

Ensure Food Safety in Bangladesh: Protection of Industry

PRIMARY ASSESSMENT OF THE FOOD SAFETY ACT'13

03/10/2019

Throwback on the last one decade

Incidents	Consequences
<p>2008 : Melamine episode</p> <ul style="list-style-type: none">• “Leading FCMP brands are adulterated with Melamine” - Claim made by a Dhaka University Professor to the media.• The claim led a Court ban of all FCMP brands• Later in a second test from an accredited lab, all alleged products were found ok <p>2018 : Litigation for false claim</p> <ul style="list-style-type: none">• Case filed against Company by a Food Inspector for false product claims and market authorization• The case was filed without carrying out proper investigation by the Food Inspector <p>2019 : Litigation against 52 brands for sub-standard quality</p> <ul style="list-style-type: none">• Cases filed by activist against 52 products due to their sub standard quality results found through BSTI independent test.• Based on the first report of BSTI , Court banned all the 52 brands• However, post second test reports by BSTI most of the products were found ok <p>2019 : Litigation against pasteurized milk brands</p> <ul style="list-style-type: none">• Fourteen pasteurized milk brand were alleged to be adulterated with antibiotic• Court banned all these products.• All alleged products were found ok in second test	<ul style="list-style-type: none">• Confused & Deprived Consumers• Harassment & Reputational + Financial loss of the Company• Companies becoming vulnerable

Primary assessment of BD Food Safety Act'2013 vs. FSSAI Act'2006

(key areas of differences)

Area	BD Food Safety Act'13	FSSAI Act'06
Offences and penal measures	<ul style="list-style-type: none">• Most of the offences are cognizable and non-bailable• Penal measures: Imprisonment or fine or both	<ul style="list-style-type: none">• Previous Indian Act has similar provisions which has amended on 2006.• Most of the offences are civil in nature in current Act• Criminal procedure can be initiated for serious offences
Complaint redressal process	<ul style="list-style-type: none">• Democratic process- Anyone can complaint in court without seeking administrative remedy• Court is all powerful- Can issue warrant	<ul style="list-style-type: none">• Usually administrative remedy is the first step but complaints can be made in court as well• Authorities view are taken before issuance of warrant
Claim regulations	<ul style="list-style-type: none">• False and misleading claims are prohibited in Act• No detailed regulations under Act.	<ul style="list-style-type: none">• Robust claim and advertisement regulations in place
Food analyzing and testing	<ul style="list-style-type: none">• Process is defined in Act• Detailed sampling regulations under Act is in place• <i>Labs not fully competent</i>• <i>Regulators/ activists are filing case without compiling the regulations</i>	<ul style="list-style-type: none">• Detailed process are defined in the Act• Labs are competent and lists are public.

Recommendations

1. Complaint redressal process need to be framed out (Proposed):

Step-1: Administrative inquiry

Process flow-

- Admissibility of complaint by regulatory body (Sampling regulations should be followed)
- Notice to Company for explanation
- Notice to Company for hearing of expert committee (Expert committee will be formed along with the frame out of compliant redressal process. Representatives from expert organization, Academia, Lab and Industry association will be part of committee.)
- Recommendation from expert committee to regulatory body
- Order from regulatory body considering the nature of compliant

Process standard-

- Competent Lab and Analyst have to be ensured and in place
- Accountability of the complainant should be ensured
- Total process will be kept confidential till formal announcement of the results

Step-2: Legislative

- Court will seek authority's opinion on complaints and proceed based on administrative inquiry report of authority

Recommendations

Types of complaint	Types of penalty – BD food safety Act’13	Types of penalty – FSSAI Act’2006
Manufacture, import, market, sale, store and distribution of adulterated food	<ul style="list-style-type: none"> • Cognizable and non-bailable • Imprisonment or fine or both. 	<ul style="list-style-type: none"> • Imprisonment and fine for intentional offences • Only fine for unintentional offences
Manufacture, import, market, sale, store and distribution of sub-standard food	<ul style="list-style-type: none"> • Cognizable and non-bailable • Imprisonment or fine or both. 	<ul style="list-style-type: none"> • Civil remedy (fine)
Manufacture, import, market, sale, store and distribution of food without taking registration (if applicable)	<ul style="list-style-type: none"> • Cognizable and non-bailable • Imprisonment or fine or both. 	<ul style="list-style-type: none"> • Imprisonment and fine.
Manufacture, import, market, sale, store and distribution of counterfeit food	<ul style="list-style-type: none"> • Cognizable and non-bailable • Imprisonment or fine or both. 	<ul style="list-style-type: none"> • Civil remedy (fine) • Food will be destroyed
False and misleading information/claim in label	<ul style="list-style-type: none"> • Non-cognizable and bailable • Imprisonment or fine or both. 	<ul style="list-style-type: none"> • Imprisonment and fine for intentional offences.
False and misleading information/claim in advertisement	<ul style="list-style-type: none"> • Non-cognizable and bailable • Imprisonment or fine or both. 	<ul style="list-style-type: none"> • Civil remedy (fine)

2. Provisions on offences and penal measures need to be amended. FSSAI Act’2006 can be used as reference

3. Robust regulations on claims under the purview of Codex need to be framed out

4. Ensure competent labs and analyst. Labs lists should be in public