

Research Paper

SAFE FOOD FROM FARM TO FORK AN OVERVIEW OF INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

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ABSTRACT

Food safety is a growing concern across the world. There is increasing need to provide greater assurance about the safety and quality of food to consumers. Consumers have a right to adequate and suitable food to meet their nutritional needs. They also have the right to expect that such food is safe to consume.

Though this right was reinforced a decade ago by the FAO/WHO International Conference on Nutrition in 1992, the reality is quite different. Millions of consumers suffer and die each year from diarrhea and other food borne as well as water borne illnesses. In the Asia Pacific region, more than 700,000 people die from cases of food and waterborne disease caused by microorganisms. The WHO estimates that almost 2 million children in developing countries die each year from diarrhea caused mainly from food-borne disease. The unsafe foods are not only the cause for diarrhea, but also the cause of a number of other types of serious diseases, including the long-term effects of certain chemicals naturally occurring or added to foods through agricultural production systems. Food and food products can contain traces of hazardous chemicals, like pesticides or heavy metals that cause neurological and hormonal damage as well as cancer. The issue of safety and quality of food thus a very important issue because the life and health of individual depends on the food they consume. From production to consumption, it is the responsibility of national governments, the food industry, and consumers themselves to ensure that food is safe. However, it is the prime responsibility of the governments to provide a framework for establishing effective food safety programs. Food safety issues respect no national boundaries because hazards can be introduced or exacerbated at any point in the worldwide food chain. They can be a serious international public health concern and necessitate timely, effective, and joint responses at the international level. Hence it is essential to examine the International and National legal framework with respect to food safety.

Food Safety: Concept

Food safety is a scientific discipline describing handling, [preparation](#), and storage of [food](#) in ways that prevent [food borne illness](#). This includes a number of routines that should be followed to avoid potentially severe [health hazards](#). It means assurance that food is acceptable for human consumption according to its intended use. It means that the probability of an adverse effect on the health of consumers following food consumption, the severity of the effect and consequential health hazard has been eliminated so that it will not cause any health hazard (chronic or acute). Unsafe food is a major public health issue and World Health

Organization (WHO) calls it “one of the most widespread health problems and an important cause of reduced economic productivity especially in developing and underdeveloped countries”. Safety of food and water is a requirement of public health. Safe food means eliminating all those hazards which make food injurious to health. These hazards arise from improper agricultural practices, poor hygiene at all stages of the food chain, lack of preventive controls in food processing operations, misuse of chemicals, contaminated inputs, or inappropriate storage and handling. The access to safe, reliable and nutritious food supplies is a basic need for all people. Governments have an obligation to ensure this need is met.

Right to Safe Food:

The right to safe food in human rights law is derived from both the right to health and the right to food. It is very closely interrelated with these fundamental human rights – being at the same time one of their integral components and an element upon which their realization is dependent. Article 25 of the Universal Declaration of Human Rights affirms that “everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services”, while Article 12 of the International Covenant on Economic, Social and Cultural Rights enunciates the right to health as “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. It is relevant to mention here that in its General Comment No. 14 on the domestic implementation of Article 12, the Committee interpreted the right to health, as defined in Article 12.1, “as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and ... an adequate supply of safe food”. With respect to legal obligation, the Committee states that, the States Parties are under the obligation to adopt domestic laws aimed to ensure “the underlying determinants of health, such as nutritiously safe food and potable drinking water” and to provide for implementation of such legislation. The Committee also reiterated the view expressed in General Comment No. 1221 that guaranteeing “access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone” is one of

the core obligations of the state. It is the duty of state parties to guarantee the satisfaction of minimum essential levels of the right to health. While recognizing that the right to adequate food is crucial for the enjoyment of all rights, the Committee considers that the core content of this right implies “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances”.

The United Nations General Assembly has also adopted the same approach as the committee and in its resolution 63/187 of 18 December 2008, it reaffirmed, “the right of everyone to have access to safe, sufficient and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”. Further the Human Rights Council has also reiterated the same formula in its resolution on the right to food of 27 March 2008.

There are numerous international documents relating to right to safe food. The World Declaration on Nutrition, adopted by the FAO International Conference on Nutrition in December 1992, asserts that “access to nutritionally adequate and safe food is a right of each individual” the 1996 Rome Declaration on World Food Security includes the States' commitment to “implement policies aimed at eradicating poverty and inequality and improving physical and economic access by all, at all times, to sufficient, nutritionally adequate and safe food and its effective utilization”. The related Plan of Action provides that States “apply measures, in conformity with the Agreement on the Application of Sanitary and Phytosanitary Measures and other relevant international agreements that ensure the quality and safety of food.

The Declaration adopted at the FAO World Food Summit in 2002 confirms “the right of everyone to have access to safe and nutritious food” (preamble); and the 2007 Beijing Declaration on Food Safety reiterates the statement of the 1992 Declaration on Nutrition. Moreover, the view that “food safety and food security are inseparable” has been at the basis of the FAO/WHO Plan of Action for Technical Cooperation in Food Safety. It acknowledges that food safety and security “jointly contribute to progress towards the attainment of the Millennium Development Goals, particularly the reduction of hunger and poverty.” From this legal framework it can be inferred that in the human rights perspective it is generally recognized that every individual is entitled to food that is safe and of good quality.

Food Safety Measures under International Law:

At international level the World Health Organization (WHO), is the United Nations agency for health. Its goal is that all people attain the highest level of health possible, which it believes is the state of complete physical, mental and social well-being. It works closely with the Food and Agriculture Organization of the United Nations (FAO), to improve food safety. Under international level the standards of food safety is mentioned under Codex Alimentarius.

The Codex Alimentarius (Latin for "Book of Food") is a collection of internationally recognized standards, codes of practice, guidelines and other recommendations relating to [foods](#), food production and [food safety](#). Its texts are developed and maintained by the Codex Alimentarius Commission, a body that was established in 1963 by the [Food and Agriculture Organization](#) and the [World Health Organization](#) (WHO). The Commission's main aims are to [protect the health of](#)

[consumers](#) and ensure fair practices in the international food trade. The Codex Alimentarius Commission is recognized by the [World Trade Organization](#) as an international reference point for the resolution of [disputes](#) concerning food safety and consumer protection.

The Codex Commission meets every two years. Plenary sessions may be attended by as many as 600 people. Representation is on a country basis with national delegations led by senior officials appointed by their governments. Observers, which can be international governmental organizations as well as international non-governmental organizations, may present their viewpoints at every stage except for the taking of the final decision. The Codex Alimentarius is a science-based activity. It has General Subject Committees for areas such as Food Additives and Contaminants, Food Hygiene, Food Labeling, Methods of Analysis and Sampling and Nutrition and foods for Special Dietary uses. There are Commodity Committees which meet regularly to treat Fats and Oils, Fish and Fishery Products, Fresh Fruits and Vegetables, Milk and Milk Products, and Processed Fruits and Vegetables. Other Commodity Committees meet less often and often act through correspondence: Cereals, Pulses and Legumes; Cocoa Products and Chocolate; Meat Hygiene; Natural Mineral Waters; Sugars; Vegetable Proteins, etc.

The Codex has had success in achieving international harmonization of requirements for food quality and safety. It has formulated international standards for a wide range of food products and specific requirements covering pesticide residues, food additives, veterinary drug residues, hygiene, food contaminants, and labeling and certification systems. The Codex food standards and related text are the global reference point for consumers, food producers and processors, national food control agencies and international food trade and are recognized as international benchmarks in the WTO multilateral trade agreements.

Another major body dealing with food safety under international law is the World Trade Organization. Though WTO is primarily concerned with free trade, it has also adopted provisions for dealing with food safety. Article 20 of the General Agreement on Tariffs and Trade (GATT) allows governments to regulate trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism. In addition, there are two specific WTO agreements i.e. The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement), which deal with food safety and animal and plant health and safety and with product standards in general.

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. They should not be arbitrary or unjustifiably discriminate between countries where identical or similar conditions prevail. Member countries are encouraged to use international standards, guidelines and recommendations where they exist. When they do, they are unlikely to be challenged legally in a WTO dispute. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary. And they can to some

extent apply the “precautionary principle”, a kind of “safety first” approach to deal with scientific uncertainty. Article 5.7 of the SPS Agreement allows temporary “precautionary” measures. The agreement includes provisions on control, inspection and approval procedures. Governments must provide advance notice of new or changed sanitary and Phytosanitary regulations, and establish a national enquiry point to provide information.

The second agreement adopted by WTO dealing with food safety is the Agreement on Technical Barriers to Trade (TBT Agreement). It tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. However, the agreement also recognizes countries' rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, members are not prevented from taking measures necessary to ensure their standards are met. The agreement also sets out a code of good practice for both governments and non-governmental or industry bodies to prepare, adopt and apply voluntary standards. Over 200 standards-setting bodies apply the code. The agreement says the procedures used to decide whether a product conforms with relevant standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. The agreement also encourages countries to recognize each other's procedures for assessing whether a product conforms. Without recognition, products might have to be tested twice, first by the exporting country and then by the importing country. Manufacturers and exporters need to know what the latest standards are in their prospective markets. To help ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points and to keep each other informed through the WTO — around 900 new or changed regulations are notified each year. The Technical Barriers to Trade Committee is the major clearing house for members to share the information and the major forum to discuss concerns about the regulations and their implementation.

National Laws: Indian Perspectives

India has a plethora of legislations relating to food safety and hygiene. Most of these legislations are prevalent since a long time. For example the Indian Penal Code has penal provisions dealing with adulteration, the Prevention of Food Adulteration Act contains specific provisions for prevention of food adulteration, and various Food Product Orders provide various provisions dealing with the aspects of food safety. All these provisions aim at regulating sanitary and hygienic conditions at all levels of supply chain, and lay down the minimum requirements for sanitary and hygienic conditions of premises, surrounding environment and personnel, water to be used for processing, machinery and equipment, product standards, etc. Besides this, maximum limits of preservatives, additives and contaminants have also been specified for various products.

India has also established various bodies for the effective implementation of Codex Alimentarius Commission. It has established National Codex Contact Point (NCCP), National Codex Committees (NCC), and Shadow Committees of National Codex Commission. These are the bodies primarily responsible for implementing Codex Standards in India. Further there are various institutions in India which are engaged in regulation of food safety and maintaining of standards by incorporating the SPS standards. They are

Bureau of Indian Standards (BIS), Food and Agriculture Department (FAD), Export Inspection Council (EIC), Consumer Redressal Forums and Competition Commission of India. Further various governmental departments like the Ministry of Agriculture, the Ministry of Rural Development, Ministry of Health and Family Welfare, Ministry of Food Processing Industries, Ministry of Civil Supplies, Consumer Affairs and Public Distribution, Ministry of Commerce, Ministry of Environment and Forests are also actively trying to set safety standards in consonance with SPS standards for ensuring safe food.

The Ministry of Commerce & Industry is the nodal Ministry for implementing and administering the Agreement on TBT. The Bureau of Indian Standards which is the National Standards Body has been designated as the WTO/TBT Enquiry Point by Ministry of Commerce & Industry as required under Article 10 of the TBT Agreement.

Recently the Indian government has also enacted the [Food Safety and Standards Act, 2006](#) by repealing some of the earlier laws and regulations. Some of the salient features of this Act are:

- * Movement from multi-level and multi-department control to a single line of command.
- * FSSAI as a single reference point for all matters relating to Food Safety and Standards, Regulations and Enforcement.
- * Integrated response to strategic issues like Novel foods, Health Foods, Nutraceuticals, GM foods, international trade etc.
- * Decentralization of licensing for manufacture of food products.
- * Effective, transparent and accountable regulatory framework within which the industry can work efficiently
- * Emphasis on gradual shift from regulatory regime to self compliance
- * Consistency between domestic and international food policy measures without reducing safeguards to public health and consumer protection
- * Adequate information dissemination on food to enable consumer to make informed choices.
- * Compounding and Adjudication of cases – to reduce Courts workload and expedite the disposal of cases
- * Graded penalty depending upon the gravity of offences
- * Adequate representation of government, industry organizations, consumers, farmers, technical experts, retailers etc.

Conclusion

Food safety is increasingly becoming a global challenge both by virtue of its public health impact as well as its economic and political implications. Therefore it should be addressed throughout the food chain from farm to fork that is from the stage of production, processing, storage, distribution and purchase. At international level the Codex Commission and WTO are playing a commendable role to ensure food safety. The response of the Indian government has also been satisfactory and all efforts are being taken by the government to ensure that safe food reaches to the consumers. However one should remember that the issue of food safety depends on various factors such as social, economic and political factors and hence it requires a multi dimensional approach. Right to safe food is basic human right of all individual and it is not only the duty of the government to ensure safe food but it is

also the duty of all the stakeholders involved in various level of food production. Thus a concerted and coordinated approach is necessary for ensuring safe food from the farm to fork.

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