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Encountering Food Safety Challenges in Bangladesh: Law and Practice

Muhammod Shaheen Chowdhury*

Abstract

'Food Safety' denotes scientific study of describing handling, preparing and storing of food to prevent food borne diseases. Foods and drinks are usually adulterated by mixing with them inferior and harmful ingredients. As a result, it becomes impure and unfit for human consumption. Food borne illness is mainly caused by pathogenic bacteria, virus, or chemical toxins in food or water. Most countries have their own codes, guidelines and regulatory frameworks to ensure food safety and dietary nutrition to their citizens. Bangladesh is among the most vulnerable countries in the world that are exposed to unsafe food hazards. It has a number of laws & institutional frameworks dealing with food security and prevention of food borne illnesses. The paper defines the concept of food safety & food adulteration, shortly describes food hygiene guidelines adopted worldwide, critically analyzes the issues and challenges for food safety in Bangladesh and comprehensively examines its legal and institutional framework to encounter food poisoning causing public health hazards. It concludes by recommending a trade off between law and practice. The article does not incorporate all the issues of food safety due to thematic limit and uses secondary resources only.

Concept of Food safety and food adulteration

Food Safety is a multi-disciplinary, multi dimensional and multi-sectoral issue. Despite significant achievements in food grain production and availability, food security at national, household and individual levels still remains a matter of major concern for the Government of Bangladesh. 'Food Safety' denotes scientific study of describing handling, preparing and storing of food to prevent food borne diseases. This includes a number of routines that should be followed to avoid potentially severe health hazards. Food can transmit diseases from person to person as well as serve as a hub for bacterial growth that can cause food poisoning. Debates on Genetic Food Safety include impact of genetically modified food on public health and genetic pollution of environment which can destroy natural biological diversity¹. The safety

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¹ A. Shiklomanov, "Appraisal and Assessment of World Water Resources", Water International 25(1): 11-32, 2000; Web: < http://en.wikipedia.org/wiki/Food_safety#Five_key_principles.> (accessed during 07-10 June, 2011.)

of food can be at stake mainly due to adulteration which means the addition of substances to foods or drinks in order to increase the bulk and reduce the cost, with intent to defraud the purchaser.² It entails mixing of harmful ingredients with something genuine or an inferior article with a superior one of the same kind. As a result, food or drink becomes impure and unfit for human consumption.³

According to the US Federal Food, Drug, and Cosmetic (FD&C) Act 1938,⁴ a food is "adulterated" if it meets any one of the following criteria:

- (1) it contains poisonous or deleterious⁵ substance causing injury to the health; or
- (2) it consists of "any filthy,⁶ putrid, or decomposed substance" or is otherwise unfit as food; or
- (3) it has been prepared, packed, or held under unsanitary conditions, or
- (4) it contains a risky & improper dietary ingredients; or
- (5) a valuable constituent in the food has been omitted in whole or in part or replaced with another substance, conceals damage or inferiority in any manner; or any substance has been added to it or packed with it to increase product's bulk or weight, reduce its quality or strength, or make it appear bigger or of greater value than it is.

Bangladeshi Law⁷ provides almost similar provision of US definition. An article of food shall be deemed to be "adulterated" if-

- (a) any substance has been mixed and packed with the food so as to reduce its quality or strength, or
- (b) any of the food ingredients has been corrupted causing injury to health, or
- (d) it is mixed, coloured, powdered, coated or stained in a manner whereby damage or inferiority is concealed, or

² A Dictionary of Food and Nutrition, 2005.

³ West's Encyclopedia of American Law, 2005.

⁴ U.S. Code, vol. 21, section 342.[21 U.S.C. § 342]. The Environmental Protection Agency [EPA] establishes tolerances for pesticide residues in foods, which are enforced by the Food & Drug Administration, FDA, USA.

⁵ For example, apple cider contaminated with E. coli O157:H7 and Brie cheese contaminated with *Listeria monocytogenes* are adulterated.

⁶ Filth and extraneous material include any objectionable substances in foods, such as foreign matter (for example, glass, metal, plastic, wood, stones, sand, cigarette butts), undesirable parts of the raw plant material (such as stems, pits in pitted olives, pieces of shell in canned oysters), and filth (namely, mold, rot, insect and rodent parts, excreta, decomposition).

⁷ Section 3(1) of the Pure Food Ordinance, 1959

- (e) it does not comply with any food safety standard, or
- (f) it contains any harmful substance that destroys the original food value or nutritive qualities in its pure, normal, undeteriorated and sound condition, or
- h) if the nature, substance or quality of the food does not comply with the description provided by the manufacturer or the seller.

Food borne diseases or food poisoning is mainly caused by pathogenic (harmful) bacteria, virus, or chemical toxins in food or water. Some of these microbes infect our bodies and hamper growth. The end result is illness and in very severe cases food poisoning may even cause death. Experts say that food that looks, smells and tastes fine can cause food poisoning, if it has not been correctly prepared with genuine ingredients or not handled correctly or has been contaminated in some way. A great proportion of breaches of food safety lie in introduction of artificial or hazardous substances in food products or a food handler preparing food without washing their hands properly.⁸

Food Safety Guidelines

Every food establishment uses, processes, and sells food in different ways. However, the general issues and key principles of food safety remain the same, whatever the style of the operation may be. There are various degrees of international food hygiene standards to be observed by different countries to ensure food safety some of which are outlined below:

1) WHO's Five key principles of food safety

As part of its global strategy to decrease the burden of food borne diseases, the World Health Organization (WHO) adopted following five key principles⁹ of food hygiene:

1. Prevent contamination of food with pathogens spreading from people, pets and pests.
2. Separate raw and cooked foods to prevent contaminating the cooked foods.
3. Cook foods for the appropriate length of time and at the appropriate temperature to kill pathogens.
4. Store food at the proper temperature.
5. Use safe water and raw materials

⁸ Sengupta, Avik, "Food Safety & Standards In Bangladesh: Created Confusion In The Minds Of The consumers." Web: <<http://www.notundesh.com/Archive/10-13-10/English1.html>> (accessed during 07-10 June, 2011.)

⁹ Prevention of food borne disease: Five keys to safer food; World Health Organization, Web: <<http://www.who.int/foodsafety/consumer/5keys/en/>> (accessed during 07-10 June, 2011.)

Every year millions of people become ill and thousands die from a preventable food borne disease. Proper food preparation can prevent many food borne diseases. A 2003 WHO report concluded that about 40% of reported food poisoning outbreaks in the European Region occur in private homes¹⁰. In the USA alone, annually, there are 76 million cases of food borne illness leading to 325,000 hospitalizations and 5,000 deaths¹¹. Very recently, E. Coli bacterial outbreak in food stores of France and Germany has been reported to cause deaths of many people¹².

2) Food Safety Principles adopted by Food Handler Inc

Food Handler Inc- a food safety management service provider identified three basic factors that could cause food to become unsafe¹³. These are completely comprehensive for all countries irrespective of their economic growth and geographical advantage:-

1. Personal Hygiene for Food Professionals- Food workers must observe the highest possible standards of personal hygiene in order to ensure safety of foods. Hand washing, cutting fingernails & hair, using proper uniforms, gloves use, personal cleanliness, or unsanitary habits such as eating, drinking, smoking, or spitting- are all parts of defining personal hygiene standards.
2. Time & Temperature Control of Foods- Foods have to be kept in certain temperature for certain period of time in order to prevent harmful bacterial growth. US Food Code recommends using a calibrated thermometer to chart time and temperature based on the food menu, for example, cold holding (41°F), hot holding (140° F) etc.
3. Cross-contamination Prevention- It is the transfer of harmful substances to food and covers a multitude of potential food handling errors in all stages of food flow, ie. food to food, hands to food, or equipment to food.

3) Certification in Food Safety by Standardization Organizations

The certification mark (CM) is a mark that attests that the product or service is in conformity with the specific standard. Once this attestation is done by a recognized body, the buyer procures the goods bearing the certification mark with greater degree

¹⁰ Satin, M., Food Alert: The Ultimate Sourcebook for Food Safety, Facts on File, Inc., September 2008, 2nd ed.

¹¹ WHO Food safety and food borne illness, Web: <<http://www.who.int/mediacentre/factsheets/fs237/en/>> (accessed during 07-10 June, 2011.)

¹² See: <<http://www.reuters.com/article/2011/06/17/us-ecoli-france-idUSTRE75G1VD20110617>> accessed on June 18, 2011.

¹³ Lacie Thrall, Safety Management Services, Food Handler Inc, "The Basic Principles of Food Safety", Web :<http://www.foodservice.com/food_safety/fb29.cfm> (accessed during 07-10 June, 2011).

of confidence. The existence of the standard mark on products, certified under this scheme, enables the consumers to differentiate between a quality product and an untested or substandard one in the market.

For example, ISO 22000 international standard as certified by the International Organization for Standardization (ISO) deals with food safety. This specifies the requirements for a food safety management system that involves interactive communication, system management, prerequisite programs, HACCP principles etc. In Bangladesh, holder of certification mark is authorized to use BSTI logo on his product as BDS 1240:2001 used for drinking water.

4) HACCP guidelines (Hazard Analysis and Critical Control Points):- The UK Food Standards Agency publishes recommendations as part of its Hazard Analysis and Critical Control Points (HACCP) programme. The HACCP guidelines¹⁴ state that cooking foods at 75 °C or above will ensure that harmful bacteria are destroyed. However, lower cooking temperatures are acceptable provided that the 'core temperature' is maintained for a specified period of time. For example, cooking food at 60 °C for a minimum of 45 minutes.

5) Codex Alimentarius and Food Hygiene:- In 2003, FAO published the Codex Alimentarius which serves as a guideline to food safety.¹⁵

World wide Enforcement Actions against Food Adulteration

Most countries of the world have their own codes, guidelines and regulatory frameworks to ensure food safety and dietary nutrition to their citizens. State regulators generally have enforcement tools at their disposal to prevent the manufacture and distribution of adulterated food. Many countries have the authority to immediately embargo adulterated food and to impose civil fines. Quality control organizations, law enforcement agencies and other collaborative forums constantly strive to remove unsafe food from the market as quickly as possible. Mentioned below are the states of food safety measures adopted and executed by the regulatory agencies in various countries:

United States:

The US food system is regulated by numerous federal, state and local agencies. If a food is adulterated, US Food & Drug Administration (FDA) and Food Safety and Inspection Service (FSIS) have a broad array of enforcement tools. These include seizing and condemning the product, detaining imported product, enjoining persons

¹⁴ Please visit: <<http://www.wigan.gov.uk/error/error.asp?404>>(accessed during 07-10 June, 2011)

¹⁵ See: <ftp://ftp.fao.org/codex/Publications/Booklets/Hygiene/FoodHygiene_2003e.pdf> (accessed during 07-10 June, 2011.)

from manufacturing or distributing the product, or requesting a recall of the product.¹⁶ The FDA publishes Food Code, model set of guidelines and procedures to help food safety management by providing scientific, technical and legal services. These help regulate the food service industries including restaurants, grocery stores and institutional food service providers such as nursing homes. Regulatory agencies use the Food Code to develop or update food safety rules in their jurisdictions that are consistent with national food regulatory policy¹⁷. In spite of being one of the best in the world, the US food safety system is alleged to lack in "organization, regulatory tools, and resources to address food borne illness."¹⁸ There have been concerns over the efficacy of safety practices and food industry pressure on U.S. regulators. A study reported by Reuters found that the food industry is jeopardizing U.S. public health by withholding information from food safety investigators or pressuring regulators to withdraw or alter policy designed to protect consumers¹⁹.

European Union:

In the European Union, EU Parliament makes directives and regulations for food safety mandatory for member states which, therefore, must be incorporated into individual countries' national legislations. European Food Safety Authority²⁰ monitors the compliance issues. Individual member states may also have their own legislations and controls in respect of food safety, provided that they do not prevent regional trade.

¹⁶ The federal food and drug administration prohibits transportation of adulterated foods, drugs, and cosmetics in interstate commerce, as provided under the Food, Drug and Cosmetic Act (21 U.S.C.A. § 301 et seq. [1938]). State and local agencies, acting under the authority of local laws, do the same to ban the use of such impure goods within their borders.

¹⁷ FDA Food Code

¹⁸ Becker, Geoffrey, The Federal Food Safety System: A primer, Congressional Research Service, 4/10/10

¹⁹ Reuters, 14 September 2010, "Industry Has Sway Over Food Safety System: U.S. Study," Web: <<http://www.reuters.com/article/idUSTRE68C39320100913>> free archived version at: <<http://www.commondreams.org/headline/2010/09/14-1>> (accessed during 07-10 June, 2011.)

²⁰ The European Food Safety Authority (EFSA) is an agency of the European Union that provides independent scientific advice and communication on existing and emerging risks associated with the food chain, created by European Regulation 178/2002. Web: <http://ec.europa.eu/publications/booklets/eu_glance/53/index_en.htm> (accessed during 07-10 June, 2011.)

Australia:

In Australia, Australian Food Authority²¹ makes it mandatory for all relevant business concerns to provide basic food safety training to their employees by accredited training organizations. People responsible for serving unsafe food can be liable for heavy fines under the ANZ Food Standards Code.²²

People's Republic of China:

The State Food and Drug Administration in China oversees agricultural production, manufacture of food packaging, containers, chemical additives, drug production, and business regulation. Chinese Government made legislations to make aware the food traders about appropriate labeling used for "green" food, "organic" food, "pollution-free" food etc. A survey by the World Bank found that these labels are not well recognized by traders in supermarkets and many of them are oblivious of the established safety standards.²³

South Korea:

Korea Food and Drug Administration (KFDA)²⁴ is responsible for ensuring food safety in South Korea. Korean National Institute of Food and Drug Safety Evaluation performs research on toxicology, pharmacology, and risk analysis of foods, drugs, and their additives.

Food Safety in Bangladesh : Where We Are

Bangladesh is among the most vulnerable countries in the world that are exposed to unsafe food hazards. Consumers have the right to get what they are told of the contents of food product. It is extremely difficult for them to assess their exposure to risks in each food product and to accurately articulate their demand for safety. They believe what the food vendors tell them. In the Western countries, food safety regulations are very strict and millions of dollars are fined as penalty, if food safety is breached. Furthermore, jail sentences are also specified for and negligence (tort) suits are lodged in the courts for compensation for breach of safety of food. Although

²¹ Please visit: <<http://www.foodstandards.gov.au/>> (accessed during 07-10 June, 2011.)

²² The Code lists requirements for foods such as additives, food safety, labelling and GM foods. Enforcement and interpretation of the Code is the responsibility of State/Territory departments and food agencies within Australia and New Zealand. Please visit: <<http://www.foodstandards.gov.au/foodstandards/foodstandardscode.cfm> > (accessed during 07-10 June, 2011.)

²³ "China's Compliance with Food Safety Requirements for Fruits and Vegetables: Promoting Food Safety, Competitiveness, and Poverty Reduction", World Bank and China Agriculture Press. 2005.

²⁴ See: <<http://www.kfda.go.kr/index.jsp>> (accessed during 07-10 June, 2011).

statistics are hard to get in Bangladesh, it is estimated that millions suffer from food related illness each year, many of which are not reported. Only deaths due to food poisoning are covered in the media²⁵ ..

Followings are common food safety concerns in Bangladesh:

1. Food adulteration
2. Harmful preservatives used for food preservation
3. Inadequate quality control
4. Artificial ripening using formidable chemicals and methods
5. Unhealthy manufacturing process
6. Low quality ingredients
7. Unhealthy and dirty food markets
8. Unhealthy food preparation in restaurants.

Alarming increase in adulteration of foodstuffs has created a strong public opinion for combating the ferocity of the offence. Of late, mixture of poisonous chemicals (say, sodium cyclamate, formalin, fertilizer, harmful colours etc.) with food and eatables has become a cause of common concern. These deleterious substances cause serious injury to human health, i.e., cancer and ulceration. In fact, adulteration is occurring very frequently in Bangladesh with almost all types of foods. *An unacceptable culture of impunity has already been established here allowing perpetrators for cool-headed mass killing* (emphasis added).

There has been a wide circulation of views for controlling different kinds of adulteration of foodstuffs. Mobile courts are now vigilant around the capital and outside to find out the food shops, hotels and restaurants selling noxious foodstuffs. Electronic media has been giving significant coverage of various forms of food adulteration harmfully affecting the people at large. Conscious stakeholders have also come forward to manifesting their thoughtful research on the effects of adulterated food on human body. Some also used to maintain contact with the Bangladesh Law Commission for making necessary reforms in the existing food safety laws²⁶.

Legal Environment of Food Safety in Bangladesh

Food adulteration is an act of dishonest tradesmen who intend to make unscrupulous profit from minimum investment. Random manufacture of adulterated foodstuffs unsuitable for human consumption demands strong regulatory mechanism to maintain a standard of purity for the preservation of public health. In Bangladesh, legal environment of food safety and quality control consists of Laws, Regulations

²⁵ See Supra Note-08

²⁶ See, Report of the Bangladesh Law Commission 2006 on the proposed Pure Food Act.

and Standards, Administration and Inspection and Laboratory analytical services. Followings are the existing legal and regulatory frameworks for ensuring food safety in Bangladesh:

1. The Constitution of Bangladesh
2. The Penal Code, 1860
3. The Bangladesh Pure Food Ordinance 1959
4. The Food (Special) Court Act 1956
5. The Control of Essential Commodities Act, 1956
6. The Special Powers Act 1974
7. The Fish and Fish Products (Inspection and Quality) Ordinance 1983
8. The BSTI Ordinance 1985 and the Labeling Act
9. The Consumer Rights Protection Act 2009.

The Constitution of Bangladesh

As per the Constitution of Bangladesh, the State is under a responsibility to secure for its citizens basic necessities of life such as food, clothing, and medical care etc.²⁷ The state shall regard the raising of nutrition level and the improvement of public health as among its primary duties. It shall also adopt effective measures to prevent the consumption of harmful drugs, drinks and alcohols.²⁸

The Penal Code, 1860

The Penal Code, 1860 provides punishment for adulteration of food or drink and sale of noxious food or drink²⁹. However, these provisions could not effectively control the trend of manufacture and sale of adulterated foodstuff. In subsequent years, widespread evil of food adulteration began to threaten public health. With a view to protecting consumers from the menacing effect of adulterated food articles, Pure Food Ordinance was promulgated in 1959.

The Pure Food Ordinance 1959

The Ordinance aims to ensure purity of food being supplied to people in the market and, therefore, provides for preventing adulteration. The term 'food' is comprehensively defined in Section 3(5)³⁰ of the Ordinance. Public food analysts are

²⁷ Article 15(a) of the Constitution of Bangladesh

²⁸ Article 18 of the Constitution of Bangladesh

²⁹ See, sections 272, 273, 274, 275 & 276 of the Penal Code 1860.

³⁰ "Food" means any kind of edible oil, fish, fruit, meat or vegetable or any other article used as food, drinking water etc. or any substance which is intended for use in the composition or preparation of food, any permitted flavouring matter or any spice or

appointed to monitor food safety at the food shops, restaurants etc. Manufacturing of adulterated foods, their distribution, sales etc. causing malnutrition and injury to the public health have been made prohibited and punishable under the Ordinance. A consumer or purchaser of alleged adulterated food has the right to laboratory examination of the foods purchased. Food Inspector or any authorized person may prevent selling of adulterated foods and seize them if appropriate. Pure Food Court (popularly, mobile court) administered by a First Class Magistrate is empowered to try the offences relating to food safety and injury to public health. Only a Public Analyst or an Inspector or a person authorized by the Government can lodge complaint with the court. Punishment includes imprisonment or fine or both³¹.

The National Food Safety Advisory Council provides advisory services to the Government for ensuring food safety within the country. Headed by Minister for Ministry of Local Government, Rural Development and Co-operatives, the Council comprises inter-ministerial representatives, Director General of Bangladesh Standards and Testing Institution, representatives from Dhaka University (Department of Food and Nutrition & Department of Chemistry) and Federation of Bangladesh Chambers of Commerce and Industries (FBCCI). The Advisory Council provides advisory services³² to the Government on the following subjects-

- (a) issues related to the safety of food,
- (b) standard and quality control (National and Codex Standard) for food with a view to ensuring their purity, safety and proper nutritional value,
- (c) developing man-power services and facilities required for ensuring safety & quality of foods for human consumption, and
- (e) policies and strategies related to food safety and quality control.

Weaknesses of the Pure Food Ordinance:

The Ordinance provides minor penalties of different kind for adulteration of food articles. Taking advantage of such minor penalties, unscrupulous traders had started mixing injurious materials with almost every food articles which resulted in an amendment to the Ordinance by the Bangladesh Pure Food (Amendment) Act, 2005. The amendment widened the definition of adulteration, the scope of the law and enhanced the punishment of the offences.³³ But this could not cement the loopholes. Section 6A of the Ordinance prohibits the use of different formidable chemical

condiment, and any food grade colouring matter, preservative, anti oxidant and other additives intended for use in food.

³¹ Sections 40, 41, 41A, 44, 45 of the Ordinance.

³² Section 4A (2) of the Pure Food Ordinance, 1959.

³³ Visit: <<http://www.thedailystar.net/law/2009/01/03/life.htm>> (accessed during 07-10 June, 2011.)

elements in the foodstuffs which cause injury to human body. But despite having harmful effect, sodium cyclamate has not been included therein. In the absence of sodium cyclamate in section 6A, the Mobile Court finds it difficult to punish the traders who are using sodium cyclamate in their food products. The Director General of the Directorate of Food generally looks after the purity of foodstuff, but he has not been made a member of the National Food Safety Advisory Council as formed under section 4A. With a view to remove these loopholes, the Law Commission suggested the Government to further amend the Ordinance in sections 4A, 6A and 44.³⁴

The Food (Special) Court Act 1956:

The Food (Special Courts) Act, 1956 is supplementary to the Control of Essential Commodities Act, 1956 and provides for setting up of special courts headed by a special magistrate for speedy trial of offences in relation to foodstuffs. Punishment under this Act is an imprisonment for a term which may extend to three years or with fine or with both.³⁵

The Special Powers Act, 1974

The Special Powers Act, 1974 makes hoarding & black-marketeering of foods punishable with death or life imprisonment or 14 years rigorous imprisonment or with fine. Similar punishments are made for adulteration of or sale of adulterated food, drink, drugs or cosmetics. Such offences are triable by the Special Tribunal headed by the Sessions Judge or Additional Sessions Judge.³⁶

The Fish and Fish Products (Inspection and Quality) Ordinance 1983

It deals with inspection and quality control of fish and fish products. The Government can make necessary rules for ensuring the quality of fish and fish products intended for export. The Government may circulate compliance standards³⁷ for the following matters:

- a) quality and standard of fish and fish products;
- (b) regulation of catching, handling and marketing of fish or fish products;
- (c) processing, storing, grading, packaging, marking, transporting and inspection of fish and fish products;
- (d) prescribing the quality and specifications for containers of fish and fish products and the marking and inspection of such containers;

³⁴ Supra Note 26. The Report also recommended enhancement of punishment prescribed in sections 272, 273, 274, 275 and 276 of the Penal Code, 1860.

³⁵ Section 6 of the Food (Special) Court Act 1956

³⁶ Sections 26, 27, 28, 29, 30, 30A of the Special Powers Act.

³⁷ Section 3(2) of the Ordinance.

- (e) requiring the registration of fish processing and fish packing plant and establishment for freezing, processing and preservation of fish and fish products;
- (f) requiring the licensing of persons dealing in freezing, processing and preservation of fish and fish products;
- (g) determining the requirements of the equipment, construction and sanitary operation of fish processing and fish packing plants;
- (h) prescribing the sampling procedure and the manner in which samples of any fish and fish products may be taken;
- (k) prohibiting illegal marketing of any substandard fish or fish products etc.

The Government may appoint compliance inspectors to ensure the minimum standards mentioned above. The Ordinance provides punishments for a) non-compliance with any of the above standards and requirements or b) non co-operation with the Inspector, or c) for continuing occurrences of the above offences.³⁸

The Bangladesh Standards and Testing Institution Ordinance 1985

Bangladesh Standards and Testing Institution (BSTI) is the national standardization organization in the country working under the administrative control of the Ministry of Industries, Government of Bangladesh. After the independence, erstwhile Pakistan Standard Institute became Bangladesh Standard Institute (BDSI) and Central Testing Laboratory (CTL). In 1985, BSTI started its journey by merging CTL and BDSI under the BSTI Ordinance 1985. After that in 1995 Department of Agriculture, Grading and Marking was merged with BSTI.³⁹

A number of laws and regulations govern the activities of BSTI some of which may be mentioned below:

- a) The Bangladesh Standards and Testing Institution Ordinance, 1985 (as amended up-to-date)
- b) The Standards of Weights and Measures Ordinance, 1982 (as amended up-to-date)
- c) The Bangladesh Standards and Testing Institution Regulation, 1989
- d) The Bangladesh Standards of Weights and Measures (Amendment) Rules, 2006

³⁸ See, sections 9, 10, 11 of the Ordinance.

³⁹ Visit: <<http://www.bsti.gov.bd/about.html>> & <http://www.moind.gov.bd/index.php?option=com_content&task=view&id=442&Itemid=545> (accessed during 07-10 June, 2011.)

- e) The Bangladesh Standards of Weights and Measures (Package Commodities) Rules, 2007

Organogram of BSTI

The Council is the highest decision-making organ of BSTI. It may exercise all powers and perform all functions that might be exercised or performed by the Institution. The Council works through various committees. BSTI is headed by a Director General who is its principal executive officer and is responsible for its proper administration. The institution discharges its responsibilities through 06(six) wings. Under these 06 wings there are 21 divisions or sections such as standards wing, physical testing wing, chemical testing wing etc. Headquartered in Dhaka, the Institution has 06 regional offices at 06 Divisional Headquarters and 03 district offices at 03 district headquarters.⁴⁰

The functions of BSTI :

The main functions of the BSTI are, *inter alia*, :

- a) formulate national standards of industrial, food and chemical products,
- b) quality control of the products as per specific national standards; &
- c) implement metric system of weight and measures in the country.

Certification Marks:

BSTI operates the certification marks scheme under which the manufacturers or importers are licensed to use the standard mark on goods produced or imported by them in conformity with the relevant Bangladesh Standard (BDS). This scheme is governed by the Bangladesh Standards and Testing Institution Ordinance, 1985 and Bangladesh Standards and Testing Institution (Amendment) Act, 2003 and the regulations made there under.⁴¹ The scheme covers industrial and agricultural processed products but excludes drugs and pharmaceuticals (administered by separate authority). To provide quick services to the applicants and licensees, BSTI operates through 05 regional branch offices besides the head office to take care of certification marks function.

⁴⁰ Ibid

⁴¹ Under section 20 of BSTI Ordinance 1985, BSTI issues quality assurance certificates on various products either produced in the country or imported from other countries.

WTO-TBT (Technical Barriers to Trade) National Enquiry Point

As a member of the World Trade Organization (WTO), Bangladesh has signed the Agreement on Technical Barriers to Trade (TBT). Each WTO member must set up a National Enquiry Point which is able to answer all reasonable enquiries on standards, technical regulations, conformity assessment procedures etc. from other members of WTO and other interested parties there. BSTI is the National Enquiry Point. There is an internal committee on WTO affairs in BSTI and it participates in the notification activities to WTO through the Ministry of Commerce and the Ministry of Industries.⁴²

Bangladesh & SPS Agreement:

Bangladesh has also signed the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures dealing with food safety & dietary nutrition. Therefore, it is bound by the sanitary and phytosanitary requirements under the Agreement. However, the preamble of the SPS Agreement categorically states that its provisions are not to be applied in a manner which is arbitrarily or unjustifiably discriminatory or which amounts to a disguised restriction on international trade. The SPS Agreement has certain rules and provisions for least developed countries like Bangladesh. Article 10 refers to the special rights of LDCs. Article 10.1 requires members to take account of the special needs of developing country members, in particular, those of the LDCs. As an LDC, Bangladesh can take the benefit of Article 10.2 by applying for longer time frames for SPS compliance.⁴³

The Consumer Rights Protection Act 2009

The culture of consumerism is seemingly unknown in Bangladesh. Ill-fated consumers are completely cheated at almost every level of service sectors including food safety, transportation, healthcare, education, access to justice, housing and what not. Consumer rights are considered as fundamental rights to life. Therefore, promotion and protection of these rights are essential for the life of every citizen. The Consumer Rights Protection Act 2009 was enacted with the intention to protecting the legitimate interests of consumers. The Act comprehensively deals with the protection of consumers' rights from the grip of greedy traders. It categorically

⁴² Supra Note 39

⁴³ Dr Khan, Mohammad Hassanul Abedin, Director, WTO Cell, Ministry of Commerce, Bangladesh, "Bangladesh's experiences with SPS and food safety: Shrimp exports", web: <www.searo.who.int/LinkFiles/Publications_Bangladesh_experiences_SPS.pdf> (accessed during 07-10 June, 2011.)

identifies some acts or omissions as violative of consumer rights. The National Consumer Rights Protection Council (NCRPC or Council) has been set up to monitor the state of protection of consumers' rights in the country. The Council comprises members from various quarters such as different ministries, National Security Intelligence, BSTI, Consumer Association of Bangladesh (CAB), NGOs, law enforcing agencies and different trade bodies etc.⁴⁴

The Consumer Rights Council works through different district committees comprising Deputy Commissioner, Police Super, President of District Chamber of Commerce, representatives of consumer rights based organizations, person experienced in trade, industry and public administration etc.⁴⁵ The National Consumer Rights Protection Directorate is headed by a Director General (DG). The DG can take any action to protect and prevent violation of consumer rights and dispose of the complaints relating to violation of consumer rights.⁴⁶ The DG or any person authorized by the Government can investigate into any offence under the Act, issue proclamation, detain or arrest the perpetrators and can also order for temporary closure of shops, factories, business places etc. for the alleged violation of consumer rights. He may also take assistance from law enforcing agencies.⁴⁷

The Government may prohibit manufacturing, selling etc. of foods prejudicial to human health or attach or forfeit any such item⁴⁸. Both civil and criminal remedies are available against the infringement of consumer rights. Punishments of different categories have been provided in the Act for violations of various degrees. Civil cases are disposed of by Joint District Judge and criminal cases are triable by 1st class Judicial Magistrates or Metropolitan Judicial Magistrates.⁴⁹

Other related Laws on Food Safety:⁵⁰

- (a) The Bangladesh Pure Food Rules, 1967: In this Rule, there are generic standards for 107 food products. Now, this 'Rules' is under revision.

⁴⁴ Section 5 of the Consumer Rights Protection Act 2009

⁴⁵ Section 5 of the Act.

⁴⁶ Section 21 of the Act.

⁴⁷ See sections 23, 24, 25, 26, 27, 28 of the Act.

⁴⁸ See sections 29, 32, 33, 35, 36 of the Act.

⁴⁹ Parts 5 & 6 of the Act.

⁵⁰ Dr. Mohammed Hossain, "Food safety and quality control in Bangladesh", Web: <<http://www.thefinancialexpress-bd.com/2008/09/10/45060.html>> (accessed during 07-10 June, 2011.)

- (b) The Food Grain Supply (Prevention of Prejudicial activity) Ordinance, 1956: This ordinance provides special measures for prevention of prejudicial activity relating to the storage, movement, transshipment, supply and distribution of food grains. It provides basis for the protection of false statement or information.
- (c) The Radiation Protection Act, 1987: Under this Act, the Institute of Food and Radiation Biology (IFRB) of Bangladesh Atomic Energy Commission is primarily involved in food irradiation research and development in the country.
- (d) The Iodine Deficiency Disorders (IDD) Prevention Act, 1989: It was enacted, a) for universal salt iodization, b) to ban non-iodized salt from market & c) to eliminate IDD from the country.
- (e) The Essential Commodities Act, 1990: The purpose of this act is to stabilize, maintain or increase supply of essential commodities including foodstuffs. The Act also provides broad spectrum of monitoring activities for storage, transportation, distribution, disposal, acquisition, use or consumption of any essential commodity.
- (f) Some other minor Laws and Regulations: In addition, a number of other Laws and Regulations exist in the country to ensure the safe and quality food, viz., the Animal Slaughter (Restriction) and Meat Control (Amendment) Ordinance, 1983 (it is under revision); the Pesticide Ordinance, 1971 & the Pesticides Rules, 1985; the Destructive Insects and Pests Rules (Plant Quarantine), 1966 (amended up to 1989); the Agricultural Products Market Act, 1950 (revised in 1985); the Fish Protection and Conservation Act, 1950 (amended in 1995); the Marine Fisheries Ordinance 1983 and Rules, 1983; Procurement Specifications, Ministry of Food, Rice Mill Control Order etc.

Challenges of ensuring food safety in Bangladesh

Bangladesh has strong regulatory framework of food safety but it suffers from very poor implementation of those instruments. We have very good laws but unfortunately our institutional sets up are not strong enough to apply those laws.

Challenges of ensuring food safety in Bangladesh can be characterized as follows:

- a) Poor implementation backbone,
- b) Defective legislations and lack of legislative wisdom and prudence.
- d) Absence of effective judicial activism,

- e) Pervasive corruptions at every level of state life and lack of political commitment
- f) A general lack of public awareness about the prevailing laws ensuring food safety.

Bangladesh is yet to develop a uniform food safety administration system and to formulate a food Safety policy. Nevertheless, some activities in food safety and quality control are going on in the country. A number of Ministries, Departments and Agencies are involved in these activities with a major responsibility of the Ministry of Health and Family Welfare. The government and its development partners made some desired efforts to develop a Food Security Policy. Earlier in 2000, a Task Force on Comprehensive Food Security was set up which came up with a strategy paper for future food security policy of the government. Under the auspices of the project titled "Improving Food Safety, Quality and Food Control in Bangladesh (IFSQFCB)", different action programs have been taken to enhance food safety, strengthen and develop food control capacity in Bangladesh. The project is tasked with developing and implementing coherent national food safety and quality policies and strategies, underpinned by risk-based food control programmes which cover the entire food supply chain. Training activities were undertaken and technical support materials were developed for food businesses and assistance in the introduction of food safety management programmes. The delivery of such activities would include training of trainers and technical units to provide guidance on implementation of Good Manufacturing Practices (GMP), Good Hygienic Practices (GHP) and the introduction of the Hazard Analysis Critical Control Point (HACCP) System for small-to-medium sized food enterprises.⁵¹ There are approximately 27 food security and social safety net programmes in action in the country but the coverage of these programmes is still not sufficient to reach all the needy people⁵². However, consumer rights based organizations, by their significant movements, keep continuous

⁵¹ Visit: <http://www.bdfoodsafety.org/inner_details.php?Page=8> (Accessed during 07-10 June, 2011). The Project is being implemented jointly by the FAO & the Ministry of Health and Family Welfare, Government of Bangladesh. Funding is provided by the European Union.

⁵² Ms. Usha Mishra Joshi, Senior Advisor, WFP, the keynote paper presenter in a National Workshop on 'Current Food Security and Challenges in Bangladesh', organized jointly by the Ministry of Food and Disaster Management, Government of Bangladesh & World Food Programme, Dhaka, Bangladesh, October, 2005.

pressures on the policy makers to take pro-active actions for establishing a sustainable food safety net in Bangladesh.⁵³

Once passed by the Parliament, the proposed *Food Safety and Standards Bill* will be a very significant initiative to diversify agriculture and encourage food processing industries. However, the Bill is still in the custody of parliamentary committee and is hoped to be placed before the House without much delay. These initiatives are highly relevant at this juncture when rising incomes, urbanization, and globalization have opened new avenues for agricultural diversification in marginalized countries like Bangladesh.⁵⁴ The parliament is expected to frame the *Fish and Poultry Feed Act* and the *Hatchery Act* to regulate fish and animal feed production, prevent contamination and deal with other compliance issues. The laws will help prevent sale of sub-standard and adulterated fish and animal feeds, exposing millions of people to deadly diseases like cancer.⁵⁵

Kibria⁵⁶ points out that, local feed manufacturers and suppliers in Bangladesh are doing their businesses without registration and licence. Due to lack of proper surveillance, most of them sell poor quality feed, chemicals and antibiotics in the market. Farmers also use the contaminated feed and antibiotics to fatten domestic animals and in shrimp farming in ponds or low-lying lands. He suggests that processing plants might introduce a self-checking method before collection and export of raw materials, or send those for further testing. To stop the toxic antibiotics from getting into the food chains and control the fish and animal feed manufacturing, registration is a must. Farms, feed manufacturing factories including landing/auction centres, depots, processing and export units should be registered and brought under a licensing system. Kibria proposes to take lesson from the curative and preventive measures taken by the Thai government and create scopes and potential areas of collaboration between the two countries in this regard⁵⁷. Mishra

⁵³ For example, Consumer Associations Bangladesh (CAB), Voluntary Consumers Training & Awareness Society (VOCTA) etc. Details of their activities can be found at <www.consumerbd.org> & <www.voctabangladesh.org/vocta>

⁵⁴ Supra Note 08

⁵⁵ Md Sharful Alam, secretary of Ministry of Fisheries and Livestock at a workshop on 'Compliance with International Food Safety Requirements: Lessons from Thai Experience', Dhaka, Web: <<http://gurumia.com/2010/01/18/bangladesh-establishes-new-food-safety-laws/>> (accessed during 07-10 June, 2011.)

⁵⁶ Muhammed Shamsul Kibria, the keynote paper presenter on food safety in the workshop, See supra note 55.

⁵⁷ Ibid

recommends that there is an urgent necessity to develop an integrated policy and action plan, bringing together all the diverse players and stakeholders as well as making them accountable for contributing their effort to the overall challenge of improving food security in Bangladesh.⁵⁸

Being world's one of the smallest food producers, Bangladesh is poorly rated in terms of value addition to its raw produce in the food processing industry. Countries such as Philippines, India and China, not to speak of those in Europe and North America, have managed to add considerably more value to their farm products than Bangladesh. The food processing policy has been suffering from serious constraints such as, absence of uniform regulatory machinery covering all stages of the value chains. Multiplicity of laws has created confusion in the minds of the consumers, producers, traders, and investors. Besides, most of the existing laws were framed at a time when the food processing industry was at a nascent stage. Genetic modification of food was not possible then. Enactment of uniform Food & Nutrition Code updating and consolidating all existing laws on the subject is *sine qua non* and will thus usher in integrated food management and safety systems. Under the proposed Code, a high-powered Food Safety and Standards Authority, equipped with adequate manpower and logistic facilities, will then be established to lay down guidelines and set safety standards in Bangladesh. New positions of district level food commissioners need to be created in order to ensure compliance. In addition, removing infrastructure constraints, offering fiscal incentives, reducing the abnormally high cost of packaging, and shortening the supply chain between the farmer and the consumer would also be necessary.⁵⁹

Conclusion

Unsafe food represents a major threat to public health in Bangladesh. People are acutely suffering from food borne diseases caused by microbial pathogens. Long term health injury may result in from consumption of food tainted by chemical substances and toxins. Access to safe food is a basic human right. By minimizing the consumer's exposure to unhygienic, contaminated and adulterated food it is possible to significantly reduce the morbidity and mortality associated with unsafe food.

⁵⁸ Supra Note 52

⁵⁹ Supra Note 08. A law containing similar provisions had been enacted in India in 2006 and titled, "The Food Safety and Standards Act of 2006." The concept of uniform food safety code still remains as discussion agenda of different donor agencies, NGOs and government ministries in Bangladesh. Bangladesh Law Commission is trying to prepare a draft legislation in this regard.

Collective remedial measures are essential to reduce the impact of unsafe food on the people. Declaration of a National Food Safety & Nutrition Policy and an effective action plan will help improve food safety along with proper implementation of existing laws, standards and regulations. Necessary trainings with appropriate follow-ups are required for health and sanitary officers & food traders to prevent unsafe food handling and processing practices. Urgently needed to strengthen food inspection services and enhance laboratory analytical capability. Besides, there is a strong need for development of awareness of food hygiene and safety among food producers, food processors and food handlers in particular and the common people in general. *Creating general mass awareness of food safety will comprehensively supplement the existing regulatory enforcement mechanism and institutional backbone to prevent food contamination and reduce the burden of food borne diseases (emphasis added).*