

**“Legal complexities surrounding Food Safety and
Standards Act 2006 – A special reference to
Manufacturing Companies”**

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1. INTRODUCTION

Food is a substance for human consumption which provides nutritional support to human body and contains essential nutrients like Vitamins, Fats, Carbohydrates, Proteins etc. Food usually consists of either plant or animal origin. Individuals depend on different sources of food to satisfy their physical needs and their taste varies from geography to geography. However, irrespective of source or taste, every human being has a right to safe food, which is nutritious and diseases free. Otherwise, unsafe food causes many acute and lifelong diseases, ranging from diarrhoeal disease to various forms of Cancer.¹

Food industry mainly consists of milk and milk products, pulses, grains, fruits and vegetables, chocolates, water, beverages, jams, bakery products, processed food, snacks, ready to cook and ready to eat foods etc., Food industry provides a vital linkage between the Agriculture and manufacturing.

Food is considered to be adulterated when some inferior substitute or substandard material is added to it. The adulteration may happen by adding of extraneous matter, subtracting the essential ingredient or misbranding the product to mislead the consumers about the quality, standards or other claims or non-compliances of standards, in order to generate the sales of the product. In most of the cases the adulteration is caused due to deliberate and intentional act and sometimes due to unintentional act on account of ignorance or carelessness. The parody on adulteration goes like this:

*Mary had a little lamb
And when she was sick
She shipped it off to Packington
And now its labelled chicken*²

¹ Monitoring Contaminants in food, available at <http://www.who.int/foodsafety/en/> (retrieved on October 06, 2011).

² Jeffery M Pilcher, Food in World History p 59 (2006) New York : Routledge

In view of the importance of food in human life, the Government of India has legislated food laws from time to time. The laws regulating the quality of food have been in force in India since 1899. Article 47 mandates the duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. Until 1954 several states have their own food related laws. The Government of India has enacted central legislation called Prevention of Food Adulteration Act 1955, with an object to lay down the standards for food and rules for labelling and packaging, which was repealed in 2011. Till the enactment of Food Safety and Standards Act 2006, multiplicity of laws like the Prevention of Food Adulteration Act, 1954 (37 of 1954), Fruit Products Order, 1955, the Meat food product Order, 1973, the Vegetable Oil Products (Control) Order, 1947, Edible Oils Packaging (Regulations) Order, 1998, the Solvent Extracted Oil, De-oiled Meal, and Edible Flour (Control) Order, 1967, the Milk and Milk Products Order, 1992, Essential Commodities Act, 1955 (10 of 1955) are in existence.³

Multiplicity of laws in food sector was creating confusion in the minds of consumers, traders and manufacturers. The Standing Committee of Parliament on Agriculture in its 12th Report submitted in April 2005 to Parliament, desired to have an integrated Food Law for entire food processing industry and its all channels like manufacture to retailing⁴. Thus it paved path for introducing the Food Safety and Standards Bill 2005 in the Parliament and finally the Bill was passed in the Year 2006.

Primary food or processed food is now governed by Food Safety and Standards Act 2006 in India. However, the entire Act came into force only from 5 August 2011 and till that time Prevention of Food Adulteration Act 1954 and other Acts

³ All Acts are repealed effective from 05/08/2011

⁴ Standing Committee on Agriculture, (2005), 12th report on Food Safety and Standards

were in force⁵. Food Safety and Standards Act regulates the entire process of supply chain from manufacturing, storage, distribution, packaging, labelling, sale and import.

As per the study of CII and Mckinsey, the turnover of the food processing industry is around US \$ 69.4 billion⁶. It is not uncommon that majority of these business are being handled by Companies at various stages with an ultimate goal to deliver the food to the consumers for consumption. The manufacturer or the seller shall ensure the compliance as prescribed under statutes and to follow Good Manufacturing Practices, exercise all such powers and to take all such steps as may be necessary or expedient to prevent the commission of any offence. However, many Companies fail to follow the standards resulting into adulteration or misbranding of food, causing serious health effects to the consumers. Nevertheless, most of these offences are not reported or if any action is initiated that may not withstand before the Courts for technical reasons and eventually the accused are acquitted.

2. Statement of Problem:

The production of safe food requires all those involved along the food chain to recognize that primary responsibility lies with those who produce, process and trade in food.

This responsibility also extends to the end consumer who must be educated to ensure that food is properly stored, hygienically prepared and food shelf lives are respected. A holistic, integrated food chain approach should further engender the need for close contact and collaboration between various stake holders, for example, food control authorities and those responsible for environmental protection and water quality. Furthermore, this approach should permit greater traceability of food products and facilitate - not only the withdrawal from markets

⁵ GSR 362(E) (May 5, 2011) Ministry of Health and Family Welfare , GOI

⁶ CII – Mckinsey report (2004)

of hazardous or contaminated foods - but also the identification of weak hazard-promoting links in the chain.⁷

To protect the interest of the consumers the Prevention of Food Adulteration Act 1954 was legislated to safeguard the public from poisonous and harmful food and to prevent the sale of substandard foods and to eliminate fraudulent practices. However, the Act could not able to address the issues and achieve the objectives considering the multiplicity of laws and varied standards and procedures. The standards are rigid and non responsive to scientific advancement and enforced by multiplicity of authorities under various laws⁸. Then the Food Safety and Standards Act 2006 legislated, which eventually has come into force from 05/08/2011. The object of Food Safety and Standards Act 2006 is to consolidate the laws relating to food and to establish Authority to lay down the science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import and single reference point for all matters relating to food safety and standards.

Accordingly, the Act governs the entire life cycle of the food from manufacture till the human consumption. It also covers other ancillary areas like advertisement, health claims, standards of food, food additives required to be added etc. The food business operators largely constitute Companies like manufacturers and retailers. These Companies through their various departments undertake manufacturing, packaging, storage and selling of food. Any non-compliance with regards to standards or rules amounts to offence under the Act.

The quality and standards of the food manufactured or prepared by these manufacturing companies depend upon the quality of raw materials they use for production or preparation. Water is an essential ingredient in most of the food

⁷ Food and Agricultural Organisation, *Strategy for a Food Chain Approach to Food Safety and Quality: A framework document for the development of future strategic direction*; Rome (31st March – 4 April 2003) <http://www.fao.org/DOCREP/MEETING/006/Y8350e.HTM> (accessed on August 01, 2011)

⁸ *supra* note 4, 3

product and water used by these manufacturing companies is supplied by the Municipalities or Water Boards, the quality of ground water will differ from place to place.

Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly⁹

However, the company can nominate one person who is responsible for taking necessary measures. Whereas, the larger issue is whether these Companies take enough measures to prevent offences under the Act? Despite the preventive actions, if any offence is committed then the company is exposed to the liability of prosecution. Once the prosecution is launched by the administrative machinery then personal liability of the Director's will be at risk despite nominating an officer as prescribed under the Act. However, the Directors are not responsible if they are not in charge of the conduct of its day-to-day management.¹⁰

Further, the procedure followed by the authorities under the Food Safety and Standards Act in prosecuting the manufacturing companies for any offence is not fool proof and many of the cases are dismissed merely on technical grounds.

3 Research Questions:

1. Are there any appropriate standards prescribed for food safety in India?
2. What are the measures taken by the manufacturing companies to prevent any offence of food adulteration? Are the measures taken by the manufacturing companies enough to safeguard the consumers interest?

⁹ See Food Safety and Standards Act of India, 2006, § 66

¹⁰ Pepsico India Holdings Pvt. Ltd v. Food Inspector, (S.C) I.L.R. 2011 (1) Kerala

3. What is the role of the administrative machinery for prevention of food adulteration? What are the problems faced by the authorities in implementation of the norms.
4. How do the companies respond in case of any food adulteration?
5. What are the rights of the consumers under the Act? How effectively the consumer rights are protected as against the companies in the event of food adulteration?

4 Research Hypothesis

The following Hypothesis are envisaged for the purpose of the study

The existing legislation regulate a framework for the manufacturing companies to take measures to prevent the food adulteration and these companies take adequate measures for prevention of offences under Food Safety and Standards Act 2006. Generally the food sold by these Companies is safe for consumption and non conformance to standards amounts to offence. Offences, if any, committed by these manufacturing Companies are unintentional and inadvertent. Board of Directors of these manufacturing Companies take necessary measures to ensure safety of food manufactured by their Companies. A food safety committee is to be setup to assist the Board of Directors for effective control on the food safety measures and to protect consumers' interest and rights.

5 The objectives of the research are –

To study the possible causes of the offences committed by the manufacturing companies whether it is wilful or unintentional. Further, to understand the measures taken by the companies in prevention of the offence and the liability of the Companies in the event of any offence and the persons responsible for such offence. Yet further, the research also aimed to assess the loss suffered by the customer on account of food adulteration. On the other hand it is also purported to review the enforcement structure and procedure of inspection and sampling

under Food Safety and Standards Act 2006 and to suggest the measures or steps for addressing any shortfalls or procedural lapses in implementation of food safety and standards.

6 Scope of the Study

The study will be conducted on 5 big companies having State level presence and 5 local companies from the perspective of companies in manufacturing sector. The current research is to study and focus on the legal complexities surrounding Food Safety and Standards Act 2006. Further, the study also includes examining whether the manufacturing Companies follow Good Hygiene Practices (GHP) and Hazard Analysis and Critical Control Point (HACCP) systems.

The study excludes the areas like fresh produce standards, genetically modified food, process of manufacturing, and method of food analysis.

7 Importance of Proposed Research

Food nourishes and provides the essential nutrients to human body. Having safe and quality food is thus a right of the consumers. Consumers eating habits and dietary intakes are changing rapidly. The entire food lifecycle passes through various phases and each phase is mostly managed by companies. The proposed research is to study the reasons and causes for non-compliances of standards by manufacturing companies in food related issues.

The proposed research intends to study the legal issues contiguous to Food Safety and Standards Act 2006 and identify the gaps in the operations or activities of the manufacturing companies in safeguarding the consumers' interest and company's interest.

8 Research Methodology

The methodology adapted for conducting the proposed research is Qualitative Research method. It aims to deal and ascertain duties and functions of all the stakeholders who are involved from sourcing of the food to the selling of the

food in the company. During the study the data will be collected from the participants through open-ended interviews and focus group studies.

The field study is restricted to 5 State level companies and 5 local level manufacturing companies. The primary data is collected mainly through questionnaire and interview schedule.

The information will be obtained through a detailed questionnaire either mailed or sent personally to the various departments of manufacturing companies dealing with Quality, Food Technology, Operations, Logistics and Legal. Interviews would also be conducted wherever required.

The relevant information will also be collected from State Health Department, Government of India Ministry of Health and Family Welfare and Food Safety and Standards Authority of India. Further, the information will be obtained on the measures or steps taken by these various departments in prevention of any adulteration or misbranding of the food. In the event of commission of any offence what are the actions taken by the companies to recall the products or to stop consumption of the food by any customers also forms significant information to be collected.

Secondary data like cases filed against the manufacturing companies, consumer cases etc will be collected from Journals like Food Adulteration Cases, Food Safety Magazine, All India Reporter, FSSAI journals and Supreme Court Cases.

9 Potential Outcomes of research

The proposed research will reiterate the process between the legislation (theory) and applied process. This will determine the strengths and weakness of the manufacturing companies in implementation of the operational procedures about the steps being taken in prevention of any offences under Food Safety Standards Act. A detailed checklist will be envisaged during the research for easy

implementation and also for identification of the non-compliances for the companies to avoid any commission of offence. On the other hand it also helps the enforcement officers to carry out the process of sampling and to enquire, inspect, investigate, and to prevent commission of any offence as per the legislation.

10 Literature Review

Section 3 (a) of Food Safety and Standards Act 2006 defines “Adulterant” means any material which is or could be employed for making the food unsafe or sub-standard or mis-branded or containing extraneous matter and Section 3 (zf) defines misbranded food.

Section 65 of The Food Safety and Standards Act, 2006 mandates to pay compensation in case injury or death of consumer.

Section 66 of The Food Safety and Standards Act, 2006 envisages about the liability of the Companies in the event of any offence of adulteration or misbranding.

Seth and Capoor’s (2006) have analysed with respect to various judgments in their book Commentary on Prevention of Food Adulteration Act 1954, that the Directors of the Company is not liable for the offences unless they are responsible for the day to day affairs of the management.

Mahendra K Sharma (1996) in Minimum Sentencing for offences in India : Law & Policy, has observed that the Law relating to Prevention of food Adulteration is a move to prevent socio economic offences, because these offences are risk to the health of the society. Therefore it has become essential to provide for stringent and effective step to root out this socio economic evil in the greater public interest.

Monica Dasgupta (2005) in Public Health in India: an overview, World Bank Development Research Group, Public Services. The Prevention of Food Adulteration Act is one of the few pieces of public health legislation in force. However, the Act has several serious deficiencies which prevent it from protecting the food safety.

Further, the researcher will be focusing on the existing Literature on what has been done by the manufacturing companies in the event of any commission of offence under food laws. The existing literature as on the date will be categorized into:

- Studies on the offences by the manufacturing companies in food adulteration.
- Studies on the criminal liability of the manufacturing companies under food adulteration
- Studies on the criminal liability of the manufacturing companies in General.

Judgments of High Courts and Supreme Court in food adulteration cases by the companies, existing legislation on the liability of the Companies in offences related to food adulteration cases, and study on food safety and standards authority of India would be used in the research.

During the course of research other relevant literature reviews would be added. The literature review will be emphasized on the legal complexities surrounding the Food Safety and Standards Act 2006.

11 Structure of the Thesis

The research presentation will be structured between 6 chapters. The scheme of chapters will be arranged in the sequential order beginning with the introduction and ending with the conclusion:

1. Chapters 1 will contain introduction, objective of the study, literature review, hypothesis and methodology. 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. Chapters 2 will contain likely causes of food adulteration and standards prescribed under the Food Safety and Standards Act and its regulations. This chapter also deals with the possible causes for the variance in food quality. It focuses on prescribed standards and statutory compliances to be complied by the companies like confirming to the standards, establishing quality control cells, monitoring the sourcing, manufacturing and merchandizing process.
3. Chapter 3 will be dealing with the various regulations of Food Safety and Standards Act 2006 and the role of the companies like obtaining the requisite licenses, approvals and following the regulations and guidelines. Discussion would also be made on problems of administrative set up of food safety authority and process of sampling and testing and further procedure of prosecution in the event of any offence by the manufacturing companies.
4. Chapter 4 will be dealing with the liability of the company and its Directors in the event of any commission of offence. Both criminal liability and financial liability will be discussed.
5. Chapter 5 will be dealt by summarising the rights and protection available for the consumer and consumer safety and the whether these companies or government providing the better product information and guidance. Further this chapter will also be dealt about food product recall.
6. Chapter 6 – will be dealing with the measures to be taken by the Companies likes Good Manufacturing practices etc., in prevention of the offences and conclusion and suggestions.

Research Plan

The researcher plans to schedule the entire research proposal under the following activities corresponding to a finite timeframe and to conform the time limits.

Time table for research covering the whole period of research as follows

Activity	Time Frame
Refine Research Objectives	4 weeks
Literature Review	10 weeks
Research methodology	6 weeks
Data collection and analysis	20 weeks
Conduct Primary Research	30 weeks
Analyze primary research	24 weeks
Final write up	10 weeks

Tentative Bibliography

1. Seeth and Capoor's 2006 The Prevention of Food Adulteration Act 1954 , Delhi Law house
2. Monica Dasgupta (2005) Public Health in India: an overview, World Bank Development Research Group, Public Services
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4. Katherine Ralston (2001) Consumer food safety behaviour , US Dept of Agriculture : Economic Research Service

5. Ensuring Safe Food: From Production to Consumption : By Committee to Ensure Safe Food from Production to Consumption (U.S.), National Research Council (U.S.), National Academy of Sciences (U.S.)

LIST OF STATUTE / LEGISLATION

1. Consumer Protection Act 1986 [Act No. 68 of 1986, dated 24th December, 1986]
2. Criminal Procedure Code 1974 [Act No. 2 of 1974, dated 25th January, 1974]
3. Food Safety and Standards Act 2006 [Act No. 2 of 1974, dated 23rd August, 2006]
4. Legal Metrology Act 2009 [Act No. 1 of 2010, dated 13th January, 2010]
5. Legal Metrology (Package Commodity Rules) 2011
6. Prevention of Food Adulteration Act 1955 [Act No. 37 of 1954, dated 29th September, 1954]

I. Website:

- a) www.mohfw.nic.in
- b) <http://fssai.gov.in/>
- c) www.supremecourtfindia.nic.in
- d) www.metrologycentre.com
- e) www.fao.org

II. Journals

- a) Food Adulteration Cases
- b) AIR

III. Thesis

- a) Chabra KS, “Law and control of prevention of food adulteration in India with special reference to Panjab”: An evaluation (1986) (Ph. D. dissertation, Department of Law, Gurunank Dev University, Amritsar)
- b) Gour KD , “ Critical review of nature of liability under Prevention of Food Adulteration Act” (1986) Department of Law, Utkal University, Bhubaneshwar, Orissa
