

Assessing the Regulatory Landscape: Strengthening Food Safety Enforcement in India for Public Health and Economic Progress

Tuhin Banerjee¹, Dr Mohit Kanwar²

¹LLM Student, Chandigarh University

²PH.D, LLM, Chandigarh University

Abstract

Food safety must be guaranteed if a country is to progress and succeed economically. India faces several challenges in protecting its food supply due to its fast-increasing urbanization, population expansion, and thriving economy. Food contamination in agriculture is caused by a number of factors, including the overuse of pesticides, the use of growth hormones, and contact with hazardous waste. The safety of consumable items is further compromised by the presence of impurities, chemicals, adulterants, additives, and toxic colorants or preservatives. Food supply integrity may be jeopardized from the start of food production all the way through processing, packaging, and delivery. As such, every stage makes it extremely difficult to enforce laws that guarantee food safety. The Food Safety and Standards Act (FSS Act), which was passed in 2006, replaced a number of core Acts pertaining to food safety as the law now in effect in India. August 2011 saw the official announcement of the FSS Act and its corresponding Rules, which signalled the start of the new regulatory framework. Ever since the new food safety standards were put into effect, the Food Safety and Standards Authority of India (FSSAI) has been hard at work laying the necessary foundations for their efficient enforcement. However, given the functioning of the FSSAI and an analysis of the literature, which includes the reports of the Parliamentary Standing Committee on Health and Family Welfare and the Comptroller and Auditor General of India carrying out the implementation performance audit of the FSS Act, a number of steps must be taken to reinforce the regulatory framework in order to ensure the FSS Act's strict enforcement.

KEYWORDS: Food safety, Regulatory landscape, economic progress, public health, FSS Act, FSSAI Act, Food contamination, Urbanisation, Population growth, Right to life

Introduction

Food safety must be guaranteed if a country is to progress and succeed economically. India faces several obstacles in achieving food safety due to increasing urbanization, population expansion, and a booming economy. Food contamination in agriculture has resulted from the overuse of pesticides, growth hormones, and exposure to toxic waste. Food becomes harmful to eat if it contains chemicals, contaminants, additives, adulterants, hazardous colouring agents, or preservatives. Food quality can be

¹ L.L.M (2023-24), UILS, Chandigarh University, Mohali, Punjab, India-140413

² Professor, UILS, Chandigarh University, Mohali, Punjab, India-140413

affected at any point during the manufacturing process, from the first stages of primary farming to the processing, packing, and distribution stages. As a result, the enforcement of food safety laws faces significant challenges at every turn.

In the nation, there have been several reports of food adulteration. One cannot be certain of the quality of food they eat in the current situation since food adulteration is so prevalent. Many manufacturing facilities continue to engage in unfair business tactics and provide consumers with food of inferior quality, despite accusations from a number of them that they do not follow food safety regulations. The poorer segments of our society can afford food thanks to the sizeable, unorganized food sector in our nation. Although the street cuisine is well-liked for its unique tastes and potent smells, there are serious concerns about the hygienic conditions and sanitation procedures. Milk and milk derivatives are among the most often contaminated foods.

The preservation of general health and wellness depends on the critical component of food safety. According to section 2(q) of the FSS Act of 2006, food safety is the guarantee that a food is suitable for human consumption in relation to its intended use. Practices including the handling, preparing, and storing of food are necessary to ensure food safety and avoid foodborne infections. This comprehensive idea takes into account a number of variables, including food sources, food labelling procedures, cleanliness, additives, and pollutants. It also takes into account biotechnology policies, import/export regulations, inspection protocols, and food certification programs.³

To prevent pollutants and germs from contaminating food and water sources, food safety must be ensured. These dangerous substances not only put individuals at risk for illness but also cause the food's vital nutrients to deteriorate. Each year, eating contaminated food makes millions of people sick, and in certain circumstances, it can even be fatal. The majority of foodborne diseases may be avoided by using appropriate food preparation techniques. Infants, the elderly, and those with precarious medical conditions are among the populations most susceptible to the serious effects of diseases brought on by contaminated food. These vulnerable individuals are more likely to have more severe and perhaps deadly effects from such illnesses.

A Constitutional Mandate for Food Safety

In the case of *Centre for Public Interest Litigation v. Union of India*, the Hon'ble Apex Court of India acknowledged the importance of clean food and upheld the idea that the right to clean food is a part of the right to life.⁴ As a result, the court gave this privilege the status of a fundamental right.

The right to nutritious food is included in the most important basic right of all, the Right to Life, which is protected by Article 21 of the Constitution. Accordingly, this basic right is endangered by any dietary ingredient that endangers public health. The Constitution's combination of Articles 21 and 47 places a major duty on the state and its agencies to establish an appropriate standard for preserving human life and health.⁵

³Ranjana Ferrao, "Food Security in India", 14(1), *Brazilian Journal of International Law*, 114 (2017).

⁴*Centre for Public Interest Litigation v. Union of India*, (2013) 16 SCC 279.

⁵Sushila, "Legal Framework Regulating Food Safety: A Critical Appraisal", 8, *International Journal on Consumer Law and Practice*, 78 (2020).

The UN's Guidelines on Consumer Protection, which were created in 1985, state that one of the core consumer rights is the assurance of access to food free of pesticides, insecticides, veterinary medications, antibiotics, and other hazardous materials. Even with these recommendations, a lot of foods, such as milk, grains, meat, fish, vegetables, and fruits, still contain harmful ingredients that can seriously harm one's health. Because of their physiological immaturity and increased soft drink intake, children are more susceptible to the harmful effects of pesticides.⁶The ICESCR of 1966, specifically Article 12, was referenced by the Supreme Court in its decision, highlighting the state's obligation to ensure food safety.⁷

Context of Current Food Safety Law

There were numerous rules, agencies in charge of creating guidelines, and organizations that enforced them in different areas of the food business. Confusion resulted for investors, producers, traders, and customers. Regarding the acceptability and allowable amounts of food additives, pollutants, food colours, preservatives, and related factors, the particular regulations established in various legislation differed greatly. These norms were often rigid and did not change to reflect advancements in science or modern living. The emergence of the food processing industry was negatively impacted by this complicated environment, which also made it more difficult to effectively define and implement food standards.

In 1998, the PM's Council on Trade and Industry established a task group to investigate the food and agro-industries. The committee suggested setting up a Food Regulatory Authority to oversee both the domestic and foreign markets for the food business. Furthermore, in its 2004 report, the Joint Parliamentary Committee on Pesticide Residues emphasized the need to create a single regulatory authority for this area and simplify the current food-related legislation. The committee voiced serious concerns over India's food safety and public health regulations. Consequently, because of their crucial relevance, the Standing Committee of Parliament on Agriculture proposed in its 12th Report in April 2005 that the legislative process for Integrated Food Laws be expedited.⁸

At that time, the Member-Secretary of the Law Commission of India was tasked with carrying out an exhaustive analysis of food laws in developed and developing countries, as well as pertinent international agreements and treaties pertaining to the topic. The Member-Secretary suggested that the new food legislation take a comprehensive strategy that prioritizes supporting the developing food processing industry because of its potential to create jobs and ease exports, after conducting a thorough analysis of laws and policies from many nations.

In keeping with the global modernizing trend, it was proposed that a comprehensive food law be enacted, necessitating the repeal of current laws pertaining to food. The intention was to change the

⁶B. S. Reddy; R. Ramya, "The Right to Food as a Human Right: An Overview of Public Understanding of the Right to Safe and Nutritious Food", 4(1), *CMR University Journal for Contemporary Legal Affairs*, 245 (2022).

⁷Ayush Kumar Upadhyay, "Food Security and Livelihood Security under WTO and FTAs", 3, *International Journal of Law Management & Humanities*, 1020 (2020).

⁸Pitta Isaac Newton, "Food Safety and Standards Act, 2006: Punishment for Unsafe Food in Milk and Milk Products", *International Journal of Law Management & Humanities*, 1950 (2023).

paradigm of food law from one of strict control and regulation to one of enhanced manufacturer accountability and self-regulation. Among the major subjects of discussion were manufacturer accountability, product recall procedures, regulations governing genetically modified and functional foods, creating containment plans for issues, and adhering to food safety, good manufacturing practices, and process control.⁹

In light of this, the Indian government established a Group of Ministers, who held in-depth talks and approved the Integrated Food Law with several modifications. The ensuing law, known as The FSS Bill, 2005, sought to promote an organized and scientific progress of the Food Processing Industries by creating a single statute pertaining to food.

To create and uphold food standards, it recommended creating the FSSAI. The FSSAI would supervise and keep an eye on food production, import, processing, distribution, and sales to ensure that the general public is receiving wholesome food. A Central Advisory Committee would help in job prioritization, while Scientific Committees and Panels would support the Food Authority in defining standards. Together with their officials and local Panchayati Raj/Municipal authorities, the State Commissioner for Food Safety will be responsible for putting the Act into effect.

The legislation, among other things, borrowed significant sections from the Prevention of Food Adulteration legislation of 1954 and was inspired by international institutions, the Codex Alimentarius Commission, and food safety laws worldwide. Hence, the Bill addressed global standards, sought to provide a thorough regulatory framework, and offered a centralized method for managing personnel engaged in food production, promotion, processing, handling, transportation, import, and sale.¹⁰

The legislation in question was modern and all-encompassing, created to improve consumer safety through the use of Food Safety Management Systems and the establishment of transparent, scientifically-based standards. Its main goal was to respond to the changing demands of both foreign trade and the Indian food trade and industry. As a result, the FSS Act was passed in 2006, and the FSSAI began operations in January 2009. In August 2011, a new regulatory framework was formally introduced with the FSS Act and supporting rules. Before it was put into effect, a number of federal statutes pertaining to food safety were superseded by this Act.¹¹

Operation of the FSSAI and The Way Forward

The FSSAI is the country's main regulatory body in charge of guaranteeing food safety. Among other things, the FSS Act's preamble seeks to guarantee the availability of healthy and safe food for human consumption as well as to set criteria for food products that are supported by science. Food safety is a specialist field, hence FSSAI, a science-based organization, ought to have the resources and skills required. It is imperative that the agency be headed by a person possessing the necessary technical know-how to handle the complex work of food regulation in a nation as varied as India. Consequently,

⁹Maruthi Prasad Palthur; Sree S.S. Palthur; Suresh Kumar Chitta, "Emerging Product Categories in India: A Regulatory View", 64(4), *Food and Drug Law Journal*, 677 (2009).

¹⁰*Supra* note 3.

¹¹*Supra* note 3.

hiring staff with technical expertise and proficiency becomes crucial to carrying out FSSAI's important role.

On August 5, 2011, the FSS Rules 2011 and six regulations were released, bringing the FSS Act into force. FSSAI has done a great deal of effort in the years after it was put into action to make sure that the new food safety laws are properly enforced. However, an assessment of FSSAI's operations and a thorough analysis of the literature, such as the report from the Parliamentary Standing Committee on Health and Family Welfare on FSSAI's operations and the report from the Comptroller and Auditor General of India on the performance audit of the FSS Act's implementation, highlight the need for a number of steps to improve the regulatory framework and guarantee the FSS Act's strict enforcement.¹²

First and foremost, it is imperative that the promotion and skill development initiatives carried out by FSSAI be improved. This would help the sector comply with the new food safety laws as well as raise public knowledge of them. These kinds of programs are intended to lessen the enforcement workload that food safety authorities bear while also supporting those authority's enforcement efforts. When used collectively, these steps are essential to guaranteeing the availability of healthful and safe food. Stakeholders' low understanding of the new standards is proof that, despite FSSAI's many activities, the lobbying and outreach efforts have not produced the expected effects.

The FSSAI's capacity-building measures are considered insufficient, and its educational attempts to raise understanding of the new food safety laws have had minimal results. Training modules that are specifically designed for manufacturers, importers, sellers, distributors, and FBOs are desperately needed. These shorter-term, industry-specific training sessions ought to be offered. To properly prepare FBOs and small-scale companies for compliance with the criteria stated in the FSS Act, frequent training sessions are important.

In this particular scenario, it is advised that the food safety authority combine advocacy and enforcement actions to better accomplish the objectives of the FSS Act. As a result, the FSSAI ought to start its awareness programs in educational settings, with a focus on schools. The goal of this strategy is to thoroughly teach kids about the value of eating a balanced diet and the fundamentals of food safety.¹³

FBOs are the backbone of the food safety system, and the FSSAI is responsible for immediately addressing and resolving their concerns and questions. Precise information on food safety procedures must be provided to FBOs in order to promote increased compliance, which in turn ensures the production of safe food. In order to respond to inquiries and concerns about legal compliance, the FSSAI ought to provide Guidance Notes and set up a consultation process. Taking the proactive approach rather than the reactive one would align with the goals of the new law.

Having a team of qualified people make decisions is essential for a governing body to function well. For example, the direction of FSSAI should be left to professionals in the field of food safety, such as trained scientists who can properly oversee the organization and provide the required administrative and bureaucratic backing. The CEO and chairman roles, which oversee regulations, ought to be occupied by experts with specific knowledge in the pertinent fields. As such, a detailed analysis of the appointment

¹²Report of the Comptroller and Auditor General of India on Performance Audit of Implementation of Food Safety and Standards Act, 2006 [Report No. 37 of 2017].

¹³Supra note 6.

processes is essential. Moreover, as per Section 5 of the FSS Act, it is mandatory to include two representatives from consumer groups as ex officio Members, which emphasizes the significance of many viewpoints in the regulatory framework.

This provision strengthens the ability of consumers to speak up and their right to be represented in all bodies that make decisions about matters pertaining to consumers. It is crucial that these job openings receive enough press attention in order to uphold consumers' rights to justice. This would make it possible for consumer advocates who are committed to advancing the welfare of consumers to apply for these roles. It is often noted that a dearth of qualified applicants keeps these posts vacant.

A significant discrepancy between the total number of cases submitted and the total number of convictions is highlighted on the FSSAI website, suggesting a very low conviction rate. This implies that FBOs involved in the distribution of tainted or mislabelled food items are not successfully punished, enabling them to get away with it.

It is not appropriate to issue or renew FBO licenses in a mechanical or automated manner. Rather, a methodical process ought to be devised to comprehensively evaluate FBOs submitting applications for licenses or extensions. The FSSAI must thoroughly assess the FBO's historical FSS Act compliance, taking any non-compliance with the Act seriously in the past. Streamlining the development of an electronic gateway that gathers an extensive compliance history of food enterprises would make the process of doing due diligence prior to license issuance or renewal much easier. The Food Authority may find this site to be a useful resource when making judgments on license renewals.

The nation's infrastructure for ensuring food safety is not uniform, with many areas missing well-established agencies like food safety bureaus and appellate courts. Some states don't have any laboratories at all, or if they have, they don't have properly operating equipment or qualified staff. As such, a uniform food safety framework that applies to all states is urgently needed. Unreliable lab test findings are the consequence of inconsistent techniques and methodology throughout the nation's food testing facilities. The FSSAI must oversee and ensure that all laboratories follow standard operating procedures and recommendations.

Many harmful substances and contaminants enter the food chain in the early phases of manufacturing. Surprisingly, basic food production is now beyond the scope of the legislation. The FSS Act is severely challenged by this omission, which leaves a loophole that excludes farmers, fishermen, and farming enterprises that include cattle and fisheries. Since raw material quality directly affects the quality of the finished product, it is imperative to ensure its quality. The legislature must immediately close this legislative gap by enacting the required changes to the legislation.

Vendors in the unorganized sector are ignorant of the laws pertaining to food safety. It is imperative that producers, importers, and distributors only purchase and sell food products from authorized or registered vendors. This policy intends to educate vendors about the importance and benefits of following laws in addition to extending legal compliance to the tiniest firms. It is recommended that FSOs and State Licensing Authorities perform routine inspections to make sure FBOs are adhering to these criteria.

Inspections are the cornerstone of every network pertaining to food safety. As a result, it is essential that the State Food Authorities or the FSSAI conduct inspections before granting any licenses, or else they must require inspections following the granting of licenses or registrations. There are very few random inspections by food regulators at the moment. This is especially important in a nation like India where there is a large unorganized food industry that is home to a large number of small food businesses. In this situation, timely and thorough inspections become even more important.

Conclusion

India, being a welfare state, is primarily accountable for being a key player in building a strong food safety system for the welfare of its people. On the other hand, the State has continuously failed to meet this need. Food safety is now governed by rules and practices that are insufficient and poorly enforced. Numerous food scandals and extensive food adulteration have resulted from the loose application of food rules. Food of poor quality has overtaken the market, harming public health permanently. Over time, the fundamental entitlement to clean, safe food has been undermined and neglected. Understanding the close relationships between food security, nutrition, and safety is crucial. The public's health is unintentionally at risk due to the inadequate infrastructure for food safety, as access to safe and nourishing food is essential to overall wellbeing. FSSAI was established as a result of the FSS Act, which marked a significant change from a multi-level to a single control structure that prioritizes self-compliance over a strictly regulated approach. At the federal and state levels, it established a standardized licensing and registration process. Developing science-based food standards and, if possible, harmonizing them with Codex Standards is one of FSSAI's primary duties. The FSSAI Scientific Committee and a number of Scientific Panels are involved in the establishment of these standards, and the Authority itself gives the ultimate approval. The FSS Act attempts to control food production, storage, distribution, sale, and import in order to guarantee that food is available that is both healthy and safe for human consumption as well as for the benefit of related customers.