

Food Safety and Standards: The Maggi Episode

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Food is an essential part of the rich cultural heritage of India. Food is not merely what we eat to live, but it is an identity to who we are. In spite of the importance “food” holds in our everyday lives, yet it forms to be a part of one of the most neglected area in terms of quality and standards. As in the words of Micheal Pollan who has rightly pointed... “We should not eat anything our great grandmother wouldn’t recognise as food. There are many great foods like items in the market our ancestors wouldn’t even recognise as food and thus we ought to stay away from these. A similar food item we found all these years in our supermarkets is known as “Maggi”, which stands to be a classic example of this. Maggi, which became a household item, as common as that of wheat, rice or dal, came into limelight due to its safety and standards under the current Food law regime. Its popularity and level of consumption across the country was mind boggling. However, its targeted audience being mostly children was the cause of concern. The turmoil regarding the safety of this product lead to a nationwide protest. In light of the Maggi episode, this paper tries to highlight how the Food safety and standards of consumable items available in market are not under proper scanner. Lastly the research tries to make some conclusions on the basis of findings with special reference to the famous Maggi episode.

Introduction

Maggi as a consumable item had gained nation-wide recognition as a staple item as it had become a one-minute recipe for millions who survived for their hunger on this product which was not just cheap but tasty too and as we all know the brand was successful enough to touch the emotions of individuals. In many cities many people do not eat at home. There has been rise in consumption of fast food items and with that a rise in the risk of health also. Maggi is eaten majorly by children and youngsters. Therefore, the issue holds ultra-sensitivity with respect to our ongoing generations as well as generations to come.

Our Cabinet Minister for Consumer Affairs and Food products, Shri Ram Vilas Paswan, had expressed his concern over the issue and emphasised over how the consumption of Maggi has resulted into a blunder and why this product has continued to remain in market for

years and decades. He ordered for inquiry into the case by the FSSAI and UPDHA who submitted their reports related to all violations made by the Nestle company.

It is material to note that there were petitions filed in public interest which challenged the production and distribution of Maggi on grounds of its safety and standards. The Bombay High Court as well as the Apex court both opined that Maggi is a product unsafe for consumption and must be taken back from circulating in the market. This banned the product till any further clarification was sought from the company.

I have divided the research paper into five issues for having a better clarity about the famous “Maggi Episode”

Issue I. What are the Issues in the Maggi Episode?

The famous Maggi episode contained following issues:

1. That Maggi contains Lead beyond the permissible limits of 2.5ppm and therefore is extremely harmful to consume in long run as well as short run.
2. that the labels specified on the product do not provide adequate information as to its content and is to great extent misleading in terms of words attached “No added MSG” on the package
3. That release of a non-standardised food product in the market, viz. “Maggi Oats Masala Noodles with Tastemaker” without risk assessment and grant of product approval.

The Company through its representatives had replied to these issues. They stated that they were committed to providing safe food for the consumers and that the whole controversy had been created on account of confusions created and lack of proper understanding of the issue.¹ As provided in the order sheet, Nestle responded on each of the above issues in the following manner:

1. The company asserted that the testing protocols had not been followed and interpreted correctly. According to them: (i) the Product contained two parts i.e. the Noodle and the Tastemaker. The samples had been tested for each of the two components separately whereas it should have been tested as a combined end product, i.e. the form in which it is finally consumed; (ii) The CFL Kolkata had also tested the product as a combined product but the results showed a very high level of Lead because the samples remained open for a considerable period before being tested;²
2. The “No added MSG” on the label was on account of lack of clarity in the regulation and that the Company had followed the practice generally followed by the industry in this behalf. However, they were quick to add that the Company would rectify the labels if it was interpreted as a case of

¹ Order No.10/Q.A./Enforcement Issues/FSSAI- 2015 Food Safety and Standards Authority of India (Quality Assurance Division) (A Statutory Authority established under the Food Safety and Standards Act, 2006)

² Order No. 10 FSSAI, Para 3 (a), Pg. 1

mislabelling. They added that the Company had already ordered printing of new labels without mentioning "No added MSG" thereon and that their products would be packed in the re-printed packets after the current stock was exhausted. However, the Company also finally agreed to pack all freshly manufactured food in the new packaging.³

3. As regards the issue of release of one of the variants, viz. "Maggi Oats Masala Noodles with Tastemaker" in the market without getting the product assessed for its risk/ safety and grant of product approval, the Company representative stated that this product had been launched at a time when the Advisory dated 11.05.2013 was under stay granted by the Court. The attention of the Company representatives was drawn to the provisions contained in Section 22⁴ under which the food product as a 'Proprietary Food' was not at all allowed to be manufactured and placed in the market, the Company representatives stated they would comply with the directions of the Food Authority in this behalf.⁵

After due consideration of the arguments averred by the company the Authority rendered its observations as under:

Issue 1. Excessive presence of Lead beyond permissible safety limit:

Argument 1: The company argued that the excessive lead as found in various laboratory reports were taken from few samples derived from other noodle brand as well and were not entirely in Maggi only. Also that one of the products of Nestle in question was taken to laboratory without prior approval. The reports thereby clearly stated that Maggi contained excessive lead whereas company furnished a document "certificate of analysis" which clearly stated that lead content was 0.0153⁶.

Argument 2: The arguments advanced by the Company as recorded under para 3(a) above have not been found tenable on the following grounds: (i) The company manufactures the Noodles and the Tastemaker and markets the same in two separate packages (Tastemaker or Masala is always in a separate sachet placed inside the main packet)⁷. The prescribed Standards have to be applied in respect of each of these two components independently and have no linkage with the processing of the end product as it is consumed⁸. Water is added to the preparation of the product before it is consumed and depending upon the source, water may also contain contaminants like lead, for which the Company may not be liable. Therefore, the final process of preparation has no linkage with the manufactured product as placed in

the market and the compliance of standards has to be tested for each of two items; (ii) It has been ascertained from CFL Kolkata that the sample was tested separately for the Noodle and the Tastemaker and it is wrong to say that the sample remained in open condition for about two months.⁹

Argument 3: Presence of lead in food products makes the food extremely dangerous for human consumption. It is a heavy metal contaminant and eating the same has toxic effects on the body. The effects can be either long term or short term depending upon its continuous intake. "Short-term exposure to high levels of lead can cause brain damage, paralysis, (lead palsy), anaemia and gastrointestinal symptoms. Long-term exposure can cause damage to the kidneys, reproductive and immune systems in addition to effects on the nervous system¹⁰. The most critical effect of low-level lead exposure is on intellectual development in young children and like mercury, lead crosses the placental barrier and accumulates in the foetus. Infants and young children are more vulnerable than adults to the toxic effects of Lead, and they also absorb lead more easily. Even short-term low-level exposure of young children to lead is considered to have an effect on neuro behavioural development. Consumption of food containing lead is the major source of exposure for the general population."¹¹

Issue 2. Violation of labelling related Regulations:

Argument 1: The Authority observed that the product "Maggi" does contain a label stating that there is "No added MSG". Whereas it was found that MSG was present in it. The company however stated in its defence in the report submitted by it as also summed stated in the order of the Authority. The Company has stated¹² that its claim is regarding "Added MSG" which is a correct position since the Company has not added any MSG (E621). It has further stated that "it is a known fact that it is not possible to distinguish between naturally occurring glutamate and added glutamate in foods".¹³ The Company's aforesaid letter further reads "We have been declaring "No Added MSG" on Maggie Noodle Packs as we do not add MSG (flavour enhancer - E621) as an additive in the product. This is a common practice across the industry in many food products viz. instant noodles, ready to eat foods, soups etc." Drawing support from the legal opinion taken from Mr. Justice V.N. Khare, former Chief Justice of India, it has been further stated that "the declaration of "No Added MSG" on the labels of Maggie Noodles does not violate the Food Safety Standards Act, its rules and its regulations there under".¹⁴

³ Order No. 10 FSSAI, Para 3 (b), Pg 1

⁴ Food safety standards Act, 2006

⁵ Order No. 10 FSSAI, Para 3 (c), Pg 1

⁶ As per the Certificate of Analysis furnished by the Company with its application, the Lead was 0.0153 ppm vide report dated 17.10.2012.

⁷ Order No. 10 FSSAI, Para A.2 (i) Pg 3

⁸ Ibid

⁹ Order No. 10 FSSAI, Para A.2 (i) Pg 3

¹⁰ Reference is made to a document published by the Food Safety Authority of Ireland on "Mercury, Lead, Cadmium, Tin and Arsenic in Food" (Issue No.1, May 2009 in its Toxicology Factsheet Series

¹¹ Ibid 10

¹² Vide its letter dated 2nd June, 2015

¹³ Order No. 10 FSSAI, Para 3 (c), Pg 1

¹⁴ Company Nestle defended itself in the Order no. 10, FSSAI

Argument 2: The assertions made by the Company in its aforesaid letter dated 02.06.2015 have not been found acceptable. Attention in this behalf is invited to Regulation 2.2.1.1, which reads as under: "1. Every pre-packaged food shall carry a label containing information as required hereunder unless otherwise provided, namely, 3. Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect;"¹⁵

Argument 3: It is amply clear that this sub-regulation prohibits any other information on the label other than what is otherwise provided for in the FSSR. It defies the common understanding as to why the Company has to make this assertion when it is not required to do so. The apparent reason for using such information on the label is driven by an undue commercial advantage/ benefit to create an erroneous impression in the minds of consumers regarding the character of the product.¹⁶

Argument 5: It is clearly established from the aforesaid that printing "No added MSG" on the label of the said Product is in violation of the FSS (Packaging & Labelling) Regulations, 2011.¹⁷

It is clear from above stated arguments and observations that Nestle has failed to comply with the duties and obligations as laid down in the FSSA 2006. It has violated section 26 and also the FSS Rules and Regulations laid down under Section 26 of the Act. Further, the Company has violated the FSS Act, Rules and Regulations and is liable for prosecution and penalty under Sections 20, 22, 23, Section 24 read with Section 53, Section 26, 27, 48, 50, 52, 58 and Section 59 of the FSS Act, 2006, read with the applicable Rules and Regulations thereunder.¹⁸

Issue II. Whose Responsibility Shall It Be?

The prime question that arises is that who shall be held responsible for such a stack in the system? Is the company "nestle" liable, who failed to comply with the guidelines laid down in the Act and who performs unfair trade practices? Or are the laboratories liable, which conduct tests over consumable items and fail to construe any lacunae in the item under scanner? Or the administrators who neglect to ensure food safety and place checks at various levels do their job carelessly?

The answer to these questions should be made with the help of the food law regime in India. The FSS Act, 2006 is imposing liability over all those food businesses who violate norms provided under the Act. Nestle in the Maggi case had been found guilty of sub-standard product with high amount of lead content crossing all permissible limits. The responsibility under the Act remains with that of the company primarily as its their responsibility to ensure that the product contents are fulfilling all standards and norms. Secondly, FSSAI, as established under the FSSA, 2006 has the duty to ensure

that any non-compliance be dealt with strictly. Therefore, stress should be laid on the liability of the authority as well, as they were mandatorily bound to maintain food safety standards. Liability must also be extended to all those agencies and organisations involved in the process of ensuring food safety standards. For e.g., Laboratories, officials appointed in various agencies, etc.

Another view is that Nestle as a company has many competitors. The entire Maggi saga is a result of nothing but competition amongst Maggi and other noodle brands which are placed into the market. There are arguments that can be given for the motion that Maggi episode is due to foul play by other companies. In support of the contention we can suggest that the reports of multiple laboratories were varied as the Indian laboratories had found higher amounts of lead and MSG as compared to what the reports of USA and UK laboratories found. Considering the amount of corruption that we witness in food licensing and food checks it can be said that the noodle companies have tampered with the reports and provided a plot where Nestle product "Maggi" is put into the dock for their own mala-fide gains. As the strongest contender being "Maggi" which claims maximum share of noodle distribution and sales and if it is targeted and removed then a high amount of targeted audience will switch over to other noodle companies. Another contention that can be raised is that no harm was ever caused to individuals with Maggi consumption all these years. In spite of all checks it is only after decades that Maggi was found to contain certain harmful substance. This indeed is thought provoking.

Issue III. What are the International Standards that we need to abide by and how Far are they being Complied with?

India as a member of UN promises to fulfil all its obligations at international front and therefore finds it obligatory to adopt in its domestic laws all those provisions which are important to maintain international standards.

The food laws in India have evolved faster than any branch of law. The national food legislations are a reflection of how india as a country is flourishing and how our economy is progressing. Certain objectives have been laid down for development of food law. They are as follows:

1. The laws must assure a cent percent health protection for consumers.
2. States have an obligation to ensure that only safe food and feed are placed on the market; and have both national and international obligations particularly in relation to trade of foods. Therefore, the effective

¹⁵ Order no. 10 pg 8 para 3

¹⁶ ibid

¹⁷ ibid

¹⁸ Order no 10, FSSAI

functioning of both the local and the internal market in safe food and feed should be assured.¹⁹

3. Where appropriate, the protection of the environment, the protection of animal health, life and welfare and the protection of plant health and life should be taken care of.

Further Points to be taken into consideration²⁰:

1. States are responsible for the enforcement of food law, but primarily the responsibility vests with the businesses. Food business operators must ensure that all stages of production are that all stages of production and distribution are under their control and carried out in such a manner that food complies with the relevant provisions of food laws and especially food safety.

2. that the rights of consumers are secured such as their right to know, not to be misled and to have access to accurate information. Therefore, transparency of the development of food law and the access to information in this regard should be secured.

3. The “precautionary principle” foresees to develop provisional measures where an unacceptable level of risk to health has been identified but further scientific data is required to arrive at a comprehensive assessment of risk to health.

4. Food law should be based on high quality, transparent independent scientific advice following the three interconnected components of risk analysis: risk assessment, risk management and risk communication.

The legal set up with the new FSSA, 2006 has changed the scenario of maintaining food standards but the assessments are still not up to the mark. The FSSA was established under Food Safety and Standards Act, 2006 which consolidates various acts & orders that have hitherto handled food related issues in various Ministries and Departments. FSSAI has been created for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption.

The FSS Act aims to establish a single reference point for all matters relating to food safety and standards, by moving from multi- level, multi- departmental control to a single line of command. To this effect, the Act establishes an independent statutory Authority – the Food Safety and Standards Authority of India with head office at Delhi. Food Safety and Standards Authority of India (FSSAI) and the State Food Safety Authorities shall enforce various provisions of the Act.²¹

FSSAI has been mandated by the FSS Act, 2006 for performing the following functions:

- Framing of Regulations to lay down the Standards and guidelines in relation to articles of food and specifying appropriate system of enforcing various standards thus notified.
- Laying down mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management system for food businesses.
- Laying down procedure and guidelines for accreditation of laboratories and notification of the accredited laboratories.
- To provide scientific advice and technical support to Central Government and State Governments in the matters of framing the policy and rules in areas which have a direct or indirect bearing of food safety and nutrition.
- Collect and collate data regarding food consumption, incidence and prevalence of biological risk, contaminants in food, residues of various, contaminants in foods products, identification of emerging risks and introduction of rapid alert system.
- Creating an information network across the country so that the public, consumers, Panchayats etc. receive rapid, reliable and objective information about food safety and issues of concern.
- Provide training programmes for persons who are involved or intend to get involved in food businesses.
- Contribute to the development of international technical standards for food, sanitary and phyto-sanitary standards.
- Promote general awareness about food safety and food standards²²

We therefore conclude that Indian laws have been created more or less keeping in mind all international standards. The FSS Act, 2006 is an improvement over the old Prevention of Food Adulteration Act. It introduces many new provisions which put checks over the food industry covering a variety of food categories. Thus our food laws do not majorly lack on any ground.

Issue IV. Can the principle of absolute liability be extended to food businesses being operated at not just big scale but also to small scale?

Absolute liability or no-fault liability is a principle which puts the defendant into liability for those acts which he took steps for preventing from happening. As a matter of policy absolute liability has been extended to food businesses at large scale as any negligence is intolerable as life and health is precious and needs to be given optimum care and caution. It can be argued that absolute liability needs to be extended to not just at large scale but also small scale food businesses.

¹⁹http://www.unido.org/fileadmin/import/32094_10FOODSAFETYHYGIENEREGs.2.pdf

²⁰ Ibid 2

²¹ www.fssai.gov.in

²² FSSAI website: functions of the FSSAI, <http://www.fssai.gov.in/AboutFSSAI/introduction.aspx>

Issue V. To what extent are brand ambassadors of such products liable for promoting them as they are harmful for human consumption?

A case was lodged against Nestle India, while actors Amitabh Bachchan, Madhuri Dixit and Preity Zinta were also separately dragged to court for promoting the 'two-minute' noodles brand.

“Section 53. Penalty for misleading advertisement.

(1) Any person who publishes, or is a party to the publication of an advertisement, which—

(a) falsely describes any food; or

(b) is likely to mislead as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend to ten lakh rupees.”²³

This provision is wide enough to bring within its ambit the celebrities who have been party for promotion and advertisement to any product which has been proved harmful for human consumption. In the case at hand, “Maggi” brand ambassadors have been imposed with penalty under the Act as even if they were not aware of the contents of safety of the food they promoted, they are liable to pay the sum as prescribed in the Act.

As per FSS Act, 2006, advertising, promoting a food product which is harmful for human consumption is also a violation. Normally these brand ambassadors have a clause in the contract where they clearly mention that the quality of food product will have no bearing upon the person endorsing it. They shall hold no responsibility or liability on event of any injury caused by consumption of such products. As the statements, of celebs like Amitabh Bachchan and Madhuri Dixit they tried to avoid the liability. In the case of Maggi, these brand ambassadors have been brought into limelight as they have said to have violated the Act and therefore will be liable to the extent that the profits they earned with the endorsements made of Maggi.

In my opinion, the liability of the brand ambassadors is a must as they are the renowned faces who people perceive as their idol and their liking for the product increases and thereby the consumption. They play a key role in deciding the popularity and levels of consumption of the product. Therefore, their role and extent of liability should be defined in the contract itself.

Conclusion & Solutions

The question now remains is that what is the verdict of the entire Maggi Saga and what are the practical solutions that can be proposed in order to ensure that such cases do not occur in future. We can sum the points in the following manner:

1. The verdict is clear. Nestle is guilty under the Act. It is the duty of it as a food business operator to ensure the quality of its product which it failed to

do and therefore it is liable to pay heavy penalty. It is not just a legal duty but also a moral duty for all business operators to abide by rules and regulations and not misuse for their own profits as the nature of their business directly has implications over the lives of many.

2. Regular checks must be placed by the FSSAI. The checks as required under the Act are being carried but it is necessary that it be carried on more frequent basis. Maggi is a product which continued to affect millions for almost two decades. The authority did not wake up for such a long period and never found a necessity to put the product under scanner. The defect came into limelight after a reported medical illness on one person in UP. In order to avoid such blunders to reoccur we must ensure that regular checks are placed.
3. It is ideal if the authorities take random and impromptu samples from the manufacturing units of produces at large scale as well as small scale. This would enable the authority to be in a better position to find the truth relating to the quality of product. If the producers of food items are informed with respect to checks they shall prepare themselves accordingly and certainly hide the truth.
4. Every manufacturing unit must record their manufacturing process in a digital form and make it accessible to public in general by electronic means so that the public may have full knowledge as to how the product they consume is being made. the set up may include visit to the factory or manufacturing unit also. This way the manufacturing of products will be in full transparency and known to all.
5. The goodwill of the brand must be taken into consideration. Depending upon the popularity of the product and products which have key hold in the market must be required to undergo frequent checks and if any violation is found stricter penalties must be imposed on them. Nestle which manufactured product like Maggi possesses high brand value and therefore its liability to guarantee a high quality product is a must.

The brand ambassadors who endorse the products must ensure the safety of the product they are promoting. The contracts must be construed in a manner where the brand ambassadors know their duties and liabilities. A provision dealing with the same must also be included in the Act also as it will ensure that the celebs become more cautious and sensitive with respect to the endorsements of their brands.

²³ Section 53, FSS Act, 2006