

Business Standard

Some food for thought

Hazy laws, poor implementation cast a shadow on food safety regulations. Time for the regulator to get its act together

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Much before the controversy around Maggi raised an alarm over food safety standards in India, the voluminous rejection list of Indian food and cosmetic items in the US served as a precursor to the need for better regulations of food safety laws in India.

India has always been one of the top three countries to face rejections in the monthly refusal list of food items by the Operational and Administrative System for Import Support (OASIS), of the US FDA (Food & Drug Administration). In June 2015, 170 Indian products, 185 in May and 143 in April, were rejected by the US

FDA, marking the second highest number of refusals in all the three months.

Ironically, India has one of the best food laws in place on paper, which requires even a roadside peanut vendor to get a licence from the government. However, the problems lie in the poor implementation of laws. In 2006, the Food Safety and Standards Authority of India (FSSAI) was established as an independent statutory authority for all food-related laws under Food Safety and Standards Act, 2006. The Act repealed a plethora of previous central Acts including the Prevention of Food Adulteration Act, 1954, which was the principal law governing the food sector in India so long. The new laws were aimed to address the issue of food safety, apart from food adulteration.

The FSSAI- broadly based on Codex Alimentarius Commission, a benchmark for international food safety practices- became the central regulatory authority responsible for regulating manufacture, storage, distribution, sale and import of food. The commission dates back to 1963, when the Food and Agricultural organization (FAO) and World Health Organization (WHO) along with its 185 member states formed the standards.

"The biggest problem with food law is that it was hurriedly copied from Codex but was not sufficient to address problems in the Indian food sector. Most importantly, at the ground level, the food inspectors have no competency and capacity for effective monitoring. The FSSAI has just made the inspector raj more pronounced," said a food consultant on the condition of anonymity.

Too many ifs & buts

Experts opine that even though the FSSAI brought about the much needed reforms in food laws, it left out several categories of food.

For example, The Food Safety and Standards (Food Product Standards and Food Additives) Regulations, 2011 provides a lists of food and additives allowed in nutritional products. However, "proprietary food"

remains ill-defined. FSSAI defines proprietary food items as ones which have not been defined by the regulations, thus leaving gaps in food laws.

"There are only 377 products mentioned in the regulations. Other countries around the world have over 10,000 standards. Moreover, the list is not regularly reviewed," said Kunal Kishore, partner, Juggernaut Legal and Financial Solutions.

Most of the legal problems pertaining to food laws stem from the proprietary food category, said Kishore. For example, in 2013 Vital Neutraceuticals, a Mumbai-based company, moved the Bombay High Court against an advisory issued by FSSAI asking manufacturers to take approval for products, licensed and existing in the market. The court quashed the advisory, and the Supreme Court upheld the decision. "An environment of trust needs to be created between the regulator and the industry. Testing of products could be conducted in the presence of the manufacturer," said Gowree Gokhale, partner, Nishith Desai Associates,

Low standards, poor implementation

The controversy over the presence of unacceptable levels of lead and monosodium glutamate in Maggi - a popular instant noodle product manufactured by Nestle - showed the confusion over standards in different states. After testing samples, Maharashtra, Punjab and Kerala banned the product, while Karnataka, West Bengal, Goa and Chhattisgarh claimed the levels of lead were not unsafe. This raises doubts on the standard procedures followed by the laboratories certified by the regulator.

"Even if they (the laboratories) are proved wrong, no one is answerable, there is no legal recourse for the company to claim compensation as the government would claim that it was done in good faith," said a lawyer, who did not want to be named.

FSSAI officials were not available for comment, and an email sent to the regulator remained unanswered at the time of going to press.

Many in the industry feel that the regulator is grossly understaffed and underfunded to monitor the widening ambit of food laws. Also, there are no standard practices for food inspection, the process being mostly discretionary. "Ideally, the food inspectors should upload online reports, along with pictures of products," said Vijay Saranda, a food consultant and director, Achievers' Resources.

The Codex Alimentarius Commission met last week in Geneva to review existing standards for food safety and quality. Representatives from 185 countries - including those from India - agreed that more stringent benchmark norms for various food categories be followed worldwide. This included setting the maximum levels of lead in fruit, juices and canned foods, new worldwide standard for ginseng products, nutrition labelling reference value for potassium, new standards for the safe use of food additives, and capping limits for pesticide residues in food. Clearly, FSSAI would have to spruce up its facilities to keep pace with the changes in global standards in food safety and quality.

Being just a few years old, FSSAI may still be finding its feet. But the Maggi episode may force it to get its act in place.