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Legal vs humanitarian

The pharma price-control order drew a fine balance between interests of industry and patients. Withdrawing it is a blow to the incipient fair-pricing mechanism

The National Pharmaceutical Pricing Authority's (NPPA) withdrawal of its guidelines assuming powers to revise the maximum retail prices(MRP) of scheduled and non-scheduled drugs is an unfortunate development. The guidelines, issued in May, reiterated the NPPA's authority under Paragraph 19 of the Drug Prices Control Order(DPCO)-2013 allowing the Government to regulate drug prices in "extraordinary circumstances, if necessary in public interest". Subsequently, the NPPA cut the prices of 108 single-formulation drugs used for cancer, HIV, cardiovascular, and diabetes treatment, in July. This angered the pharmaceutical industry, which moved the courts alleging overreach of NPPA's powers. Asked for his opinion, Solicitor-General Ranjit Kumar told the Department of Pharmaceuticals that this power must be reserved for truly extraordinary circumstances such as epidemics, financial crisis, or a restricted supply of lifesaving drugs for a fixed time period. Kumar noted that this power to fix prices was delegated to the NPPA by the government, and the former could be asked to modify the guidelines and change its stand.

From a purely technical standpoint, Kumar's opinion may be correct, but the government and the NPPA have a mandate going beyond technicalities, to ensure public welfare and upholding patients' interest. It is common knowledge that the demand for medicines is prescription-driven and patients have little choice. This assumes significance as the inter-brand price difference in drug formulations vary widely but neither doctors, nor pharmacists, or the State educates consumers on alternate low-priced brands. The NPPA has restricted the prices only in cases where the MRP of the brand(s) exceeded the average price of all the brands in a drug category by 25 percent, and capped the new MRP at the 25 per cent level. While pharma companies claim that different brands have varying quality levels, the NPPA says these differences are not significant at the therapeutic level. Unlike fast-moving consumer goods, electronics, apparel or the real-estate sector where state intervention in the market is undesirable, the pharma industry must accept social realities. Pharma caters to patients, most of them burdened by the huge financial strain of hospitalisation, loss of livelihood, and drug costs. With nearly one-fifth of the country's population struggling with various diseases by one estimate, what constitutes public interest and extraordinary circumstances is an arguable proposition that cannot be settled by mere legal opinion.

The price band cap of 25 per cent above average prices, and the annual ten per cent hike in prices to accommodate for inflation, offer a reasonable spectrum for both higher-end and the low-cost brands to function without resorting to exploitative pricing. The argument that low-cost drug makers will also hike their drug costs to take advantage of an artificial ceiling is without merit because these companies survive on competitive pricing. However, the saving grace is that the withdrawal of the guidelines is prospective and will not affect the price caps on the 108 drugs. When the DPCO-2013 was notified, a similar brouhaha erupted over the government setting ceiling prices of 348 drugs/652 formulations which were brought under a National List of Essential Medicines. But the DPCO left enough loopholes incentivising pharma companies to migrate out of this regulated list by either shifting to equivalent, yet unregulated, formulations or to combinations of these 652 formulations. Moreover, patented drugs were also left out of the DPCO-2013. The momentum towards fair pricing achieved by the NPPA since the DCPO-2013, the May guidelines, and the price-control action in July stands reversed now. In chaotic market conditions, this distaste for regulation will cost the country dearly.

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NPPA has systematically crippled Indian Pharma and conceded Antibiotics market to China n r In the process of conceding other drugs too!