



**HAWASSA UNIVERSITY, SCHOOL OF GRADUATE STUDIES,
COLLAGE OF LAW AND GOVERNANCE, SCHOOL OF LAW**

THE LEGAL GROUND OF PRICE REGULATION IN ETHIOPIA

LLM THESIS

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**LLM THESIS SUBMITTED TO THE SCHOOL OF LAW, COLLEGE OF
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HAWASSA UNIVERSITY COLLAGE OF LAW AND
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I, RediateHaileyesuse, hereby declare that this work is original and has not been presented in any other institution before. To the best of my knowledge and belief, I also declare that any information used here has been duly acknowledged and cited.

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This is to verify that RediateHaileyesus has completed her thesis entitled “The Legal Ground of Price Regulation in Ethiopia” this is her original work and is submitted it for examination with my approval as a thesis.

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ABSTRACT

Price affects the society, the market's supply and demand equilibrium, choice of traders, over all activity of trade and economy of the country. Because of its wide effect, some suggested restrictions to direct the economy in certain desired direction and some others oppose it by mentioning its negative consequences. However, there has not been agreement as to whether the negative effects weigh the positive impact. So, even though price regulation has negative and positive consequences, many countries including Ethiopia follow the policy in order to achieve a certain objective. And this government intervention in price regulation needs legal bases to manage its consequences.

The aim of this research paper was to assess the legal base of price regulation in Ethiopia legal system. To conduct this study, the researcher used a doctrinal and qualitative research method to explain the legal ground of price control in Ethiopia. Primarily data like relevant international and national laws that deal with the issue of price regulation in Ethiopia collected, analyzed, interpreted and examined. Moreover, as secondary source of data statutory materials, regulated goods and services practical cases or case reports, relevant literatures related with the subject matter both from foreign and domestic sources like books, journals, unpublished materials and others collected from library and internet sources and analyzed alongside major conceptual, legal and practical framework of price regulation in Ethiopia. In addition, an effort has been made to collect other primary data. Under the primary sources in-depth interviews with people from different categories (academicians, government officials, consumers and traders) who have knowledge and information about an issue have been conducted. In addition questioners have been conducted by randomly selecting 50(fifty) people from the public. Based on the research finding, there are some gaps, when the practices evaluated by the law like lack of standard and regulating price without considering the interest of the stake holders in the business. For the above problems to exist there are different underlying factors. Among those factors lack of legal framework which stipulate the standard and lack of institutional frame work that establish the system to be effective. Based on this, the researcher recommends that to overcome the mentioned problems, the government should issue a legislation which set a standard for appropriate function of price regulation policy.

Abbreviations and Acronyms

FDRE- The Federal Democratic Republic of Ethiopia

TCCP proclamation- Trade competition and consumer protection proclamation

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CHAPTER ONE

INTRODUCTION

Price plays different role in a market and it also has a power to determine supply and demand of goods and services which are keys to understand economy of the country. And price is seen as a measure to evaluate the value of goods and services. Even though price has all this impact and influence, some argued that government needed to intervene in the market to regulate price for different reasons. Curbing inflation, solving commodity scarcity and creating balanced market is the main justifications given while restrictions are set in price, in addition to other social, economic and political objectives. Most scholars argued price regulation seldom achieves economic objectives and mostly solve some social problems based on the political decision. And in the other side, some other scholars are pro price regulation if it is on a short-term basis. As restrictions could affect economy of the country, Regulatory choices and level of government intervention in price regulation needs legal basis to manage its consequence. In this regard, Ethiopia adopted different legislations.¹ And on the bases of different social, economic and political objectives, price controls has a long history in Ethiopia especially in case of price of food, energy, transport fares and other basic commodities.

As the researcher assesses other researches in the area, most previous studies have addressed the economic aspect of price regulation in Ethiopia, as mostly the issue of price is seen as pure economic concept and failed to address the legal foundation price regulation has in Ethiopian legal system.

The objective of this proposal is to identify and analyze the legal basis of price regulation in Ethiopia and to examine the practice in the insight of the law. And the research will try to address Gaps of the law on price regulation which is in contrary with the general social, economic and political objective of the country and Challenges of the legal system in managing problems which is created when price is fixed.

¹FDRE constitution, TCCP proclamation no. 813/2013, basic commodities price, distribution and control directives no. 03/2011, road transport tariffs council of ministers regulations no. 2/1992, insurance business proc. No. 1163/2019 and other price control directives and regulations, transport proclamations, insurance business proclamation.

1.1 Background of the Study

Price is the value that is set to a good or service and is a matter of course of intricate set of calculation, research and understanding and risk taking ability. ²Therefore, under the concept of price, there is a lot of segment that is needed to be considered, ability of consumers to pay, condition of the market, reaction of other competitors for the given price, issue of trade margins and costs of production. This means ‘price’ affects consumers or the society, the market’s supply and demand equilibrium, action of traders, overall trade activity and in general the economy of the country. In this regard, price plays a significant role in the economic, social and political development of the country. Because of its wide effect in the economy some suggested restrictions in order to curb inflation and to steer the economy in certain desired direction, and some others opposed price control, by saying that it has more negative consequence than its positive outcome in addressing the problem, and agree that price regulations do not accomplish what they are intended to do.³

The term price regulation is the policy of setting minimum or maximum price by a government agency, legal statute or regulatory authority and it also encompasses guidelines which specify the magnitude by which price can vary from the specific price.⁴ Price regulations are usually implemented as a means of direct economic intervention to manage the affordability of goods and services.⁵ Although it may make certain goods and services more affordable and improve social outcomes, it can often lead to disruptions in the market, losses for producers, a noticeable change in quality (inferior product quality) and illegal market. In addition it has growth challenges which discourage domestic investment and entrepreneurial activity, social and

²*The Economic Times* (The Economic Times website,(2022, May 20)
<https://economictimes.indiatimes.com/definition/pricing-strategies>> accessed 22, May 2022

³Kenton, W. (*Investopedia.com*.,2021, July 28)
<https://www.investopedia.com/terms/p/price-controls.asp> >accessed May 11, 2022

⁴Shapiro, R. K. (*stats.oecd.org*, (2002, January 3)
<https://stats.oecd.org/glossary/detail.asp?ID=3286>>accessesed May 11, 2022

⁵Kenton, W. ,supra note 3

political policy challenge and the effective conduct of monetary policy challenge. Therefore, in order to attain the desired objective and to minimize the negative consequence it has in the economic, political and social environment of the country, it needs strong legal foundation and economic consideration. Different types of price regulations have been tried in many countries for different social, economic and political reasons, and Ethiopia is also among those countries.

Since 1995, Ethiopia adopted FDRE constitution in which under its article 89, indirectly empowers the governmental authority to regulate price when it gives the government the power to formulate economic policies which ensure that all Ethiopians are benefited from the nation's resource. And also other legislations like TCCP proclamation no. 813/2013, basic commodities price, distribution and control directives no. 03/2011, transport laws like road transport tariffs council of ministers regulations no. 2/1992, financial sector laws like insurance business proc. No. 1163/2019 and other laws of the country which established a set of rules to regulate price and to mandate the intervention of the government in the market, even though scattered in different legislations.

According to Fekadu Petros, part of the reason why governments resort to price regulation is a wrong understanding of the very notion of price itself.⁶ And he agreed with other some economists that many view prices as random numbers by a seller and because of this many see prices as being an impediment to accomplishing their desired goals and misunderstand the fundamental nature and role that price has in an economic system. When we come to Ethiopia case, as the price regulation decision frequently fail to meet its objective and aggravate the problem which it intended to solve, most price regulation decisions are random which is set with out any legal standard and further examination of the situation, by only using the power the law gives to the government to regulate price.⁷

⁶Fikadu Petros, 'The constitutional and legal basis of price regulation in Ethiopia' (Mizan law review, 2020) p.123

⁷See the 2011 price controls in staple foods as an example which shows random decision of Ethiopian government which also aggravated the problem more, OCHA. (2011, January 25). price controls cause chaos in Ethiopian markets. Retrieved July 4, 2022, from reliefweb.int website: <https://reliefweb.int/reprt/ethiopia/price-controls-cause-chaos-ethiopian-markets>

These days, as the economy is destabilized and its future being unpredictable because of different reason like deteriorated politics and other economic issues, Ethiopia needs more comprehensive and systematically organized regulation method to attain the desired objective and to protect the nation's economy as a whole, to not to add other problem which could be created by price regulation . The researcher chose this topic because it is a relevant and recent topic in Ethiopia today. Besides, the researcher had observed some practical cases which are likely an outcome of price regulation in which shortage of supply outbreak and illegal markets pervade. Therefore, the researcher wants to contribute something by investigating more on the legal foundation of price regulation and it's implication in practice.

1.2. Statement of the Problem

Price regulation is not a new phenomenon in Ethiopia. Since the Derg regime, Ethiopia has been regulating the prices of goods and services. After the fall of the Derg regime in 1991, price regulation was particularly executed both as a permanent policy measure that is in respect of some goods and services like fuel prices and transport tariffs, and as ad-hoc measure in respect of the price of basic commodities.⁸ Despite the existence of a fairly strong legal basis for governmental price regulation, most of the instruments introducing price regulation do not recite the source of the authority for such regulations. In addition, before the introduction of the Federal Administrative procedure proclamation no. 1183/2020, there was no streamlined legal procedure for remedies if legislation that regulates price and decisions made to control unreasonably imposed. This proclamation gives procedural safeguards for individuals and entities affected by administrative rulemaking in price of goods and services.

Previous researches on regulation of price has focused more on the economic aspect of price regulation and we can say almost there is no researches done in the area in the case of the legal ground price regulation concept has. Plus there has been little work on exploring the gap the proclamations has. In addition, in the last few years Ethiopia has been adopted various laws which deal with price regulation but those developments in the legal system is not analyzed, researched and also its practice is not evaluated.

⁸Fikadupetros, supra note 6,145

Price regulation is becoming an issue as it is considered as a solution for the raising economic inflation. Addressing this problem will have practical benefits while applying price control on goods and services, by facilitating the better way to meet the objective the regulation intended to do and contribute for the wellbeing of the nation as a whole, as it touches the economic, social and political face of the country.

Therefore, to gain a fuller understanding of the problem that exists in regulation of price in Ethiopia, a doctrinal and qualitative depth research is required. Moreover, focusing on the gap of the legislation, which the law misses to cover, help to potentially inform future law makers.

1.3 Objectives of the study

1.3.1 General objective of the study

The general objective of this study is to analyze the legal basis of price regulation in Ethiopia.

1.3.2 Specific objective of the study

The specific objectives of the study are:-

To identify the justification(objective) behind price regulation in Ethiopian legal system

To analyze the legal ground that empowers the government of Ethiopia in regulating price and level of government intervention the law set.

To assess regulatory choice of price in Ethiopian legislations, and to evaluate the practice with the law.

1.4. Research questions

What is price policy of Ethiopia and justifications behind controlling price in Ethiopia?

On what legal base the Ethiopian government regulates price and how the legal system controls the level of intervention of the government?

What are the gaps of the law which hinders practice of price regulation?

1.5. Significance of the study

Currently as Ethiopia is bogged down in a morass of inflation and scarcity of some basic commodities, price regulation is one of a solution that is considered as the main remedy for the

problem. Pointing out the challenges of price regulation in the legal dimension may give an opportunity for the concerned parties to apply possible recommendations found out by the researcher. And it may also help to address some problems which are encountered by the society because of the failure of the law in some cases.

And also the researcher believes that this study would contribute something concrete through giving information about legal basis of price regulation in Ethiopia. In addition, the area of study needs further development. The findings of the research also help to create a frame on discussions that focus on issues of price regulations in Ethiopia. This research can serve as a base for the researchers who will make their research on issues of legal foundation of price regulation.

1.6. Scope of the study

The study is concerned with analyzing the spectrum of price regulation based on Ethiopian legal system. The study will not include prices set by government or legislation for administrative service charges and charges applied by state owned enterprises with natural monopoly.⁹

1.7. Limitations of the Study

There are various limitations that this study is expected to face. Primarily, the scope of the issues, which this study is trying to cover is very broad and covers legal ground of price regulation in every aspect which is linked with transaction between private parties. This requires deeper and thorough investigation to gain an in depth understanding about the entire set of factors contributing to the impacts this study is trying to study. Secondly, lack of related literature previously conducted on the area of price regulation particularly in Ethiopia limited the researcher from getting theoretical foundation for the study.

In addition, the time available to study a research problem in detail is constrained by the deadline to submit the proposal. As the area of the study is not studied well, in Ethiopia case, it needs for a future longitudinal study.

1.8. Research methodology

The purpose of the research is to analyze the price policy of Ethiopia and the justification behind controlling price. And also the legal ground the government has to regulate price and how the

⁹ Id, p.125

legal system controls the level of intervention of the government. Plus it evaluates the gaps of the law which hinders the practice.

To address these issues, this research substantially employs doctrinal and qualitative research methods. Primarily data like relevant laws that deal with the issue of price regulation in Ethiopia collected, analyzed, interpreted and examined. The FDRE constitution, price control directives and regulations, transport proclamation, insurance business proclamation and other important international and national laws reviewed. Moreover, as secondary source of data statutory materials, regulated goods and services practical cases or case reports, relevant literatures related with the subject matter both from foreign and domestic sources like books, journals, unpublished materials and others are collected from library and internet sources and analyzed alongside major conceptual, legal and practical framework of price regulation in Ethiopia.

As examination of law alone doesn't reveal what exist on the ground, an effort has been made to collect other primary data. Under the primary sources in-depth interviews with the maximum number of 6(six) people who have knowledge and information about an issue to be discussed were conducted. Under these individual interviews, interviewees selected from different categories to get different perspective in the area. Based on this selection, scholars who have knowledge and specialization in the area, government officials who are responsible in price regulation and traders(who are engaged with in the business of transport, basic commodities, real estate(renting, buying and selling houses), construction, educational sector, and other business) were included. And unstructured format of interview was used in case of interview of scholars and government officials to not to limit the detail of information gained from them, as unstructured interviews allow a free flow of ideas and information, and semi-structured interview in case of traders. In addition questioners have been conducted by randomly selecting 50(fifty) people from the public as price regulation can affect everyone in the society, traders in the market, government officials who are responsible in price regulations and scholars who specialize in area of economics and commercial law were selected.

In addition, in the comparative study section, countries were selected due to different reasons. One of the reasons is there legal system. Being a country that follow common law legal system or civil law legal system, religious legal system, customary legal system or mixed legal system has different outcomes in regard to interpreting and enforcing a law in regard to one policy. So,

the researcher tried to select from different legal systems to see their difference. For example, USA is from common law legal system, Rwanda is civil law legal system, India draw her legal system by mixing common law, religious law and civil law legal system and South Africa's legal system is formed by the mix of civil law system, common law and customary law system. USA has a rich legal system which creates different doctrinal solutions for different problems which are created by using price regulation policy. Almost most of the doctrines which are related with price regulation, especially in recent time, are sourced from USA's legal system. And Rwanda was selected for having almost the same economic and living standard status with Ethiopia. Plus after the genocide, the country is registering a good economic development. For this reason, as Ethiopia was also one of a country with political un-stability during the derg regime; the experience of Rwanda is a good lesson for Ethiopia. India is characterized by diverse languages, cultures and geography that differ on a regional basis like Ethiopia. In addition, India is a country characterized by the high amount of low income consumers just like Ethiopia. But India is becoming one of the fastest economy among major economies. So, studying the economy and the legal system of India is one means of drawing a lesson for Ethiopian economy and legal system.

Furthermore, some sample regulated goods and services prices in the practice will be analyzed.

The researcher was fully responsible for conducting all the interviews and collecting data through questionnaires.

The primary and secondary data that was collected through the different tools of the study from different sources were checked for its accuracy and examined for its consistency and completeness before the analysis, and the results from the two data sets were triangulated to complement each other.

1.9. Organization of the study

The paper constitutes five chapters. The first chapter encompasses background of the study, statement of the problem, research questions and objective of the study, research method, scope of the study and its organization. The second chapter will review literatures written in the area. The third chapter presents general overview of price regulation. Moreover, this part assesses Justifications given behind price control and the role of price regulation in managing inflation. In

addition types and Methods of price regulation and its socio- economic impact addressed. Finally, consequences of price regulation are discussed in this chapter.

In the fourth chapter the experience of other countries in relation to price regulation and their price regulation legal frame work will be addressed. In this chapter the experience of USA, Kenya, India and South Africa will be viewed high lightly. The fifth chapter will analyze price policy of Ethiopia, the Ethiopian legal frame work governing price regulation, the adequacy of the law in maintaining the objective of price regulation and the practice.

The final chapter will present findings, conclusions and recommendations.

1.10. Ethical Consideration

The researcher will ensure the consent of the research participants before starting data collection. And also the researcher will inform the aim and academic purpose of the study for the participants.

CHAPTER 2

THE NOTION OF PRICE REGULATION AND ITS' CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1. THE NOTION OF PRICE REGULATION

In normal circumstances price keeps the balance between supply and demand.¹⁰ It also creates increase or decreases of production and manages the allocation of goods.¹¹ Plus it determines an efficient distribution of resources in a market system.¹² So, the current inclination of economic thought is towards a pure competitive free market system in which the market must be free from interference and led by the normal rule of supply and demand.¹³ But this ordinary laws of economics fail to work when the normal circumstance of the economy disturbed by different factors and in that case, price will no more serve its natural function of defining the supply and demand equilibrium. Therefore, the issue of regulation comes to the scene.

Regulation refers to a system that control social and economic interactions in a particular area of economic activity capturing both formal and informal rules, norms and behaviors whether such is done by the economic sector itself (i.e. self-regulation) and public/governmental regulation.¹⁴

Price regulation is the policy of setting minimum or maximum prices by a government agency, legal statute or regulatory authority.¹⁵ It also encompasses “guidelines” which specify the magnitude by which prices can increase as in the case of rent controls.¹⁶ Price controls are

¹⁰ Bernard F. Grainey, (1943), “price control and emergency price control act”, Notre dame law review. 31 issue 1, p.31

¹¹ ibid

¹² Tejvan Pettinger, “Role and function of price in economy”, (15 November 2019, economicshelp.org), available at: <https://www.economicshelp.org/blog/1170/economics/role-and-function-of-price-in-economy/#~:text=The%20price%20of%20goods%20plays,respond%20to%20changing%20market%20conditions.> accessed in August 1, 2023

¹³ Binnyam Idris (2019), “Economic Analysis for regulating legal service pricing, Ethiopian case”, St, Mary’s university, p.14

¹⁴ Christopher Decker & George Yarrow (2010), “understanding the economic rationale for legal services regulation”, Regulatory policy institutes, p.5

¹⁵ Organization for economic cooperation and development (OECD), Glossary of industrial organization economics and competition law, p.69

Available at: <https://www.oec.org/regreform/sectors/237.6o87.pdf>

¹⁶ ibid

government regulations on wages or prices or their rates of change.¹⁷ So, when the ordinary laws of price in the economy fail to fulfill its objective, Price control is one of the means available to the states within its domain for the protection and promotion of the welfare of the economy.¹⁸

Bernard F. Graine asks whether price regulation is being predicated up on the government's power of eminent domain (taking private property) or up on the government's power to regulate?¹⁹ Eminent domain grants government the right to take private property within its boundaries without the consent of the owner for the purpose of public use by paying just compensation, even though the conditions of public use and just compensation raise numerous arguments.²⁰ In other literature Black's constitutional law defines the power of eminent domain as "a right in the government, acting in the interest of the whole public to force the owner of the property to sell the same to the public, from whom his title originally came, and subject to whose needs it is always held."²¹ In this case power of eminent power is associated with sovereignty and it defines the public as the owner of every property in a way that narrows the concept of private property. The government in the exercise of the right of eminent domain takes is bound to pay compensation for the property seized.²² And in the other side "police power" or "regulatory power of government" is its power to direct the activities of persons within its jurisdiction. "Police power on the rights of property is generally conceded that all property is held subject to the general police power of the state so to regulate and control its use in a proper case as to secure the general safety, the public welfare and the peace, good order and morals of the community."²³ Power of regulations is not a concept under the rights of eminent domain or it is not a deprivation of property without due process of law but they may interfere with private rights without providing for compensation.²⁴ So, in comparing the power of eminent domain

¹⁷ Christopher J. Neely (2022), "why price controls should stay in the history books", Federal reserve bank of ST. Louis

Available at:- <https://www.stlouisfed.org/publications/regional-economist/2022/mar/why-price-controls-should-stay-history-books>

¹⁸ Bernard F.G, Supra note 10,40

¹⁹ Id, p.33

²⁰ William C. Kuhn (August, 12002), pricing and eminent domain takings: a case study of residential property in Las Vegas, Nevada, University of Nevada, Las Vegas, p.1

²¹ Black's constitutional law, p.469

²² T.D. Havran (1930), "Eminent Domain and the police power", Notre Dame Law Review, vol.5, Issue 7, article 3, p.381

²³ Id, p.382

²⁴ ibid

with that of power of regulation, we take heed of that they look like each other in that each power recognizes the community against the interest of the individual, the former depriving him of the right to obstruct the public necessity and convenience by obstinately refusing to part with his property when needed for public use, the latter preventing his use of his own property in his own way as against the general comfort and protection of the public.²⁵ The distinction however lies in the fact that in eminent domain the public welfare is promoted by the actual taking of the property or some right therein from the owner and transferring it to a public agency to be enjoyed by it as its own, whereas in police power the public is benefited merely by the regulation and restriction of the use of the property.²⁶ Therefore based on the definition and characteristics of both power of eminent domain and power of regulation, price regulation is under power of regulation of government.

But even though it is hard to find laws and legislations where price regulation is conclusively declared as an equivalent of expropriation and though the very nature and characteristics of price regulation is different from the concept of power of eminent domain, there is some tendency in some jurisdiction to associate price regulation with expropriation/takings law. John N.Drobak concluded this in his article by saying:-“In USA, courts have gradually developed three criteria in the context of the constitution’s taking protection:-1/the price control should be for public interest; 2/ the price control should not be temporary and thirdly the investor’s exit from the price controlled business should be possible. So, USA courts have come to distinguish between price controls in the utility sector on the one hand and general price control legislation on the other.²⁷

Some writers also compare price regulation with expropriation or power of eminent domain. We can see this from FekaduPetros article when he analyzes the concept of price regulation in light of elements of expropriation or eminent domain. Here, FekaduPetros tried to distinguish price regulation with expropriation or taking law from international law point of view in which it reflects regulation as denying the ownership right of the owner of the good and service.

So, the question here is that can we conclude a limitation on the exercise of ownership right as ‘denying the ownership right of the owner of the good and service’? And is it enough to treat it

²⁵ Id, p.383

²⁶ ibid

²⁷ John N.Drobak(1986), “constitutional limits on price and rent control: the lessons of utility regulation. Washington university law review, vol. 64, Issue 1, p.108

as expropriation? As power of regulation in general and price regulation in specific interfere with private rights for the sake of public use, can we say that restriction of the use of the property by an individual is expropriation without the actual taking of the property by the government? Can we relate price regulation with expropriation without raising the issue of compensation? Therefore based on the answers given for these questions we can relate expropriation and price regulation depending on their definition and characteristics.

Under Ethiopia law, article 40 of the FDRE constitution protects private property. However, the characterization of price regulation as an indirect expropriation seems unattainable.²⁸ For the constitution expropriation takes place only if government takes private property, since the concept of indirect expropriation does not exist in Ethiopia.²⁹

In the common law legal system, in one of a case submitted to the court, in regard to setting prices on milk the American court reasoned out that due process of law merely demanded that the law should not be unreasonable, arbitrary or capricious and that the means selected should have a real and substantial relation to the object sought to be obtained.³⁰ Because of this decision the doctrine of “reasonable return” was established and price regulation was confused with the right of a “fair value” under eminent domain.³¹

Some thinkers also trace back the notion of just or fair price to discuss the doctrine of price control and some other economic regulations. William Boyd sum up how the doctrine of just or fair price triggered the notion of regulation in price as follows:

‘Fair price, fair wage, fair trade and prohibitions on price gouging are a sample of contemporary manifestations of a normative commitment to fairness in economic exchange that reaches back centuries. The basic idea of just price holds that there should be equality of fairness in economic transactions. For every sale of goods or services, the medieval scholars starting in twelfth century held, there was a just price that would ensure that neither party to the exchange was able to exact unfair gains at the expense of the other. When markets could not be trusted to ensure that goods and services traded at their just, various types of regulation, formal and informal, were called

²⁸FikaduPetros, supra note 6, p.138

²⁹ibid

³⁰ Bernard F.Grainey, Supra note 10, p.34

³¹ ibid

upon to correct or fix prevailing prices and align them with the just price. Prices are not usually considered to have any ethical or moral content; rather, they are viewed as signals- vital pieces of information that reveal the interactions between supply and demand. But markets do not always work as intended, and prices can sometimes depart quite significantly from what the fundamentals of supply and demand would dictate. When market distortions, manipulations, or pricing decisions cause prices to deviate from their 'reference' levels, common intuitions of fair pricing are often invoked and regulation is sometimes called upon to return prices to their 'normal' level.³²

Also other writers like Robert L.Schuettinger and EamonnF.Butler concluded that the very existence of the thinking of the notion that there is a "just" or "fair" price for a certain commodity, a price which can and ought to be enforced by government, as apparently as coterminous with civilization.³³

But the concept of "fair value" has no relation at all to the basic economic concept of price regulation.³⁴

2.2. CONCEPTUAL AND THEORETICAL FRAMEWORK OF PRICE REGULATION

The power to regulate is the power to enact all appropriate legislation for its protection and advancement.³⁵ Therefore the power to regulate commerce is the power to prescribe the rules by which commerce or transaction is governed.³⁶ An entity that engaged in the transaction could be public utilities or quasi-public enterprises or private competitive businesses.³⁷ So those regulating rules direct the activities of the entities.

In this regard, Price regulation rules are directed at the profits of a business by lowering price or the control could be directed at the havoc to the economy of the nation resulting from distorted prices in which the effect upon a business is indirect and unintentional.³⁸

³² William Boyd (2018) " just price, public utility, and the long history of economic regulation in America" , Yale journal on regulation, Vol.35, p. 722-730

³³Robert L.Schuettinger&EamonnF.Butler(1979), 'Forty centuries of wage and price controls; how not to fight inflation', the heritage foundation, Washington D.C. p.3

³⁴ William H.Nicholls(1943) "constitutional aspects of public regulation of business price policies", Journal of farm Economics, vol. 25, No. 3, p.568

³⁵ Bernard F. Graineey, Supra note 10, p. 41

³⁶ ibid

³⁷ William Boyd. Supra note 31, p.566

³⁸ Id, p 34-35

Price regulation between private contracting parties only refers to when the control only fixes the price terms of private contracts; when the regulation involve no appropriation of proceeds to or from the government and when the fixing of price must not be associated with direct government sales, purchases, or manipulation of resources so as to maintain the regulated price.³⁹ Therefore the government gains nothing by the transactions among individuals. In this case Price regulation is one of many forms of legislative action which interfere with private contracting in the market place.⁴⁰ Even though it is a legislative action which is expected to meet economic objective, legal tradition tends to be individualistic and negative in its approach to economic regulation.⁴¹ It is often contended that judicial attitudes and processes are unsuited to the implementation of broad public policies by regulatory agencies.⁴² At the same time, it is claimed that to evaluate our understanding of the legal and economic aspect of price regulation which we seek to explain it is essential that we discover implications refutable by facts and by this criteria the available body of economic theory pertaining to price control is deficient; the massive literature on the subject offers few such implications.⁴³ Traditional legal principles serve to limit discretion by providing the official with as little elbow room as possible for error or bias.⁴⁴

As price regulation needs a strong legal authority under the constitution to evaluate proper and improper exercise of price regulation power by the government, the question of how constitutionality of price regulation is evaluated also pointed in the work of Bernard. Based on his analysis, the constitutionality of price regulation is evaluated under due process as to its reasonableness and as to procedure and under delegation of legislative power.⁴⁵ Price regulation or interference of the government in the economy can affect basic rights like freedom of contract, property rights or can restrict other economic rights in general, thus the government has a duty of displaying that a legislation intervening with those rights was in fact authorized by the constitution. In addition, most regulation of business necessarily imposes financial burdens either on the enterprise or the society for which no compensation is paid, therefore to embody

³⁹ Steven N.S.Chung(1974), "the theory of price control system", the journal of law and economics, vol.17,no.1, p.53

⁴⁰ *ibid*

⁴¹ Roger C.Cramton(1964) " the effectiveness of economic regulation: a legal view Cornell law faculty publication, p.185

⁴² *Id*, p.186

⁴³ Steven N.S.Cheung, *supra* note 38, p.53

⁴⁴ Roger C.Cramton,*supra* note 40, p.185

⁴⁵ Bernard F.Graine, *Supra* note 10, p.43

commitment to legality or due process of law both in case of substantive and procedural due process of law and restriction on the power of state agencies to regulate prices is needed to restrain the violation of the fundamental laws of the constitution.

States have an innate regulation power to defend public safety, public security, health, morality, development and general prosperity, but the extent of the power may vary based on the subject matter over which the power is employed.⁴⁶ And if the regulation goes too far, it will be recognized as a taking of property. Thus the means employed to effect the regulation must be neither arbitrary nor oppressive but must produce a real and substantial relation to an end that is the public safety, health, development and etc. So, the end of price control must be legitimate and legislation will not be contrary to due process if it is a reasonable means of attaining this end.⁴⁷ In addition, if the government has the power to fix prices it must be contingent up on one or several of the government regulatory powers.⁴⁸

When to exercise the power of price regulation, is another issue which is needed to be addressed. Some intervention of the government in the economy is as an emergency measure for different situations like war, drought, flooding or other situations and in some circumstances government uses price regulation in normal times as a policy or economic doctrine in all or some goods and services. E.g. in some countries the war power of state may be exercised under a price fixing statute where the public interest in the preventing of inflation so demands.⁴⁹ In this regard price regulation statute in time of war is dormant in time of peace.⁵⁰ In Ethiopia with regard to price regulation in normal times, the recently enacted administrative procedure proclamation is one of a price fixing statute which gives a power to regulate power for the government.⁵¹

There are a number of pricing methodologies available to set price, and each method can be made fit a specific sector depending on the situation. Two commonly used forms of price

⁴⁶ William H.Dunber(1895), "state regulation of prices and rates", The Quarterly journal of economics, vol.9, no.3, p.322

⁴⁷ Bernard F.Grainey, Supra note 10, p.42

⁴⁸ Id, p. 35

⁴⁹ Id.p.43

⁵⁰ Ibid

⁵¹Fikadu Petros, supra note 6, p.152

regulation are the rate of return and cost plus regulation.⁵²Rate of return relies on the determination of a maximum return on capital invested and in this case, the expenses of the company are covered and a fair profit is gained.⁵³ In a cost plus regulation price of a product is determined by adding a specific fixed percentage to the product's unit cost and the price paid by consumers must be lower than the sum of actual costs and a certain margins.⁵⁴ Depending on the methodology chosen the advantage and disadvantage gained from the regulated price is different and also because of costs, return on investment or markups or other reasons, the bases on which regulated prices are set vary.⁵⁵

Once country legal system needs a legal framework within which the public policy towards business must operate. When we see countries experience in how they designed there legal frame work, USA's experience is an elaborated one to capture the legal system's conceptual and theoretical frame work of price regulation. USA's supreme court has gradually developed the constitutional price regulation doctrine in two distinct groups of cases, though the two groups of cases appear to establish inconsistent standards, one group has dealt with utility rate regulation; the other federal price control.⁵⁶ In the first set of cases, the court interpreted the constitution as establishing a lower limit on utility rates. The utility rate making cases require a court to judge the constitutionality of rates by a process that involves balancing the public and investor interests.⁵⁷ Although the public interest can outweigh the investor interest and justify rates that are too low to meet the investor interest.⁵⁸ In the second group of cases, involving federal price controls, the court has not applied standards.⁵⁹ In addition it does not even require an examination of the financial effects on the regulated firms and their investors.⁶⁰

Nonetheless, the dichotomy in the price regulation doctrine stems from a consistent application of the principles of the takings clause of the Fifth Amendment, which is the foundation of both

⁵² Jacques Steenbergen&Alexis Walckiers(2011), "competition and price regulation of retail services in Belgium", REFLETS ET PERSPECTIVES DE LA VIE ECONOMIQUE journal, no.3, p.60

⁵³ ibid

⁵⁴ ibid

⁵⁵BinnyamIldris, Supra note 13, p.15

⁵⁶John N.Drobak, Supra note 27, p.108

⁵⁷ Id. p.109

⁵⁸ ibid

⁵⁹ ibid

⁶⁰ ibid

the utility and price control branches of the constitutional doctrine.⁶¹ The takings clause constrain all types of economic regulation by requiring the payment of “just compensation” if a regulation causes enough injuries to constitute the “taking” of property from the regulated person of firm.⁶²

USA’s Supreme Court has consistently ruled that utility rate making is governmental taking that triggers the compensation requirement.⁶³

In USA legal barriers to exit from a regulated business is a major reason for the constitutional rate making doctrine.⁶⁴ The statutes require utilities to continue providing service until they obtain permission to cease.⁶⁵ The obligation to provide service is so important that utilities may be forced to incur continuing operating losses while proceeding through reorganization procedures.⁶⁶ The Court's perception of this service requirement as analogous first to eminent domain and then to regulatory takings, led to the development of the modern constitutional limits on utility ratemaking.⁶⁷

The American court reasoned out that due process of law merely demanded that the law should not be unreasonable, arbitrary or capricious and that the means selected should have a real and substantial relation to the object sought to be obtained.⁶⁸

In another case Belgium’s legal system adopted some regulation on price due to the impact the international competition brought in the economy. The national bank of Belgium stated that the relative price increase of goods and services sheltered from international competition could in the medium run have an upward effect on the prices of goods and services exposed to international competition, to the extent that the increase of wages, prices and tariffs of these sectors put pressure on inflation, wages in internationally exposed sectors may be affected through indexation mechanisms.⁶⁹ Therefore, the governor of the bank argued that a review of all

⁶¹ John N.Drobak, *Supra* note 27, p.109

⁶² *Ibid*

⁶³ *ibid*

⁶⁴ *Id*, p.120

⁶⁵ *ibid*

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ William c.Kuhn, *Supra* note 20, p.5

⁶⁹ Jacques s. & Alexis W., *Supra* note , p.58, also see, national bank of Belgium(2011), “report on 2010 economic and financial developments”

mechanisms of price formation is desirable to reduce the impact of inflation that could widen the vulnerability of the position of Belgium companies exposed to foreign competition.⁷⁰ The bank is concerned that a faster increase in hourly labor costs relative to key neighboring countries competitors would damage competitiveness of exporting firms, unless it is accompanied by a similar evolution of labor productivity, because these units cost have grown consistently faster in Belgium than other neighboring countries.⁷¹ Moreover, inflation hampers the ability of Belgium unions and employers to reach an agreement over higher real wage increases. Therefore, most politicians have proposed measures against inflation.⁷² Some of them have proposed to strengthen the powers of the price observatory in order to reintroduce a form of price control.⁷³ So, in this case Belgium's government uses price regulation as a cure for inflation and as a mechanism to strengthen the national companies to overcome neighbor countries competition.

There is a strong legal authority under the constitution of Ethiopia to regulate prices, but there is lack of detailed standards to distinguish between the proper and improper exercise of price regulation power.⁷⁴

The lesson of a half century of experience is that the environment generates enduring problems which limit the potential effectiveness of rate regulation.⁷⁵

2.3. PROPOSITIONS FOR AND AGAINST PRICE REGULATION

Roger C.Cramton also asks a question whether economic regulation makes a difference in the behavior of the regulated industry or not.⁷⁶By regulating price, various objectives like averting inflation of commodity prices, fighting anti-competitive behavior, promoting social policy and public health, and other purposes are intended to be achieved when governments interfere in the determination of prices.⁷⁷ In addition, like all forms of regulation on market transactions, price controls usually has the effect of redistributing wealth.⁷⁸ However, authors, like Roger C.Cramton, argue that price regulation seldom achieves the objectives so devoutly desired by the

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² *ibid*

⁷³ *ibid*

⁷⁴ A paragraph paraphrased from FekaduPetros *supra* note 6, p.123

⁷⁵ Roger C. Cramton, *supra* note 40 p.186

⁷⁶ *id.* p. 182

⁷⁷ A paragraph paraphrased from FikaduPetros, *Supra* note 6, p.123

⁷⁸ Steven N.S.Cheung, *Supra* note 38, p.66

regulators. He points out that there are inherent limitations on the effectiveness of economic regulation, even where public policy is fairly clear and the regulatory task is relatively confined and manageable.⁷⁹ In general he concluded that price regulation has no economic or social significance and it only affects the structure of the industry or the behavior of its firms or the fortunes of the individual participants.⁸⁰ And another writer, Fikadu Petros mentioned that price regulation seldom achieves economic goals, though it may help solve some social problems.⁸¹ And for this reason he concluded that price regulation is more of a political decision than economic and that political decision to use governmental power to regulate prices emanates from the law.⁸²

But writers like kenton narrate the advantage of price regulation economically if it is applied for extremely short term.⁸³ He argues that price control as a direct intervention of the government helps to manage the affordability of certain goods and services and creates economic stability.⁸⁴ For example, he mentioned rent control as a means to keep housing affordable; low prices on drugs which make medication and health care more affordable and as the same time setting high prices for drugs as a means for patent protection and to cover expensive costs of research, development and distribution; minimum wages as a regulation which positively creates a fair market and also mentioned the use some type of price regulation like price ceiling as a type of regulation to prevent producers from price gouging and as a means of benefiting producers to remain competitive and to ensure that they are profitable, though he didn't hide that they may have the opposite effect.⁸⁵ At the same time he clarifies the cons of such controls if it is applied for over long term. In this case, he justifies that price regulation may create shortage, rationing, deterioration of product quality and illegal markets that arise to supply the price controlled goods through unofficial channels.⁸⁶ In addition producers may experience losses especially if prices are set too low and this can often lead to a drop in the quality of available goods and services. And other writer, John Kenneth believed price control is one policy options as a temporary

⁷⁹ Roger C. Cramton, *supra* note 40 p.186

⁸⁰ *Id.* P. 183

⁸¹ Fikadu Petros, *Supra* note 6, p 123-152

⁸² *ibid*

⁸³ Kenton, W., *Supra* note 3

⁸⁴ *ibid*

⁸⁵ *ibid*

⁸⁶ *ibid*

expedient to buy time while a more comprehensive policy to solve the problem is being in place.⁸⁷

Price control is also seen as a micro economic tool that is used to foster a better functioning of firms or sectors.⁸⁸ Although a better functioning of sectors will have an impact on growth and prices, the extent to which price control can help control inflation is unclear.⁸⁹

Price controls are mostly imposed in markets with natural monopoly or oligopoly components with a rationale of preventing consumer from exploitation through excessive prices, or to avoid market foreclosure, where high sale prices might obstruct downstream competition.⁹⁰ But Niamh believe that even though price regulation applied in the economy with the intention of preventing consumer from exploitation and avoiding unhealthy completion, price controls can have unintended negative consequences.⁹¹

But, a writer like Murray Rothbard totally agrees against price regulation. Murray Rothbard said that price controls didn't work in WWI, when they began as 'selective', they didn't work in WWII, when they were 'comprehensive', price controls have never worked.⁹²

In the works of Steven N.S.Cheung, he tries to analyze the effect of price regulation from different perspective and he tries to relate its effect with right of contract and property right. Based on his analysis, economic conceptual tools, demand and supply, are not equipped to handle a situation where the price which they are designed to determine is controlled. But, he said that, apparently perceiving the futility of treating the problems in terms of "disequilibrium of supply and demand", they failed to investigate actual constraints, this imaginary restrictions were devoid of empirical content and have produced hypothesis is interesting only as intellectual exercise and incapable of explain real world phenomena. Because, the usual complexity of any effective price control, and that one control usually differs from another, it is highly unlikely that

⁸⁷ John Kenneth(1941) "The selection and timing of price controls" the review of economic statistics,23(2), p.84

⁸⁸ Jacques S. & Alexis W., Supra note 42, p.62

⁸⁹ ibid

⁹⁰Niamh Dunne(2017), 'price regulation in the social market economy', LSE law, society and economy working papers No.3, published by the London school of Economics & political science law department, p.4

⁹¹ ibid

⁹² Murray Rothbard (1995) 'price controls are back in making economic sense', Auburn, aliludring von mises institute,

the actual constraints can be guessed correctly.⁹³ So, the central problem in interpreting the effects of price control is the specification of constraints requires an investigation of the real world situation on one hand and the investigation itself must be guided or restricted by some theoretical framework on the other hand.⁹⁴ Effective price controls vary from time to time and from place to place, they entail immense bodies of regulations and administrative enforcements, and they involve constraints on behavior not limited to legal provisions. Furthermore, as with any empirical inquiry, no study of finite length could possibly incorporate in detail all the relevant constraints.⁹⁵ Therefore, based on Steven's analysis we cannot frame price regulation as a bad or good choice of policy based on experiences, because those specific experiences doesn't define the whole picture of price regulation.

And in the other side Steven narrates the effect of regulation from the perspective of rights. Price controls restricts the income terms of private contracts, the right to contract implies that the resources involved are at least to some degree exclusively owned.⁹⁶ Therefore when we see the concept of price regulation, it is necessary to see the issue of rights related with contract and rights related with private property. In this regard, he also elaborated how he related the proposition of price regulation with private property. So, based on Steven's analysis, "a good or an asset is "private property", if and only if three distinct sets of rights are associated with its ownership.1/ exclusive right to use, or to decide how to use the good (the right to exclude other individuals from its use); 2/the exclusive right to receive income generated from the use of the good. And 3/ the right to transfer, or freely alienate its ownership to any individual the owner sees fit includes the regulation both to enter into contracts and to choose the form of such contracts with in the realm of economic principles."⁹⁷ These rights are interrelated. That means a restriction imposed on the right to receive income, as in the case of price regulation will yield predictable changes in behavior in the exercise of the other two sets of rights. So, price control by interfering with the terms of private contracts, impose constraints on decision making that

⁹³ Steven N.S.Cheung, *supra* note 38, p.54-56

⁹⁴ *ibid*

⁹⁵ *ibid*

⁹⁶ *Id*, p.57

⁹⁷ *Id*, p.70

differ from those of private property.⁹⁸ And economic theory of price regulation has seldom stepped beyond the constraint of private property rights.⁹⁹

The other proposition that is raised by writers is in terms of creating a system which makes the policy applicable on the ground and different factors which makes its applicability difficult. In this regard Fekadupetros said that “Setting up an effective pricing policy is difficult because:-1/ pricing behaviors of market operators affected by different factors because the choice of a methodology can often be difficult. Because different stakeholders try to achieve their own goals and the government can be influenced by their vested interests. 2/ once a methodology have been chosen, determining the price is not straightforward, as some relevant information (e.g. Cost) must be obtained from the regulated companies themselves. 3/ as prices are key economic variables, reflecting the relative scarcity of a product or a service on the market under price regulation, prices paid by consumers won’t always achieve allocative efficiency.”¹⁰⁰

2.4. Studies on Legal Bases of Price Regulation in Ethiopia

Based on a preliminary literature review in Ethiopia, other works only try to show the aspect of economics and failed to show the legal aspect. The first piece of work in the area is FekaduPetros’s article which is mentioned here. By pointing out various practices and experiences throughout the world in case of price regulation, Fekadu explained how regulating price can affect the market equilibrium and missed to achieve its basic economic goal and contain undesirable consequences price regulation has. And it has been discussed that price regulation is a measure taken only when an economy is in an unhealthy state. Besides, it has been mentioned that price regulation is doomed to fail in terms of achieving economic objectives. The article also discussed how price regulation in Ethiopian law is treated and how it relates with other rights. He concluded that, in case of Ethiopian law, based on article 40 of the FDRE constitution as the constitution protects private property, the characterization of price regulation as an indirect expropriation seems to be inexistent. And the author advised the Ethiopian legal system to adopt tests to validate price control in light of the constitution. Fekadu’s article also explained the constitutional basis for governmental authority to regulate price. Under Ethiopian law the constitutional basis for governmental authority stems from the

⁹⁸ ibid

⁹⁹Id, p.70

¹⁰⁰ Jacques S. & Alexis W., Supra note 51, p.65

state's policy making power under article 51, the economic objectives expressed under article 89 and from state of emergency provisions. In view of the author, the criticism against price regulation loses weight in the case of emergency circumstances, in which the positive effects of price controls could offset the drawbacks. In the case of the federal or regional power classification to determine prices, it concluded that economic regulation in general seems to be meant for the federal government, his justification for this conclusion is except in the case of state emergency in their respective territories, it could distort the uniform economic community. In Ethiopia under price regulation related legislations, power to regulate price is given to the council of ministers. In case of transport law, which regions seem to regulate tariffs in their own ways, which is a shared regulation as a moderate version of the unilateral price control power, the authority impose tariffs that are proposed by the transport providers. Furthermore the author discussed the necessity of a legal redress against interference of property rights of business or persons. However, he argued both in support and against protection of property rights in the context of price regulation, the author argued against its protection in case of customer's right protection. At the end he settles the discussion by identifying major price regulation exercises in Ethiopia. The Ethiopian government has been regulating the prices of commodities and services in the market since the military regime. And after 1991, price regulation was selectively implemented both as a permanent policy measure that is in respect of fuel prices, and as ad-hoc measure in respect of the price of basic commodities. In addition, there are many areas of price control which are either in the pipeline or have been introduced as a solution to curb inflation in that specific area. In this case the author mentioned his worry in regard to using price control as a panacea for every increase of prices.

The strong acceleration of price inflation and scarcity of goods is basic economic problem which need urgent solution in Ethiopia and price control is one of the major solutions which have been taken so far. The authors work in this regard could be counted as a good start to develop knowledge and the article also contributed a lot in this area because it is an issue that needs to be studied and researched well. The article could benefit the general public as it is written in clear and simple language and expression, and plus it could be a springboard for other scholarly works but as the issue is not well studied (the absence of other research works shows that the area is not well studied) it needs in-depth study by including current development and experience. So, an insightful importance of the article is the attention it draws to various issues that led the concept

of price regulation to various interpretations and its detailed analysis of the legislations as it is in the outset promised to point out. Suggestion which is given by the author in regard to having standards to separate the arbitrary vis-avis the appropriate form of price control in the absence of state of emergency is a good point which could be an input for the legislator in this area.

As a core point of the article, author had mentioned price regulation as a measure for unhealthy economic condition. If his conclusion is treating price control as a measure of emergency, then does it mean that it is the concept which is not used in normal economic circumstances? And does he mean price control measure is right only in case of emergency? based on other scholars Price regulation can be used to create fair market that is accessible by all,¹⁰¹ which means the government could control price even without the emergency happened as it has been seen in the time of Derg due to many reasons like government economic policy. Therefore in my opinion, this generalization raises logical fallacy.

Besides, Even though the author mentioned that there has not been agreement in whether the adverse effects of price regulation out weight the positive impact of price regulation, he mainly focused on the drawbacks and failed to clearly show its positive effect and it makes the reader to take only one side of the issue. In the article the author seem to argue against price regulation and when he says ‘the rational for price regulation is typically to prevent consumer exploitation and to avoid market foreclosure’ in the article’s conclusion part, it again presented it as a solution for economic problem and in the other side he presented it as ineffective in terms of achieving its economic objective. These two concepts contradicted each other.

Despite the fact that price regulation is a means of direct economic intervention of the government to achieve economic goals like controlling inflation and commodity scarcity and to solve some social problems, the above scholars and many other scholars argued against it as it interferes with the freedom of contract on the parties involved in the transaction and as a distorter of basic order of the market which must be determined by the supply and demand equilibrium and in the other side some others supported price regulation based on different conditions. Price regulation not only interferes with the freedom of contract, but it also restricts the income terms of private contracts, since the property subjected to the price regulation is privately owned, an

¹⁰¹ Will Kenton, ‘price controls’ updated July 28, 2021, reviewed by Charles potters, available at < <https://www.investopedia.com/terms/p/price-controls.asp>> accessed on 20,Dec,2021

important question of procedural safeguard can be raised.¹⁰² We should thus characterize the concept of price regulation within the constitutional protection and the instruments of price regulation before embarking on the procedural safe guard, if any.¹⁰³

¹⁰²Fikadu Petros, *supra* note 6, p. 149

¹⁰³ *ibid*

CHAPTER THREE

3.1. GENERAL OVERVIEW OF PRICE AND PRICE REGULATION

In general definition, price is the amount of money that has to be paid to acquire a given good or service and, as the amount people are prepared to pay for a product represents the value, price is also a measure of value of the product.¹⁰⁴ Therefore, as price is the value of the product, Price determines what goods are to be produced, how the goods are to be produced, how much quantity is needed to be produced and who will get the products.¹⁰⁵ And also in a system of free market, price promotes efficiency and indicates key market tendencies.¹⁰⁶

Prices contain essential information. They show how scarce resources are; indicate what consumers want; producers rely on prices to decide on their products and so and so. Prices are effective only when they reflect actual economic conditions.¹⁰⁷

Prices should naturally equate supply and demand in a free market, which price as a signaling mechanism matching supply and demand.¹⁰⁸ That means demand and supply components of a market depend on price. The law of supply and demand centers on prices that change when either the supply of goods and services or the demand for them changes.¹⁰⁹

But supply and demand do not necessarily respond to price movements proportionally.¹¹⁰ The measure of how sensitive the quantity demanded to its price is known as its price elasticity.¹¹¹ Or

¹⁰⁴ The editors of Encyclopedia Britannica, price/demand, supply and market equilibrium definition/ Britannica Money

<https://www.britannica.com/money/price-economics>

¹⁰⁵ ibid

¹⁰⁶ Fikadu Petros, supra note 6, p.122

¹⁰⁷ Daniel Heil (January 12, 2021), "what goes wrong when government interferes with prices", Hoover institution, Stanford university

Available at: <https://www.hoover.org/research/what-goes-wrong-when-government-interferes-prices>

¹⁰⁸ Jason Fernando. (Investopedia.com., updated 2023, march 13)

<https://www.investopedia.com/terms/l/law-of-supply-demand.asp#:~:text=The%20law%20of%20supply%20and%20demand%20combines%20two%20fundamental%20economic,supply%20constricts%20while%20demand%20grow.> accessed August 10, 2023

¹⁰⁹ Leslie Kramer. (investopedia.com, updated August 11, 2023)

<https://www.investopedia.com/ask/answers/033115/how-does-law-supply-and-demand-affect-prices.asp> accessed August 27, 2023

¹¹⁰ Fikadu Petros, supra note 6, p.123

¹¹¹ Wikipedia 'price elasticity of demand' available at: <https://en.m.wikipedia.org/wiki/price> elasticity of demand

price elasticity is the variation in demand in response to a variation in price.¹¹²The price elasticity gives the percentage change in quantity demanded. When the price rises, quantity demanded decline for almost any good, but it decline more for some than for others. Products with a high price elasticity of demand will see wider fluctuation in demand based on the price. In contrast, basic necessities will be relatively inelastic in price because people can't easily live without them, meaning demand will change less relative to changes in the price. The law of supply relates price changes for a product with the quantity supplied. In contrast with the law of demand the law of supply relationship is direct, not inverse.

Based on the law of demand, demand for a product increases if the price decline and demand for a given product decreases if the price increases. And in the opposite, in the case of the law of supply, higher prices increases supply of a good and lower price makes the supply to decrease.

High prices suggest that demand exceed supply, which shows that a market is profitable and invites entry—which, other things being equal, should lower prices due to increased competition.¹¹³ In addition, increasing price drive consumers to decide upon the extent to which they value a good or service and, in theory, “result in that scarce commodity being allocated to those who value it the greatest.”¹¹⁴ In this way, the price formation mechanism gives rise to allocation of resources efficiently depending on the society's demand. Therefore, the determination of market prices through the dynamic interaction of supply and demand is the basic building block of economics.¹¹⁵ That means if the government intervene through price control, this basic order of the economy will be distorted.

The adoption of price control policy defines the market prices and compels transactions to materialize at that price rather than the equilibrium price adjusted by supply and demand interaction. In addition, as supply and demand change persistently depending on the reaction it has for tastes and costs, regulated price will never be effectively an equilibrium price because the

¹¹² ibid

¹¹³Fikadu Petros, supra note 6, p.121

¹¹⁴ Id.122

¹¹⁵NiamhDunne(2017), ‘price regulation in the social market economy’[inGebremeskel, F. P. (2020). The constitutional and legal basis of price regulation in Ethiopia. *Mizan law review* p.121]

government will change the price only after lengthy political process. This means that the government price will be either too high or too low.¹¹⁶

Therefore, imposing regulated price in the market may stimulate more production (supply) more than what the consumers need or can afford and this may lead to product wastage. Or in the other side in the case of lower price, consumers may want more of the product than what is made available in the market and this may result in scarcity and discourages producers to produce or noticeable change in quality.

Government set price control system with different intention depending on the understanding of the notion of price; lower prices to protect consumers, increase prices to benefit industries or lower or push prices for other reasons. And sometimes part of the reason why governments resort to price control is a wrong understanding of the very notion of price itself.¹¹⁷ Understanding prices as a random numbers set by the sellers and forgetting the effect of the concept in the economy is one of the misconceptions in dealing with the concept of price. Other times government uses price as a means to achieve other objective or goal; like to improve social outcomes. Price control reform in the Arab republic of Egypt, Morocco and Tunisia during Arab spring under pressure from social tension is one example for this. This countries tightened food price control and reduce price of oil in 2011 to reduce inequality and poverty.¹¹⁸ But this reform didn't meet its objective due to different reasons. These views, however, misconstrue the fundamental nature and role that prices play in an economic system.

Government management of prices can also occur as a by-product of other policies. For instance, preferential exchange rates for certain goods and the imposition of non-tariff barriers can all push prices away from that which would prevail in a competitive market. It may also alter the proportions between the various categories of prices by means of tariffs, taxes, wage regulation, buying up surpluses and similar measures which of these measures should be adopted depends

¹¹⁶ Paraphrased from Fiona M.S.Morton(2001), 'The problems of price controls regulation' Cato Review of Business and Government, vol.24,No. 1, p.2

¹¹⁷ Fikadu Petros, Supra note 6, p.123

¹¹⁸ Justin Damien Guenette(April,2020), "price controls; good intentions, bad outcomes" policy research working paper, World bank group, p.8

on the economic conditions prevailing.¹¹⁹The employment of such measures cannot, however, be of equal help to all parts of the economic system simultaneously.

In general, the use of price control has primarily political and economic objective, and too infrequently it is as a tool for social policies such as determination of floor prices to discourage addiction in alcohol and tobacco use.¹²⁰However, price regulation achieves the social objectives more often, while it may sometimes achieve the political gains and rarely attains the economic objectives.¹²¹The political gain that price control creates is increasing political support for the incumbent politicians. However, from economic point of view, “the implementation of price controls does not change the fundamental nature of the economic problem. Decisions still need to be made about how to best allocatescarce resources among an array of feasible alternatives.”¹²² Where price controls do not apply, “these decisions are made through the market process, which relies on true market prices reflecting the relative scarcity of resources. However, with the implementation of controls, the market process is distorted and political competition, at least partly, replaces market competition.”¹²³

3.1.1. HISTORICAL BACKGROUND OF PRICE REGULATION

Price regulations have a long recorded history and it cover the times from Hammurabi and ancient Egypt 4,000 years ago to Roman Empire and medieval kingdom to this day.¹²⁴ But a relatively sophisticated version of the regulated price theory was developed in the 1960s as an offshoot of the literature on industrial organization.¹²⁵ Throughout all those years, price regulation policy has been tested over such diverse historical experience in different times, places, peoples, modes of government and systems of economic organization.¹²⁶

From the comparative perspective, unlike the conventional view that price regulation is the hallmark of emerging markets and developing countries, or undemocratic political systems, it

¹¹⁹ Carl F.Goerdeler(1938), “do government price controls work?” foreign affairs journal, vol.16, no.3,p.495

¹²⁰FikaduPetros, Supra note 6, p.124

¹²¹FikaduPetros, Supra note 6, p.124

¹²² Coyne C. and R.Coyne(eds. 2015), flaws and ceilings ; price controls and the damage they cause , London; institute of economic affairs.p.23

¹²³ ibid

¹²⁴ Robert L. Schuettinger&EamonnF.Butler(1979), ‘Forty centuries of wage and price controls; how not to fight infilation’, the heritage foundation, Washington D.C. p.3

¹²⁵ Maurice Levi and Albert Dexter (Mar,1983), “Regulated prices and their consequences”, Canadian public policy/analyse de politiques, vol.9, No.1,p.24

¹²⁶ ibid

spread across all economies and ideologies.¹²⁷ In the 20th centuries, these policies were used extensively in several western countries during World War II, including United States and United Kingdom.¹²⁸ But the control is to be much more pervasive in emerging markets and developing countries than in advanced economies, especially for energy products and food related goods.¹²⁹ The relatively high prevalence of other types of price controls in advanced economies reflects the greater prevalence of controls for services such as telecommunications.¹³⁰ And also price control regimes tend to be more restrictive in emerging economies and in developing countries when compared to advanced economies, even though the extent of controls varies greatly across economies¹³¹ Price regulation is also a common trend in communist countries with planned economies.

In emerging markets and developing economies, price controls on goods are often imposed to serve social and economic objectives. They may be part of government efforts to protect vulnerable consumers, by addressing market failures or subsidizing the cost of essential goods. Or they may be intended to maintain the incomes of producers, as part of a price-support program. Alternatively, they can serve the purpose of price smoothing, especially for key commodities subject to high volatility in international markets.

Even though the historical record shows that prices has been regulated for all or some of goods and services, price controls are commonly imposed on consumer staples, essential items like basic consumer commodities, energy products, wage, rent and etc.¹³² since 1980s, generalized price controls fell out of favor and controlled pricing for certain good and service like rent and pharmaceuticals are trending.¹³³

¹²⁷ Fikadu Petros, Supra note 6, p.123

¹²⁸ Coyne C. and R. Coyne (eds. 2015), *Flaws and Ceilings: Price Controls and the Damage They Cause*, London; Institute of Economic Affairs. (In Justin Damien Guenette (April, 2020), "price controls; good intentions, bad outcomes" policy research working paper, World Bank Group, p.2)

¹²⁹ Robert L.S. & Eamonn F.B., Supra note 123, p.3

¹³⁰ *ibid*

¹³¹ *ibid*

¹³² Will Kenton (investopedia.com, 2023, September 30), "price controls explained: types, examples, pros and cons"

<https://www.investopedia.com/terms/p/price-controls.asp> accessed in October 20, 2023

¹³³ Robert L.S. & Eamonn F.B., supra note 123, p.2

3.2. JUSTIFICATIONS BEHIND PRICE REGULATION

Theoretically, regulation is instituted primarily for the protection and benefit of the public at large or some large subclass of the public.¹³⁴ Therefore, unless the regulations which injure the public are costs of some social goal or occasionally, perversions of the regulatory philosophy, it must protect and benefit the public or section of the public. Which means the policy needs to justify why the regulation is applied and its advantage for that specific society.

While enacting price regulation policies, different justifications have been given by the advocates of the policy, the government and policy makers. And justifications given for a given control of goods and services most frequently vary noticeably across economies.

Generally Price regulations are seen as restrictions imposed by governments to ensure that goods and services remain affordable and also used to help steer the economy in a certain direction.¹³⁵ They are also used to create a fair market that is accessible by all. The policy of price controls is also used to help curb inflation and to create balance in the market. Supporters of price controls say that these policies are necessary in order to make things more amenable for both consumers and suppliers.¹³⁶ By enacting price regulation policies, consumers can afford essential goods and services and producers can remain profitable.¹³⁷

Governments may also set price limits on goods and services if they feel that producers aren't benefiting from the free market due to unfair competition. And the aim of this control is to allow companies to remain competitive and to ensure that they are profitable.¹³⁸

Controlling how prices are set keeps companies from developing monopolies. Companies are at an advantage and can dictate prices when demand is high and supply is short.¹³⁹ As such, they may be able to inflate prices to boost their profits by using their monopolistic power. In this case, Governments can intervene and set price ceilings to prevent suppliers from continuing to raise

¹³⁴ George J. Stigler (1971) 'The theory of economic regulation', *The bell journal of economics and management science*, vol.2, No.1, University of Chicago, p.2.

¹³⁵ Will Kenton, *supra* note 131

¹³⁶ *ibid*

¹³⁷ George J. Stigler, *supra* note 133

¹³⁸ *ibid*

¹³⁹ *ibid*

prices, and to allow new competitors to enter the market and crush monopolies that exploit consumers.¹⁴⁰

As mentioned earlier, different justifications has been made for using price control as a policy depending on situation and different methods of price control also used based on the circumstances. For example; Countries apply price controls on export and import goods. Governments often impose controls on the domestic prices of imports to maintain real incomes of domestic consumers, hold down costs to producers, or smooth domestic price volatility.¹⁴¹In another case the financial sector is also often a target of price controls. Some countries have imposed ceilings on interest rates. The reason for this control is often motivated by a desire to provide targeted support to strategic industries or to shield consumers from financial exploitation.¹⁴²

In the case of transport sector, in rail transportation, prices regulated to protect the travelers because, it is assumed that there is a monopoly in rail travel when rail is simply one small part of a vibrant market for transport services.¹⁴³

Governments have three main reasons for imposing rent control. ¹⁴⁴The first is the fear that those who can pay will get all the housing and the poor will be left in the cold. The second is that landlords benefit too much from rents which can be indefinitely raised. The third is that a rise in rents is a form of inflation, and so should not be allowed.¹⁴⁵

Price ceilings are established to prevent producers from price gouging and this is common in the housing industry and in the health sector.¹⁴⁶ For example, based on the universal health coverage policy which is a commitment made by the united nations member states to extend coverage to needed health care services for the whole population, without people suffering from high health care payments or poverty, to attain this commitment, governments are obligated to take reasonable regulatory and other measures, with in available resources, to achieve the progressive

¹⁴⁰ *ibid*

¹⁴¹ Robert L.S. & Eamonn F.B., *Supra* note 123, p.6

¹⁴² *Id*, p.7

¹⁴³ Coyne C. and R.Coyne, *Supra* note 121, p.125

¹⁴⁴ George J.Stigler, *Supra* note 133, p.85

¹⁴⁵ *ibid*

¹⁴⁶ Will Kenton, *Supra* note 131, also see Coyne C. & R.Coyne, *supra* note 121, p 123-125

realization of the right to health care.¹⁴⁷ The world health organization and OECD suggested price regulation in health sector is to ensure that all people have access to health services and the justification for this obligation is for most commodities, pricing is determined based on supply and demand, but unlike other commodities, consumers of health care usually know less than the seller while concurrently having a financial interest in the ultimate decision on what option to use. For many commodities, consumers assess the price and the value of goods, but in the case of health, accurate comparable information about price is difficult to assess.¹⁴⁸

3.3. HOW PRICE REGULATION FAIL TO CURE INFLATION

Price controls are often implemented with the goal of fighting inflation. But this, incorrectly, assumes that all price increases are the result of inflation.¹⁴⁹ States pursue monetary and fiscal policies that cause inflation, convinced that the policies can manage the economy. From the earliest times, from the very inception of organized government, rulers and their officials have attempted, with varying degrees of success, to control their economies. For the past forty-six centuries (at least) governments all over the world have tried to fix prices from time to time. The question is have price controls ever achieved the objective intended, restraining inflation or cure shortage?

To answer this question it is important to see the basics of inflation and price control and how price control reacted with the inflated economy. Robert L.SchuttingerandEamonnF.Buttler also suggest policy makers, before jumping to the conclusion that price control can actually cure an inflation, to make an attempt to understand the true cause of that phenomenon.¹⁵⁰ And pointed out that, the absence of such understanding is one of the reasons that price controls have had such a long and painful history of failure and ineffectiveness.¹⁵¹

The phenomenon of inflation is seen to have one major cause, but is associated with a large number of economic conditions, institutional rigidities, monetary expansion(excess of money

¹⁴⁷ Sarah L.Barber, Luca Lorenzoni and Paul Ong (2019), “price setting and price regulation in health care: lessons for advancing universal health coverage”, world health organization and the organization for economic cooperation and development(OECD), p.3

¹⁴⁸ *ibid*

¹⁴⁹George J.Stigler, *Supra* note 133, p.21

¹⁵⁰ Robert L.Schuettinger&EamonnF.Butler, *Supra* note 123, p.121

¹⁵¹ *ibid*

supply), failure of prices to adjust in recession, economic rigidity, expansion caused by war and so on, which make simple solutions like price controls inadequate as a cure.¹⁵²

There is growing support for the hypothesis that inflation is always and everywhere a monetary phenomenon caused principally by an expansion of the supply of money in circulation over and above the level of output.¹⁵³

An expansion of the supply of money in circulation, without a corresponding expansion of the commodities in circulation will, therefore, produce a general rise in prices throughout the economy.¹⁵⁴ Every inflation, including all contemporary inflations, has the same explanation. There are no exceptions to the rule. The rule is that prices, on average, depend on the ratio of money to output. ¹⁵⁵

Indeed, there is not a single episode where price controls have worked to stop inflation or cure shortages. ¹⁵⁶ Instead of curbing inflation, price controls add other complications to the inflation disease, such as black markets and shortages that reflect the waste and misallocation of resources caused by the price controls themselves. ¹⁵⁷ Many of the results of price controls, such as black and gray markets are predictable. Instead of eliminating shortages, price controls cause or worsen shortages. By giving producers and consumers the wrong signals because "low prices to producers limit supply and "low" prices to consumers stimulate demand, price controls widen the gap between supply and demand. ¹⁵⁸

Controls may be able to suppress the symptom of inflation, but the evidence shows that they are not a cure for the disease itself. ¹⁵⁹ So far it has been shown that throughout history, price controls have been ineffective as cures for inflation. Occasionally, they have relieved the symptoms of inflation for a while; sometimes, they have reduced expectations of inflation and therefore contributed to a reduction in the public pressure on the government to stimulate monetary

¹⁵²Paraphrased from Robert L.Schuettinger&EamonnF.Butler, supra note 123, p. 121-125

¹⁵³ Id, p.127

¹⁵⁴ Coyne C. and R.Coyne, Supra note 121, p.22

¹⁵⁵ id, p.136

¹⁵⁶ ibid

¹⁵⁷ ibid

¹⁵⁸ ibid

¹⁵⁹Robert L.Schuettinger&EamonnF. Butler, supra note 123, p.121

growth.¹⁶⁰ Always, however, they have been short-lived and they have never been fully effective in their nominated ends.¹⁶¹ Indeed, as has been pointed out, price controls often have such a perverse effect on the economy that they worsen the inflationary situation.

The history of price regulation from Hammurabi, to ancient Egypt, to Sumeria, to Rome, Medieval England, French Revolution to modern day America and Ethiopia, invariably shows that price controls never worked to control inflation.¹⁶² It is not merely that controls draw attention away from the real causes of inflation, but that they give governments an excuse for inaction.

To sum up we can take Coyne C. and R.Coyne conclusion:

Price controls have been tried in a number of radically different economies and eras. The context has been currency depreciation or inflation and the consequences have been depressingly similar. Inflation may sometimes have been interrupted temporarily but it has never been eliminated or contained by such means. Inflation or currency depreciation tend to lead to price controls which are intended variously to mitigate some of the regressive character of the inflation tax and to contain inflation itself. Controls are often the result of a reversion to the 'ethics of small groups' where someone's economic gain is always seen as someone else's loss. Hence the discomfort of those ill affected by inflation is supposed to be the result of the actions of merchants, property owners and others who gain. The obvious solution, it appears, is to restrain the actions of the merchants and property owners. But this approach is flawed as it is based on a mistaken understanding of the mechanism of inflation. Not surprisingly, the approach also fails, except for short periods, to mitigate inflation or its ill side effects.¹⁶³

¹⁶⁰Coyne C. &R.Coyne, Supra note 121, p.131

¹⁶¹ ibid

¹⁶²FikaduPetros, Supra note 6, p.126

¹⁶³ Coyne C. and R.Coyne, supra note 121 ,p.43

3.4. TYPES OF PRICE REGULATION

Price controls can be set in a variety of forms and types. There are two prominent types of price controls, which are price ceiling and price floor and as a third type there is less used type which is profit margin. Price ceiling restricts prices from exceeding a maximum price or the highest points at which goods and services can be sold determined by government: an example would be rent controls of residential living spaces which set a legally mandated upper bound on the price that can be charged to tenants. Price ceilings are typically applied to staples such as food and energy products when such goods become unaffordable to regular consumers.¹⁶⁴ Because of politically sensitive nature of fuel price, Price ceiling has often been applied in energy markets in almost all countries throughout the world. This kind of price control is set by government when it seems that price is excessively high or rising out of control.¹⁶⁵ Food price ceiling is another form of control especially for developing countries, including Ethiopia and it is one of the oldest of price regulation in the world.¹⁶⁶ In more developed countries, a typical item often chosen for price capping is medicine. However, unlike the practice in many countries, Ethiopia does not regulate the price of medicine.¹⁶⁷ Price ceiling is basically designed to protect the consumer.

Depending on the good and service regulated there are several types of price ceiling: Absolute price ceiling is a fixed limit on the price that can be charged for a good or service. The price cannot go higher than this limit.¹⁶⁸ The fixed price on gasoline currently in Ethiopia is typical example for this.

Relative price ceiling is a limit on the price of a good or service in relation to another good or service. For example a government might set a relative price ceiling on the price of rent depending on the average income of renters.¹⁶⁹

¹⁶⁴ Troy Segal(May 27,2023), "price ceiling types, effects, and implementation in Economics", Available at: <https://www.investopedia.com/terms/p/price-ceiling.asp#:~:text=price%20ceilings%20and%20price%20floors,rising%20above%20a%20certain%20level>.

¹⁶⁵Fikadu p., Supra note 6, p.129

¹⁶⁶ ibid

¹⁶⁷FikremarkosMerso (2017), Patents and the Development of the Pharmaceutical Industry, Ethiopian Civil and Commercial Law Series, Vol. 7, p. 157[inGebremeskel, F. P. (2020). The constitutional and legal basis of price regulation in Ethiopia. *Mizan law review* p.130]

¹⁶⁸ ibid

¹⁶⁹ ibid

Periodic price ceiling is a limit on the price for a specific period of time. ¹⁷⁰Even though the government didn't limit specific price for rent, this kind of controls is used in Ethiopia, in Addis Ababa city. Recently, the Addis Ababa city administration has restricted land lords from increasing rent price for 3 month and again in another round for 6 months.

The drawback of price ceiling is, it creates excess demand coupled with a supply shortage because producers are unwilling to sell at a lower and consumers are demanding cheaper goods. Perhaps, price ceiling may be of the oldest of price regulation in the world. ¹⁷¹

The second one is price floor, in contrast, prohibits the charging of prices below a predetermined minimum.¹⁷² Minimum prices are imposed to help producers when authorities believe that prices are too low, leading to an unfair market. So, it is the lower boundary on the price of a commodity in the market. Governments often impose price floors to protect sellers against low prices in markets characterized by uncertainty.¹⁷³ It is a common form of policy intervention to bolster prices.

There are two types of price floor.1/binding price floor: is a price which is set greater than the equilibrium market price.¹⁷⁴ Producers are better off as a result of the binding price floor, but consumers are always worse off because they must pay more for a lower quantity.¹⁷⁵

2/ Non-binding price floor: is one that is lower than the equilibrium market price. Producers and consumers are not affected by a non-binding price floor.¹⁷⁶

In general the effect of price floor on producers is ambiguous. They may be better off, no difference or worse off as a result of the measure. But in case of consumers, consumers never gain from it; they may be worse off or no difference.

¹⁷⁰ ibid

¹⁷¹ Coyne C. &R.Coyne, Supra note 121. P.129

¹⁷² George J.Stigler, Supra note 133, p.1

¹⁷³ Stephen Salant, William Shobe&NeslihanUler (April,20220), 'the effects of "non binding" price floors', European Economic Review, p.2

¹⁷⁴ Corporate finance institute team, 'price floor',(available at: <https://corporatefinanceinstitute.com/resources/economics/price floor/>)

¹⁷⁵ ibid

¹⁷⁶ ibid

Governments usually set up price floor to assist producers or workers in the case of labor market. And it is implemented in markets with inelastic demand and very low prices naturally. The practice allows the government to increase overall welfare in the society.¹⁷⁷

The most prominent example of price floor is the minimum wage in developed countries. Another area of price floor is minimum unit pricing in alcohol pricing and controlling the problem of smoking and tobacco use.¹⁷⁸

As a third form which is less known and less used than the first two Regulation of profit margin, also known as mark-up regulation is another type of price control mechanism. Conceptually, “a mark-up may be defined as the difference between the purchase price (cost price) and the selling price of a commodity.”¹⁷⁹ Various jurisdictions have used profit margin regulation as an alternative to floor and ceiling control or as supplementary to price control. It sets clear rules to reduce differences in price for the same product along the supply chain.¹⁸⁰ Markup regulation is used in fruits and vegetables markets in which price cap would be impossible to implement due to high seasonality or uncertainty in production costs. And also mark-up regulation is often used in regulating the price of pharmaceuticals in many developed and middle income countries.¹⁸¹

In terms of method, some writers also include macro-economic policies like budgetary operation of the country, commercial policies like control on imports and exports, tariffs and etc, direct measures which are operated through legislative and administrative measures like administered price, subsidization, dual pricing (affordable prices for the weaker section of the society while same commodities are sold at higher prices in the market) as a measures or methods to control prices.

¹⁷⁷ *ibid*

¹⁷⁸ Fikadu Petros, *supra* note 6, p.127-128

¹⁷⁹ The Regulation of Mark-ups in the Pharmaceutical Supply Chain, WHO/HAI Project on Medicine Prices and Availability, 2011, p. 1, Available at <<https://haiweb.org/wp-content/uploads/2015/07/Working-Paper-3-Regulation-of-Mark-ups.pdf>> Accessed, Sept. 4, 2019. [in Gebremeskel, F. P. (2020). The constitutional and legal basis of price regulation in Ethiopia. *Mizan law review* p.130]

¹⁸⁰ World health organization(2021), 'mark up regulation across the pharmaceutical supply and distribution chain'

¹⁸¹ Fikadu p., *Supra* note 6, p.131

3.5. SOCIO-ECONOMIC IMPACT OF PRICE REGULATION

The primary objective price regulation is expected to meet is political and economic objective, but governments also use it as a means to implement social policies. Though mostly, price regulation achieve the social objective than the economic objectives. Therefore, Controls can be used for noneconomic purposes. But in the case of economic objectives, the policy of price control does not cure the fundamental economic problem.

Governments set price by taking social, political or economical objectives into consideration. Though, the policy may or may not meet its objective as expected. That means a regulation that takes place for economic purpose might not bring the economical impact rather bring social or political impact. For example: In the case of minimum wage, minimum wages are set to protect the workers against low pay and to overcome poverty and to ensure the satisfaction of the needs of all workers. However, ‘does minimum wage allow workers and their families to live above the poverty line?’ is the question that has to be addressed while evaluating the economic objective of the policy. This is because other economic factors like inflation need to be considered for the ‘minimum wage policy’ to meet its economic objective. As the effectiveness of minimum wage economic objective depends on other factors, minimum wage may or may not meet its goal. Therefore, in most cases minimum wages have little impact on overall poverty rates.¹⁸² But in the case of social impact minimum wage has positive impact on social outcomes like, minimum wage reduce wage inequality and it also reduces wage payment based on gender (gender pay gap).¹⁸³ And sometimes, the issue of minimum wage is purely a payoff for the political motive of government or political party in which they try to show the community that ‘they are working for the betterment of economic status of the working class’, though they didn’t show the framework how it became effective in the midst of other factors which hinder its effectiveness.

In addition in the case of social impact, another example is, in Europe minimum unit pricing in alcohol pricing is used. The basic goal of setting this price regulation is to control alcoholism.¹⁸⁴ And this regulation is said to be effective in controlling alcoholism which is basically social and health objective. Therefore studies in various countries have shown that high floor prices have an

¹⁸² Klaus Grunberger, EdliraNarazani, Stefano Filauero&Aron Kiss,” social and fiscal impacts of statutory minimum wages in EU countries: A microsimulation analysis with EUROMOD”,JRC working papers on taxation and structural reforms NO.06/2021, European Union,p.10

¹⁸³ Id, p.9

¹⁸⁴Fikadu P., Supra note 6, p.128

impact of reducing alcohol consumption, thereby becoming an important public health policy instrument. Floor prices also have helped many countries to control the problem of smoking tobacco. This regulation also relates to solving social than the economic problem. Therefore, in most cases, when the regulation applied to achieve its economic objective, the social impact brought by it is seen.

From the economic point of view price controls naturally distort basic supply and demand relationships. Giving signals of low prices to producers' limit supply and 'low' prices to consumers stimulate demand; and price controls widen the gap between supply and demand.¹⁸⁵ Therefore, Price controls were no longer seriously considered as tools of economic policy.¹⁸⁶

In general, there are some other Comments on the economic impacts of price controls that might be given here: Firstly, Controls sometimes might harm the economy by making the need for structural reforms in the economy

Secondly, controls shift the traditional economic powers wielded by government, labor organizations, businesses and consumers. For the most part, power is put into the hands of the former three at the expense of the latter. The government, by intervening in wage disputes and other crucial activities, expands its economic influence to gigantic proportions when compared to its influence in a free market.

In addition to these impacts, George J.stigler summarizes the impact of price regulation in the economy.

1/ controls lead to distortions in the market system;

2/ controls negate the profit principle;

3/ the regulatory body becomes more important than the market

4/ controls draw attention away from the real causes of inflation.¹⁸⁷

¹⁸⁵ Id, p.124

¹⁸⁶ ibid

¹⁸⁷ Paraphrased from George J.Stigler, supra note 133, p 139-142

CHAPTER FOUR

CONSEQUENCES OF PRICE REGULATION AND COUNTRIES

EXPERIENCE

4.1. CONSEQUENCES OF PRICE REGULATION

Any policy has its own consequence depending on the situation, either positive or negative. Thus, it is very important for a policy maker to decipher the effect whenever they propose as a government policy. Price regulation, as one of the policy measures taken to cure an unhealthy economic state, has economic, social and political effects. However, there has not been agreement as to whether the adverse effects weigh the positive impacts.¹⁸⁸

4.1.1. ADVERSE CONSEQUENCES OF PRICE REGULATION

Price regulation can have unintended negative consequences. The adverse consequence of price regulation cannot be listed exhaustively, but there are some consequences which happened in most cases throughout the world in many controlled markets. Those consequences are:-

1. Disruption of the market; shortage and surplus of products

In normal circumstances, consumer preferences for a product determine how much of it they will purchase at any given price and if the price of the good or service declines they will buy more, at the same time, firms decide the amount of goods and services they are willing to supply at different prices.¹⁸⁹ If consumers are willing to pay higher prices for a given product, then more manufacturers will try to produce the product and this will result in increase in production capacity and motivate to conduct research to improve the product.¹⁹⁰ In this way this interaction produces an equilibrium market price, in which the quantity demanded equate the quantity supplied. And the price formation mechanism leads to an efficient distribution of society's finite resources.¹⁹¹ There is, therefore a default assumption that price should be determined, principally, by interaction of levels of supply and demand in a market.¹⁹² Adam Smith in his work, *The wealth of Nations*, describe this scenario as invisible hand which are unseen forces

¹⁸⁸ Robert I.Scheuttinger&EamonnF.Butler[in FekaduPetros p.131]

¹⁸⁹ Fiona M.S.Morton, supra note 115

¹⁹⁰ ibid

¹⁹¹Niamh Dunne, supra note 89,p.3

¹⁹²Niamh Dunne, supra note 89, p.3

that move the free market economy by incentivizing individuals, acting in their own self interest, to produce what is societally necessary.¹⁹³ So, the basic supply and demand frame work highlights the fact that in an unregulated price, there is an inherent tendency for prices to adjust to align the different interests of consumers and suppliers.¹⁹⁴

Therefore, price is the most immediate parameter upon which undertakings compete, and the free operation of the price formation is vital to the effective and efficient functioning of competitive market.¹⁹⁵ At the case of the effectiveness of markets is the notion of economic calculation, which refers to the decision making process of how to best allocate scarce resources among the array of feasible alternative.¹⁹⁶ Crucial to this decision making process are prices and profit and loss accounting.¹⁹⁷ Prices, which serve as a common unit of calculation, capture the relative scarcity, or opportunity cost of different goods based on context- specific conditions.¹⁹⁸

But when government regulate price, it defines market price of a product and forces all. Supply and demand shift constantly in response to consumer tastes and costs of products, but the regulated price will change only after a lengthy political process; therefore, the regulated price will effectively never be an equilibrium price.¹⁹⁹ This means that the regulated price will be either too high or too low. When the price is too high, there is an excessive amount of the product compared to demand. And when price is regulated below the equilibrium, this may cause consumers to want more of the product than available product in the market. And this may result scarcity of the product.²⁰⁰

So, price regulations are a problem. Because, it create persistent shortage or surplus while reducing the number of mutually beneficial exchanges that would occurred in the absence of regulation. And it distorts the price mechanism's ability to allocate resources to their highest valued uses through voluntary exchange.²⁰¹

¹⁹³ Christina Majaski(Dec, 14,2023), " what is the invisible hand In Economics?",

¹⁹⁴ Coyne C.&R.coyne, supra note 121,P.9

¹⁹⁵Niamh Dunne, supra note 89, p.3

¹⁹⁶ Coyne C &R.coyne, supra note 121, P.9

¹⁹⁷ ibid

¹⁹⁸ Id, p.10

¹⁹⁹ Christina Majaski, supra note 192

²⁰⁰ ibid

²⁰¹Coyne C. &R.coyne, supra note 121, P.15

This dynamic was evident in early twentieth century, in France in the years following the French Revolution, when city residents found it difficult to purchase grain. The grain shortage was not due to any agricultural production problems; France was a wealthy agricultural nation proficient of feeding itself. Instead, the threat of famine was due to internal procurement and distribution problems created by the government. For example, agents for the city of Paris, the military and the government competed with each other in trying to purchase grain. This created local shortages where none had existed before, and led to social unrest. Then the city of Paris, in an effort to pacify the public, decided to subsidize flour, creating even more shortages in the city.

Again to solve this shortage, the French convention, which governed the nation at that time, tried to address the problem by establishing maximum prices for grain and instructing farmers to supply it to local markets. Farmers did not cooperate with the new law. Markets were empty of grain; further shortages developed; official tallies of grain supplies failed to find and keep track of stocks; urban riots continued.

The convention passed another law later in 1793 extending maximum prices to other essential supplies. Those price controls, in combination with government requisitioning and corruption, created chaos in the French economy. Merchants responded by reducing the quality of their goods and the black market blossomed. It was the honest merchant who became the victim of the law.²⁰²

And in another case, when we come to Ethiopia, in the case of cement in 2014, the government of Ethiopia passed a directive on cement,²⁰³ to curb the rising price that give the government an authority to set a price and tried to control its distribution.²⁰⁴ Based on this directive, the government regulate price of cement through measures like setting fixed prices, limiting the volume that individuals can buy and by asking producers to cut off the distributors who take the products from the producers out of the supply chain. And factories were supposed to sell to distributors which were selected by the government. In the aftermath of the directive, accessing

²⁰² Fiona M.S.Morton, *supra* note 115, 2

²⁰³ cement marketing and distribution directive 908/2014

²⁰⁴ Metasebia Teshome (Dec, 2022), 'trade ministry steps in to regulate stiff cement market' capital news paper. Available at:- <https://www.capitalethiopia.com/2022/12/25/trade-ministry-steps-in-to-regulate-stiff-cement-market/?amp=1#:~:text=in%20a%20press%20conference%20held,out%20with%20a%20new%20regulation>

cement even twice its rated price were a great concern for the people.²⁰⁵ Before the directive were passed the price of one quintal of cement was not more than 700 birr and after the directive within few years the price of cement shifted to over 2000 birr in the market which is more than 285 percent price increase.²⁰⁶ And this regulation automatically resulted the disappearance of cement from the market, as the upset merchants hide the product to not to sell in the regulated price and it also create black market, as the demand for the product is unbearable. Since then even though the government tried different measures to cure the issue of cement, even by amending this directive, it remained ill.

2. Decrement and noticeable change in quality, discourage research and improvement of products

Quality and price determines customer satisfaction.²⁰⁷ Therefore, regulators often enact price restrictions with the goal of improving access to products at affordable prices.²⁰⁸ And the main purpose of the regulated market is to encourage providers to keep cost down without skimping on quality.²⁰⁹ Yet due to changes in the financial incentives, firms may alter their behavior regarding quality.²¹⁰ This means that firms may have an incentive to decrease quality in order to cut the costs instead of improving productivity.²¹¹ This may include the substitution of low quality for high quality ingredients in the production of a good or, in the case of rent regulation, maintenance and investment not being carried out and poor quality conditions being allowed to develop in accommodation.²¹²

However, firms can respond to their regulations by adjusting their product offerings, which could come at the expense of consumer access to the market.²¹³ In addition, regulators may invent

²⁰⁵ ibid

²⁰⁶ ibid

²⁰⁷ Ismail R., Nazief N. &BogeTriatmanto (2016), 'the impact of product quality and price on consumer satisfaction with the mediator of customer value', Journal of Marketing and consumer Research, Vol.30, p.59

²⁰⁸Eilidh Geddes (Dec,2022), ' the effects of price regulation in markets with strategic entry: evidence from health insurance markets', Northwestern University, p.2

²⁰⁹PiiaPekola, IsmoLinosmaa&HennamarMikkola (2017), 'Effects of price regulation and freedom of choice on quality: evidence from the physiontherapy market, Health economic review, p.2

²¹⁰ ibid

²¹¹ ibid

²¹² Coyne C. &R.coyne, supra note 121, P.20

²¹³ ibid

different mechanisms, which are designed to eliminate decreased service quality when price regulated.²¹⁴ But, they may in fact encourage firms to do just the opposite, reduce investment in quality.²¹⁵

Competitors compete away any potential revenue above the cost of the basic output by offering higher quality.²¹⁶ And also they make a research to improve the product, . The competitor's quality offerings will vary directly with the regulated price. Regulation induces a uniformity of quality offerings. Whereas unregulated industry would offer a variety. All consumers must be worse off when a competitive industry is regulated, because they lose quality choice. So, indirectly, it also affects freedom of choice. So, if the goal of policy makers is to improve standards of living, policy must focus on incentivizing improved quality and availability.²¹⁷ This means, when a government considers price regulation, these costs of using the policy must be considered.

3. Diffusion of illegal market

The other negative effect of price regulation is emergence of illegal markets. Unable to adjust prices legally, producers and buyers may move in to the extralegal market to engage exchange.²¹⁸

To provide one illustration of black market activities, consider the recently wheat case in Ethiopia. Since 2021, the government of Ethiopia is set price caps of wheat and promised for the people to provide wheat in abundant amount in low price and issued a directive that set a quintal of wheat to be sold for 3,200 birr only for unions with the aim of accelerating the export and local supply with the unions selling to factories at 3,381 birr to flow supply.²¹⁹ But the farmers and traders who decline to obey the directive seem to hide and withhold yields and have been

²¹⁴PiiaPekola, IsmoLinosmaa&HennamarMikkola, supra note 208, p.14

²¹⁵ ibid

²¹⁶ Lawrence J.White(1972) , 'quality variation when prices are regulated', the Bell journal of Economics and Management science p.425

²¹⁷ Coyne C. &R.coyne, supra note 121, P.20

²¹⁸ Id, P.15

²¹⁹MetasebiaTeshome(March, 2023),'Oromia region lifts wheat price cap' capital news paper.

Available at:- <https://www.capitalethiopia.com/2023/03/20/oromia-region-lifts-wheat-price-cap/?amp=1>

forced to engage in smuggling of agricultural products to neighboring countries and this led to shortage in the market.²²⁰

4. Other adverse consequences

On the other side, one of the justifications to regulate price is to benefit the consumers by making goods and services affordable. But the controlled price which is meant to benefit the consumer may also harm the consumer in the same regulated price. Consumers, in competing for a limited amount of the controlled product, may waste as much as they gain from getting it at a low price. Because they may waste time and energy, even they may waste more money.²²¹ And, this fact was clearly seen in the below cases.

Fiona Morton put the case of Poland as a typical example of how the regulated price which is meant to benefit the consumer affected the consumer in a negative way.

In this case, the polish government kept TV prices artificially low, demand far outstripped supply and televisions became scarce. A consumer who wanted a TV had to sign on to a waiting list. In most cases, the consumer had to visit the store everyday to keep his place on the list. Based on the calculation made by one of an economist in the country, David Tarr, the social cost of the queue for television sets was ten (10) times the size of the standard deadweight loss and that the cost of the price controls on televisions to the polish economy was more than the industry's total sales."²²²

Regulators often seek to both promote competition and limit price variation across consumers to promote access.²²³ But, it may also eliminate competition. Technically, more competition typically lowers prices, the pricing regulation creates pricing spill over.²²⁴ Competition will outweigh a firm's possible incentive to seek cost reductions through quality, but, when price is regulated because of the limitation competition could be eliminated.²²⁵

²²⁰ *ibid*

²²¹ Christina Majaski, *supra* note 192

²²² Fiona M.S.Morton, *supra* note 115

²²³ Coyne C & R.coyne, *supra* note 121. P.20

²²⁴ Eilidh Geddes (Dec,2022), *supra* note 207, p.1

²²⁵ Piia Pekola, Ismo Linosmaa & Hennamar Mikkola, *supra* note 22, p.1

In general, all the consequences are related. The cause of one effect may create another one. If for example, the regulation may cause diffusion of the market; the shortage of the product in the diffused market may also initiate the emergence of black market or it may create another negative consequence at the same time. So, all the consequences associated with price regulation must be considered while applying the policy in the economy.

4.1.2. POSITIVE CONSEQUENCES OF PRICE REGULATION

In principle, the economy must be operated freely by its moving tool, demand and supply. However, sometimes, there is a perception that the equilibrium price in a free market is not fair, even though the concept of ‘fairness’ lacks a consistent or agreed definition. Therefore, government intervention in the market is called because of the desire of the policy makers to protect the interests of the economy and to guarantee price stability. When a market or the economy fails to operate in normal circumstances, the government is supposed to intervene and take steps to curb the problem. So, one of the main tools the government has to change the look of the market is through price regulation.

Price regulation has positive economic, social and political consequences. And those positive consequences of price regulation are happened if the regulation is applied in two scenarios, in the regard to time span, when it is applied for short term and when it is applied in the time of emergency, like war.

The economy could benefit by providing products on the market at their ‘fair values’, but at the same time to give new opportunities for inelastic product sectors with existing monopolies.²²⁶ While protecting both consumers and producers, price regulation may make certain goods and services more affordable in the economy, Price floors safeguard sellers from losses while selling goods, while price caps safeguard consumers from being overcharged by sellers if it applied for short period of time. The policy further target is a protection of the poor layers of the society. Setting prices on essential goods gives easy access to people to meet their basic necessities such as needs for food, health care and etc.²²⁷

²²⁶PlamenLazarov, ‘the effects of regulations such as price controls on medicine prices; the case of India’, Erasmus university, Rotterdam,p.3

²²⁷ ibid

In addition, even though its economic positive consequence is negotiable, price control holds price from increasing dramatically and makes it stable.

It also positively impacts the economy in the case of monopoly. In the case of monopoly, as the firm lacks any viable competition and as the firm is the only producer of the product, it has absolute market power and can set a price above the firm's marginal cost. Without government interference in the market, firms can exploit monopoly power by lowering workers wage and by charging high prices to consumers; therefore the monopoly power will rise without government intervention. This means, government control in the market can regulate monopolies and promote fair competition.

In the case of emergency, especially in the case of war, as the state is producing goods for neither consumption nor investment but for military objectives, the risk of shortage and the need for rationing basic goods is inevitable.²²⁸ Therefore, as most of the time wars lead to inflation the government intervene in the economy as emergency measure, this situation clearly seen in the world war I and world war II in most countries specially in Europe and USA and currently, in USSR and Ukraine war.²²⁹ Especially in the case of World War II, price control has worked to control the inflation and keep countries economy from falling during the war.²³⁰

In the other side as a political positive consequence, government gains favor with voters and constituents when it lowers the price of goods and services. Government also gains favor from lobbyists and firms when it raises prices to promote the health of the industry.²³¹

In the other way, when we see its social positive consequence, rent control in Addis Ababa at the time of Covid-19 is one of the examples as a social positive effect brought by the price regulation. At the time the city administration of Addis Ababa has issued a prohibition on rent increases by land lords until July 8, 2023 as a response to some property owners using the roof

²²⁸ Laszlo Andor(2022), 'the war-price spiral', foundation for European progressive studies,

²²⁹ ibid

²³⁰ Paul Evans(Oct,1982), 'The effects of general price controls in the United states during world war II', university of Chicago press,p.944

²³¹Niamh Dunne, supra note 89, p.3

and wall tax as a pretext for raising rents. In another case, price policy is one of a strategy which is recommended to reduce cigarette demand and to protect society's health.²³²

4.2. EXPERIENCE OF OTHER COUNTRIES

4.2.1. LEGAL FRAME-WORK OF PRICE REGULATION IN USA

In USA, even though the country follows free market policy, there is a fragmented, with multiple overlapping regulators and a dual state-federal regulatory system in the financial regulatory system.²³³ And there are different types of regulation applied to market participants, and price regulation is one of financial regulation. Though, price regulation is relatively rare in federal regulation. Policy makers justify price and rate control on grounds of consumer and investor protections.

Since 1934 G.C in USA, price regulation has become an accepted, though sometimes controversial, part of the government's control over the economic market place.²³⁴ So, since then price regulations have been used in various situations throughout US history and today USA regulates price in certain notable sectors like public utilities like electrical power, rent and health care.

The US government in four different occasions used a more organized price controls; during WWI, WWII, the Korean War and the economic dislocation of the Nixon administration.²³⁵ And from all historical experiences, WWII is the most ambitious experiment with price regulation.²³⁶

In regard to legislation, to aid in preventing the greater depression (inflation) which is resulted from war, the congress passes the emergency price control act of 1942, the purpose of the act is to stabilize prices, prevent speculative, unwarranted and abnormal increases in prices and rents; to prevent hoarding, profiteering and other disruptive practices resulting from abnormal market conditions; to prevent dissipation of defense appropriations by excessive prices; to prevent undue

²³²Felsinger R. &Groman E (2022), "price policy and taxation as effective strategies for Tobacco control", Front. Public health policy. available at : <https://doi.org/10.3389/fpubh.2022.851740>

²³³ Congressional research service,(Oct,2023), 'who regulates whom? An overview of the U.S. financial regulatory frame work', congressional research service report, p.2

²³⁴ John N.Drobak, supra note 27, p. 107-108

²³⁵ Todd N.Tucker,(Nov,2021), 'price controls: How the US has used them and how they can help shape industries.', Roosevelt institute, p.6

²³⁶ ibid

hardships on those dependent upon set incomes; to assist in securing adequate production and to prevent a post emergency collapse.²³⁷

Again after 1950, after another act, defense production act (DPA), renewed the powers granted to the president by empowering the Truman administration to execute the Korean war, the act has been expanded to be applicable not just in wartime but in other types of emergencies.²³⁸

4.2.2. LEGAL FRAME WORK OF PRICE REGULATION IN RWANDA

The period 1990-2012 was first noticed by the four year's war (1990-1994) that culminated in to genocide, both of which led to the collapse of the Rwandan economy.²³⁹ It was also a period characterized by important economic reforms that enabled the country to make a progressive transition from a regulated to a market economy.²⁴⁰ The government decided to liberalize the economy and this was materialized through various measures. Price controls were abolished in 1991 and the privatization process of state owned companies started in 1996.²⁴¹ In connection with the monetary and exchange rate policy, measures of direct controls were progressively replaced by mechanisms that relied more on market forces to regulate the economy.²⁴²

Even though Rwanda adopted free market economy, it still uses price regulation as a tool to solve some problems of the economy. So, prices in Rwanda are liberalized, aside from petroleum products and certain commodities, which the government sets after limited consultation with industry stakeholders.²⁴³ For example, the ministry of trade and industry of Rwanda published retail and bulk purchase prices for staple foods like maize and rice in 2023, to ease the burden of the high cost of living. A move was aimed to improve food security in the country as food inflation continues to escalate due to low food production because of unfavorable weather conditions. The new prices were intended to take effect immediately but the directive was challenged by traders who refused to follow the regulated price even after one week. Some parties like the country's consumer's rights protection organization oppose the directive by

²³⁷ Bernard F.Graineey, supra note 10, p.3

²³⁸ Todd N.Tucker, supra note 234

²³⁹Irakunda Joy (Oct, 2014), "The effectiveness of monetary policy in Rwanda", COMESA monetary institute, p.3

²⁴⁰ ibid

²⁴¹ ibid

²⁴² ibid

²⁴³ International trade administration(2022), 'Rwanda- country commercial guide'

Available at: <https://www.trade.gov/country-commercial-guides/rwanda-selling-factors-techniques#:~:text=prices%20in%20Rwanda%20are%20liberalized,either%20zero%20or%20exempt.>

health coverage; increasing funding for medicines; strengthening partnerships and collaboration for health; and on increasing the capacity of the health sector to fulfill one of its mandates of ensuring that Rwandan people have access to safe, efficacious, affordable and good quality medicines.²⁵⁰ Costs of pharmaceutical products constitute a significant part of the overall health care costs.²⁵¹ The rationale behind for Rwanda government to adopt this pricing regulation is the government is expecting economic growth in the years to come and this growth produce a growing demand for health care and high expectations of its citizens, so the government needs to correlate economic growth with health spending. Though currently, there is no national level law or regulation that regulate wholesale or retail pharmaceutical products prices or mark ups. The 2016 national pharmaceutical policy refers to the need for a pharmaceutical pricing policy and mentions the development of a pricing policy as one of its strategies.²⁵²

4.2.3. LEGAL FRAME WORK OF PRICE REGULATION IN INDIA

India is comprised of 29 states, each of which is possessing different resources with different market conditions.²⁵³ And also the country is characterized by diverse languages, cultures and geography that differ on a regional basis. Due to their resource availability and socio economic factors, different states vary in their economic indicators. But over-all, India is a country characterized by the high amount of low income consumers.²⁵⁴

Due to the mid-1980s market reform, which made India economically successful, through time, the Indian economy is transferred itself towards a more market oriented economy.²⁵⁵ The regulatory environment in India promotes viable competition.²⁵⁶ Though, Product market regulations are much more restrictive compared to OECD countries.²⁵⁷

Even though India promotes free market policy, due to high poverty level and low income consumers, the government intervenes in the market to regulate price in the case of inflation or

²⁵⁰ Id, p.2

²⁵¹ Id, p.3

²⁵² National pharmacy policy, ministry of health, April2016[inRepublic of Rwanda ministry of health (Oct,2020), 'National pharmaceutical products pricing and containment policy', p.7]

²⁵³PlamenLazarov, supra note 225, p.10

²⁵⁴ ibid

²⁵⁵ T.C.A Anant and Jaivir Singh(Jan,2006), 'structuring regulation: constitutional and legal frame in India', Economic and Political weekly,vol.41, no.2,p.121

²⁵⁶PlamenLazarov, supra note 225, p.14

²⁵⁷ ibid

price increment. For example, in 2013, India adopted partial price cap regulations for several essential medicines. And the country has been regulating its drug prices since 1970s.²⁵⁸ But through time depending on the situation the price control mechanism in India changed from controlling profit margins in 1970s to ceilings on post manufacturing margins in 1995, under the drugs prices control order.²⁵⁹ And also established an organization called NPPA(The National Pharmaceutical Pricing Authority), which was established to fix or revise the prices of controlled bulk drugs and formulations and to enforce prices and availability of the medicines in the country.²⁶⁰ The organization is also entrusted with the task of recovering amounts overcharged by manufacturers for the controlled drugs from the consumers. It also monitors the prices of unregulated drugs in order to keep them at reasonable levels.²⁶¹ Indian consumers pay high pharmaceutical prices relative to their per capita income. So, in order to solve the issue of high priced drugs, the country has amended their drug price control order. Therefore based on the amended order, since 2013, India regulates the prices of 652 formulations of 348 drugs.²⁶² So, the government does not control the prices of all drugs. The prices of drugs are left to market forces. Only those medicines which satisfy the priority health care needs of the majority of the population are brought within price control regulations, by including them in the national list of essential medicines.²⁶³ And the prices or the ceiling prices are calculated following a market based methodology.²⁶⁴ And those prices which are not listed are merely monitored by the NPPA and an annual increase in the maximum retail price of up to 10 percent is permitted.²⁶⁵ All the manufacturers in the country are mandated by law to follow the regulated price, or else they risk facing recovery of the overcharged amount along with interest, and in some cases, a penalty.²⁶⁶ Regardless of the fact that the legislation is enacted to oust market failure and to increase

²⁵⁸ *ibid*

²⁵⁹ *ibid*

²⁶⁰ Department of pharmaceuticals (2003), 'DPCO/NPPA', Government of India Ministry of Chemicals and Fertilizers.

Available at: <https://pharmaceuticals.gov.in/dpconppa>

²⁶¹ Department of pharmaceuticals (2003), 'DPCO/NPPA', Government of India Ministry of Chemicals and Fertilizers.

Available at: <https://pharmaceuticals.gov.in/dpconppa>

²⁶² Coyne C. & R. Coyne, *supra* note 121, p.16

²⁶³ Archana Sahadeva (2003), 'pricing & reimbursement laws and regulations 2023/India', Global Legal Insights. Available at: <https://www.globallegalinsights.com/practice-areas/pricing-and-reimbursement-laws-and-regulations/india>

²⁶⁴ *ibid*

²⁶⁵ *ibid*

²⁶⁶ *ibid*

affordability for life saving medication, market based price controls introduced in India have been criticized for being a threat that may drive high quality firms out of the market.²⁶⁷ Moreover, they boosted drug shortages, they threat to lower competition, and to discourage investment in the pharmaceutical sector.²⁶⁸ While the pricing of drugs is extremely essential, especially in a developing country such as India, often there are instances when manufacturing of price controlled drugs is not economically viable for companies. So, the law, as it stands to date, mandates that any company that wishes to stop production of price controlled drugs must issue a public notice and also intimate the government in this regard at least six months prior to the intended date of discontinuation, and the government may, in the public interest, direct the manufacturer to continue with the required level of production or import for a period not exceeding one year, from the intended date of such discontinuation within a period of 60 days of receipt of such intimation.²⁶⁹

In regard to staple foods, India experienced major staple food inflation since 1974 and used different monetary policies to overcome the inflation and able to control the inflation.²⁷⁰ but when the inflation hit the economy again in 2009, government started to influence cereal crops price through its various policy interventions like export controls, imposition of minimum export prices, and varying tariffs including with other anti-inflationary policies that involve fiscal and monetary measures, the rationalization of excise and import duties on key commodities to safe guard the interests of the consumers.²⁷¹ Government also took price control measures on selected food items, like rice and wheat.²⁷²

And currently, price monitoring division (PMD) in the department of consumer affairs is responsible for monitoring prices of selected essential commodities. The division monitors the retail and wholesale prices, and future prices of selected essential commodities on a daily basis. It also analyses the price situation and gives advance feedback for taking preventive measures to help policy interventions at appropriate time to prevent undesired shortfall in the availability of

²⁶⁷PlamenLazarov, supra note 225,p.14

²⁶⁸ ibid

²⁶⁹ArchanaSahadeva, supra note 262

²⁷⁰KaveryGanguly, Ashok Gulati (Nov,2014), 'the political economy of food price policy in India', oxford academic, p 339-361

²⁷¹ ibid

²⁷² ibid

essential commodities. In the event of shortage of any specific essential commodity and to keep price of the item under control, the division also implements commodity specific market intervention schemes to give relief to the consumers. And since 2021, Price is monitored for 22 essential commodities (like sugar, rice, wheat, sunflower oil, palm oil, tea, milk, potato, onion, tomato, salt and e.t.c.) based on data collected from 550 market centers spread across the country daily through mobile application developed by the department.²⁷³ The mobile application also has an in-built feature to calculate and report the average price. To cross-check the accuracy of prices reported by price reporting centers from the states, the services of NAFED (National Agricultural Cooperative Marketing Federation of India) have been used since 2021.²⁷⁴ Field offices of NAFED send daily reports on retail prices of 11 food commodities. And both the reported prices from the mobile application and from NAFED compared in a daily basis, and this further validate the price data received from the states.²⁷⁵ Price monitoring division also monitors other variables at the national and global level that are likely to impact prices. The prevailing price situation as well as factors which impact on prices, in both domestic and international markets, are studied and brought to the notice of high level committees.²⁷⁶ The decision taken in these meetings are implemented by the ministry and department of consumer affairs monitors the action taken on those decisions by the concerned ministry.²⁷⁷

In the case of fuel, India has followed different fuel pricing policies throughout the years.²⁷⁸ Before 2014, the government of India directly intervenes in petrol prices by revising the price in every 15 days. But the government changed its approach and complete deregulation of petrol prices came in to effect in 2010 and that of diesel in 2014. Then the price of fuel started to update in daily basis based on the international price, exchange rates and other factors influencing fuel prices. But this liberal pricing has resulted in higher fuel prices, Even though the government is still playing a significant role in the pricing mechanism by imposing taxes and other

²⁷³ Department of consumer affairs, 'price monitoring division', Ministry of Consumer Affairs, Food & Public Distribution of Government of India.

Available at: <https://consumeraffairs.nic.in/price-monitoring-cell/price-monitoring-cell>

²⁷⁴ ibid

²⁷⁵ ibid

²⁷⁶ ibid

²⁷⁷ ibid

²⁷⁸ Sruthi Sreenivas and Dr. Manoj P.K., (Dec, 2019), 'Fuel pricing policy of India: after effects of deregulation', the international journal of analytical and experimental model analysis, vol. XII, issue XII, p.1678

charges.²⁷⁹ But this intervention of the government is not seen as price regulation intervention, because it has no intention of keeping the price from rising.

Currently, retail fuel pricing is deregulated, and oil marketing companies are to set prices based on market forces.²⁸⁰ However, despite fluctuations in crude oil rates, the retail selling prices of petrol and diesel have mostly remained stagnant. The reason for this is the role of the government, that the fuel retail market is largely dominated by public sector undertakings.

4.2.4. LEGAL FRAME WORK OF PRICE REGULATION IN SOUTH AFRICA

As economic policy South Africa followed free market policy and at the same time during emergency time and in normal circumstances based on different justifications, the government intervened in the economy and controlled the price.²⁸¹

For example in case of the health sector, the government of South Africa believed that medicines were public utility goods, and not mere commodities, and that it could no longer allow a situation where companies priced their products as they contented.²⁸² And the countries' health department claimed that South Africa was among the world's top five most expensive medicine markets.²⁸³ But this position of the government was challenged by the pharmaceutical manufacturer association. Despite the associations' effort to halt the reforms, the government made clear that they would take measures to correct the problem.²⁸⁴ In this regard, a number of key government policies, legislative and regulatory provisions were enacted.²⁸⁵

During the 20th century, almost for more than 60 years, South African agricultural and food markets were regulated by the government.²⁸⁶ This control come to an end in 1990s and since

²⁸⁰RichaMishra(2003), 'understanding fuel prices: what factors influence the rates of petrol and diesel in India?', Available at:<https://www.thehindubusinessline.com/multimedia/audio/understanding-fuel-prices-what-factors-influence-the-rates-of-petrol-and-diesel-in-India>

²⁸¹ Cumulative reading of Massimo Motta(2020), 'price regulation in times of crisis can be tricky', available at; dailymaverick.co.za and David Storer& Ethel Teljeur(2003), 'Administered prices; executive report', a report for National Treasury.

²⁸²SkhumbuzoNgozwana,(2016), 'policies to control prices of medicines: does the South African experience have lessons for other African countries', Available at:-<http://link.springer.com>>

²⁸³SkhumbuzoNgozwana, supra note 281

²⁸⁴ ibid

²⁸⁵ ibid

²⁸⁶ Johann Kirsten, (Mar,2013), 'the political economy of food price policy in South Africa', policy brief no.9

then South Africa has had liberalized agricultural and food markets with limited or no boardercontrols. ²⁸⁷Then after this deregulation South Africa experienced two major food price crises due to different reasons. Though the government adopted no major policy changes and tried to react with other intervention to protect the poor section of the society.²⁸⁸

In another scenario, during the break out of COVID-19, South African government issued regulations, state of national disaster in March 2020 and emergency regulations, which regulate certain essential goods and services, ranging from food stuff to medical supplies.²⁸⁹ The regulation prohibited unfair price increase of goods and service during the covid-19 disaster period.²⁹⁰ But the price increase is prohibited when it does not correspond to the increase in the cost of providing that good or service.²⁹¹ That means the regulation permitted the increase of the price if the cost of the good or service increased.

South Africa also regulates prices by using her competition law alongside consumer protection law. Even during the time of COVID-19 break out, the government relayed in the existing legal frame work and competition institutions rather than creating new once. For example, if companies found to be in contravention of the regulations which were introduced during the pandemic to control some basic food and consumer items, will be liable for penalties provided for in the competition act.²⁹²

The competition act and the consumer protection law of South Africa are designed to regulate price issues both in normal times and emergency times. Especially the competition law indicated the standard when price regulation is needed. Under Competition Act, to determine whether a price is ‘excessive or not, South African competition commission must take account “the structural characteristics of the relevant market, including the extent of the respondent’s market share, the degree of contestability of the market, barriers to entry and past or current advantage

²⁸⁷ ibid

²⁸⁸ ibid

²⁸⁹ Massimo Motta,(April,, 2020), ‘price regulations in times of crisis can be tricky’

Available at:- <https://www.dailymayerick.co.za/opininonista/2020-04-22-price-regulation-in-times-of-crisis-can-be-tricky/>

²⁹⁰ Government communication and information system Republic of South Africa, ‘corona virus lockdown: regulations on price increase protection fact sheet’

²⁹¹ ibid,

²⁹² ibid

that is not due to the respondent's own commercial efficiency or investment".²⁹³ And in the same legislation, the test for excessive pricing is when " a price for a good or service which bears no reasonable relation to the economic value of that good or service; and is higher than a certain value".²⁹⁴ Which means a price can be excessive where the price is 'higher than a competitive price' and whether such difference is unreasonable. In this case the legislation allow the government to intervene when price is excessive based on the test and the standard of the law. So, the South African competition commission could impose regulated price in the market.

But the standard and test had been criticized for it may create uncertainty for businesses in the pursuit of profit maximizing conduct fearing the risk of being sanctioned for taking advantage of short term market fluctuations.²⁹⁵ In addition, there is uncertainty as to what profit margin may be viewed as excessive. So, the legislation criticized for lack of clarity in how businesses can ensure that price increases are proportionate to cost increases.²⁹⁶

4.3. Lessons from the Experiences

1. Lessons from experience of USA: in USA policy makers justify price regulation on grounds of consumer and investor protection, which means while protecting the consumer the regulator also consider the investor from getting any harm from the regulation. By this way, negative consequences which discourage the investor can be minimized. Because, prices play vital role in influencing producers decisions, regarding production levels and resource allocation. So, this experience of USA is a good lesson for other countries legal system like Ethiopia to consider both consumer and investor protection.

2. Lessons from experience of Rwanda: in the case when the ministry of trade and industry of Rwanda published retail and bulk purchase prices for staple foods in 2023, reports shows that the outcome, regulating the inflation, which were needed by the government that the price regulation objected were resulted due to the second harvest and exemptions of those products from VAT. As price regulation has negative consequences this experience of Rwanda is a good example for

²⁹³ Article 1 (b) of Competition amendment act no. 18 of 2018(Amendment act) , government gazette 42231 dated 14 February,2019

²⁹⁴ ibid

²⁹⁵ Michael James Currie, Gina Lodolo and Nicola Taljaard(2023), 'the risk of price regulation: a review of recent abuse of dominance cases in South Africa', African antitrust & competition law news & analysis

²⁹⁶ ibid

a government to look for other options which can help to manage the problem, rather than letting the problem only in the hands of regulation policy.

In the other case, when the 2020 national pharmaceutical pricing containment policy focus on supporting the achievement of universal health coverage; increasing funding for medicines; strengthening partnerships and collaboration for health; and on increasing the capacity of the health sector to fulfill one of its mandates of ensuring that Rwandan people have access to safe, efficacious, affordable and good quality medicines, the rationale of Rwanda's government to adopt this pricing regulation of correlating living standard of the people and economic growth with health spending is the other lessons we draw from Rwanda experience. Health issues affect the economic growth directly or indirectly, because labor productivity can be determined by the health of the society. For this reason, the affordability of the health sector is a crucial issue for the government to consider along economic growth.

3. Lessons from experience of India: experience of India in which, the prices or the ceiling prices are calculated following a market based methodology is a good experience which help to reduce price regulation negative consequences. The 2021G.C 22 essential commodities price control, which is based on data collected from 550 market centers spread across the country daily through mobile application is one example which shows how price can be regulated on market based methodology. In this case the government is regulating the price, but the price is not determined arbitrarily. The price of the market also considered. So, this helps the government to see factors that dictate price of a product in the market. Plus it also helps to protect both consumer and investor.

In the other case, when those prices which are not listed under regulated prices are permitted to increase annually in the maximum retail prices of up to 10% is another good lesson. Even though the government is not regulating price directly, it is trying to control the price from increasing more than 10 percent. This means, this method is another form of moderate type of regulation. So, the government can use this type of control rather than strict control to minimize the negative consequence of regulation. And, to let the market to determine the price of a product in its demand and supply calculation up to the permitted limit.

The other lesson that is drawn from experience of India is companies or producers exit from price controlled sector is limited by the law. For example in the case of drug pricing, the law, as it stands to date, mandates that any company that wishes to stop production of price controlled drugs must issue a public notice and also intimate the government in this regard at least six months prior to the intended date of discontinuation, and the government may, in the public interest, direct the manufacturer to continue with the required level of production or import for a period not exceeding one year, from the intended date of such discontinuation within a period of 60 days of receipt of such intimation. This limitation of the law protects the economy from sudden shortage of the product that the company stops to provide. And give the government and the society to consider other options. Plus other producers may get time to produce additional amount of the product that have been produced by the company that exited from the market.

4. Lesson from experience of South Africa:

During Covid-19 pandemic, the price increase is prohibited when it does not correspond to the increase in the cost of providing that good or service. That means the regulation permitted the increase of the price if the cost of the good or service increased. This experience of South Africa shows that even though the country was in emergency situation, the government prohibited itself from over regulation and over enforcement. So, the producer is permitted to increase the price of the product if the cost of the product increased. In this case it protected the market from situations which undermine the producer or service provider from investing and innovating.

In addition, even though the standard and test which stipulated by the competition amendment act had been criticized for it may create uncertainty for businesses in the pursuit of profit maximizing conduct fearing the risk of being sanctioned and lack of clarity in how businesses can ensure that price increases are proportionate to cost increases, having standard and test is a good ground for one legal system to limit the power of the government in regulating price and interfering in the market. Further, the standard and test gives a clue for the businesses and consumer when the government can intervene in the market if any of it infringed.

CHAPTER FIVE

THE LEGAL BASIES OF PRICE REGULATION IN ETHIOPIA AND ITS PRACTICE

5.1. THE LEGAL BASIS OF PRICE REGULATION IN ETHIOPIA

5.1.1 THE CONSTITUTIONAL BASIS OF PRICE REGULATION IN ETHIOPIA

Despite the recent trend of following free market policy, price regulation is a vital part of policy in Ethiopian economic system especially as a solution for inflation and as a means to control price fluctuation. Both federal and state governments regulate prices in different sectors. So, what is the basis of their regulation power and on what authority Ethiopian government regulate price? Does the constitution have standard to keep the balance between the interest of the investor as well as the interest of the public? These are the questions discussed in this topic.

The justification for the regulation, the duration of the controls and the ability of the regulated firm to avoid the regulation by withdrawing from the regulated business are factors that help analyze the constitutionality of the state's authority to fix prices in some legal systems.²⁹⁷ And also, balancing the interest of the public and the interest of the business or the investor is also seen as one of a way to limit government's regulation power and to analyze the constitutionality of the regulation.²⁹⁸ So, what is the constitutional principle the Ethiopian legal system follow in regard to price regulation will be analyzed in this section.

The constitutional basis for governmental authority to control prices under Ethiopian law emanates from the state's policy making power under article 51 and the economic objective expressed under Article 89.²⁹⁹ The powers embodied under article 51 of the constitution give the federal government the legislative power and function in respect of formulation and implementation of economic policies and strategies(51(2)),development, administration and regulation of different types of transport, air, rail, water(51(9)) and interstate commerce(51(12)).³⁰⁰ And the powers stated in Article 89 sub 3 and sub 8 of the constitution give the government regulatory power based on the economic objective of the country.³⁰¹ While the powers under article 51 of the constitution describe the state's policy making power in actual

²⁹⁷ John N.Drobak, supra note 27, p.112

²⁹⁸ Ibid, p.108

²⁹⁹ Fikadu Petros, supra note 6, p.136

³⁰⁰ ibid

³⁰¹ ibid

expressions, the provisions of article 89 are guiding principles in the exercise of these defined powers as one of economic objective of the country.³⁰² Actually the constitution didn't mention the term 'price regulation' directly as one regulatory power of the government. But as price regulation is one of an economic policy, if the government preferred to use it as the country's economic policy, the constitution give the federal government the power to formulate and implement it.

Any economic policy implemented by the government is one of the main factor that influence economic success or failures of nations. And one of the most important variables in the explanation of the performance of national economies is price stability. Thus, the issue of price is the central goal of economic policies. The principal objective of economic policies is to increase national income rapidly, both in the short and long run, to improve the living standards of the society and to ensure price stability. Therefore, implementation of any policy must comply with objective of the policy.

Thus, any ambiguity surrounding price regulation power under article 51 is easily dispelled when one looks at the overarching policies and objectives that should guide the exercise of powers under article 89.³⁰³ For instance article 89(8) states that 'Government shall endeavor to protect and promote the health, welfare and living standards of the working population of the country.' That means when the government is using its power of regulation based on article 51 of the FDRE constitution, improving the life of working population of the country, must be considered as one objective of the policy. And in this case protecting the poor section of the society is one justification for using price regulation policy under Ethiopian law. In this case price regulation being often portrayed as a pro-poor regulatory intervention, this principle can serve as a very powerful justification.³⁰⁴

Article 89(3) of the FDRE constitution also gives the government to take measures to avert any natural and manmade disasters and, in the event of disasters, to provide timely assistance to the victims. In this case, we can say the other provision except this provision is power of the government to intervene in the economy in normal times, because there is no emergency that the

³⁰² ibid

³⁰³ ibid

³⁰⁴ ibid

government is expected to avert. But in this case the objective of the policy is to avert the disaster and to control the situation. So, this is the other objective and justification the law gives when power of regulation under article 51 of the FDRE constitution were given. We will see price regulation in time of emergency in detail in the next section.

In some jurisdictions, there is standard for determining whether the rated price satisfied the investor interest or the proportionality of the regulation with the situation.³⁰⁵ Because from the investor or company point of view, it is important that there be enough revenue not only for operating expenses but also for the capital cost of the business and other expenses.³⁰⁶ By that standard, the return should be sufficient to assure confidence in the financial integrity of the enterprise. So, when the public interests outweigh the investor interest and justify rates that are too low to meet the investor interest, the constitutional standard of balancing plays the predominant role in the regulation. In this case, for example, the American legal system has a standard called the ‘Hope’ standard.³⁰⁷ Based on this standard, if a regulation causes enough injury to constitute the ‘taking’ of property from the regulated person or firm, it assures that adequate compensation is provided.³⁰⁸ Therefore this may somehow constrain the government from arbitrary regulation. In addition such kinds of standards help to analyze the constitutionality of the economic regulation. Plus it helps to balance between price regulation and rights affected by the regulation. In the case of Ethiopia, even though the constitution give a solid ground for the government to regulate price, it fail to give standard to check the constitutionality of the regulation plus it fail to stipulate a recourse mechanism for affected parties where the price is arbitrary or if it disproportionately harms business.³⁰⁹

³⁰⁵ John N.Drobak , supra note 27, p.108

³⁰⁶ Id. P.109

³⁰⁷ ibid

³⁰⁸ ibid

³⁰⁹FikaduPetros, supra note 6, p.149

5.1.1.1. PRICE REGULATION IN TIME OF EMERGENCY BASED ON ETHIOPIAN CONSTITUTION

In the case of Ethiopia, Price regulation can be used as a state of emergency power where natural disaster or epidemic occurs in terms of article 93 of the constitution.³¹⁰ So, state of emergency provisions under the constitution is the other constitutional basis for price regulation. In time of emergency, like in case of external invasion or war, in the occurrence of natural disaster and outbreak of epidemic, the regular law might not control the situation. Because from its very nature, state of emergency power, when necessity calls for its exercise, tolerates no qualifications or limitations, unless found in the constitution.³¹¹ Therefore it breaks down every barrier so anxiously erected for the protection of property, liberty and life.³¹²

In article 93 of the FDRE constitution, the law empowered the government to intervene and take measures in case of external invasion or war, a breakdown of law and order which endangers the constitutional order and which cannot be controlled by the regular law enforcement, in the case of incident of natural disaster and epidemic.

War is emergency situation that necessitates regulatory intervention in the market. War greatly compounds a number of adverse effect on the economy of the country by rising inflation, increasing food insecurity and other economic effects that may require price control.³¹³ War mobilizations produce excess demand and inflationary tensions.³¹⁴ This excess demand arises not only for military goods and services but for civilian goods and service.³¹⁵ In the other side, during a war effort, the free movement of prices will not restore equilibrium. Therefore as war does not stay the operation of the constitutional protection of rights and because of economic demand of war, the law gives the government to intervene in this situation and to control price.³¹⁶

Natural disaster is another emergency situation that may bring about food shortage that may require price control. In this case the price regulation is the occasional response of the

³¹⁰Fikadu Petros, supra note 6, p.136

³¹¹ Paul A. Freund, 'the emergency price control act of 1942: constitutional issues". Duke university school of law, p.77

³¹² John N. Drobak , supra note 27, p.109

³¹³ Francisco Vargara,(Oct,2008), 'the theory of price control: John Kenneth Galbraith's contribution', Review of political economy, vol.20, no.4, p.576

³¹⁴ ibid

³¹⁵ ibid

³¹⁶ John N. Drobak , supra note 27, p.119

government to control parties who take advantage of the situation. During natural disaster, due to the situation, supply restrictions often lead to price increases as the market reacts to rebalance supply and demand. So, to protect consumers, states enact laws that limit a merchant's ability to raise prices during emergencies.³¹⁷ Price gouging occurs when a seller increases the price of essential goods and services during an emergency to a level that is higher than what is considered 'reasonable'.³¹⁸ The attitude towards such price control is an implicit acceptance of some sort of just price reasoning.³¹⁹ Economists usually lobby against implementing price regulating laws that restricts large price increases during natural disasters.³²⁰ Instead, they advocate raising prices to bring demand in line with supply.³²¹ By allowing the market to work, economists argue, products will remain available and sold only to those who value them the most. High prices also mitigate hoarding that customers buy extra because the price is low.³²² So, it will bring quick sellouts, hording and lowering the financial encouragement to boost supply.³²³ When we see this concept with the situation of Ethiopia, as one of developing country and the most prone to natural disasters, it suffers more than any other country in Africa from drought, and the large amount of arid and semi-arid land makes it extremely vulnerable to disasters resulting from either shortage of, or excessive rain fall, if the government fails to intervene in time of situation like this, it will affect the majority of the people, because majority of the people is lower income people who are less able to afford higher prices.³²⁴ It only benefits few, specially the investor and businesses.

Likewise, the outbreak of a nationwide epidemic may result in more demand for essential goods, sanitation products, medicine and medical services.³²⁵ Epidemic can trigger scarcity as it debilitates the productive capacity, transportation and processing industries.³²⁶ And this may

³¹⁷ AFPM legal(2017), 'natural disasters and price gouging',
Available at: <https://www.afpm.org/newsroom/blog/natural-disasters-and-price-gouging>

³¹⁸ ibid

³¹⁹ Warren J.Samuels& Edward Puro(1991), 'the problem of price control at the time of natural disasters', review of social economy, vol.49, no.1, p.62

³²⁰ Rafi Mohammed(2017), 'why businesses should lower prices during natural disasters', Harvard business review
Available at: <https://hbr.org/2017/09/why-businesses-should-lower-prices-during-natural-disasters>.

³²¹ ibid

³²² ibid

³²³ ibid

³²⁴ Background report on law and regulation for the reduction of risk from natural disasters in Ethiopia; a national law desk survey, August 2012, Red cross and Red crescent societies, p.2

³²⁵ Kobi Finestone& Ewan Kingston (2021), 'crisis prices: the ethics of market controls during a global pandemic', Cambridge university press, p.12

³²⁶ F.Petros, supra note 6, p.137

bring equity concerns, because due to scarcity of products price will increase and this price increment will undermine equitable access to essential goods.³²⁷ Therefore, those who are most vulnerable during emergency are priced out of a market by those with larger cash reserves.³²⁸ This entails that markets fail to serve the needy and price increases that are only inconveniences for the wealthy become existential threats to the poor.³²⁹ Therefore price regulation is one policy choice to manage this situation. In this regard the FDRE constitution under article 93 empowered and authorized the government to control the market price in the case of emergency. Again, if the provisions of article 93 that define state of emergency power are uncertain on the constitutionality of price control, article 89 comes to its aid.

Such interfering measures can be justified on grounds that during such emergencies the ordinary laws of economics cannot deal with such unnatural situation.³³⁰ Price remains no longer a restraint to demand for either goods or services.³³¹ The outcome is an ever escalating inflation. Due to the natural or unnatural shortage, consumers will be forced to demand irrespective of the price increase, and price will no more serve its natural functions of defining the equilibrium between supply and demand.³³² In the absence of such intervention of the government to control price, the main group who suffer the most in such circumstances will be those who have fixed income, such as employees and the poor.³³³ Therefore, in the case of emergency, the criticism against price regulation loses its strength and the positive effects of price controls outweigh the drawbacks.

Generally, therefore besides regulating prices in normal times, all the justification for state of emergency under article 93(1) (a) of the constitution can be used as other basis of price regulation by the federal government. Likewise, based on article 93(1) (b) of the FDRE constitution regional states can regulate prices in emergencies caused by region wide natural disasters and epidemics.

³²⁷Supra note 44, p.21

³²⁸ *ibid*

³²⁹ *ibid*

³³⁰F.Petros, supra note 6, p.125

³³¹ *ibid*

³³² *ibid*

³³³ *ibid*

5.1.1.2. REGULATION POWER DIVISION BETWEEN THE FEDERAL AND STATE GOVERNMENTS

In Ethiopia, constitutional powers and responsibilities are divided between the federal and state governments. So, which level of the government has the power to regulate the economy in general and price regulation specifically, and what regulatory power differences exist between the federal and state levels of government, is a reasonable question to ask. To understand the economic regulation system of one federalist country, one must also understand its federal system. Ethiopia's federal structure suggests that it emphasizes more on self-rule than shared rule.³³⁴ The federal government has enumerated and limited powers and the states hold residual powers.³³⁵ Any power not mentioned in article 51 of the FDRE constitution belongs to the states. So the reserve powers of the state's only apply after discounting all the powers of the federal government which are distributed throughout the text of the constitution.³³⁶ In this regard, the Ethiopian constitution has provisions that seem to give power to the federal government over economic policy matters. It seems to put primary responsibility on the federal government to determine major policy directions and standards to the nation.³³⁷ And the same constitution also empowers the states among other things to formulate and execute economic policies, strategies and plans for the state in its boundaries.³³⁸ So, the question here is what could be done if there is an overlap between the powers of the federal government and the states concerning economic plans? To what extent could the federal government outline the national standards and policy criteria or the depth of the nationwide policies? It is not clear what is left for the states. However, it seems clear from the provisions that the federal government cannot exhaustively legislate all these matters. This power, under articles 51 and 52 of the FDRE constitution, is the basis for shared power covering the bulk of economic sphere.³³⁹ So, we need to see powers of federal and state government under these provisions (article 51(2) and 52(2) (c) of the FDRE constitution with article 55(6) of the constitution to avoid overlap between the power of the federal government and the power of the state government. Under this provision, the federal government is empowered to 'enact civil laws that the House of Federation deems necessary to establish and

³³⁴AssefaFisha(2009), 'Federalism: teaching material', justice and legal system research institute, p.482

³³⁵ Id, p.214

³³⁶ ibid

³³⁷ Article 51(2) of the FDRE constitution

³³⁸ Article 52(2) (c) of the FDRE constitution

³³⁹AssefaFisha, Supra note 333, p.217

sustain one economic community.³⁴⁰ So, based on this provision, economic regulation in general and price regulation in particular seem to be meant for the federal government.³⁴¹ While, an all-inclusive list of matters that relate to the formation and sustenance of one economic community has not been developed by the HOF, the intention of the constitution is to vest these powers in the hands of the federal government.³⁴² The justification for this is that price regulation of one region be clearly different from another on the same economy activity, it surely can result in distorting the uniform economic community desired in the constitution.³⁴³ Entrepreneurs and investors may migrate to another regional state there by adversely distorting economic development.³⁴⁴ But still in matters that the federal government didn't enact laws based on article 55(6) of the constitution, the state government has the power to formulate and execute economic policies, strategies and plans of the state based on article 52(2(c)) of the constitution in their boundaries. One example for this is in the transport sector, regions seem to regulate tariffs in their own ways.³⁴⁵

In addition, the Ethiopian constitution also has given power to the federal government over economic policy matters in regard to power to regulate interstate commerce (article 51(12)). The power to regulate interstate commerce is federal power in many federal constitutions.³⁴⁶ And the constitution has given the emergency power under article 93(1(a)) of the constitution to the federal government and based on article 93(1(b)) of the constitution to the state. But in the case of state, the emergency condition in which states have emergency power is in case of natural disaster or epidemic only. This means if there is any emergency condition which needed price regulation and other economic regulation like an occurrence of breakdown of law and order or war, even though it happened in one specific state, that state has no power to exercise emergency power. So, in this case it is the power of the federal government to exercise emergency power in that specific state. In addition, unless there is a state of emergency at regional level, region cannot have emergency power apart from organizing the execution of price regulation that is made at the federal level.

³⁴⁰Article 55(6) of the FDRE constitution.

³⁴¹F.Petros, p.139

³⁴² Id, p.140

³⁴³ ibid

³⁴⁴ ibid

³⁴⁵ ibid

³⁴⁶ ibid

5.1.2. PRICE REGULATION UNDER OTHER LEGISLATIONS

In 2021, a new law has been passed by parliament which repealed about 41 legislations and that limited the applicability of some provisions of some laws. Definition of powers and duties of the executive organs proclamation No.1263/2021 gives power and duties to the Ministry of Trade and Regional Integration to establish a system to ascertain that export or import goods are traded or bought at appropriate prices and to follow up the same in collaboration with concerned organs.³⁴⁷ Even though this provision didn't mention directly or clearly the ministry's power to control the price of exported or imported goods, establishing a system to check whether a given price of goods and services is appropriate or not is one way of regulating pricing of products. In other words, the law didn't leave the price of the products in the hands of the market. So, the law indirectly gives the ministry the power to control prices. But the question here is on what bases did the ministry check whether the price is appropriate or not and what measure does the ministry will take is not clear. So, the ministry is expected to create that standard and measures to be taken in the system to exercise this power.

But in the other provision of this proclamation, under article 22(1(I)), the law clearly stipulates the regulatory power of price of the ministry of trade and regional integration. Based on this provision, the ministry undertakes and submits to the council of ministers studies relating to prices of basic commodities and services that require price control and oversee implementation of the same up on approval.³⁴⁸ The provision grants wider discretion to the ministry. It is not clear as to the necessary circumstances leading to initiating research by the ministry. The content, method, and effect of the study are also not clearly provided in the provision.³⁴⁹ The failure to incorporate mechanisms which ensure transparency and public participation in the process of conducting a study aiming at the need for price control, could be a ground for potential misappropriate use of such power.³⁵⁰ The other unsettled issue is, who actually determines the price of basic goods and services after a study is conducted to this effect? Is it the ministry or the council of ministers? The provision seems to be ambiguous as to where the ultimate power of price regulation is vested. One way to interpret the provision is that the

³⁴⁷Definition of powers and duties of the executive organs proclamation No.1263/2021, article 22(1(g))

³⁴⁸Proclamation no. 1263/2021 article 22(1(I)),which became a law on 6th October, 2021

³⁴⁹AbrhamYohannes(2011), 'legal aspects of fixing price of goods',

Available at:- <https://ethiopianlaw.weebly.com/blog/lrgal-aspects-of-fixing-prices-of-goods>

³⁵⁰ ibid

ministry only submits the list of goods to be subjected to price regulation, without indicating the proposed prices. Secondly, the provision could also mean that the study to be submitted shall include the specific prices and hence the power of approval of council of ministers extends to the specific prices. However, one can argue that the ultimate power to control prices is vested in the council of ministers than in the ministry, since the later implements price regulation which is approved by the council of ministers.³⁵¹

And again content of proclamation No.1263/2021 article 22(1(I)) is very similar to the one under article 25(1) of the TCCP (Trade Competition and Consumer Protection) Proclamation no.813/2013. Article 25(2) of the TCCP proclamation reinforces the price regulatory power of the state declaring that “it shall be prohibited to sell or attempt to sell basic goods or services beyond the price fixed by the government and announced by a public notice.” Under article 43(6) of the proclamation, violation of this provision can result in a fine of up to 50,000 ETB or imprisonment.

In addition when applying proclamation No.1263/2021 article 22(1(I)), we need to see it with TCCP proclamation, because the previous proclamation didn't define what basic goods/commodities are. In this proclamation, the basis of identifying basic commodities with the other goods and services is not clear. So, we need to see TCCP proclamation to know what basic commodities are.

Basic goods/commodities and services are defined (under the TCCP proclamation) as “goods or services related to daily needs of consumers the shortage of which in the market may lead to unfair trade practices”.³⁵² The proclamation defined the term widely, even though the definition of basic goods and services is wide, it has in practice been implemented often for controlling the price of cereals, edible oil and sugar.³⁵³

Again, the above two proclamations do not directly and clearly stipulate council of ministers power of approval (except that proclamation no.1263/2021 under its article 5 simply refers to article 77 of the constitution) and article 77(6) states that the council of ministers “shall formulate and implement economic, social and development policies and strategies.” On the

³⁵¹FikaduPetros, supra note 6, p.141

³⁵²Trade competition and consumer protection proclamation no.813/2013(TCCP), article 2(3)

³⁵³FikaduPetros, supra note 6, p.141

other hand, article 77(13) states that the council of ministers shall “enact regulations pursuant to powers vested in it by the house of peoples representatives,” These sub articles read in conjunction with article 51(2,9 and 12) as well as article 89(8) of the constitution seem to be well in conformity with the above proclamation.³⁵⁴

Regarding the forms of price regulation a careful reading of article 25 of TCCP proclamation reveals that it is concerned with price caps than floors, because the law is more concerned with the consumers. And in article 25(2) the phrase ‘beyond the price fixed’ clearly shows the form of price regulation under this situation is price cap. However, the proclamation deals indirectly with price floors in the context of abuse of market dominance under article 5 (2)(b). Under this provision, selling below cost of production is defined as an abuse of dominance, making the cost of production an indirect price floor.³⁵⁵ Price regulation may also occur with the objective of prohibiting anti-competitive price determination by cartels or collusions between traders under article 7(1) (b) of the TCCP proclamation. This provision prohibits agreements between trader involving “directly or indirectly fixing a purchase or selling price”. As this provision is concerned with price fixing by cartels, it can be used to introduce either floor prices or caps to counter the cartel price.³⁵⁶ Article 5(2(c)) of the proclamation also prohibits any direct or indirect fixation of unfair selling and purchasing price by traders. But on what ground does the government say a given price is fair or unfair is not clear. This provision gives the government indirect control power over price but the standard is left to its discretion. Specially the concept of ‘fairness’ must be defined in the proclamation.

The other legal instrument that empowers the government to regulate prices is the transport laws. In case of transport, under road transport proclamation no. 1274/2022, article 5(11) minister of transport and logistics “undertake periodic review of tariff and may determine tariff cap on individuals or enterprises engaged in national commercial public transport services having due considerations to their services as well as the overwhelming economic capability of the consumer: and may determine tariff cap where the above circumstances demand so”. This provision of the proclamation English version has slight difference from the Amharic translation. The Amharic translation says that ‘after undertaking periodic review of tariff, the minister may

³⁵⁴ Id, p.142

³⁵⁵ Fikadu Petros, supra note 6, p.139

³⁵⁶ Id, p.142

determine tariff caps on individuals or enterprises engaged in national commercial public transport service by considering their service and the economic capability of the consumer'.³⁵⁷ Even though both versions, the Amharic and English, is a moderate version of price control power that didn't stipulate obligatory provision to regulate the tariff by giving discretion to the minister, the English version is more conditional when it says 'may determine tariff cap when the above circumstance demand so'. That means the minister may determine price, based on the review, in the case where the circumstance of the transport demanded price regulation. Otherwise the minister is not obliged to do so.

In addition, some financial sector laws like insurance sector laws are one of the legislations that empower government to regulate price. In vehicle insurance against third party risks proclamation give power to the council of ministers to determine premium tariff applicable to vehicle insurance policy against third party risks based on the study carried out by the insurance fund administration agency.³⁵⁸ So, the law gives power to the government to regulate premium. And Insurance business (amendment) proclamation empowers the National Bank of Ethiopia to determine minimum insurance premium rate.³⁵⁹

Concerning minimum wage, many jurisdictions have setted minimum hourly/monthly wages to employees working within their territory.³⁶⁰ Others leave this issue to the contracting parties. In the case of Ethiopia, based on article 55(2) of proclamation no. 1156/2011, the law gives a power to council of ministers to issue a regulation which determines the powers and responsibilities of a wage board that will periodically revise minimum wages based on studies which take into account the country's economic development, labor market and other considerations. Until now, this regulation is not issued, though the law gives power for the council of ministers to issue regulation that institute wage board. So, till now the law leaves the issue of wage to the contracting parties.

And recently the FDRE People's Representative's ratified a new Residential Property rent control and Administration proclamation no.1320/2016 that establish a regulatory body to oversee and control residential property rent fees in regional cities, Addis Ababa and Dire Dawa.

³⁵⁷ See the Amharic translation of Road transport proclamation no. 1274/2022, article 5(11)

³⁵⁸ Vehicle insurance against third party risks proclamation no.799/2013, article 4(4)

³⁵⁹ Insurance business (amendment) proclamation no.1163/2019, article 58

³⁶⁰ MahariRedae(2009), 'employment & labor law, teaching material', Justice & Legal Research Institute,p.68

It also obliged parties to make written contract which is registered in regulatory organs. The proclamation under its article 8(4) give power to the regulatory body to determine rent fees annually by taking into account the country's economic conditions and other related matters.

5.2. HOW THE ETHIOPIAN LEGAL SYSTEM MANAGE RIGHTS AFFECTED BY PRICE CONTROL

5.2.1. PRIVATE PROPERTY RIGHT AND PRICE REGULATION

Price control is effected to bring benefits to the mass population by setting the prices of certain goods or services below or above the market price.³⁶¹ However, this regulation may affect private property rights, as property right is the exclusive authority to determine how a resource is used, exclusive right to determine the service of a resource and exclusive right to exchange the resource at mutually agreeable terms by the holder of the right.³⁶² This means if one of these elements is missed, private property rights are reduced.³⁶³ Therefore as price regulation limits an exclusive right of an individual to exchange the resource at mutually agreeable terms, it reduces of private property rights.³⁶⁴

Therefore, if one country considers private property as a fundamental basic right of citizens and human kind, the two concepts, price regulation and private property rights need a legal frame work to function in harmony.

In Ethiopia, property rights get legal protection mainly under the FDRE constitution, the 1960 civil code and other legislations. And the extent to which Ethiopian legal system support private ownership of private property is stipulated under article 40 of the FDRE constitution. Article 40 of the constitution comprises the definition, allocation and protection of private property.

The definition of private property under article 40(2) of the constitution encompasses goods and services of individuals, business firms and communities.³⁶⁵ Article 40(1) establishes the basic

³⁶¹ Mohammad DulalMiah and Yasushi Suzuki(Nov,2018), 'power, property rights and economic development', Palgrave Macmillan, Singapore,p.131

³⁶²ArmenA.Alchain, 'property rights' , Library of Economics and Liberty
Available at: <https://www.econlib.org/library/Enc1/propertyrights.html#:~:text=private%20property%20rights%20are%20the,behavior%20that%20political&20authorities%20approve>

³⁶³ ibid

³⁶⁴ ibid

³⁶⁵FikaduPetros, supra note 6, P.135

principle of protection of private property stating that private property is protected and unless prescribed by law on account of public interest, this right includes the right to acquire, to use and in a manner compatible with the rights of other citizens to dispose of such property by sale or bequest or to transfer it otherwise.³⁶⁶ This means in one way or another, if the government regulate price for the sake of public interest, the very provision that protect private property allows its limitation and allows the government to interfere in the case of how this right is used. But based on this article this interference of the government in the protection of private property right is allowed only if it is for the purpose of public interest. The fundamental idea behind price regulation is that if the free movement of certain prices produces very bad consequences or if it makes it impossible or very difficult to attain some important national goal.³⁶⁷ Therefore, behind limiting exercise of private property right and interference of government, the idea of having national goal is the main component. Hence, regulating price for the sake of once political ambition or for the sake of some groups of business firms is not accepted. But the question here is, is there a single case of regulated price that we can mention that is analyzed before court of law based on these criteria? There is not a single case where price regulation was challenged before Ethiopian court of law.³⁶⁸

The other issue is in some legal systems, there is a tendency of associating private property with expropriation.³⁶⁹ But For the FDRE constitution, expropriation takes place only if government takes private property. Since the concept of indirect expropriation doesn't exist in Ethiopia.³⁷⁰

One cannot say that the protection enshrined in the constitution against expropriation can readily be applied in cases of price regulation, however arbitrary and damaging the regulation may be.³⁷¹

³⁶⁶ Article 40 of the constitution

³⁶⁷ Francisco Vargara, supra note 312,p.571

³⁶⁸ Fikadu Petros, Supra note 6, p.135

³⁶⁹ William A. Fischel(1991), 'Exploring the Kozinski paradox: why is more efficient regulation a taking of property', 67 Chicago kent law review,[in F.Petros, p.133]

³⁷⁰ Hailemariam Belay, indirect expropriation under the Ethiopian law: questing for its recognition under domestic investment laws and its implications, LLM thesis, Mekele university, school of law, 2019, p.99 [in p.135 of Fikadu Petros]

³⁷¹ Mohammad Dulal Miah and Yasushi Suzuki(Nov,2018), 'power, property rights and economic development', Palgrave Macmillan, Singapore,p.131

5.2.2. Freedom of contract and price regulation

Freedom of contract can be seen as a choice between individual liberty and heavy handed government control.³⁷² So, whether there is freedom of contract or not is dictated by three (3) related ideas.1/ whether parties in contract are free to choose their contracting parties (party freedom) or not; 2/ whether parties agree freely on the terms of their agreement (term freedom) or not and 3/ where agreements have been freely made, parties should be held to their bargains (sanctity of contract).³⁷³ This means when there is freedom of contract there is party freedom, term freedom and sanctity of contract. So, freedom of contract is assumed that everyone is free to choose which contracts they entered in to and the term on which they wish to do so. But if there is price regulation, freedom of contract can be limited because it limits parties from agreeing freely on the terms of their contract, because as price is one terms of the agreement, the control interfere in the contractual arrangement of parties.

In Ethiopia, the law that governs contract is primarily based on the Ethiopian civil code and the Ethiopian commercial code. Based the 1960 Ethiopian civil code, ‘The object of a contract shall be freely determined by the parties....’³⁷⁴ Therefore, the law recognized freedom of contract under this provision. But under the same provision the law shows that this right is not absolute when it says ‘....subject to such restrictions and prohibitions as are provided by law’.³⁷⁵ So if there is any law that prohibits or restricts the freedom of contract, the law clearly allows the limitation of freedom of contract. The objective of limiting freedom of contract can be, with other objective, to use it as means of social protection and consumer protection.³⁷⁶ As protecting the consumers from exploitation of the business firms or the investor is one of basic objective of price regulation, the objective of limiting freedom of contract can be consumer protection.³⁷⁷ So, the limitation of the right, freedom of contract, can be the goal of the other, price regulation.

³⁷² Richard craswell (1995), ‘freedom of contract’, coase-sandor institute for law and economics working paper no.33, p.4

³⁷³ Encyclopedia of law and economics(Dec,2014), ‘freedom of contract’, date of visitation March 24,2024

³⁷⁴Article 1711 of the 1960 Ethiopian civil code

³⁷⁵ ibid

³⁷⁶MesganawKifelew&DemelashShiferaw(2009), ‘law of contract I: teaching material’, justice and legal system research institute, p.56

³⁷⁷ Robert Baldwin,Martin Cave, Martin Lodge (October,2011), ‘understanding regulation: theory, strategy, and practice’, Oxford university press, p.479

In the other side freedom of contract is protected when property right is not affected by any intervention of the government. So, Freedom of contract is less relevant without freedom of property.³⁷⁸ That means, freedom of contract is interrelated with freedom of property.³⁷⁹

In general, price regulation infringes different rights, especially property rights. Therefore, there should be standards that can separate the arbitrary vis-à-vis the appropriate form of price regulation in the absence of state of emergency.³⁸⁰

5.2.3. HOW THE LAW PROTECT RIGHTS AFFECTED BY PRICE REGULATION.

While empowering government to regulate price, the law must safeguard parties affected by the regulation to avoid harmful and arbitrary price regulation and to avoid infringement of basic rights like property rights. In this case, the federal administrative procedure proclamation no. 1183/2020 has some remedies. Until this proclamation was enacted, except from a few constitutional principles that require the government to be transparent and accountable for their actions, there was no streamlined legal procedure for remedies if legislation and decision unreasonably encroach up on rights.³⁸¹ The proclamation is projected to regulate the manner by which administrative agencies give decisions on matters they are required to decide on and exercise their rule making powers delegated to them by law.³⁸² And also it was enacted with the objective of protecting individual's rights and interests from violation by administrative agencies.³⁸³ The proclamation outlines a number of procedures administrative agencies must follow as they exercise their law making powers. Any legislative document issued by an administrative agency in the exercise of its delegated powers that has the potential to affect an individual's rights is deemed a directive subject to the regulation of the proclamation. Based on the proclamation, administrative agencies are required to notify stakeholders to solicit comments and hold public hearings before they issue directives.³⁸⁴ Requirement to provide notice of directives before its adoption extends to publishing the relevant information about the directive

³⁷⁸MesganawKifelew&DemelashShiferaw, supra note 375

³⁷⁹ ibid

³⁸⁰F.Petros, p.149

³⁸¹AronDegol&AbdulatifKedir (2013), 'Administrative rulemaking in Ethiopia: Normative & institutional framework', 7(1), Mizan law review,[in F.Petros, p.145]

³⁸² In the Preamble of federal administrative procedure proclamation no. 1183/2020

³⁸³ ibid

³⁸⁴ Article 8 and 9 of federal administrative procedure proclamation no. 1183/2020

intended to be adopted on a newspaper of wide circulation and other media outlets.³⁸⁵ And also they are expected to keep records of information about the directive they adopt.³⁸⁶ Before ratification of directives, an administrative agency is required to fairly consider comments submitted on the draft. And in case of rejecting comments, it provides justification for the rejection.

Administrative agencies may only be exempted from this procedure where there are emergencies, because the emergency provisions will take control of the situation.³⁸⁷ In the case of decisions by administrative agencies in their daily functions, the proclamation also outlines principles that the administrative agencies expected to follow. The principles include: -respecting scope of authority of the agency established by law, balancing public and individual interests, making reasoned decisions and making timely and predictable decisions and etc.³⁸⁸ if these procedural requirements are not observed, the directive can be revoked by a court of law.³⁸⁹ And individuals who have incurred damage due to the directive or the decision are entitled to compensation³⁹⁰. The proclamation's scope is limited to the executive organs of the federal government. Further, the proclamation excludes some establishments like national bank.³⁹¹ Further the regional executive organs are also excluded.

So, in the case of price regulation, as it affect rights plus as it have huge impact on the economy, while controlling price, the government must consider citizen's rights and interests protection. Plus the regulation must fulfill procedures of the above proclamation and while controlling price the agency must consider those proclamation principles. And in the case of infringement of those procedures courts must consider remedies based on the authority given by the law.

5.3 PRICE REGULATION PRACTICE IN ETHIOPIA

Price regulation is not a new incident in Ethiopia. Since the Derg regime, Ethiopia has been regulating the prices of goods and services.³⁹² After the fall of the Derg regime in 1991, price

³⁸⁵ *ibid*

³⁸⁶ Article 7 of federal administrative procedure proclamation no. 1183/2020

³⁸⁷ Article 11 of federal administrative procedure proclamation no. 1183/2020

³⁸⁸ Article 23 - 35 of federal administrative procedure proclamation no. 1183/2020

³⁸⁹ Article 48 and the following provisions of federal administrative procedure proclamation no. 1183/2020

³⁹⁰ Article 59 of federal administrative procedure proclamation no. 1183/2020

³⁹¹ Article 3 of federal administrative procedure proclamation no. 1183/2020

³⁹² F.Petros, p.145

regulation was particularly executed both as a permanent policy measure that is in respect of some goods and services like fuel prices and transport tariffs, and as ad-hoc measure in respect of the price of basic commodities. Some of the major practical exercises of price regulation are: -

1. Basic commodities: commodities are an extremely important part of the financial market. That's because they are essential goods and services that we need in our daily lives.

Since 2004, a combination of different factors including the increment of world market price, drought, devaluation of the Birr against the US dollar and social unrest contributed for a steady increase in the price of food in Ethiopia.³⁹³ In response to rising food price, the Ethiopian government have been initiated several policy measures including price regulation. The policy of food price regulation is among the several policy measures taken by the Ethiopian government as a solution when inflation drove food prices above desired levels in 2008.³⁹⁴ The government prescribed the maximum prices to be charged for selling some basic commodities like grains and placed directives on private traders to use price tags on their goods and to post the list of their goods for sale with their corresponding prices.³⁹⁵ A task force has been established to take action against traders who acted against the directive. Many traders were arrested for violating the directive. Though, the endeavor of the government to decrease the price of the commodities was not effective.³⁹⁶

Again in 2011, the government directly interferes in the free market and set price for the goods and services. The Ethiopia government announced price caps on some items as meat, rice, sugar, cooking oil and many other staple food items. And recently, since 2021 the government of Ethiopia is set price caps of wheat and issued a directive that set a quintal of wheat to be sold for 3,200 birr only for unions with the aim of accelerating the export and local supply with the unions selling to factories at 3,381 birr to flow supply.³⁹⁷

³⁹³AssefaAdmassie(2014), 'the political economy of food price policy in Ethiopia', p. 133-136

³⁹⁴ Id, p.142

³⁹⁵ ibid

³⁹⁶ ibid

³⁹⁷MetasebiaTeshome, supra note 218

And in other case for example in 2016, the government regulate price of products supplied by the government in a special subsidy program and does not apply to similar items procured on the free market.

2. Price regulation of cement:

Around 2010 G.C Ethiopia transformed from importing cement to exporting for neighboring countries, due to the increment of annual production.³⁹⁸ But due to the gush of cement demand for housing projects and numerous mega projects including Grand Ethiopian Renaissance Dam (GERD) affected its production negatively and created shortage.³⁹⁹ Therefore to encourage the producers the government lifted the price caps and let it to be sold under the free market principles. Few days after the amended directive implemented, Specific agents avail cement from factories and give to middlemen, and then those middlemen take the cement from agents and sell it to others before the cement reaches the shops.⁴⁰⁰ Therefore, the price started to increase after the price was left to be determined by the market while the supply is highly short.

Then in 2014, the government passed a directive on cement, cement marketing and distribution directive 908/2014 to curb the rising price, that give the government an authority to set a price and tried to control its distribution.⁴⁰¹ Based on this directive, the government regulate price of cement through measures like setting fixed prices, limiting the volume that individuals can buy and by asking producers to cut off the distributors who take the products from the producers out of the supply chain. And factories were supposed to sell to distributors which were selected by the government.

In July, 2021 the Ministry of Trade and Regional integration announced that the cement market would be based on free market prices for an indefinite period of time and revoked Directive 908/2014.

But despite the deregulation of cement in 2021, Ethiopia has announced a new cement price in 2022. Cement factories were initially asked to make price adjustments but the prices suggested

³⁹⁸TewedajSintayehu(July,2021), 'cement: a cry for regulation', The Reporter .
Available at: <https://www.thereporterethiopia.com/11763/>

³⁹⁹ ibid

⁴⁰⁰ ibid

⁴⁰¹MetasebiaTeshome, supra note 203

were too high, prompting the Ministry of Trade and Regional Integration to establish a task force to study the production process and come up with price suggestions.⁴⁰² The Ministry has regulated the factory selling prices per quintal. But sales in different cities will be regulated according to the cost of transportation, loading, unloading and warehouse rent costs. In this regulation besides price control, the government follows additional measures like limiting sales volumes for individuals and asking producers to cut distributors out of the supply chain.⁴⁰³

3. Transport tariffs: transport sector is one of service sector that price regulation is applied by the government. Based on Road transport proclamation no. 1274/2022, article 5(11) minister of transport and logistics determine tariff cap on individuals or enterprises engaged in national commercial public transport services. And the regions also set prices for transport in their boundaries. But if the service is cross country transport, the federal transport authority is the one to regulate the price.

4. Fuel price regulation: the Ethiopian government regulates the price of fuel mainly gasoline, kerosene and diesel.⁴⁰⁴ The ministry of trade sets the price of fuel products at the beginning of every month, although not regularly.⁴⁰⁵ In every developed and liberal country, the price of fuel has been a subject of control.⁴⁰⁶

5. Third party insurance premium: it is the other service sector price regulation. Based on vehicle insurance against third party risks proclamation, the council of ministers determine premium tariff applicable to vehicle insurance policy against third party risks.⁴⁰⁷ So, the law gives power to the government to regulate premium.

6. Interest rate regulation: some scholars suggested government intervention in the financial sector for economic growth of developing countries especially in the case of interest rate.⁴⁰⁸ And on the other hand some other scholars recommend financial liberalization for developing

⁴⁰² All Africa(Sep,2022), 'Ethiopia: Ministry unveils new factory prices for cement products', AllAfrica.com

⁴⁰³ Global cement(Jan,2023), 'Ethiopian government intervenes on cement prices', globalcement.com

⁴⁰⁴ FikaduPetros, supra note 6, p.147

⁴⁰⁵ ibid

⁴⁰⁶ ibid

⁴⁰⁷ Vehicle insurance against third party risks proclamation no.799/2013, article 4(4)

⁴⁰⁸ MelesseAsfaw&MekonenKassahun (2014), 'Financial Regulation and Supervision in Ethiopia', Journal of Economics and Sustainable Development, Vol.5, No.17, p.67

countries.⁴⁰⁹ Ethiopian government preferred interest rate regulation by justifying high real rates of interest generated by financial liberalization depress investment, reduce demand for credit and generate excess liquidity.⁴¹⁰ Initially the government controlled both deposit and lending rate controls but gradually lifts the lending rate and only limits the minimum deposit rate.⁴¹¹ And in 2017, the National bank of Ethiopia issued interest rate directive in which demand deposit become deregulated and the directive let the banks to determine the rate freely and limited the minimum interest rates on saving and time deposit by 7%.⁴¹²

7. other price regulation initiatives: recently the parliament has ratified a proclamation, rent control and administration proclamation, that prohibit land lords from increasing rent more than once a year.⁴¹³ Based on this proclamation, the regulatory body which is overseen by the ministry of Urban and infrastructure is tasked to determine and enforce an annual cap on rent increases.⁴¹⁴ But the proclamation exempts newly built housing from the rent increase cap for a period of up to four years. And the control is on residential houses. Before the ratification of this rent proclamation the cabinet of Addis Ababa city government also issued a regulation to suspend a residential housing rental increment for 90 days from February 25th, 2022 to August 24th, 2022.⁴¹⁵

The issue of minimum wage is also the other area which from different part of the society requested for its regulation. Recently, the Ethiopian Human Rights Commission (EHRC) requested the establishment of a minimum wage system based on the Labor law proclamation no.1156/11.

⁴⁰⁹ ibid

⁴¹⁰ Id, p.69

⁴¹¹ ibid

⁴¹² Interest Rate Directives No.NBE/INT/12/2017, Article 1.1 and 1.2

⁴¹³ KidusDawit(April 2,2024), ‘parliament approves rent control legislation’, The Reporter Available at: <https://www.thereporteeerethiopia.com/39471/>

⁴¹⁴ ibid

⁴¹⁵ Regulation No. 122/2021, a regulation to provide for the amendment for the suspension of residential housing rental increment for 90 days, 26th day of March, 2022

CHAPTER SIX

SUMMARY OF RESEARCH FINDINGS, CONCLUSION AND RECOMMENDATIONS

6.1. FINDINGS

This chapter is devoted to interpret and analyze data obtained from academicians, government officials, traders/businesses/investors and consumers. The data mainly focus on synthesizing the legal, institutional and practical aspects of price regulation in Ethiopia.

6.1.1 ETHIOPIA PRICE REGULATION LEGAL FRAME WORK AND POLICY

JUSTIFICATIONS VIS- A VIS THE PRACTICE: WHAT ARE THE GAPS?

Based on the data collected, the researcher found some gaps in the practice which contradicted with the law. For example:-Balancing the interest of the public and the interest of the business or the investor is seen as one of a way to limit government's regulation power and to analyze the constitutionality of the regulation. But when we see the practice, the practice shows some gaps which price regulated without fulfilling the conditions of the law. Under road transport proclamation no. 1274/2022, article 5(11) the proclamation required the government to balance the interest of the consumer and the interest of the investor when it says, the ministry of transport and logistics "undertake periodic review of tariff and may determine tariff cap on individuals or enterprises engaged in national commercial public transport services having due considerations to their services as well as the overwhelming economic capability of the consumer: and may determine tariff cap where the above circumstances demand so". Therefore, when the minister regulate prices related with transport, the minister needs to consider two things 1/ the minister needs to consider the service and of the transport provider, which means the gain they get from the service they provided and 2/ economic capability of the consumer. But the government regulate price mostly without considering the interest of the trader/businesses and investor. For example, based on the response the researcher get from government officials and transport service providers the researcher concluded that, the government has two justifications while regulating the price of the transport sector. One is to protect the consumer and the other is government is regulating price of transport because the government is the one responsible to

import the fuel to the market and also subsidize the market for price stability.⁴¹⁶ some years back, government regulate price of transport by subsidizing it to protect the business but currently the government is setting price by almost averting the subsidy and without considering any other expenses of the sector like spare part expenses, tire, maintenance expenses and other expenses related with the business.⁴¹⁷ Even some of the investors in the sector are planning to stop further investment in the sector and some of them are working only for survival.⁴¹⁸ Even one interviewee mentioned the circumstance as “when the government regulate price of transport currently, he is saying just buy the fuel and give service freely.” Therefore, the government is not considering the service of the service provider. So, the government needs to balance both the interest of the consumer and the interest of the investor.

In another case, in Yirgalem agro-industry Park, when the park was established, the aim of its establishment was to collect agriculture resources from the surrounding area and to process those resources and to export. In this way, the country can get benefit both from the hard currency earned from the export and the traders who supply the resource also benefited from the establishment.⁴¹⁹ But in one case, the government by getting agreement with the company agreed to set the price of avocado 9(Nine) birr per kilo and instructed the farmers to supply the company in this price.⁴²⁰ Then the farmers refuse to supply in this price and try to smuggle the product to other areas to get market. Again in the case of JOJO milk factory, the government set milk prices for the farmers to supply the factory in the setted price.⁴²¹ Again, the farmers refused to supply the factory in that price and smuggle the milk to big city in their surroundings. Because of this Jojo milk factory closed its establishment. In the case of cattle the same thing happened. Here the objective of the price control is getting hard currency at the expense of the farmer and other traders. In this case, under which legislation the government is regulating price without considering the interest of the investor while the other party engaging in the transaction is also

⁴¹⁶ Interview with communication officer of Sidamaa regional state trade and market development bureau(Hawassa, Ethiopia, May 21,2024)

⁴¹⁷ Interview with transport sector investor (Hawassa, Ethiopia, May 15,2024)

⁴¹⁸ ibid

⁴¹⁹ Interview with Mr. Takelewiliso, Sidama regional state industry products market information professional(Hawassa, Ethiopia, May 21, 2024)

⁴²⁰ ibid

⁴²¹ ibid

investors who get profit is not clear. Here, the government is considering the interest of himself and the interest of one party.

6.1.2. INSTITUTIONAL GAPS

Even though, the law gives the government to regulate price. The government has no clear system how it set price and what price affecting factors are considered while regulating the price. Even how the government evaluate whether the regulation serve its intended objective or not is not clear.

6.1.3. CAN THE PRICE REGULATION SOLVE THE CURRENT INFILATION?

Based on the data collected most of the consumers think that government should control price to make goods and services affordable, in order to manage the inflation and basically in order to protect the poor.⁴²²To protect people who live in low living standard, the government needs to control price of goods and services related with basic necessity of human being (food, shelter and cloths). Else, the poor section of the society will reach to a level of inability to afford anything in the market.

But based on the opinion of traders and investors, the market needed to be free in order to regulate itself. Price can be stable not because it is regulated by the government but when the supply and demand in the market balance itself, the market will be stable and inflation can be managed.⁴²³ One of a business man gave an example of onion, by saying “recently the price of onion was 150 Ethiopian birr but currently the price of onion is 40-65 birr. Again, the price of cabbage from the beginning of this year to half of this year was 80-100 birr and now it is 15 and 20 birr. The cause for the increment of the price when the onion and cabbage was sold in 150 birr and 100 birr was because of shortage of supply and now the reason for price decrease is supply is increased. If the government set price and obliged the trader to sell onion by 40 birr without adequate supply, the trader cannot sell the product at that price. It’s a principle. In this case the price of onion shows decrement not because the government regulated it. It’s because of

⁴²² From interview collected from consumers (Hawassa, from date May 16, 2024 to May 21, 2024)

⁴²³ From interview collected from traders and investors(Hawassa, from Date May 14, 2024, to May 20, 2024)

the supply.”⁴²⁴ Therefore the trader is saying that in order to control the inflation the government needs to consider other issues like facilitating the economy to produce more products.

In addition, based on the experience Ethiopia has so far, the government soothe the inflation for a very short period of time by regulating price. There are issues related with inflation that are not settled by regulating price.⁴²⁵ And the price regulation in most cases is not successful. So, the government need to study the basic root cause of the inflation and the cure must be based on the finding of the study. For example the current inflation is caused by mainly the current situation of the country (unstable peace and security and war). Because of security issues, Product which is produced in one area cannot move to another area which didn't produce the product. So, because of shortage of the product price will increase and this can create inflation. So, the government needs to control the issue of peace and security in order to regulate the inflation. Further, in the case of imported items, the government can stabilize the price and control inflation by minimizing taxes.⁴²⁶The amount of government tax also determines the price of the good. So, when the government decreases tax, it will automatically contribute for the decrease of price of the good. Plus when the government controls the amount of money circulating in the economy by monetary regulation, it can also contribute in some amount to controlling inflation.

In 2015E.C price of basic commodities were escalating and this has many reasons, in addition to the Ukraine and Russian war, increment of price of fertilizer and best seed, escalation of hard currency exchange rate and global fuel price increment contributed for the current inflation.⁴²⁷ The Ukraine and Russian war influence on the economy is beyond the control of the government which resulted inflation not only in Ethiopia but also globally.

And the issue of fertilizer price and best seed was also one reason for the inflation. Because of shortage and increase of price of fertilizer food supply shortage happened. And the government try to solve this issue 1/ by importing fertilizer to the country and 2/ in some states like Sidama regional states some government officials was selling the fertilizer themselves at higher price and the government arrested the officials and tried to solve the problem.

⁴²⁴ ibid

⁴²⁵ From Interview collected from different academicians and professionals of policy administration and governance, economist and lawyers(Hawassa, from date May 14,2024 to May 20, 2024)

⁴²⁶ ibid

⁴²⁷ ibid

The issue of escalation of hard currency exchange rate escalation and fuel price increment is one of main cause of inflation which is created by the government. As far as the government keep increasing the price of hard currency rate and price of fuel, inflation is inevitable. So, the government needs to consider its policy in this regard.

In general, price regulation is not the only solution for the inflation. Other contributing factors must be considered to cure the current inflation.

6.2. Conclusion

As it has been discussed in depth Prices contain essential information. They show how scarce resources are; indicate what consumers want; producers rely on prices to decide on their products and so. Prices are effective only when they reflect actual economic conditions. So, the interference of the government in the market affects this nature of price.

Price regulation is usually implemented as a means of direct economic intervention of the government for different social, economic and political reasons. But it may fail to meet its objective and aggravate the problems which it intended to solve and can often lead to disruptions in the market, losses for producers and diffuse illegal markets.

Price regulation also can affect basic rights like freedom of contract, property rights or can restrict other economic rights in general, thus the government has a duty of displaying that a legislation intervening with those rights was in fact authorized by the constitution. In addition, most regulation of business necessarily imposes financial burdens either on the enterprise or the society for which no compensation is paid, therefore to embody commitment to legality or due process of law both in case of substantive and procedural due process of law and restriction on the power of state agencies to regulate prices is needed to restrain the violation of the fundamental laws of the constitution.

States have an innate regulation power to defend public safety, public security, health, morality, development and general prosperity, but the extent of the power may vary based on the subject matter over which the power is employed. And if the regulation goes too far, it will be recognized as a taking of property. Thus the means employed to effect the regulation must be neither arbitrary nor oppressive but must produce a real and substantial relation to an end that is the public safety, health, development and etc. So, the end of price control must be legitimate

and legislation will not be contrary to due process if it is a reasonable means of attaining this end.

In Ethiopia, there is a strong legal authority under the constitution of Ethiopia and other legislations to regulate prices, but there is lack of detailed standards to distinguish between the proper and improper exercise of price regulation power.

6.3. Recommendations

The study identified multitude of gaps in the price regulation practice. Based on the results of this study, the following recommendations have to be taken in to consideration:

1/ the government need to set a standard to examine the situation and a standard to separate the arbitrary vis-à-vis the appropriate form of price regulation in the absence of state of emergency.

2/ In the data collected , the researcher observed that most price regulation especially in case of basic commodities are set to silence the community without any study and research of the situation. So, the government needs to see the economy despite the political interest.

3/ About the currently issued rent control proclamation, in order to not to discourage the investor from renovating the houses, the government need to allow the investor to increase rent when the investor make any renovation in the house any time.

4/ As mentioned in the above sections, the Ethiopian government is empowered to regulate price by different laws of the country, and the federal administrative procedure proclamation no. 1183/2020 is adopted to safeguard parties affected by the regulation, to avoid harmful and arbitrary price regulation and to avoid infringement of basic rights like property rights. But, the problem is its scope is limited to the executive organ of the federal government. So, the government needs to extend the scope of the law to reach state governments.

6/ In addition the government need to give some incentive to the investor, in order to minimize some negative consequences of price regulation.

Appendix 1

Hawassa University school of Law and Governance

Interview Guide Questions 1

I am RediateHaileyesuse and a graduating student at Hawassa University post-graduation program at school of law, in commercial law stream. I am working my graduating thesis on the research entitled “The legal basis of price regulation in Ethiopia”. I believe that it would be quite useful for me to have interviewed you and hear your thoughts on the subject of my inquiry. I assure you that information you give me and views expressed will be useful for me and I would like to say thank you for your cooperation in advance.

Respondent profile

1.1 Sex: Male Female

1.2 Educational background.....

Interview questions

(For Academicians)

What are the gaps in laws dealing with price regulation in Ethiopia?

What are the challenges related to absence of price control standards which measures the proportionality of the regulation with the situation and which check the constitutionality of the regulation in Ethiopia?

What are institutional challenges in regard to price regulation?

What are the ways of minimizing the draw backs of price regulation while using it for its positive effect?

Do you think the legal frame work of price regulation in Ethiopia keep the balance between the interest of the investor as well as the interest of the public?

What do you think about the current rent control proclamation? Do you think the proclamation can control the currently rising rent prices?

In regard to private property right, is it fair to regulate price?

Do you think the legal framework of price regulation in Ethiopia effectively limit government’s regulatory power?

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