
INDIA'S ANSWER TO SLACK FILL

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ABSTRACT

The article analyses slack fill—the insidious empty space in packaged products—as a widespread problem undermining consumer trust in India, where there are no clear laws to tackle it, as opposed to unclear U.S. and California laws that inadvertently benefit businesses. Based on an empirical survey of more than 160 varied respondents, portraying widespread discontent and preference for openness, coupled with legal analyses and foreign examples, it documents how deceptive packaging subverts expectations in spite of required quantity disclosures. Suggesting amendments to the Consumer Protection Act, 2019, to re-define "quantity" requiring visual inspection through transparent strips or complete visibility, the solution enables consumers to make a choice, transferring responsibility from government regulation to market forces. Addressing issues such as intellectual property expense and market transitions with subsidies, phase-ins, and efficient processes, it draws on India's history of reforms (e.g., GST, UPI) to promote transparency, building authentic trust and restraining fraud through consumer-led accountability.

Introduction:

“The consumer, so it is said, is the king each is a voter who uses his money as votes to get the things done that he wants done.” – Paul Anthony Samuelson¹

The Consumer Protection Act is the cornerstone of consumer rights in the country; it protects individuals from unfair trade practices, ensures product safety, and encourages transparency. Trust between consumers and companies has always been crucial and is present because capitalism thrives on this relationship. But currently, deception packaging like slack filling and shrinkflation has eroded this dynamic.

This article highlights the problem of slack fill; it is the difference between the actual capacity of a container and the volume of product contained therein. It means extra empty space in a package that leads buyers into thinking that there's more in the packet than the real quantity; this leaves consumer feeling cheated. In the USA, the Food and Drug Administration has guidelines that limit slack fill² and California goes beyond by banning misleading extra empty space, unless it's clearly justified.³

In India, currently, there is no specific law dealing with slack fill; this has created a unique loophole that companies are using to deceive their consumers. More specifically, and most popularly, this tactic has been used by packaged food companies in the country. The objective of this article is to highlight the problem of slack fill and suggest necessary changes in the Consumer Protection Act, that can resolve this problem, give consumers the protection and the right to choose that they deserve.

The primary data for the article have been collected through an empirical survey, articles and papers published in legal journals; and foreign laws were used as primary sources. Secondary sources for this article are news and data resource centres' reports. An empirical survey of more than 160 people was conducted among individuals from diverse backgrounds to understand the frequency of buying packaged goods, their satisfaction with the quantity, awareness among people about their consumer rights, and to get their inputs on suggested solutions to these issues. Around 64% of the surveyed reside in urban areas, 77% are from the age group of 10

¹ PAUL A. SAMUELSON, *ECONOMICS: AN INTRODUCTORY ANALYSIS* (McGraw-Hill 1967).

² 21 C.F.R. § 100.100 (1994) (U.S.).

³ *Business and Professions Code*, § 12606.2 (1969) (California, U.S.).

to 30, 72% have at least bachelor's degree and 73% of them, at a minimum, purchase packaged products 3 to 4 times in per week.

The Hidden Void: Unpacking the Prevalence and Impact of Slack Fill in India

Consumer Deception in Plain Sight: How Slack Fill Erodes Trust and Expectations

Deceptive packaging practices like slack fill are creating significant challenges for Indian consumers. Though this problem is not new or unique to our country, people have faced this issue for years, and its rampant persistence in India and worldwide is blatantly evident. It is particularly problematic because of its deceptive nature and has significantly contributed to eroding consumer trust in companies throughout the world.⁴

A substantial portion of the responses in the survey indicated that respondents were not satisfied with the quantity of the product; they receive less in packaged goods compared to what they expect. Under the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, and the Legal Metrology (Packaged Commodities) Rules, 2011, it is mandatory for every food product to have quantity written on the package.⁵ Even though there are statutory mandates to disclose the quantity on packages, the question is how many consumers are really checking it.

In 2013, a study was published in Public Health Nutrition that indicated that the majority of consumers buying food products primarily check packages for manufacturing and expiry dates⁶, which was then confirmed in a survey from 2014 by Vijayeta Priyadarshini⁷. These numbers show a great decline when it comes to technical information like nutrition and ingredients, as evident in a 2018 study where 57.7% of consumers don't understand food labels⁸, but there is no credible survey that specifically deals with the quantity written on the package. In this context, the empirical survey clearly indicated that nearly half of the

⁴ U.S. Food & Drug Admin., *Slack-Fill*, <https://www.fda.gov/food/food-labeling-nutrition/slack-fill> (last visited Aug. 8, 2025).

⁵ Food Safety and Standards (Packaging and Labelling) Regulations, 2011; Legal Metrology (Packaged Commodities) Rules, 2011.

⁶ Katie Wilson et al., *Food and drink reformulation for healthier diets: a review of evidence on reformulation strategies*, Public Health Nutrition (2013).

⁷ Vijayeta Priyadarshini, *Awareness and use of food labelling informations among consumers in Bhubaneswar city*, 9 Asian J. Home Sci. 114 (2014).

⁸ Sudershan Rao Vemula et al., *Food label reading: Read before you eat*, 7 J. Family Med. Prim. Care 324, 327 (2018).

respondents don't check the quantity written on the package, which defeats its whole purpose. A survey of 14 states in 2022 suggested that interpretive labels like the traffic light system would be better understood by consumers.⁹

Lessons from Abroad: The Pitfalls of Regulating Slack Fill in the U.S. and California

California mandated its regulations on slack-fill in 1969, and the federal level in the United States of America did so in 1994¹⁰. These provisions allowed necessary slack fill to protect products while in transport, to leave leaving space for machine functionality in packaging, for reusable, decorative product containers (like a biscuit box, which is recyclable), and for specific functioning of products (like drinks that state 'shake before use'). Apart from these guidelines, every empty space was categorised as unnecessary slack fill.¹¹

These provisions were vague in nature, which invited different interpretations. That led to a rise in the number of lawsuits, which majorly sided with companies because of the loopholes in the statutes. Unnecessary slack fill remained stagnant, as the provisions promised reforms but in practice supported the status quo. In 2018, state of California went further in this onslaught on consumer rights and made amendments to these rules by introducing the safe harbor doctrine, which even gave more exemptions to companies, including those in online commerce. Though a silver lining in this amendment was the fill line exemption, which mandates some companies to indicate the real quantity inside a package through a line.¹²

In *Ebner v. Fresh, Inc.* (2016), Angela Ebner alleged deceptive labelling, design, and packaging with oversized tube and box for on sugar lip balm sold by Fresh, Inc. She even alleged that 25% of the lip balm was inaccessible due to the tube design. The company, in response, cited statutory language that requires mentioning the 'net weight' of a product, which was accurately disclosed in this case. They also argued that any prudent consumer would understand that the mechanical design of a lip balm may leave some product in the tube inaccessible, and that visual inspection makes this clear. The court, in its judgment, accepted the company's

⁹ Sapna Negi et al., *Consumers' Perception About Front of Package Food Labels (FOPL) in India: A Survey of 14 States*, 10 *Frontiers in Pub. Health* 936802 (2022).

¹⁰ *Business and Professions Code*, § 12606.2 (1969) (California, U.S.); 21 C.F.R. § 100.100 (1994) (U.S.)

¹¹ 21 C.F.R. § 100.100 (1994) (U.S.); *Business and Professions Code*, § 12606.2 (1969) (California, U.S.)

¹² *Business and Professions Code*, § 12606.2, amended by Assembly Bill No. 2632, Chapter 544, *Statutes of 2018* (California, U.S.)

arguments, which were aligned with the safe harbor doctrine.¹³

Framing statutory provisions for unnecessary slack fill is not practical, as is clearly evident from the examples of the USA and California, which have been trying to curb it since 1969. Similar laws are applicable in Canada, the European Union, and the United Kingdom. In actuality, they have given companies legal backing to exploit consumers, which was not the initial intention. This high expectation by the government that consumers even comprehend lip balm durability based on net weight when visible confirmation could be an option, is unreasonable. Frustration regarding the quantity of products, which made respondents feel deceived, was clearly indicated even in the empirical survey.

Seeing Through the Package: Empowering Consumers with Transparency as India's Solution

Anticipating the dissatisfaction of the respondents with the quantity in packages, one of the questions in the survey inquired about the visibility of the product in the package, which was vehemently supported by the majority. More than 70% of the respondents preferred products that at least have a transparent strip on them. The enthusiasm of the respondents can be interpreted as more than 85% also showing the inclination to buy a product if the same package becomes transparent in nature.

Redefining Quantity in Law: Mandating Visual Verification to Close the Slack Fill Loophole

Learning from the examples of countries that tried to curb unnecessary slack fill with statutory provisions that backfired into creating loopholes to exploit consumers more. India should approach this problem by trusting its population to understand their interests. Rather than creating complex provisions to address slack fill, it can choose a simple path of mandating companies to make their products transparent to visibly confirm the quantity. This will shift the onus from the government regulating, to consumers' choice.

Defining quantity in the Consumer Protection Act¹⁴, could become the most straightforward way to mandate this solution. It should be defined in a way such that the interpretation would

¹³ *Ebner v. Fresh, Inc.*, 838 F.3d 958 (9th Cir. 2016).

¹⁴ *Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India)*.

be clear without casting any doubt, that quantity elucidates not only the stated amount but also visual confirmation of products as well. It should be distinctly stated that this would mean visibility of the product in a package from top to bottom so that consumer could understand the actual amount of product in packages. It does not mean that the entire package would need to be transparent; it should be in a way that the true quantity of any product could be visibly verified. It should be left to companies as to what extent their products should be transparent after complying with the basic guideline, from a strip of transparent material to their packages being entirely transparent.

As a result of this the interpretation of consumer rights, misleading advertisement, and unfair trade practices would change, as their definitions in section 2 of the Consumer Protection Act, 2019 includes the word quantity.¹⁵ All protections under the act would apply to quantity as well because these protections are given for the violations of consumer rights, misleading advertisement, and unfair trade practices. Powers of the Central Consumer Protection Authority and the District Collector to penalize companies for non-compliance with the act would then also apply to quantity.¹⁶

The empirical survey clearly demonstrated the exasperation of customers regarding the quantity in packages. The indication of mass acceptance by customers for transparent packages, whether partial or entire was evident through the survey. The legitimacy of transparent packages as an answer to slack fill is supported through this public endorsement.

Navigating the Challenges: Balancing Transparency with Business Realities and Market Dynamics

Intellectual Property Challenges: Overcoming Design Alterations and Brand Consequences

Packages are mandated to comply with trademark, copyright, design patents, and trade dress laws and regulations, which in turn also protect them.¹⁷ One of the most significant changes from the solution will be to the packages of products, which cover elements like shape, color, graphics, and appearance. If companies act in accordance with the proposed solution under

¹⁵ *Consumer Protection Act, 2019, section 2, No. 35, Acts of Parliament, 2019 (India).*

¹⁶ *Consumer Protection Act, 2019, section 18, 72, No. 35, Acts of Parliament, 2019 (India).*

¹⁷ *Trade Marks Act, 1999, No. 47, Acts of Parliament, 1999 (India); Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India); Designs Act, 2000, No. 16, Acts of Parliament, 2000 (India).*

orders from the government, they would be required to alter their current designs. This would result in them incurring costs for redesigning and re-registering for new intellectual property rights. Changes to packages would also affect brand recognition, as most consumers identify brands through current designs.

Financial impacts from these regulations could be mitigated through subsidies and tax incentives that would cover the costs of redesigning packages and re-registering intellectual property. A streamlined registration process for the specific mandate would fast-track registration, reducing legal and administrative burdens. Implementation of the proposed solution would be better if companies were allowed a phase-in period to continue with existing packages until they exhaust the stock; this would give them time to develop new designs and reduce waste. There should be proper guidelines from the authorities about design templates to avoid any confusion and waste of design costs.

Changing Tides of the Market: Foreseeing Consumer Actions and Economic Ripple Effects

Data suggest that whenever there is a substantial change in the market through government policies, consumer buying patterns change, with liberalisation being the most evident example. In India, consumer spending was \$181.02 billion in 1991, rising to \$298.55 billion by 2000, \$916.98 billion by 2010, and reaching \$2044 billion by 2022.¹⁸ The Fast-Moving Consumer Goods (FMCG) sector, which this article focuses on and comprises food, beverages, personal care, and household items, is expected to hit \$220 billion by 2025, compared to just \$31.6 billion in 2011, with urban areas contributing 65% and rural areas to 35%.¹⁹ Validating the potential growth of this sector, it had an expenditure of \$3.75 billion on advertising in 2023.²⁰

Government's Record: Leveraging Past Reforms to Promote Consumer Empowerment

Justification for the adoption of the proposed changes by the government comes from its previous position to protect and strengthen consumer rights. The biggest example is the Consumer Protection Act, 2019, where faster dispute resolution and protection against e-

¹⁸ World Bank, *Final consumption expenditure (current US\$) - India*, <https://data.worldbank.org/indicator/NE.CON.TOTL.CD?locations=IN> (last visited Aug. 6, 2025).

¹⁹ India Brand Equity Foundation, *Thriving FMCG Industry in India Driving Its Sales*, <https://www.ibef.org/industry/fmcg> (last visited Aug. 12, 2025).

²⁰ India Brand Equity Foundation, *Indian FMCG Industry Analysis*, <https://www.ibef.org/industry/fmcg-presentation> (last visited Aug. 4, 2025).

commerce were added as extensions to the 1986 Act.²¹ Recent broader policy changes like the Goods and Services Tax (GST) and the Unified Payments Interface (UPI) had a great impact on consumer rights as well. GST resulted in over 200 essential items' price drops as the multiple preceding tax regimes were simplified into one unified lower tax; it also curbed black marketing and hoarding, which were direct benefits to consumers.²² UPI, launched in 2016, revolutionized payment system for consumers, which enabled instant digital payments and negated high fees for card payments; it also reduced fraud through secure protocols.²³

Conclusion

In the empirical survey, respondents indicated their acceptance of a price increase for a product if it is visible enough. The betrayal by companies pushes customers into accepting higher prices for a product that is at least transparent. India is one of the biggest markets in the world by its sheer population, but it is also one of the most prudent markets. An Indian consumer choosing a half-filled packet over an almost-filled packet that is visible, is fiction for us; it is this belief that makes mandatory transparent packages a solution. Rather than any complicated mandates which would require stringent vigilance by the government and filled with loopholes, it would be the consumers who will compel companies to keep the slack-fill minimal. If any company still believes in its methods, let it then continue the same measures of slack-fill after the proposed changes; it would get the consumer's answer in their quarterly numbers. Democratizing to this extent will evanesce consumers' misplaced trust in companies.

²¹ *Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).*

²² *Goods and Services Tax Council, 14th GST Council Meeting, <https://gstcouncil.gov.in/node/3879> (last visited Aug. 10, 2025).*

²³ *Nat'l Payments Corp. of India, Unified Payments Interface (UPI), <https://www.npci.org.in/what-we-do/upi/product-overview> (last visited Aug. 12, 2025).*