



CHAPTER - 5

FROM CODEX TO COURTS: NATIONAL APPROACHES TO FOOD SAFETY GOVERNANCE

Manisha Naskar¹, Amirah Nasrin²

^{1,2}Assistant Professor, Brainware University

*Mail ID: mn.law@brainwareuniversity.ac.in

Abstract

With the rapid growth of trade liberalization, technological innovation and public health threats, food safety governance has become a critical issue for global concern. The Codex Alimentarius Commission (CAC), which was set up by the FAO and WHO, sets international standards, which are used as a benchmark in national food safety regimes and are recognised under the WTO's Sanitary and Phytosanitary (SPS) Agreement. However, the national approaches are still different despite this harmonization process, due to the differences in legal traditions, institutional capacities and socio-political priorities.

This chapter provides a critical review of the development of global food safety standards and their impact on the national food safety regimes in the United States, the European Union, India and a few other jurisdictions. It brings attention to regulatory bodies like FDA, USDA, EFSA and FSSAI, as well as to the judiciary's contribution in the interpretation of legislation, in determining liability, and in integrating food safety into the wider context of consumer rights and constitutional protections. The landmark cases of the United States v. Park and the rulings of India's Supreme Court on the right to food show how judges fill the gap between formalism and reality.

The discussion also covers issues of the day in the regulation of ultra-processed foods, biotechnology innovations, pandemics and digital agriculture. It examines the conflict between global harmonisation and national sovereignty and the power dynamics between the multinational corporations and regulators, in favour of greater international cooperation, more effective national enforcement and greater judicial awareness. Overall, it shows that food safety governance needs to be transformed into a global framework that takes into account local realities, with a view to delivering public health, public trust and sustainable food systems in a fast-changing world.

Key Words: Codex Alimentarius, to national regimes, to public health, to consumer rights, to global trade, and judicial enforcement.

Introduction:

With the globalisation of the food system, the transport of food goods in the world has made food safety a major issue that requires harmonisation of food standards in order to safeguard public health and the fair trade. Created in 1963 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO), the Codex Alimentarius Commission is the most important body for formulating international food standards, guidelines, and codes of practice. These standards are recognized under the World Trade Organization (WTO) Agreement on the

Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Codex is a key element of global food governance (FSSAI, 2023).

National food safety regimes, although based on the same concept of food safety, are still uneven, based on different legal traditions, institutional capacities and socio-economic realities. Comprehensive regulatory regimes are implemented in the USA by the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA), and in the European Union through harmonised regulations provided by the European Food Safety Authority (EFSA). On the other hand, a country such as India, which has a Food Safety and Standards Authority of India (FSSAI), faces difficulties with enforcement of standards in informal food systems and the need for modernization versus traditional practices. These differences highlight the conflict between the harmonization of the world and local adaptation.

Other actors and actors, such as the courts and judicial bodies, also affect food safety governance by interpreting statutes, determining liability when someone has been ill as a result of food poisoning, and holding companies responsible for failings in food safety. The judiciary, in various jurisdictions, has been called upon to close the "gap" between codified standards and real-life experiences of consumers in many landmark cases. The analysis of national food safety regimes must, therefore, not only approach the regulatory framework but also the judicial enforcement of the regulations and the impact thereof on public health and consumer protection.

This chapter aims to critically review the impact of Codex Alimentarius on the national food safety systems, the level of compliance with Codex standards and the difficulty of implementing and enforcing food safety through judicial and regulatory bodies. It does so in a comparative perspective; it points to the dynamics between international commitments and domestic circumstances, and provides insights into the future of food safety governance in this fast-changing world.

Evolution of Global Food Safety Standards

Global Food Safety Standards have evolved over the years. The Global Food Safety Standards have changed over time. As food trade has become international, international standards have been developed to guarantee safety, fairness and consumer protection. The Codex Alimentarius Commission (CAC), a Joint FAO/WHO body set up in 1963, is at the centre of this work. The Codex is a detailed code of recommendations, standards and codes of practice which act as references for national legislation and international trade conflicts. The codex has also gained an effective quasi-legal power in the WTO through the principles of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) (FAO/WHO, 2020).

In accordance with the SPS Agreement, food safety measures should be scientific and should be harmonised with international standards. This system minimises the likelihood of protectionism being disguised as health concerns and encourages consumers to be healthy. SPS is accompanied by the Technical Barriers to Trade (TBT) Agreement which also includes food safety labeling, packaging and standards, which brings food safety into the global trade regime (WTO, 2017).

In spite of these, there are still problems to overcome in terms of uniformity. It is important to recognize that the implementation of Codex standards is challenging in developing countries due to a lack of resources, which creates inconsistencies in their application and protection for consumers. Furthermore, there are cultural differences in food practices and food risk perception, which complicate harmonisation. Different regulatory philosophies, for example, in food safety governance, are evident between the EU and the US, with the EU placing more emphasis on the precautionary principle and the US on the risk-based approach (Vos, 2000).

In this way, the development of the global food safety standards reflects not only the evolution towards harmonization, but also the ongoing conflicts between global responsibilities and national sovereignty. The Codex Alimentarius will remain a link between science, trade and law, but it needs to be adopted by national regimes if it is to be of any value.

National Food Safety Regimes: Comparative Perspectives

- **United States**

The U.S. food safety system is one of the world's most complicated, broken down between the Food and Drug Administration (FDA) and United States Department of Agriculture (USDA). Most foods are regulated by the FDA

(processed foods, seafood, dairy) and some egg products by the USDA (meat and poultry). This dual jurisdiction is often complained of as causing fragmentation and overlapping, but the dualism is a result of the history of the food regulation system in the country (Nestle, 2010). Enforcement methods involve inspections, recalls, and litigation, and courts often determine liability when an individual falls sick from eating contaminated food. The Food Safety Modernization Act (FSMA) of 2011 represented a paradigm shift in the U.S. law by focusing on prevention instead of reaction, and by moving closer to global risk based approaches (FDA, 2011).

- **European Union**

Harmonized food safety framework has been developed by the European Union (EU) under European Food Safety Authority (EFSA). The EU tends to be more concerned with the precautionary principle and can take measures even when there is no scientific certainty. This principle came to the fore following the BSE (“mad cow”) and other crises, which have influenced consumer confidence and food control (Vos, 2000). EU law says that there must be uniform standards, that is a standard that is consistent across the borders. The European Court of Justice (ECJ) further enhances accountability in the case of disputes with respect to trade and consumer protection.

- **India**

The governance of food safety in India is centralised with FSSAI which was constituted under the Food Safety and Standards Act of 2006. FSSAI brings together several previous legislations into a single law, with the goal of modernizing the law and enhance consumer protection. Despite this, the enforcement remains difficult because of the large informal food sector, restricted resources and inconsistencies in enforcing food security laws between different states of the country (Bhattacharya, 2019). Geographical distribution of food is linked to fundamental rights as the right to a safe food is interpreted in India by courts.

- **Other Jurisdictions**

Examples of countries with different types of food safety governance exist, including Japan, Brazil and South Africa. Japan places a high value on standards and consumer trust, while Brazil caters to both farm exports and consumer safety and South Africa integrates food safety into broader public health frameworks. These examples illustrate that the national regimes are different and full harmonisation is not possible under the codex standards.

Courts and Enforcement Mechanisms

While regulatory agencies establish the framework for food safety, **courts and judicial bodies** play a decisive role in interpreting laws, adjudicating disputes, and ensuring accountability. Enforcement mechanisms vary across jurisdictions, but they share common challenges: balancing consumer protection, corporate liability, and trade interests.

- **Judicial Role in Food Safety**

Courts often act as the final arbiters in disputes involving contaminated food, misleading labeling, or corporate negligence. In the United States, litigation under tort law has been a powerful tool for consumers seeking redress in cases of foodborne illness. Landmark cases have compelled companies to adopt stricter safety measures, reinforcing the preventive approach introduced by the **Food Safety Modernization Act (FSMA)** (FDA, 2011). Similarly, in the European Union, the **European Court of Justice (ECJ)** has upheld consumer rights by interpreting food safety regulations in light of the precautionary principle, ensuring that public health remains paramount even in the absence of complete scientific certainty (Vos, 2000).

- **Corporate Accountability and Liability**

Multinational corporations dominate global food chains, making corporate accountability a central issue. Courts have increasingly imposed liability on companies for lapses in safety, ranging from contamination outbreaks to deceptive marketing of ultra-processed foods. In India, judicial activism has linked food safety to the **constitutional right to life under Article 21**, thereby elevating food safety from a regulatory obligation to a fundamental right (Bhattacharya, 2019). This judicial stance has pressured regulators and corporations alike to prioritize consumer welfare.

- **Enforcement Agencies and Mechanisms**

Beyond courts, enforcement agencies conduct inspections, issue recalls, and impose penalties. The FDA and USDA in the U.S., EFSA in the EU, and FSSAI in India all rely on administrative enforcement, but their effectiveness depends on resources, political will, and public trust. In many developing countries, weak enforcement capacity undermines compliance, leaving courts to fill the gap through litigation and judicial directives.

Landmark Cases and Precedents

- **United States v. Park (1975):** Established corporate liability for food safety violations, even without direct involvement of executives.
- **EU BSE Crisis Cases (1990s):** Reinforced the precautionary principle in EU food safety law.

- **Indian Supreme Court, Right to Food Cases (2001 onwards):** Expanded the interpretation of Article 21 to include safe and adequate food, linking food safety to human rights.

These cases illustrate how courts not only enforce existing laws but also shape the evolution of food safety governance by embedding consumer protection into broader legal and constitutional frameworks.

Contemporary Challenges in Food Safety Governance

However, although significant advances have been accomplished via Codex Alimentarius and national regulation, food safety governance is still faced with complex challenges in these contemporary times. The challenges are related to globalization, technological innovation, and changing consumer behavior, and call for the adaptability of legal regimes.

- **Trade Liberalization and Domestic Protection**

International trade agreements are promoting free trade of food products, but sometimes they conflict with local concerns about maintaining the viability of local food systems and consumer safety. Its SPS and TBT agreements establish scientific requirements for restrictions, which many members find difficult to meet while ensuring they are in line with national interests. Such tension can also be seen in conflicts regarding genetically modified organisms (GMOs) and pesticide residues (WTO, 2017).

- **The regulation of Ultra-Processed Foods**

Ultra-processed foods bring new challenges to the regulatory arena. These products tend to be high in sugar, salt and additives, and are linked to obesity and diabetes among other health issues. Some countries have implemented labelling rules, advertising regulations and taxes, but enforcement is not consistent. When it comes to claims and consumer rights, adjudication has become an increasingly common function of the courts (Moodie et al., 2013).

- **Emerging Risks: Pandemics and Biotechnology**

The COVID-19 pandemic has highlighted the need for food supply chain vulnerabilities and safety monitoring. There is a need for adaptation of legal regimes to respond to zoonotic threats and build food system resilience. Likewise, innovations such as GMOs, cell-cultured meat, and synthetic food pose biosafety, labelling, and consumer concerns. There are significant differences among national laws, and EU laws take a more precautionary stance than the U.S. risk-based approach (Bauer, 2018).

- **Digital Agriculture and Data Governance**

Digital technologies, including precision farming, blockchain traceability, and AI-based monitoring, present opportunities to improve safety and transparency in farming. But these innovations also bring up concerns with respect to data privacy, data ownership and regulatory oversight. Innovation, however, must be accompanied by accountability and national regimes must establish frameworks that ensure that innovation is not used for private gains but for the benefit of public health.

Analysis and Discussion

The analysis of the national food safety regimes has identified strengths and weaknesses in the global governance of food safety. Codex Alimentarius etc. are international standards that offer a common basis but are subject to different interpretations in different jurisdictions. This gap relates to differences in institutional capacity, legal cultures, and socio-political priorities.

- **The business case for National Regimes (NR). The business case for NRs**

It can be seen that the compliance and enforcement is higher in countries with well-developed institutions, like the United States and the European Union. In the United States, the Food Safety Modernization Act (FSMA) is a proactive risk management measure, and in the EU, the precautionary principle is a similar measure. These, though, are not without their own problems when it comes to new and emerging risks, like biotechnology and ultra-processed foods. Developing countries, on the other hand, face difficulties with the enforcement as a result of resource issues and informal food sector which often lack regulatory control in India (Bhattacharya, 2019).

- **Harmonization vs. Sovereignty**

Harmonization under WTO agreements and Codex standards goes against national sovereignty. Harmonisation can smooth trade and prevent conflicts, but it can also be a threat to local practices and preferences. For instance, the EU has adopted a precautionary approach regarding GMOs, whereas the U.S. has taken a risk-based approach, which has created trade conflicts and different protection measures for consumers (Bauer, 2018). This tension highlights the challenges to establishing a truly world-wide food safety regime.

- **Courts have played a vital role in defining accountability**

Judges and courts have an important role in filling the gaps between regulation and practice. Courts have helped to develop the concept of food safety beyond the mere statutory requirement and have included it in other frameworks,

such as consumer rights and constitutional rights. The cases of *United States v. Park* (1975) and the Indian Supreme Court's landmark judgment on Article 21 show how the judiciary can make food safety a fundamental right and a corporate responsibility issue. This judicial activism provides for the evolution of food safety governance in response to society's needs.

- **Confronting power dynamics in food governance**

MNCs have a great influence over the global food chain and can outpace regulators in influencing food choices by consumers. Enforcement is uneven as courts and regulators try to hold corporations accountable. For example, the marketing of ultra-processed foods is a reflection of this imbalance, with corporate interests often taking precedence over public health concerns (Moodie et al., 2013). International cooperation and monitoring at the national level are needed to tackle these power dynamics.

Conclusion

Food safety governance is a case in point of the complexity of interaction between global governance, national governance and judicial enforcement. The Codex Alimentarius Commission has offered an important instrument for harmonizing and there is a variety of national approaches, reflecting institutional capacity, cultural practices and political priorities. The comparative analysis of the United States, European Union, India and other jurisdictions shows that some jurisdictions have strong mechanisms in place to enforce regulations, while others have limited resources and informal food sectors.

Powerful courts have evolved as influential players in accountability, and taken the food safety issue beyond the confines of the statutory approach, to consumer rights and constitutional protections. The uniform decisions of courts in different jurisdictions highlight the importance of the judiciary to further integrate food safety into the wider justice and public health system. Meanwhile, multinationals maintain their strong influence, and have the capacity to contest regulators and judiciary decisions on consumer and corporate interests.

Legal responses must be adaptive to the challenges of today – from trade liberalisation, to the trend of ultra-processed foods, biotechnology innovations, and digital agriculture. National regimes need to be both based on international best practices and to be attuned to local realities, so that food safety governance is inclusive, equitable and resilient.

In conclusion, the answer to improving the situation is to improve international cooperation, as well as the capacity of national enforcement bodies and the judiciary in their role of protecting consumers. Food safety governance can be made to operate between Codex and courts to protect the public health while preserving cultural diversity and meet the needs of a globalized food system.

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