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**FOOD SAFETY LAWS IN INDIA: A CRITICAL ANALYSIS OF THE EXISTING
LEGAL FRAMEWORK**

Anurag Bhardwaj

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Contents

Volume I 2018 Shimla Law Review

<i>Articles</i>	<i>Page</i>
1. Address of Hon'ble Justice Shri Ranjan Gogoi on the Occasion of Second Orientation Programme, HPNLU Shimla	1
2. State and Equality from Sadācār(a) to Bazaar: Searching Alternative Impressions in Light of the Sanskriti Litigation <i>Chanchal Kumar Singh</i>	7
3. Right to Privacy in a 'Posthuman World': Deconstructing Transcendental Legacies & Implications of European Renaissance in India <i>Mrityunjay Kumar Singh</i>	52
4. The Unending Conundrum of Extra-Territorial Trade Measures and the 'Green Provisions' of the GATT: Deconstructing the Existing Approaches <i>Utkarsh Kumar Mishra</i>	89
5. Administrative Adjudication: A Comparative Understanding With Special Reference to Tribunals <i>Alok Kumar</i>	105
 <i>Notes and Comments</i>	
6. Standards of Refugee Protection: International Legal Framework and European Practice <i>S.S. Jaswal</i>	124
7. Contours of Right to Privacy in the Information Age: Some Random Reflections on the Puttaswamy Judgment <i>Meena S. Panicker</i>	136
8. In Re Muslim Women's Quest for Equality: Analysis of the Judgement of Supreme Court on Issues of Fundamental Rights and Personal Laws <i>Ritesh Dhar Dubey</i>	146
9. Principle of Proportionality: Extent and Application in Industrial Disputes <i>Namita Vashishtha</i>	158

10.	Biomedical Technology and Human Rights: The Emerging Milieu in Human Protection <i>Navditya Tanwar</i>	170
11.	Right to Freedom of Expression: An Evaluation of Theories of Self-fulfilment and Democratic Participation <i>Meera Mathew</i>	179
12.	An Anodyne Mode of Negotiation: Mediation in Dissension of Indian Family Matters <i>Rattan Singh & Shikha Dhiman</i>	190
13.	Formative Concept of 'Women Criminality' in Sexual Assault under IPC and POCSO: An Investigation into Judicial Decisions and Legislative Initiatives <i>Santosh Kumar Sharma</i>	199
14.	Appointment of Judges in India through Collegium System: A Critical Perspective <i>Varun Chhachhar</i>	208
15.	Analyzing the Role of Press in Bringing Dalits of India in the Social Mainstream <i>Sarita</i>	218
16.	Bid-Rigging and Role of Competition Commission of India: With Special Reference to its Impact on Infrastructure Development <i>Mahima Tiwari</i>	225
17.	Strategic Corporate Social Responsibility: Avenues by Jindal Steel and Power Limited <i>Avantika Raina</i>	235
18.	Food Safety Laws in India: A Critical Analysis of the Existing Legal Framework <i>Anurag Bhardwaj</i>	244

Food Safety Laws in India:

A Critical Analysis of the Existing Legal Framework

Introduction

In today's money minded environment, adulteration in food items has increased drastically. We daily consume food items which are unsafe and impure. There are several causes of adulteration. Some of the most prominent are: Poor buying practices of consumers, bargaining and taking cheaper substitute, easy availability of adulterants, easy access of bail, absence of a strong and collective effort of administration, shop keepers give various facilities like credit facility, free home delivery which strengthens faith on consumer of a shop keeper. Unawareness of consumers about hazards of adulteration is main cause for adulteration and they pay severely in money and health. The menace of unsafe food might increase as the unpacked food items are tax free under the GST rules¹ whereas packaged food are taxed at five percent.²

Laws on Food Adulteration

Indian Penal Code, 1860: Under sections 272 and 273, adulteration of food with intention to sell is punishable with imprisonment of six months and fine up to Rs. 1000. Various states like U.P., West Bengal and Odisha have enhanced the maximum punishment up to life imprisonment by enactment of special state laws. But the act is liable to be punished only when adulteration results in the food article becoming "noxious". According to Oxford English Dictionary, noxious means "harmful, poisonous or very un-pleasant."³

In *Ram Dayal v. King Emperor*⁴, Privy Council held that the mixing pig fat with ghee would be noxious to the religious and social feeling of both Hindus and Muslims, still it is not punishable (as it is not noxious to the health). Similarly, according to *Dhawa v. Emperor*⁵, mixing water with milk is no offence, as the mixture is not noxious. In *Emperor v. Barumal Jawarnal*,⁶ it was held that selling wheat containing a large admixture of

¹ Ahamad Fuwad, *GST Rates: How GST Impact Prices of Goods, Complete List of Items and Their Goods and Services Tax*, India TV (July 01, 2017). Available at: <https://www.indiatvnews.com/business/india-goods-and-services-tax-complete-list-of-items-and-their-gst-rates-388359>.

² *Id.*

³ English Oxford Living Dictionaries, available at: <https://en.oxforddictionaries.com/definition/noxious>.

⁴ A.I.R. 1925 All 214.

⁵ A.I.R. 1926 Lah 49

⁶ (1904) 1 Cr.L.J. 618.

extraneous matters is not an offence, as foreign matter is separable and wheat is not consumed in its existing condition but first washed manually.

It was difficult to prove intention to sell. Even if crime was proved, punishment imposed was minimal and in maximum cases only fine of maximum Rs.1000 was imposed which was easy for culprits to pay who made more, easy money as against fine which was one-time affair.

Code of Criminal Procedure, 1973

Under Code of Criminal Procedure offence is non-cognizable, bailable and non-compoundable. Under section 455(2) of the Cr.P.C., "The Court may order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed." Section 360 also entitles the convicted person to be released on probation on after admonition.

The Prevention of Food Adulteration Act, 1954

It had 25 sections. Act provided for Central Committee for Food Standards⁷, Central Food Laboratory⁸, Public Analysts⁹, and Food Inspectors¹⁰ etc.

Section 2(i) of the act defined "adulterant" as any material which is or could be employed for the purposes of adulteration.

Loopholes in the Prevention of Food Adulteration Act, 1954:

1. There was no compulsory standardization of food products. Food inspectors were not required to be trained. They usually did not know about quantity of sample and preservative to be taken and mixed and hence samples were ordinarily destroyed by the time of testing. Right was given to any person to get sample tested under section 12. But he had to inform the seller the purpose and had to pay the requisite fees to get the analysis done. No guilty trader will give sample to customer. The Act did not differentiate between the various categories of adulteration and provided for same quantum of punishment. There was lack of coordination between food inspector and public analyst who were not legal persons and the public prosecutor who was not technical person. In *Food Inspector v. Noor Mohammed*¹¹, it was held "The responsibility of the Food Inspector is only to send the sample not later than the immediately succeeding working day to the Public Analyst. The method in which he has to send it is not specified in section 11(3) of the Act, this may prove to be a difficult situation if 2 or more Inspector are involved in a case and they act in a different manner to each other."

⁷ S.3, The Prevention of Food Adulteration Act.

⁸ S.4, The Prevention of Food Adulteration Act.

⁹ S.8, The Prevention of Food Adulteration Act.

¹⁰ S.9, The Prevention of Food Adulteration Act.

¹¹ 1989 (1) F.A.C. 371.

2. The *procrustean cruelty* is clearly evident in provisions of section 16. While sentencing, the judge has no discretion as there is provision of minimum punishment. On the contrary, a burden is placed on him to state in judgment the special and adequate reasons as to why a particular punishment is meted out.
3. Moreover, the magistrates usually handling criminal cases are not specialists in food adulteration matters and at the same time they have the mindset of giving benefit of any doubt or any inordinate delay to the accused, which spoils the prosecution case and fails the very object of act.

The Supreme Court in the case of *Parmanand Katra v. Union of India*¹² held that right to health and medical care is a fundamental right covered by Article 21 since health is essential for making the life of workmen meaningful and purposeful and compatible with personal dignity. The state has an obligation under Article 21 to safeguard the right to life of every person, preservation of human life being of paramount importance. It is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished.

Similarly in *Centre for Public Interest Litigation v. Union of India*,¹³ the Supreme Court observed, "The right to life and human dignity under art 21 of the Constitution also incorporates the right to have food articles and beverages which are free from harmful residues such as pesticides and insecticides, that food articles which are harmful and injurious to public health had the potential of striking at the fundamental right to life guaranteed by the Constitution and it was the government's responsibility to take steps for protection of life and health."

The Food Safety and Standards Act, 2006

The Food Safety and Standards Act, 2006 provides for Food Safety and Standards Authority of India¹⁴, Chief Executive Officer¹⁵, Central Advisory Committee¹⁶, Commissioner of Food Safety of the State¹⁷, Food Safety Officer¹⁸, Food Analyst¹⁹, Improvement Notices²⁰, Prohibition Notices²¹, Compensation²² Etc.

¹² 1989 A.I.R. 2039.

¹³ (2013) 16 S.C.C. 279.

¹⁴ S.4, The Food Safety and Standards Act, 2006.

¹⁵ S.9, The Food Safety and Standards Act, 2006.

¹⁶ S.11, The Food Safety and Standards Act, 2006

¹⁷ S.30, The Food Safety and Standards Act, 2006

¹⁸ S.37, The Food Safety and Standards Act, 2006.

¹⁹ S.45, The Food Safety and Standards Act, 2006

²⁰ S.32, The Food Safety and Standards Act, 2006.

²¹ S.33, The Food Safety and Standards Act, 2006.

²² S.65, The Food Safety and Standards Act, 2006.

The word “adulterated” in Prevention of Food adulteration Act, 1954 has been substituted with “unsafe” in the Food Safety and Standards Act, 2006 which is wide than earlier definition.

The Chief Executive Officer shall be responsible for the day-to-day administration of the Food Authority.

Every food business operator shall ensure that the articles of food satisfy the requirements of the Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.²³ If a food business operator considers or has reasons to believe that a food which he has processed, manufactured or distributed is not in compliance with this Act, or the rules or regulations, made thereunder, he shall immediately initiate procedures to withdraw the food in question from the market and consumers indicating reasons for its withdrawal and inform the competent authorities thereof.²⁴

Changes Brought by Food Safety and Standards Act, 2006

It provides for compulsory standardization of food products. The liability will be civil and easier to prove. Special responsibility is on food business operator to ensure that food articles comply with necessities of act at all stages of production, etc.²⁵

Being enthused from Codex, its standard will equate the global level quality. For first time compensation is there for consumer who suffer health hazard due to food product, apart from penalty or punishment to the guilty.²⁶ The fine is enhanced to Rs.10, 00, 00. Now only one Ministry will look into the whole affair. The penalties are graded under a system depending upon the seriousness of the offence. For adjudicating purpose, adulteration is divided into two classes i.e. one that is hazardous to the health and other that is not hazardous to the health. Adulteration hazardous to the health will be referred to Special Court. Every business operator should have license or registration. Now improvement notice can be issued for non-compliance with standards.²⁷ There is a network of checks starting from Food Safety Officer, the Adjudicating Officer, Food Safety Appellate Tribunal, State Commissioner of Food Safety, Special Courts (in case of imprisonment), and High Court. The Act will envelop the Food Security Act, 2009 i.e. include food distributed through Public Distribution System.

The Food Safety and Standard Rules, 2011 provides for enforcement structure and procedures like qualifications, powers and duties of officers like Designated Officer, Food Safety Officer, Food Analyst, manner of taking extracts, sampling and analysis etc., adjudication, appeal etc.

²³ S.26, The Food Safety and Standards Act, 2006.

²⁴ S.27, The Food Safety and Standards Act, 2006.

²⁵ S.26, The Food safety and Standards Act, 2006.

²⁶ S.65, The Food safety and Standards Act, 2006.

²⁷ S.32, The Food safety and Standards Act, 2006.

Latest Developments

The Food Safety and Standards Authority of India issued a handbook named “The Pink Book- Your guide for safe and nutritious food at Home” wherein all do’s and don’ts are prescribed for food namely how to select and purchase food, storing raw food, preparing and cooking food, serving food, eating healthy food, storing cooked food, packing food, maintaining hygiene and sanitation etc.²⁸

Similarly, the Food Safety and Standards Authority of India issued a handbook named DART- Detect Adulteration with Rapid Test which tells common quick tests to detect adulteration in some household items.²⁹

During 2015-2016, total of 70,310 samples were received from states across India (not all states) and 65,057 samples were analysed. 14,179 samples were found to be adulterated. Civil and criminal proceedings were launched in 8102 and 1643 cases respectively. There were conviction in 105520 cases and penalties totalling Rs. 21,01,98,436 were imposed.³⁰ However, during 2016-17, total 69,807 samples were received all over India for analysis. However, only 60,671 food samples were analysed. Out of these 60,671 samples, 14,130 samples were found adulterated or misbranded. Criminal and Civil proceedings were launched in 1248 and 9392 cases respectively. There was conviction in 1,596 cases while penalties totalling Rs. 14,80,05,378 were imposed in 3,978 cases.³¹ Thus we can see a drop in number of samples received, number of samples analysed, civil and criminal proceedings initiated and penalties imposed etc. which is not a good sign.

Loopholes in the Food Safety and Standards Act, 2006

The Act emphasis primarily on processing industry and completely ignoring the unorganized sector. Primary food is included in the act, but Agriculture Sector which produces primary food is not included in the act. The provisions authorizing officers to grant license, penalty may result in harassment and corruption.³² Limitation is only one year is there to bring the case in the note of authority in the Act. There are many undefined expressions that might increase the litigations owing to ambiguous meaning like, “food manufacturing practices”, “safe and wholesome food for human consumption”, and “good hygienic practices”. Excepting packaged drinking water, potable water being used in manufacturing and processing of majority of the articles of food is not included in the Act.³³ Finance supply is minimal. According to the Financial

²⁸ ‘The Pink Book- Your Guide for Safe and Nutritious Food at Home’, available at: <http://fssai.gov.in/home/Pink-Book-and-DART.html>.

²⁹ ‘DART-Detect Adulteration with Rapid Test’, available at: <http://foodsmart.fssai.gov.in/DART.pdf>

³⁰ Annual Report, available at: <http://www.fssai.gov.in/home/FSSAI-Annual-Reports.html>.

³¹ *Id.*

³² S.69(1), The Food Safety and Standards Act, 2006.

³³ Prevention of Food Adulteration Act 1954, expressly excludes water.

Memorandum of the original Bill,³⁴ the total sum allocated for the purpose is ten crore rupees out of which seven crore was utilized for infrastructure of the food authority and remaining money is for establishment of laboratories, which is negligible. Cost which State Governments shall give are not estimated. Immediately adopting of global standards, without assisting or preparing domestic food sector to face challenges, the realization will be tough. Moreover the Food Safety and Standards Act is packed with bureaucrats instead of technocrats.³⁵ Many states which banned tobacco have banned Gutka, Paan Masala and not cigarettes, bidis etc. which are major source of health hazard. Act does not deal in detail with pesticides added while harvesting of crops.

The constitutional validity of the Act and its various sections has been unsuccessfully challenged on being ultra-virus of Article 14, 19, 21 of the Constitution of India, 1950 in cases like:

1. *The Association of the Traders carrying the Food Business of various Food items v. Union of India*³⁶
2. *M/s Pepsico India Holdings (Pvt) Ltd. and Another v. State of U.P. and Others*

In *Nestle India Limited v. The Food Safety and Standards Authority of India* (the Maggi Case), it was held that Principles of natural justice have not been followed before passing the impugned orders and particularly when the Petitioner - Company, one day prior to the impugned orders, had given a Press Release that it had recalled the product till the authorities were satisfied about safety of its product. The Food Laboratories where the samples were tested were not accredited and recognized Laboratories as provided under the Act and Regulations for testing presence of lead and therefore no reliance could be placed on the said results.³⁷

Suggestions

Hawkers should also be represented from their organization in the Food Authority. Food chain should be traced from farm to the marketing and consumption of products. But because of farmers being excluded from purview of the Act, the tracing is very difficult and up to market only.

Food adulteration being a grave socio-economic offence, the high officials like CEOs and MDs of the company should be made responsible and answerable. Laboratory should be established in each district. Food recall orders should be published in media to make citizens aware against unsafe food. Compulsory black-listing of the enterprise and publication should be there when held guilty of the offence more than once. Practices of adopting Confidence-building Measures among consumers are suggested by the Codex. This may be achieved by pasting a logo which displays that food products are

³⁴ The Food Safety and standards Bill, 2005 with Financial Memorandum was introduced in the Lower House on May 22, 2005.

³⁵ K.D. Raju, THE FOOD SAFETY AND STANDARDS ACT, 2006 (2007)

³⁶ Writ Petition No.477 of 2012.

³⁷ Writ Petition (L) No. 1688 of 2015.

safe to consume. This logo should be of such kind that even illiterate person can understand it apart from literate person, can be seen easily and this logo should be made mandatory to attach on food articles failing which food items shall not be allowed to be entered in market. Along with tobacco packets, cigarettes and bidis should also be banned as it contain more than 700 harmful chemicals and its smoke also effects person nearby the smoker. People might oppose it as lakhs of tobacco farmers of Andhra Pradesh, Telangana, Tamil Nadu, and Kerala might be adversely affected by it, but hard and harsh measures must be taken for a healthy society. Tobacco farmers can be encouraged and financially assisted by state authorities to grow another crop and gradually phasing out tobacco farming except for medical purposes, that too strictly monitored. Public at large should be made aware about Food Safety Law and rules thereunder. A mass campaign is needed on the footprints of Right to Information Act and Consumer Act in the sense that even non legal person knows very well about Right to Information Act and Consumer Act. Same is required to be done for food safety law.

Conclusion

All these legislations on food safety present a very rosy picture of goal to be achieved but unfortunately, in the area of food safety regulation, both the complicated nature of food science and the high threshold requirement for technical expertise further exacerbate the ineffectiveness of law enforcement, especially at the level of local governments.

Food safety standards in developing countries may actually attain those of international standards, but the lack of technical and institutional capacity to control and ensure compliance essentially makes the standards less effective. Inadequate technical infrastructure, in terms of food laboratories, human and financial resources, national legislative and regulatory frameworks, enforcement capacity, management and coordination — weakens the ability to confront these challenges. Indeed, food safety efforts in developing countries are hampered by inadequate capacity in different aspects of basic infrastructure (such as food-science laboratories and border-inspection stations), insufficiently trained personnel, unproductive legal systems, and a relative lack of financial resources and technical expertise. Consequently, food safety systems in developing countries are “reactive rather than proactive.” The deficiency is further exacerbated by the often poor management of resources, a fragmented regulatory structure where multiple agencies are involved, a lack of overall strategic planning, and underdeveloped compliance policies. Besides suffering from such a state of affairs, most developing countries are not able to participate in the Codex international “food standard”-setting process, which produces and changes international food standards frequently. Therefore, developing countries often face difficulties in assuming responsibility and accountability for food safety and consumer health protection.

But a road has been shown which if travelled will glorify the future and WHO's understanding of the fact that “voluntary compliance provides a stronger basis for public health measures than legal compulsion” will help to cover the path and will

ultimately achieve WHO's fundamental objective, as proclaimed by Article 1 of its Constitution, "attainment by all peoples of the highest possible level of health."

- *Anurag Bhardwaj**

* Research Scholar, Faculty of Law, University of Delhi. Email: anuragbhardwajdelhi@gmail.com