CHAPTER VIII

CONCLUSIONS AND SUGGESTIONS

A comparative study of the provisions of food laws currently applicable in India and those of the internationally accepted and respected regimes has revealed that there are a number of shortcomings in the Indian Food Laws. Unlike India, the ultimate goal of food regulations of other countries under study is to ensure wholesome and safe food supply and well-informed consumers in an industry friendly manner.

Enactment of the Food Safety and Standards Act, 2006 by Government of India is an appreciable move to align the Indian food regulations with the internationally accepted and respected regimes. However, it is yet to be seen whether the new law is successful in achieving its objectives. The real picture will emerge only after the rules are framed and the Act is actually implemented. There are many issues and concerns which still need to be addressed. Based on comparative analysis of some specific provisions of the food regulations of the countries under study, the following issues and concerns need to be addressed while framing rules and regulations under the new Act.

Mechanism of Evolving and Fixing Food Standards

The development of standards and specifications for agricultural produce and food products is complex as it deals with a vast geographic spread of diversity in every sphere from farm to consumers. At present, the task of developing standards for food products in India has been entrusted to a number of authorities set up under various Acts and Orders. There is a complete lack of co-ordination between these authorities. As a result, the food standards laid down by these authorities are often inconsistent and overlapping. Most of the countries like EU, Australia-New Zealand, have adopted one food law and have one supra-national authority for regulating food standards. We should also follow a similar model in India.
The present food laws in India are not responsive towards evolving new food products and emerging concerns for food safety and ecology. A large number of food products such as pickles are not covered by these standards. In many cases, the standards are not backed by scientific validation. To overcome these concerns there must be a provision for setting up independent scientific advisory committees which should work closely with the food industry to track technological developments so as to develop high standards of food safety. Food standards must be set using the best available scientific information with opportunity provided to the public and food industry sectors to provide inputs and submissions on various food standards.

The PFA in India lays emphasis on laying down standards of end product, but does not address issues related to contamination in the food chain. A provision should be made to cover all components of the food supply chain on the pattern of Australia to regulate and enforce high standards of food safety. This includes the development of standards for primary production, particularly, use of chemicals, processing, manufacture and labeling, as well as covering the domestic food industry.

At present, there is a lack of transparency and participation in setting food standards. Central Committee for Food Standards (CCFS) is the expert body that recommends mandatory national food standards under the PFA Act. It has representation from the central government, state governments, research institutions, laboratories, consumer organizations and industry. There are various sub-committees under CCFS, which make recommendations on food standards in the respective sectors.

The composition of the CCFS is heavily skewed in favour of government organizations and there is no meaningful participation by industry or other stakeholders. There is only one representative from the industry who is allowed to participate in the meeting. The frequency of CCFS meetings is very low (usually one year) and deliberations of CCFS are not time-bound. This leads to delays in decision making. A provision should be made for wider and meaningful
participation by industry and other stakeholders in the process for setting or reviewing food standards. The procedures for preparing standards should be well-defined, open and transparent.

**Food Standards**

A significant change in international trade has taken place after the establishment of WTO. Member countries are compulsorily required to prove equivalence of their standards with Codex Standards to prevent any non-tariff trade dispute. It is important that Indian companies exporting food & beverage products meet the requisite standards. Therefore, PFA Standards need to be examined with reference to Codex Standards to determine areas of agreement and disagreement and be aligned/harmonized to the extent possible. Although, complete alignment of PFA with Codex is not possible due to differences in dietary habits, there are areas where harmonization of PFA standards with Codex Standards would help in raising the quality standards, encourage product innovation and increase acceptance of Indian products in the world market.

It is suggested that a phase-wise approach for the harmonization of Indian food standards with Codex. For this purpose, food standards can be segregated into two classes:

**Phase 1**: Focus on foods which have an export potential or which may be imported to meet shortages/demand.

**Phase 2**: Focus on foods which are meant entirely for domestic consumption.

Phase 1 should cover priority items for compliance with Codex standards failing which India would lose out on exports and could become a dumping ground for sub-standard foods. The specific food products with high export and import potential such as marine products, rice, cashew nuts, buffalo meat, tea, spices and oleoresins, processed fruits and vegetables etc. need to be addressed on a priority basis. The standards available for each item under PFA, BIS, Agmark, and Export
Inspection Agency would require recasting to comply with relevant Codex Standards, particularly in respect of SPS and TBT requirements.

In Phase 2 products meant for domestic consumption need to be harmonized with Codex which would need upgradation of infrastructure and adoption of techniques relating to risk assessment and risk management including use of HACCP principles to control risk from the stage of production to processing and packaging.

To ensure international credibility, we should follow the Code of Good Practices for establishing food standards as specified in WTO agreement on Technical Barriers to Trade (TBT).

**Recommended Code Of Good Practice For The Preparation, Adoption And Application Of Standards under TBT agreement:**

The substantive provisions as laid down in Annex 3 of the Treaty are reproduced below:-

D. In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favorable than that accorded to like products of national origin and to like products originating in any other country.

E. The standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate, for
instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems\(^1\).

G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part, within the limits of its resources, in the preparation by relevant international standardizing bodies of international standards regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Member, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

H. The standardizing body within the territory of a Member shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies in the national territory or with the work of relevant international or regional standardizing bodies. They shall also make every effort to achieve a national consensus on the standards they develop. Likewise the regional standardizing body shall make every effort to avoid duplication of, or overlap with, the work of relevant international standardizing bodies.

I. Wherever appropriate, the standardizing body shall specify standards based on product requirements in terms of performance rather than design or descriptive characteristics\(^2\).

J. At least once every six months, the standardizing body shall publish a work program containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. A standard is under preparation from the moment a

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\(^1\) WTO, Uruguay Round Agreement on Technical Barriers to Trade.

\(^2\) Ibid.
decision has been taken to develop a standard until that standard has been adopted. The titles of specific draft standards shall, upon request, be provided in English, French or Spanish. A notice of the existence of the work program shall be published in a national or, as the case may be, regional publication of standardization activities.

The work program shall for each standard indicate, in accordance with any ISONET rules, the classification relevant to the subject matter, the stage attained in the standard's development, and the references of any international standards taken as a basis. No later than at the time of publication of its work program, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva. The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work program is published, the period to which the work program applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

K. The national member of ISO/IEC shall make every effort to become a member of ISONET or to appoint another body to become a member as well as to acquire the most advanced membership type possible for the ISONET member. Other standardizing bodies shall make every effort to associate themselves with the ISONET member.

L. Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise, or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred
to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

M. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard, which it has submitted for comments. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. Comments received through standardizing bodies that have accepted this Code of Good Practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.

O. Once the standard has been adopted, it shall be promptly published.

P. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of its most recent work program or of a standard, which it produced. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.

Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this Code presented by standardizing bodies that have accepted this Code of Good Practice. It shall make an objective effort to solve any complaints.

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3 Ibid.
4 Ibid.
Packaging Regulations

Almost all other countries under study have laid down very clear-cut guidelines relating to packaging. The Government of India should formulate detailed packaging guidelines on the same pattern in order to avoid any food related risks from the packaging. Further these guidelines should not focus only on just polymer based packaging material but also regulate the use of ceramics, cellulose films, lead from metal coating, adhesive, printing inks, colors etc. on the pattern of European regulations.

All materials and articles should be traceable at all stages of manufacture, processing and distribution to enable them to be controlled, if necessary recalled if they are defective and to facilitate the provision of consumer protection and the attribution of responsibility for any problems that arise. To achieve this, a system adopted by European Union on Labeling and Traceability requirements of packaging material should be adopted by the Government of India. Business operators should be required to have systems and procedures in place to allow the identification of the business from which and to whom materials and articles, substances or products used in their manufacture have been supplied.

In addition to the above mentioned requirements, the Government of India must introduce the system of substance authorization adopted by Europe. All the substances used in the manufacture of food contact materials and articles will have to be assessed for risk and be authorized for better protection and safety against risks attached to those materials and articles.

Labeling Requirements

Most of the countries have adopted the Codex regulations for labeling. The Government of India should also adopt the labeling requirements as recommended by Codex. Most of these recommendations have already been taken care of through the present rules under PFA. However, the following areas still need to be aligned with Codex recommendations:-
(a) **Name of the food**: The name specified on the package containing food should indicate the true nature of the food and normally be specific and not generic. Food for special dietary uses should be required to be designated as "Special dietary" or "Special Dietetic" or any appropriate equivalent terms may be used.

(b) **Ingredients**: Provisions should be made for:-

i. Declaration of foods and ingredients known to cause Hyper sensitivity.

ii. Declaration of foods and ingredients obtained through biotechnology of an allergen.

iii. Declaration of a food additive carried over into a food in a significant quantity or in an amount sufficient to perform a technological function in that food.

(c) **Language**: Provisions should be made to provide a supplementary label containing the mandatory information in the required language in cases where the language on the original label is not acceptable to the consumer for whom it is intended.

(d) **GMO food labeling requirements**: In view of the worldwide controversy about the safety of Genetically Modified foods, it would be appropriate if provisions are made for labeling of Genetically Modified food and Genetically Modified Ingredients on the pattern of countries like Japan, E.U., Australia & New Zealand. The Government of India had issued draft notification No. G.S.R. 152(E) dated 10th March, 2006, making GM food labeling mandatory. Government should issue the final notification without further delay so that the consumers could make an informed choice.

291
(e) **Storage and use requirements**: Provisions should be made to specify on the label, the instructions for use, including reconstitution, wherever applicable. Storage instructions of opened packages of a food for special dietary uses should be included on the label if necessary to ensure that the opened product maintains its wholesomeness and nutritive value. A warning should be included on the label if the food is not capable of being stored after opening or is not capable of being stored in the container after opening.

**Import Regulations**

Any food import control system should protect consumers and facilitate fair practices in international food trade. After studying the mechanism followed by various countries, the following control system is recommended:-

a) Introduce a system of ‘Prior Notification’

The efficacy of the control system in applying efficient targeted control measures depends upon information about consignments entering the jurisdiction. Details of consignments that may be obtained include:

(i) date and port of entry

(ii) mode of transport

(iii) comprehensive description of the commodity

(iv) quantity

(v) means of preservation

(vi) country of origin and/or of dispatch

(vii) identifying marks such as lot identifier or seal identification numbers

(viii) exporter’s and importer’s name and address
b) Introduce a ‘Risk Based Inspection Program’ at the point of entry of the imported food.

The inspection program will include physical inspection and sampling followed by testing.

The following principles should be applied while developing and implementing the risk-based inspection program:

1. Determining the level of risk assigned to an imported food should be based on available scientific information in relation to the consumption of the food. The risk assessment methodology employed should be consistent with internationally accepted approaches.

2. Requirements for the inspection program of imported food based on risk should be developed using a risk analysis approach, and should not be applied arbitrarily or in a discriminatory manner, and should not result in unjustified barriers to trade or unnecessary delays.

3. The nature and frequency of inspection of imported food should be proportionate to the level of risk attributed to it and should take into account, all relevant factors. The nature and frequency of inspection may then be adjusted according to the demonstrated compliance to food safety requirements. The nature and frequency of inspection should be fully documented.

4. Sampling plans and methods of analysis should be based on Codex standards, guidelines, and recommendations. In the absence of Codex
sampling plans, reference should be made to internationally accepted or scientific sampling plans.

5. Sampling frequency of products may be decided based on the compliance history of the product/supplier. Proper documentation of the sampling process will help build the product compliance history. The products/supplier with poor compliance history will have higher sampling frequency. The overall systems may be designed such that products/suppliers with poor compliance history will be detained automatically.

6. Internationally validated standard methods of analysis or methods validated through international protocols should be used where available. Analysis should be conducted in approved and accredited laboratories.

7. Results of inspection and laboratory analysis should be carefully interpreted before making decisions related to acceptance or rejection of consignments. The inspection system should include decision-making rules for situations in which results are on the borderline or sampling indicates that only some lots within the consignment comply with requirements. Procedures may include further testing and examination of previous compliance history.

8. The system should include formal means to communicate decisions regarding clearance and status of consignments.

9. There should be an appeal mechanism and/or opportunity for review of official decisions on consignments. In case of rejection of the consignment the food should be destroyed using appropriate means.

10. The overall systems should be transparent and up-to-date.
The overall systems may be represented as below:

Prior Notification to the Port Authorities

Review of entry documents. Risk based inspection followed by sampling

Sample sent to the approved laboratories

Sample does not comply with the prescribed standards

Opportunity appeal

Sample complies with the prescribed standards

Shipment released and documentation completed

Other concerned authorities are involved depending on the type of product

Necessary checks done by the concerned authorities and decisions conveyed to the port

Decision to accept the consignment

Decision to reject

Consignment destroyed and Documentation completed

Product complies with the standards, consignment accepted and documentation completed

Product does not COMPLY with the standards and Consignment rejected

Consignment destroyed and Documentation completed
Export Regulations

The establishment of the WTO gives opportunities to all countries to benefit from greater access to world markets. As a result, the global trade has rapidly expanded in the recent years. Indian Government has recognized the opportunities. Different agencies such as APEDA, MPEDA, Spice Board etc. have been set up to cater to the requirements of export control.

The TBT and the SPS Agreements require that certain rules and disciplines are maintained. The SPS Agreement permits member countries to impose measures to protect human, animal and plant life. Taking strengths from these agreements, a well-developed food export control system needs to be implemented and maintained.

The aim of food export control activity is to export the food which is of good quality and safe to consume thereby helping the economics and building image of the nation. The acts, regulations and requirements need to be simple, complete covering various aspects of the food chain. The export control should be compatible with the WTO requirements and based on Codex guidelines, standards and recommendations. A provision to address to the requirements of the importing country should be made.

The legislation should address to the following but not limited to:

(i) Defining the food items to be regulated for export.

(ii) Giving assistance to the industry regarding export.

(iii) Facilitating the export by providing information, inspection, and certification to meet overseas country requirements.

(iv) Registration of premises.

(v) Ensuring conditions of fair trade.

(vi) Provision to carry out control at all the stages of the food chain.
(vii) Provisions to take account of new technologies and changing trade needs.

(viii) Risk based approach and provision for risk communication.

(ix) Defined procedures and decision criteria for each level of export control.

(x) Clearly defined responsibilities.

(xi) Provision for equivalence agreements.

(xii) Provision for strengthening the laboratory infrastructure and network.

(xiii) Uniform nation-wide implementation.

There should be a process of screening to decide on the eligibility of the unit/exporter who wishes to export the food. Basic minimum criteria should be defined for any unit/exporter to be eligible for export. Such criteria may be derived from the type of product to be exported and the risk associated with it as against only the product quality. The authorities accordingly may decide on the expected extent of control to be observed by the unit/exporter. The criteria may be defined for a group of food items such as dairy products, products of animal origin, products of plant origin and so on. Such a screening process will reduce the burden on the authorities and further processes such as getting IEC number, inspection, testing etc. It would be the responsibility of the unit/exporter to present the authentic information.

Having the documentation requirements fulfilled and the IEC number allotted the authorities carry out the Consignment Wise Inspection.

Under the Consignment Wise Inspection (CWI) by EIC, each export consignment is inspected and tested, pulling various kinds of national resources. Also the test results depend on the representative nature of the sampling and hence not always reliable. Instead, a control program based on food quality and safety assurance and management system (based on HACCP) should be highly encouraged. It will be the responsibility of the industry to meet the food quality and safety regulatory
requirements of importing country. The export control authorities will ensure that the exporter meets the requirements of the importing country. This could be achieved through surveillance system of industry and the supply chain. The surveillance system should cover compliance to varying requirements of importing country so that rejections at importing country are reduced.

Countries like Australia, Japan and the European Union have already developed the legislations focusing HACCP/risk based implementation. Thailand has also implemented a farm level food control program as this is the primary level of production.

A typical control program would include:

(i) Inspection

(ii) Sampling and analysis

(iii) Checks on plan, personnel hygiene and cleanliness

(iv) Examination of routine records

(v) Audit of the establishment by competent authority

(vi) National audit and verification of the control program.

The legislation should define decision criteria and further actions to be taken by the authorities at the appropriate stages of export control. The criteria should be based on the associated risk and the controls applied in previous stages. There should be a mechanism to communicate the decisions to all the stakeholders concerned with the stage of control. E.g. if the test results do not meet the required standards, the authorities should be able to decide whether to reject the consignment or reprocess the product. While deciding so, the authorities must see that all the requirements up to the testing stage have been fulfilled and meeting the standards. The concerned departments and exporter/manufacturer should be informed of the same immediately.
All specifications, inspection and testing methods, regulations should be documented and accessible to interested parties as required under the SPS Agreement.

**Enforcement Provisions**

The PFA Act in India gives a set up of Food Inspectors and Public Analysts with an objective of inspecting the food establishments, sampling and testing and investigating the complaints. Globally the trend in food law development and administration is focusing on safe food production and not just the inspections and sampling. The approach is multi-dimensional.

In order to ensure the safety of food, it is necessary to consider all aspects of the food production chain from and including primary production and the production of animal feed up to and including sale or supply of food to the consumer because each element may have a potential impact on food safety.

Following should be the salient features of the governing law:

i) **Traceability** to facilitate the withdrawal of foods and to enable consumers to be provided with targeted and accurate information regarding implicated product.

ii) **Transparency**: General public, non-governmental organizations, professional associations, international trading partners and trade organizations are increasingly getting concerned about food safety and the protection of consumer interests. The law should establish a framework for greater involvement of stakeholders at all stages in the development of food law and mechanism necessary to increase the consumer confidence in the law. There should be open and transparent public consultation, directly or through representative bodies. Better communication about food safety, the evaluation and explanation of potential risks, including full transparency of scientific opinions, are of key importance.
iii) **Risk Analysis**: In order to achieve a high level of protection of human health and life, food law should be based on risk analysis establishing the three inter-related components of risk analysis namely, risk assessment, risk management and risk communication. Scientific assessment of risk should be undertaken in an independent, objective and transparent manner. To ensure that the enforcement authorities receive sufficient scientific inputs, the Government should establish an authority, which would be responsible for providing independent scientific advice for legislations and policies in all fields that have an impact on food safety and communicate on risks in the food chain. It should primarily be a scientific risk assessment body while risk management and decision-making should remain with the Central Food (Health) Authority.

iv) **A Rapid Alert System** for the notification of a direct or indirect risk to human health deriving from food should be established as a network. The system should cover not only the emergencies but also the early warning system and alerts when food could be unsafe.

v) **Product Recalls**: Manufacturers and distributors should develop contingency plans for product recalls that can be put into effect if, and when needed. The concerned authorities should monitor the recalls and assess the adequacy of a firm’s action. After a recall is completed, reason for the product’s defectiveness should be investigated.

**Enforcement Stakeholder Forum**

There are various authorities who concentrate on enforcement of the law from various perspectives. For example: The Food Inspectors draw samples, inspect the food units and review the test reports and so they are aware of the current trends in the industry; the Customs Authorities are engaged in controlling the safety and quality of imported food and so are aware of the trends in international business. In this scenario, the Government should consider establishing Enforcement
Stakeholder Forum on the pattern of U.K., with the aim to provide a formal communications vehicle to representatives working in this sector and to explore possibilities for productive working partnership, information exchange, possible alerts, knowledge enhancement etc. Stakeholders can also discuss current and emerging issues / trends in the food business.

Following authorities could be the members of the forum:

1. Food Inspectors
2. Customs Authorities
3. Public Analysts
4. Secretarial level officer for administrative inputs
5. Officers from primary institutes like CFTRI and others for technical inputs
6. Policymakers

**Enforcement model and food safety approach**

There are different models adopted by different countries for enforcement of the law. E.g. in Australia the approach is multi-dimensional which addresses to policy advice, implementation committees and the standard setting authorities. On top of this there is a Ministerial council comprising of the state governments to form the policies, whereas in UK, it remains the responsibility of the Local Authorities. The model adopted is generally based on the country’s infrastructure set up. But the focus is to ensure food safety. The Government may decide on the model to be followed. It may be decided to strengthen the existing FDA network or the local authorities such as the municipal corporations. But food safety approach should be the basis. Instead of enforcement of the law, the authorities should encourage the food business operators to implement a system based on HACCP principles, identifying and controlling hazards associated with various operations throughout the food chain. The systems may further be strengthened by adopting GMP practices. The enforcement authorities need to be trained on how to encourage the
industry for application of HACCP rather than just inspecting or policing. The Inspectors should be looked upon as a guide or a facilitator. Together this will create a better confidence in consumers (domestic and international), industry and enforcement authorities as a whole. The use of HACCP approach by food business should be recognized by the Government as a fundamental tool for improving the safety of foodstuffs.

If the above issues and concerns are fully addressed in the rules & regulations to be framed under the new Food Safety & Standards Act, 2006, we shall be able to ensure wholesome and safe food to the people of the country and thereby ensure right to life i.e. healthy living as guaranteed by Article 21 of our Constitution.