

hungry for power

ಕಳಗಲ ಸಮಸ್ಯೆ ಕುಗಲೂ ನಿಮ್ಮ ಕೈ ಕಟ್ಟಿದೆಯೇ?



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DEVIL

"Are your hands tied by weeds? Round-up will set you free!"



Nestlé in India

Arun Gupta

Since the adoption of the International Code of Marketing of Breastmilk Substitutes, 20 countries are recognised as having implemented all or nearly all of its provisions, and a further 27 countries have implemented many of them. India was one of the first 10 countries to initiate such action. The Government of India adopted the Code and promulgated it as the Indian National Code for Protection and Promotion of Breastfeeding in December 1983.

To enforce the provisions of this Code, pending the framing of a full-fledged law, labelling requirements were prescribed under the Prevention of Food Adulteration Rules. Finally, in 1992, The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (the IMS Act) was enacted. This Act came into force in August 1993 along with Rules framed for its enforcement.

The IMS Act does not aim to ban the products under its scope, but seeks to strictly regulate marketing and promotion of the products. It prohibits the promotion of breastmilk substitutes, which the Act calls infant milk substitutes, and feeding bottles, while permitting promotion of complementary foods, which are dubbed “infant foods” under the Act. It aims to curtail misinformation and misdirected “education” of pregnant women and mothers of infants about breastfeeding, and prohibits contact between industry and pregnant women or mothers of infants. By creating awareness among pregnant women and lactating mothers about the benefits of breastfeeding, and by providing accurate and factual information, the government hopes to reverse the decline in breastfeeding.

The Act seeks to ensure the proper use of infant milk substitutes and infant foods. The idea of the government is to restrict and control the use of

these products by advocating their use only on the advice of a health worker. It defines the role and responsibilities of health care institutions and health workers to ensure the proper use of infant milk substitutes, feeding bottles and infant foods. The Act completely prohibits any form of promotion or advertising of infant milk substitutes (formula) and feeding bottles. However, it allows promotion and advertising of infant foods (complementary foods) subject to certain restrictions regarding accompanying information regarding the benefits and superiority of breastfeeding, publication of a prominent statement that “mother’s milk is best for your baby”, and so on. It completely prohibits contact by manufacturers and distributors with a pregnant woman or the mother of an infant, and does not permit demonstration of products within the scope of the Act, except by health workers.

Also prohibited are gifts, utensils, and so on, by manufacturers and distributors to pregnant women, mothers of infants, or members of their families, for the purposes of promoting infant milk substitutes and feeding bottles. Free and subsidised supplies are also banned, as are use of health care facilities for putting up posters, calendars and the like, or for any promotional activities.

Unfortunately, while the IMS Act bans the use of baby and mother pictures or other graphics, which idealise the use of infant milk substitutes (formula), it does not place a similar embargo on infant foods and feeding bottles. Restrictions are placed on sponsorships and subsidies by industry to persons in health care facilities, but there are some loopholes here which the companies continue to exploit. Significantly, the Act completely prohibits payment of incentive-based wages to employees of companies manufacturing or marketing products within the scope of the Code.

The enforcement provisions of the IMS Act are significant. Any products violating any provision of the Act are liable to be seized and confiscated, with

extremely expensive provisions for redemption of confiscated goods. In addition to confiscation, strict criminal sanctions and penalties are prescribed under the Act. Indeed, for violation of the provisions relating to labelling and food standards, a minimum mandatory jail sentence of six months imprisonment is prescribed. Interestingly, the Act permits complaints to be filed not only by Food Inspectors under the Health Ministry, but also by representatives of non-governmental voluntary organisations which are engaged in infant health and nutrition, and are notified by the Government for the purpose.

Monitoring the Act

The IMS Act is unique in that for monitoring the marketing practices of baby food companies, in addition to the authorised government inspectors, it has authorised certain citizen's groups to file criminal cases in court in case of violations. It has also provided that upon such complaint being accepted by the Court, it then becomes the duty of the State-appointed public prosecutor to prosecute the case. A number of NGOs have been authorised under the Act to approach the court of law in case of violation of any provision of the Act, to ensure the law is followed in letter and spirit.

In October 1994, Nestlé's advertisements appeared to be violating some provisions of the IMS Act. Some magazines carried adverts for Cerelac, a follow-on food or complimentary food, in Hindi in which Nestlé recommended Cerelac from the fourth month of life. Underlined in the advertisement was – 'Chautha machine se' – meaning "from fourth month", that is, when the child is just 3 months old. This is a month earlier than is allowed by the law. The advert could suggest that Cerelac should be used at the beginning of the 4th month, but the Act defines infant food "as any food 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 four months". The advert could be seen as an attempt by Nestlé to persuade

mothers to start cereal foods when their baby is 3 months old – a month earlier than is allowed by law – and to generate more revenue for the company, knowing fully well that it will reduce breastmilk intake.

It was also noticed that Lactogen, the infant milk substitute sold by Nestlé, did not fully comply with the labelling Rules, especially since the statement that "Mother's Milk is Best for Your Baby" was substituted by "Breast Milk is Best for Your Baby". This is a significant change because, in the Indian context, the word 'Breast' is understood by many to mean the udder of a cow.

I was authorised by Association for Consumers Action on Safety and Health (ACASH) Bombay, which is a notified NGO under the IMS Act, to file a complaint against Nestlé. A complaint was filed in the Court of the Metropolitan Magistrate, Delhi, and after preliminary hearing and scrutiny of the records, Nestlé was summoned to the Court through its Managing Director, under an order of January 1995.

Nestlé resorted to delaying tactics. The company said it did not receive the summons, even though this has been served twice. In July 1995 one of the company's legal representatives was discovered surreptitiously observing the court proceedings and, on being asked why he was there, he informed the Court that he had been sent by Nestlé. It was only then that the magistrate could serve the summons to him, directing Nestlé to appear. Even after appearing in the Court, Nestlé found excuses to delay the hearing. On procedural grounds, the company has managed to delay it up to the present time.

Nestlé claims to obey the Indian law and to follow the International Code in letter and spirit in India. But through a writ petition in the High Court of Delhi, Nestlé has sought to challenge the Constitutional validity of the IMS Act and Rules, and prayed for a stay of the operation of its important provisions. Nestlé complained that the IMS Act and Rules are

impossible to comply with. Its petition was filed in December 1995, and though it has not yet been admitted, Nestlé seeks to exploit the situation by delaying hearing of the criminal complaint on the ground that this petition is pending.

But the company has changed their labels, to conform with the IMS Act and Rules, thus showing that compliance is possible. In June 1997, Doordarshan, the official Indian television, banned the advertisements of infant foods that are not in conformity with the IMS Act. This happened after a series of deliberations and considerations by the various ministerial committees including the Law ministry about the advertisements of infant foods, which were being telecast by Doordarshan.

Nestlé has also adopted new ways of promoting their products. 'Nestlé Nutrition Services' invites doctors to meetings on subjects like "Dangers of unmodified bovine milk", but at the end of the meeting they offer a free lunch and conclude by promoting Lactogen.

Nestlé appears to be still violating the Indian law by advertising Cerelac in a similar fashion through private channels like Star and Zee TV which are relayed from Hongkong, the viewers are very much Indian and advertisements are made for them.

Apart from Nestlé, two other companies were also taken to Court for allegedly violating the IMS Act. Johnson and Johnson faced two cases for selling feeding bottles on discount, and for advertising of feeding bottles and promotion of a "colic-free nipple" (teat). The company apologised in the Court and voluntarily agreed to withdraw completely from the feeding bottle market in India; it stopped manufacturing the bottle in late 1996, finally withdrawing completely in March 1997.

An Indian manufacturer of pharmaceuticals and infant formula, Wockhardt, was taken to Court in Bombay due to alleged violations of the labelling

requirements similar to those committed by Nestlé. Wockhardt also apologised through an affidavit in the Magistrate's Court, undertook to follow the Act, and also volunteered to stop using the name of its formula for other paediatric products such as vitamin drops, which were being used for surrogate advertising of formula. In India, the net will now be spread wider to investigate more alleged violations.

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