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SOLICITORS AND ADVOCATES



FOOD LAWS IN INDIA: A COMPARATIVE STUDY

BACKGROUND

- The laws regulating the quality of food have been in force in the country since 1899.
- Until 1954, several States formulated their own food laws.
- The Central Advisory Board and the Food Adulteration Committee appointed by the Government of India (“**Gol**”) in the years 1937 and 1943 respectively recommended for a central legislation.
- The **Gol**, therefore, enacted a Central Legislation called the Prevention of Food Adulteration Act (“**PFA**”) in the year 1954 which came into effect from 15 June, 1955.

Prevention of Food Adulteration Act, 1954 (“PFA”)

OBJECTIVE/FEATURES OF PFA

- Central legislation to bring uniformity in food laws.
- Protection of public from poisonous and harmful foods.
- Prevention of the sale of substandard foods.
- Protection of the interests of the consumers by eliminating fraudulent practices.
- To prevent, curb and check the rampant adulteration of food stuffs.

Prevention of Food Adulteration Act, 1954

IMPORTANT DEFINITIONS

As per PFA-

Food means any article used as a food or drink for human consumption other than drugs and water and includes:

- any article which ordinarily enters into, or is used in the composition or preparation of, human food,
- any flavoring matter or condiments, and
- any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purpose of this Act.
- Package drinking water was declared as food by the Central Government vide notification dated 21st March, 2001.

As per the Drugs & Cosmetics Act, 1940, 'drugs' means medicines intended for external or internal use in the diagnosis, treatment or prevention of any disease in human beings or animals and includes substances other than food intended to affect any function of the human body.

Definitions Contd...

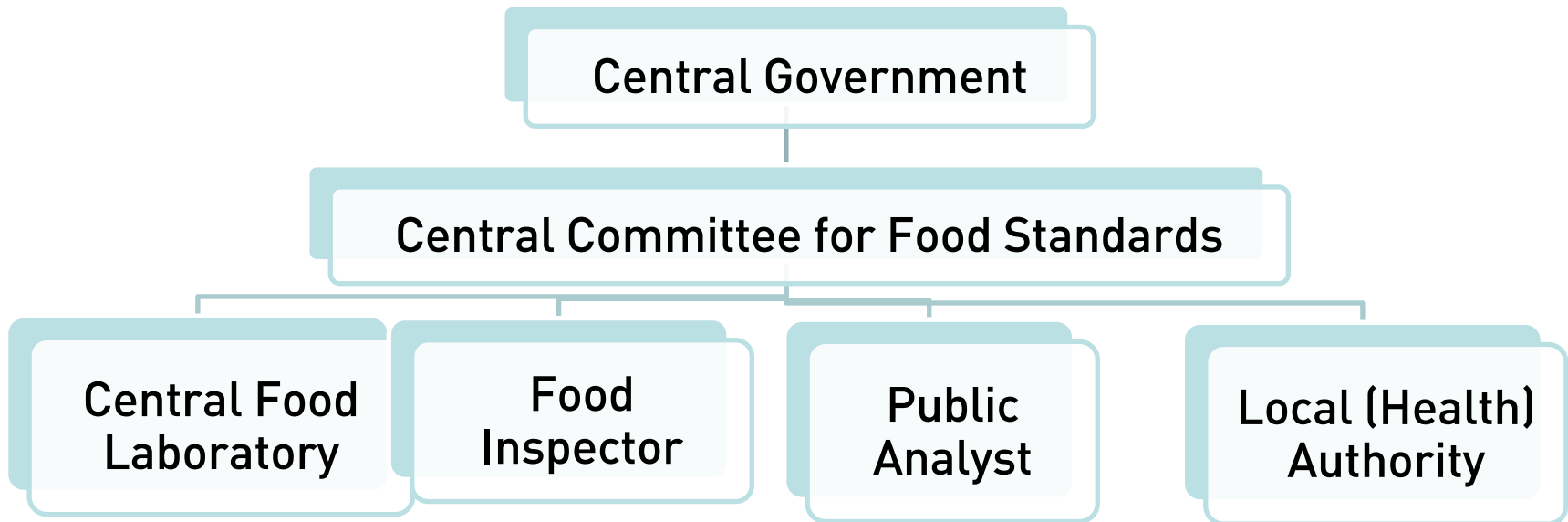
Adulterant means any material which can be employed for the purpose of adulteration.

Adulterated-

An article of food will be deemed to be adulterated if:

- Article sold by the vendor not of the nature, substance or quality it is represented to be;
- Cheaper substance is added to the article so as to affect the nature, substance or quality;
- Article is prepared, packed or kept under insanitary conditions;
- Article consists of rotten or decomposed substance or is insect-infested or is unfit for human consumption.

AUTHORITIES UNDER PFA: COMPOSITION



**Central Food Laboratory's are located in-
Kolkata, Mysore, Pune and Ghaziabad**

AUTHORITIES UNDER PFA: FUNCTIONS

Central Committee for Food Standards

- **Advises the Central and the State Government**

Central Food Laboratory

- **Constituted by the Central Government**
- **Analysis of the sample of food on payment of prescribed fees.**

Public Analysts

- **Appointed by the Central or the State Government for different local areas.**
- **Should not have any financial interest in the manufacture, import or sale of any article of food.**

Local (Health) Authority

- **Appointed by the Central or the State Government for different local areas**
- **In charge of the Health administration**

AUTHORITIES UNDER PFA: FUNCTIONS Contd...

Food Inspectors

- **Appointed by the Central or the State Government for different local areas**
- **To take food samples**
- **Send sample to the Public Analyst**
- **Prohibit sale of the article of food with prior permission from Local (Health) Authority**
- **Inspect any place where article of food is manufactured or stored**
- **Seizure of any article or book of accounts or any other document**

IMPORT OF FOOD

- **Requirements –**

Any articles of food for the import of which a license is prescribed.

- **Prohibitions on import of-**

- i. Adulterated food**
- ii. Misbranded food**
- iii. Any article of food which in contravention with the provisions of PFA.**

- **Custom inspection requirements-**

Any officer of the Customs may detain any imported package if he suspects it of being adulterated and misbranded and forward such package to the Central Food Laboratory.

- **The Customs shall undertake the following general check prior to the clearance of food items:-**

Contd....

- i. To check the storage requirements as per the nature of the product;**
- ii. Physical / visual appearance in terms of damage;**
- iii. The product should meet the labeling requirements**
- iv. All consignments of high risk food items, like milk powder, infant milk food, pulses and pulses products, etc. shall be referred to the Public Analysts for testing and clearance shall be allowed only after receipt of the test report.**
- v. If the product fails the test the goods are either re-exported or are destroyed.**
- vi. The perishable food items should not be subject to drawal of samples and testing prior to the clearance of the same.**

Recent Notifications

- 1. The Central Government has extended the prohibition on import of milk and milk products including chocolates and chocolate products and candies/ confectionary/ food preparations with milk or milk solids as an ingredient, from China .(Notification No 16 (RE – 2010)/2009-2014)**
- 2. Instructions have been issued to all custom officers to check food articles particularly fresh produce exported from Japan after March 11, 2011, such as sea food, fruits, vegetables and meat for radioactive contamination.**

DOMESTIC MANUFACTURING OF FOOD ARTICLES (Section 7)

- **Prohibition on manufacture, sale, etc., of certain articles of food such as-**
 - i. Adulterated food**
 - ii. Misbranded food**
 - iii. Any articles of food for the import of which a license is prescribed**
 - iv. Any article of food which in contravention with the provisions of PFA.**

RIGHT OF A PURCHASER TO GET FOOD ANALYZED (Section 12)

The purchaser can get the food analyzed by a public analyst after paying the prescribed fees, in the manner as provided herein below:

- i. Purchaser has to inform the vendor of his intention.**
- ii. Refund of fees if sample fails.**
- iii. Failing sample will lead to prosecution.**

Offences & Penalties under PFA

OFFENCES	PENALTIES
<p>Penalty for selling, manufacturing or distributing adulterated, misbranded food and giving of false warranty</p>	<p>Imprisonment not less than 6 months but which may extend to 3 years Fine not less than Rs. 1,000/-</p>
<p>Penalty for selling, manufacturing or distributing adulterated food or containing adulterant injurious to health</p>	<p>Imprisonment not less than 1 year but which may extend to 6 years Fine not less than Rs. 2,000/-</p>
<p>If the adulterant is likely to cause death or amounts to grievous hurt</p>	<p>Imprisonment not less than 3 years but which may extend to life term Fine not exceeding Rs. 5,000/-</p>
<p>Failure of the vendor to disclose the details of the person from whom the food article was purchased</p>	<p>Imprisonment not exceeding 6 months Fine not exceeding Rs. 500/-</p>

ORDERS UNDER PFA

- **Section 3 of the Essential Commodities Act, 1955 has issued the following orders for regulating the licenses, permits or otherwise the production or manufacture of essential commodity**

FRUIT PRODUCTS ORDER, 1955 (“FPO”)

- ***Fruit Products* means non-fruit beverages, squashes, jams, jellies, tomato products, etc.**
- **Central Government » Central Fruit Products Advisory Committee » Licensing Officer (“L.O.”).**
- **Every manufacturer must apply for a license.**
- **The L.O. may refuse to grant the license and reasons are to be recorded in writing.**
- **The manufacturer can appeal to the Central Government within 30 days of such refusal.**

FPO contd...

Labeling requirements under FPO

- **License number to be displayed or embossed prominently in case of bottle, tin, barrel or any other container.**
- **It should specify the code number and date of manufacture. The code number should be given in English or Hindi numerals or alphabets or both.**
- **Labels should not be misleading or false.**
- **Any beverage which does not contain 25% of fruit juice shall not be described as a fruit syrup, fruit juice or syrup.**
- **Non-fruit beverages, syrups, etc. should be labeled as “Non-Fruit”.**
- **This Order shall not apply to any syrup which contains fruit juices for medicinal use or are sold in bottles bearing a label with the words “ For medicinal use only”.**

THE MEAT FOOD PRODUCTS ORDER, 1973 (“MFP”)

- ***Meat food products*** means any article of food, being used as a food which is derived from meat by means of drying, curing, smoking, cooking, seasoning, flavouring.
- **Meat food products shall not include the following products unless the manufacturer himself desires to be covered under the provisions of the said Order:**
 - **Meat extracts, meat consomme and stock, meat sauces;**
 - **Whole, broken or crushed bones, animal gelatin, meat powder, bone extracts and similar products;**
 - **Fats melted down from animal tissues;**
 - **Patties, puffs, rolls, samosas, cutlets, koftas, kababs, chops, tikkas and soups made from mutton, chicken, etc.**

MFP contd...

- **Central Government » Meat Food Products Advisory Committee » Licensing Authority**
- **The Licensing Authority may refuse to grant the license and such reasons are to be recorded in writing.**
- **The manufacturer can appeal against the refusal within 30 days**
- **Validity of license- 1 year**
- **Renewal of license**

THE VEGETABLE OIL PRODUCTS (REGULATION) ORDER, 1998 (“VOP”)

- ***Vegetable Oil Product* means any product obtained for edible purposes by subjecting one or more edible oil to any combination of processes like blending, refining, etc.**
- **Central Government » Vegetable Oil Products Commissioner (“Commissioner”)**
- **No producer shall be eligible for registration unless he has his own laboratory for testing of samples**
- **The Commissioner may refuse to grant registration and such reasons for rejection are to be recorded in writing.**
- **Any person can appeal against such a refusal/cancellation of the registration within 30 days of the receipt of the said order.**

EDIBLE OILS PACKAGING REGULATION ORDER, 1998 (“EOPR”)

- ***Edible Oils* means vegetable oil and fats but does not include any margarine, vanaspati, bakery shortening and fat spread.**
- **Central Government » Edible Oils Commissioner » Registering Authority appointed by the State Government » Inspecting Officers**
- **Any person who intends to carry on the business as a packer must be registered.**
- **The certificate of registration is valid for 3 years and can be further renewed for the same period.**
- **Any person can appeal against the cancellation of the registration by the registering authority to the State Government within 30 days of the receipt of the said Order.**

THE MILK AND MILK PRODUCTS ORDER, 1992 (“MMP”)

- ***Milk* means milk of cow, buffalo, sheep, goat, or a mixture thereof, either raw or processed**
- ***Milk Product* means cream, curd, yogurt, cheese and cheese spread, ice cream, milk ices, condensed milk (sweetened and unsweetened), condensed skimmed milk (sweetened and unsweetened), sweets made from khoya, etc.**
- **Central Government » Milk and Milk Product Advisory Board » Registering Authority**
- **No person or manufacturer shall set up a new plant or expand the capacity of the existing plant without obtaining registration/permission**
- **Transfer of registration**
- **Suspension/ cancellation of the certificate by the Registering Authority**

DRAWBACKS OF PFA

- Multiplicity of laws created confusion in the minds of the consumers, traders, manufactures.
- Food industry was facing problems as different products were governed by different Ministries and Orders.
- Variation in specifications/ standards in different Order.
- Changing requirements of our food industry
- Emerging concern for food safety

Food Safety and Standards Act, 2006

KEY PROVISIONS OF FSSA

- 1. Effectively regulate manufacture, storage, distribution and sale of food to ensure consumer safety and promote global trade.**

- 2. Single reference point for Food Safety and standards, regulations and enforcement.**

- 3. Codex Alimentarius Commission (Codex)**

- 4. Prevention of**
 - Unsafe/contaminated or sub-standard food**
 - Sale of misbranded food**

- 5. No article of food shall contain food additive, processing aid, contaminants or heavy metals, insecticides or pesticides residue.**

IMPORTANT DEFINITIONS

As per FSSA

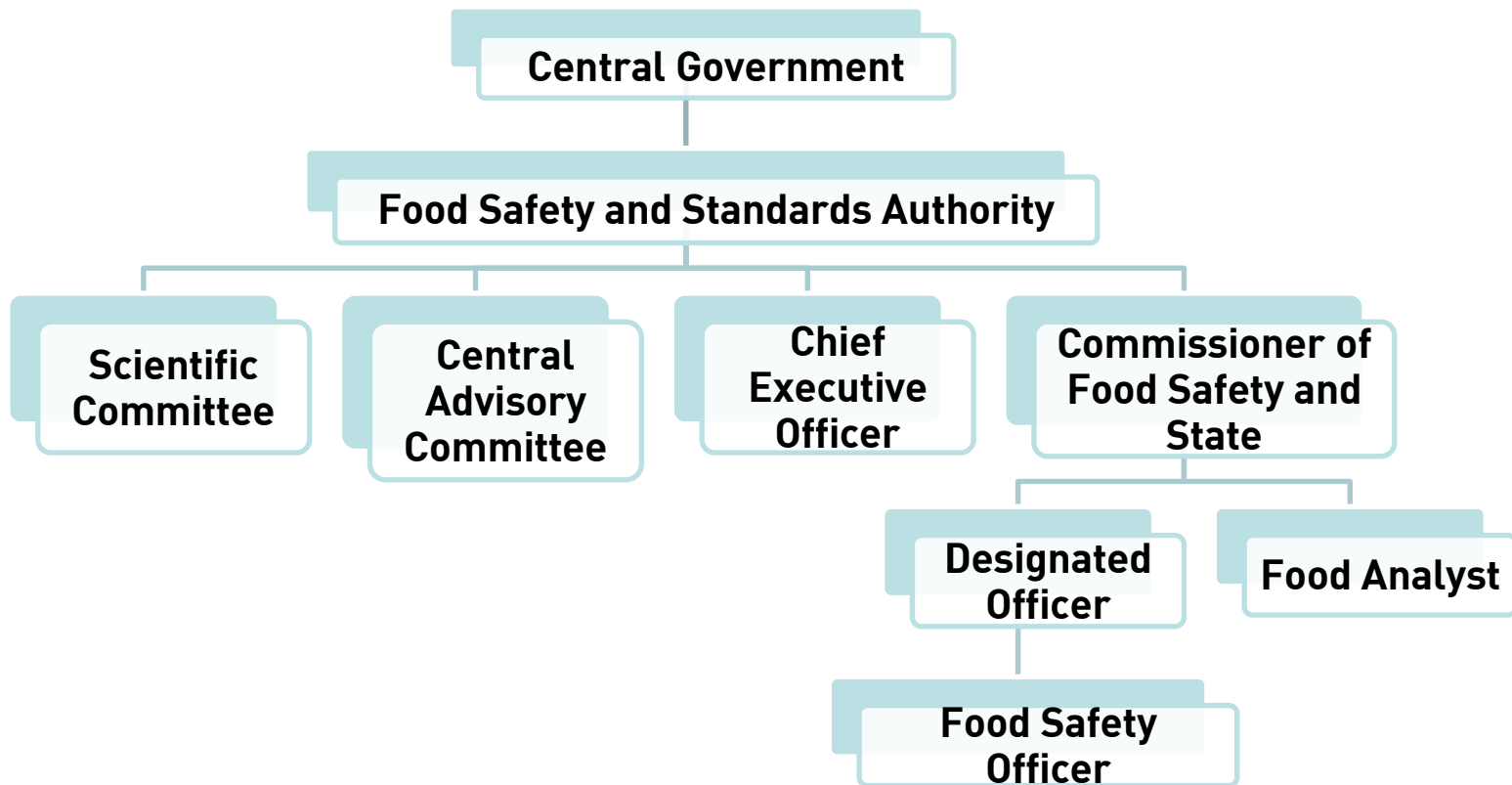
Food

- any substance, whether processed, partially processed or unprocessed, which is intended for human consumption.
- It includes infant food, packaged drinking water, water used in food during its manufacture, chewing gum.
- It does not include live animals, plants prior to harvesting, cosmetics, drugs and medicinal products.

Adulterant

- Any material which renders the food unsafe or sub-standard, misbranded or contains extraneous matter.

AUTHORITIES UNDER FSSA



FOODS FOR SPECIAL DIETARY USES, HEALTH SUPPLEMENTS OR NUTRACEUTICALS (Section 22)

- **They are processed to satisfy a particular dietary requirement which exist because of a particular physical condition or disorder.**
- **They may contain plants, minerals or vitamins or portions or substances from animal origin.**
- **Not conventional food and are in the form of powders, granules, tablets and are meant for oral administration.**
- **Does not claim to cure or mitigate any disease or disorder.**
- **Does not include a narcotic drugs.**

RESTRICTIONS ON ADVERTISEMENTS AND PROHIBITION OF UNFAIR TRADE PRACTICES (Section 24)

- **Restriction on advertisements which are misleading or deceiving.**
- **Prohibition on false representation of standard, quality or quantity of food.**
- **Prohibition on false representation regarding the usefulness.**
- **Prohibition on giving guarantee to the public of the efficacy of the article of food which is not based on adequate justification.**

LIABILITY OF THE MANUFACTURERS, WHOLESALERS, DISTRIBUTORS AND SELLERS (Section 27)

In the event any article of food

- **Supplied/sold after the date of expiry**
- **Unsafe or misbranded**
- **Unidentifiable of manufacturer**
- **Received with the knowledge of being unsafe**
- **Stored in unhygienic conditions**

Food Recall Procedures (Section 28)

- **Food business operator to initiate procedures to withdraw an article of food**
- **Inform the competent authorities if he has reasons to believe that the article is unsafe for consumers.**

Licensing And Registration Of Food Business (Section 31)

- **License is mandatory .**
- **However, petty manufacturers, hawkers, temporary stall owners, small scale cottage industries etc. are required to register with the concerned municipal authority.**

IMPROVEMENT NOTICES (Section 32)

- Issued by the designated officer
- Improvement notice includes:
 - i. Grounds stating the failure to comply with regulations.
 - ii. Matters which constitute FBO's failure to comply.
 - iii. Measures to be taken by FBO in order to secure compliance within reasonable time.
- Failure to comply the notice may lead to suspension/ cancellation of the license.

RIGHT OF A PURCHASER TO GET FOOD ANALYZED (Section 40)

- **Section 40, gives power to the purchaser to get the food analyzed by food analyst, after paying the fees specified.**
- **Purchaser has to inform the food business operator, at the time of purchase, that it is for analysis.**
- **Refund of fees if sample fails.**
- **Failing sample will lead to prosecution.**

Offences & Penalties under FSSAI

<u>OFFENCES</u>	<u>PENALTIES</u>
Selling food not of nature, substance of quality demanded	Penalty not exceeding Rs. 5 lakhs
Selling, manufacturing or distributing sub- standard food	Penalty not exceeding Rs. 5 lakhs
Selling, manufacturing or distributing misbranded food	Penalty not exceeding Rs. 3 lakhs
Misleading advertisement	Penalty not exceeding Rs. 10 lakhs
Food containing extraneous matter	Penalty not exceeding Rs. 1 lakhs
Failure to comply with the directions of food safety officer	Penalty not exceeding Rs. 2 lakhs
Unhygienic or unsanitary processing or manufacturing of food	Penalty not exceeding Rs. 1 lakhs

Offences & Penalties contd...

<u>OFFENCES</u>	<u>PENALTIES</u>
Processing adulterant not injurious to health	Penalty not exceeding Rs. 2 lakhs
Processing adulterant injurious to health	Penalty not exceeding Rs. 10 lakhs
Unsafe food which does not result in injury	Imprisonment up to 6 months and fine up to Rs. 1 lakhs
Unsafe food which results in non-grievous injury	Imprisonment up to 1 year and fine up to Rs. 3 lakhs
Unsafe food which results in grievous injury	Imprisonment up to 6 years and fine up to Rs. 5 lakhs
If failure results in death	Imprisonment not less than 7 years but which may extend to imprisonment for life and fine not less than Rs. 10 lakhs

COMPARISON

Sr. No	Subject	PFA	FSSA
1.	Definition of Food	<p>"Food" means any article used as food or drink for human consumption other than drugs and water and includes :-</p> <p>(a) any article which ordinarily enters into, or is used in the composition or preparation of, human food,</p> <p>(b) any flavouring matter or condiments, and</p> <p>(c) any other article which the Central Government may having regard to its use, nature, substance or quality, declare by notification in the official Gazette, as food</p>	<p>"Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (ZK), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal</p>

COMPARISON

Sr. No	Subject	PFA	FSSA
2.	Authority	It consists of the Central Committee For Food Standards, central food laboratory, food inspector, etc.	<p>products, cosmetics, narcotic or psychotropic substances: Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;</p> <p>It consists of the FSSA, , scientific committee, central advisory committee, etc.</p>

Sr. No	Subject	PFA	FSSA
3.	Prohibition of import	<p>Prohibition of import on any article of food which is adulterated, misbranded or which is contravention of any provision of the PFA. Further, any officer of the Custom may detain any package if he suspects it of being adulterated or misbranded.</p>	<p>Prohibition of import on any article of food which is unsafe, misbranded, sub-standard or which is contravention of any provision of the FSSA. Further, the import of food articles is regulated under the Foreign Trade (Development and Regulation) Act, 1992 and the standards laid down by the Food Authority are to be followed.</p> <p>The Central Government may, from time to time, formulate and announce by notification in the Official Gazette, the export and import policy and may also, in the like manner, amend that policy.</p>

Sr.N o	Subject	PFA	FSSA
4.	Food Recall Procedure	No such provision	In order to remove unsafe food from the market and thus prevent injury to consumers food recall procedures can be initiated voluntarily by the manufacturers/distributors concerned or by the Food Authority.
5.	Improvement Notice	No such provision	If the Designated Officer has reasonable ground for believing that any food business operator has failed to comply with any regulations to which this section applies, he may, serve an improvement notice on that food business operator.
6.	Licensing	Licensing Authority	All food business operators are required to get a license or registration that will be issued by the local authorities. Temporary stall holders are exempted from the same but are required to get their business registered with the panchyat or local municipality.

Sr. No	Subject	PFA	FSSA
7.	Health Supplements/ foods for dietary uses/ nutraceuticals	<p>As per the Expert Committee Report of the Director General of Health Sciences, health supplements should be categorized as “food” and not “drug” as they don’t make any therapeutic claims.</p> <p>PFA does not provide any limit on the vitamins, minerals and other nutrients.</p> <p>The Patna High Court, on the recommendations of the Expert Committee headed by the Director General of Health Services (DGHS) as ruled that health supplements should be treated as “food” and not “drugs” and upheld products like revival, samdol, promac powder as food as these</p>	<p>This has now been defined under sec. 22 of the FSSA and may contain plants or botanicals in the form extract, powder, concentrate, etc., but does not include a narcotic drug or psychotropic substance and does not claim to cure any specific disease.</p>

Sr. No	Subject	PFA	FSSA
		<p>products help in supplying essential nutrients to the body for a balanced diet instead of making any therapeutic claims.</p> <p>The Kerala High Court, categorized all pills and capsules as 'drugs'. However, on the recommendations of the DGHS distinguished between capsules and pills on the basis of their functions and suggested that since they do not make any therapeutic claims and are health supplements they should be categorized as 'food'. Further, the Court also categorized certain products containing vitamins and minerals in the levels prescribed for the 'drugs' for prophylactic use in the Drugs & Cosmetics Act, 1940 as food.</p>	

Smokeless tobacco in food category?

The Union Health Ministry has called a consultation with the FSSAI to determine if a new clause can be brought into the FSSA declaring smokeless tobacco as food that people eat.

The Ministry wants to define it as a food item as the rules to regulate tobacco use aren't proving effective.

If smokeless tobacco is added as a food item then it will have to be tested for their ingredients and thus prove how harmful they are.

Thank You!



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