

Food literacy & food labeling laws—a legal analysis of India's food policy

Om Prakash Bera¹, Ranjit Singh², Sudip Bhattacharya³

¹Country Coordinator, Global Health Advocacy Incubator, ²Advocate, Supreme Court of India, ³Department of Community and Family Medicine, All India Institute of Medical Sciences, Deoghar, Jharkhand, India

ABSTRACT

Aggressively marketed, cheaper and more easily available pre-packaged foods, often considered as foods high in fat, salt, and sugar (HFSS) is finding a growing preference amongst consumers in India. These HFSS foods are the major causes of heart and other non-communicable diseases worldwide. To prevent or control further widespread of NCDs, Food Safety and Standard Authority of India (FSSAI) has issued numerous food and packaging laws and acts to control their manufacture, storage, distribution, sale, and import so that a safe and wholesome food is available to the consumers. The Front-of-pack labeling (FOPL), proposed by FSSAI in 2019, is a key strategy to alert and educate consumers in making an informed choice. This article aims to enlist and describe various food and labeling laws and acts enacted in India since the last two decades and identify that what type of label would be best suited to India.

Keywords: Food labeling laws, food literacy, FSSAI

Introduction

The burden of non-communicable diseases (NCDs) has seen an abrupt rise globally and in India since last two decades.^[1] NCDs are the major cause of morbidity and mortality around the world and are mostly associated with the lifestyle factors.^[2] According to the World Health Organization (WHO, 2018), NCDs account for 71%, i.e., 41 million deaths each year globally with cardiovascular diseases (CVDs) being a leading cause of mortality in India.^[3] One in 4 deaths in India are now because of CVDs with ischemic heart disease and stroke responsible for >80% of this burden.^[4] Foods high in fat, salt, and sugar (HFSS) are the major causes of heart and other NCDs worldwide.

India is one of the largest markets of packaged foods in the world. Aggressively marketed, cheaper, and more easily available

pre-packaged foods is finding a growing preference amongst consumers.^[5] The easy availability of HFSS among school going children in the form of pizzas, burgers, noodles, cookies, chips, bakery items, etc., has been increasing in Indian children since last two decades which is leading to dental caries, childhood obesity, and high cardio metabolic risks.^[6] The matter of the concern is that this increase in number (overweight and obesity rates) is not only restricted among children and adolescents of the higher socioeconomic groups but also in the lower income groups of India.

The Food Safety and Standard Authority of India (FSSAI) was established under the Food Safety and Standards, 2006,^[7] which consolidated various acts and orders to handle food-related issues which lays down science-based standards for food products to control their manufacture, storage, distribution, sale, and import so that a safe and wholesome food is available to the consumers [Table 1].

To prevent or control further widespread of NCDs, labelling of food, especially Front-of-pack labeling (FOPL), proposed by

Address for correspondence: Dr. Om Prakash Bera, Country Coordinator, Global Health Advocacy Incubator, India. E-mail: dromprakashberapgi@gmail.com

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FSSAI in 2019, is a key strategy to alert and educate consumers in making an informed choice.^[8] Labels are the main link of communication between a manufacturer and the consumers. They include the percentage of recommended daily allowance (RDA) of total calories, saturated and trans-fats, sodium, and added sugar per 100 g of foods. The most effective food label would be simple, straightforward, interpretative, and relevant across different SES groups, language groups, and regions in India. With this background, it is essential to understand various food and labeling laws and acts enacted in India since the last two decades and identify what type of label would be best suited to India.

Chronology of Food Legislations

I. The Food Safety & Standards (FSS) Act, 2006

“The (FSS Act), 2006, along with its Rules and Regulations framed thereunder, constitute a vigorous regulatory regime, to monitor the content as well as labelling of food, thus enabling consumer to make informed and healthy choice of food,

- i. Section 16 of the FSS Act explains, the duty of the Food Authority to specify, labelling standards including claims on health, nutrition, special dietary uses, and food category systems for foods.
- ii. Section 18 of the FSS Act elucidates to carry out risk management/assessment of a food to inform the general public about the nature of the risk to health and ensuring protection of the interests of consumers to make informed

choices in relation to the foods they consume.

- iii. Section 26 of the FSS Act explains that the Food Business Operator (FBO) should ensure that the food articles should satisfy the requirements of the Act and should regulate all stages from production, processing, import, distribution to sale.
- iv. Section 3 of the FSS Act defines food, label, package, and misbranded food
- v. Section 23 of the FSS Act, pertains to packaging and labelling of foods, and inter-alia makes it mandatory for “packaged food products” to be labelled or marked in the manner as may be specified by regulations.
- vi. Section 52 of the FSS Act prescribes penalty for misbranded food as:
 - Any person (by himself or by any other person on his behalf), If found selling or distributing misbranded food articles shall be penalised up to Rs. 3,00,000/-.
 - The Adjudicating Officer may issue a direction to the guilty for rectifying the mistake or such article of food shall be destroyed”.

1. The Food Safety and Standards (Labelling and Display) Regulations^[9]

“The Regulations enacted under the FSS Act provide elaborative details for food labelling. The initial Food Safety and Standards (Packaging and Labelling) Regulations, 2011, was divided into two regulations, namely,

Table 1: Operational Definitions given under various regulations

Title	Food Safety and Standards Act, 2006	The Food Safety and Standards Regulations
The Food Safety and Standards Authority of India (FSSAI)	“a body established under section 4 of the Act to perform the functions assigned to, under Section 16 of the Act.”	
Food Business Operator (FBO)	“any undertaking engaged in the manufacture processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients.”	
Food	“any substance which is intended for human consumption (all forms of food & beverages) and includes any substance used into the food during its manufacture, preparation or treatment”.	
Label/labelling	“any tag, brand, mark, pictorial or other descriptive matter (written, printed, stencilled, marked, embossed, graphic, perforated, stamped or impressed) on container, cover, lid of any food package and includes a product insert”.	“any written, printed or graphic matter that accompanies the food or is displayed near the food”
Package	“a pre-packed box, bottle, casket, tin, barrel, case, pouch, receptacle, sack, bag, wrapper or such other things in which an article of food is packed”.	“the packed food, which cannot be changed in terms of its contents without being tampered and ready for sale to the consumer”.
Misbranded food	“an article of food, offered or promoted for sale with false, misleading or deceptive claims either; upon the label of the package, or through advertisement, or is not labelled as per the requirements”.	
Principal display panel		“part of the container/package which is intended or likely to be displayed or presented or shown or examined by the customer”.
Retail pack or retail unit		“the packages which are intended for sale to ultimate consumer for the purpose of consumption of the food contained therein”
Front of pack		“part of the package that faces forward (in the principal field of vision) and is typically the first thing a consumer will see when they look at the product”

1. The Food Safety and Standards (Packaging) Regulations, 2018, which deals with regulating the packaging materials of food. AND
2. The Food Safety and Standards (Labelling and Display) Regulations, 2020 which deals with regulating the labelling and display of pre-packaged food”.

The Food Safety and Standards (Labelling and Display) Regulations, 2020 (FSS Regulation), has comprehensively revised the erstwhile Food Safety and Standards Labelling Regulations, with emphasis on enabling consumers to make informed choices about their food purchases in the sphere of packaged food products. FSS has issued various regulations for every packaged food.

Each packet of food article should comprise of the name of that food product which describes its true composition. The name should be mentioned on the front of the pack. Along with this, the package should also include the list of ingredients in the order of their composition by weight or volume besides the information about the food additives or flavouring agents (if any) used in the food article. Every package of food shall carry a list of ingredients in descending order of their composition by weight or volume, as the case may be at the time of its manufacture. The information carrying the nutritional properties of the food should also be part of the consumer information. A color-coded symbol is required to given on each food package so as to inform the consumers about the vegetarian or non-vegetarian quality of the food product. Green- and brown-coloured circle inside a rectangle are used for vegetarian and non-vegetarian food products, respectively. For the food article not meant for human consumption, black colour cross inside a square with black outline is used. Other important information required on every food article includes the name and complete address of the brand owner, name of the country of origin (in case of the imported food products), FSSAI logo and license number, date of manufacturing, lot/batch number, sale price, instructions for use, consumer care details, claims, principal display panel, etc.

The packaged food must also comply, where applicable, with the labelling requirements of the following Regulations:

- i. The FSS (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food) Regulations, 2016
- ii. The FSS (Import) Regulations, 2017.
- iii. The FSS (Organic Foods) Regulations, 2017.
- iv. The FSS (Fortification of Foods) Regulations, 2018.
- v. The FSS (Advertising and Claims) Regulations, 2018
- vi. The FSS (Alcoholic Beverages) Regulations, 2018
- vii. The FSS (Packaging) Regulations, 2018.
- viii. The FSS (Recovery and Distribution of Surplus Food) Regulations, 2019.
- ix. The FSS (Food for Infant Nutrition) Regulations, 2020.

III. FOOD REGULATORY BODIES

1. NATIONAL REGULATORY BODY

The Food Safety and Standards Authority of India (FSSAI) or Food Authority, under the Ministry of Health & Family Welfare (MoHFW), Government of India (GOI), is the single point of reference for all matters relating to food safety and standards in India. Consolidated various acts and orders to handle food- related issues which lays down science-based standards for food products to control their manufacture, storage, distribution, sale, and import so that a safe and wholesome food is available to the consumers.

The FSSAI consists of representative from the Food Industry, Food Technologists, Food Producers, Retailers Organisations, Consumer Organisations, Farmers Organisations, State Governments and concerned Ministries or Department of Central Government, where food safety/regulation is a shared responsibility.

Along with this, the MoHFW, GOI has the Food Quality Control Section which controls the administration of the FSS Act, 2006 and its amendments for laying down science-based standards for food articles and issuing time to time notifications, so as to ensure availability of safe and wholesome food for human consumption.

2. SUB-NATIONAL OR STATE REGULATORY BODY

The State Food Authority is headed by the Food Commissioner along with the Designated Officers and Food Safety Officers, who are required to take necessary steps through surveillance, monitoring, inspection, and random sampling of food products to ensure compliance with the FSS Act, 2006 and Regulations enacted thereunder in the State.

IV. LITIGATIONS ON FOOD LABELS

Some of the judgments and orders that may have bearing to the afore mentioned submissions are as follows:

1. Hon'ble Supreme Court of India in Centre for Public Interest Litigation Versus Union of India and Others (Writ Petition (Civil) No. 681 OF 2004), vide its judgment dated 22nd October 2013, held:
...“We may emphasize 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. 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.”
2. Hon'ble Delhi High Court in Uday Foundation For Congenital Defects & Rare Blood Groups Vs Union of India & Ors (W.P. No. 8568/2010), heard a Public Interest Litigation that flagged the issue of easy availability of junk

food and carbonated drinks to children and the harmful effects thereof and further sought a ban on sale of junk food and carbonated drinks in schools and initiation of measures to develop a comprehensive school canteen policy with emphasis on health and nutrition.

The Food Safety and Standards Authority of India (FSSAI), along with its affidavit to the court submitted, the “Guidelines for Making Available Wholesome, Nutritious, Safe and Hygienic Food to School Children in India” to the Court.

The Hon’ble High Court vide its final order dated 25th February 2015, directed FSSAI, to adopt the annexed Guidelines in the form of Regulations, and further take appropriate steps to enforce the same.

3. Hon’ble Delhi High Court in *Danisco (India) Private Limited Vs Union of India & Anr. W.P. (C) 2644/2014*, in the case challenging the FSSAI order refusing to grant a No-objection certificate (NOC) to the consignment imported by the petitioner, on the ground that, “*the said consignment did not comply with the requirements prescribed under the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, held, the information on the pack is sufficient for the FSSAI to test whether the goods in question conform to its description and accordingly, directed the FSSAI to examine the goods in question and issue a No-objection certificate within a period of 10 days from today, if the goods are found to be in conformity with their description as available on the package*”.
4. Hon’ble Delhi High Court in *Ram Gaua Raksha Dal Vs Union of India & Ors W.P.(C) 12055/2021*, in a case seeking(a) direction to the respondents to formulate guidelines and policies to strictly implement the existing rules for mandating manufacturers to label their products according to the nature of the ingredients used therein, and based on the items used during the manufacturing of the food articles. The petitioner cited “in the process of manufacturing of White Sugar, Bone Char/Natural Carbon is used for the purpose of whitening/refining of the Sugar which questions about its nature being vegetarian or non-vegetarian. The correct information of the ingredients is essential for the consumers for making the informed and right choices of food products”.

The Hon’ble Court vide, order dated 09.12.2021, directed, “There should be full and complete disclosure of all the ingredients which go into the manufacture of any food article, not only by their code names but also by disclosing as to whether they originate from plant, or animal source, or whether they are manufactured in a laboratory, irrespective of their percentage in the food article. The Court further directed the Food Business Operators, to ensure full and strict compliance of Regulation 2.2.2 (4) on the basis that the use of any ingredient – in whatever measure or percentage, which is sourced from animals, would render the food article as non-Vegetarian. We may observe that failure on the part of the Food Business Operators to comply with the above requirements would expose themselves to, inter alia, class action for violation of the fundamental rights of the consuming public and invite punitive damages, apart from prosecution”.

Conclusion and Way Forward

This article gives a comprehensive overview of the food and labelling regulations issued by the Ministry of Health and Family Welfare to regulate the process of the development of any packaged food article (from manufacturing till we get the final product). A draft on Front of Package Labelling (FOPL) vide the Food Safety & Standards (Labelling and Display) Regulations, 2019 was proposed by FSSAI, which included colour coding for product high in calories, saturated fat, trans fat, added sugar and sodium. However, globally the best practise of FOPL includes the Chilean Model, which amongst other provisions mandates, label and advertisement of packaged foods and beverages to carry one or more black octagonal stop sign warning labels. This 2019 FSSAI regulation was shelved for now based on huge industry push back; however, it appears there is new interest from the government to revisit this issue and potentially issue regulations for front of pack warning labels and they have set up a consultative committee to develop the same.

The consumers often due to paucity of time and lack of understanding of the nutrient information on pack failed to make an informed and healthy choice. The FOPL, if implemented, will help consumers understand product’s nutritional information and enable them to make better informed food choices at the point of purchase. The consumers would be able to get nutritional information in interpretative form on food products.

Considering the increasing burden of obesity and NCDs, India must adopt warning labels on the front of food packs. Healthy choice of food can help prevent and reduce the burden of childhood obesity, NCDs (e.g., cardiovascular disease, cancer, obesity, and type 2 diabetes) in Indian population. This can be achieved by amending the Food Safety and Standards (Labelling and Display) Regulations, 2020, with insertion of suitable texts on warning labels (FOPL), in regulation 6, after sub-regulation(3) of the said regulations.

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Conflicts of interest

There are no conflicts of interest.

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