

---

AN ANALYSIS OF FOOD SAFETY ISSUES WITHIN LEGAL FRAMEWORKS:  
BANGLADESH PERSPECTIVE

MALEK, Abdul

Department of Law, International Islamic University Chittagong, Bangladesh

ABSTRACT

Millions of people in Bangladesh suffer from food borne illness. Now it is hardest challenge for the people to get safe foods. In spite of distinct set of laws and principles to protect the public health the government, non government organizations have come forward to improve and secure food safety, but the changes do not go far enough. To build a healthy Bangladesh it needs to enact such laws which can protect the consumers from unfair practices of producers and sellers in one side and public awareness in other side. This article will concentrate on the drawbacks in the existing enactments regarding food safety and appropriate suggestions thereto. The author, through this article, intends to draw the attention of the government of Bangladesh to take necessary steps as per the findings of the research to protect the consumers from adulterated foods and to ensure safety food.

*Keywords:* Food Safety, Consumer Protection, Food Legislation, Bangladesh.

1. INTRODUCTION

Safe food simply means any product which under normal or reasonably foreseeable conditions of use presents no risk or only the minimum risk compatible with the product's use and which is consistent with a high level of protection for consumers. But most of the products in our country do not go with this definition because of their adulteration. A recent survey conducted by POBA, an environment preserving association in Bangladesh observed that eighty four percent food item sold in capital city Dhaka are adulterated by dangerous color or chemical which may cause serious health problems in human body. Now the problems of food safety in Bangladesh are enormous and complicated to address. In Bangladesh food borne illness causes many diseases like physical disability, unfertile of mental faculty, abnormal development of children etc.

The unhygienic and unsafe treatment of food is seriously impacting public health by causing numerous chronic and non-chronic diseases even sometimes death. The government struggles to meet its responsibility for ensuring a safe food supply with limited resources. Independent groups—such as religious organizations, non-governmental organizations (NGOs) and intergovernmental organizations—have stepped in with the government and provide alternate ideas on how to improve food safety. In Bangladesh, manufacturing process of most of the foodstuffs and their consumption are unsafe because of adulteration. Foods are adulterated by using various harmful chemicals and toxic artificial colors or poisonous substances to attract the consumers. By taking these adulterated foods or drinks, the people of our country are

suffering from numerous serious chronic and non-chronic diseases which lead them early death. Hunger, malnutrition and poverty are widespread in Bangladesh and millions of people struggle to meet their basic food needs every day. Half of the population, 70 million people is too poor to be able to afford enough food to sustain a healthy and productive life. Nearly a third of the population lives in grinding poverty on less than US\$ 1 per day.<sup>1</sup> The average Bangladeshi diet is 15 per cent deficient in energy and levels of malnutrition are amongst the highest in the world.<sup>2</sup> A survey conducted by the Institute of Nutrition and Food Science, Dhaka University, in early 1980s had revealed that inadequate diets and intake of adulterated foods are responsible for the malnutrition of 60 per cent of the people of Bangladesh.<sup>3</sup>

In Bangladesh, 2003 another study conducted by the Institute of Nutrition and Food Science as in the capital city Dhaka that revealed amongst 400 sweetmeats, 250 biscuits, 50 breads and 200 ice creams samples, 96 per cent of sweetmeats, 24 per cent of biscuits, 54 per cent of breads, and 59 per cent of ice creams were adulterated.<sup>4</sup> The Institute of Public Health (IPH) in Dhaka and the World Health Organization (WHO) in their joint study on adulteration of food in 1994 tested 52 street vendors and found that, all of the vendors' food samples were contaminated with different types of disease breeding micro-organisms.<sup>5</sup> Malnutrition is one of the result of consuming such unsafe food and for this the people of Bangladesh especially the women and children are mostly victimized by it. It is a common custom in Bangladesh that women eat last, which means that they often eat least. So, by this way the women generations to generations are malnourished and a malnourished mother give birth to a malnourished baby. As a result in whole 45 per cent of all mothers are malnourished and underweight, and 30 per cent of all babies are born underweight (below 2.5 kg).<sup>6</sup>

The Ministry of Health and Family Welfare (MOHFW) has taken some initiatives such as legislations, different programs, long-term and short-term projects in different levels, planning and decision making at both macro and micro level to achieve the goal for ensuring food safety as per the constitutional obligation and commitment under different international covenants. The country has so many organs for the purpose to ensure safe food but yet the unsafe food remains the major challenge in Bangladesh. Lack of specific law, inadequate and anomalous punishments in different Acts for adulteration, ineffective manage of food supply chain, corruption, political unrest and several other key factors contribute to ongoing food safety crisis in Bangladesh. This study will endeavor to find out the key food safety problems, their serious impact on public health, existing enactments and the gapes to secure food safety issues with necessary recommendations to remove food safety problems in Bangladesh.

## 2. THE DEVELOPMENT OF CONSUMER PROTECTION LAW IN BANGLADESH

Consumer protection is not simply a middle-class issue but a matter of vital importance for the less well-off members of the society.<sup>7</sup> The origin of consumer's rights protection is

<sup>1</sup> UNDP, Human Development Report, 2002.

<sup>2</sup> United Nations Common Country Assessment (CCA) 2000, Bangladesh.

<sup>3</sup> Ali, Mohahhad, Quazi, Dhaka University Studies, Part-C, The Survey was cited as, "*Some Aspects of Consumer Protection in Bangladesh*", (1984), page-111.

<sup>4</sup> Rahman, Shah, Mahfuzur, Hoque, Md Asirul and Talukder, Md, Amin, Ruhul "Food Security in Bangladesh: Utilization, Nutrition and Food Adulteration" (paper presented at the National Workshop on Food Security, Dhaka, Bangladesh, 19-20 October 2005), 45-6.

<sup>5</sup> Neela Badrie, Sonia Y. De Leon, and Talukder, Md, Amin, Ruhul, "Food Adulteration Management Systems: Initiatives of Trinidad and Tobago, West Indies, Philippines and Bangladesh" (*paper presented at Caribbean Agro-Economics Society 26th West Indies Agricultural Economic Conference, Puerto Rico, July 2006*), 85.

<sup>6</sup> International Food Policy Research Institute (IFPRI), 2001, Food for Schooling in Bangladesh.

<sup>7</sup> This point has been emphasized in David Caplovitz; the poor pay more, New York, Free Press, 1963.

found in the different religious order. In Islam, the profounder of it has clearly mentioned that a Muslim is not a pure Muslim from whom hands and mouth others is safe. Islam always encourages business but warns the seller not to cheat his consumers by deceitful means. It is narrated from Abdullah Bin Umar (R); a person who cheated in sale (by giving defective goods) was mentioned before the prophet Muhammad (sm).

The prophet said when you make a sale, say that there is no fraud in it.<sup>8</sup> From this it is concluded that the protection of consumer's rights is not a new concept. In the Bible, it is mentioned 'to be good to one's neighbor'. The common law also has given a good concentration in protecting consumer's rights. The innkeeper's liability in English law was based on the principle of 'strict liability' as they had "greater opportunity for theft than most other people." The common Law has imposed special duty on the professional having expertise in their respective fields who offered their services to the public at large should show care, skill and honesty in their dealings. Since 1983, March 15 is observed as "World Consumer Rights Day" originated from the declaration of US President John F Kennedy in 1962. This day is observed with a view to (a) promoting the basic rights of all consumers; (b) demanding that those rights are respected and protected; and (c) protesting the market abuses and social injustices which undermine them.<sup>9</sup>

Legal protection of consumer rights in Bangladesh has been enacted first under section 25 C of the Special Powers Act, 1974 providing penalty for food or drink adulteration. The process of formulating special comprehensive consumer protection law began in 1992 when the then commerce minister pledged to enact such legislation. However, the real work began in July, 1994 when a committee of 21 members prepared a draft this law. Finally, the draft titled "Consumer Rights Protection Bill, 1998" was tabled. This Bill was put into public scrutiny by the Consumer Association of Bangladesh (CAB) and on January 5, 1999 the ministry of commerce forwarded the Bill to the Cabinet for its approval. The Cabinet forwarded the Draft to the Law Commission on 28 October, 1999. The Law Commission sent the Draft to the ministry of law for vetting. After re-examine the draft was sent to the Cabinet again in June, 2004 and was approved subject to some amendments and recommendations. In January 30, 2006 after discussion by the Cabinet directed the commerce ministry to re-introduce the draft after further examination.

An inter-ministerial meeting was held and ended without any decision. After the caretaker government took over power on January 11, 2007, it proposed to enact consumer protection law within two months. But it was delayed and finally passed in 2007 titled "Consumer Rights Protection Ordinance, 2007 which was signed by the then president on October 6, 2008 and was gazette on October 13, 2008. The next elected government, in its very first session of parliament the "The Consumer Rights Protection Act, 2009" was passed unanimously.<sup>10</sup> But this Act was not beyond criticism such as:

- Under the existing legal regime, the aggrieved consumers themselves cannot go to the court to sue against the violators. It is only the designated government officials empowered under this law, who can initiate and sue against the violators.<sup>11</sup>

<sup>8</sup> Fathul Bari, vol- IV, page-337.

<sup>9</sup> Afroz, Turin "Consumer Rights Day: What do we want", The Daily Star, "Law & our Rights", March, 14, 2004

<sup>10</sup> Rahman, Mizanur, Consumer Protection in Bangladesh: Present status and Some Thoughts for the Future, Prime University Journal, Brief History of Enactment of CRPA, 2009, Vol-3, No. 01, 2009, page13-14.

<sup>11</sup> Ahmuduzzaman, and Husain, shamsia, Sayeda, Consumer Protection Law, Law Book Company, Dhaka, 2<sup>nd</sup> edition, 2011, page-165

- The provisions of penalty are not sufficient to discourage offence under this law. Punishments are so negligible that nobody cares it to abide because all the penal sections have alternative punishments e.g. imprisonment or with fine.
- Under section 41 provides that whoever sells or offers to sale adulterated product or medicine knowingly will be punished with imprisonment not exceeding 3 years, or with fine not exceeding 2, 00,000 taka, or both. As there is no minimum punishment fixed by law often the violators are getting ignorable punishment.
- All the offences under this Act are bailable and compoundable under section 58, for that why finally the offences are not effectively enforced in courts of law.

## 2.1 FOOD SAFETY AS RIGHT TO HEALTH AND LIFE

Since its independence in 1971, the leaders and legislatures have given keen importance on food safety to build a healthy and sound nation. For this the constitution has guaranteed the safe food to its citizens considering right to food as right to health and life. Right to life entails the right to the enjoyment of a variety of facilities such as foods, services and conditions necessary for the realization of the highest attainable standard of health. The right includes rights to both healthcare and the underlying determinants of health, including access to potable water, adequate and safe food, adequate sanitation and housing, healthy occupational and environmental conditions, and access to health-related information and education.<sup>12</sup> The right to life is guaranteed as one of fundamental rights in the Bangladesh Constitution under Article 32. The same constitution under Article 15 (a) has guaranteed the basic necessities to its citizens for life, including food, clothing, shelter, education and medical care.<sup>13</sup> This basic right to safety food the State party cannot avoid raising any excuse on his behalf. The right to food and health was an integral part of a meaningful right to life and the right to health and medical care is a fundamental right under Article 21, and used the right to life to secure the right to emergency medical care concluding that such an essential obligation could not be avoided by pleading financial constraints.<sup>14</sup>

## 2.2 ADOPTING THE ENACTMENTS

There was no specific law to regulate the food safety issue and to protect the consumer's rights for a long time in Bangladesh. The present government has enacted the country's first law named Consumer Rights protection Act, 2009 in regards to protect the consumer's rights and also established a Mobile Court Act, 2009 to implement the provisions of this Act. There are a number of national and international legal instruments regarding promotion and protection of food safety incorporated in this article with different heading. Besides those there are some enactments which are protecting the consumers for ensuring the safety food simultaneously: These are:

- Food (Special Courts) Act, 1956.

---

<sup>12</sup> Chowdhury, Haider, Omar, and Osmani, S.R. (March-June 2010), "Towards Achieving the Right to Health: the Case for Bangladesh", *The Bangladesh Development Studies*, Vol. XXXIII, Nos.1 & 2, page-04.

<sup>13</sup> Khasru, Matin, Abdul, Minister, Ministry of Law, Justice and Parliamentary Affairs, The constitution of The People's Republic of Bangladesh, part-II, as modified up to 31<sup>st</sup> May, 2000, page-5.

<sup>14</sup> Kumar, Avinash, Human Right to Health, 1<sup>st</sup> edn, page-178, Satyam Law International, New Delhi, India, 2007, Paschim Bangla Khet Mazdoor Samity and Others Vs. State of West Bengal and Another, (1996), sec 37, page-4.

- Cantonments Pure Food Act, 1966.
- Fish and Fish Products (Inspection and Control) Ordinance, 1983.
- The Breast-Milk Substitutes (Regulation of Marketing) Ordinance, 1984.
- Iodine Deficiency Disorders Prevention Act, 1989.
- Consumer Protection Rules, 2010.
- The Drugs (control) Ordinance, 1982.
- The Animal Slaughter (Restriction) and Meat Control Act, 1957.

### 3. THE PROBLEMS AND IMPLICATIONS OF FOOD SAFETY

Public health is facing serious apprehension regarding food safety in Bangladesh. World Health Organisation (WHO) has expressed its anxiety about the impact of food safety upon public health in Bangladesh in its website. It reveals that unsafe food can be a significant reason of many chronic and non-chronic diseases including but not limited to diarrhoea, cancer, heart diseases, various kidney diseases and birth defects.<sup>15</sup> Following are some modes and causes of food adulteration and its potential impact upon the public health.

Unhygienic practices in food handling become a common phenomenon in the Bangladesh food industry. Countless restaurants, fast food outlets are cooking, baking and processing foods in extremely unhealthy environments. Unhygienic food is a significant reason of diarrheal diseases as well as malnutrition.

In Bangladesh Formalin and other poisonous chemicals are used in foods, fruits, fishes, meats and vegetables to keep them fresh.<sup>16</sup> Formalin is a crucial problem in Bangladesh currently. Local markets, footpath shops even Supermarkets openly selling their products by using such notorious chemicals which are seriously dangerous for public health. Unauthorized food colors, textile dyes are used in food especially in sweet products, manufacturing and processing in Bangladesh.<sup>17</sup>

Food safety is the primary responsibility of those who handle and prepare food for the consumers. Food safety refers to the conditions and practices that preserve the quality of food to prevent contamination and food borne illness. Food safety is also involves the safe handling of food from the time it is grown, packaged, distributed, and prepared to prevent food borne illnesses. Adulterated foods and drinks cause so many food borne illness. Food borne illness is such diseases which usually either infectious or toxic in nature, caused by agents that enter the body through the ingestion of food.<sup>18</sup> Not only are developing countries like Bangladesh but also developed country like United States of America, United Kingdom, France affected by it. In each year 76 million in USA, 2 million in UK and 7, 50,000 in France people are suffering from food borne diseases.<sup>19</sup> Following are some diseases caused by consuming unsafe foods or drinks.

Diarrhoea diseases are one of the major public health problems in Bangladesh around 70% of which are food and water borne. A UNICEF study in 2000 revealed that prevalence of diarrheal diseases among fewer than five children is 16.7%. A Report of the Directorate General of Health Services (DGHS,2001) showed that the diarrheal diseases is the most prevailing one among all age groups including 5.9 % deaths (1997).

---

<sup>15</sup> *Supra* note 9

<sup>16</sup> Staff Correspondent, "Trader Fined for Selling Fish Treated with Formalin," *Bangladesh Today*, September 1, 2009, accessed on November 16, 2012

<sup>17</sup> Staff correspondence, The Daily Star, a reputed journal "Traders Fined for Selling Toxic Chemicals as Food Color, March 3, 2012, page-7

<sup>18</sup> <http://www.who.int/mediacentre/factsheets/fs237/en/> accessed on June 20, 2013

<sup>19</sup> *Ibid*, accessed on June 20, 2013.

Typhoid which is also in Bangladesh an important cause of high morbidity and economic loss for unsafe food known to cause a wide spectrum of disease syndromes in man and animals like gastroenteritis, enteric fever, bacteraemia, focal abscess or as an asymptomatic infection i.e. carrier state.

In Bangladesh, cholera outbreaks occur regularly twice a year, both before and after monsoon.<sup>20</sup> It is proved that consuming unsafe food many chronic and non-chronic diseases including cancer, heart diseases, various kidney diseases and birth defects, skin diseases and other specific potential impact upon the public health for want of various vitamins.<sup>21</sup>

#### 4. LEGAL FRAMEWORK IN THE REGULATING OF FOOD SAFETY

Currently in Bangladesh there are about twenty laws to deal with the food safety affairs. There are several laws in Bangladesh for maintaining the food pure, protection of health and safety standards.

##### 4.1 THE BANGLADESH PURE FOOD ORDINANCE, 1959<sup>22</sup>

This is an ordinance to provide better control of the manufacture and sale of food for human consumption. Under section 4 (A) of this Ordinance, it has been proposed to constitute a National Food Safety Council, headed by the Ministry of Health and Family Welfare as well as to establish Food Courts. Under section 6 A) provides that “No person shall directly or indirectly use any poisonous or dangerous chemicals or ingredients like carbide, formalin, DDT, PCB or intoxicated food color or flavor in any food which may cause injury to human body”. Section 16 of the PFO 1959 proscribes keeping of adulterants in places where food is manufactured. Now, this Ordinance is amended as 'The Bangladesh Pure Food (Amendment) Act' 2005. This newly amended Act in its section 44 has provided minimum monetary fine of Taka 5000(five thousand) and not more than six months imprisonment and maximum monetary fine Taka 3,00000(three lakhs) with imprisonment which may extend to three years for selling or manufacturing the adulterated food items.

Section 41 has given the power to the government to establish a Pure Food Court chaired by a magistrate of first class but under section 41A has given a barrier to take cognizance the case unless a written complaint made by a Public Analyst or an inspector authorized by the government. So always there exists a chance to negotiate with the violator and the official.

##### 4.2 THE PENAL CODE 1860

Two sections of this code deal with adulteration of food or drink, sale or offer exposure for sale of noxious food means the harmful or injurious to public health. Section 272 and 273 endorse food adulteration as punishable offence. Section 272 and 273 of the penal code provide that “Whoever intending to sell adulterates or offers or exposes for sale the adulterated article knowingly, or having reason to believe that the same is noxious and harmful or injurious to health, shall be punished with imprisonment of either description for a term which may extend

---

<sup>20</sup> ICDDR, B Annual Report, 1998.

<sup>21</sup> Sustainable Development and Healthy Environment: Food Safety,” World Health Organization: Country Office for Bangladesh accessed on November 8, 2012.

<sup>22</sup> East Pakistan Ordinance no. LXVIII, 14 October, 1959, The Bangladesh Pure Food (amendment) Act, 2005, registered no. D. A-01 as the ordinance is amended at sep. 22, 2005.

to six months, or with fine which may extend to one thousand taka, or both.<sup>23</sup> These two sections of the penal code relating to food adulteration is non-cognizable which means the law enforcing agencies like police cannot take cognizance it without intervention of the court.

#### 4.3 THE FOOD GRAIN SUPPLY (PREVENTION OF PREJUDICIAL ACTIVITY) ORDINANCE, 1956 (ORD. XXVI OF 1979)

This ordinance provides special measures for prevention of prejudicial activity relating to the storage, movement, trans-shipment, supply and distribution of food grains. It provides basis for the protection of false statement or information.<sup>24</sup>

#### 4.4 THE CONSUMERS RIGHTS PROTECTION ACT 2009<sup>25</sup>

For the purpose of this Act, there shall be a council termed as “National Consumer Rights Protection Council” which shall comprise of Minister and Secretary of Commerce Ministry, together with representative from government and non- government institution for two years tenure. Under sections 37 to 56 of this Act described the various punishments for committing different kinds of offence under this Act. Section 21 of this Act has said that the seller could not display or offers the consumers to purchase the adulterated food or drink items. Under two penal sections 41 and 42 of this Act has provided as “whoever displays, offers, exhibits the adulterated food or drink to sale, or whoever mix up any poisonous things with food or drink items to sale it, shall be punished with imprisonment which may extend to three years of fine which may extend to Taka 2,00000 (Two lakhs)”.

There is a limitation of this Act provided in section 62 stating that “the magistrate will not take cognizance of any offence if the charge sheet is not submitted within 90 days of the lodging complaint”. But the magistrate will not take cognizance the complaint directly from the aggrieved, he/ she first will make complaint to the Director General or any authorized officer within 30 days of accrual of the cause of action. All the offences under this Act are bail able and compoundable.

#### 4.5 THE BANGLADESH STANDARDS AND TESTING INSTITUTE ORDINANCE 1985<sup>26</sup>

Since its establishment, it is the sole body to look after the quality of the products in Bangladesh. This ordinance relates to establishment of an institution for standardization, testing, metrology, quality control, grading and marking of goods. Within the framework of this ordinance, the government has established the Bangladesh Standards and Testing Institution (BSTI). One important task of this organization is to certify the quality of commodities, materials, whether for local consumption or for export and import. This institution is also authorized to grant and revoke license if it is deemed to necessary. To maintain the standard it conducts the routine inspection and testing to ensure that the article or process of making articles concerned conforms to the related Bangladesh standard. After amendment The Bangladesh Standards and Testing Institute (Amendment) Act, 2003 under sections 31, 31A and 32 provide the punishment of imprisonment which may extend to four years, or with fine

---

<sup>23</sup> Hossain, Belayet, and Akter, Selina, The Penal code, Hira Publications, Dhaka-1205, second edition, February, 2013, Page- 481 & 482

<sup>24</sup> Hosain, Dr., Mohammad, Food Safety and Quality Control in Bangladesh, The Financial Express, Dhaka, sept.10, 2008

<sup>25</sup> Consumer Rights Protection Act, 2009, Sec.21, 41, 42, Act no. XXVI of 2009

<sup>26</sup> Ordinance No. XXXVII of July 25, 1985.

which may extend to one lakh Taka for exporting and importing of any articles which do not bear the standard mark or does not conform the regulations of BSTI.

#### 4.6 THE ESSENTIAL COMMODITIES (CONTROL) ACT, 1956<sup>27</sup>

An attempt is taken by this so that the food stuffs, medicine, baby foods etc. are properly purchased by purchaser without paying excessive payment and if any one obstructs to do that shall be punished with imprisonment which may extend to three years together with fine under section 6 of the Act.

#### 4.7 THE SPECIAL POWERS ACT, 1974

The government of Bangladesh comprised food adulteration under the Special Powers Act, 1974 by inserting section 25C providing maximum punishment for food adulteration. The section provides that “Whoever adulterates any article of food or drink, or sells or offers or exposes for sale, adulterates any drugs or medical preparation in such a manner as to lessen its normal efficiency knowingly or having reason to believe that the same is noxious or injurious to health, shall be punished with death, or with imprisonment for life, or with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine”.<sup>28</sup>

#### 4.8 THE SALE OF GOODS ACT, 1930

Under this Act two kinds of stipulations should be given to buyer about the goods those are guarantee and warranty. If those guarantees or warranties are not expressly given by the producers or sellers sometimes law itself will presume that there exist certain protection of consumers rights especially in food or drink items. In case of sale of eatable goods, it is the duty of the seller to supply the buyer such goods which are safe, free from any defect which render them unfit for human consumption (Frost Vs. Aylesbury Dairy Milk Co. Ltd, 1905).<sup>29</sup> In case of goods carrying some inherent danger character it is utmost the seller’s duty to inform the buyer about it otherwise the seller shall be liable for any accident or damage caused by it.

### 5. NATIONAL AND INTERNATIONAL OBLIGATIONS TO KEEP THE FOOD SAFE

#### 5.1 CONSTITUTIONAL OBLIGATION

Article 15 (a) states that: “It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens- the provision of the basic necessities of life, including food, clothing, shelter, education and medical care”.<sup>30</sup> Article 18(1), which states that “The State shall regard the raising of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other

---

<sup>27</sup> Act No. I of 1956

<sup>28</sup> Chowdhury, Huq, Obaidul, *The Special Powers Act*, Seventh edn, Dhaka Law Reports, 2002, published by Chowdhury, Huq, Esrarul, Dhaka-1217, Act no. XIV of 1974, page 94-95

<sup>29</sup> Kuchhal, M.C. *Mercantile Law*, Reader in commerce, University of Delhi, Vikas Publishing House Pvt. Ltd, New Delhi, 5<sup>th</sup> revised edition 2004-2005, page 256

<sup>30</sup> *Supra* note 11, page-5.



intoxicating drinks and of drugs which are injurious to health”.<sup>31</sup> The Constitution of Bangladesh also provides for a wide range of “social rights” that are relevant to the right to food, including the right to social security, health and leisure. Health and health care are no longer a mere need rather widely recognized by international and national legal instruments. The right includes rights to both healthcare and the underlying determinants of health, including access to potable water, adequate and safe food, adequate sanitation and housing, healthy occupational and environmental conditions, and access to health-related information and education.<sup>32</sup>

## 5.2 THE SUPREME COURT’S DECISIONS

Selling and exposure of adulterated food or drink injurious to health is illegal. The expression noxious means unwholesome as food or drink or injurious to health and not repugnant to one’s feeling.<sup>33</sup> The mixing of noxious ingredients in food or drink, or otherwise rendering it unwholesome by adulteration is punishable under the section of 272 of the penal code. But mere adulteration with harmless ingredients for the purpose of getting more profit is not punishable under it e.g. mixing water with milk.<sup>34</sup> Mere possession of any adulterated food in any premise by itself does not constitute an offence under section 272 of the penal code and section 25 (c) of the Special Powers Act, 1974 unless it is alleged and proved that a particular person or group of persons were personally involved in the process of such adulteration of food or selling thereof.<sup>35</sup> On conviction, the noxious article of food or drink can be destroyed but there is no bar to the prosecution to take any judicial action against the offender. Knowledge that the for sale is noxious as food or drink, is required to be proved, for there is no warrant in law for the presumption that the accused knew or had reason to believe that an article of food was unfit for human consumption.<sup>36</sup>

## 5.3 THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

Right to food is considered as one of the most important right of a human being in every country. To monitor and to enforce the human rights in Bangladesh it has established the “National Human Rights Commission” after a long struggle started since 1995. This independent commission is empowered to monitor human rights, as well as be adequately equipped and financed and accessible. It will also be fundamental duty of the State that the National Human Rights Commission is given a strong mandate to monitor the realization of economic, social and cultural rights, including the right to food.

## 5.4 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

Food and water are essential elements that all human beings must have access to in order to live. But if those foods and drinks are not safe may be the cause of death. Under Article 25 of UDHR, 1948 it is said to ensure the safety food that: “Everyone has the right to a standard

---

<sup>31</sup> Ibid, page-6

<sup>32</sup> *Supra* note 10, page-4

<sup>33</sup> Islam, Md, Jahurul, *The Penal Code*, 261 Cr. L J 220, Bangladesh law book company, 1<sup>st</sup> edition, Chapter XIV, “*of offences affecting the public health safety, convenience, decency and morals*”, 2005, page 457.

<sup>34</sup> *Supra* note 29, 1 LBR (1902) 153, page-458.

<sup>35</sup> 3 Bangladesh Legal Decision (BLD), a book contains the judgments of the Supreme Courts published in each year, HCD, Mohammad Nazrul Islam Vs. State, (1983), page-65.

<sup>36</sup> AIR 1934 All 214

of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

## 5.5 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Government of Bangladesh is obligated to respect, protect and fulfill all human rights, including the right to food as it are guaranteed in constitution of Bangladesh under article 15 (a).<sup>37</sup> Bangladesh has ratified all the major international human rights instruments relevant to the right to food, although it has made some important reservations. Bangladesh is party to the International Covenant on Economic, Social and Cultural Rights, which is the main instrument protecting the right to food. It therefore has committed itself to respect, protect and fulfil the right to food (article 6).

## 5.6 UNITED NATIONS GUIDELINES FOR CONSUMER PROTECTION, 1999

The main objective of it is to protect the interests of consumer particularly in developing countries from hazardous goods either food or drink, safety of public health of party State, enhance nutrition awareness activities, prevention of food borne diseases and food adulteration. When the government of party State is going to formulate national policies and plans with regard to food, it should take into account the need of all consumers for food security and should adopt the standards from the Food and Agricultural Organization of the United Nations and the World Health Organization (WHO).<sup>38</sup>

## 5.7 WORLD FOOD PROGRAM (WFP)

World Food Program (WFP) is the food assistance branch and world's largest humanitarian agency fighting against hunger since its establishment in 1961. From its headquarters in Rome and more than 80 country offices around the world, WFP works to help people who are unable to produce or obtain enough food for themselves and their families. To that effect this active organ of United Nations (UN) is taking to their hand different initiatives such as technical help to produce more foods, training the farmers, mass awareness food safety etc to its member countries especially in back warded countries to build a safety food world. Bangladesh as a party state is following its program.

## 6. DRAWBACKS IN LEGAL FRAMEWORKS AND ENFORCEMENT PROCESSES

### 6.1 MULTIPLICITY OF LAWS

There are about 20 laws prevailing to govern the current legal framework of food safety in Bangladesh. It is important to note that, use of such a large quantity of laws for a single purpose like food safety is quite unusual and it is seen earlier that same offence of adulteration is defined and prescribed punishment in different ways under different Acts. This multiplicity of enactments creates confusion in the mind of manufacturers, processors, retailers or even to the enforcement authorities to realize which law deals with particular food safety issue. So,

---

<sup>37</sup> *Supra* note 11, page-5

<sup>38</sup> Ahmuduzzaman and Husain, Shamsia, Syeda, Consumer Protection Law (Bangladesh and International perspectives), 2<sup>nd</sup> edn, Law Book Company, April, 2009, Dhaka, page-271

therefore it can be argued that an integrated law is essential to address the current food safety concerns, and all the aforesaid statutes can be consolidated to enact a single food safety law.<sup>39</sup>

## 6.2 MULTIPLICITY OF ADMINISTRATIVE AUTHORITIES

Food safety has become an important topic as consumers in Bangladesh have become victim of serious adulteration in food though the state is under an obligation to ensure the basic necessities to its citizen including food. For this purpose to ensure food safety the government has established various departments but because of multiplicity of departments, no unique department is taking this responsibility to his shoulder to ensure it. The following Ministries, Departments, Agencies are directly or indirectly responsible for enforcement of food safety laws, rules and regulations:

- Ministry of Health and Family Welfare (MOHFW): As per the Bangladesh Pure Food Ordinance, 1959 and the Bangladesh Pure Food Rules, 1967, the MOHFW having the major responsibility for the enforcement of food control legislation to ensure safe food. This Ministry is also responsible for monitoring of food quality and safety situation including collection of food samples to identify its quality and safety.
- Ministry of Local Government Rural Development and Co-operatives (MOLGRD): MOLGRD is responsible for the food safety and quality of food in City corporations and Municipalities.
- Ministry of Industry: Ministry of Industry is responsible for the Standardization, Certification Marks and Monitoring quality control of food items through its BSTI. BSTI is responsible for implementing food regulations in Bangladesh.
- Ministry of Agriculture: Ministry of Agriculture is also involved in maintaining safety and quality of food through good agricultural practices like optimum use of chemical fertilizers, pesticides, preservation and supply of seeds.
- Ministry of Environment and Forest: Ministry of Environment and Forest is also involved in food safety. Presently, the Department of Environment of the ministry along with the Department of Agricultural Extension and Bangladesh Power Development Board is implementing a project on Persistent Organic Pollutants (POPS) under Stockholm Convention aimed to protect human health and environment.
- Ministry of Fisheries and Livestock: The Department of Fisheries of this Ministry is responsible for prevention and control of diseases in fishes & aquatic animals and safety and quality of fish and aquaculture products.

In addition, the Ministries like Ministry of Home Affairs, Ministry of Science and Technology, Ministry of Energy and Mineral Resources, Ministry of Commerce, Ministry of Education, Ministry of Defense are also responsible for food safety and quality control.<sup>40</sup>

---

<sup>39</sup> Examples can be taken from the India (also a developing and neighbor country like Bangladesh) which made a single law named *Food Safety and Standards Act, 2006*, that consolidates all Acts and Orders to address the food safety issues of the country. See, "*Food Safety and Standards Authority of India (FSSAI)*," accessed on November 13, 2012.

<sup>40</sup> Tiwari, Dr., G.M, Consultant, Laws and Regulations to Foods and Foods Additives, Country Report, Bangladesh, page-7.

### 6.3 INADEQUACY OF PENALTIES

Inadequate penalty for adulteration of foods or drinks is another important factor. Moreover, differentiation of penalties under different enactments for food adulteration raises a question as to whether the sanctions provided in the statutes are adequate or not. Few examples are given below. The penalty as set in section 272 of the Bangladesh Penal Code, 1860 for adulteration of food or drink is a maximum term of six months of imprisonment or up to a maximum fine of BDT (Bangladesh taka) 1000 (equivalent to Euro 10).

The Pure Food Ordinance, 1959 which was amended in 2005 is one of the most important laws to combat the manufacture of unsafe food in Bangladesh provides maximum penalty for a first offence in regard to the manufacture of adulterated or stale food which is not of a fit nature, substance or quality has been raised to BDT 50,000 (equivalent to Euro 476) or imprisonment for a term of one year. Unlike the above mentioned negligible penalties, the Special Powers Act, 1974 provides severe sanctions, such as life imprisonment or the death penalty for food adulteration.<sup>41</sup> Admittedly, the imposition of this kind of punishment is also not desirable; the death penalty is a very much brutal punishment for any offence. Use of death penalty should be considered from the human rights perspective as the Second Optional Protocol to the International Covenant on Civil and Political Rights, suggested the abolition of death penalty from the civilized world.<sup>42</sup>

### 6.4 GAPE IN ACCOUNTABILITY AND TRANSPARENCY

It is commonly accepted that a proper and effective regulatory framework should be based on transparency and accountability. A regulatory body should be transparent both externally and internally.<sup>43</sup> On the other hand accountability simply means an obligation or willingness to accept responsibility or to account for one's actions. The accountability is "The obligation of an individual or organization to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property".<sup>44</sup> Under section 4 a (1) of The Pure Food Ordinance, 1959 there are 15 members out of which 12 are government representative including the Ministers, Secretaries and other Administrative. Among them only Ministers are directly accountable to Prime Ministers and to the people as a representative of them. But Ministers are engaged and burdened with numerous activities, so it is not easy for them to monitor the food safety mechanism closely.

### 6.5 IRREGULARITIES AND CORRUPTION

Corruption means Wrong doing on the part of an authority or powerful party through means that are illegitimate, immoral, or incompatible with ethical standards. Corruption often results from patronage and is associated with bribery.<sup>45</sup> It is earlier mentioned that the secretariats and other administrative are accountable to the Minister and the minister is ex-officio chairman of National Food Safety Advisory Council (NFSAC) and he is a part of the

<sup>41</sup> *Supra* note 22, page-94.

<sup>42</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, opened for signature 15 December 1989, 1642 UNTS 414 (entry into force 11 July 1991).

<sup>43</sup> Wolfe, 'Regulatory Transparency,' page-173

<sup>44</sup> <http://www.businessdictionary.com/definition/accountability.html> accessed on July, 12, 2013.

<sup>45</sup> *Ibid*, definition of corruption

political government. Consequently, political influence cannot be disregarded in the decision making or taking either by executive or judicial authority. Hence, owing to such irregularities corruption becomes a grave concern in Bangladesh at present.

## 7. CONCLUSION

Human cannot survive without food but unsafe food is a significant reason for the considerable number of diseases in the entire world. The unsafe foods and drinks being the primary source of transmission of infectious diseases from individual to individual and community health, hinders the national productivity, to export fit handsome human resources & thus minimize the earning of foreign currency. Bangladesh has been doing better in improving health and nutrition status of its large number of population by taking different steps. There should have a single well drafted and up to date legislation to address the food safety issue. Recently, the Cabinet of present government has approved the draft of the Food Safety Act, 2013 on Monday, July 01, 2013 keeping the provision of death sentence in case of felony. The existing various departments and political leaders should come forward and verbally play their assigned statutory role to protect the food safe. Finally it can be concluded that a single and uniform law and their proper implementation and an autonomous body with accountability and transparency can ensure food safety to build a safe Bangladesh.

## 8. RECOMMENDATIONS

Malnutrition is a serious disease resulted by consuming unsafe food. Malnutrition rates in Bangladesh are very high. According to a survey in 2002, 51 percent of the children aged of 6 to 7 months suffers from underweight, 49 percent suffers from stunting and 12 percent suffers from wasting.<sup>46</sup> The right to food meaning the safety food is embedded in the Constitution of Bangladesh. The National Health policy, 2000 also confirmed the State's constitutional obligation of delivering health services like food, medicine to all people of the country. The following measures should be taken to ensure food safety in Bangladesh.

Integrated and unique law is to be formed to address the current food safety concerns and the government should take step immediately to consolidate a single law for food safety of the people. A Comprehensive food safety policy should be formulated having an appropriate institutional framework to operationalize it.

Under the Consumer Rights Protection Act, 2009 an individual cannot file a case against the violator without endorsement of the Director General of the Consumer Rights protection Department. There is an option of appeal to the Session Judge within 90 days against judgment or order of the lower court but there is no option of retrial the case. No court shall take cognizance if the charge sheet is not submitted within 90 days from the date of complaint. So virtually the court is ineffective and all powers are assumed by the department and they have a wide scope of corruption. These legal flaws are to be removed to have the safe foods.

The labors who are engaged in food or drink production, in most of the factories they are illiterate. It should be mandatory for the producers to engage such people who have given proper training regarding the production of foods or drinks or fishing items free from poisoning, insecticides, packaging, exporting etc. To implement it the government may employ a supervisor for certain area to look after it.

---

<sup>46</sup> The study was conducted by the fourth year students of B. Sc (hons) of The Institute of Nutrition and Food Science (INFS), University of Dhaka, under the supervision of Professor Rezaul Karim, Professor Md. Nazrul Islam Khan as part of their field assignment in session 2002-03.

A civil suit may be filed to Joint District Judge for claiming the damages taking unsafe food or drink, if any. But the *advalorem* (at the value of the suit) court fees in filing the suit sometimes discourages the consumer to access the remedy from court. The government may fix a nominal court fees instead of *advalorem* court fees.

The ignorance of consumer as to their rights protected in law sometimes hinders the implementation of law. In some cases people want to avoid unnecessary harassments or long time proceeding in regular court. So to encourage the people to come forward some alterative judicial and quasi-judicial courts like mobile court may be established by giving special powers and jurisdiction.

Effective and immediate actions must be taken by government to keep water safe from arsenic and to prevent some other water borne diseases. A large number of people both in urban and rural areas especially in rural area in northern of Bangladesh are still drinking unsafe arsenic contaminated water from shallow tube well for want of necessary deep tube well to supply arsenic free water.<sup>47</sup> The government should collect the sample of tube well water and certify the same as suitable for use after a laboratory test.

There is no strong political commitment to protect the food safe. Most of the political leaders of Bangladesh are businessman. In some cases they indulge themselves with corrupt businessman by taking subscriptions and other illegal facilities and thus lessen government to take an all-out strategy to combat against corruption. The civil society and NGOs should come forward with different programs to address such problems to ensure food safety. In this respect, they should arrange conference, meeting, seminars, workshops etc and should publish it in both print and electronic media.

The long-promised National Human Rights Commission (NHRC) should act as the human rights ombudsman with a strong mandate to monitor and promote the realization of the right to food as because it is considered a human right. The Anti-Corruption Commission (ACC) as an independent body should also be more fluent to improve transparency and accountability, particularly in food distribution and procurement process.

A special force may be constituted to monitor the quality of foods or drink, market price of various goods and also the services provided by both private and public sectors e.g. shops, mall, hospitals, transports etc. There should have a Bazar (local word which means market) Monitoring Committee under the Commerce Ministry to control the quality goods and to conduct frequent operation in collecting sample from the market for examining it in the laboratory. Unnecessary price hike sometimes enforce the lower or middle class people to purchase less quality products by concession price.

Public awareness should build up of their right to safe food and the ministry of information can do it by giving advertisement through media for mass communication. Because in every time the seller is not bound to supply any goods either food or drink this should be suit for any particular purpose of the buyer or which should possess any particular quality. It is the buyer's duty under the doctrine of *caveat emptor* (buyer be aware) to select the goods of this requirement. After conclusion of sale the purchaser cannot recover the price or damages from the seller.<sup>48</sup>

Religious faith is also an effective method to ensure food safety as because the messages of all religions in the earth for human betterment and discourages all kinds of cheating, fraud in sale of goods. Selling of defective goods like foods, fruits and drinks knowingly is amount to an unjust enrichment from seller's side which is against the teaching of Islam. In Islam, it encourages the trade and business but the business must run with fair

---

<sup>47</sup> See [http://phys4.harvard.edu/~wilson/arsenic\\_recommendations.html](http://phys4.harvard.edu/~wilson/arsenic_recommendations.html).

<sup>48</sup> Sale of Goods Act, Act III of 1930

intention by lawful (Halal) goods. If a person purchases and takes possession of an article and afterwards discovers it to have been defective e.g. not safe for human consumption if it is food items at the time of sale, it is at his (buyer) option either to take it for the full price or to reject it.<sup>49</sup> In another occasion the prophet (sm) himself discouraged to sale the goods without disclosing its defects and said that “If any one sale a defective goods which are unsafe without drawing attention to it to buyer, he (seller) will remain under Allah’s anger, or the angels will continue to curse him”.<sup>50</sup>

---

<sup>49</sup> Sircar, S. C. Al Sharai, *Sunni and Imamia Codes*, Vol-I, Law Publishing Company, Lahore, page 496.

<sup>50</sup> Ashraf, Md. Shah *IbnMajah*, Vol-I, 1981, page 613.