



RIGHT TO FOOD AND FOOD SAFETY IN INDIA : CONSTITUTIONAL MANDATE AND JUDICIAL PRECEDENT

*Dr. Priya Ranjan Kumar**

Abstract

Health is the descriptor of peoples' physical, mental and social condition and depends on access to food, adequacy of food, quality of food in terms of nutrition and safety from any kind of adulteration. Nature and quality of food a person takes determines the quality of life he/she enjoys. It is the State responsibility to ensure through legislation, policies, executive mechanism the quality of food made available for consumer's consumption, laying down food standards and regulate the economic activity from manufacturing to retailer. Though the Indian constitution in content does not recognises right to food as fundamental right but Indian Judiciary has succeeded in fulfilling international obligation towards citizen's right to food and food safety by elevating Directive Principles of State Policy to that of Fundamental rights. This paper attempted to reflect the right to food and food safety legislation in India from constitutional perspective and discuss some relevant issues with the help of judicial precedent. The paper also explains the limitation of judicial precedent in food safety and standards for consumers who happens to be an innocent less intellectual capacity to understand technicality involved in it. The paper Concentrate on food safety and standard issues relating to salt, adulterated and synthetic milk, sale of adulterated food, tobacco product, bottled drinking water, use of lactic acid in food products and Maggie noodle case. The paper is purely based on doctrinal method of research.

I. INTRODUCTION

Stipulation of health gives complete description of one's physical, mental and social condition and its productive competency to work, live and enjoy life as a human being with dignity. Universal Declaration of Human Rights do state for everyone right to health which includes right to food, clothing, housing, health services and public services. Availability of food, access to food, adequacy of food, quality of food in terms of nutrition and safety from any kind of adulteration are the parameters which will determine the given nations citizen's life quality and socio-economic growth of nations. Jurisprudence imposes a responsibility on the Nation State and international community to undertake activities for promotion of the rights in the nature of the right to food. Roscoe Pound, the founder of sociological school also laid emphasis on the need for law to protect the social interest. The right to food is amongst one of the basic human wants. Therefore, philosophy of Roscoe Pound guides the Nation

* Associate Professor & Head, Department of Law, Tezpur University.

State to enact legislation on the right to food.¹ India is a signatory of a number of international treaties which cast an obligation on the Government of India to guarantee to the people of India the right to food. Indian Judiciary has succeeded in fulfilling this international obligation towards citizen's right to food and food safety by elevating Directive Principles of State Policy to that of Fundamental rights. Moreover, Judiciary has reviewed the State actions which alleged to jeopardise citizen's right to food.

II. LEGISLATION ON RIGHT TO FOOD AND FOOD SAFETY: A BRIEF NOTE

India does not have comprehensive legislation on right to food for its citizen's but the protection depends on numerous central and state legislations which aims to achieve constitutional goal and fulfils international obligations. Food related Legislations in India are : The Indian Penal Code- sections 272 to 276 relating to public health and safety; The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, The Food Safety and Standards Act, 2006 to consolidate -The Prevention of Food Adulteration Act, 1954, The Fruits Product Order, 1955, The Meat Food Products Order, 1973, The Vegetable Oil Products (Control) Order, 1947, The Edible Oils Packing (Regulation) Order, 1988, The Solvent Extracted Oil, De-Oiled Meal and edible Flour (Control) Order, 1967, The Milk And Milk Products Order, 1992 and any order made under The Essential Commodities Act, 1955. There were many regulations made under the Food Safety and Standards Act covering the delegated legislation permissible area of food additive, contamination & toxins in food, food for special medical purposes, specific and non-specific food, organic food, alcoholic beverages, advertising and claims, packaging, labelling, Import, laboratory and sample analysis etc. There is much state legislation too on food safety and standards.

The Food Safety and Standard Act, 2006 along with various regulations were legislated and enforced with an object to remove confusion in the minds of consumers and stake holders about multiplicity of laws. Lay down standards to regulate food additives and contaminants. It was enacted to after considering Law commission report, international laws and agreement and to fulfil international obligations. It intends to establish Food Safety and Standard

¹ FBA Freeman Michael, *Lloyd's Introduction to Jurisprudence* (Sweet & Maxwell, 9th edn., 2014).

Authority of India for laying down scientific standards for food article and regulate economic activity from manufacturing to retail and ensuring quality of food for human consumption.²

III. RIGHT TO FOOD: CONSTITUTIONAL MANDATE AND JUDICIAL PRECEDENT

It is imperative to comprehend that Indian constitution in content does not recognises 'right to food' as a fundamental right though in context the India Judiciary has upheld right to food as fundamental right while giving liberal interpretation to article 21, 23, 39, 43, and 47 of the Indian Constitution. In the matter of protection of women from sexual harassment at workplace or protection of children, or elderly person, equal pay for equal work and at many more occasion 'Judicial Activism' has bridged legal gap, redefined and given new dimension to fundamental rights and provided social security. Law declared by the Supreme Court of India is precedent for all subordinate courts in India and its importance in establishing the right to food in India cannot be underestimated. According to Prof. A. Lakshminath, "the doctrine of *stare decisis* helps to generate judicial accountability, ensures fairness in adjudication and excludes arbitrariness and helps in maintaining stability and certainty". Through Public Interest Litigation, the doctrine of precedent has played a very creative role in realization of right to food of the hungry and malnourished population of India in absence of adequate enactments.

As the process of determination of the authority of a precedent is complex. The illiterate men who constitute the whole bulk of the starving population finds it difficult to access to the laws derived through the precedent. However, this doctrine of precedent is subject to certain lacunae. First, the unsatisfactory method of reporting makes it difficult for a food vulnerable person to know the law on right to food. Secondly, the determination of the *ratio decidendi* of the case which lay down the biding principle is a complex process. Thirdly, some conflicting decisions throw the people in dilemma as to what the law of the land is and under such circumstance people find it difficult to ascertain and enforce their rights in case of violation. Fourthly, there are various other factors which destroy the authority of precedents. Sometimes the legislature adopts a legislation which expressly or impliedly abrogates a precedent.³ In such cases it becomes difficult for an illiterate man to rely on law laid down as

² *Swami Achyutanand Tirth v. Union of India* (2016) 9 SCC 699.

³ The Parliament adopted the twenty-fourth amendment of the Constitution to abrogate the effect of the decision of *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

precedent and undertake the risk of incurring expenditure on litigation. Fifthly, precedents are sometimes reversed by a higher tribunal on appeal. Therefore, a common man is unsure about the authority of a precedent. Sixthly, confusion arises in the minds of the common man as a precedent is often overruled in subsequent cases and a new law is established. Seventhly, a precedent also does not enjoy the authority of law when it is given in ignorance of law. Therefore, the doctrine of precedent can be termed as the law for the lawyers and the highly educated section of the society. Eighthly, the precedent does not enjoy the authority of law when the decision is passed *sub silentio*⁴. This creates a hurdle for the illiterate man to understand the laws flowing through the precedent. Finally, the observations of the court in a judgement divorced from its context, as containing a full exposition of the law on a question when such question was not required to be answered does not operate as the authority of law⁵.

IV. RIGHT TO FOOD AS A BASIC HUMAN RIGHT

Judicial construction of right to food and its relation to fundamental rights can be seen in the case of *Francis Coralie v. Union Territory of Delhi*,⁶ wherein Court observation on meaning and nature of right to life enshrined under article 21⁷ was not merely an animal existence but includes right to live with human dignity. To live or survive with human dignity it is essential that a person must have right to access adequate nutritious food, shelter and clothing.⁸ The basic necessity of life of hunger is food without which there is no meaning to their life. Thus, right to food is protected under the right to life⁹. People have to eat to survive and if right to livelihood is not upgraded as fundamental right, then the easiest way to deprive a person right to life is to deprive him from access to food or means of livelihood.¹⁰ Supreme Court has asserted the fact that “right to life guaranteed in any civilized society would take within its sweep the right to food”.¹¹ Right to food is essential to have good health and have right to health as fundamental right¹². Children of tender age must have an opportunity and facility to develop in a healthy manner in condition of freedom, dignity, just and human conditions of

⁴ *MCD v. Gurnam Kaur*, (1989) 1 SCC 101.

⁵ *Madhav Rao Jivaji Rao Scindia v. Union of India*, (1971) 1 SCC 85.

⁶ AIR 1981 SC 746.

⁷ The Constitution of India, 1950, art. 21.

⁸ H.M. Seervai, *Constitutional Law of India* 737 (Universal Law Publishing, LexisNexis, Vol.-I, 4th edn., 2017).

⁹ Dr. J.N. Pandey, *The Constitutional Law of India* 280 (Central Law Agency, 47th edn., 2010).

¹⁰ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

¹¹ *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520.

¹² *State of Punjab v. Mahinder Singh Chawla*, AIR 1997 SC 1225.

living.¹³ The Supreme Court has emphasized in *Vincent v. Union of India*¹⁴ that “a healthy body is the very foundation of all human activities”. Canteen is required to be established in all establishment where food can be supplied to the workmen at the subsidized rates is the right to food as a basic human rights¹⁵. Even the Court has taken reference to article 25 of UDHR and held that ‘right to life includes right to live with basic human dignity with the suitable necessities of life including food for socio-economic well being of every individual¹⁶. The Universal Declaration of Human Rights, International Covenant on Economic Social and Cultural Rights recognises certain basic needs for human existence and to ensure socio-economic justice which includes right to food, clothing, housing, right to education, rights to physical and mental health as integral part of right to life¹⁷.

V. RIGHT TO FOOD AND FOOD SAFETY UNDER DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

Articles 36 to 51 contain the Directive Principles of State Policy (DPSP), borrowed from the Irish Constitution and are non-justiciable¹⁸ policies. DPSP are fundamental in the governance of the country and aims to establish welfare State, to promote just socio-economic order, improve the public health and thereby aids the realisation of right to food of the people. States have constitutional obligations to apply these policies in law making.¹⁹ The court has used articles 14, 19 and 21 frequently as a means to implement the directive principles²⁰ and maintained that DPSP and fundamental rights are complementary and supplementary to each other²¹ and both together form the conscience of the Constitution.

To improve the nation’s public health is the primary constitutional obligation of the States²² and its scope is wider in nature. Right to health includes right to food which must be nutritious in nature with which a person may lead a healthy life free from hunger. The availability of food to people must also be free from any adulteration which is not fit for

¹³ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

¹⁴ AIR 1987 SC 990.

¹⁵ *Deena Nath v. National Fertilizers Ltd.*, (1992) 1 SCC 695.

¹⁶ *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India*, (1992) 2 SCC 343.

¹⁷ *C.E.S.C. Ltd v. Subhash Chandra Bose*, (1992) 1 SCC 441.

¹⁸ Constitution of India, art. 37 says that, the Directives shall not be enforceable in the Court of law but the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws; *Ashok Kumar Thakur v. Union of India*, (2008) 6 SCC 1

¹⁹ B. Shiva Rao (ed.); *The Framing of India’s Constitution, Select Documents* 175 (Vol-II, Universal Law Publication Co. Pvt. Ltd., New Delhi, 2010).

²⁰ *Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645.

²¹ *Dalmia Cements (Bharat) Ltd. v. Union of India*, (2000) 123 ELT 307.

²² Constitution of India, art. 39 (e) and 47.

human consumption. Therefore, the Government is under obligation to prohibit exploitation of innocent people by the hand of economic gainer by marketing genetically modified food grains which are harmful for human consumptions. The Supreme Court has held that “even the food distributed through the public distribution system is required to pass the litmus test and the Government should confer to the letter and spirit of this provision and it cannot distribute food grains unsuitable for human consumption”.²³

Article 47 of the Indian Constitution for improving public health confers obligation on the states to raise level of nutrition and standard of living of its people. The state is to endeavour to bring about prohibition of the consumption intoxicating drinks and drugs which are injurious to health except for medical purposes. The Allahabad High Court has issued a “writ of mandamus restraining the state from selling in open market chemically processed soya bean which was unfit for human consumption”.²⁴ The Bombay High Court has upheld the Food Safety and Standards Act, 2006 as welfare legislation and intra virus to the Constitution²⁵ referring precedent in the case of *Sant Lal Bharati v. State of Punjab*.²⁶

The court in the case of *Saikhawant Ali v. State of Orissa*²⁷ expressed that “adulterated food, which would pose adverse health risk, there was a need to confer special powers so that in emergency conditions, the legislation could be properly implemented and the culprits punished appropriately”. Citing the observations of the Supreme Court in *Centre for Public Interest Litigation v. Union of India*²⁸, the Bombay High Court indicated that “the Act was framed in order to confer protection to health and well-being of human beings”.²⁹ It further added that “any adulterated hazardous food can be a threat to the fundamental right to life”.³⁰ The Court was of the view that “Food Safety and Standards Act was a mechanism to implement article 47 of the Constitution of India which ensures that the State raises the level of nutrition and standard of living for the benefit of public health in India”.³¹

²³ *Tapan Kumar Sadhukhan v. Food Corporation of India*, (1996) 6 SCC 101.

²⁴ *Shaibya v. State of U.P.*, AIR 1993 All 171 (para 8).

²⁵ *Ahar, Indian Hotel and Restaurant v. Union of India*, Writ Petition No. 477 of 2012 decided on September 16, 2015.

²⁶ (1988) 1 SCC 366.

²⁷ AIR 1955 SC 166.

²⁸ AIR 2014 SC 49.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

VI. INDIAN JUDICIARY ON FOOD SAFETY AND STANDARDS ACT, 2006: SOME REFLECTIONS

The Constitution of India being supreme law of land, the Supreme Court of India the highest Judicial Authority of the country and is the interpreter and protector of the Constitution. It is the guardian of the fundamental rights of the people and review actions of all the wings of the States; has the power to determine the constitutionality of all laws and its decision, direction and even guidelines are laws aimed to protect public interest and human rights including right to food. Judiciary being independent, impartial, free from external influence have effective power to ensure better security for the rights of the public.

Constitutionality of Food Safety and Standards Act, 2006

The jurisdiction of the Bombay High Court was invoked through PIL with a prayer to quash the provisions of Food Safety and Standards Act, 2006 as violative of article 14, 19 and 21 of the Indian Constitution. The Bombay High Court, in the case of *Ahar, Indian Hotel and Restaurant v. Union of India*³² upheld the constitutionality of the Food Safety and Standards Act, 2006 and the rules made there under and taking reference to *Sant Lal Bharti v. State of Punjab*³³ and *Kusum Ingots and Alloys Ltd. v. Union of India*³⁴ stated that “constitutional validity of any Act must be on the basis of certain and definite set of facts and not on apprehension and cannot be raised in abstract or in vacuum. The fact must show that implementation of the Act has violated any constitutional or legal right guaranteed”. It is within the statutory capacity and discretion of the public authority with the rules of natural justice to grant licence or permit or withhold the same and impose reasonable restriction within the parameter of article 19 (1) (g) on carrying out trade or business in beef or food products which are inherently dangerous, noxious or injurious to the public interest, health and safety. Article 14 forbids class legislation but permits reasonable classification. If classification is based on intelligible differentia and such differentia must have rational relation to the object sought to achieve by the legislation.

³² *Supra* Note 25.

³³ (1988) 1 SCC 366.

³⁴ (2004) 6 SCC 254.

Sale of Salt

The Food Safety Officer collected the sample of salt having brand name as “*shudh*” and sent for its testing to state food and drugs laboratory in Namkom, Ranchi through the designated officer. Upon the sample being analyzed, it was found of substandard grade with unsafe in terms of section 3(zz), (x), and (xi) of Food Safety and Standards Act, 2006. On receiving report, the designated officer sent the report to the appellant calling upon him to get the sample reanalyzed, if he wishes to do so, from the referral laboratory. The appellant did not opt for reanalyzing and thereby, the report was submitted to the Adjudicating Officer. For Selling of salt of sub-standard quality and for keeping it in unhygienic condition the Court has convicted the appellant for the offences punishable under sections 51 and 59(1) of the Food Safety and Standards Act and sentenced him to pay a fine of Rs. 3 lakhs for both the offences.³⁵

In *Academy of Nutrition Improvement and ors v. Union of India*³⁶, the court said that “the terms like processing, storage, distribution, food service, catering, food ingredients which are not defined under the Act have created an ambiguity and vagueness in the implementation of the provisions of the Act”.³⁷ The Supreme Court has observed that “where an item of food (used in the composition or preparation of human food and used as a flavouring) is in its natural form and is unadulterated and is not injurious to health, a rule cannot be made under the provisions of the Act to ban the manufacture for sale, storage or sale of such food item on the ground that such ban will ensure that the populace will use a medicated form of such food, which will benefit a section of the populace”.³⁸ The Supreme Court has made the decision in the context of the challenge to the validity of Rule 44-I of the provisions of Food Adulteration Rules, 1955 which banned use of common iodised common salt for human consumption. The issue was whether compulsory iodization system ought to be replaced by voluntary need-based iodization system? Such replacement will give an opportunity to those who have deficiency of iodine and they can choose iodized salt. It was claimed that it is unjust and unfair to deny a person having deficiency of iodised to choose between iodized and common iodized sal and therefore, Rule 44-I was violative of articles 14 and 21 of the Constitution. The Supreme Court held that “the issue to have a universal salt iodization is much debated technical issue relating to medical science and that decisions in these matters

³⁵ *Manoj Verma v. The State of Jharkhand.*, (2015) SCC Online Jhar 2432.

³⁶ 2011 (8) SCC 274.

³⁷ *Ibid.*

³⁸ *Ibid.*

can only be taken by an expert”.³⁹ The Court should not hasten on the issue where the scientist and medical experts are careful. Moreover, the court should not substitute their own views as wise, secure, sensible or appropriate relating to technicalities where question is about the public health.

Adulteration of Milk

Milk is considered as essential nutritious food for all age of human being. A PIL petition was filed based on “Executive Summary on National Survey on Milk Adulteration, 2011”. The petition has stressed on the growing threat of sales of adulterated and synthetic milk in India.⁴⁰ It was alleged that milk was produced with the use of hazardous substance like Urea, detergent, refined oil, caustic soda having threat to the life and standard of human health and the government have failed to prevent and prohibit such practices. Such hazardous substances are harmful for heart, liver, kidneys and may also lead to cancer. On such a grave issue, the Court direction has provided relief to the consumer. The Court held that “the Government shall take appropriate steps to implement Food Safety and Standards Act, 2006 in a more effective manner and to inform owners of dairy, dairy operators and retailers working in the State that if chemical adulterants like pesticides, caustic soda and other chemicals were found in the milk, then stringent action shall be taken on the State Dairy Operators or retailers or all the persons involved in the same”.⁴¹ The Court has also given direction to the State Food Safety Authority to identify high risk areas and at the times of nearing festivals where such practices were paramount. The lab testing infrastructure must be also be looked into by the State Food Safety Authorities. The snap short surveys at the State as well as at the national level be undertaken by FSSAI. Awareness among the School going children be carried out so to develop skill and competency to detect common adulterants in food.

In the case of *Pradeep Kumar Gupta v. State of U.P.*,⁴² the appellant was a petty food salesperson occupied in the business under the Act. The Food Safety Officer investigated his stall, purchased a specimen of paneer, which as per report of public analyst was found to contain fats less than the prescribed limit of 50% hence, sample was found to be sub-standard. On the basis of the report and after requisite sanction from the Designated Officer under the Act, a complaint was filed by the Food Safety Officer before the Adjudicating

³⁹ *Ibid.*

⁴⁰ *Supra* note 2.

⁴¹ *Ibid.*

⁴² Criminal Appeal No. 1586 of 2015.

Officer. The Adjudicating Officer after notice and hearing the appellant passed an order imposing a penalty of Rs. 5 lakhs. The appellant preferred an appeal under section 70(1) before the Food Safety Appellate Tribunal i.e., the District Judge. The F.S.A.T further passed a conditional order that the appeal be admitted subject to deposit of 50% of the penalty. In appeal the Allahabad High Court upheld the objection stating that both the adjudicating authority under the Food Act, 2006 were having only power of civil court and while imposing penalty have exceeded their authority. Therefore, the court referred the matter for determination by the bench of the High Court.

Sale of Adulterated Food

While defining the scope of the prohibition against selling of adulterated food, the Supreme Court observed in the case of *State of Orissa v. K.R. Rao*⁴³, that,

“In the absence of any provision, express or necessarily implied from the context, the courts would not be justified in holding that the prohibition was only to apply to the owner of the shop and not to the agent of the owner who sells adulterated food. The Act is a welfare legislation to prevent health hazards by consuming adulterated food. The *mens rea* is not an essential ingredient. It is a social evil and the Act prohibits commission of the offence under the Act. The essential ingredient is sold to the purchaser by the vendor. It is not material to establish the capacity of the person vis-a-vis the owner of the shop to prove his authority to sell the adulterated food exposed for sale in the shop. It is enough for the prosecution to establish that the person who sold the adulterated article of the food has sold it to the purchaser.”⁴⁴

Food article must have basic standard and the Food Authority of India is under obligation to prescribe the standard by laying down regulation on every food article.⁴⁵ Any deviation to those standards must be dealt strictly. The Apex Court plays a stringent function in reviewing the action of administrative authorities while implementing the food adulterated laws and shows no compassion to the convict for reducing and giving sentences.⁴⁶ *Khoya*, a milk product is used for preparing sweets and many other eatable food and adulterators of it has

⁴³ AIR 1992 SC 240; retrieved from www.indiankanoon.org/doc/1971456/; accessed on 18-04-2018 at 08:44 PM.

⁴⁴ *State of Orissa v. K. Rajeshwar Rao*, AIR 1992 SC 240

⁴⁵ *Vital Nutraceuticals Pvt. Ltd. v. Union of India*, 2014 (2) FAC 1.

⁴⁶ *Mithilesh v. State of NCT, Delhi* 2014 (2) FAC 37.

been given rigorous imprisonment.⁴⁷ From manufacturer to street vendor, all are duty bound to adhere with food standard laid down under FSSA to maintain food hygiene and ensure nutrition as well as public health.⁴⁸ To maintain public health, the Court emphasizes on providing proactive disclosure of food ingredient and its importance and printing it on the cover of the product⁴⁹. The cases relating to adulterated food must be disposed off in prescribed time bound limit,⁵⁰ giving due consideration to fact of each case⁵¹.

Though the court had stringent approach in food adulterated cases but has also depicted flexibility in catering needs and requirement of the society.⁵² Even though, food adulteration recorded marginal in nature but still an act is an offence and punishable⁵³. The role of the judiciary becomes more important when the laws on food safety or rules thereunder are defective or there are lacunae in procedural norms. Misappropriation of funds in food subsidy cannot be tolerated.⁵⁴ There were contradiction of opinion of High Court on delay in proceeding, delay and contradiction in laboratory report and analyst which have given benefit of doubt to accused person which resulted in acquittal⁵⁵. For defects in laws or administrative norms or in cases of latent adulteration of food benefit of doubt is conferred on accused.⁵⁶

Tobacco Products

The Central Legislation on Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) is a comprehensive law on tobacco product in the interest and to protect public health as a Constitutional mandate under article 47. All tobacco products are covered under it and it prohibits advertisement but regulate production, supply, distribution, trade and commerce. Consumption of tobacco in India is very high. The State of Assam enacted the Assam Health (Prohibition of Manufacturing, Advertisement, Trade, Storage, Distribution, Sale and Consumption of *Zarda*, *Gukta*, *Pan Masala*, etc. Containing Tobacco and/or

⁴⁷ *Suman Saini v. State of Haryana*, 2014 (2) FAC 152.

⁴⁸ *National Association of Street vendors v. South Delhi Municipal Corporation*, 2014 (2) FAC 96. See also *Banshilal v. State Of Rajasthan*, 2014 (2) FAC 120.

⁴⁹ *Danisco India Pvt Ltd. v. Union of India*, 2014(2) FAC 109.

⁵⁰ *M/s Tirupati Food and Beverages v. State of H.P.*, 2014 (2) FAC 125.

⁵¹ *Hotel Ranchi Ashok v. State of Jharkhand*, 2014(2)FAC 157.

⁵² *Muthyalakka v. Union of India*, 2014(1) FAC 190.

⁵³ *Sukhdev Singh v. State of Punjab*, 2014 (1) FAC 260.

⁵⁴ *Manpreet Singh v. Director, CBI*, 2014 (1) FAC 477.

⁵⁵ *Baljit Singh v. Union of India*, 2014(2) FAC 44.

⁵⁶ *Delhi Administration v. Sunil Kumar* 2014(1) FAC 163.

Nicotine) Act, 2013 which was challenged through PIL as unconstitutional.⁵⁷ The Gauhati High has affirmed the challenge and declared the Assam Health Act as unconstitutional as it lacks legislative competency and the Act is repugnant to COTPA. Moreover, unlike COTPA the Assam Health Act prohibited completely the entire industrial activity relating to smokeless and chewing tobacco which was otherwise permitted by the central legislation. Now the question arises is that whether the states are not having primary duty to give effect to article 47 of the Indian Constitution? Whether smoking cigarette or chewing tobacco is not injurious to health? In the case of *Godawat Pan Masala Products*⁵⁸, the Supreme Court stated that “trade or business in article of tobacco does not lead to an activity which is criminal in propensity, immoral, obnoxious, injurious to the health of general public”. Moreover, the court asserted the fact that there exists plethora of legislation which regulated tobacco product and does not suggest that the parliament has ever treated it as an article *res extra commercium*. If tobacco is injurious to health, then what is wrong in completely prohibiting its manufacture, production, supply, distribution and consumption in the interest of public health?

In the case of *M/s Omkar Agency v. The Food Safety And Standards Authority of India*⁵⁹ wherein the commissioner of Food Safety, Patna, in exercise of power under section 30(a) of the Food Safety and Standards Act, 2006 has prohibited the manufacture, storage or sale of *Zarda*, *Pan Masala* and *Gutka* was challenged as violation to COTPA and also that schedule tobacco product is not food business within the meaning of Food Safety and Standards Act, 2006. Though, the Commissioner order was quashed and set aside as arbitrary and made beyond the scope of the power conferred by the Food Safety Act but the court do stated that “*Pan Masala* means the food generally taken as such or in conjunction with *Pan* like Betelnut, lime, coconut, *catechu*, saffron, cardamom, dry fruits, *mulethi*, *sabnermusa*, other aromatic herbs and spices, sugar, glycerine, glucose, permitted natural colours, menthol and non-prohibited flavours and regulated by the Food Safety and Standards Act, 2006. The moment tobacco is added to *Pan Masala* as occurring in Food Safety Regulation, 2011 it will take colour of *Pan Masala* under COTPA and the commission does not have power to

⁵⁷ *Dharampal Satyapal Ltd. v. State of Assam*, W.P (C) No. 1583/2014.

⁵⁸ *Godawat Pan Masala Products v. Union of India*, W.P. No. 78378-78380/2013.

⁵⁹ Civil Writ Jurisdiction Case No. 3085 of 2015, decided on May 2, 2016.

prohibit it by impugned order.”⁶⁰ In *ITC Ltd. v. Agricultural Produce Market Committee*⁶¹, the Constitutional bench of five judges observed that tobacco is not a food stuff.

In the case of *Ganesh Pandurang Jadhao v. The State of Maharashtra*,⁶² the petitioner stopped by Food Safety Officer and was found carrying huge quantity of vessel of tobacco in a lorry. The officer filed a police complaint alleging that the petitioner had committed violation of a Government Notification prohibiting tobacco and thereby committed offense punishable under sections 26 and 30 of the Food Safety and Standards Act, 2006. The food safety officer further professed that the petitioner was also liable to be arraigned and penalized for offences punishable under sections-272, 273,188 and 328 of the Indian Penal Code. The police registered an offence and arrested the petitioner. Although the petitioner has got bail, but he himself asserted that registration of crime and lodging of complaint for offences are punishable under provisions of Indian Penal Code was illegal. According to them, offence punishable under section 328 of the Indian Penal Code is not made out against them. The day when the incident occurred, the prohibitory order was also in force. It is, therefore, clear that the petitioners were found to have committed violation of the prohibitory order. Section 272 and section 273 of the Indian Penal Code deals with the adulteration of food or drink intended for sale. Section 273 deals with the provisions of Sale of noxious food or drink. Both the sections deal with adulteration of article of food. However, it can be assumed that adulteration of food would mean mixing any material to food which would make the food unsafe and substandard. Masala would amount to administering poison. Therefore, *gutka* or *pan masala* are not subjected to food analysis. The commissioner on the basis of various report but not the report of analyst was of the opinion that sale of tobacco was not in public interest. Therefore, the Bombay High Court held that both *Gutka* and *Pan Masala* are befuddling, exhilarating or unhealthy drugs. It leads to oral sub-mucous fibrosis. Besides offering these items of food would not amount to intention to cause hurt. The provisions of section 328 of the Indian Penal Code to the present cases are therefore impermissible. Therefore, the action taken by the Police against petitioners under sections 372, 373,188 and 328 of the Indian Penal Code was declared to be illegal and as a result the complaints were quashed. In appeal to the Supreme Court, the charges under section 328 of IPC were quashed, and the petition was stay was granted.

⁶⁰ *Ibid.*

⁶¹ AIR 2002 SC 852.

⁶² Criminal Writ Petition No. 1027/2015 decided on October 15, 2020.

Bottled Drinking Water

Profuse of water are available on the earth but regret to say only diminutive 0.3 % is available for human consumption and rest 99.7% is found in other form in the nature. In such a backdrop and with knowledge that water form most essential requirement for human existence either to prepare food or to drink for survival, manufacturing, processing and trading in drinking water is economically profitable venture with all time consumer demand. The manufactures of bottled drinking water are required to complete registration process under the Food Safety and Standard Act, 2006 and also required to obtain Bureau of Indian Standard certificate. In the case of *Kerala Bottled Water Manufacturers Association v. Ministry of Health And Family Welfare*⁶³, a writ petition was filed by the Kerala Bottled Water Manufacturers Association seeking a few reliefs. The court held that only persons having proper registration can manufacture or produce packaged drinking water and the said product can be only sold with genuine parchment by the Bureau of Indian Standards. Moreover, the respondents shall take instant pace to enforce the said provisions of law.

Regulation 2.10.8 of Food Safety and Standards (Food Products Standards and Food Additives) Regulations of 2011 state about packaged drinking water which is other than mineral water and are water derived from the 99.7% sources available in the nature i.e., sea or underground water which are subject to further treatment to remove all harmful contaminations and make the water drinkable which was otherwise not.

Use of Lactic Acid

Lactic acid is a food additive and is used in food as an acidulant, buffering agent, neutralising agent. It is not consumed as a food by itself and may be used for technological purposes in manufacturing, processing, and preparation. The Bureau of Indian Standards has laid down use of lactic acid must be in conformity with standards and ash sulphate (salt-free basis) should not be used more than 2.5% by weight and in case of sugar boiled confectionery not more than 3 % o be weight. Whereas ash sulphate in dilute hydrochloric acid used not be more than 0.2% by weight and in sugar boiled confectionery not more than 0.4% by weight. In the case of *Parle Biscuits Private Limited v. Food Safety & Standard Authority of India, Ministry of Health & Family Welfare*,⁶⁴ the petitioner's shop was sealed and the raw materials and the food articles were seized by the Commissioner of Food Safety. The

⁶³ Writ Petition No. 31449 of 2016, decided on February 17, 2017.

⁶⁴ (2013) 2 Mah LJ 409.

petitioner prayed before the court to restrain respondent from taking any further action and quash action already taken. The petitioner manufacture confectionery products including sugar boiled confectionery and sale its product since 2004 and 2008 with trade name 'kaccha Mango Bite' and 'Mazelo' respectively. The petitioner product sample was sent for analysis and respondent claimed that it contains lactic acid which was impermissible and the sample contain more than permissible amount of colour which is against the Act, rules and regulations. It was noted that out of 48 batches of samples 39 batches of sample contained permissible limit but rest were not. The court held that the lactic acid is a permissible ingredient in sugar boiled confectionery product subject standards laid down by the Bureau of Indian Standards. It is important to note that DL lactic acid shall not be added to any food meant for children below 12 months. The court directed to return back 39 batches of product which are within permissible limit.

Maggie Noodles

Maggie noodles is the choice of all the children and people of all age as it is easy to cook and be made presentable on dining table quickly. Maggie Noodle is product of Nestle Company, a Switzerland based company having subsidiary place of business in India. The question was raised on the manufacturing process of Maggie noodle in which use of glutamic acid including monosodium glutamate (MSG) and lead was made. The Uttar Pradesh Food Safety and Drugs Administration collected the samples of Maggie noodles and found that it does contain lead in excess of maximum permissible limit of 2.4 ppm, misleading labelling information on the package reading "no added MSG and lead". The FSSAI, New Delhi held liable the company and directed to withdraw its product from market. The Government filed complaint against the company and claimed Rs. 640 crore as compensation before the National Consumer Dispute Redressal Commission, New Delhi which had forwarded 16 samples of Maggie Noodles to Central Food Technological Research Institute, Mysuru as per direction of Supreme Court.⁶⁵ The Bombay High Court interpreted the show cause notice issued to the company as a ban order. At many occasion the sample of Maggie Noodles was sent to laboratory in Gorakhpur, Kolkata, Delhi, Maharashtra, Gujarat, Tamil Nadu, etc and found contain of lead and glutamic acid beyond the permissible limit. In 2015, the company called back its Maggie Noodles from the market till the clearance from the Authority to ensure consumer health safety.

⁶⁵ Order dated January 13, 2016, Civil Appeal No. 14539 of 2015 with SLP (C) No. 33251 of 2015.

The honourable court held that all the administrative orders must pass the test of principle of natural justice and the impugned order in this case failed in test and therefore, liable to be set aside. When the company had withdrawn the product till the clearance by the authority by press release then what was the need of such order. The Court has also questioned on the laboratory institution where the samples were test on the ground of their accreditation and recognition that they were not as per the Act and regulation and therefore the court decline to rely on their reports. Mandatory procedure laid down under section 47 of the Act and Regulation were also not followed.⁶⁶ The Court has given relief to the Company on the ground of non-adherence of procedural norms by the Food Authority and Laboratory credentials but what if the alleged Maggie product have lead and MSG, can it be allowed to threaten the life, safety and health of people only on the ground on non-adherence of procedural norms.

VII. CONCLUSION AND SUGGESTIONS

India judiciary equipped with feature of independence, guardian to the constitution and Fundamental Rights of individual have upgraded the Directive Principle of State Policy to fundamental right. Right to food implied under article 21 of the Indian Constitution and many judicial precedents on right to food, food safety and standards were laid down which needs to be complied subject wise highlighting stare decisis so that layman can read, understand and apply in their day-to-day life and be aware of their right. Persons who know their rights can be in a position to enforce it in case of violation. The executive machineries responsible to implement the statutory provisions of Laws on Food Safety and Standards have an onerous responsibility to the welfare of the citizens and preserve and protect their valuable rights guaranteed under the Indian Constitution. Infrastructure and skilled man power needs to be raised in Laboratories recognised for analysis of Food and related samples. The dilemma of conflict and confusing state of mind regarding recognised lab and authenticity of its report must be avoided and what happened in Maggie Noodle case should not be repeated at the cost of human life, safety and health.

⁶⁶ *M/s Nestle India Limited v. The Food Safety and Standards Authority of India*, AIR 2015 SC 489.