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PUBLIC HEALTH

A Bill and its import

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A new piece of legislation the government plans is a threat to the existing law that guarantees all measures to encourage breast-feeding, which is important in checking infant mortality.



In Hyderabad, a woman with her baby and the pictures she sells. It is accepted the world over that breast-feeding is the best way to check malnourishment in children up to two years of age.

THE proposed integrated food law, the Food Safety and Standards Bill, 2005, a brainchild of the Ministry of Food Processing Industries (MoFPI), of which Subodh Kant Sahai holds independent charge as a Minister of State involves the repealing of the Infant Milk Food Substitutes, Feeding Bottles and Infant Feeds (Regulation of Production, Supply and Distribution) Amendment Act, 2003 (IMS Act, 2003). This has resulted in a lot of anxiety both within and outside the country as the decision will not only have a serious impact on the promotion of breastfeeding but will increase infant mortality drastically.

The Human Resource Development Ministry, under Arjun Singh, in particular, has raised objections to the Bill. In separate communications, Arjun Singh and Reva Nayyar, Secretary, Women and Child Department, have requested the MoFPI to keep the IMS Act out of the purview of the new Bill. One reason they have is that the IMS Act cannot be seen as just another Food Law. Arjun Singh, as Human Resource Development Minister, had taken a keen interest in the enactment of the Act in 1992. As Chairman of the Joint parliamentary Committee, he also saw to its successful amendment in 2003.

In her letter to her counterpart in the MoFPI, Nayyar said that the Women and Child Department,

being the nodal department for nutrition, had been striving hard to address the widespread problem of malnutrition afflicting children under three years of age. She referred to a previous letter dated September 1, 2004, wherein she had made a similar request to the Ministry to keep the IMS Act out of the integrated food law. On December 21 Nayyar wrote: "I wish to reiterate that the IMS Act is not a general food law but is basically a special legislation to address marketing issues concerning the production, supply and distribution of infant milk substitutes, feeding bottles and infant foods so that these do not harm the sound practice of breastfeeding, most essential for ensuring child survival, nutrition and health."

Nayyar also referred to the global public health recommendations given by the World Health Assembly (WHA) in 2001 and 2002. She wrote: "India has made history by enacting the IMS Act in 1992 and its Amendment incorporating the mandate of World Health Assembly resolutions, in June 2003."

In the same letter, Nayyar called upon her counterpart to "appreciate the fact that government efforts for promoting breastfeeding can never match the aggressive campaign of the multinationals... it is therefore extremely important that we keep this Act out of the purview of the integrated food law, basically because it is more of a marketing legislation than a general food law."

Arjun Singh, too, wrote to his counterpart in the MoFPI, referring to Nayyar's previous communications: "All the efforts of the Department at national and international levels for protecting the traditional and sound practice of breastfeeding will go waste if we fail at this stage to keep this Act out of the purview of the integrated food law. Incidentally, recent scientific studies also reveal that breastfeeding alone can reduce infant mortality by 13 per cent (*Lancet*, 2003.) I, therefore, request you to kindly look into the matter and keep the IMS Act out of the purview of the integrated food law." It is also quite intriguing that the Group of Ministers that deliberated over the integrated food law, did not include the HRD Ministry, especially when this Bill has a definite design to do away with the IMS Act. Though the Ministry of Health was represented, it did not take up with the MoFPI the issue of repealing.

It is well-documented that India had taken the leadership, with one of the strongest pieces of legislation in the world, to protect breastfeeding from commercial influences and bad marketing practices. Little wonder that international organisations too have expressed concern at the attempt to repeal the IMS Act. In a letter to Prime Minister Manmohan Singh, Anwar Fazal, Chairman Emeritus and Director of the World Alliance for Breastfeeding Action (WABA), wrote that he was shocked to learn that "such a wonderful and landmark legislation may be repealed...." The WABA director also stated that the breast-feeding community from all over the world often looked to India as an example, where the IMS Act, 2003, had managed to widen its scope to include any infant foods, commercial health drinks and food products promoted for the consumption of babies under the age of two years, and also to include sensitive areas such as the sponsorship of the medical profession.

The Malaysia-based International Code Documentation Centre (ICDC), which keeps track of global efforts to implement the International Code of Marketing of Breastmilk Substitutes, stated that it was jubilant when India became one of the few countries in Asia to implement fully the international code with the enactment of the IMS Act. In a letter to the MoFPI, the ICDC's legal adviser wrote: "When the Act was amended in 2003, it widened its scope to a full range of baby foods and delved into sensitive areas such as sponsorship of the medical profession; it was seen as an example of an innovative and progressive legislation and India was heralded as a leader in the area of legislation on infant and young child health."

IN January, the MoFPI put out a notice in some newspapers, titled "Draft Modern Integrated Food Law." Among other things, the notice explained that the Government of India had constituted a Group of Ministers to propose legislative and other changes considered necessary for finalising the integrated food law and related regulations. It said: "A draft 'integrated food law' has been

prepared, which is intended to be contemporary, comprehensive and ensure better consumer safety through food safety management systems and setting standards based on science and transparency as also meet the dynamic requirements of international trade and the Indian food trade and industry."

The Bill was put on the Web site of the Ministry and all stakeholders were informed to send their suggestions to the Joint Secretary in the Ministry by February 15. Among other features in the Bill, several existing Acts, including the IMS Act, were included in the list of Acts to be repealed under Section 108, Schedule I of the Bill. And despite the stated transparency in the government notice inviting suggestions, when a delegation of the Breastfeeding Promotion Network of India (BPNI) went and expressed its concerns to the Ministry over the proposed repeal of the IMS Act, it was first told that it had exactly five minutes to explain its objections and after that was informed bluntly by the Joint Secretary that everything had been decided.

Given the non-responsive stance of the Ministry, the BPNI has now roped in other concerned organisations to mobilise opinion on the issue. Under the aegis of the Jan Swasthya Abhiyan, the Voluntary Health Association of India, the India Alliance for Child Rights and the BPNI, a people's petition was drafted. At that meeting, Planning Commission member Syeda Hameed was also present. She expressed concern over the move to repeal the IMS Act. Other networks such as the Indian Medical Association, the Indian Academy of Paediatrics, the Federation of Obstetrics and Gynaecological Societies of India, the National Neonatology Forum and the Trained Nurses Association of India have also supported the petition, which has categorically stated that the IMS Act should not be repealed.

The detailed petition has been sent to the President, the Prime Minister, and all major political parties. The petition states that either there "has been a gross error in including the IMS Act in the list of repealed Acts or there is a deliberate effort by vested interests to repeal it."

The IMS Act is a unique piece of legislation. It has more to do with promoting and protecting the health of infants rather than regulating food products. Repealing it would also affect the Tenth Plan goals of increasing the current levels of breast-feeding. Moreover, India being a signatory to several international covenants on children, including the Convention on the Rights of the Child, any step taken that negates the interests of children would go against treaty obligations.

In 1981, the WHA adopted the International Code of Marketing of Breastmilk Substitutes with the aim of protecting, promoting and supporting breast-feeding, and prohibiting unethical and dangerous marketing practices. The Indian government voted in favour of the adoption of this Code. In fact, Prime Minister Indira Gandhi made a strong supporting statement for the adoption of this code at the WHA. India became the 10th country to enact the Code into a law in 1992.

India has endorsed the 2002 Global Strategy on Infant and Young Child Feeding, which calls on governments to take action to implement or strengthen the International Code and subsequent WHA resolutions, which the IMS Act encapsulates. The law was further strengthened in 2003 to plug the loopholes and also to harmonise with recent WHA resolutions.

According to the United Nations Children's Fund (UNICEF), more than 10 million children die yearly, mainly from preventable diseases such as diarrhoea, pneumonia, measles and malaria. It is estimated that if every baby is exclusively breast-fed from birth to six months, an estimated 3,500 children's lives can be saved each day. India has the highest number of under-5 child deaths in the world, and exclusive breast-feeding is considered the best intervention possible to reduce mortality rates.

Arun Gupta, national co-ordinator, BPNI, says that the Food Safety and Standards Bill is a general Act dealing with all sorts of foods, processed and unprocessed; it has nothing to do with breast-feeding or the health and the well-being of the woman and the child. "Only one of the nine

operative sections in the IMS Act deals with food standards, and this section makes it clear that these standards shall continue to be governed by the PFA [Prevention of Food Adulteration Act, 1954] Act. All that is required is an amendment to provide that this will now be governed by the Food Act without repealing the IMS Act," says Gupta. He adds that the proposed Food Bill does not cover feeding bottles, but the IMS Act had banned its promotion. Incidentally, the PFA Act also stands to be repealed under the new legislation.

This is a test for the United Progressive Alliance government. It is a choice between trade and the country's future, which will be secure if infant survival is ensured. The IMS Act is a comprehensive piece of legislation; it is marked by a deep sense of equity, and it is educative in its role. Its objectives have been to ensure proper information to families on optimal infant feeding and young child feeding and to control the marketing of baby foods with the aim to contribute to a reduction in child malnutrition and infant mortality. The protection to breast-feeding is vital for saving the lives of millions of children in India every year.