Absolute Liability and Its Application to Food Adulteration in Indian Perspective

Monika Negi
Assistant Professor (Laws)
Panjab University Regional Centre, Hoshiarpur, Punjab, India

ABSTRACT
The phrase ‘Absolute Liability’ mean Liability without fault, without intention or without negligence. Liability of this kind is exceptional under the Common law as the ordinary rule is that a person is liable only for the harm due to his intention or negligence and not for other kind of harm which would be merely considered inevitable accident. Except where it is relic of history as in the case of trespass to land Liability for such accident rest on the principle that a person engaging in an ultra-hazardous work of activity from which injury to others is likely is to result notwithstanding his reasonable care should pay for some injury. In the light of above statement the present paper analyze the concept of absolute liability and its application to food adulteration and liability of manufacturers as laid down in the enactment passed by the Indian Parliament i.e. The Food Safety and Standards Act 2006.

Keywords: Absolute Liability, The Food Safety and Standards Act 2006, India

INTRODUCTION
Tort is a civil wrong, which is redressible by an action for unliquidated damages not amounting to mere breach of contract. Law of Torts covers numbers of wrongs, which can not be fitted into one definition as according to Salmond there is no law of Tort, it is a law of Torts. Thus, the law of Torts covers a variety of specific rules prohibiting harmful act. In almost all tortious act, there must be three things viz, wrongful act, breach of a legal duty and resulting harm. Every person who breach his duty shall be liable. Ryland v. Fletcher1 was the first case under which the liability of breach of legal in the case of negligence is categories as ‘Strict Liability.’ But the provision of Strict Liability was felt unsuited to Indian situation. Thus the court in the case of M.C Mehta v. Union of India2 propounded new concept of Tortious Liability in which there is no need place of exception. That’s why the Liability was termed as Absolute Liability.

However, in England we cannot hope to find any such for mutation in cases which recognized Absolute Liability, because they did so at different times and for varying reasons and against a back ground of legal history to which any such statement of principal was Foreign. But the cases will now ever, on examination be found to rest ultimately on some such principle of policy.3

For instance, the rule as to the cattle trespass, one of the oldest cases of Strict Liability is capable of explanation. A person who keeps cattle may not be able with reasonable care to prevent the staging and doing damage occasionally to his neighbor’s crops, but it is just and reasonable to the interest of agriculture that he should pay for the damage. This perhaps is the explanation for the old rule at process that the remedy for such damage was an action for trespass in which the plaintiff had only to prove the trespass and not any bears of duty on the part of the defendant. This rule of Strict

1 1868 LR3 (HL) 330. Rylands possessed a piece of property but did not have rights to the mines and veins of coal under the surface. Fletcher possessed coal mines located near Ryland’s property. Rylands constructed a reservoir on his property above an abandoned coal mine that was connected to Fletcher’s mines below the surface. The shafts of the abandoned mine below Ryland’s property had been filled in with soil and did not know or suspect that there was an abandoned mine below the surface. When the reservoir was filled, water flowed into Ryland’s mines causing the mine to shut down. Fletcher sued Ryland for damages and lost profits.

2 1987 SCR (1) 819. The case originated in the aftermath of oleum gas leak from Shriram Food and Fertilisers Ltd. complex at Delhi. This gas leak occurred soon after the infamous Bhopal gas leak and created a lot of panic in Delhi. One person died in the incident and few were hospitalized.

3 Id.at 52.
Liability under Ryland v. Fletcher\(^4\) for harm due to the escape of dangers things brought by a person on his land is a modern extension of the old rule as to the cattle trespass. The principle of responsibility for hazard or danger inherent in certain activities is capable of an elastic interpretation and will justify other rules of Absolute Liability under common law of statute.\(^5\)

The rule as to Vicarious Liability of employer’s or agents in business or Industry is in present conditions necessarily attended with risk of their employers cannot avoid with all possible care and he is therefore regarded as an insurer of others’ against such injury. The principle of insurance against harm is in accordance with the ideas of social justice that is now it prevails and become the avowed feature of modern legislation such as Workmen’s Compensation Act, 1923 in India that is Prevention of Food Adulteration Act, 1923 and Motor Vehicle Act, 1987.\(^6\)

In Read v. Lyon\(^7\), it has been regarded as establishing a rule of Strict Liability is that of an insurer, in a particular class of cases. This rule is however, qualified by a number of exceptions which considerably reduce the scope of its operation.

**Rule of Absolute Liability in Ancient India:**

Opening up at the Hindu Mythology, Vedas, Purans, Upanishads and other Ancient scriptures of the Hindu religion have given a detailed description at trees, plants, wild and their importance to people, Yajnavalkya Smiriti prohibited the clothing at trees by prescribing punishment for such Act which would be absolutely the necessity of forest administration and Asoka’s 5th pillar edict express his view about the welfare of the creatures in the state\(^8\). Evidence from the civilization of Mohenjo-Daro and Harappa has further proved that the small population lived in consonance with the ecosystem and their needs maintained harmony with environment\(^9\). Thus, Hindu society was conscious of the adverse environmental effects caused by deforestation and extinction of animal species if anybody was found to infringing the rule, would be Absolutely Liable.\(^10\)

**Evolution of Rule of Absolute Liability:**

Liability is another side of the rights accorded to citizens. Evolution of liability went hand in hand with evolution of law and society, vicarious liability evolved when the concept of delegation came about thus possibly in cave man society when a child destroyed property his/her parents would be held liable, later in the civilized societies of Sumer and Indus this would be slave or servant. Romans refined the system of liability and also added the codes of law and liability the vanquished would face, but the real impetus to provide a fault based liability came in the Islamic era when the Islamic canon laws derived independently or under the influence of Roman laws. Post renaissance laws regarding liability evolved at a fast pace in the common law system of Britain where the concept of Damnum sine injuria (damages without injury) was given precedence. Thus any damage would not necessarily give rise to injury and according to scholars of that era injury was necessary to provide relief\(^11\).

The Indian judiciary had tried to make strong efforts following the Bhopal gas tragedy, December 1984 to enforce the disaster amount of protection to public. The doctrine of Absolute

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\(^4\) Supra note 1.


\(^7\) Supra note 3. An explosion occurred in a munitions factory and injured an inspector who was present during the explosion and sued the company arguing that liability should be based on the principle of strict liability.

\(^8\) J.S. Badyal, History of Ancient India.

\(^9\) Id. at 88.

\(^10\) Rule of Absolute Liability, www.findlaw.com/22/01/2015)

Liability was evolved in Oleum Gas Leak Case and can be said to be a strong legal tool against those corporations that were negligent towards health risk for public. This legal doctrine was much more powerful than legal doctrine of Strict Liability developed in U.K case Ryland v. Fletcher. This meant that the defaulter could held liable for even third party error when the public was at a high risk.

This could ensure stricter compliance to the rule that were meant to safeguard the public. The doctrine of Absolute Liability has been originated in India in case of M.C. Mehta v. Union of India after the Oleum Gas Leakage from Shri Ram Food and Fertilizers’ Ltd. Complex at Delhi. In this case one person died and few were hospitalized. The case laid down the doctrine of Absolute Liability and made one observation that since we are not deciding the question as to whether Shri Ram is authority within the meaning of Article 12 so as to subject to the discipline of the fundamental right under Article 21. We are found that the industry which is involved in hazardous or dangerous activities is Absolutely Liable without any fault.

PRECAUTIONARY PRINCIPLE:

The Precautionary Principle or Precautionary approach to risk management states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is not harmful, the burden of proof that it is not harmful falls on those taking an action. The principle is used by policy makers to justify discretionary decisions in situations where there is the possibility of harm from making a certain decision (e.g. taking a particular course of action) when extensive scientific knowledge on the matter is lacking. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

The technology of Genetic Engineering is a fit case for the application of Precautionary Principle. Precautionary Principle necessitates that if there are reasonable scientific oriented for behaving that a new product may be harm to the public and not safe, it should not be introduced until we have convincing evidence of reasonable certainty of safe for the public. The principle can also be applied to existing technologies when new evidence appears and suggesting that they are more dangerous than what society previously had faced. The principle suggest that to withdraw the products or impose a ban on the dangerous product which may harm the society.

The Apex court of India in A.P. Pollution v. M.V Naidu held that Precautionary Principle is applicable in India. The principle mandates that when a new technology or process causes serious and irreversible harm to the health of the public and the environment, Precautionary measures should be used even though, some cause and effect relationship are not fully established scientifically.

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12 Supra note 2. The case originated in the aftermath of oleum gas leak from Shriram Food and Fertilisers Ltd. complex at Delhi. This gas leak occurred soon after the infamous Bhopal gas leak and created a lot of panic in Delhi. One person died in the incident and few were hospitalized.

13 Supra note 1.
14 Id. at 311.
15 Supra 2.
16 M.C Mehta v. Union of India AIR 1987 SCR (1) 819.
17 https://en.wikipedia.org/wiki/Precautionary_principle
19 Id. at 17.
SCOPE OF ABSOLUTE LIABILITY:

The scope of the Absolute Liability is that if the enterprise is permitted carry on any hazardous or inherently dangerous activities for its profit, it must be presumed that such permission is conditional or subject to restriction that he would pay the cost or damage for the same. In other words, if any company or industries carry any harmful and danger activities he shall be liable without any excuse and he shall not take any defense that it was happened without his intention or knowledge. In modern era the scope has widened, this doctrine is not only applicable in socio-economic offences but, against the environment offences.

The court had also widened the scope of Absolute Liability in M.C. Mehta v. Union of India, the court find that the activities of producing chemicals and fertilizer is deemed by the state to be an industry of vital importance of public interest. The activities should be carried out by the state itself, in the interim period with state support and under the state control. Private corporations may also be permitted to supplement the efforts. The argument of the applicant on the basis of this premise was that in view of this declared industrial policy of the state. Even Private Corporation manufacturing chemicals and fertilizers can be said to be engaged in activities which are as fundamental to society as to be necessarily considered government functions.

ISSUE OF STRICT AND ABSOLUTE LIABILITY:

On the question of developing a new doctrine of Absolute Liability is that the Liability under this rule is Absolute and it is no defense that the thing escaped without that person’s willful act, default or at its existence. This rule is laid down that the things brought by the owner on his land and collects and keep there anything likely to harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused for the same. This rule applies only to non-natural use at land and does not applies to things naturally on the land or where the escape is due to an act of God and an act of stranger or the default of the person injured or where the thing escaped is present by the consent of the person insured in certain cases where there is a statutory authority.

This rule was evolved at the time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any such kind of Liability consistent with the needs of present day uncanny and social structure. We need not feel inhabited by this rule when was evolved in this context of a totally different kind of economy. Law is to be followed in order to satisfy the need of the fast changing society and keep abreast with the economic development taking place in the Country. We cannot allow all suicidal thinking to be contacted by reference to law as it prevail in England or for the matter of that in any other Foreign Country.

We are the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which possess a potential tenet to health and safety of persons working in the factory and residing in the surrounding areas owes an absolute and non-delegate duty to community to ensure that no harm results to anyone an account by hazardous or inherently dangerous nature. The other activities which it has undertaking one Absolutely Liable to compensate all those who are affected by the accident. Absolute Liability is not subject to any of the exceptions vis-à-vis the tortuous principle and strict liability under the Ryland v. Fletcher.
Doctrine of Absolute Liability under Food Safety and Standards Act, 2006.

Food is one of the basic necessities for sustenance and for sustenance healthy diet is essential for the good health of the people. It is said that community health is National wealth. So the Food laws are to be enacted to protect consumers against unsafe products, Adulteration and fraud, as well as to protect the honest Food producer and trader. They also are facilitating the movement at goods within and between consumers by providing a common lexicon for good quality and safety. Food laws have traditionally been considered to be the responsibility of the public and government both.

The consumers in India are the most helpless victims of the society coupled within National one soft legal system which permits exploitation by the manipulation and mechanizations of vested interest. Here under the Indian Constitution, “it is the State’s duty to raise the level of nutrition and the standard living and to improve the public health.” So the Parliament of India enacted Food Safety and Standards Act, 2006. Under the Act there provisions for which deals with the Absolute Liability. According to the Act if anyone commits breach or violates the law or any provision of the Act, he shall be Absolutely Liable without any fault.

Need For Enactment of Food Safety and Standards Act: 2006.

The provisions related to Adulteration of Food under the Indian Penal Code, 1860 did not protected the consumer interest and provided the effective remedy. Hence the Prevention of Food Adulteration Act, 1954 and many other Food legislations were enacted. Even after repeated amendments to the PFAA in 1964, 1971, 1976 and other Food related legislations to make them effective, there was no reduction.

New Delhi: In a new development for the troubled Nestle, Mumbai-based NGO Watchdog Foundation on Monday filed a criminal case against the Indian arm of the Swiss multinational giant, Nestle India, and its nine directors over the Maggi noodles issue. The case, which was filed in Metropolitan Magistrate Court, Andheri in Mumbai, also named Maggi brand ambassadors like Amitabh Bachchan, Madhuri Dixit and Preity Zinta in the lawsuit. Earlier in the day, the Food Safety and Standards Authority of India (FSSAI) has ordered testing of branded noodles, pasta and macaroni made by firms including ITC, GSK Consumer, Ruchi International, Indo Nissin, besides Nestle.

In supply at unsafe and Adulterated Food to the market. The reasons for the failure of these acts are many. The study conducted by the Industrial Toxicological Research Centre, Lucknow reveals the depth of the problem. On analyzing 12,750 samples of colored items Including milk products, sweets and soft drink, Spices and condiments it was found that 70% of them had been toned with an authorized toxic calories or were otherwise unfit for human consumption. In other survey carried out...

27 www.mofpi.gov.com. The Ministry of Food Processing Industries (MOFPI) is a ministry of the Government of India responsible for formulation and administration of the rules and regulations and laws relating to food processing in India. The ministry was set up in the year 1988, with a view to develop a strong and vibrant food processing industry, to create increased employment in rural sector and enable farmers to reap the benefits of modern technology and to create a surplus for exports and stimulating demand for processed food.

28 International Agreement in outlook of Genetically Modified Organization www.igmn.in (25/1/2015) The International Genetically Engineered Machine (IGEM) competition is a worldwide synthetic biology competition that was initially aimed at undergraduate university students, but has since expanded to include divisions for high school students, entrepreneurs, and community laboratories, as well as ‘over graduates’.

29 The Cartagena Protocol on Biodiversity www.cpbc.in(18/1/2015). The Cartagena Protocol on Biosafety to the Convention on Biological Diversity is an international agreement on biosafety, as a supplement to the Convention on Biological Diversity. The Biosafety Protocol seeks to protect biological diversity from the potential risks posed by genetically modified organisms resulting from modern biotechnology.


31 The Times of India 5(8/6/2015).

32 Ibid.
on the samples chilies and colander collected from several areas in Bombay, the extent of Adulteration in chilly samples was found to be at the rate of 56.25% and in colander samples at 45.07%.  

Present like coke and Pepsi soft drinks cases, the Center for Science and Environment had disclosed that Coke and Pepsi soft drinks were containing pesticides in 2003 and requested for ban.  

Again after three years of detailed survey, CSE released its findings that Coke and Pepsi Soft drink are containing a cocktail 3-6 pesticides and average pesticide residue is 24 times higher than the *Bureau of Indian Standard (BIS)*. These soft drink companies are continuously committing offences under *Prevention of Food Adulteration Act, 1954* and *Bureau of Indian Standard's Act, 1986*. Hence the *Food Safety and Standards Act, 2006* has been passed by the Parliament.

**The Object of Food Safety and Standards Act, 2006.**

The *Food Safety Act, 2006* is a comprehensive legislation on Food and is single statute relating to Food which provides a single window to guide and regulate persons engaged in manufacture and sale of Food products. The *Food Safety Act, 2006* is a special Act and cannot be considered to be a general Act. Even if the *Food Safety Act* is considered to be a general Act, having regard to the fact that the *Food Safety Act, 2006* is a later Act and contains the non obstante clause therefore, the later Act will prevail over the earlier special Act. The main object of the act is as under follows:

1. single reference point for all matters relating to Food Safety and standards regulations and enforcement;
2. shift from mere regulatory regime to self-compliance through the Food Safety Management System;
3. responsibility on Food business operators to ensure that Food processed, manufactured, imported, or distributed is in compliance with the domestic Food laws.
4. provision for graded penalties depending on the gravity of offence.
5. It takes care of International practices regarding Food standards.
6. It provides a single window to guide persons engaged in manufacture, making process, handling transport, import and sale of Food looking upon the international trends modernizing food standards.

This Act has total 11 chapters containing 101 sections and two schedules. The following legislations and orders shall stand repealed on the date on when this new act come into force, namely, the *Prevention of Food Adulteration Act, 1954*, the first products order, 1955 the *Meat Food Products Orders, 1973*; the *Vegetable Oil Products (control) Order, 1947*; the *Edible Oil Packing (regulation) Order, 1998*; *Solvent Extracted Oil, De-oiled Meal and Edible (Control) Order, 1967*; *Milk and Milk Products Order, 1992*, any other order issued under the *Essentials Commodities Act, 1955* relating to good, shall stand repealed on even dates as the central government may appoint in this behalf.

**Salient Feature of Food Safety and Standards Act, 2006:**

The Act mainly incorporates the provisions of the *Prevention of Food Adulteration Act, 1954* and is based on International Legislation and instrumentalities. However, the main features of the Act are follows:

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33 [www.cseindia.org/taxonomy/term](http://www.cseindia.org/taxonomy/term) (27/1/2015). centre for Science and Environment (CSE) is a not-for-profit public interest research and advocacy organisation based in New Delhi, India. Established in 1980, CSE works as a think tank on environment-development issues in India. Poor planning, climate shifts devastating India's Sundarbans and advocates for policy changes and better implementation of the already existing policies. CSE uses knowledge-based activism to create awareness about problems and propose sustainable solutions.


38 *Id at. 9.*
1. Licensing for manufacturing of Food products owner is presents granted by would stand decentralized to the commissioned Food safety and his Single reference for all matters relating to Food safety and Standards regulations and enforcement.

2. Integrated response to strategic issue like novel, genetically modified Foods, International traders;

3. Movement, from multilevel and multi-departmental control to integrated line of command; Shift from mere regulatory resume to self-compliance through Food safety management system.

4. Responsibility on Food business operator to endure that Food processed manufactured, imported or distributed is compliance with the domestic Food laws, and provision for regard graded penalties depending on the gravity of offence i.e. civil penalty for minor offences and punishment for serious violations.39

DEFINITION OF FOOD

According to Food Safety and Standards Act, 2006 Section 3(j) “Food” means any substance, whether processed or unprocessed, which is intended for human consumption and includes primary Food to extent defined in the clause (zk),genetically modified or engineered Food or Food containing such ingredients, infant Food, packaged ,drinking water ,alcoholic drink ,chewing gum ,and any substance including water used into Food during its manufacturer ,preparation or treatment 40. Unless the item is intended to be used for human consumption the same at any rate cannot come within the definition of the Food GokulRefoils Solvents Private Ltd. v. Union of India41.

Food Safety & Standards Authority of India... v United Distributors 42 in this case Supreme court held that Food means which is something intended for human consumption, Food additive, essentially is something not normally consumed as a Food itself. Though both definitions, after so providing, proceed to be inclusive but in our understanding of the principles of Interpretation of Statutes, the various items in the „inclusive portion” of the definitions will have to satisfy the essential test.

Constitutional Mandate:

Under the article 47 of the constitution, “it is the State’s duty to raise the level of the nutrition and standard of living and to improve public health.” The state shall regard the raising the standard of living of its people, and to improvement of public health as among its primary duty. The state shall endeavour to bring about prohibition of the consuming, selling, intoxicating drink and of drugs which are injurious to health except for medicinal purpose. So it is the duty of the state and this provision gives ample power to the state to pass all necessary legislation and administer such laws which are necessary for the protection of the consumer and their health.43

General Principles of Food Safety and Standards Act, 2006.

The Act contains the general principles for the implementation of the Food Safety and Standards Act. Section 18 provides the ‘General Principles’ to be followed for the implementation of the act by the central government and Food Safety and Standards Authority of India. The State government and other agencies as the case may be while framing regulations or specifying Food safety standards or while enforcing or implementing the provision of the Act shall take account all provisions prevailing in the Country. The Food Authority shall take into account the prevailing practices and contains in the Country i.e. agricultural practices, handling, storage and transport conditions and other International standards and practices while implementation of the Act44.

41 A.I.R 2011 (5) 633.
42 A.I.R 2015 (25) 674.
The general principles and guidelines shall be followed by Food safety and standards authority of India, transparent public consolidations, and protection of consumer interest etc. This section empowers the Food authority to notify other general principle from time to time as per the requirements of the Act. However, the provision of the Act shall not apply to any farmer, farming operation, crops, livestock supplies used or produced in the farming or production.45


The general provisions relating to articles of Food are contained in Section 19 to 24 of the Act. Section 19 prohibits the use of any Food additives or processing aid unless it is in accordance with the provisions of the Act and regulations made their under. It further provides that no articles of Food shall contain naturally occurring toxic substance or toxin or no one or heavy metals of such quantizes as may be specified by the regulations as provided in section 20 of the act. Section 21 further provides that no article of Food shall contain insecticides, pesticides veterinary drugs residues, antibiotic abortive residues substances and microbiological counts in access of such tolerance limits as may be presented by the regulations.46

It is also provided that no insecticide shall be used directly on articles of Food except fumigants registered and approved under Insecticides Act, 1968. Section 22 restricts manufacture, distribute, and sale of genetically modified Articles of Food, nutraceuticals, health supplements proprietary Foods and similar Foods except in accordance with the provisions of the Act and regulations made thereunder.47

Responsibilities of Food Business Operator under Food Safety and Standards Act, 2006.

Section 26 provides for the responsibilities of Food business operation to ensure that the articles of Food satisfy the requirements of the Act and regulations made there under all the stages of production, processing, import, distribution and sale within the business under his control. It is also provided that the Food business operator or any person shall not manufactures stores sell or distribute any articles of Food which is unsafe or misbalanced or substandard or contaminated or which is for the time being prohibited by Food authority or the central government or State government in the interest of public health. It is also provided that the Food business operator shall not employ any person suffering from infections, contagious diseases. The Food business operator shall not sell or offer for sale any article of Food to under the Act unless, he gives a guarantee in writhing about the nature and quality of such article of Food to the vendor.48

Liability of Manufacturer, Pecker, Wholesaler and Distributer under Food Safety and Standards act.2006:

Section 27 speaks that manufactures, packer and wholesaler of an article shall be liable if he does not meet the requirements of the Act and rules or regulations made thereunder. The wholesaler or distributors shall be liable for any article of Food which is supplied after the date of expiry or stored or supplied in violation of any safety instructions of unidentifiable of manufactures from whom the articles of Food have been received or stored or handled or kept in violation of the provisions of this Act, the rules and regulations made there under. The seller shall be liable for any article of Food which is sold after the date of expiry or handled or kept in unhygienic. The seller shall also be liable if he receives or Food received by him with the knowledge of being unsafe.49

Food Safety and Standard Authority of India.

Section 4 of the Food Safety and Standards Act, 2006 speaks about Food Safety and Standards authority of India. The Food Safety and Standard Authority of India shall be consist of a Chairperson and the following twenty-two members out of which one-third shall be women, namely:50

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45 Supra note 22.
48 Id.
50 Food Safety Helpline.Com (2/2/2015).
1. seven members, not below the rank of a Joint Secretary to the government of India, to be appointed by the Central government, to respectively represent the ministries or departments of the Central government dealing with -  
(a) Agriculture,  
(b) Commerce,  
(c) Consumer Affairs,  
(d) Food Processing,  
(e) Health,  
(f) Legislative affairs,  
(g) Small Scale Industries, who shall be members ex officio, 

(i) Two representatives from Food industry of which one shall be from small scale industries;  
(ii) Two representatives from consumer organizations;  
(iii) Three eminent Food technologists or scientists;  
(iv) Five members to be appointed by rotation every three years, one each in seriatim from the zones as specified in the first Schedule to represent the States and the Union territories;  
(v) Two persons to represent farmers’ organisations;  
(vi) One person to represent retailers’ organisations. 

2. The Chairperson and other members of the Food authority shall be appointed in such a manner so as to secure the highest standards of competence, broad range of relevant expertise, and shall represent, the broadest possible geographic distribution within the country. 

3. The Chairperson shall be appointed by the Central government from amongst the persons of eminence in the field of Food science or from amongst the persons from the administration who have been associated with the subject and is either holding or has held the position of not below the rank of Secretary to the government of India. 

4. The Chairperson and the members other than ex officio members of the Food authority shall be appointed by the Central government on the recommendations of the selection Committee. 

5. The Chairperson or members other than ex-officio members of the Food authority shall not hold any other office.

### Offences and Penalties Food Safety and Standards Act, 2006:

<table>
<thead>
<tr>
<th>Sr.no</th>
<th>Sec.</th>
<th>Offence</th>
<th>Punishment</th>
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<tbody>
<tr>
<td>1</td>
<td>50</td>
<td>For selling food not of the nature or substance or quality demanded</td>
<td>Fine not exceeding two lakh</td>
</tr>
<tr>
<td>2</td>
<td>51</td>
<td>For selling sub-standard food</td>
<td>Fine may extend to five lakh rupees</td>
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<tr>
<td>3</td>
<td>52</td>
<td>For selling misbranded</td>
<td>Fine may extend to three lakh</td>
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<td>4</td>
<td>53</td>
<td>For misleading advertisement</td>
<td>Fine may extend ten lakh Rupees</td>
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<td>5</td>
<td>54</td>
<td>For food containing extraneous matter</td>
<td>Fine may extend to one lakh rupees</td>
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<td>6</td>
<td>55</td>
<td>For failure to comply with the directions of the food safety officer safety officer</td>
<td>Fine may extend two lakh Rupees</td>
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<tr>
<td>7</td>
<td>56</td>
<td>For unhygienic or unsanitary processing or manufacturing of food</td>
<td>Fine may extend to one lakh rupees.</td>
</tr>
<tr>
<td>8</td>
<td>57</td>
<td>For possessing adulterant: (if) adulterant is not injurious to health health; (ii) Fine may extend to ten lakh Rupees</td>
<td></td>
</tr>
</tbody>
</table>

(i) Fine may extend to two lakh rupees; 
(ii) Fine may extend to ten lakh rupees.
| 9. | 58 | If adulterant is injurious to health rupees. | Fine may extend to two lakh rupees |
| 10 | 59 | For contraventions for which no specific penalty is provided | (1) Imprisonment may extend to six months with fine may extend to one lakh rupees |
|    |    | For unsafe food: | (2) Imprisonment may extend to one year with may extend to five lakh rupees, |
|    |    | (1) unsafe food does not result in injury; | (3) Imprisonment may extend to six years with fine may extend to five lakh rupees, |
|    |    | (2) unsafe food result in non-grievous injury: | (4) Imprisonment may extend to seven years to life imprisonment with fine may extend to ten lakh rupees |
|    |    | (3) unsafe food safe food result in grievous injury: | |
|    |    | (4) Unsafe food result in death. | |
| 11 | 60 | For interfering with seized items | Imprisonment may extend to six months with fine may extend to two lakh rupees |
| 12 | 61 | For false information | Imprisonment may extend to three months with fine may extend to one lakh rupees |
| 13 | 62 | Obstructing or impersonating a food safety officer | Imprisonment may extend to three months with fine may extend to one lakh rupees |
| 14 | 63 | For carrying out a business without license | Imprisonment may extend to six months with fine |
| 15 | 64 | For subsequent offences: | -Twice the punishment of first conviction |
|    |    | -If the offence is continuing one | - Further fine on daily basis may extend to one lakh rupees |
|    |    | -Court may publish offenders name, address, off address, offence and penalty | - Expenses of publication |
|    |    | -Notification | - License shall be cancelled |
| 16 | 65 | Compensation case of injury or death of | -not less than five lakh rupees |
|    |    | consumer; death for grievous injury | -not exceeding three lakh rupees |
|    |    | ,for all other injury | -not exceeding one lakh rupees |
| 17 | 66 | Offences by companies; if it is | Such persons shall be held liable and accordingly punished |
|    |    | committed with the | |
|    |    | With the consent or connivance of or is | |
|    |    | attributable to any neglect on the part of | |
|    |    | any director ,manager, secretary or other officer of the company | |
| 18 | 67 | For contravention of provision of Act in case of import of import of articles of food to be in addition to addition penalties provided under any other Act | Shall be liable under this Act, in addition to any penalty under provision of the Foreign Trade (Development and Regulation) Act, 1992 and the Customs Act, 1962 |
Conclusions

To conclude it is submitted that India is a country in which the condition of Food and its safety is worse and the lacuna lies in the laws. However, there are many legislations passed by the parliaments to improve the worse conditions of the Food but, the lacunas lies in the hands of the authorities who are responsible for the implementation of the law. There are many reasons for the Bad conditions of the Food in India. Non-implementation of the laws by the appropriate authorities is one of major reason for the bad conditions of the Food in India. There is not proper checking of Food in India this is also reason for the bad condition of the Food in India. There is not proper checking of Food in India this is also reason for the bad condition of the Food in India. There are also few drawbacks in authorities who are responsible for implementation of the Food laws. The principle of Absolute Liability is very aptly related to the food safety and standards but it is ironical to say that even after having such a comprehensive legislation like The Food Safety and Standards Act 2006 the interest of consumers is not sufficiently protected. The basic reason behind these lacuna is lack of proper implementing machinery moreover the Act in India does not have sufficient teeth and autonomy for regulating the Indian Food market. In the end it is suggested to have a proper coordination between the various authorities such as ministry of Food and processing, Food Safety and Standards authority of India, Bureau of Indian standards and various intermediaries so as to truly implement the principle of Absolute Liability in relation to food safety.

References


ACTS, RULES AND REGULATIONS:

ACTS
Bureau of Indian Standards Act, 1986
Cattles Trespass Act, 1887
Consumer Protection Act, 1986
Drugs and Cosmetics, 1940
Essentials Commodities Act, 1955
Food Safety and Standards Act, 2006
Indian Penal Code, 1860
Insecticides Act, 1968
Insurance Liability Act, 1987
Motor Vehicles Act, 1987
Prevention of Food Adulteration Act, 1954
The Workman’s Compensation Act, 1923
Foreign Trade (Development and Regulation) Act, 1992
Customs Act, 1962

RULES
Food Safety and Standards Authority of India (Salaries Allowances and Other Conditions of Service of Chairperson and Members) Rules, 2008
Food Safety and Standards Rules, 2011

REGULATIONS
Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011
Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011
Food Safety and Standards (Packing and Labelling) Regulations, 2011
Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011
Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011
Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011
Food Safety and Standards Authority of India (Transaction of Business at its Meetings) Regulations, 2010
Food Safety and Standards Authority of India (Procedure for Transaction of Business of the Central Advisory Committee) Regulations, 2010
Food Safety and Standards Authority of India (Procedure of Scientific Committee and Scientific Panel) Regulations, 2010

LIST OF CASES
Ryland v. Fletcher 1868 LR3 (HL) 330.
M.C Mehta v. Union of India A.I.R 1987 SCR (1) 819.
Read v. Lyon 1853 LR (543).
N.K Proteins Ltd. v. Union of India, 2012 (280) ELT 168 (Gujarat).