

Food Law Regime in India: Meeting the Global Standards

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Abstract

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Received on 05.10.2018
Accepted on 31.10.2018

Implementation of Food standards to ensure Food safety is a serious public health concern in the world especially in countries like India. The challenges of feeding a large, geographically dispersed population, millions of whom are poor and malnourished, are immense. This has led to the proliferation of illegal, dishonest, and bootleg suppliers and slipshod government policies. The results are detrimental to public health, particularly for vulnerable communities. These crises further compromise international perceptions, indicating poor governance, weak political will, inadequate policies and lack of enforcement. The path to development is not exclusively about economic growth, jobs, and infrastructure. Clear and consistent food regulatory policy, and their implementation are both imperative for growth and the inherent responsibility of responsible and progressive governments. Food scandals have plagued India for decades. The case of Nestlé's Maggi instant noodles has thrust the issue of food safety into the national political spotlight. Additives such as monosodium glutamate (MSG), which some consider a possible health concern, have been detected in Maggi noodles, although the company has consistently denied using such additives. After the Food Safety and Standards Authority of India (FSSAI) discovered unhealthy levels of lead in the noodles, FSSAI banned Maggi.

Keywords: Food Law Regime; Monosodium Glutamate; FSSAI.

Introduction

Food safety is a shared responsibility. Governments establish food safety policies and they put in place and manage a system of controls that collectively aims to assure that national food safety goals are met. National food safety regulations and standards are a fundamental part of the food control system. The modern conception of food control places direct responsibility for ensuring the safety of food on all operators in the food chain. They must be able to demonstrate to regulatory authorities that their operations are in line with national guidelines and codes of practice and that their products meet national standards.

Consumers also play a role in functioning of national systems of control beyond the actual safe handling of food that they purchase or otherwise obtain: their choices and concerns influence decisions of government and the food industry [1].

One of the most basic rights that we come across is the right to safe and nutritious food [2] that has evident nexus with right to life. These human rights are indivisible and inalienable and hence these rights cannot be denied to any individual. These rights are inter-linked to one and other so denial of enjoyment of one right will have inevitable impact on other rights as well and also its relation with rule of law. Proper and precise implementation is required for an effective Rule of Law not only in documents but in reality as well. It was a bumpy ride for India when

it comes to the Country's Food Safety Administration or its reform process. Adoptions of Sanitary and Phytosanitary (SPS) Agreement [3] under the World Trade Organization (WTO) have earned for India alongside world a larger share of recognition in world food trade. The ability of India to enter world food market depends entirely to the food safety standards adopted by developed countries [4]. The GFSI Vision is "driving continuous improvement in food safety to strengthen consumer confidence worldwide" [5]. In order to implement the provisions of Food Safety and Standards Act, 2006, Food Safety and Standards Rules and Regulations were under preparation during the period 2009 and 2010. The main objective with which the act is introduced is to achieve a single line of command instead of having multi-level, multi-departmental control [6].

The Meeting of Global Standards - A Comparative Analysis of Indian Food Laws and Global Standards

The year 1945 can be solely marked as the 1st year in which issues related to maintenance of food standards was undertaken by international organizations as well as governments of the respective states. Prior to the commencement of this year there were no such measures adopted by any international organisation. The food and agriculture organisation of the United States popularly known as FAO [7] was established in the year 1945 and the World Health Organisation [8] which was established in the year 1948 led to the commencement of new era in providing guidelines for maintenance of food standards on a global level. Instead of being separate entities, both the organisations were established with an intertwined mission. During the year 1960, a joint food standard programme was adopted by these two organisations which was known as food standards programme [9]. The aim of this programme was harmonisation of the food standards [10].

Few Examples of International Institutional Structures Serving as a Framework for the Standardization of Foodstuffs

We will now separately take a look at to how the inter-governmental organisations and non-governmental organisations have separately set benchmarks and guidelines for various developing nations including India and have acted as the guiding light for their national standards. We proceed with our discussion by first analysing the various important inter-governmental organisations.

• Inter-Governmental Organisations

The Codex Alimentarius Commission

Under the joint food standard programme which has been slightly discussed above a commission called codex alimentarius commission was established in order to set high food standards globally, to give guidelines and deal with other matters incidental thereto. The importance of Codex Alimentarius was recognised in the 1985 United Nations Resolution 39/248:

"Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius..." [11].

One of the main purpose of codex was to ensure high food standards and thereby ensure consumer protection. It also primarily emphasised upon the promotion of coordination adoption of the food standards by the governmental and non-governmental organisations [12]. The Codex Commission comprises of 163 member states and has various committees dealing with the establishment of international standards relating to food laws. For a codex standard to be approved, a long 8 step process has to be passed and initiated. This is a reason why a codex standard takes a long span of time in order to be approved. At present, there are about 200 codex standards which has been approved and initiated. These standards were initially not legally binding but were brought in order to act as a guiding light for maintenance of food standards in the developing countries. They became legally binding only after their adoption by the member states. Under recent World Trade Organization (WTO) treaties and agreements, however, once a Codex standard is adopted nationally, the Codex standard represents a "safe harbor" for countries that want to sell products in world markets [13]. Until the year 1994, the work done by CAC mainly remained unnoticed by the international community. The WTO came as a rescue and threw a light over the work of codex commission more prominently. The success of the codex commission became so prompt that its membership jumped from 77 countries in 1991 to 123 countries in the year 2003.

CCASIA

CCASIA is "one of the Regional Coordinating Committees established by Codex Alimentarius Commission, which has 23 Asian Member

countries as of 2014. The main objective of CCASIA is to promote mutual communication among the Asian members as well as to develop regional standards for certain food products. Since its beginnings in 1978, CCASIA has been working under the purpose of the Codex of protecting the health of the consumers and ensuring fair practices in the food trade. India has been elected as the Regional Coordinator for Asia in July 2015 and will host the 20th Session of the CCASIA in September 2016 [14]."

Codex Procedures

The procedures with regard to functioning of Codex are available in the Codex Procedural Manual. The Procedural Manual of the Codex Alimentarius Commission describes the legal foundations and practical functioning of the Commission and its subsidiary bodies [15]. There is a uniform procedure laid down by the Codex Alimentarius Commission for the elaboration of Codex Standards and related texts.

The Sanitary and Phytosanitary (SPS) Agreement

The agreement pertains to the sanitary or phytosanitary measures that members take to protect human, animal, and plant life and health from foreign pests, diseases, and contaminants [16]. The standards related to food safety are covered in the same rubric. National sanitary and phytosanitary standards can be established either using internationally agreed upon guidelines, recommendations, or standards; otherwise they must be based on sufficient scientific evidence.

The SPS agreement encourages the governments of respective States to make their standards in consistency with the international standards, guidelines and recommendations and the process is came to be known as 'Harmonization'. The agreement also emphasises over the fact that some of the trade restrictions are necessarily enforced in order to ensure the safety of food. The agreement further aims at reduction of arbitrariness in the decision making process of particular states in order to encourage a consistent decision making process.

The Economic Commission for Europe of the United Nations (E. C. E./U. N.)

The devotion towards the quality standard in the field of food standards can be seen by the E.C.E of United Nations. Its work mainly belonged to the agricultural produce food stuffs as their standardisation also had a significant importance [17].

The Organization for Cooperation and Economic Development (OCED)

In order to develop exchanges and to foster the quality of products, the OCED contributes more particularly to the definition of trade -categories in the field of fresh fruit and vegetable as well as to the standardization of, conditions of transportation and presentation of such products. The international application of the technical standards so proposed was recommended to governments on the grounds of a "Regime's for the application of international standards to fruit and vegetables [18]."

The Council of Europe

The Council of Europe constituted, within its organization, as early as 1959, a "Partial Agreement", so "called because its work-more particularly in the field of public health is pursued by a restricted number of Member States. The standardization efforts undertaken 'concern mainly flavouring, the use of additives and the prevention of foodstuff contamination (pesticides, packages).

The European Economic Community

The unification of European markets implies the free movement of commodities on the territory of the nine Member States and the removal, namely, of non-tariff hindrances to exchanges. The deletion of legislative or statutory discrepancies, which this object implies, is carried out, in particular, by negotiation and the 'determining of European food standards, either on a "horizontal" plane (use of additives, labelling) or on a "vertical" plane (definition, composition and presentation of determined products). The standardization of foodstuffs in the context of the European 'Community thus gives rise to the laying down of common rules with a "supra-national" calling since they become mandatory for Member States through the sole fact of their approval by the Council [19].

Benelux Economic Union

Entrusted with the implementation of the Economic Union established between its three Member States, this small international organization is, therefore, interested also in the standardization of commodities, especially of foodstuffs. Under its care, the concertation between governments permitted the substantial unification of a certain number of national food standards [20].

The International Council for the Culture of the Olive

Institution constitutes a good example of an organization set up in view of the implementation of an international governmental agreement on basic products [21]. It has for its task, among others, within the context of this agreement, to elaborate international technical standards applicable to olive oil and table olives and to organize and recommend the adoption thereof.

The International Office of Vine and Wine

Also with an intergovernmental character, this organization prepares technological standards intended for the improvement of the quality of grape, grape juice and wine. Such standards can lead to an international agreement (convention for the standardization of methods of analysis for wine) or be the subject of plain recommendations intended for governments [22].

• *Non-Governmental Organisations*

International Standardization Organization (I.S.O.)

Specifically devoted to the international standardization, this important organization has a universal calling and forms a kind of international federation of national groups, independent of their governments. One of its specialized bodies, the Technical Committee (ISO/TC 34) is more particularly devoted to the standardization of agricultural produce and foodstuffs.

International Dairy Federation (IDF)

Represented in 29 countries by national groups, it collaborates actively with other international organizations interested in the standardization of milk and dairy products.

International Organization of Consumers Unions (IOCU)

This young organization has not for its object to elaborate international food standards but tends to gather the national consumers' organizations to the end of expressing their viewpoint, within the context of international harmonization work [23].

Global Dialogues upon the Food Safety

When "it was clearly recognised by the WHO and FAO that only setting up international

standards are insufficient, in July 2008 the G-8 countries came forward to stress upon the importance of a national Food Safety system. It gave its recommendation to WHO and FAO to "organize periodic international meetings of food safety regulators to advance the process of science based public consultations."²⁴

Responding to the above recommendation two global meetings were consequently organised for the food safety regulators. First took place in the year 2002 and the second one took place in the year 2004. The meetings were attended by nearly representatives of 100 countries.²⁵ The meetings provided a golden opportunity of interaction of the food regulators of developing as well as of the developed countries. The interaction resulted in sharing of the experiences and problems."

Moreover the Second Forum Led to Discussion upon the benefits and problems upon merging of the food safety agencies Announcement was made regarding establishment of a new network for emergency communication within the food safety regulators which was known as INFOSAN. The food regulators of the developing countries also confessed their frustrations due to the lack of resources for their programs. One of the nongovernmental organization called Safe Food International (SFI), presented a concept paper on the value of partnering with consumer organizations in building support at the consumer level for strong national food safety programs [26].

The food safety Regulatory Compliance in India with the International Standards.

One of the most developing issues confronting the international community in present context is Food Safety. Instead of the fact that there are international regulations prevailing for approximately all the categories of products, the regulations followed by the individual member nations yet vary. One of the nation's possessing such variance is India. The main reason behind such a variation is that these nations are free to adopt and modify and have their own regulations. It as an crucial aspect to have an understanding of the levels of food safety regulations and its compliance in our country. The present head is an attempt towards understanding the levels of food safety regulation compliance in India in food businesses under surveillance of India's food safety act of 2006 and also to understand that whether the food safety act of India is complying with the above mentioned international standards or not [27].

In the global arena the food needs have gone beyond from the mere supply of food to the safe and nutritious food and its decent marketing system which promises a high quality and standardised food products [28]. The consumers have high hopes that domestic as well as the imported food meet the basic quality as well as the safety standards in terms such as food hygiene, certification, labelling and other related activities. Scientific developments have led the consumers towards the awareness of all these aspects in a better manner which made them more vigilant in the food matters [29].

However instead of having so many international and national laws, the apprehension about the quality and standards of food still exists. And the apprehension not only persists in developing countries but also in the developed countries. In order to comply with the global perspectives of food safety and standards, long-term national strategies has been initiated by India in order to establish an efficient food safety system. However it is a clear fact that how much benefit the laws rules and regulations will give entirely depends upon the law enforcement agencies and authorities who are responsible for implementation of the regulations and monitoring of compliance.

United Nations and World Health Organisation Guidelines on Food Safety

Safety is not defined as a situation with total absence of hazards. According to the Food and Agricultural Organization of the UN and World Health Organisations, food safety refers to all those hazards, whether chronic or acute, that may make food injurious to the health of the consumer [30].

The Indian Food Safety System Vis-À-Vis International Objective of Food Safety

The Indian food domestic market does not possessed effective food control system because of the presence of multiple legislations within the nation. The presence of such multiplicity of laws weakened the surveillance monitoring and enforcement procedure. The food laws prevailing before the coming of present act were passed by various ministries in India each having their own dominance in terms of their rules and orders, which created a conflicting and contradictory environment in the food sector [31]. So it can be easily concluded that despite of having multiple legislations in our country no remarkable achievement was made in terms of food safety within the nation.

The year 2006, the country looked forward to a new initiative and enacted the Food Safety and Standards act of 2006 (No. 34 of 2006), which was passed by the ministry of Health and Family Welfare which integrated the previously existing Food Laws of India. The Food Safety and Standards Authority of India (FSSAI) "has been established under Food Safety and Standards, 2006 which consolidates various acts & orders that have hitherto handled food related issues in various Ministries and Departments. FSSAI has been created for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption."

The present Act brought one statute under a sole regulator known as Food Safety and standards Authority of India (FSSAI) with major revisions. To strengthen the process further the central government notified the Food Safety Standards rules [32], 2011 on 5th May 2011. These fresh initiatives brought up by the government laid sown science-based standards for betterment in control of food quality. If we analyse the Indian act further a conclusion can be drawn out that it is based on international legislations, Codex Alimentarius Commission and various other instrumentalities. The Act consists of 21 chapters and 101 sections and two schedules that provide measures of food safety from various stages of production to consumption.

Some of the most important provisions of the act such as CH-IV comprising of sections 19-25 holds some of the key provisions.

For Example

Section 21 of the Act states that foods are not to contain any insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active substance and micro-biological contaminants in excess of limits prescribed under the regulation. One important clause of the Act imposes liabilities on the manufacturers, packers, wholesalers, distributors and sellers if a food article fails to meet the requirements of this Act. It provides for graded penalties where offences of manufacturing, storing or selling of misbranded or sub-standard food is punished with fine, and more serious offences with imprisonment. The Act also compels the establishment of food recall procedures [33]. The progress seen in the Indian food regulatory system is a positive indication by the coming of such comprehensive legislation. It is also to be noted that

the act embraces the concept of International Food safety Objective [34] that entails “*flexibility of food safety operation to the Indian food businesses to manage food risks hazards in the global competitive market.*”

Regulators are motivated by the act along with the rules to further develop and implement the inspection procedures in a more significant manner. It further enables them to adequately access the control measures that are implemented. For instance, the Act aims to register/issue licenses to all the food business operators in the country including the small, medium or even temporary vendors in streets, in order to trace and control quality of food. In this context, as per Clause No. 1.2.1(5) of FSS (Licensing and Registration of Food Businesses) Regulation, 2011, State Food Safety Commissioner may involve officials of Panchayat, Municipal Corporations, NGO or any other local body in an area as registration authority under the Act.”

Codex India

The 40th Session of Codex Alimentarius Commission (CAC40)

The “40th Session of Codex Alimentarius Commission (CAC 40) was held at CIGG, Geneva, Switzerland during 17-22 July. Several new standards, codes of practice and amendments/revision of existing standards were adopted in this session.

India was re-appointed as Regional Coordinator for Asia (CCASIA) to hold office from the end of CAC40 until the end of session of the Commission scheduled for 2019. The FAO Conference had adopted a resolution promoting 7th June as World Food Safety Day. The commission welcomed and strongly supported the observance of the World Food Safety Day which would contribute to raise awareness of food safety issues amongst all relevant stakeholders worldwide and to raise the profile of Codex with respect to food safety.”

Areas Requiring Serious Efforts

India’s food sourcing problems have been immense. Genetically modified products are increasingly seen by some as a viable solution for feeding India’s growing population, setting the stage for a public battle among corporations, scientists, public health advocates, and NGOs. Although the EU recently lifted a ban on imported Indian

mangoes, a number of agricultural products remain subject to import restrictions, due ostensibly to lax regulations and enforcement.

Regrettably India’s food safety standards are not at developed world standards. The U.S. Food and Drug Administration (FDA) frequently rejects products shipped from India, from food to generic medicines and cosmetics. Given this, it is difficult to see how Maggi was declared unsafe when analyses by Singapore, the United States, the U.K., and Canada indicate otherwise. This raises the prospect that India’s food safety monitoring system is inconsistent and arbitrary, a product of larger governance and bureaucratic failures at the regulatory level.

Testing and analytical capacity among India’s official food safety monitoring units is inadequate to manage a supply system that feeds nearly 1.3 billion people. In Delhi alone, a food testing agency has only three chemists and has had to rely on outsourced capacity of dubious reliability. Many have argued that food testing laboratories lack adequate equipment and expertise. Assuming the Maggi product sold in India is the same as that sold around the world, there appears to be a breakdown in India’s food safety monitoring system. Beset with under-capacity, the country’s food regulatory bodies lack credibility among the domestic public and international communities and investors. This undermines government efforts to protect citizens against legitimate health threats.

Prescriptive Rather than outcome Approach

Codex International Codes of Practice consists of a global range. The approach adopted by the codex practices is that what are the factors that need to be considered and what are the results that are simultaneously required to be achieved. Their approach is quiet impressive. If we talk about the Indian standards it has always focused on how the results should be achieved, which should not be their primary focus.

There are certain advantages of a prescriptive approach such as:

- Prescription presents a number of advantages:
- Producers/ processors can clearly understand what is required of them
- Auditors can readily judge with relative uniformity whether the required provisions are being met
- Standard implementers have reasonable assurance that their requirements are met by their suppliers

Demonstrating Equivalence of National Voluntary Standards

It is very important to develop equivalence between 3 levels of standards i.e.

1. Equivalence of international standards with the national standards.
2. Equivalence of national standards with the standards developed by the private food operating agencies so as to act in coherence with each other and also to act in a contributory manner.

In order to eliminate the potential negative impacts coming out from the breach of standardization it is one of the most logical approach to come together and act in a collective and equivalent manner at all the levels of standardization. It also brings the positive effects of the prescription. The approach has been much applauded and has been taken up by many countries and in most of them the positive outcomes have been attained by working in collaboration and co-ordination. For e.g. if we set the international standards as a bench mark to the national ones and the national standards as a bench mark to the private food business operators, it would be very feasible for them to work in a manner that would help the process of standardization in achieving its objectives. It would definitely act as a much more practical approach. In order to withstand the imposition of costly food safety management measures, which do not necessarily contribute to improved food safety outcomes, countries must have the ability to qualitatively or quantitatively demonstrate the equivalence of an alternative measure in terms of food safety outcomes.

Requirements for Documentation and Record Keeping

Keeping the records up to date and documentation is one of the most crucial requirements of the food standards and safety management systems. It is very important to rationalise documentation requirements in a manner so that it may provide the necessary food safety guarantees without any obstacles or inefficiency in the day-to-day business and operations.

Requirements for Staff Training

There is increasing specificity provided on staff training requirements as we move from Codex to collective private standards to individual firm standards. Section 10 of the Codex General Principles of Food Hygiene requires that "Those

engaged in food operations who come directly or indirectly into contact with food should be trained, and/or instructed in food hygiene to a level appropriate to the operations they are to perform" and provides further guidance on factors to be considered by businesses in deciding on the level of training required. Specific Codex codes provide further guidance on training needs in specific operations. Collective private standards are generally in line with the Codex guidance but in some cases, may specify areas of training needs and also explicitly require that training records be kept. Some individual firm standards may further require that key food safety staff be trained through "approved industry training courses". The ability of the nation to implement codex standards would thereby greatly enhance their ability to comply with the standards. Instead of the fact that India has an authority for the implementation of food safety standards; the country still struggles for an effective implementation.

FSSAI is a learning organisation that has already established connections with opposite numbers in many other countries and benefited from the interaction. It now needs to look more systematically at how to develop optimal engagement with other countries. The Report covers some different forms of international engagement but it also focuses on which countries FSSAI should look to learn from. Most of its partnerships have been with developed countries but it has much to learn from other middle income countries that are facing similar issues at present or have faced them recently and moved through them. The Report therefore reviews major food safety challenges or currently contentious issues in order to suggest which countries FSSAI should look to in order to learn from. It suggests more middle income countries than FSSAI has engaged with so far and suggests what the main learning should be from each.

Formal Exercise of International Obligations

India has obligations to the international community and many of these are formalised in treaties or other forms of international agreements. For FSSAI, the two areas of international obligations are food standards and trade in food products. Both have a common source which is the WTO SPS Agreement, which sets out the WTO context for trade in food products. This is regulated by having a common global approach to food standards through the Codex Alimentarius structure. India has been a member since 1964 and currently hosts the FAO/WHO Coordinating Committee for Asia (CCASIA)

and the specialist Codex Committee on Spices and Culinary Herbs (CCSCH).

Although FSSAI is not responsible for food exports, it is responsible for imports. Responsibility for trade policy is with the Ministry of Commerce and Industry so FSSAI's role is a technical one of ensuring control over food imports. This is now subject to the Trade Facilitation Agreement¹ which became binding on all WTO members in February 2017 and requires import controls to be risk-based. FSSAI will have ways of learning of dangers in incoming consignments through trade notifications.

For the purposes of learning from specific countries, FSSAI has also entered into various bilateral agreements with a few countries and international organizations, through Memoranda of Understanding, Cooperation Agreements or Joint Statements of Intent. Although these are legal documents, the obligations would never be enforced and, in any event, are not very onerous. These bilateral agreements are as much about diplomacy and ceremony as about business but their purpose is as a vehicle for learning. Some have been more successful than others but they are not seen as an effective answer to the challenge of keeping up with developments.

Analysis and Conclusion

There are many difficulties seen as to the cooperation of the global standards with the national laws. It brings with itself the risk of slowing down the process and also sometimes jeopardises it. In the process of achieving the global co-operation the main hindrance seen is the difficulty of the political nature. When many organisations and governments come together with their different policies and ideas it is seen that the probability of clashes increase and there arises a conflict as to whose idea prevails in front of all. The possibility towards negotiations decrease which is very essential for the attainment of global cooperation in terms of any laws. Also there are divergent views of the nations which is a necessity because of different economic characters they possess.

Apart from the political difficulties there persists technological differences among the developed and the developing nations. India being technologically much weaker to UK and USA, initially wasn't able to pull of the global standards much effectively. It is because of coming of FSSAI that these standards have been kept in mind and the national laws and rules are made accordingly. It is to be kept in mind

that these difficulties are to be tackled in accordance with the circumstances prevailing the country. The non-compliance also occurs sometimes due to the excessive complexities of the international standards. One of the facts which cannot be concealed is that a much elaborated international standardization is a luxury which can be often afforded by the developed nations but in case of the developing nations like India such luxuries cannot be afforded at every instance. However India as a developing country has made much considerable attempts as to the meeting the global standard to ensure food safety within the nation but the fact which cannot be ignored is that apart from having so much global laws and international standards and despite of so many efforts the apprehension related to the safety of food still exists and prevails into the society. One of the major reasons behind such an apprehension could be that the corporate entities indulged in food marketing and business in India is continuously breaching these standards.

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