

FSSAI Regulations and Their Effect on the Consumers

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Abstract

Every civilized nation of the world has its own legislation, which protects the consumers. In India, it was at the end of twentieth century that the Consumer Protection Act, 1986, was enacted. The main object of the act is to provide a better inexpensive and speedy remedy to the consumers. It seeks to provide for better protection of the interest of consumers and for the said purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. The primary notion for contention is how two laws operate in their totally distinct spheres. The laws even though are made for consumer protection, there needs to be a bridge between the consumer protection and consumer preference and this paper is aimed at the same. Bringing international standards will certainly lift the quality constructs up; however, we even need to see if the existing array of products and services are going to survive to the increased standard of quality. Apart from that in India, we have various laws that have been applicable in this direction, and they include Indian Penal Code, 1860 [1], Agricultural Production, Grading and Marketing Act, 1937, Sale of Goods Act, 1930, Drugs and Cosmetics Act, 1940, and Consumer Protection Act, 1986. The final Act saw a change from the dictum of 'caveat emptor' (buyer beware) to 'caveat venditor' (seller beware).

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INTRODUCTION

The consumer movement in India is as old as trade and commerce. In Kautilya's Arthashastra, there are references to the concept of consumer protection against exploitation by the trade and retailer with respect to quality, short weight, measurement, and adulteration of goods [2]. Yet until the late 1970s, there was no systematic movement in the country for safeguarding the interests of consumers. But now it is widely acknowledged that the level of consumer awareness and protection is a true indicator of development of the country and progressiveness of civil society. The main reason for this is the rapidly increasing variety of goods and services, which modern technology has made available. In addition, the growing size and complexity of production and distribution systems, the high level of sophistication in marketing and selling practices and in advertising and other forms of promotion, mass marketing methods and consumers' increased mobility resulting in reduction of personal interaction between

buyers and sellers, have contributed to the increased need for consumer protection.

Protection of consumer rights in modern times dates to 1962 [3]. On 15-3-1962, the Consumer Bill of Rights was proclaimed by the United States President in a message to the Congress. The message proclaimed:

- I. The right to choice,
- II. The right to information,
- III. The right to safety, and
- IV. The right to be heard.

In India, we have various laws that have been applicable in this direction, and they include Indian Penal Code, 1860 [4], Agricultural Production, Grading and Marketing Act, 1937, Sale of Goods Act, 1930, Drugs and Cosmetics Act, 1940, and Consumer Protection Act, 1986. The final Act saw a change from the dictum of 'caveat emptor' (buyer beware) to 'caveat venditor' (seller beware) [5]. This change has come forward and gained importance in view of the increasing size and complexity of markets, fast changing technology, and expanding range of

products, and the same could only be achieved by the following two:

I. Consumer Awareness

II. Redressal Mechanism

There have been recurring concerns on the construction of the statute of consumer protection, and it balances between the approaches of a broad construction [6], which is in favor of the consumers to further the objective of the Consumer Protection Act [7] and not letting an action in good faith be read into deficiency [8], by abusing or doing violence to the provisions at hand [9]. Under the head that we are currently dealing with, all these concepts boil down to ‘sustainable consumption’ which is beneficial to all the players, i.e., the consumers as well as the food suppliers.

‘Sustainable consumption’ is an important subject in the changed social, political, and economic scenario. Article 21 of the Constitution requires the state, inter alia, to protect life, which must be construed as including the right to a healthy and safe environment, and more importantly is inclusive of right to safe and healthy food, and the same is the object of the FSSAI Act [10]. A healthy and safe environment is inalienably linked with sustainability and promotion of sustainable consumption. The concern in the Indian Constitution for protection and promotion of an individual’s rights, and for the dignity and welfare of the citizen makes it imperative to provide for the welfare of the individual as a consumer, a client and a customer. The rights under the Consumer Protection Act, 1986, flow from the rights enshrined in Articles 14 to 19 of the Constitution of India. The RTI, 2005, which has opened up governance processes of our country to the common public also has far-reaching implications for consumer protection.

The consumer protection policy creates an environment whereby the clients, customers, and consumers receive satisfaction from the delivery of goods and services needed by them. Good governance requires efficiency, effectiveness, ethics, equality, economy, transparency, accountability, empowerment, rationality, impartiality, and participation of citizens. The concern of consumer protection

is to ensure fair trade practices; quality of goods, and efficient services with information to the consumer about quality, quantity, potency, composition, and price for their choice of purchase. Thus, proper and effective implementation of consumer protection law promotes good governance.

CONSUMER PROTECTION IN INDIA

Education is the most powerful tool for the progress of the country and it is a social and political necessity. Education helps an individual – as a consumer – in making rational choices and protects him from trade and business-related exploitation. But more is needed for the effective functioning of the national market to create an increased level of awareness of consumer rights, and for these consumers have to be educated about rights and responsibilities through concerted publicity and awareness campaigns. In the awareness campaigns, special emphasis needs to be given to vulnerable groups such as women and children, students, farmers, and rural families and the working class.

The Consumer Protection Act was enacted in 1986 based on United Nations guidelines with the objective of providing better protection of consumers’ interests. The Act provides for effective safeguards to consumers against various types of exploitations and unfair dealings, relying on mainly compensatory rather than a punitive or preventive approach. The Act applies to all goods and services unless specifically exempted, and covers the private, public, and cooperative sectors and provides for speedy and inexpensive adjudication [11]. The rights provided under the Act are:

- I. The right to be protected against marketing of goods and services which are hazardous to life and property.
- II. The right to be informed about the quality, quantity, potency, purity, standard and price of goods and services to protect the consumer against unfair trade practices.
- III. The right to be assured of access to a variety of goods and services at competitive prices.
- IV. The right to be heard and assured that consumer interest will receive due consideration at appropriate fora.

- V. The right to seek redressal against unfair or restrictive trade practices or unscrupulous exploitation of consumers.
- VI. The right to consumer education.

Under the Consumer Protection Act, 1986, a three-tier, simple, quasi-judicial machinery has been established at the national, state, and district levels for hearing cases raised by consumers. The Act was amended in 1991 and again in 1993. A comprehensive amendment was last made in 2002 for making the Act effective, functional and purposeful. The amended Act, inter alia, provides for the attachment and subsequent sale of the property of a person not complying with an order.

Although implementation of the Consumer Protection Act can be viewed as a success, there are still serious shortfalls in achieving consumer welfare because of the deficiencies in quality infrastructure in the country. First, there is a regulatory deficit in many products and services which impact on the health, safety and environment of the consumers and mandatory standards have not been prescribed for such products as electrical and electronic goods, IT and telecom equipment, industrial and fire safety equipment and toys. There is a multiplicity of regulatory/standardization/conformity assessment bodies and proliferation of certification and inspection bodies. At present, the Quality Council of India (QCI) is the main accreditation body for conformity assessment bodies taking up product or system certification or for inspection bodies, and the National Accreditation Board for Laboratories performs the same function for laboratories. However, there is no compulsion on the conformity assessment bodies, inspection bodies or laboratories to obtain accreditation, thus creating a lack of certainty about the existence of quality products, systems, inspections and laboratories.

OBJECTIVE OF THE LAWS

The provision of the Act in the light of its preamble reads as:

“An Act to provide better protection of the interest of consumers...for the settlement of consumer disputes and for matters connected therewith.” [12].

The word “protection” furnishes the key to the mind of the makers of the Act [13]. Its provision has to be interpreted in favor of the consumer, in such a manner as to provide maximum relief to him. This right of consumer education has been given prominent place among the various rights which the Consumer Protection Act, 1986, seeks to promote and protect.

Food safety is a public health priority; millions of people fall ill every year and many die as a result of eating unsafe food. Serious outbreaks of food-borne diseases have been documented on every continent in the past decade, and in many countries rates of illnesses are increasing significantly [14].

INTERNATIONAL PERSPECTIVE

The right to food is recognized in several legally binding international instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), where it is recognized as part of an adequate standard of living, which also includes right to safe and hygienic food. Under the Covenant, state parties are obliged to take all appropriate steps, to the maximum of available resources, to progressively achieve the right to food for all.

The United Nations Guidelines for Consumer Protection passed in 1985 have also placed considerable emphasis on the need for consumer education. They urge governments to develop or encourage the development of general consumer education and information programs, bearing in mind the cultural traditions of the people concerned. The guidelines further recommend that consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably a component of existing subjects.

The US Department of Education considers consumer education as a process by which consumers:

- Develop skills to make informed decisions in the purchase of goods and services in the light of personal values, maximum utilisation of resources, available

alternatives, ecological considerations and changing economic conditions.

- Become knowledgeable about the law, their rights and methods of resources, in order to participate effectively and self-confidently in the market place and take appropriate action to seek consumer redress.
- Develop an understanding of the citizens' role in the economic, social and government systems and how to influence those systems to make them responsive to consumer needs [15].

FAO

FAO's [16] Constitution sets out the purpose of FAO, in its preamble, as "raising levels of nutrition and standards of living...and thus...ensuring humanity's freedom from hunger."

Its Strategic Framework for 2000-2015 also mentions rights-based approaches to food security and stresses FAO's role as a forum for debate and negotiations, and in strengthening regulatory frameworks [17]. General Comment 12 of the Committee on Economic, Social and Cultural Rights is the most up-to-date and authoritative interpretation of the right to adequate food, as enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights. The following elaboration of the normative content of the right to food is based on the General Comment [18].

Definition of the Right to Food

"The right to adequate food is realised when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement."

The core content of the right to adequate food implies:

- The availability of food in a quantity and quality enough to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
- The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

FRAMEWORK LAW

Article 2 of the ICESCR commits state parties to take legislative measures for the implementation of the rights recognized in the Covenant. In the case of the right to adequate food, relevant legislation ranges from food safety through production and marketing to social security. Food security and the right to food are thus multidimensional and cross sectorial in nature, requiring legislative measures in many different areas [19].

General Comment 12 of the CESCR recommends the adoption of framework legislation on the right to food:

"In implementing the country-specific strategies referred to above, states should set verifiable benchmarks for subsequent national and international monitoring. In this connection, states should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organisations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, states parties should actively involve civil society organisations" [20].

Such a regulatory framework, while not an obligatory measure for state parties, would be useful for several reasons.

- It could assign responsibility to the different government agencies involved, and define overall responsibility for one organ, thus overcoming the problem arising from too many actors bearing responsibility, which tends to lead to lack of responsibility.
- Greater accountability would be achieved through legislation laying down the responsibility. Legislation in itself is a

transparent measure, and it can also provide for public access to government information that otherwise would not necessarily be released.

- Participation in decision-making is a key element of rights; this could also be provided for in the legislation, by formalising the role of communities, NGOs and civil society at large.

While framework legislation would probably not dictate policy in any detail, it would establish the principles to which such policy should conform, as well as perhaps defining actions which were forbidden to ensure respect for the right to food. It would also set in action review of other, sectorial legislation and set targets for the progressive achievement of the right to food, which will be monitored by specified actors.

CONSORTIUM OF THE TWO CONCEPTS

The Statement of Objects and Reasons of the FSSAI Act reveals that the legislature felt that it was necessary to make the procedure for applying for license for manufacture and sale of food products easier and, at the same time, regulate the quality of food in order to ensure that the food which is supplied to the consumers is safe and wholesome. The Act makes provision for the purpose of framing regulations laying down the standards which have to be adhered to and followed by the manufacturers of food. Section 16(2) of the Act empowers the food authority to prepare regulations. These regulations assume force of law after they are passed by both the Houses of Parliament under Section 93 of the Act [21].

In India, at present there are seventeen different Acts and Rules under center and state governments, which are dealing wholly or partially with “Food” as a subject and are responsible for standards and regulations settings and enforcement. All these multiple laws and regulations prescribed various standards regarding food additives, contaminants, food colors, preservatives and labeling, thereby, leading to a system which was over-regulated and under administered. Provisions regarding admissibility and levels of food additives and contaminants, food colors, preservatives, etc., and the

requirements of labeling have varied standards under these laws. Therefore, in order to rationalize the multiplicity of food laws and bring out a single reference point in relation to regulation of food products, a group of ministries was set up to suggest legislative and other changes to formulate an integrated food law that could protect the consumers and provide a regulatory environment conducive to industry in general as well as consumers’ protection. Based on the recommendations of the group of ministries, the ministry of food processing industries enacted the Food Safety and Standards Act (FSSA), 2006, with two main objectives, i.e., (i) to introduce a single statutory body relating to food, and (ii) to provide for a scientific development of the food processing industry.

The main objectives of the FSS Act are:

- I. Single reference point for all matters relating to food safety and standards, and regulations.
- II. Lay food standards based on science, transparency and consultation.
- III. Effectively regulate manufacture storage, distribution and sale of food to ensure consumer safety and promote global trade.
- IV. Rationalize and strengthen existing enforcement mechanism.
- V. Shift from mere regulatory regime to self-compliances through food safety management systems.
- VI. The Act has the features to achieve appropriate levels of protection of human life and health and protection of consumers’ interests including fair practices in all kinds of food.
- VII. Carry out risk management based on risk assessment; also, to adopt risk management measures necessary to ensure appropriate levels of health protection.
- VIII. Risk assessment is to be based on the available toxicological evaluation and extensive open and transparent discussion with all stakeholders, and the underlying principle is to ensure protection of consumers by preventing fraudulent, deceptive or unfair trade practice.
- IX. In case of suspected risks of the public consuming contaminated food, the FSSA will take appropriate steps to inform the general public of the risk to health.

FSSAI will be aided by several scientific panels and a central advisory committee to lay down standards for food safety. These standards will include specifications for ingredients, contaminants, pesticide residues, biological hazards and labels. State Commissioners of Food Safety and other local-level officials will enforce the law. Every food business operator is required to have a license in order to operate his food business from the state food commissioners or from designated food officers. Petty manufacturers who make their own food, hawkers, vendors or temporary stall holders do not require a license. Instead, they need to get their businesses registered with the local municipality or Panchayat.

ISSUES CONCERNING CONSUMERS

There are a number of consumer concerns relating to the implementation of the law. The Act provides for a food recall procedure under Section 28, which mandates a food business operator to recall a food item if it is manufactured in contravention of any provision of the Act. However, there is no requirement that the food business operator inform consumers about a product recall, especially if some of the products have already been sold. Nor is there any cognizance of junk or fatty food, ignoring the fact that obesity has emerged as a major problem in India in recent years. This Act differentiates between contaminants, which renders food unsafe and “extraneous matter”. Extraneous matter, it defines, will not render food unsafe. The Act also excludes plants prior to harvesting feed from its purview. Any harmful input such as pesticides in vegetables that could affect the safety standards of food products is not effectively covered. While the government has drafted an integrated food law, no assessment has been made about the technical and upgraded manpower required to meet and monitor the intended objectives. Therefore, the Act could turn out to be stillborn at the initial stage itself. While the new integrated food law promises availability of safe food, its effective implementation will remain the key.

CONCLUSION

The primary objective of the Consumer Protection Act is to ensure availability of safe

and wholesome food for human consumption. Unlike existing laws, which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The act is intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, award relief and appropriately compensate the consumer. Further, the Act intends to shift from mere regulatory regime to self-reliance through food safety management systems. But this laudable step of the Government to have a consolidated food law may not be successful as there are numerous ambiguities that still exist in the Act. Now making the Act as a consumer-friendly law is the responsibility of the various educational institutions, organisations, advocates, and NGOs as they can play a significant role in the area of consumer education. It depends on the authorities how efficiently they can utilise the existing system including public private partnership in the implementation of the Act so that it will give least burden to the public exchequer and simultaneously provide safe and wholesome food to the consumers.

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