

LEGAL FRAMEWORK REGULATING FOOD SAFETY: A CRITICAL APPRAISAL

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Abstract: *Food safety is crucial for progress and the economic growth of a country. With rapidly increasing urbanization, population and rising economy, India faces many challenges in its quest for food safety. Use of excessive pesticides, growth hormones, exposure to toxic waste etc, results in food contamination at the farm level. Additives, contaminants, chemicals, environmental pollutants, adulterants, toxic colorants or preservatives, etc. render the food unsafe for consumption. At any stage of food production, right from the primary production to processing, packaging and supplying, the quality of the food can be compromised. Every step, thus, poses a challenge for enforcement of food safety regulations.*

The present legislation dealing with food safety in India, ie, the Food Safety and Standards Act (FSS Act) was passed in 2006 after repealing various central Acts relating to food safety. The FSS Act 2006 and Rules were notified and commencement of new regime started from August 2011. In the last few years of its coming into force, FSSAI has done a lot of ground work to effectively enforce the new food safety regime. However, based on the working of FSSAI and a review of the literature including the Report of Comptroller and Auditor General of India conducting the performance audit of the implementation of the FSS Act and the Report of the Parliamentary Standing Committee on Health and Family Welfare on functioning of FSSAI, it is imperative that various measures are required to be undertaken to strengthen the regulatory framework for robust enforcement of the FSS Act.

In this paper, the researcher intends to critically examine the working of the present Indian Food Safety Regime. The researcher has also used the experience gained during a recently conducted

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survey in the National Capital Region under a UGC funded project in the area of food safety.

Keywords: Adulteration, Codex Alimentaries, Food Safety, FSSAI, Food Labeling, etc.

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I. IMPORTANCE OF FOOD SAFETY

Food safety is crucial for progress and the economic growth of a country. With rapidly increasing urbanization, population and rising economy, India faces many challenges in its quest for food safety. Use of excessive pesticides, growth hormones, exposure to toxic waste etc, has resulted in food contamination at the farm level. Additives, contaminants, chemicals, environmental pollutants, adulterants, toxic colorants or preservatives etc, render the food unsafe for consumption. At any stage of food production, right from the primary production to processing, packaging and supplying, the quality of the food can be compromised. Every step, thus, poses a challenge for enforcement of food safety regulations.¹

Food adulteration has been reported widely in the country. In the present scenario, when food adulteration is so common, one cannot be sure of the quality of food he/she eats. Several manufacturing units have been accused of not adhering to the food safety norms and many more are still indulging in unfair practices and resort to supply of sub-standard quality food to the consumers. Our country has a large food sector which is unorganized that provides affordable food to the economically weaker sections. The street food is popular for its rich aroma and complex flavors but the hygiene and sanitary practices are a matter of grave concern. One of the most common adulterated foods is milk and milk products.²

¹ *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. As per the data available with WHO, contaminated food is the main cause behind spread of over 200 diseases including diarrhea and even cancers. The burden of food borne diseases on South East Asia is second highest after Africa. Contaminated food or drinking water is responsible for over two million deaths occur every year from.

² *Ibid.*

Food Safety is important for maintaining overall health and well-being. The Food Safety & Standards Act 2006 defines 'food safety' in section 2(q) thereof as an 'assurance that food is acceptable for human consumption according to its intended use'. Food safety ensures that food is safe for human consumption and involves handling, preparation and storage of food in ways that prevent food borne illness. Food safety considerations include the origins of food including the practices relating to food labeling, food hygiene, food additives and contaminants, as well as policies on biotechnology and food and guidelines for the management of import and export, inspection and certification systems for foods.³

Food safety is also important to prevent microbes and contaminants from getting into foods and water. Microbes or contaminants not only cause diseases to human beings, but they also destroy valuable nutrients in the food. Millions of people fall ill every year and may die as a result of consuming unsafe food. Proper food preparation can prevent most of the food borne diseases. Infections caused due to consumption of unsafe food have a bigger impact on populations with poor and fragile health, infants, elderly, etc, and are usually more severe and may be fatal.⁴

There are various opportunities for food contamination to take place. Food supply chain involves a range of stages including on farm production, harvesting, processing, storage, transportation, distribution etc. before it reaches the consumers and hence opportunities for food contamination increase. Further, globalization of food business is making the food supply chain longer and complicates food-borne disease outbreak investigation and product recall in case of emergency.⁵

Food contamination has far reaching effects beyond direct public health consequences - it undermines food exports, tourism, livelihoods of food handlers and economic development, both in developed and developing countries.⁶ Food safety is multi-sectoral and multi-disciplinary. To improve food safety, a multitude of different professionals need to work together, making use of the best available science and technologies. Different governmental departments and agencies, encompassing public health, agriculture, education and trade, collaborate and communicate with each other and engage with civil society including consumer groups.⁷

³ FSSAI, *Manual for Food Safety Officers* (2017).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

Food safety is a shared responsibility between governments, industry, producers, academia and consumers. Everyone has a role to play. Achieving food safety is a multi-sectoral effort requiring expertise from a range of different disciplines - toxicology, microbiology, parasitology, nutrition, health economics, and human and veterinary medicine. Local communities, women's groups and school education also play an important role. Consumers must be well informed on food safety practices. People should make informed and wise food choices and adopt adequate behaviors. They should know common food hazards and how to handle food safely, using the information provided in food labeling.⁸

II. FOOD SAFETY – A CONSTITUTIONAL MANDATE

Recognizing the importance of pure food, the Hon'ble Supreme Court in the case of *Centre for Public Interest Litigation v Union of India*⁹ had held that right to life also includes right to pure food and thereby raised the status of this right to that of fundamental right.¹⁰

Right to Life, the most important fundamental right of every citizen guaranteed under art 21 of the Constitution includes in it the right to healthy food and therefore any food article which is hazardous or injurious to public health is a potential danger to fundamental right to life.¹¹ Art 21 read with art 47 of the Constitution casts a primary duty on the state and its authorities to achieve an appropriate level to protect human life and health.¹²

Availability of food without insecticides and pesticides residues, veterinary drugs residues, antibiotic residues and other harmful substances is one of the essential consumer rights covered under the United Nations Guidelines on Consumer Protection adopted by United Nations in the year 1985. However, there are still many food articles such as milk, rice, meat, fish, vegetables, fruits containing harmful substances which can cause serious health hazards. Due to physiological immaturity of the children and greater exposure to soft drinks, they are uniquely susceptible to pesticides' effects.

⁸ *Ibid.*

⁹ (2013) 16 SCC 279. This writ petition dealt with the harmful effect of soft drinks on human health. While referring to various the provisions of FSS Act 2006, the Supreme Court held that there is a paramount duty cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under art 21 read with art 47 of the Constitution of India.

¹⁰ *Ibid.*

¹¹ *Food Safety and Standards Authority of India* <<https://www.fssai.gov.in/>> accessed 2 June 2020.

¹² Constitution of India, arts 21and 47.

The Supreme Court in its judgment in the abovementioned case¹³ also referred to art 12 of the International Covenant on Economic, Social and Cultural Rights 1966 to highlight the role of State in ensuring food safety.¹⁴

III. BACKGROUND TO PRESENT FOOD SAFETY LAW

Multiplicity of food laws, standard setting and enforcement agencies pervaded different sectors of food, which created confusion in the minds of consumers, traders, manufacturers and investors. Detailed provisions under various laws regarding admissibility and levels of food additives, contaminants, food colors, preservatives etc., and other related requirements had varied standards under these laws. The standards were often rigid and non-responsive to scientific advancements and modernization. Such ecosystem was having detrimental impact upon the growth of the nascent food processing industry and was not conducive to effective fixation of food standards and their enforcement.¹⁵

A subject group on Food and Agro Industries (appointed by the Prime Minister's Council on Trade and Industry in 1998), had recommended a comprehensive framework on food with a Food Regulatory Authority concerning both domestic and export market. Besides, a Joint Parliamentary Committee on Pesticide Residues had emphasized in its report in 2004, on the need to converge all existing food related laws and to have a single regulatory body in this area. A great concern over condition of public health and food safety in India was expressed by this Committee in its report. Thereafter, in April 2005, the Standing Committee of Parliament on Agriculture in its 12th Report recommended that the process for passing the much-needed legislation on Integrated Food Laws should be expedited.¹⁶

¹³ *Ibid.*

¹⁴ The International Covenant on Economic, Social and Cultural Rights 1966 states that, *Article 12*

(1) *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

(2) *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*

(a) *The provision for the reduction of the still birth-rate and of infant mortality and for the healthy development of the child;*

(b) *The improvement of all aspects of environmental and industrial hygiene;*

(c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

(d) *The creation of conditions which would assure to a medical service and medical attention in the event of sickness.*

¹⁵ Food Safety and Standards Act 2006, Statement of Objects and Reasons.

¹⁶ *Ibid.*

The then Member-Secretary, Law Commission of India was tasked to comprehensively review of the food laws of developed and developing countries and other relevant international agreements and instruments on the subject. The Member-Secretary after in-depth survey of the laws and policies of various countries, recommended that the approach of the new food law must include the overall perspective of promoting nascent food processing industry given its income and export potential.

Besides as per the international trend towards modernization, it was also suggested that an integrated food law should be passed after repealing all the existing acts relating to food. There was also intention to shift the approach of food law from regulation and control to self-regulation and focus was more on the responsibility of manufacturer, recall, genetically modified and functional foods, emergence control, food safety and good manufacturing practices and process control.¹⁷

In this background, the Group of Ministers constituted by the Government of India, held extensive deliberations and approved the proposed Integrated Food Law with certain modifications. The Integrated Food Law was named as 'The Food Safety and Standards Bill, 2005'. The main objective of the Bill was to bring out a single statute relating to food and to provide for a systematic and scientific development of Food Processing Industries.

It proposed to establish the Food Safety and Standards Authority of India (FSSAI), which would fix food standards and regulate/monitor the manufacturing, import, processing, distribution and sale of food, so as to ensure safe and wholesome food for the people. The Food Authority would be assisted by Scientific Committees and Panels in fixing standards and by a Central Advisory Committee in prioritization of the work. The enforcement of the legislation was to be through the State Commissioner for Food Safety, his officers and Panchayati Raj/Municipal bodies.¹⁸

The Bill *inter alia* incorporated the salient provisions of the Prevention of Food Adulteration Act 1954 and was based on international legislations, instrumentalities and Codex Alimentaries Commission (which related to food safety norms). In a nutshell, the Bill took care of international practices and envisaged an overarching policy framework and provision of single window to guide

¹⁷ Food Safety and Standards Authority of India <<https://www.fssai.gov.in/>> accessed 2 June 2020.

¹⁸ Food Safety and Standards Act 2006, Statement of Objects and Reasons.

and regulate persons engaged in manufacture, marketing, processing, handling, transportation, import and sale of food.¹⁹

The main features of the Bill were²⁰:

- (a) Movement from multi-level and multi-departmental control to integrated line of command;
- (b) Integrated response to strategic issues like novel/ genetically modified foods, international trade;
- (c) Licensing for manufacture of food products, which is presently granted by the Central Agencies under various Acts and Orders, would stand decentralized to the Commissioner of Food Safety and his officer;
- (d) Single reference point for all matters relating to Food Safety and Standards, regulations and enforcement;
- (e) Shift from mere regulatory regime to self-compliance through Food Safety Management Systems;
- (f) Responsibility on food business operators to ensure that food processed, manufactured, imported or distributed is in compliance with the domestic food laws; and,
- (g) Provision for graded penalties depending on the gravity of offence and accordingly, civil penalties for minor offences and punishment for serious violations.

The Bill was contemporary, comprehensive and intended to ensure better consumer safety through Food Safety Management Systems and setting standards based on science and transparency as also to meet the dynamic requirements of Indian Food Trade and Industry and International trade.²¹ Accordingly, the Food Safety and Standards Act 2006 (FSS Act) was passed in 2006 and FSSAI, established under this Act, became functional from January 2009. The FSS Act and Rules were notified and commencement of new regime started from August 2011. With the commencement of this Act, various central Acts²² relating to food safety were repealed.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Acts such as Prevention of Food Adulteration Act 1954, Milk and Milk Products Order 1992, Meat Food Products Order 1973, Vegetable Oil Products (Control) Order 1947, Edible Oils Packaging (Regulation) Order 1988, Fruit Products Order 1955 Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order 1967, etc, stood repealed with the passing of the FSS Act 2006.

IV. WORKING OF FSSAI AND MEASURES TO MAKE THE ENFORCEMENT MECHANISM MORE ROBUST AND EFFECTIVE

FSSAI is the apex regulatory body for food safety in the country and the Preamble to FSS Act *inter alia* seeks to lay down science-based standards for articles of food and ensure availability of safe and wholesome food for human consumption. Food safety is thus a specialized job and FSSAI being a science-based organization should be equipped with proper tools and capabilities and headed by someone with the requisite technical acumen and appropriate expertise to address the challenging task of food regulation for a country like India. Engaging man-power with technical skill and competence, therefore, becomes imperative for effective rendering of important mandate given to FSSAI.²³

The FSS Act was operationalized with the notification of Food Safety and Standards Rules 2011 and six Regulations²⁴ w.e.f. 5th August 2011. In the last few years of its coming into force, FSSAI has done a lot of ground work to effectively enforce the new food safety regime. However, based on the working of FSSAI and a review of the literature including the Report of Comptroller and Auditor General of India conducting the performance audit of the implementation of the FSS Act²⁵ and the Report of the Parliamentary Standing Committee on Health and Family Welfare²⁶ on functioning of FSSAI, it is imperative that various measures are required to be undertaken to strengthen the regulatory framework for robust enforcement of the FSS Act and the same are detailed in the succeeding paragraphs.

Firstly, there is an imperative need to scale up the advocacy and capacity building initiatives undertaken by FSSAI which would not only spread awareness of the new food safety regime amongst consumers but would also help industry comply therewith. Such efforts would not only minimize the enforcement task of food safety authorities but would also supplement the enforcement efforts and together would go a long way in ensuring availability of safe and wholesome foods. No doubt, FSSAI has taken a series of initiatives, yet the

²³ See (n 12).

²⁴ 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 Food, Food Recall Procedure, Import, Approval for Non-Specified Food and Food Ingredients and Organic Food.

²⁵ *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].

²⁶ *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.

advocacy and outreach efforts have not fructified in achieving the desired outcomes which is reflected from the low visibility of the new regime amongst the stakeholders.

Advocacy initiatives of FSSAI have achieved little results in educating the stakeholders of the new food safety regime and the capacity building initiatives undertaken by FSSAI are not sufficient. It is important to develop specific training modules for manufacturers, importers, sellers, distributors and FBOs. The training should be industry specific and for a shorter period. Regular trainings should be conducted for FBOs and small industries to adequately equip them to comply with the standards of the FSS Act.

In this regard, it is suggested that a combination of advocacy and enforcement initiatives by food safety authority would mutually supplement each other in attaining the objectives of the FSS Act. Hence, the FSSAI should start its outreach activities with schools so that children can be imparted adequate knowledge about importance of healthy foods and food safety.²⁷

During a survey conducted recently²⁸ it was found that many FBOs were operating without obtaining license/registrations. Particularly, in the rural areas and informal sectors, the compliance was almost non-existent. The unregistered FBOs pose a threat to public health. A robust and reliable database on FBOs needs to be prepared for effective monitoring of FBOs. Food authorities need to conduct surveys in this regard to create a reliable database of FBOs in all the areas their jurisdiction which will also help in proper implementation and enforcement of the law.

FBOs are the backbone of the food safety regime and it is the responsibility of the FSSAI to ensure that their problems and queries are immediately solved. Accurate knowledge about food safety practices and procedures will help in better compliance by FBOs which will in turn ensure production of safe food. FSSAI should provide Guidance Notes and a mechanism for consultations so as to address the queries and concerns of FBOs relating to compliance with

²⁷ FSSAI has launched various outreach programmes 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'.

²⁸ Survey conducted by NLU Delhi in the National Capital Region under UGC funded project in the area of Food Safety and Standard Act.

law. A pro-active, rather than reactive, approach would be in alignment with the philosophy of new law.

For success of a regime, there is also a need that decision-making body should be manned by experts. FSSAI should be headed by people experts in the field of food safety and scientists who should run the authority with bureaucratic and administrative support. Professionals with domain expertise should be selected as Chairman and CEO for this regulatory responsibility. Therefore, there is proper review of the process of appointments. Besides, section 5, FSS Act mandates appointment of two representatives from consumer organizations who shall be Members *ex officio*.

This provision strengthens consumers to be heard/right to representation at every decision-making authority dealing with consumer issues. For strengthening right to be heard of consumers, the above vacancies should be given proper publicity in newspapers so that consumer activists working for consumer welfare may be appointment. Most of the time it is observed that such vacancies go vacant due to non-availability of candidates.

The data available on the website of FSSAI indicates a huge gap between the total number of cases filed and total number of convictions as the rate of conviction seems to be quite low. This indicates that FBOs involved in supplying adulterated or misbranded food products are not successfully prosecuted and therefore, they get away easily without punishment.

Licenses for FBOs should not be issued/ renewed in a mechanical manner. A well-established mechanism should be developed for scrutinizing such FBOs who apply for licenses or renewal thereof. FSSAI should examine the FBO's previous track record with regards to compliance with the FSS Act. Any previous non-compliance should be taken seriously. Expediting the development of an e-portal that will create a compliance history of food business which the Food Authority can refer while renewing licenses, would greatly help in this process of due diligence, before grant or renewal of licenses.

Food safety infrastructure has lack of uniformity across the country. In some areas, food safety authorities including appellate tribunal and food safety departments have not been established. In some states, either there are no laboratories or if they are in place, they are not equipped with functional equipments and trained manpower. Therefore, there is a need of a uniform food safety regime in all the states. Food testing laboratories across the country are not following uniform procedures and methodology due to which lab test results are inconsistent. There is a need for the food safety regulator (FSSAI)

to oversee and ensure that uniform procedure and guidelines are followed by all laboratories.

Many of the harmful components and contaminants enter the food system at the time of primary production whereas such primary food production is exempted from the coverage of the law. Exclusion of farmer/fisherman or farming operations including fisheries, livestock from the FSS Act is a major challenge and lacuna in the Act because unless the raw material is of good quality, the good quality of final product cannot be ensured. The legislature needs to revisit this legislative vacuum by making appropriate changes in the law.

There is very poor visibility of food safety regime amongst vendors operating in unorganized sector, it is important for the manufacturers/importers/distributors to purchase/sell food items from/to licensed/registered sellers only. This would not only spread the reach of law up to the last mile, but would also help realize such vendors about the importance and benefits of compliance. It is recommended that the State Licensing Authorities and Food Safety Officers (FSOs) should ensure through timely inspections that these conditions are being followed by FBOs.

Inspections form the core of a food safety network and therefore FSSAI or the State Food Authorities should conduct inspections before issuance of any license or make inspections mandatory post-issuance of license/registration. Very fewer random checkings are conducted by food officials. In a country like India that has a large unorganized food sector with many small food businesses; it becomes more important to conduct inspections in a time bound manner.

The field officers should inspect the premises of FBOs and guide the manufacturers to maintain proper hygienic conditions. There should be surprise inspections. Every effort must be made so that the FBOs do not evade the inspection process. Further, the inspection process should be streamlined to ensure that the same is used to regulate and monitor food safety and not harass FBOs.

The analysis of the sample in the food testing labs will be successful only when the sample that is picked up by a FSO is properly stored and transported to the laboratory. The guidelines on sampling have to be followed. The FSOs have to be trained, qualified in the procedure of lifting, keeping and sending samples properly so that the samples that are sent to the labs give accurate results. It is necessary to specify a time limit by which a FSO should submit the samples to the Food Analyst for laboratory analysis. In this regard, it is commendable that FSSAI has prepared a comprehensive manual for guidance

of food safety officers. The same needs to be constantly and dynamically updated based upon the feedback received from field officers and stakeholders.

FSSAI should put in place a comprehensive network of certification and accreditation agencies to certify and audit food laboratories. Most food labs including NABL accredited (the National Accreditation Board for Testing and Calibration Laboratories) lack facilities for testing food articles on all parameters. For ensuring food safety, the food samples have to be tested for toxic chemicals, heavy metals contamination, bacterial contamination, pesticide residues, etc; therefore, it is important that the laboratories are functional, well equipped and adequately staffed.

FSSAI should prepare a model food safety compliance manual for the benefit of FBOs particularly those who are operating in informal and unorganized sector of the economy. An easy to understand compliance programme in different local languages would greatly help the FBOs in understanding the nuances of the new law. An effective compliance programme which is regularly updated to meet the emerging and evolving regulation is key to successful corporate governance. It should broadly have the following three main objectives: prevention of infringements, promotion of a culture of compliance; and encouraging good corporate citizenship.

Further, absence of a mechanism to monitor NABL empanelled labs is a matter of grave concern as the reliability and accuracy of results of testing for various parameters remain questionable. The very purpose of accreditation of labs is defeated if they are not able to execute their mandate efficiently. The FSSAI should inspect, monitor and investigate these labs at periodic intervals so that their efficacy in testing samples on the requisite parameters is maintained.

Despite passing of more than a decade of enactment of FSS Act, a regulatory vacuum exists in the import of GM Food. FSSAI has neither put the regulations for such approvals in place nor taken any measures to stop the imports. The FSSAI should urgently finalize 'Guidelines for safety assessment of food derived by GM Technology'. FSSAI should also work to upgrade the GM food testing infrastructure and make use of the already present laboratories in the country and equip them with latest technology. Whereas, for organic food, the FSSAI has recently framed regulations which makes it mandatory for the domestic producers to certify their food as organic. This will remove non-certified/fake products from the market. A separate certification mechanism should be in place for small farmers to minimize their costs.

FSSAI should take steps to ensure that every eatery including hotels, fast food chains, restaurants and e-commerce food sellers should provide all statutory information concerning packaging and labeling of food item on menu cards, advertisement and display panels and also mandatorily print calorie information on their menu so that the consumer makes informed choice and healthy eating is promoted.

Multiplicity of standards and certification from different agencies is a cumbersome compliance and process for the industry. There is a need to address the existing overlap between standards. BIS and AGMARK Standards should be reviewed to explore the extent to which they can be merged into the FSS Act/Standards/Regulations. The main idea behind FSS Act was consolidation of food laws but varied standards defeat this very idea. It is important to have only one certification procedure under the FSS Act.

Any changes in the Packaging and Labeling regulations should be timely disclosed to the FBOs so that they get enough time to conform to the changed standards. The regulations should be implemented in a phased manner rather than haphazardly. Proper training to the FBOs is essential for enforcement of the labeling norms.

The FSSAI should work on labeling based on colors and symbols. The traffic light labeling system as practiced in other countries for packaged food items in India may be adopted. This labeling will enable people specially the less educated consumers to have a better idea of the nutritional content of the packaged foods. Food with high salt, sugar and fat content will be marked red which is a sign for unhealthy food, amber for moderate, and green for low (healthy).

Food safety enforcement is a shared responsibility and requires constant interactions and engagements amongst all stakeholders. The FSSAI needs to upgrade its level of engagement with the market participants so that compliance and enforcement burdens can be reduced. Steps should be taken to encourage voluntary compliance/self-regulation which would help in reducing enforcement frictions and would, in turn, incentivize the firms to introduce innovative food products through faster approvals.

Consumer protection cannot be protected by only focusing sampling and analyzing the food products at final stage. It is important to have in place *ex ante* preventive measures at all stages of the food production, distribution and retailing chain.²⁹ This helps in early identification and detection of unsafe

²⁹ *Food Safety and Standards Authority of India* <<https://www.fssai.gov.in/>> accessed 2 June 2020.

food products well before they reach the market at the final retail stage. The food safety plan should focus its shift to preventive stage to minimize the enforcement efforts and attendant health hazard by blocking entry of unsafe food in the retail market. The FSSAI should adopt this approach in prioritizing its enforcement tasks.

Preserving traditional food is also important to maintain the cultural heritage of the country. A modern blend of science would help upgrade the knowledge of traditional food without diluting the culinary heritage. It is necessary for FSSAI to formulate vertical standards for traditional food which can be developed.³⁰ Regulation of small unorganized players such as street vendors is a challenging task in a vast country like India. The informal and unorganized-nature of such players further accentuates and strains the enforcement efforts. A number of awareness initiatives need to be undertaken by FSSAI to sensitize them about the importance of food safety. The entire approach should be persuasive than coercive.

E-commerce is one more area where FSSAI should remain watchful of the fast evolving landscape of new business practices adopted by online food aggregators. Proper compliance of food safety norms is important in e-commerce as the buyers do not directly come in contact with the sellers. Role of consumer movement in ensuring food safety is also very important. Civil society and consumer movement are crucial not only for ensuring accountability of erring FBOs but also for creating awareness about food safety issues. FSSAI should help the efforts of civil society in this regard by making them partners in its outreach activities.

Lastly, FSSAI should use extensive use of digital media for its outreach activities instead of adopting the traditional modes. This would not only minimize the cost of advocacy efforts but would also enhance their efficacy in fast emerging digital economy.

V. CONCLUSIONS

Mahatma Gandhi had once said, 'It is health that is real wealth and not pieces of gold and silver'. This rings true as safe and nutritious food is the foundation of good health. Food affects us all in myriad ways. Food, in its varied forms, is not just a means of sustenance - it is a central, defining aspect of cultures across the world. Apart from nutrition and taste, a less glamorous but perhaps more important part of food is the safety standards that people adhere

³⁰ *Ibid.*

to while preparing, selling, serving and eating food. Unsafe food is being perceived as a growing global threat today.³¹

India as a welfare State has primary responsibility to take a key role in establishing a robust food safety mechanism for the welfare of its citizens but time and again the State has failed to address the same. The policies and the existing food laws are inadequate and are weakly enforced. This poor implementation of the Food Law has resulted in rampant food adulteration and various food scandals. Substandard quality food has been reaching the market and causing irreparable damage to public health. The fundamental right to pure food has been compromised and long since forgotten. Food Safety, nutrition and food security are intricately interlinked. Poor food safety infrastructure inadvertently poses a threat to public health as nutritious and safe food is fundamental to good health.³²

The passing of the FSS Act led to the establishment of FSSAI. It marked a paradigm shift from a multi-level to a single line of control with focus on self-compliance rather than a pure regulatory regime. It also introduced uniform licensing/registration regime across the Centre and the States. One of the major responsibilities of the FSSAI is the development of science based food standards by harmonizing the same with Codex Standards, wherever possible. The setting of food standards is undertaken through various Scientific Panels and the Scientific Committee of the FSSAI and final approval by the Authority itself.³³ The FSS Act envisages regulation of manufacture, storage, distribution, sale and import of food to ensure availability of safe and wholesome food for human consumption and for consumers connected therewith.³⁴

This modern legislation provides for decentralization of licensing for food products. It empowers States to issue Registration and State License. Effective, transparent and accountable regulatory framework is the avowed objective of the law. It has well-defined functions, powers and responsibilities of various food authorities, bodies and committees. It emphasizes on gradual shift from regulatory regime to self-compliance.³⁵ Besides, it also provides for regulation of food imported in the country; provision for food recall; surveillance;

³¹ Pawan Agarwal, 'Vision Statement: "FSSAI Ready with Roadmap for the Future"' in *Food Safety and Standards Act 2006: Commemorating a Decade* (FSSAI Publication, 2006).

³² *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* as presented to the *Rajya Sabha* on 9 August 2018.

³³ *Food Safety and Standards Authority of India* <<https://www.fssai.gov.in/>> accessed 2 June 2020.

³⁴ *Food Safety and Standards Act 2006*, Long Title.

³⁵ *Food Safety and Standards Authority of India* <<https://www.fssai.gov.in/>> accessed 2 June 2020.

envisages large network of food laboratories; new justice dispensation system for fast track disposal of cases; provision for graded penalties and consistency between domestic and international food policy measures without reducing safeguards to public health and consumer protection. Lastly, the law emphasizes on training and awareness program regarding food safety for business operators, consumers and regulators.³⁶

A new regulatory regime, particularly when it makes a significant departure from the previous regime, requires massive capacity building initiatives by the regulator to educate the stakeholders in order to make the enforcement robust. This is a work in progress. It is hoped that the legislature would suitably revisit the law in light of the difficulties faced and experience gained including the suggestions and recommendations made in this paper.

³⁶ *Ibid.*