sector, trade associations have historically acted as enforcers of cartel-like

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[16] S.S. Rana & Co., *CCI Imposes Heavy Penalty on Cement Cartel*, Mondaq (June 22, 2012), https://www.mondaq.com/india/antitrust-eu-competition-/182308.

[17] Competition Commission of India, *In re: Chemists & Druggists Ass'n of Baroda*, Suo Motu Case No. 09 of 2012.

[18] Manish Agarwal & Prabhat Dayal, *State Government Policies and Competition*, in *Towards a Functional Competition Policy for India* 130 (Pradeep S. Mehta ed., CUTS Int'l 2005).

conduct. The All India Organisation of Chemists and Druggists (AIOCD) and its state affiliates used to enforce uniform pricing by issuing informal "no - objection certificates" (NOCs). They also imposed distribution bans on pharmaceutical companies that failed to comply.[19]

The CCI in its inquiry into the Madhya Pradesh Chemists and Druggists Association (MPCDA) noted that the association was granting NOCs to producers as a condition precedent to market entry. Any producer who evaded this clearance was asked to boycott by wholesalers and retailers. In 2012, CCI fined the MPCDA and its member associations for breaking Sections 3(1) and 3(3)(b) of the Competition Act.[20]

This cartel behavior led to a lack of access to essential medicines, especially in rural areas. The practices resulted in inflated retail prices, deterred competitive entry by smaller producers, and eventually harmed the final consumer, especially those relying on public healthcare facilities.

4.3 Fertilizer Distribution Cartel and Public Procurement

The Indian fertilizer industry has also produced some cases of cartelization, particularly in government procurement for subsidized sales. In one such case in Rajasthan, the purchase of barbed wire and fertilizers under a state policy resulted in the emergence of a cartel among domestic manufacturers. The producers of such fertilizers and barbed wire came together in an association, allocated supply areas, and quoted uniformly similar prices, suppressing competition.

The government, without proper quality control procedures in place, purchased poor-quality goods at overpriced rates. The cartel collapsed only when procurement policies had shifted, illustrating the part played by distorted procurement design in propping up anti-competitive arrangements.

Bid rigging in government contracts for fertilizers was a more recent issue. Companies colluded to secure government orders, increasing the cost of subsidies and lowering product availability. CCI investigations revealed a trend of market allocation on a zone-wise basis among the bidders. This affected smallholder farmers disproportionately who depended on

[19] Julian Clarke & Simon J. Evenett, *The Effects of Bid Rigging on Public Procurement in India*, World Bank Research Working Paper (2004).
[20] CUTS Int'l, *Flyover Collusion Case in Chennai*, in *Competition and Regulation in India, 2007* 131 (2007).

subsidized and timely access to fertilizer inputs for production.

4.4 Cartelization in Government Construction Contracts

Bid rigging in public works and construction contracts has been a chronic problem in India. While the tendering process is seemingly competitive at the surface level, collusion among contractors, aided by trade cartels and sometimes with political acquiescence, has led to cost overruns and reduced project quality. In a well-known example from Chennai, contractors colluded in laying fiber optic cables, apportioning the work among themselves and overpricing.

The consequent monetary loss to the exchequer and slippages in project implementation affected not just fiscal effectiveness but also the realization of critical infrastructure. The issue is compounded by the unavailability of local-level enforcement capability and the lack of expert equipment for identifying bid patterns that are suggestive of collusion.

5. Downstream Effect of Cartelization on Consumer Welfare

5.1 Price Inflation and Decreased Purchasing Power

Cartelization of key sectors has the direct consequence of higher prices for consumers in the form of artificial inflation of cost of supply. This is most pronounced in sectors with inelastic demand like food, pharmaceuticals, and fuel. Research shows that typical cartel markups around the world vary from **16% to 49%** over competitive levels, and these are a significant degradation of consumer well-being.[21] These markups represent not only an income transfer to cartel members but also a **deadweight loss**—a loss of overall societal well-being due to foregone transactions and resource misallocation.[22]

In India, such distorted pricing disproportionately hurt poor families. Because of their having very high marginal propensity to consume basic goods, price rises in staple food directly cut down disposable incomes for other necessities. Empirical research has revealed that even a **10% rise in staple items** such as food and medicine can lead to **20% loss in welfare** for the

[21] John M. Connor & C. Gustav Helmers, *Statistics on Modern Private International Cartels, 1990–2005*, 22 J. Indus Competition & Trade 147, 150–52 (2007).
[22] John M. Connor & Robert H. Lande, *Cartels as Rational Business Strategy: Crime Pays*, 34 Cardozo L. Rev. 427, 445-48 (2012).

bottom deciles. [23]

5.2 Consumer Exclusion and Access Distortion

In addition to price distortion, cartels also corrupt **access to vital goods and services**. In instances such as pharmaceutical wholesale or fertilizer retailing, supply manipulation caused by cartels results in stockouts, local unavailability, and spatial price differentials.[24]

With wholesalers limiting supply to non-coalition retailers as observed in collusive pharmaceutical trade associations, it prohibits rural consumers' access to life-saving drugs.[25]Similarly, cartelization of government purchases, particularly in fertilizer tenders, has deprived smallholder farmers of access to critical agri-inputs in a timely manner. Such distortions have been proven to lower productivity, impacting regional food markets and regional economic disparity.[26]

5.3 Lower Product Variety and Quality

Cartels influence several aspects of business. They do not simply collude to establish prices; they also prevent innovation and limit product variety. There is no incentive for business to innovate, improve quality, or be responsive to consumers when competitive pressures are absent. The "loss of variety" is particularly problematic in the **generic pharmaceuticals** industry where limited competition leads to lack of therapeutic substitutes and weakens pricing efficiency.[27]

There is some evidence in several countries suggesting that cartelization reduces the supply of cheaper substitutes and extending the life cycle of older or less-quality products.[28] These sorts of product cycle stagnation are particularly damaging for consumers in the health and education sectors where consumer outcomes depend on access to better goods and services.

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[23] World Bank, *Effects of Market Competition and Competition Policies on Low-Income Consumers* 23 (2016), https://documents.worldbank.org .

[24] S. Stefanović, *Cartels of Large Retail Chains: Impact on Consumer Welfare*, 13503-67213-1-PB, at 98–100.

[25] Shubham Chaudhuri, Pinelopi K. Goldberg, Panle Jia, *Estimating the Effects of Global Patent Protection in Pharmaceuticals: A Case Study of Quinolones in India*, 96 Am. Econ. Rev. 1477, 1480–81 (2006).

[26] Guido Porto, Nicolas Depetris Chauvin & Marcelo Olarreaga, *Supply Chain Competition and Agricultural Producer Welfare*, World Bank Working Paper No. WPS 6342 (2013).

[27] Faster Capital, *Effects of Cartels on Consumers and the Economy* (2024), https://fastercapital.com/topics/effects-of-cartels-on-consumers-and-the-economy.html .

[28] Organisation for Economic Co-operation and Development (OECD), *Competition Issues in the Food Chain Industry* 4–6, OECD Doc. DAF/COMP(2013)3 (2013).

5.4 Socioeconomic Inequity and Regressive Impact

Cartelization is a **regressive economic cost**, falling disproportionately on the poor. Since low-income groups spend a higher percentage of their expenditure on basic commodities, increases in price due to cartel conduct are felt more by them. In the World Bank's cross-country study, it was found that **collusion in food and pharmaceuticals alone** resulted in a **20–30% greater relative loss** of welfare for the bottom decile than for the top. [29]

In India, the effect is compounded with **structural market exclusion**, viz. rural consumers are facing higher costs and fewer options. They also lack a reliable way to seek help. It goes beyond ineffective knowledge, as the lack of purchasing power leads to rationing behavior e.g. they will reduce quality of their diet, or skip preventive health, etc., which cements poverty traps.[30]

5.5 Consequences for Public Sector and Social Expenditure

In sectors where the government is a large consumer—education, health care, and public infrastructure—cartelization results in higher procurement prices, thus **less real purchasing power of public expenditures**.[31] Bid rigging in tenders for fertilizers and medical supplies lowers the coverage of the subsidy programs and undermines delivery of services. When procurement budgets are overrun, states are compelled to **reduce program coverage or postpone implementation,** directly injuring beneficiaries.[32]

This erosion in public delivery of welfare erodes public confidence in government institutions and induces a perverse vicious circle: declining service quality frequently compels consumers to turn to private markets, where again cartel pricing comes into operation.

6. Assessment of Enforcement Tools and Regulatory Loopholes

6.1 Efficiency of the Leniency Regime

The leniency program, as brought into effect through Section 46 of the Competition Act, 2002,

[29] Carlos M. Urzúa, *The Distributive and Regional Effects of Monopoly Power*, 35 Econ. Mexicana Nueva Época 3, 7–11 (2016).

[30] World Bank Group, *Anticompetitive Market Structures and Poverty in Emerging Economies*, Competition Policy Note No. 8 (2018).

[31] Robert D. Anderson & William E. Kovacic, *Competition Policy and Poverty Reduction*, in *Global Antitrust and Development* 175, 183–85 (Eleanor M. Fox & Abel M. Mateus eds., 2011).

[32] Julian Clarke & Simon J. Evenett, *The Deterrent Effects of National Anticartel Laws: Evidence from the International Vitamins Cartel*, World Bank Policy Research Working Paper No. 4675 (2008).

is the bedrock of cartel enforcement in India. It incentivizes insiders to report information on cartel conduct in return for lighter penalties. Yet, its real-world utility has been confined. One of the main problems is that **cartel members don't trust** the Competition Commission of India's (CCI) security and confidentiality system.[33]

While the law provides that applicants may seek leniency until the Director General submits the report, there is an evident hesitation among potential whistleblowers. Critics argue that without full amnesty for the first applicant and guaranteed anonymity, the incentives are insufficient. The Parliamentary Standing Committee on Finance has in the past suggested that the **initial cartel member who comes forward with credible evidence should be given full immunity**, a clause not yet fully institutionalized.[34] In addition, secondary applicants are not always given proportionate reductions in penalties, diluting the domino effect required to topple collusive schemes.[35]

6.2 The Need for Dawn Raids and Digital Forensics

India lacks one of the most important enforcement aids against cartels: powers to conduct **dawn raids**, i.e., to enter and search the offices and premises of suspected firms suddenly and unexpectedly. Such powers were available in the MRTP regime as earlier discussed, but the Competition Act, 2002 does not provide the CCI or DG with express powers to search and seize without a court order.

Global experience proves that dawn raids and digital forensic powers are essential to making cartels' hitherto hidden or undocumented evidence public. In the EU-style jurisprudence, dawn raids have brought about major enforcement success, particularly when contracts were finalized orally or on encrypted communication channels. Indian law enforcers remain reliant on **voluntary compliance or whistleblower tips**, which might not be adequate against sophisticated cartels.

To increase credibility and deterrence, there is a need for legal reform to enable the CCI to have **independent raid powers** supported by procedural protection akin to the Income Tax

[33] CUTS Int'l, *Competition and Regulation in India, 2007* 99 (2007).
[34] Organisation for Economic Co-operation and Development (OECD), *Tools for Detecting Collusive Bidding in Public Procurement*, DAF/COMP/GF(2014)5, at 17 (2014).
[35] UN Conference on Trade and Dev., *Model Law on Competition*, U.N. Doc. TD/RBP/CONF.7/L.4 (2020).

Department or the Enforcement Directorate.

6.3 Resource and Capacity Constraints

The CCI also grapples with **severe capacity constraints**—human and technical. Investigative personnel are rarely trained in forensic economics and behavioral analytics, which are crucial in establishing tacit collusion and parallelism of prices. Budget, combined with restraints on recruitment from the private sector has placed the CCI in a position where its work is reliant on secondments and poorly paid, government-sanctioned appointees. This affects not just quality of enforcement but also **adjudication speed,** which erodes public confidence.

Capacity-building activities have slowly begun to get institutionalized with assistance from development partners like USAID and the World Bank. Delays in organizing a **specialist competition bar and bench**, as with the NCLT for company law, have also impacted adjudicatory efficiency.

6.4 Fragmented Regulatory Jurisdiction and Overlaps

The Indian law is afflicted by **fragmentation** and there is **no coordination** among the sectoral regulators and the CCI. Although Section 21 of the Competition Act permits regulators to refer competition issues to the CCI, the procedure is non-binding and purely voluntary. This tends to result in jurisdictional uncertainty, regulatory arbitrage, and **forum shopping** by market leaders.

For example, in drug pricing, jurisdictional overlap between the National Pharmaceutical Pricing Authority (NPPA) and CCI has resulted in belated intervention. Likewise, fertilizer or telecom procurement cartels are dealt with by several agencies, with none playing the lead role. An organized framework of coordination, perhaps through a statutorily established **National Competition Policy Oversight Council**, would be required to align the roles, to prevent duplication, and to enable coordinated investigations.

6.5 Absence of International Cooperative Enforcement

Today's cartels often operate across different regions, especially in the pharmaceutical, agricultural commodities, and digital sectors. Notwithstanding provisions for **cooperation on an international level**, the CCI has not yet delineated **bilateral investigation procedures** with leading competition agencies such as the US DOJ, EC, or China's SAMR.

The Section 32 **extraterritorial jurisdiction** is legally valid but operationally useless in the absence of evidence-sharing frameworks, traceability norms for digital, and shared investigation triggers. For cross-border cartels, for example, the global vitamins or air cargo cartel, Indian enforcement was particularly conspicuous in its absence because of **lack of investigatory reciprocity**.

Efforts need to be channeled to the establishment of **multilateral cooperation forums**, either through the OECD, UNCTAD, or regional organizations like SAARC. Without this, India could become a refuge for international collusion spillover effects.

7. Findings, Suggestions & Conclusion

7.1 Key Findings

1. Structural Conditions Promote Cartelization:

Indian essential sectors like cement, pharmaceuticals, and fertilizers have high market concentration, homogeneity of products, and distortions in regulation. Such structural features provide an environment for collusion.[36]

2. Cartel Behavior Is Under-Detected:

Even with growth in cartel investigations, the estimated deterrence rate in developing nations such as India is low—about **24% per year**. This suggests that most cartels go undetected.[37]

3. Cartelization has Negative Consumer Consequences:

Negative economic and social consequences are primarily felt by poor groups in terms of falling access, rising costs, and falling quality of essential goods such as food, fuel and medicines.

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[36] World Bank Group, *A Step Ahead: Competition Policy for Shared Prosperity and Inclusive Growth* 93 (2016).
[37] Simon J. Evenett & Frédéric Jenny eds., *Trade, Competition and the Pricing of Commodities* 78–80 (CEPR 2012).

4. Weak Enforcement Powers Limits CCI:

India lacks procedural powers no **dawn raiding capability**, and the leniency regime has not gained credibility. Inter-agency coordination and digital forensic skills are weak. This affects how evidence is collected.

5. Regulation Fragmentation Results in Jurisdictional Disputes:

Disputes between the CCI and sectoral regulators tend to impede or weaken antitrust enforcement. Sectoral exemptions, discretionary referrals, and narrow binding authority split the regulatory regime.

7.2 Policy Recommendations

1. Endow CCI with Search and Seizure Powers:

Modify the Competition Act to allow **independent dawn raids** by the Director General, following powers conferred on income tax and customs officials. This is essential for tracking hidden or secret agreements.

2. Improve Leniency and Whistleblower Incentives:

Grant **blanket immunity** to the first member of a cartel to offer substantive evidence, and strengthen anonymity protections to encourage participation from whistleblowers, as well as allow disclosures after a DG report in exceptional circumstances.

3. Establishment of National Competition Policy Oversight Council (NCPOC):

A statutory council would facilitate coordination of competition objectives among ministries and state agencies, avoiding duplication and policy harmony. The council should undertake e**x-ante competition impact analyses** of policy decisions.

4. Establish Sectoral Competence in CCI:

Develop **specialized verticals** in the CCI for riskier industries such as food, pharma, and fertilizers. Employ industry economists, data analysts, and legal experts on secondment or contract. Promote cross-agency training with OECD and UNCTAD.

5. Implement Private Damages and Class Action Lawsuits:

Modify Indian competition law to provide for **private enforcement mechanisms**, particularly for consumer groups, to bring actions for damage resulting from established cartel conduct. This would increase deterrence via civil liability.

6. Strengthen International Cooperation Mechanisms:

Memorialize **memoranda of understanding** (MoUs) with international competition authorities for sharing of data and simultaneous investigations. It is particularly important in areas such as digital platforms, pharma, and cross-border agri-inputs.

7.3 Conclusion

Cartelization in core industries is not only a criminal offense—it is a **structural threat to consumer well-being and economic fairness**. In India, where the purchase of basic goods constitutes a significant part of family expenditures, distortion of competitive market forces results in social stratification, welfare loss, and unproductive allocation of resources. Despite the commendable development by the CCI, there are still major enforcement problems.

The solution is not in the stand-alone enforcement action but in a **united policy framework** which embraces regulatory reform followed by institutional capacity building, consumer empowerment, and regional cohesion. An engaged CCI backed by procedural powers, financial autonomy and aligned sectoral regulators can do significantly to disrupt to invisible hand of collusion.

With global market forces becoming increasingly complex, India's antitrust regime must escape procedural rigidity and adopt a **more agile, data driven and deterrent focused enforcement**. This is critical to protect the very promise of economic justice enshrined in the Indian Constitution.