

ANALYSIS OF FOOD SAFETY AND STANDARDS ACT, 2006 WITH RESPECT TO RIGHT TO HEALTH

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Abstract

The Indian constitution included the right to health as one of the fundamental rights and guiding principles of state policy, making it an unalienable right to be guaranteed. A comprehensive law known as the Food Safety and Standards Act (FSSA) was created to guarantee the quality and safety of food items in India. To safeguard the public's health, the Act contains several regulations that control the production, distribution, storage, and sale of food products. However, incidences of food contamination have been documented despite India's stringent food safety rules and regulations. Regarding such an increase in the number of violations of right to health, the link between right to health and the existing legal framework will be analysed in this dissertation. India is a signatory to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which recognizes the right to health as a fundamental human right. A fundamental prerequisite for maintaining good health is having access to safe and nourishing food, which is part of the right to health. By guaranteeing the safety and quality of food products, the FSSA seeks to advance and defend the right to health. Under the Act, the Food Safety and Standards Authority of India (FSSAI) was created with the responsibility of creating standards for food products, controlling their manufacture, distribution, storage, and sale, and ensuring that the regulations are followed. To sum up, the legal provisions meant for ensuring safe and quality food items, which are crucial for preserving good health (right to food), will be analysed in the context of India.

Key Words: Right to health, quality food, right to food

I. Introduction

When the term "food" is spoken or thought about, the first thing that immediately springs to mind for everyone is the availability of wholesome, hygienic food. The most necessity for life is food. The most fundamental and important prerequisite for properly enjoying life is food. The Indian Constitution does not specifically mention the Right to Food, even though it is protected by a number of articles⁴¹⁰. India is seeing an increase in food adulteration instances, which has led to major health risks and a threat to public health⁴¹¹. The right to food

is rendered worthless by inadequate food safety protocols and subpar food quality, which also places a financial and social strain on entire communities.

It has now been established that eating contaminated food puts millions of people worldwide in danger. According to the Centre for Science and the Environment, over 700,000 of South Asia's 2 million inhabitants perish each year from food-borne illnesses, such as diarrhoea brought on by contaminated food⁴¹². Food-related illnesses were responsible for 10%

⁴¹⁰ India Const. Art. 21, Art. 38, Art. 42, Art. 47.

⁴¹¹ Shree Dhar Purohit & Kashi Nath Joshi, Supreme Court on Prevention of Food Adulteration Law in India (1973).

⁴¹² Centre for Science and Environment, *Contamination of Food-Greatest Challenge for Food Safety in India*, <https://www.cseindia.org/contamination-of-food-is-the-greatest-challenge-for-food-safety-in-india-says-cse-on-world-health-day-april-7--5764>.

of the fatalities of children under the age of five in 2013⁴¹³. In a nation with a large population, many cases remain unreported and unidentified. Significant health risks are caused by the unrestricted use of antibiotics and insecticides. Equal access to sufficient and safe food is a fundamental human need and is crucial to eradicating poverty and hunger. Everyone wants to eat food of the highest quality, but the truth is that eating unsanitary and contaminated food—such as food with added water and detergent to milk—causes millions of illnesses and many deaths each year. Modern science and technology have advanced to the point that the world is reaching new heights, but they have also helped create new methods of food adulteration. The moment has come for food adulteration to be treated as a felony on par with murder⁴¹⁴. This remark portrays a bleak situation.

The Academy of Nutrition Improvement and other organizations with a similar goal—consumer, salt manufacturing, medical, and academic groups—have launched a writ petition against the Union of India. They oppose the requirement that salt be iodized before it may be consumed by humans⁴¹⁵. In order to amend the current FSSAI Act of 2006, the Ministry of Health and Family Welfare introduced the Food Safety and Standards (Amendment) Bill, 2020, in September 2020. This bill aimed to improve food safety and guarantee people's right to affordable, high-quality food by introducing 70 modifications.

There is a wide variety of literature when it comes to analysing food security laws and regulations from a constitutional point of view. The literatures pertain to constitutional law and judicial responses, etc. In fact, food has a vital role in human resources, productivity, and quality of life. In recent years, food security has become a significant issue both locally and globally. Numerous constitutions around the

world have recognized the “Right to Food” as a “Fundamental Right,” while the Indian Constitution has not yet done so. Despite the fact that the Indian Constitution, which was adopted after 1950, was a groundbreaking document meant to guarantee everyone's freedom, integrity, and social, economic, and political justice, food security does not actually hold a prominent place among those Fundamental Rights.

In his book “Poverty and Famines,” Amartya Sen focuses on the causes of famine in particular and malnutrition in general⁴¹⁶. The entitlement approach, which emphasizes possession and trade, is a different research methodology employed by the researcher⁴¹⁷. He has also provided a general outline of the definition and assessment of poverty. The many sociological, political, and technological perspectives are frequently examined.

The existence and extent of food security problems in industrialized nations are covered in considerable length in the World Bank Report. The report also looks at the responses from international financial organizations and the policy options available to nations in addressing the problems⁴¹⁸. It suggests strategies for reaching the end goal in the most economical manner.

J. W. Mellor looks into how long-term increases in productive food production could be supported by newly emerging global food surpluses. He asserts that food grain production is being impacted by demographic trends in both high- and low-income nations and that these effects are probably here to stay. These surpluses will be utilized in the near future to finance carefully planned food subsidies that will assist low-income families in meeting their dietary requirements. In the long term, they will support food-for-work programs and construct the rural infrastructure needed to launch rural development in other nations.

⁴¹³ *Ibid*

⁴¹⁴ J.H.C Capoor & J.D.D. Seth, Commentaries on the Prevention of Food Adulteration Act, (1982).

⁴¹⁵ Academy of Nutrition Improvement & Ors. v. Union of India, (2011) 8 SCC 274.

⁴¹⁶ Amartya Sen, “Poverty and Famines: An Essay on Entitlement and Deprivation”, (1981)

⁴¹⁷ *Ibid*

⁴¹⁸ See “Food Security Update”, The World Bank, 2024 for more information.

II. Right to Food under International Law

As part of his “Four Freedoms” speech, which also focused on the freedom of speech, religion, starvation, and terror, US President Franklin D. Roosevelt stated in a 1941 speech that all people have an inalienable right to food. Following World War II, these ideals gained international acceptance and were codified in the 1948 Universal Declaration of Human Rights. The International Covenant on Economic, Social, and Cultural Rights (1966), which became operative in 1976 and had been ratified by 156 nations, subsequently codified the right to food.

The Covenant’s Article 11 affirms that everyone has the right to food and a sufficient standard of living, as well as the right to be free from starvation. Once a nation ratifies the Covenant, it becomes legally binding, and governments are required to enact laws protecting the right to food. Hunger is predicted to decline in nations like India, where the right is well-established. The right to food must be respected, protected, and fulfilled by the nations that have ratified the Covenant. Respect entails not impeding access to food, protection entails preventing others from denying people this right, and fulfilment entails encouraging measures that increase access to food and providing aid when required⁴¹⁹.

Following World War II, governments on both ends of the Atlantic implemented strategies to increase agricultural output and self-sufficiency, with a primary focus on food security. India was aided by the US during the late 1950’s food shortages through the implementation of agricultural support initiatives and assistance programs for food, such as Public Law 480. To increase farmers’ profits and guarantee food security, agricultural price support policies and initiatives were implemented throughout Europe. About one-third of the world’s population lacked enough energy (calories), according to the World Food Survey, which was carried out in 1946 by the

Food and Agriculture Organization (FAO), which was established in 1945.

With the emphasis on the right to a decent standard of life in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the right to food is fundamental to international human rights law. There are two ways to interpret the right to food: as the right to adequate nourishment for one’s health and well-being, and as the right to be free from hunger⁴²⁰. Although they are different, these ideas are frequently mistaken. States must guarantee access to food that is sufficient, readily available, and nourishing for a healthy existence in order to fulfil one’s right to be free from hunger. On the other hand, the goal of the right to enough food for well-being is to guarantee that people have access to food that promotes health and allows them to lead fulfilling lives.

Nutrition is included in two important paragraphs of the United Nations Convention on the Rights of the Child⁴²¹. By guaranteeing access to high-quality food, clean drinking water, and medical treatment, it acknowledges the right of children to the greatest public health and calls on take decisive action against disease and malnutrition. States must also encourage education and awareness among all societal segments, especially carers, about baby health nutrition and the advantages of breastfeeding⁴²². In times of need, the Convention also requires states to offer welfare programs that prioritize shelter, clothing, and nutrition.

Access to adequate, wholesome food is guaranteed by a number of internationally recognised treaties and resolutions, including those issued by the UN General Assembly, FAO, and WHO. In order to reduce hunger and poverty and support sustainable development goals, these declarations between food safety and security. The ICESCR’s methodology

⁴¹⁹ FIAN International Right to Food, The Food First Information and Action Network, Willy Brandt-Platz 5, 69115 Heidelberg, Germany, (2007).

⁴²⁰ Article 11, International Covenant on Economic, Social, and Cultural Rights.

⁴²¹ Convention on the Rights of the Child, 1990, Article 24, (Paragraph 1).

⁴²² Convention on the Rights of the Child, 1990, Article 27, (Paragraph 3).

emphasizes that in order to guarantee food security and safety for everyone, governments must handle the food system, from production to consumption.

III. Right to Food under Indian Law

In India, the right to food is based on constitutional legislation, namely, the right to life. The lawsuit established the constitutional basis for food security in India. Additionally, states are required by International Covenant on Economic, Social and Cultural Rights, to implement legal measures to ensure food security. The significance of legal structures for food security is emphasized in General Comment 12⁴²³, which also calls for incorporating civil society organizations in decision-making delegating tasks to government agencies.

The Indian Constitution implicitly guarantees food security, and Indian citizens are afforded robust protections⁴²⁴. The state is required by under Article 47 of the Directive Principles of State Policy to raise living conditions, increase dietary quality, and advance public health⁴²⁵. Article 21⁴²⁶, which protects the Right to Life under the Constitution's Fundamental Rights section, serves as the main foundation for food security in India. In contrast to the unjustifiable Directive Principles, this renders protecting food as an enforceable right, providing more robust and easily available safeguards for food security than those found in international frameworks.

⁴²³ M. Vidar, Implementing the Right to Food: Achievement, Shortcomings and Challenges: Advantages of Framework Law, Keynote Address by FAO Legal Officer, Indian Social Institute, New Delhi, India, organised by FIAN International support by GDS.

⁴²⁴ In general, domestic institutions are literally more accessible—they are geographically closer, and their proceedings are conducted in a similar language to the one of the rights holders. The principle of exhaustion—that right holders must exhaust domestic remedies before seeking redress and remedy at the international-level—also makes domestic institutions a more likely starting point for those pursuing human rights claims.

⁴²⁵ Constitution of India; Article 47 explains: “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption exempt for medicinal purposes of intoxicating drinks and drugs which are injurious to health”.

⁴²⁶ Article 21 of Constitution of India, - Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law.

In Part IV of the Indian Constitution, the Directive Principles of State Policy enshrine the country's founders' goal of establishing a welfare state⁴²⁷ that promotes socio-economic fairness⁴²⁸. By incorporating these ideas into the Constitution, the farmers sought to create an economic democracy in light of India's pervasive poverty and inequality. As stated in Articles 39, 42, 47, and other provisions, the DPSPs place a strong emphasis on the state's obligation to enhance public health, nutrition, and quality of life. Along with protecting employees, children, and those at risk from exploitation, these rules also guarantee their entitlement to basic necessities like food, healthcare, and education⁴²⁹.

In order to create a welfare state, the Indian Constitution's Directive Principles of State Policy (DPSPs) place a strong emphasis on the state's obligation to guarantee social and economic fairness⁴³⁰. Important clauses pertaining to this vision include:

Article 39: Prevents the accumulation of power, guarantees and equitable distribution of assets for the common benefit, and guarantees the right to subsistence⁴³¹. Emphasising the importance of state in avoiding exploitation determined by age and strength, it also seeks to protect worker's health and stop child exploitation⁴³².

Article 39f⁴³³: Prevents children from being abandoned financially and morally by requiring them to have access to assets to receive a safe and respectable education.

Article 42: Permits the state to implement maternity leave and reasonable working conditions.

⁴²⁷ Constitutional Assembly Debate, Vol. III, 1949, pp. 494-95.

⁴²⁸ Pandey, J.N., Constitutional Law of India. 46th Ed., Central Law Agency, Allahabad (2009); Basu, D.D., Introduction to Constitution of India, 20th Ed., Wadhwa, Nagpur (2010).

⁴²⁹ Minerva Mills Ltd. v Union of India, AIR 1980 SC 1789.

⁴³⁰ Singh, Mahendra P., V.N. Shukla's Constitution of India, 345-46 (Eastern Book Company, Lucknow, 11th ed. 2008).

⁴³¹ Article 39(a), The Constitution of India.

⁴³² Article 39(b), (c), The Constitution of India.

⁴³³ Subs. by the Constitution (42nd Amendment) Act, 1976, Sec 7.

Article 43A⁴³⁴: Promotes laws that guarantee employees' involvement in industry management.

Article 43B⁴³⁵: Encourages the growth of an autonomous operations, democratic regulation, and cooperative societies.

Article 47: Gives the state instructions to enhance public health and nutrition and to outlaw dangerous substances, such as intoxicating beverages, unless necessary for medical reasons.

Supporting Legislations:

Although food security is acknowledged as an intrinsic human right, the legal structure for upholding this right is fragmented rather than comprehensive. Food security is addressed by a number of laws and programs, although their execution is frequently disjointed. Important acts consist of:

The Food Entitlements Act, 2009: lays forth the rights of citizens to food under specific circumstances.

Food Safety and Standards Act, 2006: controls food product and food quality to guarantee standards and safety.

Minimum Wages Act, 1948: ensures that workers receive appropriate compensation, allowing them to purchase essentials and promoting food security.

Employees Compensation Act, 1923: gives workers compensation for accidents, securing their livelihood and indirectly promoting food security.

Prevention of Food Adulteration Act, 1954: addresses food adulteration by establishing guidelines to stop the sale of contaminated foods.

National Human Rights Commission Act, 1993: The Commission is involved in keeping an eye on and promoting the rights associated with food security.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Ensures that underprivileged populations have sufficient food and fundamental rights.

Maternity Benefit Act, 1961 and 2017: gives women paid time off, which obliquely guarantees working mothers' security.

Equal Remuneration Act, 1976: helps employees obtain enough food and guarantees equal compensation for equal labour.

Bonded Labour System Abolition Act, 1976: eliminates forced labour, which frequently denies underprivileged groups access to food.

Several provisions in the Indian Penal Code, 1860, target adulteration and work to safeguard consumer rights, especially with regard to food, drink, pharmaceutical products. The IPC's Section 272 makes it illegal, tamper with food or beverages that are intended for sale in order to make them unhealthy. This offence carries a maximum penalty of six months in jail, a maximum fine of Rs. 1000 or both⁴³⁶. Proof demonstrating the food or beverage was tainted, made toxic, and meant for sale is necessary for conviction⁴³⁷. In a similar vein, selling noxious food or beverages- even if they are not tampered with but are nevertheless unfit for human consumption- is prohibited by Section 273⁴³⁸. The same punishment as in Section 272 applies: a fine or up to six months in jail⁴³⁹.

In Section 274 on drug adulteration, it is illegal to change any medication or medicinal preparation in a manner that lessens its potency or renders it dangerous. The penalty is fine of up to Rs. 1000 or six months in jail, or both. The sale of tainted medications is punishable by Section 275, which holds people responsible for selling medications whose quality has been compromised. In addition, Section 276 targets anyone who purposefully mislead consumers by selling drugs as another substance or

⁴³⁶ Indian Penal Code, 1860, Sec. 272.

⁴³⁷ Bain Dayal v. King Emperor, AIR, 1924 All. 214 (1) at p.214.

⁴³⁸ Chisholam v. Doulton, (1889) 22 Q.B.D. 736.

⁴³⁹ Section 273, Indian Penal Code, 1860.

⁴³⁴ Ins. by the Constitution (42nd Amendment) Act, 1976, Sec 9.

⁴³⁵ Ins. by the Constitution (97th Amendment) Act, 2011, Sec 3.

preparation. This also carries a penalty of up to six months in jail or a fine.

IV. Policies and schemes in relation to food security

The national and provincial governments collaborate to run the Public Distribution System. The Food Corporation of India manages food procurement, pricing, delivery, and stock distribution for state and local governments. State governments regulate distribution, identifying low-income households, distributing ration cards, and implementing the Financial Planning Standard Board. The Public Distribution System distributes items like wheat, corn, sugar and paraffin to both states and union regions for sale. Products such as cloth, workout cards, pulses, salt, and tea are offered through Public Distribution System channels in certain states and union territories.⁴⁴⁰

Established in December 2000, the Antyodaya Anna Yojana (AAY) was a targeted public distribution program designed to combat hunger and malnutrition among the most vulnerable members of society, especially those living below the poverty line. It majorly focused on supplying one crore (10 million) of India's poorest households with food grains at subsidised prices of Rs. 2 per kg for wheat and Rs. 3 per kg for rice. With the entire subsidy going straight to customers, the program aims to guarantee these households have access to food. The program initially permitted 25 kg of food grains per household per month; however, from April 1, 2002, this amount was raised to 35 kg per family per month.

The Prevention of Food Adulteration Act, 1954

One important step in combating food adulteration in India was the Prevention of Food Adulteration Act, which was passed in 1954⁴⁴¹. The Act has 25 sections and rules which were framed in 1955⁴⁴². It eliminated the need to

demonstrate effects or criminal intent (*mens rea*), as mandated by the Indian Penal Code, and established strict liability regarding food adulteration. By guaranteeing that food intended for consumption by people was safe and uncontaminated from adulteration, this Act sought to safeguard the public's health. Before being superseded by the Food Safety and Standards Act, 2006, that strengthened the food safety rules, the Act had four amendments over time (1964, 1971, 1976, 1986).

The following is an explanation for the purpose of the Prevention of Food Adulteration Act given in the *Municipal Corporation of Delhi v. Surja Ram*⁴⁴³ case: *"The object and purpose of the Act are to first reduce and subsequently eliminate completely the dangers to human health and life from the sale of unwholesome articles of food. It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social defense and welfare. It is intended to suppress socioeconomic mischief, an evil that attempts to poison, for monetary gains, the very source of substance of life and well-being of the community"*.

The Food Safety and Standards Act, 2006

the Central Government of India created the Food Safety and Standards Authority within three months of the Act's formation. It uses its authority to carry out the tasks given to it and conforms to all of the Act's rules and regulations. It benefits from having the standing of a business entity with continuous advancement. The authority to purchase, keep and dispose of both immovable and moveable property is also granted. New Delhi is home to the Food Authority's headquarters. In order to continuously monitor the work across the nation, other offices can be set up in other states.

⁴⁴⁰ Madhura Swaminathan, and Mishra Neeta, "Errors of Targeting, Public Distribution of Food in a Maharashtra Village, 1995-2000", *Economic and Political Weekly*, vol. 36, No. 26, (30 June-6 July 2001), pp. 2247-54.

⁴⁴¹ *Gazette of India*, Part II Sec. 2 Dated 25th September, 1952.

⁴⁴² *Parliamentary Debates*, Rajya Sabha Vol. II, dated 01.09.1954: "Adulteration of food stuffs is so rampant and evil, has become so widespread, persistent and nothing sort of drastic remedy provided for in the bill

and hope to change the situation. Under the concerted and determined onslaught on this anti-social behaviour and hope to bring relief to the nation, I believe the bill meets those requirements."

⁴⁴³ (1965) Cr. L.J. 571.

3.3.1 Provisions

The Food Authority team consists of eleven members in total. They are:

- a. Chairperson
- b. Six Joint Secretary-level officials chosen by the Central Government to serve as representatives of Central Government ministries, including Agriculture, Commerce, Consumer Affairs, Food Processing, Health, Law and Justice
- c. Two delegates, one from a consumer advocacy group and the other from the food sector
- d. A scientist or a food technologist
- e. Two members appointed in alphabetical order represent the States and the Union Territories.

The Central Government chooses the Authority's chairperson and members based on their effectiveness and ability. It is necessary for the Chairperson to be well-known in the field of food administration or science. He or she should also possess extensive experience and subject-matter understanding. In addition, the Chairperson shall hold a position equivalent to the of Secretary to the Central Government.

The Chairperson and members are appointed by the Central Government based on the Selection Committee's recommendation. The Committee recommends the standards by which these members are chosen. The Selection Committee is established by the Central Government in accordance with sub-section 3 of Section 5 of the Act. The members of the Committee are, namely,

- a. Cabinet Secretary serves as the Chairperson of the Selection Committee
- b. The convener member is the secretary-in-charge of the Ministry of Food Processing industries
- c. The Secretary-in-charge of the ministries of the Central Government, who has served as a member of several

departments including personnel, health , and legislation

- d. The Public Enterprises Selection Board Chairperson as a Member.
- e. A well-known food technologist who has been proposed as a member by the Central Government.⁴⁴⁴

The Food Authority's primary duty is to keep an eye on the manufacturing, processing, importing, selling, and distribution of food items to ensure their continued safety and nutritional value. The following are the Food Authority's additional duties:

- a. Establishing guidelines, standards, and rules for various food products and ensuring that they are properly applied in accordance with the Act's requirements.
- b. Establishing guidelines for the use of food products seasoning, pesticide deposits, veterinary medication residue, heavy metals, food product treatment services, toxins, potent antibiotic and pharmacological ingredients, and radiation-exposed food.
- c. Verifying that food items imported into India meet the required standards or quality.
- d. Keeping an eye on the policies, procedures, and operations of the accredited labs and reporting any changes.
- e. Establishing the protocol to be observed for information sharing, analysis, and sampling among the pertinent authorities.
- f. Conducting routine investigations to see if the Act is applied and handled in a timely manner.
- g. Verifying that food items are being labelled in accordance with the Act's requirements. Products pertaining to nutrition and health, special dietary

⁴⁴⁴ Section 6, The Food Safety and Standards Act, 2006.

needs, and food category systems are among the food goods.

- h. Choosing methods for starting elements including risk assessment, risk management, risk analysis, and risk communication.⁴⁴⁵

The Food Authority's duties include:

1. Providing the central and state governments with scientific and technical advice when they are developing food safety and nutrition laws and regulations, if requested.
2. Examining, classifying, and summarising all of the technical and scientific information gathered.
3. Developing the methods for evaluating the risk factor.
4. Keeping an eye on and informing the Commissioners of Food Safety, the Central Government, and the States about any risks pertaining to the food product's nutritional value and overall health.⁴⁴⁶
5. Giving the federal government and state governments recommendations and technical scientific advice.
6. Establishing the framework through which the network of institutions can create a technical cooperation framework by coordinating activities, exchanging information, creating and carrying out collaborative projects, and exchanging best practices and expertise in relation to all Food Authority-related matters and duties.
7. Assisting governments in acquiring scientific and technical knowledge to enhance collaboration with international organizations and ensuring that consumers, the general public, and pertinent parties at all panchayat levels receive accurate, impartial, and widely

disseminated information through highly effective methods and techniques.⁴⁴⁷

8. Educating those who are directly or indirectly involved in food safety and food industry regulations.
9. Finishing the assignment given by the Central Government.
10. Making constructive efforts to advance international technical standards in fields like food, sanitary and phyto-sanitary standards.
11. Assisting governmental and non-governmental organisations in planning their work on food product standards.
12. Promoting consistency between official domestic and international standards to ensure that the nation's adopted level of protection is maintained.
13. Educating the public about food safety regulations.

The Food Authority must act quickly to address the following issues that the public finds concerning:

- a. Educating the public on how the Scientific Panel and Scientific Committees are putting ideas and principles into practice.
- b. Annual declarations of interests made by the CEO, other Advisory Committee members, members of the Scientific Committee, members of the Food Authority, and members of the Scientific Panel, and posting them on the meeting schedule.
- c. The effects of technical research.
- d. An annual report detailing the Authority's operations.⁴⁴⁸

The Food Safety and Standards Act, 2006 contains numerous guidelines for efficient operation, such as-

1. The Food Safety and Standards Act (Licensing and Registration of Food Businesses) Regulation, 2011.

⁴⁴⁵ Section 16, The Food Safety and Standards Act, 2006.

⁴⁴⁶ Food and Agriculture Organization of the United Nations & Ministry of Health & Family Welfare, Government of India, - The User's Manual on Codex A Contemporary Approach to Food Quality and Safety Standards (2009), TCP/IND/0067.

⁴⁴⁷ Vijaay Thappar, - *Measuring the Impact of SPS Standards on Market Access*, IFATPC 29(2011).

⁴⁴⁸ Ruchika Sharma, *A Legal System for Appropriate Pesticide Use and Food Safety*, 64 (2017).

2. The Food Safety and Standards Act (Food Products Standards and Food Additives) Regulation, 2011.
3. The Food Safety and Standards Act (Prohibition and Restriction of Sales) Regulation, 2011.
4. The Food Safety and Standards Act (Packaging and Labelling) Regulation, 2011.
5. The Food Safety and Standards Act (Contaminants, Toxins and Residues) Regulation, 2011.
6. The Food Safety and Standards Act (Laboratory and Sampling Analysis) Regulation, 2011.
7. The Food Safety and Standards Act (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food) Regulation, 2016.
8. The Food Safety and Standards Act (Food Recall Procedure) Regulation, 2017.
9. The Food Safety and Standards Act (Import) Regulation, 2017.
10. The Food Safety and Standards Act (Approval for Non-Specific Food and Food Ingredients) Regulation, 2017.
11. The Food Safety and Standards Act (Organic Food) Regulation, 2017.
12. The Food Safety and Standards Act (Alcoholic Beverages) Regulation, 2018.
13. The Food Safety and Standards Act (Fortification of Food) Regulation, 2018.
14. The Food Safety and Standards Act (Food Safety Auditing) Regulation, 2018.
15. The Food Safety and Standards Act (Recognition and Notification of Laboratories) Regulation, 2018.
16. The Food Safety and Standards Act (Advertising and Claims) Regulation, 2018.
17. The Food Safety and Standards Act (Packaging) Regulation, 2018.
18. The Food Safety and Standards Act (Recovery and Distribution of Surplus food) Regulation, 2019.

Comprehensive guidelines for items such as additives that may be used in food and to what degree are contained in the Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011. There are rules governing which contaminants, toxins, and residues are permitted in food and to what extent under the Food Safety and Standards (Contaminants, Toxins, and Residues) Regulations, 2011. Certain admixtures and products are prohibited from use and sale:

- a. Cream that is not made from milk or that contains less than 25% milk fat.
- b. Milk that has water added to it.
- c. Ghee that has any additional ingredients that aren't made from milk fat.
- d. Milk that has been skimmed as milk.
- e. Edible oil made by combining two or more edible oils.
- f. Vanaspati with ghee or another substance.
- g. The presence of foreign substances in turmeric.
- h. Mixing coffee with anything other than chicory.
- i. Curd or dahi that isn't prepared from pasteurised, cooked, or sterilised milk⁴⁴⁹.
- j. Lathyrus sativus, or kesari gramme, and its derivatives.
- k. Mixture of kesari gram (Lathyrus sativus) and Bengal-gram (Cicer arietinum) or some other gram⁴⁵⁰.
- l. Marketing of impure honey as honey.
- m. Ripening the fruits with carbide gas.
- n. Selling or using ghee or butter admixtures for commercial purposes.
- o. Using naturally deceased animals' or birds' meat as a component in any culinary product intended for retail sale.
- p. Storing and selling any pesticide or insecticide in the same location where food items are produced, stored or put on display for sale.

⁴⁴⁹ Regulation 2.1, The Food Safety and Standards (Prohibition and Restriction of Sales) Registration, 2011.

⁴⁵⁰ Regulation 2.2, The Food Safety and Standards (Prohibition and Restriction of Sales) Registration, 2011.

- q. Produce, market, store, or exhibit for sale, infant formula, infant milk food, or any weaning food-based on milk cereal, processed cereal-based weaning food, or follow-up formula, unless the Bureau of Indian Standards has granted a Certification Mark⁴⁵¹.

The Food Safety and Standards (Packaging and Labelling) Registration, 2011 provides comprehensive instructions on how and what materials to use for product packaging and labelling. The rule states that any utensil or container that is rusty, chipped, improperly tinned, composed of materials or metals, or has a chemical composition that does not meet established requirements⁴⁵². There are precise rules for labelling, and a material's label on its package must explicitly state-

1. Ingredients of the product.
2. Nutritional data such as calorie value in kcal, amount of protein, carbohydrate(sugar), and fat there are in grammes (gms) or millilitres (ml), the amount of any other nutrient for which or health claim is made.
3. Declaration (Vegetarian/Non-Vegetarian).
4. Logo.
5. Food Additives Declaration.
6. Net Quantity.
7. Use By or Best Before Date.
8. Lot/Batch/Code identification.

Eight categories of functional foods are covered by the **Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food) Regulations, 2016**: Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Special Food containing Probiotics, Food containing Probiotics and Novel Foods⁴⁵³.

Novel and Proprietary food is food that is safe but for which no standards have been established⁴⁵⁴. Energy drinks and custard powder with starch, dextrose, flavour and colour are examples of novel foods. People over the age of five can take health supplements. Nutraceuticals help to maintain excellent health and offer a physiological benefit. Food business owners must include all necessary information on the label, including the terms "NUTRACEUTICALS" "NOT FOR MEDICINAL USE", nutritional content, batch number, and best before.

The Food Safety and Standards (Food Recall Procedure) Regulation, 2017 specifies that every business owner must have a current food recall plan and, if necessary, implement it to remove all food products from the market at any stage of the food chain, including those that have already been at any stage of the food chain, including those that have already been consumed by customers. To update the office of Chief Executive Officer, the FSSAI, or the Commissioner of Food Safety of the State on the recall plan's progress, the operator of a food business must submit status updates on a regular basis⁴⁵⁵.

The Central Authority has the authority to:

- a. Order the recall of any items or services that are dangerous, unsafe, or hazardous.
- b. Reimburse the price of the recalled goods or services to the buyers of those products or services if it is convinced that there is adequate evidence of a violation of customer's rights of unfair trade practices of an individual.
- c. The end of unfair practices that harm the interests of buyers⁴⁵⁶.

⁴⁵¹ Regulation 2.3, The Food Safety and Standards (Prohibition and Restriction of Sales) Registration, 2011.

⁴⁵² Regulation 2.2.1, The Food Safety and Standards (Packaging and Labelling) Registration, 2011.

⁴⁵³ Section 22, The Food Safety and Standards Act, 2006.

⁴⁵⁴ Food Safety Mantra, *Novel Foods Regulations And Their Approval Process in India*, June 4, 2019.

⁴⁵⁵ Regulation 9, The Food Safety and Standards (Food Recall Procedure) Regulation, 2017.

⁴⁵⁶ Section 20, The Consumer Protection Act, 2019.

6.2 FSSAI's Initiatives to Boost the Effectiveness of Its Enforcement System

Among other things, the preamble of the FSS Act seeks to establish science-based standards for food commodities and maintain the availability of nutritional and safe food for human consumption. The FSSAI is the nation's highest food safety regulating authority. Considering food safety is a food safety is a professional, the FSSAI, a science-based company, should be staffed by individuals with the necessary technical know-how and experience to take on the difficult task of food regulation in a nation like India. Therefore, recruiting people with technical expertise and competence becomes essential for the FSSAI in successfully carrying out its essential task.

With the issuance of the Food Safety and Standards Rule 2001 and six regulations⁴⁵⁷ on August 5, 2011, the FSS Act became active. In order to effectively carry out the new food safety regulation, FSSAI has put in a lot of prep effort throughout the years since it went into effect. However, given how the FSSAI operates and a review of the literature, including the Report of the Parliamentary Standing Committee on Health and Family Welfare⁴⁵⁸ on the functioning of the FSSAI and the Report of the Comptroller and Auditor General of India conducting the performance audit of the implementation of the FSS Act⁴⁵⁹, it is essential that several steps be taken to strengthen the regulatory framework for strong enforcement of the FSS Act. These steps are described in the paragraphs that follow.

With the aim to help industry comply with the new food safety regime and boost public awareness of it, the FSSAI must initially broaden the scope of its outreach and capacity

building programs. Together, these measures could significantly boost the availability of nutritious and secure foods while also lessening the enforcement demand on food safety authorities for enforcement considerations. FSSAI certainly initiated a number of actions, but its dissemination and advocacy activities have not been successful in producing the desired outcomes, as seen by the new regime's low level of visibility among stakeholders.

FSSAI's capacity-building initiatives are lacking, and its advocacy efforts have not done enough to inform the stakeholders the most recent food safety regulations. Developing specialised training materials for manufacturers, importers, vendors, distributors, and FBOs is crucial. The training ought to be shorter and tailored to the industry. FBOs and startups should receive regular training so they have necessary skills to adhere to the FSS's Act requirements.

Consequently, it is proposed that the food safety authority's enforcement and advocacy efforts ought to support one another in order to accomplish the goals of the FSS Act. Thus, so as to adequately educate youths about the value of eating a balanced diet and maintaining food safety, the FSSAI should begin its outreach efforts with schools.⁴⁶⁰

A lot of hazardous materials and impurities enter the food chain during primary production, yet this type of food production is not subject to the regulations. A major obstacle and vulnerability in the FSS Act is the exclusion of farmers, fishermen, and farming enterprises, including fisheries and cattle, since superior raw materials are required to ensure superior final items. The legislation must review this legislative null and modify the rule if appropriate.

⁴⁵⁷ Six principal regulations came into force on 5 August, 2011. In addition to the six principal regulations, five more regulations are notified. These relate to Food or Health Supplements, Nutraceuticals, Foods for Special Dietary Uses, Foods for Special Medical Purpose, Functional Foods and Novel Foods, Food Recall Procedure, Import, Approval for Non-Specified Food and Food Ingredients and Organic Food.

⁴⁵⁸ *One Hundred Tenth Report of Department Related Parliamentary Standing Committee on Health and Family Welfare on Functioning of Food Safety and Standards Authority of India* presented to the Rajya Sabha on 9 August 2018.

⁴⁵⁹ *Report 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]

⁴⁶⁰ FSSAI had launched various outreach programs including the "Eat Right India" Movement. As reported in the newspapers, it has also started programme in collaboration with various resident welfare associations to train the domestic workers and to make them aware about practices that need to be adopted for safe, hygienic and nutritious food at home. Such programmes are commendable which are needed to be conducted across India. The authority conducts regular street food festivals under "clean, street food hub programme". In this process, street food clusters are identified across the country that would be jointly audited with state authorities for cleanliness and hygiene. Clusters are encouraged to comply with food safety standards and those meeting the criteria are given 'clean street food hub certificate'.

There is a regulatory gap in the importation of genetically engineered foods, despite the fact the FSS Act was passed more than ten years ago. The FSSAI Act has not taken any action to halt the imports or established the rules for such approvals. The “Guidelines for Safety Assessment of Food derived by GM Technology” need to be finalised immediately by the FSSAI. The FSSAI should also endeavour to modernise the infrastructure for testing genetically modified foods and utilise the nation’s existing laboratories, outfitting them with the newest technology. On the other hand, the FSSAI recently published laws mandating local farmers to certify their products as organic. By doing this, uncertified and counterfeit goods will be taken off the market. To save their expenses, small farmers should have their own certification system.

The FSSAI should take action to make sure that all restaurants, hotels, fast food chains, and virtual vendors of food provide all required information about food item packaging and labelling on menu cards, advertisements, and display panels. They should also make sure that their menus print calorie information so that customers can make educated decisions and encourage healthy eating.

All parties involved have to continuously interact and cooperate in order to enforce food safety, which is a shared duty. To lessen the burden of compliance and enforcement, the FSSAI must ensure its level of interaction with market participants. In order to reduce enforcement frictions and encourage firms to launch novel and food items through expedited approvals, measures should be made to promote voluntary compliance and self-regulation.

It is also vital for retaining traditional cuisine in order to preserve the nation’s cultural legacy. Without compromising the culinary legacy, a contemporary fusion of science would contribute to the advancement of traditional food knowledge. The FSSAI must create vertical criteria for traditional foods that can be

produced. In a large country like India, its challenging to oversee minor, unorganised players lie street vendors. These participants’ informal and disorganised activity highlights and complicates enforcement efforts. To raise awareness of the significance of food safety, the FSSAI must launch a variety of awareness campaigns. Persuasive rather than coercive should be the overall strategy.

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