

ROAD SIDE FOOD VENDORS AND FOOD SAFETY LAWS IN INDIA- AN ANALYSIS

DR. DEEPTI KHUBALKAR

Assistant Professor in Law
Symbiosis Law School

Symbiosis International (Deemed University)

Mouza-Bhandewadi
Wathoda, Nagpur-440008
Maharashtra State, India.
Email [deeptikhubalkar@gmail.com]

Abstract

Food business in almost every country in the world is governed by legal regime which may have scientific or non-scientific base. Such norms which are providing certain standards of food safety requirement may act as trade restrictions and non-tariff trade barriers. In India, where right to trade and business is a fundamental right guaranteed to every citizen under Art. 19, right to health is also implicitly guaranteed as fundamental right under Art. 21 of the constitution of India and consequently, the latter acts as restriction to the former when it comes to the health of citizen with respect to right to hygienic food. Major food related problem arises because of the low grade food used by street vendors. This research paper examines the application of food safety rules on food sold by road side vendors. The data is collected in the year 2019-2020 from the West and East area of Nagpur city, Maharashtra, India to check how many vendors have registered themselves with food safety department to meet the standards of food safety. Procedure of Food licensing and standards are governed in India by Food Safety and Standard Act, 2006. Researcher found that, India needs effective implementation of food safety rules to check the standards of food sold by road side vendors.

Key words: food safety regulations, Constitution of India, Right to health, Nagpur, India.

Introduction

In the era of globalization, food business is one of the blooming businesses worldwide. In a developing country like India, roadside businesses are not only for employment but also for food at cheap price to those who are unable to afford costly eating houses. One of the key area of attention in these businesses is food safety. India is already facing challenges with respect to poor sanitation, contaminated water, and health hazard relating water born deceases. Constitution of India, under article 21, provides safeguard to dignified life which is interpreted by the Apex Court to include right to health in conformity with international conventions for instance *Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights*. These conventions are statutorily accepted under Indian laws. Directive Principles of state policy under part IV of the Constitution of India imposes “duty upon the state to raise the level of nutrition and standard of living of its people and the improvement of public

health. In particular, the state should bring about prohibition of the consumption of food, drinks and drugs which are injurious to health”¹.

In the case of *Bandhua Mukti Morcha v. Union of India*², Supreme Court of India, has held that the Art. 21 as fundamental right derives its meaning to include right to live with human dignity in the light of directive principle where it is a duty of state to provide protection to people's health. In another case³, court held that it is the duty of state to provide health facilities to its citizens as the right to health is implicitly included under right to life under Art. 21 of the constitution and state should maintain adequate health services for people within its territory.⁴ Right to life under Art 21 is also interpreted as right to food as an essential component of Art. 21 which ensures adequacy, availability, accessibility and non-adulterous food. Right to food was for the first time declared as human right under the Declaration of Human Rights 1948 which was also included in the Covenant of 1966 For Civil and Cultural Rights.

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 defines “street vendor” to include all those persons who are selling food related materials, cloths and other goods on the sides of road such as pavement, or footpath or at any place of public use by building a temporary structure or by moving from one place to another. The definition is inclusive and specifically includes hawkers, peddlers, squatter within the meaning of street vendors.”⁵ This Act is passed to recognize the rights of street vendors to carry on the business according to the provisions of the Act. However, it is the domain of the state to regulate these businesses by putting reasonable restrictions in general interest of the public which includes food safety and right to health. Thus, to protect rights of citizens to health and food safety, Food safety laws has been enacted by the state in the year 2006.

Legislative framework in India for food safety

Unhygienic and unsafe uncovered food are responsible for countless diseases from diarrhea and jaundice to cancer⁶. India has two major umbrella laws relating to food safety; Food Safety and Standards Act 2006 (FSSA) and the Prevention of Food Adulteration Act, 1954 to provide legislative safeguard to food safety in India. As such the term food safety is not defined under any laws in India, but generally it is understood as a standard where food is considered fit for human consumption. FSSA makes mandatory for those who want to start or initiate food business, to get permission and license from Food Safety and Standards Authority of India. FSSA replaced all previous laws relating to food safety in 2006. Prior to FSSA, provisions relating to food safety was dealt with by Prevention of Food Adulteration Act, 1954. FSSA prescribes standards of food on scientific assumptions and regulates their storing, sale and import, manufacture, distribution for meeting the requirements of fitness to human consumption and ensures food safety. Section 91 of the Food Safety Standard Act, Central Government is

¹ Art. 47 of Indian Constitution, Pandey J.N, *Constitution of India*. 384 (central Law Agency 43rd ed). (2006).

² *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802

³ *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83.

⁴ *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117.

⁵ Sec2 (l), The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

⁶ Bharat Paul et.al, Food Safety: The Indian Perspective, National Journal Of Community Medicine, Volume 6, Issue 2, Apr – Jun 2015, (May 9, 2020), www.njcmindia.org

empowered to make further rules for better implementation of the Act. In exercise of the power given under the Act Central government has framed six regulations.

Under FSSA six regulations are implemented, one of these is Food Safety Standards (Licensing and Registration) Regulation, 2011. All food businesses are required to get license and registered themselves with the authority appointed for the designated area. Authorities under FSSA acts under the Ministry of Health And Family Welfare. Every state appoints a food safety commissioner for implementation of food safety standards who acts through food safety officers for every specified area.⁷ These food safety officers are empowered to collect and seize food sample and send it for testing. Every person who wants to start his food business must obtain license. He is required to fulfill safety standard to get registration or license under the law. State food commissioner notify local bodies such as Municipality, panchayat as registering authority. Section 59 of the act provides punishment for unsafe food.

Analysis of data collected from roadside vendors

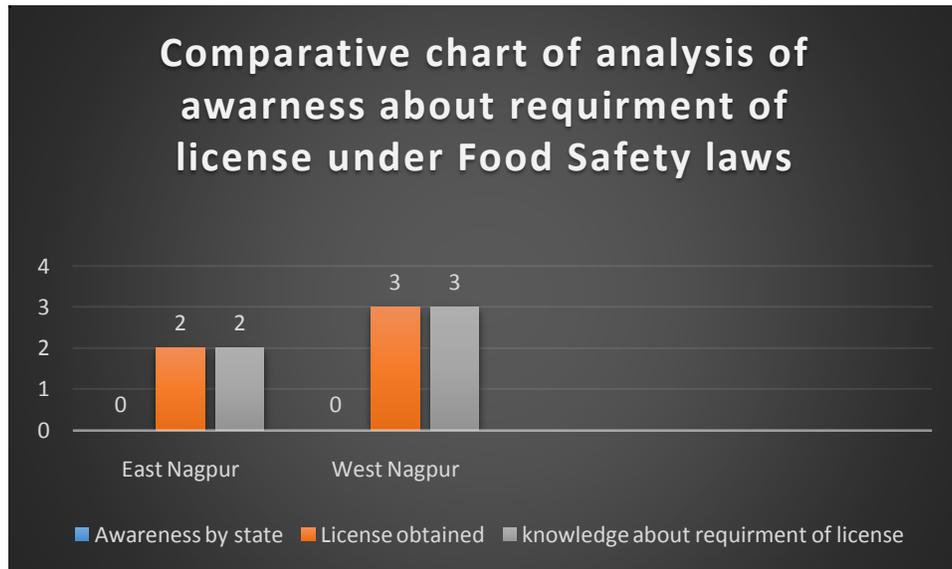
Food sold by street vendors are normally cheap in price and enjoyable to public but, food standard used by them are difficult for the consumers to know whether it is safe to consume. Therefore, through data collection from East and west side of Nagpur city, Maharashtra, India, researcher tried to find out the standards of food safety followed by food vendors and role of authority under food safety laws to keep check upon them. Data of 50 vendors from West and East Nagpur each was randomly collected through questionnaire. 55% sample sell homemade food. Remaining prepare their food as per the order (mostly in unhygienic condition) at selling place. 90% vendors are using plain water (quality of water not known) to clean serving plates and only 10 % use soap. During field visit it is observed that, many of them were not even washing vegetables before using it, food is not covered properly which attracts flies, these people are not trained regarding waste management. Dust and fumes released from the vehicles makes these open foods vulnerable. These vendors are not literate and therefore, unable to get information regarding licensing procedures and even they are not aware about the food safety laws. Few vendors are selling food ranging between 6-10 years. According to them, no awareness campaign about the law is made in these area.

Following chart indicate the percentage of registration and awareness amongst the vendors about the food safety laws in India.

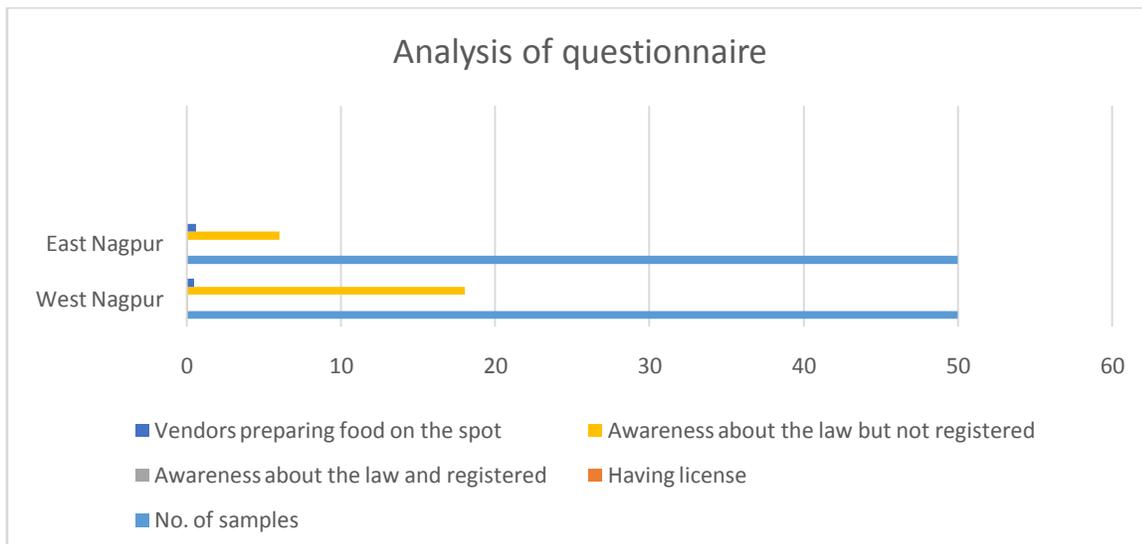
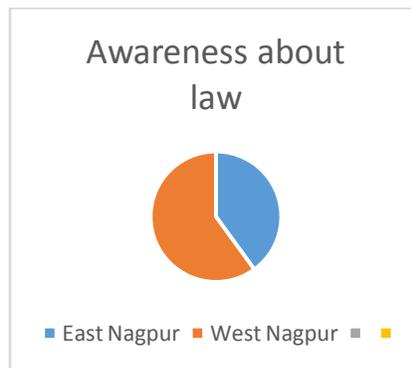
Area	No. of samples	Having license	Awareness about the law and registered	Awareness about the law but not registered	Vendors preparing food on the spot	Cleaning utensils with soap
West Nagpur	50	1.5%	1.5%	18	45%	10%
East Nagpur	50	1%	1%	6	56%	0%(using water only)

⁷ Cadman, et al (2017), Food Safety and Standards in India, ICAR-Indian Agricultural Research Institute, New Delhi India and Griffith University, Nathan, Queensland, Australia (May.10,2020,10:AM), <https://www.researchgate.net/publication/321867744>

Source: on the basis of field survey



Source: on the basis of field survey



Source: on the basis of field survey

Judicial activism and rights of street vendors

Food safety is one of the priority of the country to protect social and health interest of the community. This not only affects the health of people but also vital for employment and economic growth of the country. No doubt, Indian constitution protects this right as fundamental right to life, yet right of freedom of trade of street vendors is also protected as constitutional right and statutory right under Art 19(1)(g) and The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 respectively.

Article 19(1)(g) provides for right to carry on business or trade. However, this right is subject to reasonable restriction on the ground public well-being.⁸ In *Sodan Singh v. New Delhi Municipal Committee*⁹, Supreme Court held that “*hawkers have a fundamental right to carry on trade on pavement of roads, but subject to proper regulation and reasonable restrictions under Art 19(6) of the Constitution. So far as right of a hawker to transact business while going from place to place is concerned, it has been admittedly recognized for a long period. Of course, that also is subject to proper regulation in the interest of general convenience of the public including health and security considerations*”.

This judgement is referred and followed in series of cases including *Bombay Hawkers' Union vs. Bombay Municipal Corporation*¹⁰, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai*¹¹, *Saghir Ahmad vs. State of U.P.*¹² and *Gainda Ram vs. Municipal Corporation of Delhi*¹³. In *Bombay Hawkers' Union's* case court held that “*only cooked food properly packed with all the care of hygiene can be sold on street. food must not be adulterated or unhygienic. All Municipal Licensing Regulations and the provisions of the Prevention of Food Adulteration Act must be complied with.*”.

Conclusion and suggestions

In India huge number of people are engaged in street food business. They are also important for the reason that the millions of poor people and lower income class depends upon the street vendors for their basic requirement. Various cases filed before the court reflect that these street vendors are victimized of the behavior of state official and court has timely intervened in these matters where dignity and humanity is protected when Art. 19(1)(g) and 21 of the Constitution is construed broadly. Street vendors while selling food on the street must be subject to fulfillment of the mandate provided under food safety law. The researcher opined that the food safety law is enacted for the protection of health rights of people but in absence of strict implementation, it only will remain as blue letters only and will of no use.

⁸ Jain M.P. *Indian Constitutional Law*. (Wadhwa and Company. 5th ed.).(2006).

⁹ *Sodan Singh v. New Delhi Municipal Committee*, AIR 1989 SC 1988

¹⁰ *Bombay Hawkers' Union vs. Bombay Municipal Corporation* (1985) 3 SCC 528

¹¹ *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai*, (2004) 1 SCC 625, (2009) 17 SCC 151

¹² *Saghir Ahmad vs. State of U.P.*, AIR 1954 SC 728

¹³ *Gainda Ram vs. Municipal Corporation of Delhi*, (2010) 10 SCC 715

It is failure of duty of public authority. It is their duty to carry on inspection and take action against the vendors who are selling food without registration. If there is a failure to implement the law, situation is not less than lawlessness.

State must provide various measures to be adopted to ensure safety of food sold on roadside. Proper training regarding hygiene and healthy food habits before granting license. Their license should be subject to cancellation if the food they are selling is found in an unhygienic condition. NGOs must come forward to make them aware about the provisions of food safety regulations. Time to time awareness campaign can educate and train the vendors about the methods of hygiene cleanliness habit and waste management. Street play can be organized by involving the law college students. Regular and surprise checking by authorities must be conducted to check the quality of food. It is also the responsibility of the well informed consumers to avoid and reject food stalls not registered with the authority and not following the basic hygiene. It will force them to comply the regulations. A separate vendors zone and regular inspections and check is a need of the time.

References:

1. Jain M.P. *Indian Constitutional Law.*(Wadhwa and Company. 5th ed.).(2006).
2. Pandey J.N, *Constitution of India.* 384 (Central Law Agency 43rd ed). (2006).
3. Food Safety and Standards Act 2006 (FSSA)
4. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014
5. <https://www.fssai.gov.in/notifications.php>
6. <http://www.swaniti.com/wp-content/uploads/2017/11/Food-safety-in-India.pdf>
7. <https://www.foodqualityandsafety.com/article/food-regulations-what-is-the-current-scenario-in-india-2/>
8. <https://www.hindustantimes.com/delhi/compulsory-registration-rule-for-all-street-vendors/story-IlcHV61VugqsSdt2p9d0YI.html>
9. <http://nasvinet.org/newsite/registration-of-street-food-vendors/>
10. <https://www.downtoearth.org.in/coverage/street-food-vendors-threatened-after-court-ruling-6173>
11. https://shodhganga.inflibnet.ac.in/bitstream/10603/208973/10/10_chapter%203.pdf
<https://www.researchgate.net/publication/321867744>
12. [Www.Njcmindia.Org](http://www.Njcmindia.Org)