

EXPLANATORY NOTE

KEY POLICY ON NUTRITION FOR CHILDREN UNDER-2, UNDER THREAT BY FSSAI ACTION:

(The Infant Milk Substitutes Feeding Bottles, and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992, and Amendment Act 2003)

1. A LAW TO PROTECT BREASTFEEDING AND SAVE LIVES OF INFANTS AND YOUNG CHILDREN

History

In 1981 World Health Assembly adopted 'International Code of Marketing for Breastmilk Substitutes' that called upon every country to take legislative action. As a follow up, in the year 1992 Sh. Ram Naik, Member of Parliament, proposed a Private Members Bill. As a result of which the ruling party promised to introduce the Bill *Infant Milk Substitutes Feeding Bottles, and Infant Foods (Regulation of Production, Supply and Distribution) Bill*. In the same year, the then Minister of HRD late Sh. Arjun Singh, laid the Bill in next session. **The Statement of Objects of the Bill** included. *"Inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in our children. Promotion of infant milk substitutes and related products like feeding bottles and teats do constitute a health hazard. Promotion of infant milk substitutes and related products has been more extensive and pervasive than the dissemination of information concerning the advantages of mother's milk and breastfeeding and contributes to decline in breastfeeding..."* The Bill was finally enacted as an Act by the Parliament in December 1992 as *Infant Milk Substitutes Feeding Bottles, and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992*. **(IMS Act) Annex-1.** In the year 2002 Dr. Murli Manohar Joshi, the Minister of HRD introduced an Amendment Bill No. 8 of 2002. This was enacted in 2003 based on the recommendation of a Parliamentary Committee. The SOR included *".....The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 was enacted with a view to protecting and promoting breastfeeding and ensuring proper use of infant foods"*. (<http://childlineindia.org.in/Infant-Milk-Substitutes-Feeding-Bottles-and-Infant-Foods.htm>)

Definitions

The IMS Act has been enacted to control marketing of the products under the scope of the Act i.e. 'Infant milk substitutes' 'Infant foods', and 'feeding bottles' and these have been clearly defined under section 2.

(f) "infant food" means any food (by whatever name called) being marketed or otherwise represented as a complement to mother's milk to meet the growing nutritional needs of the infant after the age of six months and up to the age of two years;

(g) "infant milk substitute" means any food being marketed or otherwise represented as a partial or total replacement for mother's milk, for infant up to the age of two years.

Related operative provisions:

3. No person shall -

- (a) advertise, or take part in the publication of any advertisement, for the distribution, sale or supply of infant milk substitutes, feeding bottles or infant foods; or*
- (b) give an impression or create a belief in any manner that feeding of infant milk substitutes and infant foods are equivalent to, or better than, mother's milk; or*
- (c) take part in the promotion of infant milk substitutes, feeding bottles or infant foods;*

According to Section 9.

(1) No person who produces, supplies, distributes or sells infant milk substitutes or feeding bottles or infant foods shall offer or give, directly or indirectly, any financial inducements or gifts to a health worker or to any member of his family for the purpose of promoting the use of such substitutes or bottles or foods.

(2) No producer, supplier or distributor referred to in sub-section (1), shall offer or give any contribution or pecuniary benefit to a health worker or any association of health workers, including funding of seminar, meeting, conferences, educational course, contest, fellowship, research work or sponsorship.

Impact of the Act

IMS Act was enacted with huge public health significance. Today, sales of baby milks in India are growing in a slow pace in comparison to countries like China where the law for the regulation of sales of baby foods is not that stringent. In 2013, the consumption of milk formula in kg per infant/child in China was 15.2 Kg while it was only 0.4 Kg in India.¹ In China, the sale of milk formula increased from 294,000 tonnes in 2008 to 560,000 tonnes in 2012, whereas, in India the increase was from 24,428 tonnes in 2008 to 27,783 tonnes in 2012². It is evident that consumption of milk formula is forty times less in India in comparison to China, which is beneficial for the future health issues like obesity and type 2 diabetes and obesity. These are in addition to benefits of increased breastmilk intake.

2. FSSAI's ACTION UNDERMINING IMS ACT and INSTITUTIONAL CONFLICT OF INTEREST

Partnership with baby food companies

FSSAI has partnered with 'Infant and Young Child Nutrition Council of India (IYNCI)', which is a front organization of 4 leading baby food manufacturers **Abbott, Danone, Mead Johnson and Nestle**. They manufacture infant milk substitutes and infant Foods, regulation of production, supply and distribution is governed by the IMS Act. This is a clear situation of institutional conflict of interest.

¹ Euromonitor International (2013). Passport Baby food in India report

² Euromonitor International (2012). Passport Baby food in China report

This partnership project of FSSAI with baby food companies is called “Diet 4 Life”, which is meant to promote Foods Special Medical purposes (FSMP) including special formulas meant for children having prematurity, allergies to cows milk, Lactose intolerance and Inborn Errors of Metabolism.

Incidentally IYNCl claims Diet4Life as “Our project”<http://www.iyncl.org>.

IYNCl also states *“This prompted IYNCl member companies to partner the Diet 4 Life initiative by providing access to special diets (FSMP - food for special medical purposes) that these companies manufacture and sell worldwide. IYNCl will also support professional development workshops for healthcare professionals across India for appropriate dietary management of IEM conditions.”* At the same time FSSAI denies having any information on expenditure of such events. (**Annex-2**).

This action of the FSSAI's Diet4Life project has fallaciously interpreted the scope of IMS Act redundant for FSMP products. The FAQ on its website includes <http://diet4life.fssai.gov.in/faqs.html#faq-sub2> a question: *Will the IMS Act and the regulations there under be applicable to these foods? And the answer is “No. These foods are neither infant milk substitute nor infant food but are intended to meet special medical needs arising out of rare disorders/medical conditions. These foods are required to be consumed under medical supervision. These foods are covered under special category of foods defined as Foods for Special Medical Purposes (FSMP) which are out of scope of the Infant Milk Substitutes, Feeding Bottles and Infant foods (Regulation of Production, Supply and Distribution) Act, 1992”.*

Our concerns on this partnership were communicated to FSSAI but we have not yet heard back. (Annex-3).

FSSAI issued a notice on 27.12.2017 (Annex-4)

http://www.fssai.gov.in/dam/jcr:828eb88d-1c4c-49ed98882d6d224c3772/Draft_Notice_Comments_Food_Infant_Nutrition_27_12_2017.pdf

‘Notice Calling for suggestions, views, comments etc. from stakeholders within a period of 30 days on the draft notification related to standards of foods for infant nutrition.

F. No. Stds/03/Notification (IFR)/ FSSAI-2017-

FSSAI proposes several new definitions of these FSMPs and intends to keep them out of purview of IMS Act. As stated in its section 8 of general requirements; whereas, all these Food for Special Medical Purpose (FSMP) IEM are “Infant Milk Substitutes” as defined in the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act, 2003 (IMS Act).

.. (8) Food for infant nutrition except in the category of food for special medical purpose shall also comply with the requirements of the “Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 as amended in 2003 (IMS Act)”.

3. NATIONAL NUTRITION STRATEGY MAKES CLEAR REFERENCE TO CONFLICTS OF INTEREST

Under the Guiding Principles 5.10 ENSURE THAT THERE IS NO CONFLICT OF INTEREST

An underlying principle of action is that policy development and programme implementation must be transparent, open to public scrutiny and kept free from conflict of interest, with requisite safeguards. (This includes ensuring that representation on policy, technical advisory groups and various management committees at different levels is free from conflict of interest.) (ANNEX-5)

4. WHAT WILL IT RESULT IN?

These companies have already begun to sponsor health workers conferences and individuals or supply materials to hospitals blatantly in violation of the IMS Act. In December these companies sponsored National Neonatology Forum Annual Convention held in Gurgoan Conference and organizers said they have the permission of Government of India for display of infant milk substitutes. Some examples in the **Annex 6**.

CONCLUSIONS

1. FSSAI & IYNCI partnership is laying clear roads for baby food manufacturers to violate the existing IMS Act and sponsor health professionals and directly contact parents both prohibited by IMS Act. It needs to be called off.
2. If allowed such a step may undermine all efforts being made by Government of India in past 25 years towards protection, promotion and support of breastfeeding and saving babies.
3. Every action proposed by FSSAI to import and provide FSMP does not require FSMP to be exempted from IMS Act and its provisions and regulations. Government of India can take a call on how to deal with prevalence data and identification of IEMs, as well as procurement /purchase of FSMP. (**Annex-7**)
4. IMS Act provisions on regulation of production supply and distribution should continue prevail on FSMP.

BPNI 17 January 2018