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Will new FSSAI rules undercut baby food law?

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Does special infant food for certain rare medical conditions have to be kept out of the Infant Milk Substitute (IMS) Act — a law to prevent predatory marketing practices by baby food companies — to ensure their availability? This question sparked a tussle between public health activists and the Food Safety and Standards Authority of India (FSSAI). Ostensibly to deal with three very rare medical conditions in infants, FSSAI decided to exempt several products from the IMS Act. Baby food companies used this to sponsor doctors and market these special foods, which the IMS Act prohibits. Following protests from health activists, FSSAI clarified that the Act's provisions on marketing, promotion and sponsorship would apply to these special foods, but they would otherwise remain out of its ambit.

The Act is hailed globally as one of the most effective laws to protect breastfeeding against unethical marketing by baby-food companies. As a result, the sale of baby food formula in India is a tiny fraction of that in China, which does not have a similar stringent law.

So why is FSSAI keeping these special foods out of the Act? FSSAI says that since the Act says all baby food labels have to carry a statement "mother's milk is best for your baby" in capital letters, special foods for inborn metabolic errors have to be kept out of the legislation. However, according to the WHO and the American Academy of Paediatrics (AAP), there are only three inborn metabolic diseases in which breastfeeding can harm the baby. Of these, AAP says breastfeeding is an absolute no-no in just one, galactosemia. In the other two, phenylketonuria and maple syrup urine disease, breastfeeding is allowed along with special formula under medical monitoring.

FSSAI's other argument is that products under the IMS Act can be taken on the advice of a health worker, while these special diets need medical supervision.

The problem is that FSSAI has exempted all foods for special medical purposes (FSMPs). FSMPs include formulas for low birth-weight babies, hypoallergenic formulas for babies with cow milk allergy and lactose free formulas. These are already sold in India, regulated by the IMS and FSSAI Acts. They have labels saying that mother's milk is best, an advisory that they are to be used under medical supervision and a label clearly identifying them as infant milk substitutes.

Even before the draft regulation of exemption to these products got approved, FSSAI okayed labels of many of these special foods with a sticker, "This is neither an infant milk substitute nor an infant food". This is the key concern, pointed out Dr Arun Gupta of the Breastfeeding Promotion Network of India, one of four bodies responsible for reporting IMS Act violations. "Will violations under IMS Act attract penalties when the products are being kept out of its purview? The exemption will only create confusion that baby-food companies will take advantage of. The policy to exempt some baby foods from IMS Act is flawed and is the result of partnership with baby food companies," he charged.