

Prefixing 'Desi' Before Food Product Ghee- A Legal PerspectiveSwetanka^{*}Jyotsna Nisha^{**}**Abstract**

The market is flooded with food products describing them as 'desi', most of these products are ghee. The use of expression desi may not be justified in light of existing legal provisions under the Food Safety and Standards Act and Rules & Regulations made therein. The existing provision under these regulations requires that the labelling of the product should describe the true nature of the product contained in the package. It is possible that the ghee described as 'desi' may not be describing the true nature of the product and therefore, is misleading under the present food safety laws. The expression 'desi' may be used to refer to indigenous cows – Indian-origin cows. The indigenous breed is generally known by the names - Gir (Surati/ Kathiwar etc), Red Sindhi, Sahiwal, etc. The product obtained from these species may be referred to as 'desi'. Ghee is a standardized product under the Food Safety and Standards Act, 2006 (referred to as the Act). The standardised product is those which have been described in the FSS (Food Product Standards and Food Additives) Regulations, 2011 (referred to as the Regulations). These regulations describe the various parameters which need to be adhered to. Similarly, there are labelling regulations that prescribe the nature of information required w.r.t product mandatorily on the label of it. The use of expression desi or any such adjectives, if mentioned, should justify its usage on the label of the food product. The use of such adjectives is also regulated under the FSS Advertisements and Claims Regulations. These specifically prohibit usage of adjectives like real, traditional, natural etc in the name of the product if it misleads the consumer and allows such usage only if a disclaimer that the use of such expression is not related to nature, origin etc of the product is given on the label. If this disclaimer is not given then it means the expression describes the nature of the product and if something contrary is found then the product will be declared to be misbranded and the expression to be misleading. In this paper, I have analysed the legal provisions w.r.t use of expression 'desi' for ghee and tried to explain as to when the use of expression desi would be justified.

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1. INTRODUCTION

The food business is one of the most promising, income-generating businesses which is worth billions of rupees. In the last few decades, the food market has grown steadily. With the expansion of the food market, the desire of providing better products at a competitive price has also increased among the food companies. Everyone wants to sell their product in the market and try every means to make their product stand out from others. For this, various means of representation, advertisement, marketing etc are used. One of the most common methods adopted by them is the “nomenclature of the food product”. The companies try to name their product in a very attractive way to gain the trust and confidence of the consumers. This has led to the rampant use of adjectives like real, desi, pure, and many other prefixes in food products. If one visits any of the food stores, they would surely notice these fancy names written on the food products. Such usage definitely attracts one’s attention. Here, I will be talking about one of such products which have the suggestive adjective “desi”, attached to it by almost every manufacturer. The product in mention can be easily found in almost all Indian households. It is clarified butter or ‘Ghee’, as we commonly call it in India. The market is flooded with “Ghee” products at very competitive prices. The starting price of one litre of ghee is 378 rupees¹ and it goes up to 3000 to 4000 a litre.² Some of these products are labelled as “desi”. The question here is why ghee is referred to as “desi”. What is the meaning of the expression “desi” prefixed before ghee? We need to understand the meaning of the expression “desi” and provisions under the Food Safety and Standards Act, Rules & Regulations governing the labelling, standardisation, claims etc w.r.t the food product. In this article, I have analysed the legal provision under the Food Safety and Standards Act w.r.t the food product ghee and use of the expression desi.

2. MEANING OF THE EXPRESSION “DESI”

¹ <https://grofers.com/prn/grocery-desi-ghee/prid/439969> last assessed on 4th July 2021.

² https://bodhishop.in/products/govedic-gir-cow-bilona-ghee?variant=32305255383087¤cy=INR&utm_medium=product_sync&utm_source=google&utm_content=sag_organic&utm_campaign=sag_organic&gclid=CjwKCAjwuIWHBhBDEiwACXQYsZdbLyxanbovLNkHmvqUOjlkTDMNgQ6945igz03n59tliM1JhNxoC9wkQAvD_BwE last assessed on 4th July 2021.

The interpretation of statutes requires one to first look for the general/literal meaning of the expression or word before going to its scientific meaning. Therefore, I looked for the dictionary meaning of the term “desi” (as an adjective). The dictionary meaning of the word desi is “indigenous, authentic”³; “unadulterated or pure”.⁴ The literal meaning of the term “desi” gives a clear understanding that the expression “desi” is used to describe a product that is of local origin and is pure. The product of local origin means those products which are either grown locally or obtained from indigenous breeds of animal. In the present case, we are considering the product “ghee”, thus here indigenous refers to ghee obtained from the desi breed of cow or buffalo or goat or camel or any other milking animal whose milk is consumable. However, in India we generally consume milk or milk products obtained from cow and buffalo; thus, we would restrict to ghee obtained from milk products of two animals cow and buffalo. Considering the above, the ghee can be described as “desi” if obtained from indigenous & pure breeds of milking animals cow and buffalo. The above-deduced meaning of the term “desi” is one of the ways of describing the expression w.r.t food product ghee.

However, for a better understanding of the expression “desi”, we need to look at the legal provisions under the FSS regulations on food product standards (Food Safety and Standards Regulations).

3. THE CONTEXTUAL MEANING OF THE EXPRESSION “DESI” AS USED IN THE UNAMENDED REGULATION

The expression “desi” also found mention in the original regulation on food product standards under the FSS Act.⁵ The expression has been used in the definition of ghee wherein it is stated that ghee is derived solely from milk or curd or “desi” cooking butter. The food product “desi cooking butter” is a standardised food product under the original FSS Regulations.⁶ The use of expression “desi” is w.r.t the cooking butter, the cooking butter is different from table butter as the latter contains salt in it as an ingredient. Here the word “desi” is used in a different context, the meaning of it has to be deduced from

³ <https://www.collinsdictionary.com/dictionary/english/desi> last assessed on 4th July 2021.

⁴ <https://in.search.yahoo.com/search?fr=mcafee&type=E211IN1289G0&p=desi+meaning> powered by Oxford Dictionaries, last assessed on 4th July 2021.

⁵ https://www.fssai.gov.in/upload/uploadfiles/files/Food_Additives_Regulations.pdf last assessed on 4th July 2021.

⁶ Regulation 2.1.10 of the original version of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

the various contextual use of it in the regulations. The other place where the expression desi has been used is with “khadsari sugar”⁷. This type of sugar is different from white or refined sugar, the difference lies in the process of manufacturing. Khadsari is prepared using the traditional method wherein it is minimally processed and tried to retain the natural form. Thus, from the above, it can be said that the expression “desi” refers to the traditional process of manufacturing and therefore, the expression “desi” w.r.t cooking butter would mean the butter prepared using the traditional way. In simple terms, it can be said that the “desi” refers to the traditional methods used in India for manufacturing products. In the case of butter, the traditional method used is continuous churning of malai. Thus, from the above, it can be deduced that “desi” used before the food product “ghee” may refer to the traditional Indian method of ghee production. In India, the most common ancient method of ghee production is the “bilona” method. In this method, the milk is heated at around 80 degrees Celsius and malai is collected. This malai is then fermented and thereafter continuously churned to obtain butter. The butter obtained is called desi cooking butter and is used for preparing ghee. This ancient way of preparing ghee gives it a special flavour and texture.⁸ So, from the above, it can be said that “desi”, if mentioned on the label of food product ghee may refer to the traditional method of manufacturing ghee as followed in ancient India. The importance of this lies in the special developed flavour and texture of the obtained ghee which differentiates it from others. However, the present regulation on food product standards and food additives does not use the expression “desi” and the food product “desi cooking butter” no longer finds mention in the regulations.

4. DEFINITION OF “GHEE” UNDER THE PRESENT REGULATIONS ON FOOD PRODUCT STANDARDS AND FOOD ADDITIVES

The present FSS (Food Products Standards and Food Additives) Regulations, under the definition of ghee, mentions that ghee is a product obtained “exclusively from milk or milk products by the process which completely removes water and milk solid non-fat”. Also, ghee develops a special natural flavour and physical structure because of the

⁷ Regulation 2.8.1:3 of the original version of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

⁸<http://ecoursesonline.iasri.res.in/mod/page/view.php?id=5795#:~:text=Some%20follow%20slightly%20different%20method,to%20get%20the%20desi%20butter> last assessed on 4th July 2021.

process of manufacturing.⁹ Thus, the definition of ghee under the present regulation states that ghee is produced from milk or from milk products which will include “desi cooking butter” or any other form of butter and it does not make any differentiation among the ghee obtained from any of them. Further, it also clarifies that the special flavour & physical structure of ghee is because of the manufacturing process; thus, the justification that ancient traditional method issued will no more be relevant for mentioning “desi”.

From the above-referred meaning of the expression “desi” and the current definition of ghee under the existing regulation, it can be said that the expression “desi” is not relevant for describing ghee products manufactured using the traditional Indian method i.e., bilona or any other. The existing regulation has removed the expression “desi” and thus, differentiation made using the contextual meaning of it may no longer seem to be justified. Nevertheless, the literal or dictionary meaning of “desi” may still be relevant and can be used to differentiate one’s product from the other. However, the question is when it can be used before the food product ghee? For this, we need to analyse the relevant provisions under the FSS labelling and

5. PROVISIONS UNDER FSS ADVERTISING & CLAIMS AND LABELLING REGULATIONS

A claim is defined under the advertising regulations; claim means any representation made on the food product which gives an impression that the quality of food is related to its origin, nature etc.¹⁰ The regulations further restrict the use of adjectives like real, natural, etc. Such expression, if used on the food product, should not mislead the consumer as to the nature of the product. However, if it is likely to mislead the consumer as to the nature of the food in that case a disclaimer that the use of such adjective only represents the brand or trade name and has no relation to the nature of the product has to be given explicitly on the label of the product. In this context, it can be said that if the food product ghee is derived from milk or milk product obtained from indigenous breed of cow or buffalo then the use of expression “desi” seems to be justified. The use of it will refer to the qualities which are related to the origin of an animal breed which is an Indian breed in the present case.¹¹

⁹Regulation 2.1.8:1 of the present Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

¹⁰ Regulation 2(d) of the Food Safety and Standards (Advertising and Claims) Regulations, 2018.

¹¹ Regulation 4(7) of the Food Safety and Standards (Advertising and Claims) Regulations, 2018.

Furthermore, the labelling regulation states that the name of the product should contain either the trade name or the description of the product contained in the package. This means that an exact description of the product contained in the package has to be given. In the present case, the use of expression “desi” w.r.t ghee will be justified and will give the true description of it only if it has been derived from the milk or milk product of indigenous breed of cow and buffalo.¹² Thus, the regulations are very much clear on the use of adjectives like real, natural, desi etc to describe a food product. The individual company or any manufacturer of ghee should accordingly use the expression in light of these provisions. Here it is also important to highlight the differentiation made with respect to the types of milk referred to as A1 and A2.

6. A1 AND A2 MILK-DIFFERENCE?

The internet is flooded with an ample number of texts/documents differentiating A1 and A2 milk. The basic difference is in the chain length of protein beta-casein. Based on this difference, they are categorised as A1 and A2 milk. The study has found that originally all the indigenous breeds of cow contained A2 milk but the cross-breeding of an indigenous breed with Jersey/Holstein breed is responsible for the production of A1 milk.¹³ However, in this regard, the FSSAI came up with a clarification that the “Scientific Panel on Milk and Milk Products did not come to any conclusion on this issue due to lack of clinical data/risk assessment done at scale so far.” Therefore, such differentiation is not accepted and is of no significance in differentiating milk and product obtained from it like ghee in the present legal system.

7. CONCLUSION

In light of the above discussion on the use of the expression “desi” w.r.t ghee, it can be concluded that the literal meaning of the expression “desi” is found most suitable. The use of the expression “desi” before ghee seems justified only if it is derived from milk or milk product which has been obtained from indigenous breed of animal i.e., cow or buffalo. Ghee, even if it obtained from milk or milk product which is an admixture of both cow and buffalo, still the expression desi can be used, the only condition is that both

¹² Regulation 2.2.2:1 the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

¹³ <https://www.thehindu.com/sci-tech/health/milk-a1-a2-or-entirely-avoidable/article29876733.ece> last assessed on 4th July 2021.

the breeds of animals (cow and buffalo) should be indigenous and pure. The word pure refers to the originality of breed meaning thereby that no cross-breeding of the indigenous animals has been done with the foreign breed i.e., purity of the Indian breed has been maintained. Therefore, the food companies or any individual manufacturer of food product “ghee” if using the expression “desi” before it should do it in light of the existing legal provisions under the Food Safety and Standards Act & Rules and Regulations made thereunder. If these provisions are not followed in naming the food product “Ghee” then there are chances that the FSSAI may declare the use of expression “desi” as misleading and the food product “Ghee” is misbranded. Also, this may lead to the initiation of legal proceedings and if allegations are proved it will culminate into the imposition of penalty or any other legal consequences.

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