

A
DISSERTATION ON
'ROLE OF JUDICIARY IN IMPLEMENTATION
OF FOOD ADULTERATION LAWS'

SUBMITTED IN THE PARTIAL FULFILLMENT OF THE
REQUIREMENT FOR THE DEGREE OF
(L.L.M) – 1-YEAR

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CERTIFICATE

This is to certify that the entire work embodied in the practical title Role of Judiciary in the Implementation of Food Adulteration Laws has been carried out by Ms Tanushree Kakkar under my supervision and guidance in the department of Law, New Law College, Bharati Vidhyapeeth Deemed University, Pune for the L.L.M (Trimester) 1 year course.

Place: - Pune

Date -

Signature

DECLARATION

I hereby declare that this Dissertation is a result of my research work and the same has not been previously submitted to any examination of this University or any other University. **'Role of Judiciary in implementation of Food Adulteration Laws'** is submitted by Ms. Tanushree Kakkar under the Guidance of Mrs. Jyoti Dharam, New Law College, Pune, as a partial fulfillment of the degree of Masters of Law(LLM- 1 YR) 2014-2015.

The present Dissertation to the best of my knowledge and belief is original.

Place : Pune

Date :

Ms. Tanushree Kakkar

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Ms. Tanushree Kakkar

SCOPE OF THE RESEARCH

The scope of my Research is limited to Indian Scenario but with a background of the issue with international provisions.

RESEARCH METHODOLOGY

The present Research is a Doctrinal type of Research because the sources of data collection are all secondary which includes books, journals, articles and internet websites. The reason behind why I chose this type of research is due to the time constraint.

SOURCES OF DATA

The Sources of data collected are all secondary sources which are-

1. Books
2. Journals
3. Articles
4. Internet websites.

RESEARCH PROBLEM

- Legislations in India for Prevention of Food adulteration have been framed from time to time.
- Adequate Legislations are there but still adulteration in food articles is unable to be curbed.
- Problem is with the Implementation of these laws. Why are judicial decisions and guidelines not helping curb food adulteration to that effect?
- Where exactly does the lacuna lie, with law or with the implementation of these laws by the concerned authorities?
- From the Producer to the end consumer the responsibility lies at all levels to ensure and be educated with respect to the purity of the food that is being supplied as well as being consumed.

OBJECTIVE OF THE STUDY

This research is being conducted to study the concept of adulteration and its effects on human lives. Further , what measures have been taken by the legislature and their legislations to prevent this increasing menace of adulteration.

Yet further the research also aims to assess the role of Judiciary in the implementation of these laws and providing justice in these matters thereon. What exactly has been done till date and what is the future scope of Judicial intervention in such adulteration cases.

On the other hand it also tries to recognize the actual loopholes underlying in the implementation of the food adulteration laws. It also tries to review the enforcement structure and procedure of inspection and sampling in the food industry under the latest Food Safety and Standards Act, 2006 and to suggest the measure or steps for addressing any shortfalls or procedural lapses in implementation of food safety and standards.

HYPOTHESIS

The following hypothesis has been envisaged for the purpose of the study -

- Ample statues are existing for preventing adulteration in food articles in India.
- With changing times even the laws have been changed.
- The problem is with Implementation of these laws and the malpractices/corrupt practices by the authority concerned in not being strict while implementing these laws. (Role of administrative machinery).
- Judiciary at all levels has played a positive and responsible role for strict implementation of food adulteration laws and to curb the increasing acts of adulteration in food articles and eatables.

STRUCTURE OF THE RESEARCH

1. INTRODUCTION.

This will contain introduction, concept and effects of adulteration, research problem ,objective of the study, and hypothesis . It provides the theoretical background to the study and establishes a linkage between legislation and the proposed research and the methodology of doing the research.

2. INTERNATIONAL BASIS.

This will further contain the background of all international summits and covenants which made a basis for other nations to lay their legislations and initiate reforms in those directions. These include –

- International covenant on economic, social and cultural rights.
- United nations declaration on Human rights
- World Food conference- International undertaking on World food security.
- Special Rapporteur on Right to food in 2002.

- In 2009 adoption of optional protocol to the International covenant on economic , social and cultural rights.
- Food Assistance Convention- First legally binding international treaty on food aid.

3. CONSTITUTIONAL PROVISIONS

- This deals with Article 21 and its widening scope by the Supreme court to include even Right to Pure and healthy food as a basic right protected under right to Life and live with human dignity.
- It will also talk about Article 47 as a direction and duty for the states to improve the nutrition and standard of living and improvement of public health.
- Article 32 which gives the Supreme Court ultimate right to protect the fundamental rights of the citizens if infringed.

4. LEGISLATIVE APPROACH TILL DATE.

This deals with the chronological legislations that have come up till date to prevent adulteration of food.

- Until 1954 several states had their own food related laws
- In 1955 there was a central legislation to prevent food adulteration –Prevention of food adulteration act 1955.
- Until 2006 there were many laws existing-
 - Fruits products order 1955
 - Meat food product order 1973
 - Vegetable oil products control order 1947
 - Edible oil packaging regulation order 1998
 - Milk and milk products order 1992
 - Essential commodities act 1955

Finally in 2006 in order to prevent confusion due to multiplicity of laws Food safety and standards bill was passed. It came into force in 2011. And it governs all primary and processed foods.

5. SUPREME COURT JUDGMENTS

6. CONCLUSION.

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INTRODUCTION

Introduction -

'Food Clothing and Shelter are since ages considered to be the most basic necessities of human life'. Out of the three needs, a compromise in the quality of clothes and shelter won't affect that much as the quality difference of food would.

Food by all means is the complete energy and nutrition giving source for all living beings. The reason behind intake of food is not just a ceremonial thing for the sake of doing, but it's for the complete intake of nutrition which helps in healthy building of the body and brain.

For that matter its not just about having anything, but its about having something that is healthy for our body. Hence the only question before the society and the government today is not just about making available and providing food (whether subsidized or non-subsidized) but it's also about giving them pure food without any kind of adulteration in it.

Today's society with growing population and their ever increasing needs has led to building of a market where the producers and manufacturers in order to place themselves profitably in the competing market have diverted towards malpractices wherein In order to increase their product volume and save their raw materials, they have started to use cheap substitutes of each and every product which helps them save on manufacturing and production at the same time gives them more profits. This practice though is useful and profitable for the Producers and Manufacturers but is hazardous and less nutritious for the end consumers and buyers leading to a situation where they consume the required amount of food but the nutritional value is much reduced as per the food content and that it also leads to many diseases and acts as slow poison for future, destroying many of our organs.

Food Adulteration is a very serious concern since ages now. This is because food items are perishable goods and in order to increase their shelf lives, preservatives are added. But what proportion of these preservatives should be permissible and allowed for human intake is a matter of great concern.

Even if a food article expires and its shelf life is over-consumption after that will also lead to unhealthy circumstances. Hence food perishability is a sensitive matter and therefore has to be handled with utmost care.

Legislators since independence have tried to deal with this matter, though initially only to a limited extent and to few products. There were many legislations dealing in products like meat, Edible oil, milk (which also included their export and import) that have been in place.

After Independence there were many legislations that were existing of the British times as well, then there were different

legislations by the State and by the Centre. This was making it difficult for a proper implementation and operation of food adulteration laws in India. Hence in 1954, there came up a Central law which catered to all the aspects of the Prevention of food adulteration called the Prevention of Food Adulteration Act (PFAA).

Even after the PFA legislation, with changing times there were many legislations that came up in order to prevent and control the increasing acts of food adulteration in the country due to the developing and changing technologies and lifestyles thereon.

Now it was not just the quality of food but also the labeling and packaging of the product that was catered to. With increasing awareness within the people w.r.t what they eat and what is being provided to them, it became very important to cover even those issues.

Recently to cover start to finish all aspects of food consumption, a central law of Food safety and Standards Act came into force. It has repealed all the earlier laws and taken a ground level check on all the Food adulteration laws.

The legislators are no doubt working and coming up from time to time with new laws, according to the changing circumstances, but the judiciary has played an important role to hammer the legislators and question the existence of the concerned legislations.

With increasing awareness about Human Rights in the society, there have been many instances of PILs and writ petitions being filed in the Apex court in order that the judiciary interferes in the Administrative matter and questions them for injustice caused to the consumers and provides them justice.

The Judiciary hence, with all the bindings and limitations has worked hard to streamline the mismanaged field of food industry.

The Actual loopholes and the gap in the administration seems to be with the executive wing, wherein the administrators have failed to act responsibly and in time, in order to prevent adulteration. The root cause of this being **Corruption**. Corruption has led to , making legislative norms

and fulfillment of those restricted on paper only. What functions practically is just money power.

In practice all the legislative requirements can be avoided by just pouring in under table money to the government enforcing officials leading to compromise in the standard of goods. All efforts and pain have been going in vain. Therefore there cannot be any legislation even in future which can tackle with food adulteration completely unless and until the root cause of all these i.e corruption is eradicated out of our system.

All of the governmental Policies and schemes that have been started for the welfare of the society are also of no use until their implementation has been made effectively. Eg- The Mid Day Meal Scheme if implemented properly and effectively can lead to wonders, it can solve the major problem of poverty that's endangering our society since long.

With growing population our problems are going to increase. Unless they are handled properly today they are just going to be a burden for our future generations with intensive effects

then. Hence it is more than important for us to find out immediate solution for problem like these.

Not just India, this problem of Food Adulteration has been pinpointed and catered to by even International associations time and again. Different covenants and conferences have brought into forefront the importance of hygienic food and the fact that it is a part of the basic human rights of each individual.

Concept and effects of Adulteration :-

While traditionally, Indian families used to cook food at home with healthy ingredients and knew what went into the meal, in modern times, with rising income and affluence, more and more people are moving away to readymade fast foods and eating regularly at restaurants.

Similarly with increasing demand of food grains and eatables the producers and providers to stand profitably in the growing competing market are indulging into adulterating practices. With this they have a lot more variety and choices to provide to the world consumers. Interestingly food frauds literally constitute a high tech industry because of the enormous economic gains inherent in adulteration.

Concept of Adulteration:

Food adulteration is the addition or removal of any substances to or from the food , so that the natural composition and quality is affected. Adulterated food is impure, unsafe and not wholesome.

Food can be adulterated intentionally or accidentally.

Intentional food adulteration is usually done for financial gain. The most common form of the intentional adulteration is color adulteration.

Some examples of intentional adulteration are addition of water to milk, extraneous matter to ground spices, or the removal or substitution of milk solids from the natural products. Natural adulteration occurs due to the presence of certain chemicals, organic compounds or radicals naturally occurring in foods which are injurious to health and are not added to the food intentionally or unintentionally.

Some of the adulterants and their effects are as follows¹

<u>FOOD ARTICLE</u>	<u>ADULTERANT</u>	<u>HARMFUL EFFECTS</u>
Bengal gram, Tur dal	Kesai dhal	Latharyrism Cancer.
Tea	Colored and processed tea leaves	Liver disorder
Coffee powder	Tamarind seed, date seed powder	Diarrhea
Milk	Edible Oil, water, starch, Urea	Stomach disorder
Khoa	Starch and less fat content	Less nutritive value
Wheat and other food grains	Ergot(fungus containing poisonous substance)	Poisonous
Sugar	Chalk powder	Stomach disorders

¹ www.frost.com

Black powder	Papaya seeds and light berries	Stomach and liver problems
Asatfoetida	Foreign resins galbonum, calophony resin	Dysentery
Edible oil	Arg emone oil, mineral oil, castor oil	Loss of eye sight, heart diseases, damage to liver
Chilli powder	Brick powder, saw dust	Stomach problems

Adulteration in Water :

Water has been adequately chlorinated, by using the minimum recommended water treatment standard provide protection against viral and bacterial water borne diseases. However chlorine treatment alone, as used in the routine disinfection of water might not kill some enteric viruses and the parasitic organisms that cause giardiasis, amoebiasis, and cryptosporidiosis.

One famous saying of one of our past prime ministers -

“Corruption is universal and not confined to India. Same appears to be true with food adulteration also.”

But when it comes to food adulteration no other country can beat India because this is a country where everyone has unlimited freedom to indulge in such activities with no possibility of retribution. Though food laws that exist are comparable to international ones, there is still very little activity at the ground level to monitor or detect adulterated foods in the market or punish the guilty.

Notable Adulteration Incidents Worldwide - ²

1. In 1987, Beech nut paid \$2.2mn fines for violating the Federal Food Drug & Cosmetics Act by selling artificially flavored sugar water as Apple juice.
2. In 1997, Con agro foods pled guilty to Federal criminal charges that one of its units illegally sprayed water on stored grain to increase its weight and value.
3. In 2007 samples of wheat gluten mixed with melamine, presumably to produce artificially inflated results from common tests for protein content, were discovered in many U.S pet food brands as well as in human food supply. The adulterated food was found to have its origin in China.
4. In 2008 significant portion of China's milk supply were found to have been contaminated with melamine. Infant formula produced from melamine tainted milk killed at

² www.ijst.com/vol.1/issue2/nov-de'12

least six children and were believed to have harmed 1000 others.³

5. In 2012, a study in India conducted by FSSAI across 33 states found that milk in India is adulterated with detergent, fat and even urea, as well as diluted with water. Of the random 1791 samples- just 31.5% of the samples tested (565) confirmed to the FSSAI standards while the rest 68.4% (1226) failed the test.

Notable Food Adulteration Incidents in India –

1. The FDA collected samples from Pune, Satara, Kolhapur and Sangli and found 80% of the milk adulterated with detergent, fat, edible oil , urea and diluted with water.⁴
2. The FDA had collected 81 samples of milk from Mumbai and Thane and found out that six well known brands including Amul, Gujarat Co-op Milk Federation,

³ See also China Milk Scandal.

⁴ Times of India article -07/04/2015, page 2

Mahananda dairy and Chiltale were amongst the adulterators.⁵

3. High coconut oil prices pave way for adulterated Coconut oil sale in Kerala amounting to 70% of the oil being impure and adulterated.⁶
4. In Bihar 25 primary students died and many fell ill after having adulterated mid day meal in the School after being contaminated with pesticide.
5. On July 5th and 7th, 2014 cases of children becoming sick in Bihar districts due to the mid day meals containing worms and lizard led to a lot of protests.

⁵ DNA article dated 24/12/2014.

⁶ Bussiness standard article dated 05/05/2014.

INTERNATIONAL PERSPECTIVE AND
BACKGROUND

Introduction –

The Right to food and its variations is a human right protecting the right for the people to feed themselves in dignity implying that sufficient food is available, that people have the means to access it, and that it adequately meets the Individuals dietary needs. The right to food protects the right of all human beings to be free from hunger, food insecurity and **MALNUTRITION.**⁷

The Special Rapporteur on Right to food, Jean Zeigler defined three dimensions to the right to food –

1. Availability,
2. Accessibility and,
3. Dietary adequacy .

The Right is derived from the ICESCR (International covenant for Economic, Social and Cultural Rights) which has 160 state parties as of May 2012. States that sign the covenant agree to take steps to the maximum of their available resources to

⁷⁷ Committee on Economic, Social and cultural rights, 99, para 6

achieve progressively the full realization of the right to adequate food, both Nationally and Internationally.

The ICESCR 1966 reads as follows –

Article 12 –

- (1) The states parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standards of physical and mental health.
- (2) The steps to be taken by the state parties to the present covenant to achieve the full realization of the rights 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. Improvement of all aspects of environmental and industrial hygiene.

World Food Summit –

At the 1996 World Food Summit, governments reaffirmed the Right to food and committed themselves to half the number of hungry and malnourished from 840 to 420 million by 2015. However the number has increased over the past years, reaching an infamous record in 2009 of more than 1 billion undernourished people worldwide.

International developments from mid 20th Century onwards –

1. In 1941 –

President Franklin Roosevelt in his four freedoms speech included as one of the freedoms –

‘The freedom from want’

Later this freedom did form a part of the Un Charter in the form of Article 1(3)⁸.

2. In 1948 -

The Universal declaration of human rights recognizes the right to food as part of the right to an adequate standard of living.

⁸ Ahuwalia – 2004 -10

The Universal Declaration of Human Rights, 1945 reads as follows –

Article 25 –

Everyone has the right to a standard of living adequate for the health and well being of himself and his family including food, clothing , housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

3. In 1966 –

The International covenant for Economic , Social and Cultural rights reiterates the UDHR w.r.t the right to an adequate standard of living and in addition , specifically recognize the right to be free from hunger.

- In 1976 – Entry into force of the covenant
- In 1987 – Establishment of the committee on ESC rights overseeing the implementation of the Covenant and beginning a more legal interpretation of the Covenant.

- In 1999 - The committee adopts General comment no. 12 “ The right to adequate food” describing the various state obligations derived from the covenant regarding the right to food.⁹
- In 2009 – Adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights making the right to food justifiable at the International level.

⁹ Committee on Economic, Social and Cultural Rights 1999.

**Optional Protocol to the International Covenant for
Educational, Social and Cultural Rights –**

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) is an International treaty establishing complaint and enquiry mechanisms for the ICESCR. It was adopted by the United Nations General Assembly on 10th Dec 2008. As of March 2015, it has 45 signatories and 20 state parties.¹⁰

In 1966, the United Nations General Assembly adopted the ICESCR. The Covenant obliged its parties to recognize and progressively implement economic, social and cultural rights, including Labor rights, Right to education, and Right to an adequate Standard of living, but did not include any mechanism by which these obligations could be legally enforced.

Work on an individual complaints mechanism began in 1990, with a view to developing, Optional protocol similar to those of other UN rights instruments. Development was

¹⁰ Parties to the Optional Protocol to the ICESCR.(U.N treaty collection) –Retrieved 2012-01-23

encouraged by 1993 World conference on Human rights which recommended the Commission to 'continue examination of Protocols' to the ICECSR.¹¹

The Optional Protocol establishes an individual complaints mechanism for the Covenant similar to those of the first Optional protocol to the ICESCR, Optional protocol to the Convention on the rights of persons with disabilities and Article 14 of the Convention on Elimination of all forms of racial discrimination. Parties agree to recognize the competence of the committee on Economic, Social and Cultural rights to consider complaints from individuals or groups who claim their rights under the Covenant have been violated.¹²

Complaints must have exhausted all domestic remedies and anonymous complaints and the complaints referring to the events which occurred before the Country concerned joined the Optional Protocol are not permitted.¹³

¹¹ Vienna Declaration and program of action part 2, para 75.

¹² Optional protocol ICESCR – Article 1.

¹³ Ibid – Article 3

The Protocol also includes an inquiry mechanism. Parties may permit the committee to investigate, report on and make recommendation on grave or systematic violations of the convention.¹⁴

4. In 1974 –

Adoption of the United Nations Declaration on Eradication of Hunger and Malnutrition at the World Food Conference.

World Food Conference –

The first World Food Conference was held in Rome in 1974 by the UN under the auspices of the UN Food and Agriculture Organization (FAO) in the wake of the devastating famine in Bangladesh in the preceding two years.

In the United Nations Declaration on Eradication of Hunger and Malnutrition, governments attending the World Food Conference proclaimed that “every man,

¹⁴ Ibid – Article 11.

woman and child has the inalienable right to be free from hunger and malnutrition in order to develop their physical and mental faculties.¹⁵

5. In 1988 –

Adoption of the Right to food in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural rights.

6. In 1996 –

The FAO organized the 1996 World food Summit in Rome resulting in the Rome Declaration on World Food Security.¹⁶

- In 2004 – The FAO adopts the Right to Food guidelines, offering guidance to States on how to implement their obligations on the Right to Food. The drafting of the guidelines was initiated as a result of the 2002 World Food Summit.
- In 2002 – The mandate of the Special Rapporteur on the Right to Food was established.

¹⁵ <http://en.wikipedia.org/wiki/world-food-conference>.

¹⁶ www.fao.org

Special Rapporteur on the Right to Food –

The special Rapporteur on the Right to food is a special Rapporteur who works for the United Nations and reports on the Right to Food. The mandate was established in 2000 by the former Commission on Human Rights which appointed the first Rapporteur, Mr. Jean Ziegler.

The Rapporteur is expected to report both the Human Rights Council and the United Nations General Assembly on the fulfillment of the mandate.

The mandate includes to promote the full realization of the right to food and the adoption of measures at the national, regional and international levels, “to examine ways and means of overcoming existing and emerging obstacles”, “continue mainstreaming and taking into account gender and age perspectives”, to submit proposals to realize Millenium Development Goal No.1 to have by the year 2015, the proportion of people who suffer from hunger to work in close co-operation with all states, intergovernmental and non-governmental organization and the Covenant on Educational,

Social and Cultural rights and participating in and contributing to relevant Conferences.¹⁷

In an executive summary of the Rapporteur Report, it mentioned grave concern was existing by the suffering and hunger of 38million people across Africa, principally in Southern Africa and Ethopia and Eritrea. The number of undernourished people around the world had increased to 840mn. Over 2bn people worldwide suffered from “hidden hunger” or micronutrient deficiencies, meaning that children fail to grow and develop normally, their bodies are stunted and sometimes deformed, as are their intellectual capacities and immune systems.

The report focused on two key initiatives being taken at the international level, the development of International “voluntary guidelines” on the right to food, under the auspices of FAO and the production of a new General Comment No.15 on the right to water by the CESCR. In fulfilling the mandate, which includes water as a fundamental element of nourishment, the Rapporteur called attention to

¹⁷ http://en.wikipedia.org/wiki/special_Rapporteurs_on_the_Right_to_food.

this new development and then discussed concrete examples of how food and water are inextricably linked in practice. It believed that these two ground breaking developments will strengthen the understanding of the right to food around the world and with hope that governments will engage in taking real action to eradicate hunger.¹⁸

- In 2012 - The Food Assistance Convention was adopted as a result of the Food Aid Convention (1985), making it the first legally binding international treaty on food aid.

¹⁸ <http://unispal.un.org/UNISPAL/NSF/O/>

Food Assistance Convention –

The Food Assistance Convention is an international treaty relating to food assistance. It was adopted on 25 April 2012 in London. The treaty aims at "addressing the food and nutritional needs of the most vulnerable populations" and includes mechanisms for information sharing and registration of commitments made towards such assistance. The treaty entered into force on 1 January 2013.

The convention is a renegotiated version of the Food Aid Convention, as of 2012 the only legally binding international treaty on food aid. The Food Aid Convention is however only focused on a limited number of food items (expressed in wheat equivalent tons), whereas the Food Assistance Convention is focused on "nutritious food" in general and leaves it up to parties to the convention to state commitments in wheat equivalents or in monetary terms.

Conclusion –

Hence it was the International Institutions from the point, when India was into making as a country that has recognized Good quality, hygienic food as a basic right of all living individuals.

Internationally also Food quality has not been compromised and that they understand its importance and impact. From time to time international treaties have attempted to bring to the notice of all the member countries, the increasing impact of adulteration of food products and how that is against human rights of individuals. Though not binding unless a signatory to it, but these forums have always been a foundation step for all the member countries to how to initiate and implement these laws in their respective countries. For India also these laws are very important and hence they have even included them as a Directive principle under the Directive Principles of state policy under the constitution wherein they can implement these International treaty agreements in their Central and state legislations whenever required.

CONSTITUTIONAL PROVISIONS

INTRODUCTION –

Article 21 – Right to Life and Liberty

Includes -

RIGHT TO PURE FOOD AND HEALTH

The Supreme Court has emphasized in *Vincent V. UOI*¹⁹ that a healthy body is the very foundation of all human activities.

“Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers are envisaged. Attending to public health, in our Opinion, therefore is of high priority – perhaps the one at the top.”²⁰

¹⁹ AIR 1987 SC 990

²⁰ Indian Constitutional Law with constitutional documents by M.P Jain, 6th edition , 2010 Published by Lexis Nexis and Wadhwa ,Pg 1639

Similarly in State of Punjab V. Mahinder Singh Chawla²¹ the Supreme Court held that the "Right to Life includes Right to Health".²²

In Francis Coralie Mullin V. Administration (UT of Delhi)²³ the Court observed that Right to life includes Right to live with human dignity and all that goes with it.

In Bandhua Mukti Morcha V. UOI²⁴ it was held that it is the fundamental right to everyone in this country assured under the interpretation given to Article 21 – to live with human dignity - it must include the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner in condition of freedom and dignity , just and human conditions of living.

²¹ AIR 1997 SC 1225

²² Constitution of India by P.M Bakshi- Universal Law Publishing, Pg 49.

²³ (1981) 1 SCC 618

²⁴ AIR 1984 SC 802

Article 37 – Directive Principle of State Policy

Articles 36 to 51 contain the Directive Principles of State Policy. The Idea to have such principles in the Constitution has been borrowed from the Irish Constitution.

These are designed to usher in social and economic development in the country. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give directions to the legislatures and the Executives in India as regards the manner in which they should exercise their power.²⁵

Article 37 says that, the Directives shall not be enforceable in the Court of law but the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.²⁶

²⁵ M.P Jain – vol 2 Pg 1953.

²⁶ Ibid , Pg 1954

So far as the courts are concerned the Directives are not enforceable by any judicial process. Nevertheless, since the courts form part of the 'State' – as defined in the Article 12 and the judicial process constitutes state action, the courts have a responsibility in so interpreting the Constitution as to ensure implementation of the Directives and to harmonize the social objective underlying the Directives with individual rights.²⁷

Though the Directives are not enforceable and the courts cannot direct the Legislature/ Executive to enforce them, once a legislation in pursuance of the Directive has been passed , the courts can order the state to enforce the law particularly when non-enforcement of law deals to a denial of a fundamental right.²⁸

²⁷ D.D Basu vol 3, Pg, 4029-30

²⁸ Bandhu Mukti Morcha V UOI AIR(1984) SC 802

Article 47 – Public Health and Nutrition.

Article 47 obligates the state to regard as among its primary duties, the raising of level of nutrition and standard of living of its people and the improvement of public health. In particular , the state is to endeavour to bring about prohibition of the consumption except for medicinal purposes, of intoxicating drinks and drugs which are injurious to health. ²⁹

This Article makes improvement of Public health a primary duty of the State. Hence the court should enforce this duty against a defaulting local authority on pain of penalty prescribed by law, regardless of the financial resources of such authority.

“ In case of need the local authorities should approach the state government to frant loan or aid , and the latter should

²⁹ M.P Jain Vol 2 Pg, 1991.

supply the required money in view of the primary duty of the state under the Article 47."³⁰

Anything which is hazardous to public health is a potential danger to the fundamental right to life under Article 21. In this view a Division bench of the Allahabad High Court has issued a writ of mandamus restraining the state from selling in open market chemically processed soya bean which was unfit for human consumption.³¹

³⁰ Ratlam Municipality V. Vardichand AIR (1980) SC 1622.

³¹ Shaibya V. State of U.P AIR (1993) All 171(para 8)

LEGISLATIVE INITIATIVES

The situation at present is indicative of a deeper malaise in the Indian food regulatory regime. The food industry has grown by leaps and bounds in the past two decades, but food regulation has hardly kept pace.

The Prevention of Food Adulteration Act 1954 has been replaced by a broad based food safety law and a body called Food Safety and Standards Authority of India. But the change has made no difference at the ground level.

Instead of tackling adulteration and the issue of food safety , the authority appears preoccupied with issues connected with packaged food Industry, labeling, processing, etc. It's high time that food regulator tightened its belt.

Evolution of Food Regulation in India –

1898 – Livestock Importation Act

1947 – Vegetable Oil(Control) Order

1954 – Prevention of Food Adulteration Act

1955 – Fruit Products Order

1955 – Essential Commodities Act (FOOD)

1963 – Export (Quality Control & Inspection) Act

1967 – Solvent-extracted oil, de-oiled meal and edible flour.

1968 – The Insecticide Act

1973 – Meat Food Products order

1976 – Standard weights and measure Act

1986 – Consumer Protection Act

1986 – Environment protection Act

1988 – Edible Oils Packaging (Regulation) Order

1992 – Milk and Milk Products Order

1992 – Infant Milk substitute Act & Rules

Repealing All These Earlier Acts A New Central Law Replaced

Them by a Law called the Food safety and Standards Act ,

2006

1. Livestock Importation Act, 1898.

- The Act aims at checking the importation of stock through regulations, restrictions or direct prohibition. The main objective being to limit the entry of diseased (especially contagious) livestock in the country.
- The State Government was responsible for implementation of developing framework and penalties for implementation. Deviation from the act attracted a fine up to 1000Rs.
- It covered products like meat, poultry, and dairy products.
- The issue covered under this was basically sanitary and phyto- sanitary.³²

³² www.frost.com (article on changing face of Food legislation)

2. Vegetable Oil Products Regulation Order

- Vegetable Oil Products (Control) Order, 1947 and Vegetable Oil Products (Standards of quality) order, 1975 were consolidated to form the new updated Vegetable Oil Products (Regulation) Order 1998 for the regulation of manufacture, distribution and sale of Vegetable Oil products.
- Salient features of the Order³³ –
 - a) The procedure of registration was simplified
 - b) The standards of quality prescribes under the schedule were made more strict.
 - c) Vague and non-measurable requirements, which were open to arbitrary interpretation, had been changed.
 - d) The focus of the Order was on enhancing consumers protection through assured quality.

³³ Op cit 32 of Pg 55.

3. Prevention of Food Adulteration Act ,1954 –

- The act sought to protect the end consumers against impure, unsafe, and fraudulently labeled foods. It was applicable equally to domestic and imported products.
- It included aspects such as food color, preservatives, pesticides residues, packaging and labeling, and regulation of sales.
- It focused on regulatory standards for primary food products, which constituted the bulk of the Indian client in the 50's and 60's.
- The Act was limiting in scope as it prescribed recipes and not merely minimum product quality specifications.
- Public analysts and food inspectors were responsible for food testing. These officials were appointed by the State Government.
- The Central Food Laboratory worked as an appellate laboratory under the PFA (prevention of

food adulteration) Act, 1954 to check adulteration in food samples.³⁴

4. Food Products Order , 1955

- The Order made it mandatory for all manufacturers to obtain a license.
- An expert group was authorized to discuss and recommend amendments in the Fruit Products Order.
- Requirements were laid down in the Order for hygienic production and the quality standards were –
 - a) Location and surroundings of the factory
 - b) Sanitary and hygienic conditions of premises
 - c) Personnel hygiene
 - d) Portability of water
 - e) Machinery and equipment with installed capacity
 - f) Quality control facility and Technical staff
 - g) Product Standards
 - h) Limits for preservatives and other additives.

³⁴ Op cit 32 of Pg 55

5. Solvent –extracted Oil, de- oiled meal and Edible flour (Control) Order, 1967 –

- Governs the manufacture, quality and movement of solvent extracted oils, de-oiled meal and edible flour.
- Standards for hexane which acts as a solvent in the Oil extraction process, was specified to prevent contamination of oil.
- Consumer protection through quality assurance of the solvents extracted oils, de-oiled meal and edible flour.
- Eliminated the possibility of diversion of oils for unintended uses.
- Prohibits by, offer to buy, use or stock for use, any solvent not confirming to the quality standards for extraction of vegetable oils.

6. Meat Food Products Order , 1973

- The Order makes it mandatory for all entities engaged in the business of manufacturing, packaging, repacking, re-labeling meat products meant for sale to be licensed but excludes those who manufacture products for consumption on the spot, such as restaurants, hotels and so on.
- Production of meat was governed by local laws as slaughtering is a State subject and Slaughter houses are controlled by local health authorities.

7. Edible Oil Packaging (Regulation) Order, 1988 –

- Packers would have to register themselves with a registering authority.
- Packers should have their own analytical facilities or adequate arrangements for testing the samples of Edible oils compatible with Government Standards.
- Only Oils which comply with the Standards of quality as specified in Prevention of Food Adulteration Act, 1954 was allowed to pack.

8. Milk and Milk Product Order, 1992 –

- Any dairy plant /person handling more than 10,000 lt of milk per day or 500MT of Milk solids per annum had to be registered with the registering authority.
- To promote increased dairy production, previous restriction on setting up of a new dairy unit and expanding capacity were eased. The main focus was to monitor the sanitary and hygiene conditions as well as the quality and food safety measures.

9. Food Safety and Standards Act, 2006 –

- FSSA (Food Safety and Standards Act) is very different from the previous central and state legislations as it replaces all of them.
- The focus is on two main segments –
 - a) End consumers and
 - b) The food industry

The clauses within the legislation seek to protect the end consumers against adulterated and harmful foods while at the same time adopting a

more liberal attitude to promote the food industry.

- The Governmental role has been reduced to minimum. The Onus of food safety has been put on the food sector itself.
- This has become a single reference point for all the food safety and standards matters by moving from multi level, multi departmental control to single line of command.
- It covers basically all issues relating to production, processing, marketing and distribution of food and food related articles.

FSSA highlights –

- Everyone in the food industry is required to get a license, issued by the local authorities for the same. Temporary stall holders are exempted but still they need to register their business with the local municipal authorities.
- Issue of food traceability is also addressed under the Act. Every food distributor should be able to identify any intermediate product to its manufacturers. Also, anyone in the sector should be able to recall any procedures if it violates the specified standards.
- The FSSA also includes a new category of food – ‘Functional Foods’ broadly defining it and its scope.
- The state government is the authority dealing with the breach of FSSA regulation cases. Anybody unsatisfied with the decision may appeal to the Food safety appellate tribunal. The tribunal enjoys the same power as the civil court and decides the penalty in cases of non-compliance.

Governmental Policies and Schemes

Mid Day Meal Scheme

INTRODUCTION –

The roots of the concept of supplementary nutritional support, their educational institution took its roots in India when Madras Corporation developed a school program in 1925³⁵.

In the post independence era, it was state of Gujarat to first start school lunch program in 1984. However it was only in the 1995 that the National Program of Nutritional Support to primary education was launched at the National level.

The main objective of this scheme was to give boost to universalisation of primary education and to impact the nutritional intake of students in primary classes.

Since then the program was revised in 2004 and is popularly known as the Mid Day Meal Scheme.

³⁵ Article "An evaluation of mid day meal scheme" by satish deodhar and others. www.iimahd.ernet.in

Mid day Meal Scheme And Its development –

With a view to enhance enrolment, retention and attendance and simultaneously improving nutritional levels among children the NP- NSPE was launched as a centrally sponsored scheme on 15th Aug, 1995.³⁶

In 2001 MDMS became a cooked MDMS under which every child in every government and government aided primary school was to be served a prepared Mid day meal with a minimum content of 300 calories of energy and 8-12g protein per day for a minimum 200 days. The scheme was further extended in 2002 to cover not only children studying in government and government aided institutions, but also children studying in Educational Guarantee Scheme (EGS) and Alternative & Innovative Education (AIE) centre's.³⁷

In September 2004 the scheme was revised to provide for central assistance for cooking cost @ 1Rs. Per Child Per School day to cover cost of pulses, vegetables, cooking oil, condiments, fuel and wages and remuneration payable to

³⁶ Official HRD ministry website – mhrd.gov.in

³⁷ Ibid

personnel or amount payable to agency responsible for cooking.³⁸

In July 2006, the scheme was further revised to enhance the cooking cost to Rs.1.80 per child per school day for states in North Eastern region and 1.50 per child per school day for other states and U.T. The nutritional norm was revised to 450 calories and 12g of protein. In order to facilitate construction kitchen-cum-stores and procurement of kitchen devices in schools, provision for Central Assistance @60,000 per unit and @5,000 per school in phased manner were made.³⁹

Evaluation of the Scheme –

The MDM scheme has many potential benefits attracting children from disadvantaged sections (especially girls, dalits, adivasis) to school, improving regularity, nutritional benefits, socialization benefits and benefits to women.⁴⁰

³⁸ Ibid

³⁹ Ministry of HRD website.- mhrd.gov.in/school-education.

⁴⁰ [http://www.epw.in/perspective/MDM primary-schools.html](http://www.epw.in/perspective/MDM_primary-schools.html).

But media reports also document several implementation issues, including irregularity, corruption, hygiene, caste discrimination etc. A few popular incidents are as follows-

- In DEC 2005, DELHI police seized 8 trucks laden with 2,760 sacks of adulterated rice meant for primary school children. The rice was being transported from FCI godowns Bulandshahar District to North Delhi.⁴¹
- On 16th JULY 2013, 23 children died in Dharma Sati village in Saran district after eating pesticide contaminated mid day meal.⁴²
- On 31st JULY'13 , 55 students at a government middle school fell ill at Kalyuga village in Jamui district after their MDM provided by an NGO. On the same day 95 students at Chamandi primary school in Arwal district were ill after their meal.⁴³

⁴¹ The Tribune, Delhi 20th Jan'06.

⁴² The Hindu, Article on " Chargesheet filed in Bihar Mid Day Meal Tragedy" -22nd Oct'13.

⁴³ The Hindu, Article on" Students fall ill after a Mid Day Meal in Bihar" – 31st July'13.

Supreme Courts Role in MDM Scheme -

With the deteriorating condition and status of mid day meal scheme and the destructive impact it was leading to to, the matter came up to the Supreme Court and while dealing with this matter the Supreme Court talked about the importance of Right to Food.

In April 2001, People's Union for Civil Liberties (PUCL) initiated the PIL NO 196/2001, popularly known as the Right to Food case. PUCL argued that Art 21- Right to Life of the Indian constitution read together with Art.39(a) and 47 makes the Right to food a derived Fundamental Right which is enforceable by virtue of constitutional remedy provided under Article 32. PUCL argued that excess of food stocks with the FCI should be fed to hungry citizens. This included providing MDM in primary schools. The Scheme hence came into force with the Supreme court order dated 28th Nov, 2001 which requires all government and non- governmental

assisted primary schools to provide cooked Mid day meals.⁴⁴

The Supreme Court also issued **Interim Orders** occasionally regarding the Mid day meal scheme –

- Order dated 28th Nov 2001 – Basic entitlement – Every child in the government and government assisted primary schools will prepare mid day meal with a minimum content of 300 calories and 8-12 gm protein each day of school for a minimum 200 days.⁴⁵
- Order of 20th April 2004 – The Central government shall make provisions for construction of Kitchen sheds.⁴⁶
- Order dated 20th April 2004 –Quality safeguards
Attempts shall be made for better infrastructure, improved facilities(safe drinking water) closer

⁴⁴ "Mid Day Meals- A primer(pdf) retrived 28th July '13.

⁴⁵ "MDM scheme first review mission"(pdf) retrived 2nd Aug '13.

⁴⁶ Ibid

monitoring and other monetary safeguards as also to improvement of the contents of the meals so as to provide nutritious meals to the children of primary schools.⁴⁷

The Government of India Review mission on Mid day meal scheme comprising members from Central government, State government, UNICEF, and the office of Supreme Court Commissioner was created in 2010 to review the program and offer suggestions for improvement. The scheme is independently monitored twice a year.⁴⁸

Accordingly after the increasing incidents of Mid day meal mishaps , the central government Ministry of Human Resource development , Department of School Education and literacy issued certain guidelines to be followed and acted immediately on it by all schools in order to ensure quality , safety and hygiene under the MDMS.

⁴⁷ Ibid

⁴⁸ Ibid

These Guidelines included-⁴⁹

- Setting up of management structure at various levels
- Tasting of the meal by atleast one teacher
- Safe storage and proper supply of ingredients to schools
- Capacity building
- Cooking of Mid day meal
- Awareness about Mid Day Meal Scheme
- Convening of regular review meetings at district levels
- Social audits for the same
- Testing of food samples by reputed institutes
- Emergency medical plans

⁴⁹ Official HRD ministry website.-mhrd.gov.in

SUPREME COURT JUDGEMENTS

The constitution of India provides for a single integrated judicial system with the Supreme Court at the apex, High Courts at the middle (state) level and District Courts at the local level. It also provides for an independent and powerful judicial system. Judiciary in India acts as the guardian protector of the Constitution and the Fundamental rights of the people.

Salient Features of the Indian Judiciary –

1. Single and Integrated Judicial System – The Constitution establishes a single integrated judicial system for the whole of India. The Supreme Court of India is the highest court of the country and below it are the high Courts at state levels. The Supreme Court controls and runs the judicial administration of India. All the courts in India form links of single Judicial system.
2. Independence of Judiciary – The constitution of India provides for :
 - Appointment of Judges by the President
 - High qualifications for appointment as judges

- Removal of judges by a difficult method of impeachment
- Independent establishment for the Judiciary
- Adequate powers and functional autonomy for the judiciary.

All these features together make the Indian Judiciary function as an independent body.

3. Judiciary as the interpreter of the Constitution – The constitution is the supreme law of Indian land. The Supreme Court acts as the interpreter and protector of the constitution. It is the guardian of the fundamental rights and freedoms of the people. For performance of this role it exercises the power of Judicial review. It has the power to determine the constitutional validity of all laws. It can reject an such law which is held to be unconstitutional.
4. Guardian of Fundamental rights – Indian judiciary acts as the guardian of the Fundamental rights and freedoms of the people. The people have a right to constitutional remedies under which they can seek protection for preventing a violation or any threat to their rights.

5. Judicial Activism – Indian judicial system has been becoming more and more active. The Supreme court has been coming out with judicial decisions and directives aimed at active protection of public interests and human rights. Judiciary has been giving directives to public officials for ensuring a better security for the rights of the public.

6. Public Interest Litigation system – Under this system the courts of law in India can initiate and enforce action for securing any significant public or general interest which is being adversely affected or is likely to be so by the action of any agency, public or private.

This provides for an easy, simple, speedier and less expensive system of providing judicial relief to the aggrieved public.

With all these features the Indian Judicial system is no doubt an independent, impartial, free, powerful and efficient judicial system.

The Judiciary being the third organ of the government, it has the responsibility to apply the laws to specific cases

and settle all the disputes. From the citizen's point of view, judiciary is the most important organ of the government because it acts as their protector against the possible excesses of legislative and executive organs.

Role of Judiciary as the guardian-protector of the constitution and the fundamental rights of the people making it more respectable than the other two organs.

Functions of the Judiciary and Its Importance –

1. To give justice to the people
2. Interpretation and Application of laws
3. Role in Law-making
4. Equity legislation
5. Protection of rights
6. Guardian of the Constitution
7. Power to get its decisions and Judgments enforced
8. Special role in Federation
9. Running of the Judicial Administration
10. To conduct Judicial Inquiries.

The Judiciary has taken a serious note of the growing intensity of white collar crimes in India and hence played a responsible role to a great extent. With respect to food adulteration cases here are a few cases which dealt with the issue positively as well as leniently -

In *State of Orissa V. K.R Rao*⁵⁰ the Supreme Court defined the scope of the prohibition against selling of adulterated food.

The court observed –

“ In the absence of any provision, express or necessarily implied from the context, the courts would not be justified in holding that the prohibition was only to apply to the owner of the shop and not to the agent of the owner who sells adulterated food. The Act is a welfare legislation to prevent health hazards by consuming adulterated food. The mens rea is not an essential ingredient. It is a social evil and the act prohibits commission of the offence under the act. The essential ingredient is sold to the purchaser by the vendor. It is not material to establish the capacity of the person vis-à-vis

⁵⁰ 1992 AIR 240 – www.indiankanoon.org/doc/1971456/

the owner of the shop to prove his authority to sell the adulterated food exposed for sale in the shop. It is enough for the prosecution to establish that the person who sold the adulterated article of the food has sold it to the purchaser.”⁵¹

The Bombay High Court has emphasized the obligation of the Food Authority of India to prescribe the standards of every food article by framing regulation.⁵²

The Supreme Court plays a strict role while implementing food adulteration laws. No unnecessary leniency to be shown by the judiciary while reducing and giving sentence to the convict.⁵³

The Court recognizes wide scope of FSSA. Manufacturers as well as street vendors are included to abide by the FSSA and maintain hygiene and focus on public health.⁵⁴

⁵¹ Article by Adv. Praveen Dalal dated 01/05/2005 at IMC India Independent Media Centre.

⁵² Vital Nutraceuticals Pvt Ltd v. UOI 2014 (2) FAC 1

⁵³ Mithilesh v. St of NCT, Delhi 2014 (2) FAC 37, See also Kantilal v. St of Maharashtra 2014 (2) FAC 339.

⁵⁴ National Association of Street vendors v. South Delhi Municipal Corporation 2014 (2) FAC 96.

The Court emphasizes on the printing of list of Ingredients on the packaging cover of the product and mentions its importance.⁵⁵

The Court pinpoints that the State is concerned about Nutrition and public health.⁵⁶

The Court has emphasized at several occasions the binding time period that should be maintained to try adulteration cases.⁵⁷

Considering the level of importance that a product like Khoya has in the daily life of people, the Court in one of the cases orders rigorous imprisonment for adulterators of khoya product.⁵⁸

⁵⁵ Danisco India Pvt Ltd v. UOI 2014 (2) FAC 109.

⁵⁶ Banshilal v. St of Rajasthan 2014 (2) FAC 120

⁵⁷ M/s Tirupati Food and Beverages v. St of H.P 2014 (2) FAC 125.

⁵⁸ Suman Saini v. St of Haryana 2014 (2) FAC 152

The High Court emphasizes the need to give proper consideration and thought to each fact of the case while trying the case.⁵⁹

The Court talks about the stringent approach that judiciary follows to implement all the required procedural norms. But at the same time its flexible to the needs and requirement of the society.⁶⁰

In one of the cases the court held that even though the adulteration is marginal but still its an offense and hence is punishable under the law.⁶¹

The Court in detail held the matter of food subsidy wherein there were misappropriation of funds allotted for appropriation of grains variety.⁶²

⁵⁹ Hotel Ranchi Ashok & anr v. St of Jharkhand 2014 (2) FAC 157

⁶⁰ Muthyalakka v. UOI 2014 (1) FAC 190

⁶¹ Sukhdev Singh v. St of Punjab 2014 (1) FAC 260

⁶² Manpreet singh & othr v. Director, CBI & othr. 2014 (1) FAC 477

On the other hand the judiciary due to defects in law and procedural norms, the judiciary at times has failed to justify its acts. These areas need more responsible and positive role of the judiciary.

In this case there was marginal contradiction between the two authorities reports which led to disposing off of the case by the High Court.⁶³

The High Courts in every other case due to the delay and difference of the Central Food Laboratory and the Public Analyst reports have led to giving benefit of doubt to the accused and acquittal of the accused.⁶⁴

Many a times there is defect in the administrative norms. Law is not clear. But the fact remains in such times there are

⁶³ Baljit Singh & anr v. UOI & othr 2014 (2) FAC 44

⁶⁴ See also 2014 (2) FAC 86, 2014 (2) FAC 183, 2014 (2) FAC 196, 2014 (2) FAC 203, 2014 (1) FAC 270.

cases wherein latent adulteration is there. But still benefit of doubt is given to the accused and is acquitted.⁶⁵

The High Court has many a times differentiated between product for sale and product for human consumption irrespective of the fact that in both the cases they are lastly humans who are going to consume it.⁶⁶

The Final Outcome today -

The Judiciary has no doubt in all respects tried to function in the limits that it could. But that seems to be not sufficient. We need to have a more stronger role to be played by the judiciary in order that the loopholes created by the other two organs are compensated and that these organs get a proper direction as to their future responsibilities and duties in that matter.

Today's rising concept of Judicial activism is a live example of this increasing stronger role to be played by Judiciary. In

⁶⁵ Delhi Administration v. Sunil Kumar 2014 (1) FAC 163.

⁶⁶ 2014 (1) FAC 198

almost all cases that is before the Judiciary or not, the judiciary has seen to it that it intervenes in between and orders the other two organs to function efficiently and implement its decisions.

Recently a million dollar question posing some problem to the government of India pertained to the thousands of food adulteration cases pending before various judicial courts throughout the country. This issue became a sensational news when traders associations filed a plea with the Prime Minister's Office to dismiss all such cases immediately since the present food quality and safety laws have replaced the old ones prevailing between 1956 and 2012.

But the question before the government was is it ethical for the government to direct the judiciary to ignore such cases, some of them pending for decades, when prosecutions were initiated based on laboratory evidence. A crime does not become a crime just because a law has been tweaked. The new food safety and standards act has inherited all the liabilities and assets of erstwhile Prevention of Food

Adulteration Act 1954 and therefore a crime committed then cannot be condoned under any circumstances.

No doubt the judiciary has to take some blame for this sorry situation because of the delaying procedures compounded by ruthless lawyers who try to prolong the cases as much as possible. Is it not a joke that some of the parties do not even live today because of repeated adjournments and prevarications by the clever lawyers which drags such cases for decades deliberately serving the cause of those being prosecuted!

CRITICAL ANALYSIS

1. Of the Legislative Initiatives –

The latest FSSA is no doubt a historic one. It is fully agricultural oriented and will constitute a regulatory authority that will govern the standards and quality of food right from national level to the panchayati level. Also it is a major initiative in abolition of the inspector raj system. The act imposes a responsibility on the operator of business to recall the articles of food, if he finds that they don't satisfy the standards of the Act.⁶⁷

If the inspector or the food officer is found misusing his power, there is a provision to impose fine on him which has reached to about Rs. 10,00,000⁶⁸

The Act includes the Food distributed in the Public Distribution System ie. It covers even the Food Security Act 2009.⁶⁹

⁶⁷ Sec.28. It provides for recall procedures.

⁶⁸ This amount was nominal in the PFA.

⁶⁹ Not brought to force yet.

Critical analysis of the law –

In spite of the above mentioned benefits the Act contains many loopholes. Some of the drawbacks are given below⁷⁰ –

- 1) There is no registration process mentioned, nor is there any authority specified for registration.
- 2) The Act provides for compulsory process of registration, this creates a problem for small businessmen like hawkers and vendors.
- 3) The Food Safety Officer has defined no jurisdiction for the sake of inspection and seizer of sample.⁷¹
- 4) The provisions that give power to the officers to grant license or impose huge penalty give way to the possibility of corruption which is the root cause of all evils in practice.
- 5) Except from the packaged drinking water , the potable water used in the manufacture of most of the articles of food, is excluded from the purview of the Act.

⁷⁰ Poseidon01.ssrn.com – article on a critical study of FSSA 2006.

⁷¹ The power is given under s.41 of the FSSA

- 6) There are certain expressions that are not defined and that might add and are currently adding, to the number of litigations due to their ambiguous meaning. For example, 'safe and wholesome food for human consumption', 'good manufacturing practices', and 'good hygienic practices'.
- 7) As food business includes 'any undertaking whether giving profit or not', this tends to include in itself and even criminalizes services rendered by the gurudwaras, the mosques and dargah bhandaras, which feed millions of poor people. To avoid such undesirable consequences, we need laws to project diverse food laws and culture from the disease causing homogeneous centralize food culture of the west.

2. Of the Implementing Administrative machinery –

The main problem with the laws whether that be of PFA or the FSSA, 2006 is firstly, the implementation. The laboratories are important elements towards implementation. They are the link between the Accusation and the Fact. Not just because they are meant to detect the adulterant in the food but also because there should be correct detection of the disease caused by the bad food. The problem is that the Act does not give provision for such facility in the laboratories i.e detection of the disease caused. Actually this should be one of the factors deciding the graded punishment.

The preamble of the FSSA reads as- "An Act to...establish The Food Safety and Standards Authority of India for laying down science based standards for articles of Food. The question is does this new Act provide for the establishment of state-of-art laboratories which are much more prompt and fast in giving responses.

The fact is that certain fields of science are centrally needed to inform the courts of whether and to what extent exposure to a product might have contributed to someone's injury.⁷² It is difficult to identify how much exposure was received. Regrettably they are not able to detect an adverse effect even when it is present. We don't have laboratories in India and that is a fact. The one's present are in a very pathetic condition.

Secondly, the problem of Corruption is the root cause of all evils in India. There is so much power given to the licensing authority which has led to the scope of misusing that power. The administrative authority by accepting good amount of under the table money has compromised on the legislative requirements at each level of the procedures. There is a free hand given to these authorities without any check on them leading to a mess in the administrative procedure. The failure of administrative machinery makes the legislative initiative toothless and a waste.

⁷² Carl.F Cranor, Toxic torts, Science, law and the possibility of Justice.

3.Of the Role of Judiciary –

The Judiciary has no doubt performed within its limits whatever it could. But still the issue of Food Adulteration laws are not taken as seriously by the judiciary as it should. The issue of corruption has even acted strongly in the judicial field. The legal fraternity has been misusing its immense power to a great extent. The problem of food adulteration needs immediate attention as it pertaining to life and also the subject matter is highly perishable. But our system stretches a case for ages and generations. The legal fraternity by the instrument of adjournments and delays postpones the case for ages the final result being at risk. The slow process of justice delivery system has made the best of food adulteration laws ineffective and baseless restricted only on paper. Due to some procedural loopholes in the legislative and the administrative wing, the judiciary is forced to give benefit of doubt to the accused in some cases leading to injustice to the victim.

CONCLUSION AND SUGGESTIONS

The FSSA is answer to many problems that previously existed but the implementation part raises many speculations.

Among the prominent features is the sanction part which provides for fine as well as imprisonment. The point being, the evil of food adulteration being a socio-economic crime generates a lot of wealth and therefore the perpetrator should be made to pay the fine which he easily can for which he becomes liable.

Then, the socio-economic crimes on one hand are considered to be harming the public to maximum extent and on the other hand they hardly carry the social stigma that is usually a feature in other forms of offence. The penalties will never solve the purpose. Stringent punishments to the extent of blacklisting the manufacturer or seller, so that he cannot carry the business anymore.

Food adulteration is a 'slow poison' and it gives rise to serious health hazards. Therefore laws to prevent food and dairy products should be made more stringent and strict.

As with the increase in the food industries the cases of food adulteration are also increasing. So Food testing laboratories should also be increased area wise, so that the number of tests could be increased and the people(who believe in making profits out of adulterating food) will have fear in continuing this process in future.

The definition of 'food' expressly excludes the animal feed from its purview. The fact is whatever pesticides, insecticides etc gets into animals feed and consumed by the animal (cow, goat, etc) becomes a part of the food chain. Eg Milk today.

As there is lack of proper training of procedure, both legal and scientific or technical, there has usually been problem taking the sample in the adequate manner and

quality required for testing. For this purpose, the ministry of HRD can think over the role of universities, which can, after looking at the seriousness of the affair, provide for the courses on food testing.

A separate ministry should look into the matter of food adulteration being a serious matter that affects the health of the citizens.

Food adulteration is a very serious offence therefore it should make the CEO's of the company liable.⁷³

Hawkers should be brought under the ambit of the FSSA, as they do a major part of the commerce. The method of testing in their case should be made simple and non technical.

Food recall should be issued in the media to inform the citizens and make them aware about the unsafe food.

⁷³ <http://ssrn.com/abstract>.

There should be good, high tech laboratories in each district with modernized equipments.

There does not appear to be any lasting solution to this vexed problem. Stringent punishment to proven fraudsters in double quick time, if made the hallmark of the food safety regime may see a significant decline in the food adulteration cases.

A separate and dedicated food fraud court stream under the judiciary for fast tracking such cases may also have a deterrent effect.

BIBLIOGRAPHY AND REFERENCES

1. Commentary on Constitution of India by D.D Basu, 8th Edition 2011, Lexis Nexis Butterworths Wadhwa.
2. Constitution of India by P.M Bakshi- Universal Law Publishing.
3. Indian Constitutional Law with constitutional documents by M.P Jain, 6th edition , 2010 Published by Lexis Nexis and Wadhwa.
4. Constitution Commentary by H.M Seervai, Vol 1&2, 4th edition, Universal Law Publishing.
5. Constitution of India by V.N Shukla, 12th Edition by Mahendra Singh, Eastern Book Company.
6. Introduction to the Constitution of India, 20th Edition, Lexis Nexis Butterworths Wadhwa.
7. Constitutional law of India by Dr. Subhash Kashyap, Vol.1, Universal Law Publishing.
8. Food Adulteration Cases journal 2014-15.
9. Prevention of Food Adulteration Act, 1954
10. Prevention of Food adulteration Rules, 1955 with 2010 amendments

11. Food Safety and Standards Act, 2006
12. Food Safety and Standards Rules, 2011
13. Food safety and Standards(Packaging & labeling) Regulations, 2011
14. Food safety and Standards (Food products Standard and Food Additives) regulations, 2011.
15. Food Safety and Standards (contaminants, toxins and residues) Regulation 2011.
16. Food Safety and Standards (laboratory and sample analysis) Regulation, 2011.
17. Livestock Importation Act, 1898
18. Vegetable Oil Products Regulation Order
19. Food Products Order, 1955
20. Solvent extracted oil, de-oiled meal and edible flour (control order), 1967
21. Meat Food Products Order, 1992
22. Edible Oil Packaging (Regulation) Order, 1988
23. Milk and Milk Products Order, 1973

REFERENCES

1. www.frost.com –article 'The Changing face of Indian food legislation'
2. www.ijssit.com/vol1/issue2/nov-dec2012
3. www.wikipedia.org
4. <http://ssrn.com/abstract>
5. <http://www.epw.in/perspective/MDM /primary - schools.html>
6. www.iimahd.ernet.in
7. Gujarathighcourt.nic.in/articles/courtsystem.html
8. India.indymedia.org/en/225/05/210472.shtml
9. www.fda.gov/about FDA/whatwedo/history
10. <http://unispal.un.org/UNISPAL/NSF>
11. www.acpma.com
12. www.indiankanoon.org
13. All India Reporter (AIR)
14. www.mhrd.gov.in- official HRD ministry website
15. www.fao.org – official FAO website
16. The Times of India Article -07/04/2015
17. DNA article- 24/12/2014

18. Business Standard article -05/05/2014
19. Tribune article- 20/12/2006
20. The Hindu article – 22/10/'13 and 31/07/'13
21. Committee on ESCRs 1999
22. U.N treaty collection retrieved
23. Optional protocol to ICESCR articles
24. MDM scheme first review mission(PDF)