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E-cigarettes: Regulation and not prohibition is the answer

In August, the central government asked all states to stop sales and imports of certain products like e-cigarettes, electronic nicotine delivery systems (ENDS) and heated tobacco products.

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The concerns surrounding e-cigarettes have been addressed through reasonable checks and balances rather than extreme restrictions in these jurisdictions.

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During the recent winter session of Parliament, the ministry of health and family welfare stated that it had issued an “advisory” to all states and Union Territories to stop sales of electronic nicotine delivery systems (ENDS), or electronic cigarettes (e-cigarettes). Without missing a beat, the government also said it has no plans to treat the conventional paper rolled cigarettes in a similar fashion. This defies logic.

It was in last August that the ministry issued the advisory. All states were asked to stop sales and imports of certain products like e-cigarettes, ENDS and heated tobacco products. In one stroke — though without supportive evidence — the ministry ruled that these products are hazardous for health as they contain nicotine.

Meanwhile, conventional combustible cigarettes continue to sell, delivering the same nicotine, with an added dose of smoke and tar for the consumers. Rationale be damned!

A Knee-Jerk Action

The ministry seems to have acted in haste, ignoring available research and evidence. In terms of evidence, the government seems to have overlooked the growing gamut of science and scientific literature that establishes products like ENDS — although addictive since they contain nicotine — provide a much better and far less riskier alternative to smokers who are unable to quit because they do not emit the carcinogen-laden smoke and tar that are the main culprits of smoking-related health hazards.

There is growing evidence to show that ENDS are potentially less harmful compared to traditional combustible cigarettes. This is primarily attributed to the fact that in the case of ENDS, there is no combustion of tobacco or of the other constituents of a cigarette and hence the harmful byproducts that emanate from cigarette smoke are substantially reduced.

Viewed against this backdrop, the attempt to prohibit ENDS while continuing to allow trade in combustible cigarettes seems paradoxical and far removed from the objective of reducing harm related to tobacco use.

There are however certain valid concerns in respect of ENDS. These are related to their safety, standards; and the potential for being misused or abused by certain sections of the population, especially non-smokers, children and adolescents.

Ergo, the focus of the government — if it really wants to reduce the harm of cigarette smoking — should be an appropriate policy structure, centred on the objective of minimising the risks of misuse

while maximising the potential of products such as ENDS. Thus, a future policy action can possibly be one that balances the risks and benefits of products such as ENDS.

Plenty of Global Examples

Other countries have approached this issue in a much more calibrated fashion after adequate deliberations of scientific and medical evidence. New Zealand needs special mention.

Until 2016, the regulatory environment in New Zealand was like that of India, i.e. the sale of combustible cigarettes for smoking was allowed, whereas e-cigarettes were not legally recognised as a marketable product.

The government of New Zealand deliberated upon the issue of the sale and use of e-cigarettes in the light of the existing and emerging scientific evidence available in respect of health effects of these products. On June 29, 2016, the Cabinet Social Policy Committee (SOC) agreed in principle to allow the legal sale and supply of e-cigarettes, albeit with appropriate controls and restrictions.

Consequently, the SOC directed the ministry of health to conduct an impact assessment of regulation of e-cigarettes and advise the government on possible regulatory pathways. Further, the ministry was also directed to undertake public consultation on the issue.

The New Zealand ministry undertook a detailed study of available scientific evidence, published reports and global studies and research and after seeking comments from the public gave a detailed report on the impact assessment and possible legal pathways for regulation of e-cigarettes.

After deliberations and stakeholder consultations, the government found that there exists strong evidence that e-cigarettes were substantially less harmful products, although the risks of long-term use were as yet unknown.

It found that although long-term use is unlikely to be risk-free, it is likely to be much less harmful than long-term smoking of combustible cigarettes. Further, on the concerns of accidental misuse or abuse of nicotine in ENDS, the government recommended proper regulatory mechanisms such as child-resistant disclosures, and controls on maximum available concentrations and volumes of nicotine e-liquids.

The ministry, after proper analysis, recommended that e-cigarettes should be allowed to be sold as a consumer product with appropriate restrictions.

Similar examples can be seen in other jurisdictions such as the EU and the UK where the sale and consumption of e-cigarettes are allowed in a properly regulated environment. The concerns surrounding ENDS have been addressed through reasonable checks and balances rather than extreme restrictions in these jurisdictions. It is such kind of study and analysis that is warranted from policymakers in India too while arriving at a policy decision.

Given that the thought process about ENDS in India seems to be divided into extremes of kinds, it is worthwhile that India looks at other country regulatory practices and takes a reasoned decision rather than an emotive or a philosophical one. What is required is a proper thought through a regulatory mechanism. An outright prohibition that in effect denies smokers the choice of an alternative that at least minimises the risks that a conventional cigarette poses in respect of health is definitely not the answer.

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