FOOD SAFETY AND STANDARDS ACT – blueprint for renewal

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Food is a creative expression of diversity and richness of Indian culture – it is enjoyed and passed on. Therefore food laws are to be made to propagate this diversity and cultural richness while providing a high level of consumer safety and public health. Getting the balance right is the issue of regulations.

The Food Safety and Standards Act 2006 [FSSA 2006] underwrites this 'balance' between diversity and consumer safety. This is the fundamental transformation of character that distinguishes the erstwhile Prevention of Adulteration Act 1954 and FSSA 2006. As the Act unfolds – and it is doing so – an appreciation of its distinctive parts will emerge for assimilation and implementation. However before that happens it is an appropriate time to reflect the path traveled since the first food laws came into force in the country as well as the world over. A brief review of the basis on which early regulations were made would bring out the principle shifts on the way regulations are to be made today.

Early regulations were mainly prepared by guilds or trade associations and relied largely on compositional make-up or product recipes. This was essential to prevent product distortions or adulteration essentially through recipe adherence. The addition of water to milk was commonplace – the most dangerous adulterants being the use of dyes as food colorants. The Adulteration Acts focused on the intentional debasing of the quality of the product either by admixing or substituting with inferior substances or by removing a valuable ingredient. The erstwhile Prevention of Food Adulteration Act 1954, enacted more than 50 years back relied heavily on compositional standards, having emerged at a similar time.

Locked in Specifications

It is not surprising that in order to curb this activity laws were framed on the premise that '*no person shall sell an article of food which is not of the nature, substance or quality demanded by such purchaser'*. Compositional specification appropriately satisfied this singular purpose of law by elaborating the nature, substance and quality. The way to regulate this premise was to impose specifications on products and secondly to do so in such a manner that enabled testing to enforce the law. The precepts that emerged were – specify, inspect, test, convict.
Fallout of the regulatory system created a straitjacketed thinking that all public concerns could be controlled by specifications. The logic extended to safety through inappropriate specifications such as in pickles - *'should be covered in oil so as to form a layer not less than 0.5cm'* later rephrased to *'practically submerged'*. A corollary arising from the regulatory need to specify every product introduced to market led to the disparagement of proprietary foods whose only fault was not to have been mentioned in Appendix B. The idiom seemed to be that what is not standardized is not safe or of acceptable quality. Market response does not support this view.

The system largely propagated itself on its ability to police the market through an inspectorate and no reformation took place. Consumers were protected as long as the policing was good- an impossible task considering that over 20,000 food products stand on market shelves today. When inspection becomes unwieldy – compliance to the law becomes ineffective. Very simply the imminent scenario of impossible inspection itself should drive regulatory reformation towards investing in consumer safety rather than policing product diversity.

Global Shifts – from specification to safety

With the turn of the century most regulators around the world reviewed their basis of rulemaking – European Food Safety Act 2002(EFSA), Food Standards Australia New Zealand 2002 (FSANZ), Food Safety Authority of Ireland 1998 (FSAI), emerging from a need to modernize domestic practice and global alignments, the latter cited as harmonization but often confused with reproduction. The Codex Alimentarius Commission corrected its position early 1990 when it concluded that enough work had been devoted to commodity standardization and resources should be better devoted to horizontal activities such as labeling, food additives, food hygiene, nutrition, export import.

Legislative practice in a global context moved to the premise that a food product lawfully produced and marketed in one country should be permitted access to markets elsewhere unless it could be proved to be a threat to public health, or safety. Food laws based on the old system of adulteration were caught in the flux of protecting consumer health through a spate of specifications drawing criticism of being over regulated, incoherent and fragmented.

The Food Safety and Standards Act 2006 reflects the international shift in food laws – namely from compositional standards or vertical standards to safety or horizontal standards. It provides a blueprint for renewal, assimilation and implementation and expectedly stakeholder understanding of its essence is critical to take this forward.
FSSA 2006 while unifying multiple administrations of the law seeks to provide greater consumer protection and consumer health hitherto unaddressed by the PFA 1954. The word safety does not even appear in the PFA 1954. It is further inevitable that under FSSA 2006 legislations will be science based which is the bedrock of trade obligations and agreements.

Transiting the PFA

So what is the salient distinctiveness of FSSA 2006 that provides the blueprint for renewal? Several stand out for recognition.
The most important step in the Act is the need for legislation to be based primarily on scientific evidence and risk assessment. To do this task several Scientific Panels and an overseeing Scientific Committee have been constituted. The constitutional make up is the single most significant departure from the Subcommittees or Central Committee on Food Standards [CCFS] under PFA 1954 – where members are now selected for their individual scientific expertise and not from stakeholder affiliations.

Consultations in an open manner and not based on what is already settled as was done in the past will be a binding prerequisite for regulations under FSSA 2006. Consultation is quite different from opinions, advocating policy or influencing positions. The first step is to gain scientific insight into the issue prior to reaching a management decision. Consultation exercises should be clear about the scope of the exercise, setting out the context of the market disturbance or questions on consumer safety that raised the issue for regulatory deliberations.

The Panels and Committee are expected to deliver scientific advice of the highest possible quality – espousing the principle of excellence put to use for consumer safety and health. The high quality of scientific expertise is by nature based on prior experience and that therefore having an interest does not necessarily mean having a conflict of interest – a fact often misconstrued. Declaration of an 'interest' is to provide confidence in the public domain about transparency in evaluation of issues and is not automatically considered to be in conflict.

Each Scientific Panel should be asked to draft scientific opinions for the Food Authority to evaluate what recommendations it would make in terms of regulatory or non regulatory measures or in developing country positions at international forums and regional trade.

Due Diligence in Rulemaking

Another important feature of modern legislative practice supported by FSSA 2006, is that responsibility for legislation should be separate from scientific consultation. In principle the prior consultation of independent scientific experts under the Scientific Panels and Committee will be the best means of guaranteeing scientific objectivity and is of utmost importance at all stages of the preparation of new legislation. A consultation stage impact assessment should be carried out prior to most regulatory management decisions. Consultation moving up the regulatory process must provide for greater transparency in the policymaking process and should lead to departments having more robust evidence on which to base decisions. As a consequence the long felt need for regulations to be coherent, consistent, complete and predictive will emerge

Major shifts are expected to occur to the manner in which various stakeholders interacted under previous dispensation of PFA 1954. For example reformists in Government and Industry accessed the Codex for direct reproduction of guidelines [in rule form] depending on which part was favorable to a position or opinion. The ubiquitous expression of 'harmonize with Codex' actually meant reproduce. There was never an assessment of the domestic need or understanding why countries implemented the guidelines sometimes differently. It did not matter that the US mandated nutrition labeling on food packages and did not require quid labeling contrary to the EU rulings - and yet both were in apparent harmony.

Under FSSA 2006, scientific justification of measures to be adopted will determine what gets ruled. Any regulation developed must find its authority in the Act and be carried out within the limits and in accordance with conditions or requirements attached to it. To provide for structured rulemaking the FSSA 2006 is more voluble than the PFA 1954. Hence a careful and complete understanding of the Act is required while contemplating its implementation or elaboration. Legislative practice in the past is a poor measure of understanding new equations imposed by the Act. In essence all relevant factors, and no irrelevant factors, must be taken into account. Again, what factors are relevant may be expressly stated in the law, or inferred from its purpose.

In the cusp of change

FSSA 2006 places primary responsibility for safe food with producers and suppliers through HACCP, hygiene or good manufacturing practices backed by regulatory control. There is clear responsibility for the safety and wholesomeness of food at all stages of the food chain. It provides for calculated and appropriate response ranging from improvement notices to market recall – measures that are expected to reform the way regulations are made.

Experiences may serve to reform the way regulatory interactions should occur in that actions must be reasonable, have sufficient factual support and is not arbitrary. In fact the Food Authority should discourage poorly supported advice and require robustness of evidence over voluble rhetoric. Some regulatory agencies provide for an ombudsman that oversees that the rulemaking procedure is not unfairly tilted. This obviates the obvious unfairness of allowing the regulator to be the judge of its own cause by giving its interpretive position on an issue of redress. Similarly regulatory actions are opening up the potential for private "self"-regulation to serve as an alternative to the costly command-and-control public regulation. In some cases, private enterprises will cooperate with government to create certifying bodies and accreditation structures. In still other cases, new combinations of public and private regulation will be developed. The blueprint of change upon us is one of balance of providing food diversities in a safe and wholesome way.

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