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# Banning e-cigarettes in India: Govt ignores science, law by opting for complete prohibition instead of regulation

FIRSTPOST. **Nawneet Vibhaw**  
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Cigarette smoking is injurious to health. Thanks to the statutory warnings on television, movie-theatres and even the cigarette cartons, we all know this. Having been a non-smoker all my life, there is no reason why this issue would even affect me or any other non-smoker. However, the reason we are affected is because more recently there has been a fair bit of discussion and debate around issues like public health, foreign investments, protectionism etc. and the issue of e-cigarettes interestingly touches upon all these.

It has also been argued that e-cigarettes actually help smokers quit smoking. Various reports from institutions like Public Health England, Royal College of Physicians, International Agency for Research on Cancer, Dana Farber Cancer Research Institute, National Academies of Sciences, Engineering and Medicine have been cited in this regard which shows that ENDS are a safer alternative.

The Government of India has decided to ban e-cigarettes as it feels these are harmful. While in 2015 the Drugs Consultative Committee ("DCC") had agreed that ENDS is not a 'drug' under the Drugs and Cosmetics Act, 1940, in 2019, the DCC has stated that ENDS is a 'drug' and therefore should be regulated under the Drugs and Cosmetics Act, 1940. More importantly, DCC has recommended a complete ban on the manufacture and import of ENDS under sections 26A and 10A of the Drugs and Cosmetics Act, 1940.

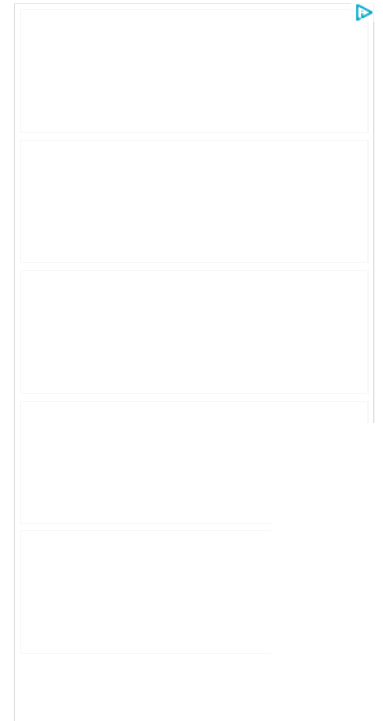
Interestingly, the Delhi High Court and the Bombay High Court in their orders dated 18 March 2019 and 25 July 2019 respectively have held that ENDS are not drugs and therefore cannot be banned under the Drugs and Cosmetics Act, 1940 and hence no proceedings can be initiated against the manufacturers, sellers and importers of ENDS.

There is, therefore, a clear inconsistency and conflict when it comes to the stand taken by the Central government and the courts. It is worthwhile to note that public health is a state subject and therefore a decision in this regard may be taken by the states after consultation with the concerned stakeholders and after a thorough examination of the medical research and scientific publications in this regard. If anything is per se harmful it should never be allowed in the interest of public health. At the same time, in the absence of clear scientific evidence, anything which is less harmful or not harmful cannot be banned when something else which is far more harmful is being allowed.

We need to treat equals equally and unequals unequally. Instead of bringing in an ordinance to ban products which may not necessarily be harmful, it would be better if we lay down standards and regulate such products so that there is appropriate quality control and we safeguard public health besides attracting investments. Protectionism is important but not in a manner which reflects the inconsistency in our approach. Afterall, we all want a healthier and happier India.

[Watch: Firstpost Conversations explores the issue with national and international experts.](#)

*The author is a Partner at Khaitan & Co LLP and does not support any form of addiction.*



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