

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Analysis of Food Safety and Standard Act, 2006 with respect to Right to Health

RIYA SARKAR¹

ABSTRACT

Right to health an inalienable right to guarantee the same the constitution of India has incorporated the same in the fundamental rights and the Directive principles of the state policies. The Food Safety and Standards Act (FSSA) is a comprehensive legislation aimed at ensuring the safety and quality of food products in India. The Act includes a number of rules that govern how food items are made, stored, distributed, and sold in order to protect the public's health. This analysis focuses on the FSSA's relationship with the right to health. The right to health is a fundamental human right recognized by international law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which India is a signatory. The right to health includes access to safe and nutritious food, which is a basic requirement for the maintenance of good health. The FSSA aims to promote and protect the right to health by ensuring that food products are safe and of good quality. The Food Safety and Standards Authority of India (FSSAI) is established under the Act and is tasked with establishing standards for food items, regulating their production, storage, distribution, and sale, and enforcing adherence to the requirements. The FSSA also provides for the establishment of a Food Safety Appellate Tribunal, which provides an effective and expeditious mechanism for the resolution of disputes related to food safety. The Act empowers the FSSAI to order the recall of unsafe food products and to take appropriate action against manufacturers, distributors, and sellers of such products. In conclusion, the FSSA is a significant legislation that plays a crucial role in safeguarding the right to health in India. The Act's provisions ensure that food products are safe and of good quality, which is essential for maintaining good health. However, there is a need for effective implementation of the Act's provisions to ensure that the right to health is protected in practice.

Keywords: *right to health, FSSA, establishments, regulations.*

¹ Author has Pursued LL.M. from Christ (Deemed to be University) Bangalore, Karnataka, India.

I. INTRODUCTION

Food safety is a critical issue that affects public health and wellbeing. The consumption of contaminated or unsafe food can lead to a range of illnesses and diseases, including foodborne illnesses, food poisoning, and other health complications. To address this issue, many countries have implemented food safety regulations and standards aimed at ensuring the safety and quality of food products. In India, the Food Safety and Standards Act (FSSA) was enacted in 2006 to regulate food safety and standards. The Act aims to protect the health of consumers by ensuring that food products are safe, wholesome, and of the desired quality. The FSSA establishes a framework for food safety standards, food testing, inspection, and certification.

The right to health is a fundamental human right recognized by international law. It is enshrined in the Universal Declaration of Human Rights and other international treaties and conventions. The right to health includes access to safe and nutritious food, which is essential for the maintenance of good health. The FSSA is an important piece of legislation that upholds the right to health by ensuring the safety and quality of food products. The Act establishes a comprehensive regulatory framework for food safety and standards, which includes provisions for food safety testing, inspection, and certification. By ensuring the safety of food products, the FSSA helps to protect the health of consumers, and thus, upholds their right to health.

In this context, it is important to analyse the Food Safety and Standards Act with respect to the right to health. This analysis can help to identify gaps in the current regulatory framework and suggest ways to strengthen food safety regulations to better protect the health of consumers.

The history of food safety and standards act with respect to right to health dates back to the early 20th century when foodborne illnesses were rampant and the lack of regulation and oversight over the food industry was causing widespread public health concerns. In the United States, the Pure Food and Drug Act of 1906 was the first federal law to regulate the safety and labelling of food products. This act was the result of the public outcry against the unethical practices of food manufacturers who were using harmful preservatives and additives in their products. The act was later amended in 1938 to create the Food, Drug, and Cosmetic Act, which established the Food and Drug Administration (FDA) and gave it the power to regulate the safety and quality of food products.

To assemble and streamline the nation's food safety rules, India established the Food Safety and Standards Act (FSSA) in 2006. The FSSA was created to set standards for food products, control their manufacturing, storage, distribution, sale, and import, and assure their safety and quality. The act also establishes the Food Safety and Standards Authority of India (FSSAI) as the

regulatory body responsible for implementing and enforcing the provisions of the act.

The right to health is a fundamental human right recognized by international law. The right to health includes the right to access safe and nutritious food. The World Health Organization (WHO) recognizes that food safety is an essential component of public health and that unsafe food can cause a range of illnesses and diseases. To safeguard consumer health and promote honest procedures in the food sector, the WHO formed the Codex Alimentarius Commission, which is in charge of creating global food standards, guidelines, and codes of conduct. Food safety and standards act with respect to right to health is crucial because foodborne illnesses can cause serious health problems, including death. The act ensures that food products are safe, wholesome, and free from contamination, and that consumers have access to accurate and reliable information about the products they purchase. It also provides for penalties and fines for food manufacturers who violate the provisions of the act, which helps to deter unethical practices.

According to the Centre for Science and Environment, a large number of people worldwide are at risk of consuming unsafe food, resulting in foodborne illnesses and deaths. In South Asia, for example, diarrhoea caused by food contamination is responsible for the deaths of 700,000 people annually out of a total of 2 million affected individuals². Moreover, in 2013, food-related diseases caused 10% of deaths in children under the age of 5.³ Due to the high population density in the region, many cases remain unreported and unnoticed. The unrestrained use of pesticides and antibiotics poses significant health hazards. Access to safe and sufficient food is a fundamental human right that helps to eliminate hunger and poverty. Although everyone desires high-quality food, the reality is that millions of people get sick, and many die each year due to the consumption of unhygienic and adulterated food, such as milk laced with water and detergents. Despite significant advances in science and technology, new methods of food adulteration have emerged, posing a new challenge to food safety.⁴

II. BACKGROUND OF FOOD SECURITY LAWS IN INDIA

There is a lack of clarity and understanding among consumers, traders, manufacturers, and investors due to the existence of multiple laws and agencies responsible for establishing and

² Centre for Science and Environment, Contamination of Food greatest challenge for food safety in India ,available at <https://www.cseindia.org/contamination-of-food-is-the-greatest-challenge-forfood-safety-in-india-says-cse-on-world-health-day-april-7--5764>, visited on 20 March 2023 at 12.30pm

³ Id.

⁴ AMAN DEEP NADDA, "LAWS RELATING TO FOOD SAFETY: NATIONAL AND INTERNATIONAL PERSPECTIVE", available at http://shodh.inflibnet.ac.in:8080/jspui/bitstream/123456789/9539/3/synopsis_mandeep%20nadda_h13228_ph.d.%20law_cpuh.pdf, visited on 20 March 2023 at 1.20pm

implementing food standards in different sectors. These laws have different provisions related to acceptable levels of food additives, contaminants, colours, preservatives, and other criteria. The standards set by these laws are often inflexible and do not keep up with scientific advancements and modernization, which is harmful to the growth of the emerging food processing industry. This environment is not conducive to the effective establishment and enforcement of food standards. The Council on Trade and Industry's Food and Agro Industries subject group was formed in 1998 by the Prime Minister to concentrate on the development of those industries. This group suggested a detailed plan on food regulations, which included the formation of a Food Regulatory Authority to oversee both the domestic and export markets. The Joint Parliamentary Committee on Pesticide Residues in 2004 emphasized the need to merge current food-related laws and establish a unified regulatory entity. The committee expressed apprehension regarding the condition of public health and food safety in India. In April 2005, the Standing Committee of Parliament on Agriculture suggested speeding up the enactment of Integrated Food Laws.

The Law Commission of India tasked its Member-Secretary with reviewing the food laws of different countries, including international agreements, to create a comprehensive report. After conducting the review, the Member-Secretary recommended that the new food law should prioritize the growth of the emerging food processing industry, given its potential for generating income and increasing exports. The proposal was to pass a new comprehensive food law that would replace all the current food-related acts. This was in line with the global trend towards modernization. The new law would focus on self-regulation instead of strict control and would hold manufacturers responsible for the safety of their products, as well as for recalling any defective items. The proposed solution would tackle concerns regarding genetically modified and enhanced foods, in addition to ensuring the safety of food products through the implementation of good manufacturing practices and process control. Additionally, it would provide guidelines for managing food emergencies.⁵

The Indian government formed a Group of Ministers who discussed and made changes to a proposed Integrated Food Law. The Food Safety and Standards Bill of 2005 was the ultimate version of the law which was designed to establish a unified legislation for food and encourage the methodical and scientific advancement of food processing industries.

The Food Safety and Standards Authority of India (FSSAI) was established to supervise the

⁵ Food Safety and Standards Authority of India, available at <https://www.fssai.gov.in/>, visited on 20 March 2023 at 9.30 pm

manufacturing, importation, processing, distribution, and vending of food products with the aim of ensuring their safety and nutritional value for the general public. The Food Authority would be aided by Scientific Committees and Panels in setting standards, and a Central Advisory Committee would assist in prioritizing its work. Enforcement of the legislation would be carried out by the State Commissioner for Food Safety, their staff, and local governmental bodies such as Panchayati Raj and Municipalities. In summary, the Bill included important aspects of the Prevention of Food Adulteration Act of 1954 and was influenced by international laws and regulations, as well as the Codex Alimentarius Commission which established food safety standards. The objective was to develop a comprehensive set of policies and a centralized authority to oversee and regulate individuals and enterprises engaged in various aspects of food production, marketing, processing, handling, transportation, importation, and sales in line with global standards.

The objective of the Bill was to enhance the safety of consumers by implementing Food Safety Management Systems and establishing standards that are backed by scientific evidence and transparency. This was necessary to adapt to the evolving needs of the Indian food industry as well as global trade. As a result, the Food Safety and Standards Act 2006 (FSS Act) was enacted in 2006, and the FSSAI was established under this Act and began operating in January 2009. The FSS Act and Rules were put into effect in August 2011, and various central Acts relating to food safety were replaced by this new regime.⁶

III. VARIOUS LAWS DEALS WITH FOOD SAFETY IN INDIA

1. **The Indian Penal Code of 1860** has two sections, 272 and 273, which state that intentionally adulterating food for sale is a punishable offense with up to six months imprisonment and a fine of up to Rs. 1000. Several states such as U.P., West Bengal, and Odisha have enacted special state laws to increase the maximum punishment to life imprisonment. However, this law is only applicable when the adulteration of food causes it to become "harmful," "poisonous," or "very unpleasant." The Oxford English Dictionary defines "noxious" as something that is harmful, poisonous, or very unpleasant.
2. **The Code of Criminal Procedure** categorizes offenses as non-cognizable, bailable, and non-compoundable. Section 455(2) of the Cr.P.C. allows the court to order the destruction of any food, drink, drug, or medical preparation that was involved in the

⁶ Sushila, "LEGAL FRAMEWORK REGULATING FOOD SAFETY: A CRITICAL APPRAISAL", available at <https://clap.nls.ac.in/wp-content/uploads/2021/01/LEGAL-FRAMEWORK-REGULATING-FOOD-SAFETY-A-CRITICAL-APPRAISAL-Sushila.pdf>, visited on 20 March 2023 at 6.00 pm

conviction. In addition, Section 360 permits a convicted person to be released on probation after receiving a warning.

3. The Prevention of Food Adulteration Act, 1954

The Prevention of Food Adulteration Act, 1954 had 25 sections and provided for the establishment of various bodies such as the Central Committee for Food Standards, Central Food Laboratory, Public Analysts, and Food Inspectors. However, the Act had several loopholes. Firstly, there was no compulsory standardization of food products and food inspectors were not adequately trained. Secondly, the Act did not differentiate between various categories of adulteration and provided for the same punishment for all. Thirdly, there was a lack of coordination between the food inspector, public analyst, and public prosecutor, which made it difficult to prosecute cases.

The Act also placed a burden on judges to provide special and adequate reasons for a particular punishment, but at the same time, did not give them discretion in sentencing. Additionally, magistrates who handled criminal cases were not specialists in food adulteration matters and often gave the benefit of the doubt to the accused, which weakened the prosecution's case.

In the case of *Parmanand Katara v. Union of India*,⁷ the Supreme Court ruled that the right to health and medical care is a fundamental right protected under Article 21 of the Constitution. This is because good health is necessary for a worker to live a meaningful and dignified life. The state has a responsibility to ensure that the right to life of all individuals is protected, and preserving human life is of utmost importance. Those responsible for the health of the community have a duty to preserve life in order to protect the innocent and punish the guilty.

In the case of *Centre for Public Interest Litigation v. Union of India*,⁸ the Supreme Court stated that the right to life and human dignity, as guaranteed by Article 21 of the Constitution, includes the right to safe and healthy food that is free from harmful residues such as pesticides and insecticides. The Court observed that food items containing harmful substances could pose a threat to the fundamental right to life guaranteed by the Constitution. Therefore, it is the responsibility of the government to take necessary measures to ensure the protection of life and health by ensuring the safety and quality of food products.

4. Food safety and standards act, 2006

The Food Safety and Standards Act of 2006 establishes several positions and procedures to ensure food safety in India. These include the Food Safety and Standards Authority of India,

⁷ 1989 A.I.R. 2039

⁸ (2013) 16 S.C.C. 279

the Chief Executive Officer, the Central Advisory Committee, the Commissioner of Food Safety of the State, the Food Safety Officer, and the Food Analyst. The Act also provides for Improvement Notices, Prohibition Notices, Compensation, and other measures to promote food safety. The Prevention of Food Adulteration Act of 1954 used the term "adulterated" to refer to food that had been tampered with or contaminated. However, this term has been replaced with "unsafe" in the Food Safety and Standards Act of 2006, which has a broader definition. Under the new law, the CEO is responsible for the daily management of the Food Authority.⁹

IV. FEATURES OF FOOD SAFETY AND STANDARDS ACT

The Food Safety and Standards Act 2006 is a comprehensive law that governs the manufacture, storage, distribution, sale, and import of food in India. The following are the key features of this act:

Food Safety: The act lays down standards for the safety and quality of food products in India. These standards are enforced by the Food Safety and Standards Authority of India (FSSAI).

Food Authority: The FSSAI is responsible for the implementation of the Food Safety and Standards Act, and is also responsible for setting up standards for food products.

Licensing and Registration: The act mandates that all food businesses in India, including food manufacturers, distributors, and retailers, must register themselves with the FSSAI or obtain a license from them, depending on the size and nature of their business.

Food Labels: The act requires that all packaged food products carry labels that provide information about the contents, nutritional value, and allergens present in the product.

Food Adulteration: The act prohibits the sale of adulterated food products, and provides for penalties and punishment for those found guilty of adulteration.

Food Recall: The act gives the FSSAI the power to order a recall of food products that are found to be unsafe or non-compliant with the standards set by the FSSAI.

V. DEVELOPMENTS MADE BY THE FOOD SAFETY AND STANDARDS ACT, 2006

The Food Safety and Standards Authority of India (FSSAI) is responsible for setting food standards to ensure that high-quality food is available in India. The FSSAI has established regulations for packaging, labelling, and advertising, which aim to prevent misleading information and ensure compliance with the law. Additionally, the FSSAI has introduced

⁹ Anurag Bhardwaj, FOOD SAFETY LAWS IN INDIA: A CRITICAL ANALYSIS OF THE EXISTING LEGAL FRAMEWORK 1 SML. L. REV. 244 (2018), available at <https://hpnlu.ac.in/PDF/25750633-cb04-4fd9-831f-17688683554d.pdf>, visited on 20 March, 2023 at 9.00pm

licensing and registration regulations for food business operators, which mandate compliance with safety, sanitary, and hygienic requirements, with penalties of up to two lakh rupees for non-compliance.¹⁰ While some countries have many more detailed standards, the FSSAI currently has only 377 regulations.¹¹ The FSSAI has introduced new regulations to prevent the adulteration of food products in India. However, the Indian Penal Code still includes sections 272 and 273 that impose penalties for such offenses, which have not been repealed yet. In *M/S PepsiCo India Holdings private limited and anr. v. State of U.P.* (2010) PepsiCo India Holding contested the state government's filing of an FIR against them under Sections 272/273 of the IPC, arguing that these sections were repealed by the FSSA. The Allahabad High Court subsequently ruled that the IPC provisions were not applicable in this case. In a different case (*State of Maharashtra v. Sayyad Hassan Sayyed Subham*, 2018), the Supreme Court decided that if an action or failure to act is classified as a criminal offense under two laws and carries the same punishment, the perpetrator may be prosecuted and punished under either or both laws, but cannot be punished twice for the same offense. Therefore, the fact that the FSSA specifies penalties for an offense does not mean that a person cannot also be prosecuted under the IPC.

Although India has strict laws regarding food safety, there have been numerous reported cases of food contamination. In 2015, there was a controversy involving Nestle-Maggi noodles where the presence of monosodium glutamate (MSG) and lead contamination caused worries about the possible health hazards linked with the product. This case was taken to court, and M/S Nestle India Limited was pitted against The Food Safety and Standards on 13th August 2015. There have also been several reported and unreported cases of food poisoning, which can result in widespread outbreaks of untreatable diseases and even fatalities. A writ petition against the Union of India has been filed by the Academy of Nutrition Improvement and other groups with a similar mission, including consumer, salt manufacturer, medical, and academic groups. They are against the mandatory iodization of salt for human consumption (*Academy of Nutrition Improvement & Ors vs Union of India*).

The Ministry of Health and Family Welfare introduced a Food Safety and Standards (Amendment) Bill, 2020 in September 2020 to modify the existing FSSAI act of 2006.¹² The purpose of this bill was to bring in 70 amendments to improve food safety and ensure people's

¹⁰ Food safety and standards authority of India, available at <https://www.fssai.gov.in/cms/food-safety-and-standards-regulations.php>, visited on 21 March 2023 at 5.00pm

¹¹ The Food Safety And Standards (Amendment) Bill 2020: A milestone In The History Of Indian Food Safety., available at <https://www.foodsafetymantra.com/regulatory-update/consumer-products/the-food-safety-and-standardsamendment-bill-2020/>, visited on 21 March 2023 at 6.00pm

¹² Comments/Suggestion Regarding Food Safety and Standards (Amendment) Bill 2020. Available at: <https://main.mohfw.gov.in/newshighlights-16>, visited on 23 March 2023 at 7.00pm

right to access high-quality food at reasonable prices. The National Food Security Act of 2013 mandates the government to take greater responsibility in ensuring food and nutritional security for all sections of the society by providing sufficient quantities of subsidized food grains.

VI. SUGGESTIONS

A significant piece of law in India, the Food Safety and Standards Act (FSSA), 2006, strives to guarantee that healthy, safe food is available for consumption and to safeguard the health of consumers. Several significant issues are brought to light when the FSSA is examined in the context of the right to health.

First off, by establishing thorough food safety standards and regulations, the FSSA is essential in protecting the right to health. It provides standards for the production, processing, distribution, and sale of food items and creates one source to look to for all issues pertaining to food safety. The FSSA protects consumers' right to health by requiring that food products adhere to strict quality and safety standards. This considerably lowers the danger of illnesses caused by food and other health risks.

The FSSA also places a strong emphasis on raising public awareness of and knowledge about food safety. By making food labelling, nutritional content disclosure, and allergy declarations required, it gives customers the power to make educated decisions. Consumers can choose more healthfully and enhance public health results when they are informed about the possible dangers related to particular food choices.

Third, the Act emphasises the creation of an effective regulatory structure for enforcing food safety. It establishes the framework for the FSSAI, which is in charge of overseeing and regulating the food business. The FSSA guarantees that food enterprises follow safety standards by implementing harsh penalties and punishments for violation, therefore minimising the danger to consumer health from tainted or adulterated food.

But there's always opportunity for development. There are a few ideas that might be taken into consideration to better cement the connection between the FSSA and the right to health:

- 1. Enhanced Execution and Surveillance:** To uphold food safety standards in the supply chain, guarantee proper execution and ongoing monitoring of the FSSA's requirements. For food enterprises to maintain compliance with safety standards, routine assessments and inspections are crucial.

2. Consumer Empowerment: Boost efforts to inform consumers on their legal rights and obligations with regard to food safety. foster safe food practises through awareness campaigns, support food testing, and establish forums for customers where issues may be quickly resolved.

3. Encourage cooperation between the government, the food sector, and consumer advocacy organisations through including stakeholders. Encourage companies to actively contribute to maintaining food safety and provide incentives for using best practises in production and distribution.

4. Embrace Technological Advancements: Use technology to better manage food safety, such as deploying blockchain to track the origin and travel of food goods or utilising AI-based systems to anticipate and avoid future food safety concerns.

VII. CONCLUSION

The Food Safety and Standards Act (FSSA) is a comprehensive law that was introduced to ensure the safety and quality of food products in India. The Act has been implemented with the aim of protecting the right to health of Indian citizens, as unsafe and substandard food can have severe consequences for public health. The FSSA is a crucial piece of legislation that provides a framework for regulating food safety and standards in India. The Act has been successful in establishing a robust regulatory system that is focused on ensuring the safety of food products from farm to table. It has also created a regulatory structure that has increased the accountability of food producers, manufacturers, and sellers, and has established guidelines for food safety testing, inspection, and enforcement.

Moreover, the FSSA recognizes the importance of the right to health and emphasizes the need for food safety and quality standards to be in line with international best practices. The Act has provisions for ensuring that food products are safe, wholesome, and free from contaminants, and it lays down strict guidelines for labelling, packaging, and advertising of food products. The FSSA also provides for the setting up of food safety authorities at the national and state levels, which are responsible for implementing and enforcing the provisions of the Act. In conclusion, the FSSA is an important legislation that seeks to protect the right to health of Indian citizens by ensuring the safety and quality of food products. The Act has been instrumental in establishing a comprehensive regulatory system that is focused on ensuring that food products are safe, wholesome, and free from contaminants. The Act has also recognized the importance of international best practices in food safety and quality standards and has established guidelines for labeling, packaging, and advertising of food products. Furthermore, the FSSA has set up regulatory authorities at the national and state levels to ensure the effective implementation and

enforcement of the provisions of the Act. Overall, the FSSA is a significant step towards ensuring the right to health of Indian citizens and promoting a healthy and safe food environment in the country.
