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Safe Street Food: Need for Statutory Mechanism for Training and Support
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Abstract

Street foods in India in one hand very popular for its affordability and taste but it is often blamed for large number of food born diseases. Although efforts are being made to make it safer by issuing various guidelines for hygiene and safety but a little is being done to provide adequate support and training to the street food vendors who mostly hail from very poor economic background. Food Safety and Standard Act 2006 is silent about any training and support for street food vendors. Street food safety is an issue connected with right to life, health and livelihood as it an important source of self-employment, poverty alleviation, and tourist attraction and for some it is a part of daily meal. Supreme Court also has through its various judgments has held that safe food is a part of right to life as well as right to livelihood. It has also warned the authorities from harassing the poor street food seller in the name of improving the quality of street food. It is need of the hour to adopt a holistic approach in improving the quality of street food by implementing the National Policy for Urban Street Vendors. The Food Safety and Standard Act 2006 must be amended and for poor food entrepreneurs there must statutory mechanism for training and support. The problems faced by the street food industry are quite distinctive so the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 should also be suitably amended.

Introduction

The taste of Indian Street food is incredible be it of north or south, east or west. By and large this industry in India is unorganized and needs little investment. Though it is appreciated for its unique taste and affordability the health experts often blame it for large number of food borne diseases. The FAO/WHO Codex Alimentarius Commission defines “street-vended foods” or its shorter equivalent “street foods” as ready-to-eat foods prepared and/or sold by vendors and hawkers especially in the streets and other public places.¹ The street food has big number of consumers ranging form students to salaried ones and form tourists to locals. Since long little governance over the street food were done by municipal

¹ CAC-GL 22 rev.1, 1999

corporations. The street food vending system has not yet been institutionalized in India. Although efforts are being made to ensure safe, hygienic, nutritious and economic little support for training is available to this unorganized sector.

Article 47 of the Constitution of India mandates the State to raise the level of nutrition and the standard of living and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. ”According to the provision of Code for Hygienic Conditions for Food Hawkers, Bureau of Indian Standards, 1984, all the hawkers shall be inoculated and vaccinated against the entire group of diseases as prescribed by the concerned health authorities and a necessary certificate in this respect should be always available with him for inspections. These measures were seldom implemented.²

In 2006 Food Safety and Standard Act was enacted by the Parliament for the regulation of Food business. This Act came in force on 2011. The Act creates a hierarchy of officers. Under the food safety regulations 2011 the street food sellers and hawker fall within the definition of “Petty Food Manufacturer”. As Petty Food Manufacturer operator they has certain duties and responsibilities. On March 2014 the Parliament of India enacted the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act. The Act provides for rights and responsibilities of vendors. The present paper analyses the laws pertaining to street food.

I. International Norms

Article 12 of the International Covenant on Economics, Social and Cultural Rights, 1966 mandated the State parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It further asks the State parties *inter alia* to take step for the prevention, treatment and control of epidemic, endemic, occupational and other diseases

Both Food and Agriculture Organisation (FAO) and World Health Organisation (WHO) had time again given stress on training of and support to street food vendors for ensuring safety of street food. FAO has a comprehensive programme to assist national and municipal authorities in ensuring the quality and safety of street food.³ It has recognized that with all food preparation activities, the basic food hygiene rules must be applied and most street food vendors are untrained in food hygiene or sanitation, and have to work under very poor

²Summary of the FSN Forum Discussion No. 39, ‘Developing and Implementing Food Safety Mechanisms’, from 30th June to 23 July 2009
http://www.fao.org/fsnforum/sites/default/files/files/39_Food_Safety_Mechanisms/SUMMARY_Food%20Safety%20Mechanisms.pdf

³ FAO, Food for the Cities: Ensuring Quality and Safety of Street Food, available at <ftp://ftp.fao.org/docrep/fao/011/ak003e/ak003e09.pdf>

and unsanitary conditions and has dedicated great attention to sensitization and training of the different actors of this complex system.⁴ FAO has given attention to realistically adapting the guidelines of Codex Alimentarius regarding the General Principles of Food Hygiene and the Hazard Analysis and Critical Control Point (HACCP) system to the street food context. The Codex Alimentarius Commission, established by FAO and WHO in 1963 develops harmonised international food standards, guidelines and codes of practice to protect the health of the consumers and ensure fair practices in the food trade. The Commission also promotes coordination of all food standards work undertaken by international governmental and non-governmental organizations.⁵ The Codex Regional Coordinating Committees have elaborated respective codes of hygienic practices for street vended foods which take into account the local conditions and the special nature of street foods. WHO has come with “Five Keys to Safer Food” to ensure street food safety viz., ‘Keep clean’, ‘Raw and cooked food should be separated’, ‘Destroy hazards when possible’, ‘Keep microorganisms in food from growing’ and the last one ‘Use safe water and raw material’⁶

II. Food Safety and Standard Act, 2006

The Food safety and Standard Act extends to the whole of India and came into force on 5th August, 2011. Besides consolidating all the previous laws on food safety and standard, the Act established The Food Safety and Standards Authority of India (FSSAI) and certain other agencies and officers for the implementation of this Act. FSSAI has been created for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption. The duty of administration and implementation of this Act falls on Central Government, State Government, FSSAI and agencies under it.⁷

The Act defines unsafe food as “unsafe food” as an article of food whose nature, substance or quality is so affected as to render it injurious to health.⁸ The food must be safe

⁴ *ibid*

⁵ available at <http://www.codexalimentarius.org/about-codex/en/>

⁶ WHO/FAO, INFOSAN Information Note No. 3/2010 - Safety of street-vended food: Basic steps to improve safety of street-vended food, 30 June, 2010, available at

http://www.who.int/foodsafety/fs_management/No_03_StreetFood_Jun10_en.pdf

⁷ Section 18, Food Safety and Standard Act, 2006.

⁸ 2(zz) unsafe food means an article of food whose nature, substance or quality is so affected as to render it injurious to health :- (i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substance; or (ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or (iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or

by composition, process, preparation and packaging. It must not contain any harmful or sub-standard thing, nor any other pesticides or contaminants in excess of quantities specified by the regulations. Colour, flavor, coating and additives shall be only as permitted by the Food Authority. Food shall not be infected or infested with worms, weevils, or insects.

It is the duty of every Food Business operator under this Act to ensure that they fulfilling the requirements of thus Act and Rule and Regultions made thereunder.⁹ They shall not sell or distribute unsafe food, misbranded or sub-standard food or food which is prohibited in the interest of public health for the time being. They shall obtain license where it is required for selling a particular food.¹⁰ . No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.¹¹

There is no special provision for street food. The provisions are of general nature. And they apply to street food. However, the Food Safety and Standard (Licensing and Registration of Food Business) Regulations, 2011 has specific provision for street food. Street food hawker, vendor, and temporary stall holders fall within the definition of “Petty Food Business Operator”.¹². Chapter 2 provides for licensing and registration. As per this

(iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or

(v) by addition of a substance directly or as an ingredient which is not permitted; or

(vi) by the abstraction, wholly or in part, of any of its constituents; or

(vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or 8

(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or

(ix) by the article having been infected or infested with worms, weevils, or insects; or

(x) by virtue of its being prepared, packed or kept under insanitary conditions; or

(xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.

⁹ Sec 26 (1), Food Safety and Standard Act 2006

¹⁰ Sec 26 (2), Food Safety and Standard Act 2006

¹¹ Sec 26 (3), Food Safety and Standard Act 2006

¹² Rule 1.2.4. “Petty Food Manufacturer” means any food manufacturer, who

(a) manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or distributes foods including in any religious or social gathering except a caterer; or

Regulation all food business operator shall be licensed and registered which obviously includes street food seller. All street food sellers have obligation to get them registered under the Act. The petty food manufacturer shall follow the basic hygiene and safety requirements provided in Part I of Schedule 4 of these regulations and provide a self-attested declaration of adherence to these requirements with the application. The registering authority shall consider the application and may either grant registration or reject it with reasons to be recorded in writing or issue notice for inspection, within 7 days of receipt of an application for registration. The registering authority shall issue a registration certificate and a photo identity card, after completing the process and which shall be displayed at a prominent place at all times within the premises or vehicle or cart or any other place where the person carries on sale / manufacture of food in case of petty food business. The registering authority or any officer or agency specifically authorised for this purpose shall carry out safety inspection of the registered establishments at least once in a year. Schedule 4 has described various provisions required for street food vendors regarding location and environment of vending stall, vending cart, water supply, handling of food and raw food, cooking and serving, storage of cooked food, personal hygiene of vendors drainage and waste disposal

Although the Rule 12 provides for training of food handlers regarding hygiene, food safety and other connected matters it don't have any specific provision regarding training of Petty Food Business Operator. It is also silent about support.

III. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

We cannot imagine about quality street food unless and until the rights of street food Vendors are properly protected. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act was got assent of the President on 4th March 2014. It was enacted with the object of protecting the rights of the street food and regulation of street vending. It defines Street vendors as “street vendor” as “a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be

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- (b) such other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and/or whose
- (i) production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or
 - (ii) procurement or handling and collection of milk is up to 500 litres of milk per day or
 - (iii) slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

local or region specific; and the words “street vending” with their grammatical variations and cognate expressions, shall be construed accordingly.”¹³

Under this as a Town Vending Committee must be constituted by the Appropriate Government which is either the Central Government in case of Union Territory and State Government in case of States.¹⁴ This Committee is to conducting a survey once in every five years of the area under its jurisdiction. The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent. of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones.¹⁵ Under Section 4 Every street vendor, identified under the survey carried out under sub-section (1) of section 3, who has completed the age of fourteen years or such age as may be prescribed by the appropriate Government, shall be issued a certificate of vending by the Town Vending Committee, subject to such terms and conditions and within the period specified in the scheme including the restrictions specified in the plan for street vending. However certificate can also be granted in the intervening period of two surveys. Section 15 makes it mandatory for street vendor to maintain cleanliness and public hygiene in the vending zones and the adjoining areas. Further Sec 37 of the Act states that Subject to the provisions of this Act or any rule or scheme made thereunder, the local authority may make bye-laws to provide for the regulation of the quality of products and services provided to the public in vending zones and maintenance of public health, hygiene and safety standards, inter alia.

The Act does not have any specific provision for street food, vending or vending zone street food. According to the Act appropriate Government inter alia is to lay down the terms and conditions for street vending including norms to be observed for up keeping public health and hygiene.¹⁶

IV. National Policy for Urban Street Vendors, 2009

The National Policy for Urban Street Vendors views street food vending as a means of urban poverty alleviation. This policy is of general nature however has important provision pertaining to street food vendors. As per it the Civic Authorities are to a vendors provide various facilities which includes, provisions for solid waste disposal, public toilets to maintain cleanliness, aesthetic design of mobile stalls/ push carts, provision for electricity

¹³ Sec 2(1) The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014

¹⁴ Sec 2(a), 2(m) and Section 22 The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014.

¹⁵ Sec 2(n), 3(1), and 3(2) The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014

¹⁶ Section 38, Schedule II The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014

provision for drinking water, provision for protective covers to protect their wares as well as themselves from heat, rain, dust etc., storage facilities including cold storage¹⁷

Further para 7 provides for ‘Self Regulation’ Street vendors by their own must practice Self-Regulation especially with respect to hygiene and quality control especially with respect to food vending especially in sensitive areas like near schools, parks etc where there is considerable exposure to children. They must also practice cleanliness and it is their responsibility to keep the environment clean by properly disposing the waste etc.

V. Confederation of Indian Industry (CII) Norms and Bureau of Indian Standard (BIS) Norms

In 2008 the Confederation of Indian Industry (CII) has come up with a 14-point checklist to improve the safety and quality of street vended food in the country. The checklist, designed by the CII Institute of Quality, Bengaluru was released as part of the two-day national seminar on “Food Safety and Quality in Kitchen – Freedom from Food borne Illnesses through Safe Kitchen”. It came up with a project called "National Programme on upgradation of Quality of Street Food in India".

Bureau of Indian Standards (BIS)¹⁸ has released Indian Standard on basic requirements for street food vendors on 12 December, 2012. In forward it says that “this standard provides guidelines with respect to minimum check points which if exercised would ensure a safe food to the common consumers...and is intended to fulfill this long felt need and follows the food chain from primary production through to final consumption, highlighting the key hygiene controls at each stage.”¹⁹ It further says that it is expected that this standard, will be of considerable assistance to local health authorities in enforcing proper hygienic conditions in the interest of public health. It also says that considerable assistance has been derived from the CII publication on street food safety ‘CII-14 Points check on food safety for street vended food, Version 1.0’ Under thirteen various head BIS standards provides for various check points. These are namely, ‘Quality of Inputs and Ingredients’, ‘Transport, Reception and Storage of Inputs’, ‘Vending Location’, ‘Vending Cart’, ‘Utensils and Cutting Tools: Material of Construction, Cleaning and Storage’, ‘Hygienic Practices’, ‘Personal Hygiene and Habits’, ‘Food Preparation, Cooking and Handling’, ‘Transport of Prepared Food’, ‘Protection and Serving of Food’, ‘Handling and Disposal of Waste’, ‘Pest Control’, ‘Training’. It must be noted that BIS norms are not mandatory in nature but they are at par

¹⁷ Para 4.1.3, National Policy For Urban Street Vendors

¹⁸ BIS is a statutory institution established under the Bureau of Indian Standards Act, 1986 to promote

harmonious development of the activities of standardization, marking and quality certification of goods

and attending to connected matters in the country

¹⁹ Bureau of Indian Standard, ‘Indian Standard Street Food Vendors — Food Safety Requirements’, IS 16066 : 2012, available at <https://law.resource.org/pub/in/bis/S06/is.16066.2012.pdf>

with international norms. The norms laid down CII and BIS has give due importance to training of and support to street food vendors.

VI. Judicial Response

It is noteworthy that our judiciary has held safe food as a part of Fundamental Right to life. In a judgment of 2013 the Supreme Court held that "...any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. A paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India."²⁰ It further emphasized that therefore, of the view that the provisions of the FSS Act and PFA Act and the rules and regulations framed thereunder have to be interpreted and applied in the light of the Constitutional Principles, discussed above and endeavor has to be made to achieve an appropriate level of protection of human life and health. Considerable responsibility is cast on the Authorities as well as the other officers functioning under the above mentioned Acts to achieve the desired results. Authorities are also obliged to maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance and other monitoring activities covering all stages of food business.²¹ Although the main issue in the said was pesticide contamination of soft drinks but it is a very important as Supreme Court has given held that right to safe food in fundamental right and all the authorities related to food safety are under obligation to protect it and the law regarding food safety must be interpreted in light of the Constitutional principles.

In another case National Association of Street Vendors of India Through its Coordinator vs South Delhi Municipal Corporation and others²² the Delhi High Court held that "the requirements of food safety have been adequately dealt with under the said Food Safety and Standards Rules and said Regulations. It is nobody's case that the provisions of the said Food Safety and Standards Rules and the said Regulations are not to be complied with. This being the position, we feel that the public notices issued by the Municipal Corporations of Delhi are too general and when specific requirements already exist in the shape of the above mentioned provisions, the latter provisions shall take precedence over the public notices and the provisions under which they were issued...The requirements of food safety have been adequately dealt with under the said Food Safety and Standards Rules and said Regulations. It is nobody's case that the provisions of the said Food Safety and Standards Rules and the said Regulations are not to be complied with. This being the position, we feel that the public notices issued by the Municipal Corporations of Delhi are too general and when specific

²⁰ para 21, Centre for Public Interest Litigation .. Petitioner Vs Union of India and Others . WRIT PETITION (CIVIL) NO. 681 OF 2004, October 22, 2013

²¹ para 22, *ibid.*

²² W.P.(C) 4303/2014 & CM No.8645/2014

requirements already exist in the shape of the above mentioned provisions, the latter provisions shall take precedence over the public notices and the provisions under which they were issued.”

The court passed the above order while disposing of the plea of some street vendors who had sought directions to South Delhi Municipal Corporation (SDMC) to not "obstruct or disturb the petitioners from carrying on trade from their respective squatting sites in accordance with order dated September 9, 2013, passed by the Supreme Court in Maharashtra Ekta Hawkers Union and another vs Municipal Corporation²³, Greater Mumbai". The Supreme Court, in its September 9, 2013 order, had held that "all existing street vendors/hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending/hawking zones is completed....Once that exercise is completed, they shall be entitled to operate only in accordance with the orders/directions of the concerned Town Vending Committee". Supreme Court has restrained all states and Union Territories from taking any action against them and directed the governments to implement the 2009 national policy for their regulation.

VII. Conclusion

A large no of rights of both street food sellers and their consumers are getting violated everyday. Apex Court has realized and warned the authorities from harassing the poor street food seller in the name of improving the quality of street food. It is need of the hour to adopt a holistic approach in improving the quality of street food. One sided approach will never lead to a solution. It is indeed an important source of self-employment, poverty alleviation, and tourist attraction and for some it is a part of daily meal. Right to safe food is a part of right to health and well being. Ignoring the hurdles and shortcomings faced by the poor and ill equipped street food entrepreneurs will never lead to any effective solution. The National Policy for Urban Street Vendors must be implement in latter and spirit in all the States. Without a holistic measure it would be unjust to put the entire burden of ensuring street food safety on street food vendors. Sanitation and waste disposal mechanism are also connected to street food safety. National Policy of 2009 speaks about provision of basic civic amenities to street food vendors. The Food Safety and Standard Act must be amended and for poor food entrepreneurs there must statutory mechanism for training and support. A separate rule for street food under Food Safety and Standard Act must be made. The problems faced by the street food industry are quite distinctive so the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 should also be suitably amended. Health of food handlers is also crucial so public health system for poor need to be improved. Food laws alone cannot ensure safe street food and holistic approach must be adopted in light of norms laid down by FAO and WHO.

²³ Appeal (civil) 4156-4157 of 2002