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Regulatory Enforcement of Food Safety Laws: A Study of Food Adulteration in India

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Food adulteration is a public health problem, a consumer protection problem and a capacity issue for food regulators in India. The concept of the Food Safety and Standards Act 2006 (FSS Act) and its enforcement against the offence of adulteration, and its capacity as a deterrent has been discussed in this paper using the doctrinal approach. It begins with the history of the Prevention of Food Adulteration Act 1954 and Indian Penal Code 1860 and ends with one science-based act, the division of labour between the Food Safety and Standards Authority of India (FSSAI) and the food safety administration of the States, analysis of the sampling, analysis, adjudication and prosecution pipeline and a review of the leading judicial decisions relating to Ram Nath v State of Uttar Pradesh (2024), Swami Achyutanand Tirth v Union of India (2016) and Nestle India Ltd. v FSSAI (2015). Official enforcement data submitted to Parliament indicates that 10 to 20% of samples analysed are considered non-conforming and that enforcement action tends to be linked to low levels of civil penalties, with few cases being prosecuted as criminal offences. The authors say that, despite the law being comprehensive, the problem with the regime was that it was weak, lacked adequate State capacity, had low realised penalties, and data were scattered. It ends with recommendations for reforming the credibility of labs, prosecutors, penalty calibration, and open, public reporting.

Keywords: *FSSAI, food safety, regulatory enforcement, unsafe food.*

INTRODUCTION

Food adulteration is one of the most personal of regulatory lapses. It is not that a consumer is tricked into eating something that is faulty, or that a contract is misleading, but rather that an adulterated meal is introduced into the body of the consumer, without their knowledge, and either the damage is immediate, or it may accumulate over the course of years. The Indian problem is not only anecdotal, but it is also documented in judicial and parliamentary documents. It is noteworthy that the petitioners before the Supreme Court in 2016 placed their dependence on the January 2011 FSSAI National Survey on Milk Adulteration, which reported that 68.4 per cent of the milk samples tested did not conform to the prescribed standards. This finding should not be interpreted as establishing that 68.4 per cent of all milk sold in India was adulterated, with some States seeing every sample being found adulterated[1]. Despite any doubts about the way the survey was conducted, the episode demonstrates the effect of one simple product in revealing the gap between law and marketplace.

The statutory answer to that reality is the Food Safety and Standards Act 2006 (FSS Act), which is an umbrella Act that gives the FSSAI statutory powers to form science-based standards and to regulate the production, storage, distribution, sale and import of food for human consumption to ensure safe and wholesome food is available.[2] The principles of risk analysis, a licensing system, a graduated system of civil penalties and criminal sanctions, and an institutional structure, from the central level to district level Designated Officers and Food Safety Officers, were incorporated in the Act, which replaced earlier food laws and orders.[3] A law is only as good as its enforcement; however, the Parliament's record indicates that the States/UTs are mainly responsible for implementation and enforcement of the FSS Act, with each State having a Commissioner of Food Safety with district-wise Designated Officers and Food Safety Officers. That the prohibition of adulteration exists in Indian law is a fact, but whether the machinery for prohibition, detection, proof, sanction and deterrence actually operates in the way it ought to be the question this paper seeks to address

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[1] *Swami Achyutanand Tirth and Ors v Union of India and Ors* AIR 2016 SC 3626
[2] Food Safety and Standards Act 2006
[3] Law Commission, *The Criminal law (Amendment) Bill, 2017 (Provisions and Dealing with Food Adulteration)* (Law Com No 264, 2017) para 4.3

RESEARCH DESIGN AND METHODOLOGY

Doctrinal Method: The method of legal research used in this study is doctrinal (black-letter). Doctrinal research involves identifying the law relating to a particular issue, finding the law from the available sources, and critically analysing the logic and sufficiency of the thus-found law. No field surveys or interviews are conducted; it is based on texts. The following sources have been relied upon herein: The Constitution of India, the FSS Act, the Bharatiya Nyaya Sanhita 2023 and its predecessor, the Indian Penal Code 1860, and reported or neutrally cited observations of the Supreme Court of India and High Courts. The secondary sources include the reports of the Law Commission of India and the official replies given to both the Lok Sabha and the Rajya Sabha by the relevant Ministries of Government, with the only consolidated information on enforcement that is currently available in the public domain.

RESEARCH QUESTIONS

1. Discuss the legal provisions of food adulteration in India and discuss its changes.
2. How are the powers of detection, sampling, analysis, adjudication and prosecution distributed among the institutions created by the FSS Act?
3. What has been the judicial interpretation of the Act, and what has been the effect on enforcement?
4. What, according to official enforcement data, does the regime's effectiveness look like and what reforms follow?

Hypothesis: The working hypothesis is that the FSS Act provides a substantively sufficient and progressive list of standards to be met in preventing adulteration, but that the process of its implementation is fraught with evidentiary vulnerabilities in the sampling and analysis chain, relies on state apparatus that is not equally resourced across states, realised penalties are low, and there is a lack of public disaggregated data.

Scope and Limitations: The paper discusses only the Indian regime for food adulteration and its associated classes of unsafe, substandard and misbranded food insofar as they affect the enforcement of the regulation of food adulteration. Does not cover labelling policy, nutrition regulation or the import clearance system, but only as they relate to it. Indian materials are adapted as per the convention followed for foreign materials (2020), and only official, judicial, parliamentary or any other institution-approved websites have been used.

There are two restrictions to be mentioned. First, the States and Union Territories collect the enforcement statistics and send them to the Centre, which are then summarised and reported to Parliament, and the latest year available as at the time of this report is explicitly stated to be a provisional year by the Government. Secondly, those ratios calculated in Part X are not exact, and represent only the author's arithmetic of the official statistics, and may include convictions from previous years for cases started in earlier years.

LEGISLATIVE EVOLUTION: FROM THE PENAL CODE TO THE FSS ACT

The Prevention of Food Adulteration Act 1954 and the Penal Code: The first general criminal laws relating to adulteration are apparent in the Indian Penal Code 1860. Section 272 makes it an offence to put noxious food or drink into the Market for the purpose of making it noxious; and Section 273 makes it an offence to sell noxious food or drink; in each case, punishable by imprisonment for a period of one year or a fine not exceeding one thousand rupees or both.[4] There is a 'mental' element for both offences - intention or knowledge in section 272, knowledge or reason to believe in section 273. In a modern setting, their maximum punishments were minuscule too, and the Law Commission of India described it as 'incoherent' when compared to that of the specialised food statute and some amendments made by the various States.

The key specialised legislation was the Prevention of Food Adulteration Act 1954 (PFA Act) for many decades.[5] It functioned via Food Inspectors and Public Analysts and established offences regarding selling adulterated, misbranded and prohibited articles. In parallel, however, there were a variety of sectoral instruments under the control of various Ministries. The Law Commission also pointed out that the orders made under the PFA Act, Fruit Products Order 1955, Meat Food Products Order 1973, Vegetable Oil Products (Control) Order 1947, Edible Oils Packaging (Regulation) Order 1998, Solvent Extracted Oil, De-Ooled Meal and Edible Flour (Control) Order 1967, Milk and Milk Products Order 1992 and the orders made under the Essential Commodities Act 1955, relating to food are also covered under the FSS Act.

[4] Indian Penal Code 1860, ss 272–273
[5] Prevention of Food Adulteration Act 1954

Consolidation under the FSS Act 2006: The FSS Act received assent in August 2006 and was brought into force in stages. The notifications appended to the Act show that provisions such as the definitions and the appointment of the Commissioner of Food Safety took effect on 28 May 2008, while the provisions on the Authority's functions and general principles were notified in November 2008 and those on the advisory committee and scientific bodies in March 2009.[6] The FSSAI was established in 2008, and the Government has described it as the body for regulating and monitoring the manufacture, processing, distribution, sale and import of food. The rules and regulations under the Act were made in 2011, the Supreme Court having noted, for example, the Licensing and Registration of Food Businesses Regulations 2011, and the Law Commission treats the Act as having taken effect in that year.[7] Section 97 deals with repeal and savings, and section 99 deems the Milk and Milk Products Order, 1992, to be regulations made under the Act.[8]

Three features of the consolidation are significant for enforcement. First, the Act declares it expedient in the public interest that the Union take the food industry under its control, thereby anchoring national standard-setting.[9] Secondly, it moves away from a model in which contraventions were predominantly treated as criminal offences towards a bifurcated model of civil penalties for lesser contraventions and imprisonment reserved for unsafe food and a handful of other offences. Thirdly, it overrides other food laws: section 89 provides that the Act prevails over all other food-related laws, a provision whose interaction with the Penal Code has proved to be of great practical consequence, as Part IX shows.[10]

CONSTITUTIONAL AND POLICY FOUNDATIONS

The regulation of food safety involves directive and enforceable constitutional norms. Article 47 of the Constitution casts upon the State the duty to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.[11] Although a Directive Principle is not itself justiciable, the Supreme Court has repeatedly read public-health values into Article 21. In *Vincent Panikurlangara v Union of India,* the Court treated the maintenance and improvement of public

[6] Food Safety and Standards Act 2006, s 1
[7] *Swami Achyutanand Tirth and Ors v Union of India and Ors* AIR 2016 SC 3626; Law Commission (n 3)
[8] Food Safety and Standards Act 2006, ss 97, 99
[9] *Ibid* s 2
[10] *Ibid* s 89
[11] Constitution of India 1950, art 47

health as part of the right to life, in the context of the quality of medicines, and in *Consumer Education & Research Centre v Union of India,* it held that the right to health and medical care is a fundamental right under Article 21.[12] Adulterated food is a direct assault on the health values protected by those decisions; and the State's enforcement failure is, in that sense, a failure of a constitutional duty rather than merely an administrative lapse.

Legislative competence is shared; 'Adulteration of foodstuffs and other goods' appears in the Concurrent List, while 'public health and sanitation' is a State subject.[13] Parliament has legislated on the subject through the FSS Act and, through section 2, has declared Union control of the food industry expedient. The consequence is a cooperative federal structure in which standards are set centrally, but enforcement is carried out by State authorities, a division that explains many of the implementation difficulties examined below.

INSTITUTIONAL ARCHITECTURE OF ENFORCEMENT

The Food Authority: The FSSAI is a body corporate with perpetual succession, whose head office is at Delhi.[14] The Act makes it the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food to ensure safe and wholesome food, and empowers it to specify by regulation, among other matters, standards, limits for additives, contaminants and residues, the method of sampling and analysis, procedures for accreditation of laboratories, and to conduct surveys of enforcement and administration of the Act.[15] Importantly for the federal balance, the Food Authority may give directions on food safety and standards to the Commissioner of Food Safety, who is bound by them while exercising powers under the Act.[16]

State Food Safety Authorities: Section 29 provides that the Food Authority and the State Food Safety Authorities are jointly responsible for enforcement, and that they must monitor and verify compliance by food business operators at all stages of the food business.[17] In operational terms, the State machinery has three tiers. The Commissioner of Food Safety is appointed by the State Government and does things such as prohibiting the manufacture,

[12] *Vincent Panikurlangara v Union of India and Ors* (1987) 2 SCC 165; *Consumer Education and Research Centre and Ors v Union of India and Ors* (1995) 3 SCC 42
[13] Constitution of India 1950 sch VII, List III, entry 18, List II, entry 6
[14] Food Safety and Standards Act 2006, s 4
[15] *Ibid* ss 16(1)–(2)
[16] *Ibid* s 16(5)
[17] *Ibid* ss 29(1)–(2)

storage, distribution or sale of any article of food in the interest of public health for up to a year, surveying industrial units, and sanctioning prosecution for offences punishable by imprisonment.[18] A Designated Officer not below the rank of Sub-Divisional Officer is appointed for each district and has to be in charge of licensing, collecting samples and reports, recommending prosecutions for imprisonment and authorising or prosecuting for fines.[19] The Food Safety Officers are appointed by the Commissioner to perform the functions of inspecting, sampling and seizing articles and adulterants.[20]

Food Analysts and Laboratories: In an adulteration case, the evidence is overwhelmingly scientific, and the Act follows suit by putting laboratories at the heart of the system. Under Section 43(1), the Food Authority may notify food laboratories and research institutions accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL) or another accreditation agency. Under Section 43(2), the Food Authority shall establish or recognise one or more referral food laboratories to perform the functions assigned to them under the Act.[21] The wording of the Act clearly distinguishes between the two requirements of accreditation and recognition, as a 'food laboratory' is one that is accredited by the NABL or equivalent organisation and recognised by the Food Authority under Section 43.[22] A Food Analyst shall not be someone who has any financial interest in the manufacture and/or sale of food and shall be appointed by the Commissioner of Food Safety.[23]

THE ENFORCEMENT PROCESS

Preventive and Regulatory Tools: Enforcement under the Act begins well before any sample is drawn. Every food business must operate under a licence, save that petty manufacturers, petty retailers, hawkers, itinerant vendors, temporary stall holders and similar small operators are required only to register.[24] Where a food business operator fails to comply with specified regulations, the Designated Officer may serve an improvement notice requiring remedial measures within a reasonable period, not being less than fourteen days; failure to

[18] *Ibid* ss 30(1)–(2)
[19] *Ibid* s 36
[20] *Ibid* ss 37–38
[21] *Ibid* ss 43(1)–(2)
[22] *Ibid* s 3(1)(p)
[23] *Ibid* s 45
[24] *Ibid* ss 31(1)–(2)

comply may lead to suspension and, after a show-cause opportunity, cancellation of the licence.[25] A court that convicts a food business operator and is satisfied that a health risk exists may impose prohibition orders on the use of a process, premises or equipment, or on participation in management.[26] In urgent cases, the Designated Officer may apply to the Commissioner for an emergency prohibition order, and knowing contravention of such an order is punishable with imprisonment of up to two years and a fine of up to two lakh rupees.[27] The Act also imposes a duty on a food business operator who has reason to believe that food is not compliant to withdraw it from the market immediately and inform the competent authorities.[28]

Inspection, Sampling and Analysis: The Food Safety Officer may take a sample of any food that appears to be intended for sale, seize food that appears to contravene the Act, and enter and inspect places where food is manufactured, stored or exposed for sale, as well as places where adulterants are manufactured or kept.[29] Where any adulterant is found in the possession of a manufacturer, distributor or dealer and he cannot account for it to the satisfaction of the Food Safety Officer, the adulterant may be seized, and the burden of proving that it was not meant for adulteration lies on the person from whom it was seized.[30]

Section 47 prescribes a sampling protocol designed to protect the rights of the accused. Except in special cases, the Food Safety Officer must give written notice of intent to analyse, divide the sample into four parts, and seal each part with the signature or thumb impression of the person from whom the sample was taken, or of witnesses if he refuses. One part goes to the Food Analyst, two parts go to the Designated Officer for safe custody, and the remaining part goes to an accredited laboratory if the food business operator so requests; if the two analyses are at variance, a part retained by the Designated Officer is sent to the referral laboratory, whose decision is final.[31] The Food Analyst must send the report within fourteen

[25] *Ibid* ss 32(1)–(3)
[26] *Ibid* s 33
[27] *Ibid* s 34
[28] *Ibid* ss 28(1)–(2)
[29] *Ibid* ss 38(1)–(2)
[30] *Ibid* ss 38(6), (9)
[31] *Ibid* s 47(1)

days of receipt of the sample, and an appeal against the report lies to the Designated Officer, who may refer the matter to the referral food laboratory for opinion.[32]

Prosecution, Adjudication and Appeal: The procedure is outlined in Section 42. The Food Analyst shall make a report to the Designated Officer with a copy to the Commissioner, and the Designated Officer shall make recommendations to the Commissioner to sanction the contravention within 14 days of being made, for the purposes of:

(a) Incurring a fine; and/or

(b) Sentencing the person to imprisonment. Whether the incident will be referred to a court of ordinary jurisdiction (if it is a crime that carries a prison sentence of 3 years or less) or a Special Court (if it is a crime that goes to prison and has a prison sentence of more than 3 years, and if the Special Court has been established).[33]

The prosecution shall be limited within a period of one year from the date of commission of the offence or for a period of three years as per the time limitation as given in section 77, which provides that the court shall not take cognisance of the offence if it was committed more than one year from the date of commission of the offence unless the Commissioner of Food Safety is satisfied that there are reasons mentioned in writing to prosecute the offence.[34]

Civil penalties are on a different tack. In the case of contraventions which may be punished with a penalty only, for example, substandard food, misbranded food, food containing extraneous matter, etc., the Act provides for adjudication, appeal to the Food Safety Appellate Tribunal and further appeal to the High Court.[35] The Adjudicating Officer or Tribunal shall consider the gain or the unfair advantage acquired and the loss suffered or likely to be suffered, the repetition of the contravention and whether the contravention was done in ignorance when imposing the quantum of penalty.[36] Section 66 provides for the liability of persons in charge of, and responsible for the conduct of, a company's business where an offence under the Act is committed. A person may rely on the statutory defence by proving that the offence was committed without their knowledge or that they exercised all

[32] *Ibid* ss 46(3)–(4)
[33] *Ibid* ss 42(2)–(5)
[34] *Ibid* s 77; Vineet Unnikrishnan et al., *Navigating FSSAI Proceedings in India* (Cyril Amarchand Mangaldas 2025)
[35] Food Safety and Standards Act 2006, ss 68, 70 and 71
[36] *Ibid* s 49

due diligence to prevent its commission. A director, manager, secretary or other officer may also be liable where the offence is attributable to their consent, connivance or neglect.[37]

THE PENAL FRAMEWORK

The penal provisions of Chapter IX, together with the compensation provision of section 65, may be summarised as in Table 1. The table is a statement of statutory maxima; the actual outcome in any case depends on the factors in section 49 and on the discretion of the adjudicating or sentencing authority.

Table 1: Principal Sanctions under Chapter IX of the FSS Act

Section	Contravention	Punishment
50	Sale of food not of the nature, substance or quality demanded, or not complying with the Act	Penalty up to ₹5 lakh (up to ₹25,000 for persons exempt from licensing under § 31(2))
51	Sub-standard food	Penalty up to ₹5 lakh
52	Misbranded food	Penalty up to ₹3 lakh; corrective direction or destruction
53	Misleading advertisement	Penalty up to ₹10 lakh
54	Food containing extraneous matter	Penalty up to ₹1 lakh

[37] *Ibid* s 66

57	Possessing or dealing in an adulterant	Penalty up to ₹2 lakh (not injurious); up to ₹10 lakh (injurious to health)
58	Contravention for which no specific penalty is provided	Penalty up to ₹2 lakh
59(i)	Unsafe food, no injury	imprisonment for a term that may extend to three months and a fine that may extend to ₹3 lakh.
59(ii)	Unsafe food, non-grievous injury	Imprisonment up to 1 year and fine up to ₹3 lakh
59(iii)	Unsafe food, grievous injury	Imprisonment up to 6 years and fine up to ₹5 lakh
59(iv)	Unsafe food, death	Imprisonment of not less than 7 years, extendable to life, and fine of not less than ₹10 lakh
63	Carrying on business without a licence	penalty that may extend to ₹10 lakh, subject to the statutory exception for persons exempt from

		licensing under Section 31(2).
64	Subsequent offences	Twice the punishment; daily fine up to ₹1 lakh for continuing offences; licence cancellation
65	Compensation for injury or death	Not less than ₹5 lakh (death); up to ₹3 lakh (grievous injury); up to ₹1 lakh (other injury)

Source: FSS Act §§ 50–54, 57–59, 63–65. Amounts are statutory maxima unless stated otherwise; ₹1 lakh = ₹100,000.

The following observations can be made from Table 1. The first difference between criminal offences and civil contraventions is that the Act differentiates between the two. Section 59 contains the provisions regarding criminal penalties for dealing in unsafe food, and Section 63 is for carrying on a food business without a valid licence. Other sections (such as 60, 61 and 62) also prescribe criminal punishment for certain offences. Therefore, criminal punishment under the Act is not confined exclusively to unsafe food. Further, a product being cheaper or non-injurious to health does not, by itself, establish a contravention. Where food is found to be sub-standard, the applicable provision depends on the nature of the contravention and the relevant statutory requirements.

Section 59 provides a graded punishment structure according to the consequences of unsafe food. If there is no injury, the punishment can be imprisonment up to 3 months and a fine up to ₹3 lakh. If it causes a non-grievous injury, up to one year of imprisonment may be imposed with a fine of ₹3 lakh, and in case of a grievous injury, imprisonment may be up to six years with a fine of ₹5 lakh. If the contravention causes death, the imprisonment shall not be less than seven years and can be up to life imprisonment, along with a fine of not less than ₹10 lakh.

Thirdly, Section 57 provides for a penalty for possessing an adulterant. The importer, manufacturer for sale, store, seller or distributor of an adulterant shall be liable to a fine of not more than ₹2 lakh in case the adulterant is not injurious to health and not more than ₹10 lakh in case the adulterant is injurious to health. There is no requirement for imprisonment under section 57; it is a monetary penalty. The provision is important as it covers the supply and distribution of adulterants, including at stages before food is sold as adulterated food.

If a consumer is injured or dies from food, there is a provision for compensation in Section 65. In case of death, compensation may be directed to be paid by the Adjudicating Officer or by the court to not less than ₹5 lakh; in case of grievous injury, not exceeding ₹3 lakh; and in other cases of injury, not exceeding ₹1 lakh. The compensation should be provided at the earliest time and in any event within six months of the incident. Interim relief must be paid to the next of kin within 30 days of the incident in the event of death. The provisions add a compensatory aspect to the framework of the statutory regime for breaches of food safety.[38]

In 2017, the Law Commission of India (LCI) in its 264th Report proposed to harmonise Sections 272 and 273 of the Indian Penal Code, 1860, into the food-specific legislation. It suggested a system of penalties according to the extent of damage caused by the adulteration or toxicity of food products: imprisonment up to life sentences for causing death; fines and compensation for victims.[39] The Commission's recommendations came after observations of the Supreme Court in Swami Achyutanand Tirth v Union of India with regard to the need for tougher punishment for food adulteration and the State amendment in the laws stipulating increased punishment.[40]

JUDICIAL INTERPRETATION AND ITS EFFECT ON ENFORCEMENT

Overriding Effect of the FSS Act: Ram Nath v State of Uttar Pradesh: For years, in several States, prosecutors would charge adulteration under both the specialised statute and the Penal Code. The question of the continuation of that practice was considered by the Supreme

[38] *Ibid* ss 65(1), (3)
[39] 'Food adulterators may get life term' *The Tribune* (17 January 2017) <https://www.tribuneindia.com/news/archive/nation/food-adulterators-may-get-life-term-351890> accessed 12 September 2026
[40] *Swami Achyutanand Tirth and Ors v Union of India and Ors* AIR 2016 SC 3626; Apoorva Mandhani, 'Law Commission Recommends Life Imprisonment For Food Adulteration [Read Report]' (*Live Law*, 19 January 2017) <https://www.livelaw.in/amp/law-commission-recommends-life-imprisonment-food-adulteration-read-report> accessed 12 September 2026

Court in Ram Nath v State of Uttar Pradesh, 21 February 2024. The accused also challenged the decisions of the High Court to reject applications challenging the refusal by the State of Uttar Pradesh to withdraw their applications for prosecution under the Penal Code and PFA Act on the basis of its order dated 11 May 2010 granting permission to prosecute under both codes.[41] The Court considered Chapter IX of the FSS Act and noted that the Act provides comprehensive substantive and procedural regulations for the offences related to unsafe food. The Court ruled that sections 272 and 273 of the Penal Code are repealed by section 89 of the FSS Act. The Court also found that the elements of sections 272 and 273 are made out, the offence under section 59 is attracted; and that section 59 is the stricter provision and does not require the intention that section 272 of the Penal Code requires. The result, the Court says in the headnote, is that it is not an issue that these both statutes are being prosecuted at the same time.[42]

The decision has two practical effects. It channels adulteration cases into the FSS Act's procedure, which means that the sanction of the Commissioner, the analysis by a recognised laboratory and the time limits of the Act apply. It also removes the option, which the Uttar Pradesh order had opened, of registering a first information report under the Penal Code and thereby bypassing the Food Safety Officer-led process. That is a gain for procedural discipline, but it is submitted that it may be a loss for deterrence in cases of deliberate poisoning, because the heavier gradations of section 59 are available only once injury or death is proved. The Court expressly confined its ruling to sections 272 and 273.[43]

The ruling did not arrive on a clean slate. In *State of Maharashtra v Sayyed Hassan Sayyed Subhan*, the Court had earlier relied on section 26 of the General Clauses Act, 1897, which allows an act constituting offences under two or more enactments to be prosecuted under either of them, in support of the permissibility of parallel proceedings under the food statute and the penal law.[44] *Ram Nath* considered that line of authority and nonetheless concluded that for offences within section 59, the overriding effect of section 89 forecloses simultaneous

[41] *Ram Nath v State of Uttar Pradesh and Ors* (2024) INSC 138
[42] *Ibid* [20]; Yash Mittal, 'Food Safety and Standards Act Overrides Indian Penal Code; Simultaneous Prosecution Under Both Acts Not Possible: Supreme Court' (*Live Law*, 22 February 2024) <https://www.livelaw.in/amp/supreme-court/food-safety-and-standards-act-overrides-indian-penal-code-simultaneous-prosecution-under-both-acts-not-possible-supreme-court-250555> accessed 12 September 2026
[43] *Ram Nath v State of Uttar Pradesh and Ors* (2024) INSC 138
[44] *State of Maharashtra and Anr v Sayyed Hassan Sayyed Subhan and Ors* AIR 2018 SC 5348; General Clauses Act 1897, s 26

prosecution. The two decisions illustrate a persistent doctrinal tension between the general criminal law and specialised regulatory statutes, which the legislature has not resolved.

The Bharatiya Nyaya Sanhita and the Question of Continuity: The Bharatiya Nyaya Sanhita, 2023, which came into effect on 1st July 2024, has replaced the Penal Code. Sections 274 and 275 of the new Sanhita repeat the content of sections 272 and 273, respectively, and increase the maximum penalty from one thousand to five thousand rupees but keep the six months' imprisonment limit.[45] It is therefore submitted that the reasoning of Ram Nath should be applied to the two regimes rather than to the numbering of the Penal Code and that, in this context, the same reasoning should be applied to the two regimes in sections 274 and 275 of the Sanhita. The retention of the lower maxima, at 2017, when the Law Commission had recommended its removal, is itself an opportunity that was missed for harmonisation.

Systemic Directions: Swami Achyutanand Tirth v Union of India: In the milk adulteration case, the Court noted that the petitioners alleged a failure of the Union and the State Governments to combat adulteration of milk with substances such as urea, detergent, refined oil and caustic soda, and recorded the 2011 FSSAI survey. The Court issued a series of directions, including that snap surveys of the kind conducted in 2011 be conducted periodically at both State and national level by FSSAI, and that the Union consider amendments to the food law and the Penal Code to bring them in line with the more stringent State amendments.[46] The significance of the decision lies in its recognition that adulteration is a systemic regulatory problem requiring surveillance, not just post hoc prosecution. The matter was before the Court again in 2023, when it issued notice to FSSAI, observing that the notice was intended to ensure that the Authority exercises its statutory power to implement the Court's directions. That the implementation of directions given in 2016 was still being examined seven years later is itself instructive.

Laboratory Credibility and Natural Justice: Nestle India Ltd. v FSSAI: The Maggi case of 2015 is the most well-known example of the operation of the Act's evidentiary machinery.

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[45] Bharatiya Nyaya Sanhita, 2023, ss 274–275; Indian Penal Code, 1860, ss 272–273

[46] *Swami Achyutanand Tirth and Ors v Union of India and Ors* AIR 2016 SC 3626; Padmakshi Sharma, 'Plea to Prevent Milk Adulteration: Supreme Court Issues Notice to FSSAI' (*Live Law*, 17 February 2023) <https://www.livelaw.in/amp/top-stories/milk-adulteration-supreme-court-issues-notice-to-fssai-221821> accessed 12 September 2026

The FSSAI had directed the withdrawal of nine variants of an instant noodle brand for alleged excess levels of lead in the food on 5 June 2015. The Bombay High Court set aside the orders on 13 August 2015 on the ground that the principles of natural justice were not adhered to and the food laboratories which conducted the tests were not accredited and recognised laboratories and therefore the result of the tests could not be relied upon.[47] The Court allowed the product to be retested during the period before it was allowed back on the market, at three accredited laboratories. The case has been cited on many occasions for its doctrine that a laboratory needs to satisfy a 'twin test' – accreditation by NABL and recognition by the Food Authority – when interpreting section 43 of the Act in conjunction with the definition of a food laboratory in section 3(1)(p). The doctrine was cited in a subsequent summary criminal case against the same company, heard in the Bombay High Court in January 2025, which was quashed.[48] The moral for enforcement is clear. The most well-designed regulation will be ineffective if a sample chain is legally unsound, or if there are procedural problems; these are not 'technicalities' in a statute, which makes accreditation and recognition requirements for valid analysis.

THE ENFORCEMENT RECORD: THE OFFICIAL DATA

Sampling and Non-Conformity: The Government has placed consolidated enforcement data before Parliament at intervals. For the years 2016–17 to 2018–19, the Ministry of Health and Family Welfare reported that the number of samples analysed was 78,340, 99,353 and 85,172 respectively, of which 18,325, 24,262 and 22,441 were found non-conforming, corresponding to non-conformity rates of 23.4 per cent, 24.42 per cent and 26.4 per cent. For the later years, the Ministry of Consumer Affairs, Food and Public Distribution furnished the figures in Table 2, in which non-conforming samples are broken down into unsafe, sub-standard and labelling defects, misleading or miscellaneous categories.[49]

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[47] *M/s Nestle India Limited v Food Safety and Standards Authority of India* (2015) SCC OnLine Bom 4713; Ashok Kini, 'Bombay High Court Quashes Maggi Ban Order by FSSAI; Orders Re-Test' (*LiveLaw*, 13 August 2015) <https://www.livelaw.in/amp/bombay-high-court-quashes-maggi-ban-order-by-fssai-orders-re-test-read-jt> accessed 12 September 2026

[48] Simranjeet, 'Bombay HC quashes case against Nestle India Ltd. for allegedly selling 'sub-standard' Maggie noodles' (*SCC Online*, 14 February 2025) <https://www.scconline.com/blog/?p=341355> accessed 12 September 2026

[49] 'LOK SABHA UNSTARRED QUESTION NO. 2538 (OIH) TO BE ANSWERED ON 07.08.2024: CASES REGARDING SELLING OF ADULTERATED AND EXPIRY GOODS' (*Price Monitoring Division*, 07 August 2024) <https://fcainfoweb.nic.in/PMS/writereaddata/2024_LS_B_2538.pdf> accessed 12 September 2026

Table 2: Samples Analysed and Found Non-Conforming, 2021–22 to 2023–24

Year	Samples analysed	Non-conforming	% non-conf.	Unsafe	Sub-standard	Labelling / misleading / misc.
2021–22	144,345	32,934	22.8	4,890	16,582	11,462
2022–23	177,511	44,626	25.1	6,579	21,917	16,130
2023–24*	169,725	33,368	19.7	6,543	22,705	4,120

The Government has presented consolidated enforcement information to Parliament at regular intervals. In the years 2016-17, 2017-18 and 2018-19, the Ministry of Health and Family Welfare reported analysis of 78340, 99353 and 85172 samples, respectively. The Ministry of Consumer Affairs, Food and Public Distribution gave the details as presented in Table 2 for the three years 2021-22 to 2023-24, where samples of food products found to be non-conforming were categorised as being unsafe, sub-standard, or containing labelling defects, misleading information, and other miscellaneous defects. The Government expressly identified the 2023–24 figures as provisional.

Penal Action: Table 3 sets out the action taken. The civil track dominates by volume. In 2022–23, for example, 38,096 civil cases were launched, and 28,464 convictions were recorded, against 4,818 criminal cases launched and 1,188 convictions.

Table 3: Civil and Criminal Action, 2021–22 to 2023–24

Year	Civil cases launched	Civil convictions	Civil penalties (₹ crore)	Criminal cases launched	Criminal convictions	Criminal penalties (₹ crore)
2021–22	28,906	19,437	53.39	4,946	671	1.38
2022–23	38,096	28,464	33.23	4,818	1,188	2.75
2023–24*	30,427	27,549	15.45	4,707	1,143	2.70

To interpret these figures, Table 4 derives four indicators. They are the author's calculations and are subject to the caveat that convictions in a year may relate to cases launched earlier.

Table 4: Derived Enforcement Indicators

Year	Non-conf. rate (%)	Civil convictions ÷ cases launched (%)	Average civil penalty per conviction (₹)	Criminal convictions ÷ cases launched (%)	Average criminal penalty per conviction (₹)
2021–22	22.8	67.2	27,468	13.6	20,566
2022–23	25.1	74.7	11,674	24.7	23,148

2023–24*	19.7	90.5	5,608	24.3	23,622

The four findings stand out. The criminal conviction rate is low (14 to 25 Convictions per 100 Cases Launched), with improvement following 2021-22. Secondly, the average civil fines imposed, based on the provisional data, have significantly decreased from around ₹27,000 in 2021–22 to around ₹5,600 in 2023–24, which is far below the statutory maximum of ₹5 lakh under section 51 for sub-standard food. Thirdly, the average amount raised per criminal conviction is between ₹20,000 and ₹24,000, which is a negligible amount compared to the maximum fine of ₹1 lakh for the least serious of the unsafe food offences under section 59(i) and nowhere near the maximum fines that would be imposed for more serious offences. Fourthly, the number of criminal cases launched is approximately the same as or fewer than the number of unsafe food examples classed (4,707 to 4,946 cases per year), suggesting that a considerable proportion of unsafe-food examples might not progress to criminal cases, although the two series are not strictly comparable because criminal cases also cover offences like unlicensed trading.

CRITICAL ANALYSIS: WHERE ENFORCEMENT FALTERS

Under-Deterrence by Low Realised Sanctions: The probability of the product being detected, the likelihood of being sanctioned, and the severity (or consequences) of the sanction are the factors that determine deterrence. The data show that the evidence is weak in each of these areas. ***The d***etection stage is the sampling rate, which is highly variable across States. Low criminal conviction rates in the sanction stage. But, as achieved, it is well below the statutory limit, and ***t***he factors the Act leaves judges to consider to determine penalties (such as the gain from the contravention and its repetitive nature) afford a principled basis for the determination of penalties, but the average penalties raised indicate that these factors are not consistently applied or that they are being outweighed by other pragmatic factors, such as the size of the operator. An adulterator who has got a considerable margin from substitution and chances of getting a custodial sentence are less; a penalty of a few thousand rupees is a cost of business.

Evidentiary Fragility: Each case of adulteration requires a chain: Food Safety Officer, sealing and notice, transmission, analysis by a recognised laboratory within 14 days, communication

of the report, and opportunity for the referral analysis. The safeguards in the Act are built-in because the sample is the whole case! Defects in the laboratory recognition process can overcome even a nationwide regulatory order, as Nestle demonstrated, and subsequent litigation has reiterated the same message. The practical implication is that if there is a rise in the quality of enforcement, it will be due to investment in laboratory accreditation, chain of custody discipline and training of Food Safety Officers, and not to stiffer sanctions. No penalty is as great as a penalty that you cannot demonstrate.

Dual Regimes and Doctrinal Uncertainty: The tension between the FSS Act and the criminal law has not been fully resolved. *Ram Nath* gives clarity on sections 272 and 273 of the Penal Code but leaves open the status of the Sanhita's successor provisions, and does not address overlapping offences such as cheating. Practitioners and investigators must therefore make charging decisions under uncertainty, and the risk that a prosecution will be quashed on a point of statutory overlap rather than decided on its merits is real. The better course is legislative clarification, whether by amendment to section 89 or by a harmonised set of penal provisions in the Sanhita of the kind the Law Commission proposed.

Federal Dependence and Capacity Disparities: The Act's design assigns standard-setting to the Centre and enforcement to the States. The Authority may give binding directions to a Commissioner of Food Safety, but it does not control the Food Safety Officers who draw samples, the Designated Officers who recommend prosecutions or the laboratories in the States. The inter-State variation in sampling noted in Part X illustrates the result. Central support for laboratories can improve capacity, but the sanctioning decision on prosecutions still lies with a State Commissioner, and the data suggest that the pipeline from unsafe finding to prosecution is leaky.

Small Operators and the Informal Sector: Much food is sold by persons who are exempt from licensing and need only register. The lighter punishment provision of the Act for such persons, under the proviso to section 50, does not seem to lack any principle of proportionality. The possibility that street vendors or local dairies are the site of the dangerous practices has not been ruled out; indeed, the Supreme Court's 2011 milk survey indicates that it might be there that dangerous practices are found. The flip-side of being rigorous with big manufacturers, whose records and laboratories are readily accessible for inspection, and lenient with small operators, whose numbers are much less well resourced,

is a risk-based regime that runs counter to the spirit of section 18 of the Act, which declares that the Act's risk-based approach is what it is. A regime that is rigorous with large manufacturers and lenient with small operators risks toeing the opposite side of the risk-based logic that section 18 of the Act proclaims it is.[50]

Transparency and Data: Lastly, evidence to assess enforcement is weak. Parliamentary replies provide only totals and not the result of each prosecution, or the length of trials, or the percentage of prosecutions which failed on technicalities or the amount of money which is recovered, or the number of victims to whom compensation is paid under section 65. The Government of India told Lok Sabha in the year 2023 that it has not maintained any separate enforcement data on the amount of adulterated food seized from the top business houses from the year 2014 to 2022 by FSSAI centrally. It can't be held to account; it can't learn from its failures if it doesn't publish disaggregated outcome data.

FINDINGS

The doctrinal analysis supports the working hypothesis in substantial part. The categories of unsafe, sub-standard and misbranded food in the FSS Act, coupled with the graded punishments in section 59, compensation in section 65 and corporate liability in section 66, are sufficient to provide a normative framework. The problems are implementation: the sampling-and-analysis chain is legally demanding and has been subject to challenge; State capacity is unequal; realised penalties are small in comparison to statutory ceilings; the interface with the general criminal law, although clarified by Ram Nath, is not fully worked out; and the data available to the public are too aggregated for a detailed assessment.

RECOMMENDATIONS

Apply Penalties at the Statutory Rates: Guidance is required by rules or FSSAI directions under section 16(5), for use by Adjudicating Officers on determining the extent to which the factors in section 49 ought to influence the penalty, such that gain, loss and repetition are clearly visible in the determination of penalty. A register of reasons should be made public in an anonymised form so that a precedent can be built up.

[50] Food Safety and Standards Act 2006, ss 18(1)(a)–(c), 18(1)(a)–(c)

Ensure that the Penalties are Uniform: After the Law Commission's recommendations of 2017, there is a need for Parliament to review the specialised and general regime in the context of graded penalties in both, and this should be defined clearly in the text of the legislation, rather than in Section 89.

Strengthen Laboratory Credibility: All notified laboratories should be prominently displayed on FSSAI's website with the scope of their accreditation, to ensure that an analysis is legally valid before enforcement authorities rely on it for action. Every notified laboratory should be listed on the FSSAI website, stating the scope of its accreditation, so that enforcement authorities can check that an analysis is legally valid before acting upon it.

Professionalise Prosecution: The interval between the report of the Food Analyst and the Commissioner's sanction was a local issue that state governments should consider in the course of implementing Special Courts, and the appointment of dedicated Public Prosecutors under Chapter X of the Act.

Maintain the Chain of Custody: The Food Safety Officers should be trained in the proper recording of notices, seals and signatures in a standardised digital way as part of the sampling protocol in section 47, to minimise the number of defective samples.

Make the Data Available and Measurable in Segmentation: FSSAI should provide annual State-wise and Category-wise enforcement statistics, with the duration of the case, outcome of the case, penalty recovered, and compensation awarded under section 65, in a uniform format and categorise the enforcement outcome as both Civil and Criminal.

Institutionalise Surveillance: Periodic National and State surveys should be conducted and published in accordance with the Supreme Court directions in the case of milk adulteration, and there should be specific enforcement action in the States and product category/sectors of the highest non-conformity.

Facilitate and Escalate the Informal Sector: Registration, training and the use of low-cost, rapid tests should be paired with a defined escalation process, leading to licence withdrawal and prosecution in cases of repeat and/or dangerous adulteration, to prevent the lighter end of the penalty spectrum for small operators being used as cover for dangerous practices.

CONCLUSION

In India, there is a paradox in the enforcement of Food Safety Law in relation to Adulteration. The FSS Act on paper is a modern, science-based Act with graduated sanctions, an explicit rule of overriding effect, and an institutional hierarchy. Official data indicate that, in practice, there has been a persistent failure to comply with the regulations, typically 20%, with the vast majority of non-compliance being resolved through civil penalties of limited realised value, low rates of criminal convictions, and significant discrepancies between States. The top judicial judgments validate this image from other angles: Ram Nath rules the selection of law, Nestle rules the quality of evidence, and Swami Achyutanand Tirth rules the rule of systemic surveillance.

The long overdue reform, therefore, is not a rehash of the statute itself, but a strengthening of the chain of enforcement, more credible laboratories, better prepared prosecutions, realistic and consistently applied penalties, harmonised criminal provisions and transparent data. Until these elements are in place, the 'deterrent' effect of the FSS Act will be only partially realised, and the consumer will still carry the 'remnants' of risk that is supposed to be removed by the Act. The doctrinal conclusions offered here would benefit from future research, especially empirical research on the outcomes of trials and orders of adjudication in individual States.