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SHOULD COMPETITION LAW REGULATE EXCESSIVE PRICING
DURING CRISIS— A DILEMMA BETWEEN MARKETS AND
MORALITY

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Abstract

Competition Laws in India were legislated to regulate the markets of the country in order to ensure that no competition takes place through exploitation. However, in India, the State doesn't have absolute influence over the markets as it provides scope for flexibility and effectiveness in the flow of goods and services. As laws are evolving in nature, there comes a dilemma between regulation and deregulation of market conditions. Various countries, across the globe, have taken strict legislative actions against excessive escalation of price of goods during crisis, especially for essential commodities and services. This research paper will address the issue on unregulated amount of price surge of goods in India during crisis and the possible solutions that can be implemented to respond to the problem. Various research papers and other secondary materials have been referred to address this issue and the possible hindrances in the path of solution. Further, the research paper will provide the scope for future researches to delve deeper into the problem. The implication of this research work is aimed at encouraging further studies in the future and find a practical solution for ensuring its implementation.

Keywords

Competition law, Price surge, crisis, Market condition, Exploitation, Essential commodities, Price gouging, Regulation

Introduction

Regulation of markets in the global context, is not a new phenomenon. It existed even before there was any formal legislation in the form of laws and statutes. Much before the government regulation over market practices, the control by the authoritative bodies existed in the medieval

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as well as in the ancient period. In the medieval time or commonly referred to as the middle age, the guilds² had sufficient power over the controlling of markets. Guilds were a group of people mostly consisted of merchants and craftsmen.

It is common to hear how the kings used to exert their control over market regulations. It was mostly regulated to ensure uninterrupted supply of goods for maintaining their armies. In India, the reign of Aurangzeb was known to have strict regulations by imposition of Islamic laws, leading to huge economic upliftment of India. However, this was not just limited within the geographical territory of India. For example, in ancient Egypt, the Pharaohs had excessive control over the flow of goods and services. Various standardized units were used for weighing and measuring goods.

In India, the laws regulating markets were first codified in the colonial period, under British Raj, for regulation of agricultural markets³, titled as Berar Cotton and Grain Market Act of 1897. In the post independence era, several laws evolved replacing the colonial laws. Finally, in 2002, the Competition Act, 2002 was enacted, replacing the Monopolies and Restrictive Trade Practices Act, 1969. It led to the establishment of Competition Commission of India, or in short, CCI. This act aimed to protect against any adverse action that may take place due to excessive and unchecked competitive practice in the market, leading to abuse of the financial condition of small retailers and buyers.

Materials and Methods:

The research paper has entailed a qualitative research methodology. To study about various laws in different countries, regulating price amounts during emergencies, a number of research paper have been referred. The news reports have been examined to understand the commonality of the issue related to price surge, in India. Several other secondary or doctrinal sources have been referred to writing this research paper.

² Guild, Merriam-Webster, <https://www.merriam-webster.com/dictionary/guild> (last visited July 9, 2025).

³ A Handbook on Agricultural Marketing Extension for Farmers (AMEEF), MANAGE (Ministry of Agriculture & Farmers' Welfare, Government of India), <https://www.manage.gov.in/publications/AMEEF.pdf> (last visited July 10, 2025).

Excessive pricing during crisis: Price Gouging

According to Say's Law⁴, supply of goods create its own demand in the market. However, there are times when the demand rises, even though there is a shortage of supply. This rigid condition in the market often creates leads to hiking of price of goods.

Price Gouging⁵ is a practice of exorbitant rise of price, especially during crisis or emergency. This occurs when the supply of goods is less but the demand is high. Therefore, to deal with the supply gap, the provider of goods and services increase the price, sometimes increasing it by fifty percent or more. However, the major problem lies in situation where essential commodities are involved. It can include the price of clean and portable water in the flood affected areas or rise in price of ambulance service during a pandemic.

In order to address the issues of excessive pricing during crisis, this research work will give special reference to the recent situation created by COVID-19 pandemic.

Global outlook on excessive pricing during crisis:

According to Adam Smith, the father of modern economics, advocated for minimal government intervention in the market. He proposed the concept of free market as he considered markets to be self regulating in nature. It is through the “invisible hands⁶” that the supply and demand of goods in the market are regulated. However, being an economist and philosopher, his ideas have much more theoretical relevance than practical insights.

This called for the need of some government regulation over the market practices. Therefore, globally, various laws have been enforced in various countries to regulate exploitative practices in a competitive market. Perfect competition is an hypothetical concept, which states that there shall be no misleading or exploitative measures taken against any businesses.

Even though in India, still now there is no law in existence that directly penalise the exorbitant rise of price during crisis, still there are various measures taken by other countries across the globe. Apart from laws, strict measures are taken by the government to set a cap or limit beyond

⁴ Say's Law, Economics Help, <https://www.economicshelp.org/blog/glossary/says-law/#:~:text=Excess%20savings,Austrian%20Economics%20and%20Say's%20Law> (last visited July 9, 2025).

⁵ Price Gouging, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/price-gouging> (last visited July 9, 2025).

⁶ Invisible Hand, Investopedia, <https://www.investopedia.com/terms/i/invisiblehand.asp> (last visited July 9, 2025).

which no price amount can rise, especially in times of crisis. This restricts the seller of goods or service providers from taking advantage of the plight of the common people, especially who are unable to afford essential goods and services at such a high price. To maintain the market conditions and address the welfare of the sellers or service providers, the State allows the escalation of price till a certain specified limit.

In particular, the Anti-Price Gouging law of California⁷ extends to all the necessary commodities. The laws come into immediate effect after an emergency situations is declared. According to section 396 of the act, it restricts the businesses from raising the price of goods and services, including rent amount, above ten percent. In case a business chooses to increase it by more than ten percent, proper justification need to be given in such case.

During the pandemic situation in 2020 and 2021, the government of France had intervened to regulate the prices, both for retail as well as wholesale goods. The competition authorities of France were tasked to investigate on it, especially for commodities like masks and sanitizers. As lockdown was declared, the street side small shops started getting shut down and suffered irrecoverable loss. On the other hand, the digital markets witnessed a boom leading them to inflating the prices on masks and sanitizers. To address this condition, the competition authorities in Italy started to take legal actions against digital platforms like Amazon and Ebay. They were forced to cut down the price imposed on sanitizers and face masks and comply with the consumer code.

For the member states of European Union (EU), the European Competition Network (ECN) focused on scrutinizing the condition of markets⁸. It affirmed to take strict measures by imposing sanctions against those who abuse their dominant positions during the pandemic situation. It further ensured that products related to protection of health of the consumers, like face masks or sanitizers, were made available at a reasonable price. Across Europe, the competition authorities ensured that they would not intervene in case the companies were positively cooperating with each other to ensure fair distribution of goods in the market place. Generally, the competition authorities penalise the businesses if they cooperate with each other to abuse their dominant

⁷California's Anti-Price-Gouging Law, Allen Matkins Insights (May 2025), <https://www.allenmatkins.com/real-ideas/californias-anti-price-gouging-law.html> (last visited July 10, 2025).

⁸Antitrust Rules and Coronavirus, European Commission Competition Policy, https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/coronavirus_en (last visited July 10, 2025).

position, like collectively creating a shortage in supply of goods and raise the demand. However, during the pandemic, they warranted minimal intervention in the market regulation.

Therefore, several competition authorities in various parts of the world safeguarded the protection of consumers in case of crisis. They ensured that the supply of medical supplies doesn't suffer any shortages. Any violation of competition rules would consequently lead to penal sanctions against the businesses. They considered that during crisis, each one would be suffering from some financial loss, but that should not have created any path for the business owners to take advantage of the predicament condition of the consumers. Some of the competition authorities didn't limit the condition to the medical necessities solely, rather extended it to other essential services like transportation, supply of ambulance, rent services as well. The United States (US) and European Union (EU) had taken strict regulations to address the supply chain of goods and services during the pandemic situation and previously in other emergencies as well.

How is excessive pricing during crisis dealt in India:

Even though several countries globally have imposed some laws to curb excessive price gouging, India is yet to make any provision that restricts such practices. The need of India to make such laws are equally essential to comply with the United Nations Guiding Principles on Business and Human Rights. According to UNGPs on BHR, price gouging should be restricted by the State authorities through stringent laws or strict policies⁹. The main aim of UNGP is to ensure that the State protects the rights of human and specifically ensure that the human rights are not abused by businesses using tactical marketing strategy. Further, the principles even aim to respect and protect the human rights as a measure of corporate responsibility.

In India there are several reports on price gouging every year in the price of vegetables like onions or tomatoes, or the price of staple crops like wheat or millets. However, the reports remain in the table without any plausible solution to it. This has raised concern about the need for laws restricting sudden surge of prices of essential goods, especially during crisis. Suggestions have been provided to follow the model of other countries in order to legislate a

⁹ COVID-19 Crisis Calls for Introduction of Price Inflation Laws in India, Vidhi Centre for Legal Policy (Apr. 4, 2020), <https://vidhilegalpolicy.in/blog/covid-19-crisis-calls-for-introduction-of-price-inflation-laws-in-india/> (last visited July 10, 2025).

similar law or provision within the existing laws. Several experts suggested to follow the US model of keeping a price limit beyond which the market price cannot be exceeded. The urgent need of discussion to enact some laws regulating it, especially comes with the exploitation of the financially vulnerable section of the society. Price surging poses a huge treat in their lives to access transportation or buy essential goods. Several such instances have occurred in India, putting the sustenance of human lives at threat.

These situations were especially witnessed in the pandemic situation when the price of N95 masks had hit the price upto Rs. 500 per piece¹⁰. Such were reported from several megacities like Mumbai, Delhi and Kolkata. The profiteers spiked the prices of medical oxygen, leading to acute shortage of supply in the market. According to a report by LocalCircles, over 70% people who accessed ambulance service had overpaid during the second wave of pandemic. To this, the Supreme Court had directed the state governments to fix a reasonable charge of ambulance service for covid patients¹¹. Further, the apex court even directed to increase the number of ambulance to deal with the shortage of supply. This was directed by the bench headed by Justice Ashok Bhushan. However, this poses a serious question, whether pronouncing temporary directions by the apex court to the state governments enough to deal with the crisis, everytime. Further, the apex court didn't deal about the access of ambulance service by the non-covid patients who were equally suffering from lack of emergency services. Alongside, in response to the order of Supreme Court, the Delhi government had capped the price of private ambulance between rupees fifteen thousand to rupees four thousand for service upto ten kilometers. The flaw can be well interpreted from the price range between when the price cap was imposed. However, these faults are likely to present if there's no comprehensive law regulating these issues.

The pandemic situation was not the only situation when massive profiteering was done by the businesses. For example, when Chennai was affected by flood in 2015, the price of Uber service had spiked exorbitantly. The recent attack of Jammu and Kashmir by the terrorist organizations

¹⁰ Coronavirus Scare Grips India: Price of N95 Mask Shoots Up to Rs 500, Sanitiser Shortage in Stores, Economic Times (PTI, Mar. 19, 2020), <https://www.economictimes.com/magazines/panache/coronavirus-scare-grips-india-price-of-n95-mask-shoots-up-to-rs-500-sanitiser-shortage-in-stores> (last visited July 10, 2025).

¹¹ Covid-19: SC Directs States to Fix Reasonable Price for Ambulance Services, Times of India (ANI, Sept. 11, 2020), <https://timesofindia.indiatimes.com/india/covid-19-sc-directs-states-to-fix-reasonable-price-for-ambulance-services> (last visited July 10, 2025).

had created an emergency condition. Taking advantage of the emergency condition of the tourists, the air-travel prices had sky rocketed by a huge amount. Therefore, an incorporation of anti-price gouging law is required to tackle these conditions of artificial price surging in India, during emergency conditions.

According to one of the pillars of UNGPs, it is the duty and eminent responsibility of the State to implement laws so that the human rights of the civilians are protected. The rise of price in medicinal products or staple crops are a serious threat to the human rights. Further, the Competition Commission of India or CCI has the authority to regulate excessive rise in prices for a product. This would, therefore, come under the ambit of Competition Act of 2002¹². However, no provisions explicitly mention about the strict penalties that shall be imposed upon the business houses. Previously, during the pandemic condition in 2020, under the Essential commodities act of 1955, the price cap over masks and sanitizers were invoked, but it remained in effect for five months, from February 2020 to the end of June 2020¹³.

Possible challenges in implementation:

Even though several experts suggested for implementing US anti-price gouging laws in India, it comes with several constraints. The Indian markets run differently that US markets. In case price gouging becomes a necessity due to lack of supply of raw materials, like crop failure due to heavy hailstorm, can actually put the small scale businessman at stake if such laws are implemented.

Another factor is that, it is often considered that in case of emergency situation, businesses are likely to suffer from loss due to presence of anti-price gouging laws, for which the businessmen can be compensated by the government. However, the underlying problem lies in the financial capacity of a State to appropriately compensate the suppliers in every emergency that our country goes through. India is still not equipped to take such a massive step.

We need to be able to differentiate between 'price gouging' and 'immoral price gouging'. While laws are meant to protect the consumers, this cannot have adverse effect to put the financial

¹² The Competition Act, 2002, No. 12 of 2003, § 1 et seq., (India), available at <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf> (last visited July 10, 2025).

¹³ Masks and Hand Sanitizers Under EC Act, 1955, Drishti IAS, Mar. 14, 2020, <https://www.drishtiias.com/daily-news-analysis/masks-and-hand-sanitizers-under-ec-act-1955> (last visited July 10, 2025).

condition of suppliers at stake. Generalisation of every price gouging as an immoral step by the suppliers can lead to further challenges in the future.

Conclusion

The State bears the responsibility to protect the rights of the consumers and also ensure that the businesses, especially small scale businesses are not adversely affected due to this. Therefore, it is the immense responsibility of the State to find a desirable balance between regulation and deregulation. Even though, our country may take references from the laws of other countries, it need to ensured that the government ultimately employs its own measures as every economic condition in the countries are unique in their own aspect. However, whatever steps are employed, it must be taken by considering all sides, so that it doesn't impose any further challenges in the future.

Several researches must be conducted in the future to suggest for more practical solutions that will best fit the economic conditions of our country.