

## Imperativeness of Safe Food as a Human Right under International Trade Law

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### ABSTRACT:

The foundation of Human Rights jurisprudence stems on the idea of ensuring a holistic approach towards protection and promotion of anything that makes life meaningful. Human rights framework existing at international level through the UN Agencies have deliberated conscientiously on ensuring the protection thereof through numerous treaties and other instruments obligating the States to fulfil them. Overall, human rights laws endure towards an indivisible, interdependent and interconnected framework to make the maximum available to human beings across. Amongst many such human rights that are inter-reliant, Right to food is paramount to the existence of human beings. The concept of right to food is wide as it covers a wide range of matters which can be connected including right to safe food. Although, it seems difficult to lay down a specific definition in legal terms as to what is safe and what is unsafe, attempts have been made to delineate the same in order to embrace the notion within legal terms. However, some understanding on the same is gathered from the existing legal literature to mobilize the same with relation to Human Rights and Right to food. From the legal perspectives existing at international and national levels too attempts have been made to bring it into a pure legal carcass. On the other hand, food has become an important element of trade. If safe food is not ensured in international trade, it acts as a set-back in its growth and can have calamitous effect on the overall economic setup. Hence ensuring safe food is seen not just as a human rights obligation but also as an imperative to boost international trade. The present paper outlines the attempts, initiatives and measures considered necessary to embrace safe food within human rights framework as well as confirming the standards followable in international trading activities.

**Keywords:** Right to safe food, human rights, international trade, Codex, food standards.

### RIGHT TO SAFE FOOD AS A HUMAN RIGHTS OBLIGATION:

The establishment of United Nations in 1945 is seen as a major breakthrough towards development of Human Rights jurisprudence at National and International forums. Each of the Human Right as recognized by UN is inextricably linked with the other and that at times makes its realization a challenge for the governments. It would be a misnomer to identify a specific human right to be more superior than others which emphasizes that non-realization of any specific right might have disastrous impact on others. Right to food which is a

recognized human right has its presence in almost all Human Rights Treaties and is closely linked with right to health, right to life, right to water, right to adequate housing, right to education, right to work and to have social security, right to take part in public affairs, right to information and freedom from torture, cruel, inhuman or degrading treatment. Further, General Comment 12, states that Right to Food is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.

Since it is linked with several other human rights, the right too has different dimensions in which it is to be understood. Normatively, the right to food is the right to have regular, permanent and unrestricted access either directly or by means of financial purchases to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear. The definition emphasizes on the term adequacy for which the General Comment 12 states, “*The right to adequate food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement. ....The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.*”

The right encompasses obligations on the Governments for Availability, Accessibility, Adequacy and Sustainability of food. Availability connotes that food be available from natural resources and also made available for sale in markets and shops to everyone. Accessibility requires physical and economical access which means food should be accessible to all including vulnerable groups and affordable to all. An offshoot of accessibility is Sustainability of food for present and future generations. Adequacy refers to quantity, quality and appropriateness, taking into account cultural aspects as well as the physiology of the individual (e.g., sex, age and health). Here, it also extends that right to safe food is an element of Adequacy of food.

Adequacy of food connects to right to safe food as one of its components. It basically means availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture. The elements of dietary needs of individuals culturally acceptable food are relative terms which differ as per the needs of individuals, communities and also the surroundings. Amongst all, food has to be free from adverse substances is a constant requirement which touches upon the concept of right to safe food. Ensuring safe food and its delivery to the end consumers requires collaborated efforts of public and private entities. Governments, here are entrusted with inherent duty to set up a mechanism through protective and regulatory measures to prevent adulterated food from reaching the public. It enjoins that food should be safe for

human consumption and there should not be any contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Hence, Fact Sheet No. 34 clarifies that the right to adequate food is more than the right to safe food.

The Human Rights obligations necessitates the governments to form a National strategy to respect, protect and fulfil right to safe food. Such strategy should address critical issues and measures in regard to all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security. These minimal standards to be adhered by the States can very well be regulated through international treaties, many of them are in place too.

The World Health Organisation has attempted to define ‘unsafe food’. It reads, Unsafe food containing harmful bacteria, viruses, parasites or chemical substances that can cause more than 200 different diseases – ranging from diarrhoea to cancers. It is also established that Unsafe food contains microbiological, chemical, or physical hazards that can make people sick, causing acute or chronic illness that in extreme cases lead to death or permanent disability. Unsafe food reduces the bioavailability of nutrients, particularly for vulnerable consumers, and is associated with malnutrition.

Around the world, an estimated 600 million – almost 1 in 10 people fall ill after eating contaminated food each year, resulting in 420000 deaths and the loss of 33 million healthy life years. Statistics above exhibit that how unsafe food can lead to diseases and death. Most vulnerable amongst all are infants, young children, elderly and the sick people. It is therefore very elementary to understand that unsafe food can have deterrent effects on people with different immunity levels and across ages. World Health Organisation has been continually involved to enhance at a global and country-level the capacity to prevent, detect and respond to public health threats associated with unsafe food. The disastrous results of unsafe food can impede socio-economic development by straining health care systems and harming national economies, tourism and trade. With globalisation and flourishment of trade and tourism activities, the impact can be even more catastrophic. With the food supply chains becoming more complex, any adverse food safety incident may have global negative effects on public health, trade and the economy.

## **ENSURING DELIVERY OF SAFE FOOD IN CONTEXT OF INTERNATIONAL TRADE:**

The global food service market was valued at USD 2323.29 Billion in 2021 and is projected to reach USD 5194.60 billion by 2029. Undoubtedly, food is an important element in trade has attracted attention of traders especially in the post-covid times. Although, the attempts regulating international food trade are deep-rooted and go as old as a century back. A major milestone was in 1903 when the International Dairy Federation developed standards for milk

and milk products which laid a foundation in bringing standards to all food products. More specific initiatives followed with the establishment of Food and Agricultural Organisation in 1945, the International Standards Organisation in 1947 and the World Health Organisation in 1948 which have been crucial in deliberating and discussing food issues in context of human rights and also trade. The World Health Assembly in 1953 expressed the view that *“the increasing use of various chemical substances in the food industry has presented a new public - health problem which might be usefully investigated.”* It acted as a trigger for establishing standards in food to enhance trade which was followed by a regional food code, Codex Alimentarius Europaeus created in 1954 and its Council formation in 1958. The need for creation of international food standards was endorsed in the First FAO Regional Conference in 1960 and with the gradual joint efforts of FAO and WHO, the Codex Alimentarius Commission was established in 1963 and the Food Code was prepared.

Codex standards are international food texts, i.e., standards, codes of practice, codes of hygienic practice, guidelines and other recommendations, established to protect the health of the consumers and to ensure fair practices in the food trade. The collection of food standards and related texts adopted by the Codex Alimentarius Commission is known as the Codex Alimentarius. Currently the Codex Alimentarius Commission has 189 Codex Members made up of 188 Member Countries and 1 Member Organization i.e. the European Union. Codex sets standards for nearly 200 food products and has over 120 guidelines and codes of practice on a vast range of issues linked to food safety, quality and trade. These are constantly evolving and are being upgraded too. Although voluntary in nature and to be transformed into national legislative and regulatory framework to make it effective, it has been considered as a single most important international reference point for food standards.

Codex, although being non-mandatory in its implementation has seen a great success with the joint efforts of International Organisations. It is indeed well perceived that food chains, food trades and food supply be ensured safe while it reaches to its end user. Considering the significant impact it can have on assurance of human rights, it was in 1985 that the UN General Assembly stated that where possible Governments should adopt Codex Alimentarius standards. This statement has led to the acceptance of Codex standards among UN Members and have seen protracted impact in its adherence worldwide. From the international trade perspective, the World Trade Organisation has also extended its support by adhering to the Codex Standards in two of its agreements. This in a way has made the said standards binding on much of the countries of the world as it encourages its members to harmonise national regulations with the international standards. Further, it means that Codex standards, guidelines and other recommendations may also be used as a reference in case of a food trade dispute. The year 1995 marks as another turning point when Agreement on the Application of Sanitary and Phytosanitary (SPS) and Agreement on Technical Barriers to Trade (TBT) formally recognized International Standards, guidelines and recommendations, including the Codex Alimentarius, as reference points for facilitating international trade and

resolving trade disputes in international law. The SPS and TBT Agreements strike a balance between members' rights to regulate for legitimate objectives, such as food safety or consumer protection, and, on the other hand, ensuring that such regulations do not become unnecessary or discriminatory barriers to trade. Both the SPS and TBT Agreements encourage members at all levels of development to participate in relevant standard-setting bodies.

SPS Agreement specifically identifies Codex standards, guidelines and recommendations as the international benchmark for food safety, national regulations consistent with Codex standards and are deemed to meet the requirement of the SPS Agreement. Hence, it obligates WTO Members to ensure the adherence of standards as per Codex. Nevertheless, more stringent standards than those of Codex can be implemented upon scientific justification to achieve their appropriate level of protection, as well as when it is demonstrated that the measures taken are based on an assessment of risk.

The SPS Agreement basically lays down rules for food safety and requirements for animal and plant health and recognizes the right of governments to adopt and enforce measures necessary to protect the same. Significantly, it is to be noted that the Agreement does not prescribe a specific set of health and food safety policies that governments should adopt. Instead, the SPS Agreement sets out a framework of rules to achieve a balance between members' rights to adopt measures to ensure food safety, and the goal of limiting the unnecessary effects of such measures on trade. The rules require that measures be based on scientific findings and applied only to the extent necessary to protect human, animal or plant life or health, as well as that they not unjustifiably discriminate between countries where similar conditions exist.

On the other hand, TBT Agreement covers a wider variety of product standards and regulations adopted by governments to achieve a range of public policy objectives, such as protecting human health and safety or protecting the environment, providing consumer information and ensuring product quality. Under the TBT Agreement, members are free to choose how to regulate products to achieve those objectives but must do so in a way that does not discriminate between trading partners or that does not unnecessarily restrict trade in these products.

Apart from these initiatives, the very determined FAO and WHO created the International Food Safety Authorities Network (INFOSAM) in 2004 to facilitate rapid exchange of information across borders and between members. The need aroused with the growing food business and interconnected global food supply which has posed risks of unsafe food. As a member-driven, global network, INFOSAN is a practical, effective and efficient tool for information exchange, allowing for the implementation of risk management measures to prevent foodborne illness and save lives. INFOSAM members are also encouraged to take positive steps in issues related to food safety.

Safe food at the international forums have gained attention keeping in mind the health imperatives and much of the contribution is seen in the health discussion forums. The Right to safe food is recognised and reaffirmed in World Summit on Food Security 2009. The 53<sup>rd</sup>, 63<sup>rd</sup> and 73<sup>rd</sup> World Health Assemblies (WHA) had a specific focus on food safety. Specific resolutions have been made in each of these Assemblies urging the Governments to take positive and preventive steps to ensure food safety within their national frameworks. The 73<sup>rd</sup> WHA had specific focus on strengthening efforts on food safety, it recognised food safety as an essential element of public health and urged the Government to affirmative actions to ensure food safety at all levels and in all sectors. Food safety is linked in direct and indirect ways to achieving many of the Sustainable Development Goals(SDG), especially those on ending hunger and poverty, and promoting good health and well-being. The SDGs have also included in its target to end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round by 2030.

The World Trade Organisation organised the International Forum on Food Safety and Trade in 2019. Director-General Roberto Azevêdo in opening of the forum said that WTO rules on food safety play an important part in enabling governments to protect their citizens while ensuring trade can play its critical part in maintaining timely supplies of safe and affordable food.

## **CONCLUSION:**

From the above discussion, it is apparent that the World community is determined to ensure safe food to every corner of the world. Had right to safe food been considered only from a human rights perspective, the observance of the same would have been a far-sighted dream. Still, it seems to be a challenge as once the Codex standards are converted into the national laws, how of the implementation could be executed at national levels remains at the hands of governments. So far as the international trade aspect is concerned, it may not seem that traders diverge from the established standards, as every exporter of food items would ensure the most of safety regulations for flourishing of its trade across borders. However, at the domestic levels, developing and under-developed countries find ensuring food safety as an arduous owing to factors beyond their controls at times. It can be summed up that ensuring right to safe food is nonetheless the duty of governments, and ensuring the same in international trade can have sweeping impact on the economy as a whole. With the international brands available in most corners of the world due the expansion of globalisation, safe food no longer remains just as a human rights concern but also as a decisive factor in international growth and trade.

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