

“SAFE FOOD AND FOOD SAFETY IN INDIA: LEGISLATIVE BACKING AND ITS DISPUTE RESOLUTION MECHANISM. ROLE OF MEDIATION.”**Dr. Ashutosh Mishra¹, Shruti Shukla²**

Assistant Professor, Faculty of Law, University of Delhi and OSD Delhi School of Public Policy and Governance

JRF research scholar, Ph.D. candidate, Faculty of Law, University of Delhi

Abstract:

Food being the most basic unit and building block of life also collects the attention of all businesses. In process of producing and feeding the community and ultimately gaining profits out of it, companies and manufacturers often get involved in malpractices or different types of practices that are either prohibited or largely harmful to the consumers. Due to the importance that food holds in everybody's life globally and locally; authorities at all level guarantee several rights to the consumers, the violation of which attract disputes among the food providers and the consumers. The consumers facing these disputes when move to the Indian Court of Law, have to go through different galleries of difficulties such as longer resolution period, high costs and various other technicalities. Mediation alternatively is a more consumer friendly, amicable, convenient, cheaper and faster process to get out of the dispute and with a comparatively more satisfactory outcome. This paper attempts to explain how the rights of a food consumer gets violated and what approach the consumer can take to get an effective resolution of the same with the help of Mediation. The Consumer Protection Act, 2019 has dedicated a complete section to Mediation and the Ministry of Consumer Affairs, Food and Public Distribution, Government of India has this year itself launched its Consumer Handbook on Mediation that in details covers all the aspects of Mediation. This in itself signifies the importance and scope of Mediation in consumer dispute redressal matters. The paper has tried to elaborate the same further.

Safe Food and Food Safety:

Food, is the most basic and essential part of life. It is fuel for the body and thought for the soul. It is food, for which the entire world tirelessly works round the clock. Where to a particular segment of the world population, food is amply available; even up to the extent of luxury but at the same time, for a large segment, access to sufficient, safe and healthy food is still beyond reach. Food safety is not just a concept, but a necessity for all sections of society and for persons of all age group. Safe food is the most basic guarantee, a person can ask from his government of security provider. With the increase of commercialization and industrialization, the sanctity of food and nutrition has widely diminished. The penetration of preservatives, chemicals and even several carcinogens has tremendously increased in food products. There has been a long felt need to recognize this issue as grave and serious and to take national and international steps cumulatively towards it. Food Safety can never be seen as a standalone issue looking at just the final product at hand, instead the complete supply chain is involved in producing, processing and procuring the food. Making the food reach up to factory and then up to the plates of consumers is a sensitive task and needs to be done with care and safety. This proclaims

202699

involvement of several stakeholders and several parties. When the stakes are too high, it becomes important for governments and health organizations to take charge of this responsibility and to ensure availability and distribution of safe and healthy food. On similar lines, the World Health Organization in the year 2018 has declared, the 7th of June to be celebrated as the World Food Safety Day. On this day, they resolve to strengthen their efforts to work towards ensuring safer food and reducing the risk of food borne diseases.

The WHO calls to action on this day are:

1. *“Ensure it's safe - Government must ensure safe and nutritious food for all*
2. *Grow it safe - Agriculture and food producers need to adopt good practices*
3. *Keep it Safe - Business operators must make sure food is safe*
4. *Know what's safe - Consumers need to learn about safe food and healthy food*
5. *Team up for food safety - Work together for safe food and good health”*

Along with the WHO, individual nations also need to ensure that they not just morally, rather legislatively also should have a strong legal framework that supports this cause. Also, when grievances arise, the legal framework and mechanism should be effective enough to address and resolve the disputes. Safe food should be like a blessing and in Indian culture, it actually is. The importance of food cannot be overemphasized as it is so widely mentioned in Ancient Indian Texts and Sanskrit Literature.

One such shloka mentioned is:

आहार शुद्धौ सत्वशुद्धिः सत्वशुद्धौ । ध्रुवा स्मृतिः, स्मृतिलम्बे सर्वग्रंथीनां विप्रमोक्षाः ॥ —
छान्दोग्य उप. ७.२६.२

Which means that: When the food is safe and healthy, it cleanses our mind and thoughts too, by a clear and calm mind, our memory improves and ultimately it leads to upper consciousness and liberation.

Another shloka goes like:

ॐ सह नाववतु । सह नौ भुनक्तु । सह वीर्यं करवावहै । तेजसि नावधीतमस्तु मा विद्विषावहै ।
ॐ शान्तिः शान्तिः शान्तिः ॥

Which says that “Let us protect each other, let us eat together, let us work together, let us study together to be bright and successful, we do not hate each other. Peace Peace Peace.

Thus, in Indian culture, food holds utmost importance and the feeling of food has always been communal and not individual. Also, the moral responsibility of making the food available to all the sections of the society and at the same time ensuring that it is healthy too was also that of the entire community. The reflection of this idea is also seen in our Indian Constitution.

Right to Food: A Fundamental Right in India:

Exclusively, the term or phrase “Food Safety” or “Right to Food” is nowhere mentioned in the Constitution of India. But over the period of time, after judicial activism and public interest litigations the scope and ambit of Article 21 i.e. Right to Life has expanded vastly. Many rights that are inherent to right to life such as food, clean water, clean air, sleep etc. have been included

with Article 21. Similarly, the Article 47 i.e. the Directive Principles of State Policy imposes the moral duty over the state “to raise the standard of living and level of nutrition and improve public health”. Other than this, the Entry 18 in list III of the constitution empowers the Union as well as the State Legislature to frame laws over the area of food adulteration. Several cases are also there decided by honorable Supreme Court of India that helped the people get guarantee for safe food and right to food as a basic fundamental right. Such cases are, *Centre for Public Interest Litigation Vs. Union of India & Ors.* - on food safety. *Swami Achyutanand Tirth & Ors. Vs. Union of India & Ors.* - related to milk adulteration, *State of Uttar Pradesh Vs. Kartar Singh.* - solving conflict with right to carrying on business and *Association of traders carrying the food business Vs. Union of India* in which the supreme court did acknowledge that the right to safe food is intertwined with the Article 21 i.e. Right to Life. In reference to the same, the “National Human Rights Commission”, India has agreed and acknowledged this fact and also found that the government has not been practically able to guarantee this right to all its citizens as of now. At many places such as primary schools and mid-day meals the provision has been made for the same but gross violations are also happening. At several places the administration and public officers are unable to deliver this obligation properly.

Rights of Consumers:

1. As per **Article 21** the consumers have the right to receive food, that is safe and healthy. The food should not be adulterated and harmful to consume. The consumer should not be misinformed of the contents of the food and about its vegetarian or non-vegetarian contents.
2. **The Prevention of Food Adulteration Act, 1954** that prevents the consumers from consuming adulterated food. The Act has monetary penalty as well as prison as punishment mentioned in the act that protects the rights of the consumers.
3. **The Food Safety and Standards Act, 2006** that standardizes the food products and holds the items permissible or non-permissible for consumption of people including, heart patients, children, pregnant and lactating women. The Act also makes provisions for categorization of products to identify them as unhealthy and leading to several diseases or categorizing various carcinogens or similar harmful food additives. The Act also established a statutory authority Food Safety and Standards Authority of India to monitor all the responsibilities and fulfil the obligations of the Act.
4. **Right to Information** empowers the consumers to be aware of what they are being fed and what they are consuming. It is because of this right only that your favorite chips or Chocolate packet is printed with that ingredients list or nutritional chart. This helps the consumer to make informed food choices. [11]
[SEP]

Food Safety Complaints can be made by several ways and at several portals. FSSAI offers Food Safety Connect Portal for the same. This is an online portal where the customer can also track the status of his complaint by the help of a unique identification number. Also, complaint can be filed with the state authority such as the Food Safety Commissioner or the District Consumer Dispute Redressal Forum.

Types of food safety issues that creates disputes:

1. **Adulteration:** the most common problem is in relation to food adulteration. The food being served being of cheaper quality, and mixing of products or chemicals that are not allowed or

harmful to the health of the consumers. Many a times colors that are not permissible are mixed in the food which causes diseases and sickness. Also, in the name of preservatives, high dosage of the same is added to the food that causes imbalances. Consumers fall sick and then they should get the appropriate resolution and compensation for their sufferings.

2. Unhygienic Food: More than what is being served, it is very important that how it is being served. Is the food being prepared in a clean, pest and pathogen free environment? Is the packing of the product as per the permissible standards? Is the temperature at which it is being stored appropriate? Unhygienic food does further lead to sickness and suffering and can even cause death of the consumer. Thus, such disputes should be addressed too at priority.

3. Misrepresentation of Misleading Advertisement: The market is entirely full of misleading advertisements. The ads glorify the products to be of utmost health and safe to consume but when researched in detail, the mixing of such so called healthy ingredients are not more than 1 or 2 percent. Many a times the companies even don't care the age groups that they are catering to. Such foul play is done even with kids nutritional drinks or old people care products.

4. Governmental Oversight: Many a times, the fault is at the part of Government. They do know about the misrepresentation or contamination but because their own inherit profits are involved, they tend to ignore the issues and cases unless some big incident happens. In such cases, the government also become party to the dispute and should be held liable in all cases.

There are many other factors that are related to food and health. Such factors can be categorized into 3 major categories. i.e. Microbial (pathogenic microorganisms), chemical (mycotoxins, pesticide residues, heavy metals, residues of veterinary medicinal products) and physical (foreign bodies) hazards. The food safety authorities need to assure that the food reaching the consumers are free from these mixes or at least are inside the permissible level. Whenever the food would be over contaminated with any of these, someone or the other would fall ill and then a dispute would for sure arise between the food provider and consumers. Such disputes when go into litigation are not very fruitful because of the long timeline in resolution of these disputes and the heavy cost involved. Also, the technicalities of the court tire the consumer unnecessarily. Sometimes the compensation awarded is much lesser than the money spent in fighting the case legally. Also, when very big parties are involved, they tend to spend more and take advantages of the legal loopholes through which they win the cases without the affected party getting ample relief. In the court of law, the reputation of the company is at stake due to which they do not feel like compromising so that further similar cases are not attracted. Such cases get better, timely, cheaper

Mediation for Food Safety Consumer Disputes Redressal:

The Consumer Protection Act, 2019 contains a separate chapter with the heading "Mediation" in it. This shows how important, the provisions of Mediation is for redressal of consumer disputes. Very evidently, in the preface of Consumer Handbook on Mediation, it is mentioned that Right to timely access to justice is a well-recognized fundamental right. *"The term justice means giving a person what he or she deserves. Mediation under Chapter V of the Consumer Protection Act, 2019 has empowered the consumers to negotiate on his own for what he deserves. Introduction of Mediation in Consumer Protection Act, 2019 is commendable since it is a milestone in the history of Consumer Law."* The handbook has several chapters that in

detail define the entire process of Mediation. The handbook also talks about the benefits of Mediation over conciliation and adjudication.

Advantages:

1. **Voluntary Process:** First of all, the process of Mediation is completely voluntary. It goes at the will of both the parties. After the Indian Court made Pre-Litigation Mediation in commercial disputes compulsory, then after the first meeting, the parties can anytime leave mediation if they feel that things are not working out or going their way. The parties are also free to choose the mediator or request for change of mediator in case they are not satisfied with the one who is Mediating over the case. This is a big advantage which is not there in Litigation.
2. **Control of Parties:** The process of mediation is at the self-determination of the parties, that is the parties have full control over the proceedings of the process. They can choose what to disclose and what not to the Mediator.
3. **Cost and Time Efficient:** Mediation is not just cheaper than Litigation but also takes lesser time to complete when compared to litigation. In Litigation, the dates of proceedings are to be decided by the court whereas in Mediation, the schedule can be finalized with the agreement of the parties and mediator involved which gives faster resolution.
4. **Confidentiality:** This aspect is unavoidable and often underestimated. Mediation is a completely confidential process. Thus, the parties can freely negotiate, make offers as per their will and can even reject the offer if not satisfied. They do not have to worry about their image getting ruined or tarnished.
5. **Amicable Settlement:** It is often seen that service providers or companies are afraid of getting disputes resolved in the court because whatever would be the decision of the court would get public and then similar claims and cases would also be filed by other customers too. Instead, when mediating the terms of settlement is confidential and at many times amicable and creative too. There is a chance that the party will get much more compensation in Mediation than offered by the courts.
6. **Win-Win Situations:** It is a common saying, that even if the Mediation fails, it is still a win-win situation for both the parties. Because they get a chance to confront each other amicably that is very important to settle and satisfy their ego. Even if the mediation failed, the doors to courts are always open. Alternatively, mediation being successful means that the parties got what they actually wanted. Thus, no one loses in Mediation, but both the parties win.
7. **Convenient:** The parties can always choose the place and time of mediation making it more convenient than litigation.

In a Nutshell: Food is the essence of life and holds a religious, natural and cultural sanctity in itself in all the regions of the world. No one can remain alive without food and if not anything else, should have the right to get access to at least simple and safe food for living. There is a reason why people in all cultures have some prayers or hymns attached to food. Reason to why there are festivals that are celebrated around food. In India this sanctity is even more. Every year, starting from Makar Sankranti, till post Diwali, we offer food to mother nature and celebrate it in different manners. Over a period of time and industrialization the source of food

has shifted from farm to factory. Also, factors like chemicals, preservatives, food colors, flavor enhancers, pest resistant and various kinds of commercialized packaging have also entered between us and our food. In order to save cost and gain profits, often the most important aspect of food i.e. consumers health gets compromised in this process. There are several disputes that arise and the consumers face due to exposure to bad or substandard food and when they feel like raising voice against it, there are so many technical barriers in their path that they often give up over the process. Mediation is a process that gives high hope in cases of consumer disputes. The Consumer Protection Act has backed this process by dedicating a complete section of the Act to Mediation. The process of mediation is much easier and convenient than Litigation and facilitate the customer with better outcomes and terms of settlement. It is also a win-win situation for the food provider or company involved. They always get chance to improve upon without tarnishing their image in front of the public at large. Thus, the government, judges and other related stakeholders should always try to raise awareness and create a facilitative pathway for Mediation in times to come because as Victor Hugo rightly said, "Nothing is more powerful than an idea whose time has come." The dawn of Mediation has just broken up and hold many sunny days in times to come.

References:

Books:

Nishikant Bhibu, Strengthening the Justice Delivery System in India Through Mediation, Mediation, 95 (V.K.Ahuja, Ashutosh Mishra, Ashutosh Acharya et. al. Satyam Law International 2020).

SUKUMAR RAY, Alternative Dispute Resolution, 72 (Eastern Law House 2007).

Web Sources:

Right to Food - A Fundamental Right. available at: <https://nhrc.nic.in/press-release/right-food-fundamental-right>

Mahima Sharma, Right to Hygienic Food - a fundamental right in India. available at: <https://nhrc.nic.in/press-release/right-food-fundamental-right>

Dr. Rashmi Ranjan Mishra, Ms. Maitreyee Chakrabarty, Right to safe food: Constitutional Perspective, available at: <https://journal.lawmantra.co.in/wp-content/uploads/2016/02/8.pdf>

Mediation from the Perspective of The Constitutional Promise of Access to Justice by Mr. A.J. Jawad, Legal Eagles Elites, Feb. 13, 2021

Consumer Handbook on Mediation (FAQ), accessible at: <https://www.scribd.com/document/665084877/ConsumerHandbook-Mediation>

World Food Safety Day, 2021, accessible at: <https://www.who.int/campaigns/world-food-safety-day/2021>

Global Hunger Index, 2021, accessible at: <https://www.globalhungerindex.org/pdf/en/2021.pdf>

FSSAI complaint redressal mechanism, accessible at: <https://ssrana.in/corporate-laws/food-laws/fssai-complaint-redressal-mechanism/>

Amit Pratap Shaunak, India: Access to Justice in India, rights/369048/ =access-to-justice-in-india, accessed on 05th of July 2021, 18:30 pm.

Black's Law Dictionary, 8th Ed., p. 1003.

Legislations:

Article 21, The Constitution of India

Article 47, The Constitution of India

Article 39(a), The Constitution of India

The Consumer Protection (Mediation) Rules, 2020, available at: [https://thc.nic.in/Central%20Governmental%20Rules/Consumer%20Protection%20\(Mediation\)%20Rules,%202020..pdf](https://thc.nic.in/Central%20Governmental%20Rules/Consumer%20Protection%20(Mediation)%20Rules,%202020..pdf)

The Consumer Protection Act, 2019, available at: <https://www.indiacode.nic.in/bitstream/123456789/15256/1/a2019-35.pdf>

Seventh Schedule (Article 246) List III—Concurrent List 18: Adulteration of foodstuffs and other goods.

Cases:

Salem Advocate Bar Association v Union of India, (2003) 1 SCC 49, (2003).

Salem Advocate Bar Association v Union of India, 6 SCC 344, (2005).

Afcons Infrastructure Ltd. V. Cherian Varkey Construction Co. (P) Ltd., 8 SCC 24 (2010).

Centre For Public Interest Litigation ... vs Union Of India Thru Secretary on 23 January, 2020

Swami Achyutanand Tirth & Ors vs Union Of India & Ors on 5 August, 2016

State Of Uttar Pradesh vs Kartar Singh on 6 February, 1964