

## **"Commercialization of Breast Milk – It's Ethical Considerations and Implications"**

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## **ABSTRACT**

Breastfeeding was once thought of as a natural act of caring, but societal changes like the rise in female employment have made it a commercial practice. This research paper discusses, the commercialization of breast milk poses ethical, legal, and public health challenges. Concerns concerning access equity, the possible exploitation of low-income women, and the health effects on newborns are brought up by the sale or donation of breast milk. The advantages and disadvantages of commercial breast milk are discussed in this research paper, along with the commodification of a customarily altruistic act, increased accessibility for infants in need of medical attention, and regulatory obstacles to quality and safety. A careful regulatory framework is required to safeguard both donor moms and newborn infants, as evidenced by the moral dilemmas surrounding the commercialization of breast milk and the intricate workings of milk banks, internet sales, and commercial products.

**Keywords: Commercialization of breast milk, Commodification, Human milk oligosaccharides (HMOs), Infant formula, Peer-to-peer sales, Donor screening**

## **INTRODUCTION:**

Historically, breastfeeding has been associated with strong ties to family and culture and has been perceived as an innate, altruistic behavior. Mothers have breastfed their children for thousands of years, providing vital nutrition and forging a unique emotional bond in the process. But the environment surrounding baby feeding has drastically changed due to changing social dynamics, such as an increase in the percentage of women in the workforce and technological advancements.

The term "commercialization of breast milk" refers to the buying, selling, or donating of human milk for profit or other incentives. Peer-to-peer exchanges, the establishment of milk banks, and the production of infant formula containing components derived from human milk are just a few of the various ways in which this can occur. Breast milk commercialization has become a contentious and complicated topic that raises serious ethical, legal, and public health issues. New options for infant nutrition have arisen as a result of the sale, purchase, and donation of human milk, especially for premature and medically fragile babies. But these practices also bring with them issues like the commercialization of a biological resource, possible women's

exploitation, and unequal access to reasonably priced and safe breast milk.

One of the biggest problems with the commercialization of breast milk is the potential for mother exploitation, particularly in low-income areas where financial incentives may encourage the commodification of nursing. The effects on mother-infant attachment and breastfeeding rates are also a source of concern, as is the equitable distribution, safety, and quality of commercially available breast milk.

In March of this year, the government opened AMRITHADHAARE, a state-funded breast milk bank at VANI VILAS HOSPITAL after taking notice of the issue. Nonetheless, some in the medical field are drawing attention to the exorbitant costs associated with human breast milk, which is primarily obtained from women who volunteer to donate. Due to the bio-politics of breastfeeding and the advantages of human milk over artificial milk substitutes made mostly from cows, there is a demand for breast milk in high-income nations. Parents who choose not to breastfeed for a variety of reasons, such as physical challenges or pressure to return to work because paid maternity leave is nonexistent, are particularly in favor of this demand. Parents of children carried by surrogates and adoptive parents are also included. On a relatively small scale, commercial milk banks, unregulated peer-to-peer sales, and informal networks for milk sharing have mostly met this need.<sup>1</sup>

### **COMMERCIAL PRODUCTS:**

A growing portion of the market for newborn nutrition is made up of commercial products that contain components of breast milk. These goods include consumer goods such as baby formula enhanced with human milk oligosaccharides (HMOs), nutritional supplements, and cosmetics. These products, which offer advantages similar to those of breast milk, such as immune support and digestive health, are marketed to parents who are searching for breastfeeding substitutes. However, there is conflicting scientific evidence supporting the safety and efficacy of these products, and the commercialization of breast milk components raises ethical concerns. Consequently, careful consideration should be given to the development, promotion, and regulation of commercial breast milk products in order to safeguard the health and welfare of infants and promote informed consumer decision-making.

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<sup>1</sup> <https://www.tandfonline.com/doi/full/10.1080/09692290.2020.1864757>

**MILK BANKS AND ONLINE MARKET PRICES:**

Milk banks and online markets are important locations in the breast milk commercialization landscape. Milk banks act as middlemen, collecting, processing, and distributing donated breast milk to babies in need, particularly those who are sick or premature. These banks usually adhere to strict quality and safety guidelines, including donor screening and milk processing protocols, to ensure the efficacy and safety of the donated milk. Conversely, because online markets facilitate direct transactions between individuals wishing to buy, sell, or donate breast milk, they do away with the necessity for conventional milk banks and governmental regulation. Online platforms are practical and simple to use, but because they might not have robust quality control and screening procedures in place, there are concerns about the dependability and safety of the milk transferred. The coexistence of milk banks and online markets symbolizes the different approaches to breast milk commercialization, each with pros and cons of their own. Achieving a balance between safety and accessibility concerns is necessary to manage the complexities of breast milk commerce while advancing the health and welfare of infants.

**ETHICAL CONSIDERATIONS:**

Concerns regarding human welfare, mother autonomy, and society values are brought up by the commercialization of breast milk. Everyone involved in its donation, sale, or purchase must give their informed consent, guaranteeing that they are aware of the advantages and risks for expectant mothers and their babies. All women should have equal access to affordable, safe breast milk, regardless of their financial situation. To guarantee quality and safety, strict guidelines must be followed during the donor screening, processing, and storage phases. Exploitation is another issue, particularly in areas with low incomes. In addition to promoting breastfeeding and preserving donor rights, a socially conscious strategy must also guarantee accountability and transparency.

### Benefits of Commercializing Breast Milk:

1. Access: Premature babies and those with health concerns benefit from the increased availability for infants whose mothers are unable to produce enough milk or breastfeed for medical reasons.
2. Nutritional Benefits: Offers vital nutrients, bioactive ingredients, and antibodies that are important for a baby's growth and development.
3. Convenience: Provides a flexible substitute for nursing moms who are unable to do so, especially those who work or have health issues.
4. Assistance for Donors: Provides regulated platforms that enable moms with extra milk to sell or donate it, providing them with financial stability and assistance.

### **DISADVANTAGES OF COMMERCIALIZATION OF BREAST MILK**

1. Monetization and Exploitation: Brings up ethical concerns regarding the commercialization of breastfeeding and the possible exploitation of donor moms, especially in underprivileged areas.
2. Safety Risks: Inadequate testing or contamination can make commercial breast milk harmful to infants if it is not properly screened and handled.
3. Effect on Breastfeeding Rates: By making formula feeding more convenient or appealing, commercial alternatives may lower breastfeeding rates.
4. Regulatory Difficulties: Consumer protection may be impacted by inconsistent regulations that jeopardize transparency, safety, and quality.

## **INTERNATIONAL FRAMEWORK**

### **RIGHT TO HEALTH:**

The right to health is an essential human right that is safeguarded by several national and international legal frameworks. According to Article 12 of the International Covenant on Economic, Social, and Cultural Rights, everyone has the right to the highest standard of physical and mental health on a global scale. This includes not having to deal with any kind of discrimination in order to have equal access to healthcare facilities, goods, and services. Furthermore, the World Health Organization's Constitution declares that having the highest possible standard of health is one of every person's fundamental rights. A number of national constitutions contain provisions addressing the right to health. For example, the right to health is incorporated into the broader framework of the right to life and personal liberty under Article 21 of the Indian Constitution. In a similar spirit, the right to receive medical care is guaranteed by Section 27 of the South African Constitution. These constitutional requirements generally oblige governments to take action to ensure that healthcare services, especially maternity and child health services, are available, affordable, and accessible. The right to health emphasizes how crucial it is to provide babies with access to safe and nourishing breast milk in the context of breastfeeding and the commercialization of breast milk. Antibodies and vital nutrients are provided by breast milk for a baby's healthy development and growth. The commercialization of breast milk should be governed by laws and policies that uphold and advance the right to health ensuring that breastfeeding is encouraged and supported as a crucial element of mother and child health programs for both women and children. This covers steps to guarantee the security, caliber, and moral treatment of breast milk that is donated or sold, in addition to assisting nursing moms in making decisions about how to breastfeed their children.

### **ART 21 –RIGHT TO LIFE**

Article 21 of the Indian Constitution, which protects the right to life and personal liberty, recognizes privacy and dignity as essential rights. These are important rights to take into account while commercializing breast milk. The right to privacy includes the freedom to make decisions about one's body and personal matters without unwarranted interference or intrusion. When it comes to their choice to express, donate, or sell their breast milk, women have the

right to privacy. This includes the expectation that any transactions involving their breast milk will respect their right to privacy and the right to choose how information about their breastfeeding practices is shared.

Every human being has inherent value and worth, which is known as dignity. Maintaining dignity in the context of nursing and the commercialization of breast milk requires respecting women's autonomy, agency, and physical integrity. Under no circumstances should women sell or donate their breast milk, and any interactions involving breast milk should be considerate of the needs of the individual women involved.

### **Regulating Breast Milk Commerce: Balancing Safety, Ethics, and Access**

In India, the commercialization of breast milk has sparked debate for a variety of reasons, including moral, legal, and medical. There are several more general guidelines and recommendations that address subjects like donor milk programs and human milk banking, even though there aren't any official national guidelines that specifically address the commercialization of breast milk.

The Food Safety and Standards Authority of India (FSSAI), established in compliance with the Food Safety and Standards Act, 2006, is the primary regulatory body responsible for overseeing food safety and standards in India. The FSSAI's primary concern is food safety, but its laws also have an indirect impact on the handling and processing of human milk for commercial purposes. The 2011 Food Safety and Standards (Food Products Standards and Food Additives) Regulations impose stringent rules on milk and milk products.<sup>2</sup>

Criteria to guarantee their quality and safety. These rules include a number of topics, such as acceptable additives, labelling specifications, processing techniques, and hygienic measures.

Furthermore, one of the leading organizations in the nation for biomedical research, the Indian Council of Medical Research (ICMR), is actively involved in formulating guidelines and recommendations for medical practices such as lactation control and human milk banking.

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<sup>2</sup> [https://wcd.nic.in/sites/default/files/nationalguidelines\\_0.pdf](https://wcd.nic.in/sites/default/files/nationalguidelines_0.pdf)

One of the most significant sets of guidelines for the handling and preservation of breast milk is found in the "National Guidelines on Lactation Management Centers in Public Health Facilities" published by the ICMR. These recommendations, which were released in 2017, seek to encourage and support nursing practices in Indian healthcare facilities.

The guidelines strongly emphasize the establishment of Lactation Management Centers (LMCs) within public health facilities as a means of providing mothers with comprehensive breastfeeding support services. Although the primary objectives of these guidelines are to support breastfeeding and address lactation-related issues, they also unintentionally address human milk donation, collection, processing, and distribution in healthcare settings. In addition, guidelines for the establishment and administration of human milk banks in India have been released by the Indian Academy of Pediatrics (IAP). These recommendations cover a wide range of subjects, including donor screening, pasteurization methods, quality control protocols, and methods for gathering and storing milk.

In addition, a number of professional associations and non-governmental organizations (NGOs) in India actively support initiatives related to breastfeeding promotion, donor and human milk banks, and donor programs. These organizations usually collaborate with government agencies and healthcare facilities to develop and implement regionally-specific policies and procedures.

The current regulatory framework, guidelines, and recommendations, in conjunction with the commercialization of breast milk for non-medical uses, serve as a basis for ensuring the safety, quality, and ethical aspects related to the handling and application of human milk in various contexts, even though India does not currently have legislation that is exclusively focused on this area.<sup>3</sup> It is important to keep in mind that regulations and laws pertaining to lactation control and the banking of human milk may alter over time in response to new issues and advancements in medical treatments.

Therefore, everyone involved in the breast milk industry in India needs to be informed about relevant developments and adhere to the highest standards of safety, ethics, and

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<sup>3</sup> [https://nhm.gov.in/images/pdf/programmes/IYCF/National\\_Guidelines\\_Lactation\\_Management\\_Centres.pdf](https://nhm.gov.in/images/pdf/programmes/IYCF/National_Guidelines_Lactation_Management_Centres.pdf)



professionalism.<sup>4</sup>

### **COMPARATIVE ANALYSIS OF GUIDELINES IN USA, UK & INDIA**

The US is subject to several laws, regulations, and ethical concerns regarding the commercialization of breast milk, all aimed at safeguarding the safety and well-being of infants. In the context of public health and newborn feeding, several organizations and regulatory agencies offer recommendations on the subject, even though there may not be any national standards that are specifically focused on this matter.

**THE AMERICA ACADEMY OF PEDIATRICS (AAP)** lists several health advantages for moms and babies while recommending nursing as the best nutritional option for new borns. The American Academy of Pediatrics (AAP) advocates for the safe and nourishing use of baby formula in cases where breastfeeding is not feasible. The Food and Drug Administration regulates the production and sale of infant formula in the United States to ensure its nutritional value and safety. Unlike baby formula, breast milk is not considered a produced good and is not governed by FDA regulations either in the manufacturing or distribution process.

The FDA does provide guidelines for handling and storing breast milk safely in order to reduce the risk of contamination and ensure the quality of breast milk when used as a feeding option for infants. This includes guidelines for correctly expressing, defrosting, and storing milk. It also offers guidance on how to give infants expressed breast milk. One of the main concerns with the commercialization of breast milk is the possibility of infectious disease transmission. The FDA advises against purchasing breast milk from unscreened or unlicensed suppliers due to the potential for infection with dangerous bacteria or viruses. The organization suggests using human milk banks that follow strict screening, testing, and pasteurization protocols in order to ensure the safety of donated breast milk.

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<sup>4</sup> <https://www.bpni.org/national-policy-programme-4/>

**The Human Milk Banking Association of North America (HMBANA) -**

It is a non - profit organization that sets guidelines for human milk banking and operates a network of accredited milk banks in the US and Canada. These milk banks collect donated breast milk, process it, and distribute it to underprivileged newborns—particularly those who are premature or have medical conditions that require human milk.

Legal requirements and ethical considerations play a major role in the concerns surrounding the commercialization of breast milk in the United States. Due to the commercialization of a typical biological process as well as financial necessity, concerns have been expressed about the potential exploitation of women who may be engaged in breast-selling.

Healthcare providers such as pediatricians, lactation consultants, and public health officials— are essential in teaching new mothers about the advantages of nursing as well as the possible drawbacks of utilizing or acquiring commercially produced breast milk. They can offer women who are having trouble nursing or are looking for different feeding options for their babies help and direction.<sup>5</sup>

**UNITED KINGDOM (U.K).**

In the UK, a variety of laws and regulations govern the commercialization of breast milk in order to safeguard the health and safety of newborns. While there are many laws and regulations pertaining to infant feeding and food safety in general, there aren't any official national standards for the commercialization of breast milk.

The primary organization in charge of enforcing food safety laws and standards in the UK is the Food Standards Agency (FSA). The FSA publishes guidelines and provides advice on a wide range of food-related topics, including formula and baby meals. Even though breast milk is not a manufactured good like formula, the FSA is in charge of ensuring its safety if it is sold or distributed. A major contributing factor to the commercialization of breast milk is the potential for contamination or the spread of infectious diseases. When considering selling or

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<sup>5</sup> <https://www.aljazeera.com/news/2018/7/17/us-has-long-protected-commercial-interests-overbreastfeeding>

donating their breast milk, the FSA advises people to get checked out to make sure they don't have any infectious diseases that could transfer to a baby through breast milk.

The FSA discourages the direct sale of breast milk over the internet or through other commercial channels. This is because concerns about the safety and quality of breast milk from unknown sources have arisen. Mothers who would like to donate their breast milk are advised by the FSA to use authorized milk banks instead. These breast milk banks collect donated milk, pasteurize it, and distribute it to babies in need—typically those in hospitals.

In addition to the FSA's recommendations, healthcare professionals like midwives, health visitors, and lactation consultants are crucial in educating mothers about the advantages of breastfeeding and the potential risks associated with consuming or purchasing commercially produced breast milk. They can provide guidance and assistance to women who are struggling to nurse or considering options other than nursing.

Concerning the commercialization of breast milk and the possible exploitation of women who sell their milk for financial gain are also ethical issues. Making certain that all business dealings involving breast milk are carried out in an ethical manner and with complete knowledge Consent is necessary.<sup>6</sup>

### **CONVENTION ON THE RIGHTS OF CHILD (CRC):**

#### **Adopted by the United Nations General Assembly in 1989**

The right to the best possible level of health and the right to sufficient nutrition are among the rights of children that are outlined in the CRC. It highlights the value of breastfeeding and shielding kids from risky behaviors. The CRC highlights, among other things, every child's right to life, survival, and development (Article 6), as well as their right to the best possible quality of health (Article 24). Furthermore, Article 27 emphasizes the significance of having access to food, healthcare, and other necessary resources while recognizing that every child has the right to a quality of living that is appropriate for their physical, mental, spiritual, moral, and social development. Article 24(2)(e) particularly emphasizes the value of breastfeeding in

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<sup>6</sup> <https://www.gov.uk/government/publications/breastfeeding-and-dental-health/breastfeeding-and-dentalhealth#:~:text=%E2%80%9CThe%20UK%20government%20recommends%20exclusive,fo>

the context of infant and child nutrition, recognizing it as the optimal way to feed infants and supporting adequate societal and governmental support for nursing mothers. Furthermore, States Parties are required by Article 24(2)(c) to guarantee the provision of essential healthcare services, such as assistance with breastfeeding, prenatal and postnatal care as well as advice on feeding techniques for infants and young children. International efforts to preserve children's well-being, encourage breastfeeding, and advance global public health agendas are bolstered by the CRC, which recognizes and protects children's rights to optimal health, nutrition, and development.

### **UNICEF & WHO:**

In order to protect children's rights and welfare globally, the United Nations Children's Fund, also known as UNICEF, is crucial. Promoting the finest feeding methods for newborns and young children is one of its primary goals. In the context of infant nutrition, UNICEF has been a steadfast supporter of nursing as an essential element of child health and development. UNICEF has partnered with the World Health Organization (WHO) and other partners to support international campaigns that preserve, promote, and support breastfeeding while adhering to the principles of the International Code of Marketing of Breast-milk Substitutes.

A shared commitment to promoting the health and well-being of mothers and children worldwide serves as the foundation for the collaboration between the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO). Their mutual commitment to upholding and promoting the principles set forth in numerous international frameworks and agreements, such as the Convention on the Rights of the Child (CRC), strengthens their partnership.

WHO and UNICEF promote breastfeeding-friendly healthcare environments globally through joint initiatives like the Baby-Friendly Hospital Initiative (BFHI), guaranteeing that women get the assistance and direction they need to start and continue nursing. Additionally, they recognize breastfeeding as a life-saving measure in emergency situations and mobilize resources to protect and support nursing women and infants during humanitarian crises and emergencies. In order to promote a healthier and more just world for coming generations, WHO and UNICEF continue to improve the rights and welfare of women and children by coordinating their efforts in accordance with these principles and utilizing their combined experience.

## **CONCLUSION**

It is well accepted from a public health perspective that breastfeeding promotion is critical to infants' development and well-being. Breast milk contains essential minerals and antibodies that provide protection against chronic diseases and infections. However, by promoting potentially less helpful products, the commercialization of breast milk, particularly when it comes to marketing alternatives, can reduce nursing rates. This makes achieving global health goals for nutrition and child survival more challenging. Economically speaking, the manufacture and distribution of breast milk have produced a niche market that serves a range of consumers, including parents who want to give their babies donor milk for personal or medical reasons. Since not all families may be able to buy or obtain safe donor milk, the commodification of breast milk raises questions around equality and access. Concerns of informed consent, fair distribution, and the exploitation of women's bodies are ethically brought up by the commercialization of breast milk. Concerns around justice and coercion arise because donor milk may come from nursing mothers who are vulnerable or economically disadvantaged. Furthermore, the marketing of breast milk substitutes may use strategies that take advantage of parents' fears or ignorance, which could compromise their ability to make educated decisions.

The commercialization of breast milk in India involves serious ethical, social, and health concerns that must be carefully addressed. Although it is widely acknowledged that breast milk is the best nutrition for babies, its commercialization runs the risk of escalating inequality, threatening breastfeeding customs, and maybe taking advantage of weaker groups. It must continue to be a top priority to guarantee fair access to breast milk for newborns who require it, such as premature or sick babies. Strong laws, moral standards, and public awareness initiatives are necessary to address these issues and safeguard the welfare and rights of expectant mothers and their babies. Finding a balance between meeting demand and preserving public health in India requires promoting breastfeeding as a natural and priceless activity while making sure that commercialization is handled sensitively and fairly.

## **References**

1. <https://www.tandfonline.com/doi/full/10.1080/09692290.2020.1864757>
2. [https://nhm.gov.in/images/pdf/programmes/IYCF/National\\_Guidelines\\_Lactation\\_Management\\_Centres.pdf](https://nhm.gov.in/images/pdf/programmes/IYCF/National_Guidelines_Lactation_Management_Centres.pdf)
3. <https://www.bpni.org/national-policy-programme-4/>
4. World Health Organization and UNICEF. 'Global strategy for infant and young child feeding' World Health Organization, Geneva 2003 (viewed on 31 October 2018)
5. <https://www.unicef.org.uk/babyfriendly/baby-friendly-resources/international-code-marketing-breastmilk-substitutes-resources/the-code/>
6. [https://www.usbreastfeeding.org/uploads/1/3/9/7/139788899/code\\_overview\\_-\\_usbc\\_-\\_3\\_may\\_2021.pdf](https://www.usbreastfeeding.org/uploads/1/3/9/7/139788899/code_overview_-_usbc_-_3_may_2021.pdf)