

The Food Safety Act of 2013: A Critical Analysis and Reform Proposals

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Abstract

Ensuring food safety through legislative and institutional framework is considered now a vital task of the state. The government of Bangladesh had also been trying since the independence of this country to regulate the food safety management under proper legislative and institutional interventions. In recent advancements, the Food Safety Act of 2013 (FSA2013) in Bangladesh was enacted for the maintenance of food safety in various levels through monitoring, coordination, testing, investigation and adjudication. However, some inherent loopholes remain inside and such lacunas should be addressed properly within a short period of time to get maximum compliance of food safety management system envisioned under the FSA2013. Problems like bureaucratic dominance in the structure and functioning of the institutions, shortage of manpower and fund, time consuming dispute settlement system, non-inclusion of contemporary factors in food business and food safety, absence of adequate rules for proper coordination etc. may thwart the expected goals to be achieved under this Act. This article is an attempt to find out the loopholes inside the FSA2013 with possible suggestions thereof for the effective, actual and sustainable implementation of the said Act resorting to contemporary problems in various sectors regarding food safety management system in Bangladesh.

Keywords: Food Safety, Food Safety Act, Food Analysts, Pure Food Court, Food Safety Management System and BFSA.

1. Introduction

Human health depends much on food to survive. Proper, safe and nutritious food must be consumed in order to preserve good health. Quest for maintaining safety in food has been one of the primitive activities of human throughout centuries and it has been pointed out by that such quest may have started with the detection and avoidance of foods subsequently that were toxic naturally (Griffith, 2006, p. 8). States have come out with legislative and institutional interventions later on to ensure management of food safety in coordinated manner. Food Safety Management System (hereinafter FSMS)

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therefore, refers to the engagement of resources and strategies to ensure the proper and safe production, processing and food distribution for consumption. On the other way it can be said that FSMS is related to the management and taking precautionary steps regarding food borne hazards like chemical, physical and biological hazards in food during consumption process (Jevs̃nik, Hlebec, & Raspor, 2008, p. 4). In recent years, due to massive adulteration and uncontrolled distribution of adulterated food, Bangladesh has been repeatedly victimized due to food adulteration and intoxication resulting in fatality where she is yet to implement a planned FSMS (Rahman & Kabir, 2013, p. 21).

Regarding the legal framework in FSMS, Bangladesh has enacted the Food Safety Act of 2013 (hereinafter cited as the FSA2013) which was implemented in 2015 as the core legislation for the maintenance and preservation of food safety in all relevant areas (The Food Safety Act [FSA2013] of 2013). Several institutions like the National Food Safety Management Advisory Council (hereinafter the NFSMAC), the Bangladesh Food Safety Authority (hereinafter the BFSA), Central Food Safety Management Coordination Committee (hereinafter the CFSMCC) and Pure Food Court (hereinafter the PFC) have also been established to facilitate the achievement of aims envisioned under the FSA2013.

After the FSA2013 was enacted, the people of this country expected that this Act will create a coordinated framework along with the mandatory observance of food safety rules in all levels to ensure the proper FSMS within Bangladesh. But due to some inherent defects, lack of coordination, absence of proper fund, personnel and logistic support etc., this Act seems to be struggling a lot to create a minimum degree of acceptance, momentum and credibility among the country people. Being the core legislation in operation for food safety and FSMS, the FSA2013 needs some serious reforms so that it can effectively reach its goal towards food safety for all. In this point, it has already been argued by Ali that some factors like the regulatory failures, food price, choice of product, lack of consumer information, cultural and educational influences are liable for the existing concerns regarding food safety in Bangladesh (2013a, pp. 34-40) where the non-maintenance or lack of effective and proper enforcement of the food safety regulations is a significant reason for the contemporary food adulteration situation in Bangladesh (2013a, p. 2).

This article hence is an effort to find out the loopholes of the FSA2013 and to suggest recommendations, alterations and additions thereto for the effective implementation of FSMS envisioned under this Act. This study will examine

the FSA2013 in details to find out the challenges for Bangladesh regarding food safety and proposed recommendations after the findings will be helpful for future endeavours to make it more effective.

2. Background History of the Enactment of the FSA2013

Regarding constitutional mandate about FSMS, the Constitution of the People's Republic of Bangladesh has clearly stated the State's fundamental responsibility under article 15 to secure the basic necessities including food (The Constitution of the People's Republic of Bangladesh [CONST] of 1972). On the other hand, under article 18, the State has taken primary duties of raising nutrition level and improving public health (CONST). Both the articles have ensured the maintenance of FSMS with the preservation of safety and quality of food under appropriate laws to uphold the rights of the food consumers as a whole.

Bangladesh had different scattered legislations and rules [1] along with government policies explicitly or implicitly relating to food safety before the enactment of the FSA2013. Such legislations and regulations may start from the Penal Code of 1860 to current FSA2013 which seems to be the revised version of the Pure Food Ordinance of 1959 (hereinafter PFO1959) (The Pure Food Ordinance [PFO1959] of 1959). The PFO1959 had authorised the government to set up Pure Food Court (hereinafter PFC) in every district area to deal with offences relating to the adulteration, intoxication, imitation and improper management of food staffs and ingredients (PFO1959, § 41). Despite of the enshrined provision for the establishment of PFC under the said Act, inadequate number of courts had been assigned to deal with the matters under the PFO1959. National Food Safety Advisory Council (§ 4A), being the advisory council for the administration of FSMS under PFO1959 had never been set up. So, PFO1959 had remained obsolete being the core legislation in Bangladesh dealing directly with purity and food safety issues. In this outset in 2009, a writ petition had been sought before the Supreme Court of Bangladesh for mandatory observance of the establishment of PFC in every district level in Bangladesh (Writ Petition No. 324/2009). Being disposed in petitioner's favour, the government had been directed by the Supreme Court of Bangladesh to establish PFC along with the appointment of necessary food inspectors and public analysts in every district and city corporations within two years (Writ Petition No. 324/2009). The Government took initiatives afterwards to set up a new legislation concerning food safety reviewing the existing outdated laws to cope with modern requirements of the FSMS with authoritative administrative

set up, adequate facilities of food testing and analysis, food inspection and monitoring, coordination etc. in order to reach the goals of founding a 'Modern and Technological Food Safety System' in Bangladesh under government's vision of 2021 (Ahmed, 2016). The FSA2013 has been enacted accordingly in 2013 and it has supplemented the old PFO1969 (FSA2013, § 90). Following another writ petition in 2014, government has been instructed by the Supreme Court of Bangladesh to form the BFSA and NFSMAC within three months to implement the FSA2013 ("High Court Asks", 2014). The FSA2013 has been executed from 01 February 2015 and the BFSA has started its operation with mandates under the said Act (Bangladesh Gazette, 2015).

3. Insight of the FSA2013

3.1. Objectives and Operational Definitions

The FSA2013 has been enacted to establish an effective and efficient authority for the regulation and coordination of activities of FSMS regarding food business to safeguard the rights of the food consumers toward access to safe food (Preamble). A vast area of operational definitions relating to food processing, food regulation and food business have been taken under this Act including inter alia insecticide or pesticide residue, food, food court, food additives, food business, contaminant, misbranded food, anti-food safety practice, adulterated food etc. (FSA2013, § 2).

3.2. Institutional Framework under the FSA2013

A 29-member national council named National Food Safety Management Advisory Council (NFSMAC) has been established with power to provide necessary advice and direction to the Bangladesh Food Safety Authority (BFSA) and all concerned with the FSMS (FSA2013, § 3). The BFSA, a body corporate with five members has also been established to carry out the functions under this Act with power to monitor and regulate the activities relating to food business and to coordinate the functions and activities of organizations engaged in food safety management (FSA2013, §§ 5, 7 & 13). It is important to note that for the effective enforcement of the functions as laid down in the FSA2013, the functions of the BFSA have been devolved under five directors through five divisions namely Food Safety Surveillance and Adjudication Affairs, Food Safety Laboratory Network Coordination Affairs, Food Safety Standardization Coordination Affairs, Consumers' Concern, Risk and Safe Food Management and Establishment, Finance, Human Resource and Corporate Affairs (§ 14). Moreover, headed by the chairman of BFSA, a

33-member Central Food Safety Management Coordination Committee (CFSMCC) has also been set up in order to coordinate among the authorities or organizations involved directly or indirectly in FSMS (FSA2013, § 15). Establishment of technical committees consisting of experts concerning to food safety or related disciplines to assist and advise in conducting the functions of the BFSA has also been laid down under the FSA2013 (§ 17).

3.3. Prohibitions to Ensure FSMS

Various prohibitions related to FSMS have been imposed to maintain food safety in an optimum level. The FSA2013 prohibits the use of poisonous elements, radioactive substances, heavy metals, food additives or processing aids, growth promoters, insecticides, pesticides or drug residues, microbes etc. (§§ 23-42). Prohibitions have also been imposed on the production, import or marketing of adulterated article of food or food ingredient, sub-standard food, misbranded food, unregistered food etc. Restrictions have also been inserted to prohibit food processing in unhygienic manner and to restrict the sale of diseased or decomposed food and to prohibit false or misleading advertisement etc. (FSA2013, §§ 23-42).

3.4. Responsibilities of Food Business Operators

Special Responsibilities of food business operators (hereinafter FBO) have been enumerated under the FSA2013 with mandatory disclosure and circulation of matters relating to any defect in the food or food processing and withdrawal of defective food items (§ 43). The producers, packers, distributors and sellers have been held specifically liable for supplying any food after the expiry date, storing or distributing food violating precautionary instructions declared by the producers, erasing any information relating to safety of food, trade symbol or identification mark, failing to provide required traceability information of the producer or of the person from whom the food was received for storage or distribution, receiving any food for storage or distribution despite knowing the fact that the food is unsafe (FSA2013, § 44).

3.5. Appointment of Food Analysts and Food Safety Inspectors

Regarding the analysis and testing of foods, appointment of adequate 'Food Analysts' has been entrusted to the BFSA under section 45 of FSA2013 (FSA2013). Analysis of food stuff and certification of food analysis report by the food analysts have been preserved with fees by any person (FSA2013, § 45).

Provisions have been inserted in FSA2013 regarding compulsory sale or surrender of food sample for analysis or testing (§ 47). The PFC can also exercise its power to have the food sample tested under section 50 (FSA2013).

Appointment of 'Food Safety Inspectors' has been entrusted also to the BFSA with duties to make regular inquiry, inspection, examination, collection of samples, preservation of various records, search and seizure etc. (FSA2013, §§ 51-52). These food safety inspectors have been given the powers to enter into any food establishment, to make submission of ledger books, vouchers, documents and accounts, power to seize adulterated food, destruction and disposal of seized living or active ingredient or food items under the said Act (FSA2013, §§ 53-57).

3.6. Offences, Penalties, Adjudication and Remedial Procedure

Various offences with penalties have been inserted in the schedule of this Act and categorized under section 60 of FSA2013 (FSA2013). In order to ensure effective trial, provision has been made to file the case before the special court or the special tribunal or under this Act wherever necessary (FSA2013, § 61).

The FSA2013 has introduced a 3-tier adjudication mechanism for offences detrimental to FSMS. Criminal remedy through fine and imprisonment has been introduced along with civil remedies in way of compensation and administrative actions in way of fines. Provisions for setting up PFC have been inserted (FSA2013, § 64[1]). This Act however has not made it clear whether such court will be a separate court stating that the courts of first class Magistrates or the Metropolitan Magistrates may be designated as PFC and empowered to try offences. (FSA2013, § 64[2]). Locus standi or the right to sue for criminal offences has been vested to any person or the Chairman of BFSA or any officer appointed by him to get remedy against such offences (FSA2013, § 65). It is worthily to note that twenty five percent of the imposed fine has been awarded to the complainant under section 62 upon conviction under FSA2013 (FSA2013). This Act has also opened scope for any any affected person or food consumer to seek additional civil apart from remedies under criminal prosecution to get compensation not exceeding five times of the assessed amount of damage (FSA2013, § 76). Administrative fine not exceeding taka three lakhs can also be imposed in case of allegation on purity of any food by any person under section 78 of FSA2013 (FSA2013).

4. Lacunas in the FSA2013 and Reform Proposals

4.1. As Regard to Operational Definitions

The term 'Food Businesses' under section 2(8) must include 'Food Export Processing' as exported food items must comply with the FSMS and provisions of the Act (FSA2013). It is undeniable that our food export industry will face bad reputation if quality is not maintained. For instance, we had already seen the European Union's ban on entry of Bangladeshi shrimps in 1997 regarding excessive and unauthorized use of antibiotics where estimated net loss for short term has been assessed as US\$ 14.7 million where medium and long term losses had affected the sector with much higher momentum through market diversion and erosion in price (Rahman, 2005, p. 4)

'Food Business Operator' should also include associates and agents in addition to proprietor or responsible to such business. Including associates and agents will be helpful to ascertain liabilities of such FBO chain committing offences or irregularities under FSA2013 (§ 2[9]). 'Food Additive' under section 2 (10) should insert that they must be able to be digested safely and biologically. Adding this clause will significantly cut down the rate of use of artificial food additives to the food which cannot be digested by human body (FSA2013).

'Food Consumer' should be defined under FSA2013 so as to give remedy to the consumers including users and beneficiary. FSA2013 should also insert provisions to designate micronutrient deficiencies and mineral deficiencies as against FSMS. It is undeniable that various micronutrients and minerals play a crucial role in our health protection.

4.2. Issues Regarding the NFSMAC, the Formation of the BFSA and Divisions

The NFSMAC consists of thirty members allows 29 *ex-officio* posts including minister, secretary, joint secretaries, high officials from state owned or dominated entities and chiefs from city corporations and upazilaparishad (FSA2013, § 3). Being *ex officio* members, all of them have additional responsibilities apart from the duties entrusted to them under the FSA2013 and it may lack proper functionality in ensuring advices and directives for ensuring safe foods for the food consumers in Bangladesh. For this reason, independent persons having adequate experiences should be placed instead of prevailing high handled bureaucracy in such national council to make the FSA2013 more effective.

Regarding formation of the BFSA, it should be pointed that no microbiologist, food scientists and legal experts have been made eligible for appointing as the member of the BFSA (FSA2013, § 9). Absence of such members may hinder the process of supervising proper scientific, legal and technical issues relating to FSMS in this rapid changing situation of food adulteration scenario. Hence, recommendation to include such experts has been stressed.

Regarding five divisions, it seems that the BFSA shall maintain its functions through these divisions. But it is a matter of regret that no qualification clauses are seen in the FSA2013 regarding the eligibility of the directors for such divisions. Being purely technical in nature, qualification of such directors should be inserted in the proviso. These divisions must also include legal experts to assess and regulate the management under the FSA2013 so that it can sustain in the long run before the relevant courts in the process of litigation and advisory opinion. These committees are expected to function with the majority consent of the members of the BFSA. So, their expertise may also be overlooked by the BFSA. Being purely technical in nature, their advise and recommendations should not be overlooked only because of majority.

4.3. Autocracy in Decision Making

The NFSMAC and the BFSA have been given the power to enforce and validate decision even in case of vacancies and defects in the constitution of the authorities (FSA2013, §§ 3 & 7). It seems that chances have been given to adopt and enforce decisions by the chairman even he/she is not supported by the members of the abovementioned authorities. He/she also can abuse the power when majority members resign from the authority. A national council and core authority regarding the FSMS should not represent such character of autocratic system. It has therefore been stressed that such autocratic provision should be repealed to maintain transparency in decision making. It is also necessary to have the adopted decisions under review jurisdiction of the Supreme Court of Bangladesh as enshrined in the constitution of Bangladesh (CONST, art. 102).

4.4. Food Safety Network and Challenges of Coordination

The FSA2013 has envisioned a Food Safety Network (hereinafter FSN) under the CFMCC headed by the chairman of the BFSA (FSA2013, § 15). The BFSA has been given the power to send mandatory directives relating to food quality and safety to any authority, organization or person concerned directly or indirectly with FSN (FSA2013, § 19). Regarding non-compliance, no

consequence has been inserted in the FSA2013. Power to give mandatory directives should have been issued under the authority of the CFMCC being the regulatory authority of the FSN for coordination.

FSN under the FSA2013 has been meant for coordination among the authorities and organizations concerned with the FSMS to facilitate scientific cooperation, exchange of information, development and implementation of joint projects and exchange of expertise as well as best practices etc. Establishment of such envisioned FSN requires proper coordination among all actors involved in the FSMS. It to be noted here that the issues of food quality and food safety have been mentioned under the mandate of several ministries and independent authorities established under various laws in Bangladesh [1]. It has been alleged that such entities dealing with FSMS work with “neither coordination nor any effective coordination mechanism” among them due to gaps arising out of overlapping policy statements or presence of concurrent multi-authority jurisdiction for the implementation laws and rules (Asaduzzaman, Rokonuddowlah, & Faroque, n.d., p. 3). Bangladesh has already been described as ‘over-burdened with laws for safety of food but food is most unsafe’ (Siddiqui, 2014). So, it is necessary to maintain effective coordination between large numbers of national entities directly or indirectly related to FSMS. Having the highest number of legislations regarding food safety in the world (Siddiqui, 2014) with a lot of entities doing almost the same repetitive works, there will be a problem of hierarchy under the CFMCC as its chairman being the chairman of the BFSA. For this reason, a creation of a regulatory commission instead of CFMCC may be suggested to govern and manage the coordination for the establishment of an effective FSMS under the FSA2013.

4.5. Issue Regarding Funds and Shortage of Personnel in the BFSA

The BFSA has been said to have a fund from government grants and approved sources (FSA2013, § 20). It is not clear that which functions is to be done with such fund. We should bear in mind that ensuring FSMS involves awareness building, educational and promotional campaigns, advocacy, preventing measures, inspection and testing, monitoring and adjudicating actions with proper flow of fund and logistic support with adequate personnel. Some additional sources like fines imposed under the FSA2013 may be inserted to be deposited in the stated fund. Government should also take long term action plan with adequate funding to ensure proper FSMS through strict monitoring of periodical achievements.

Regarding devolution of personnel, the BFSA has been alleged to have been “understaffed and regulator on paper only” till today as it has remained “an 11-man army, whereas its organogram requires it to be 1,004 and the authorities have agreed to sanction a 422 strong manpower” (“Sorry state”, 2016). This type of huge shortage of staffs and personnel must be addressed properly through the appointments in adequate numbers as soon as possible.

4.6. Ongoing Crisis in the Appointment of Analysts and Inspectors

The FSA2013 has made provision for appointing ‘Food Analysts’ without any qualification to analyse and examine foods or ingredients of food. Adequate qualifications or training experiences must be added for them in order to maintain the food examination in proper standard and management. The BFSA has been empowered to appoint ‘Food Safety Inspector’ (hereinafter FSI) for discharging duties of regular inspection, examination, inquiry, search, seizure, sample collection etc. under the FSA2013 (§§ 51-52). It is obvious that appointment of adequate numbers of FSI is mandatory to maintain all activities assigned to them under the FSA2013 in every local area. But it is a matter of sorrow that the BFSA after being formed in 2015, yet to appoint adequate numbers of food inspectors in this regard. It has been pointed out that a total number of 556 sanitary inspectors are now working in Bangladesh for maintaining food safety inspection under various departments, authorities and ministries [2] while the BFSA has appointed only 128 food inspectors to work in district level so far (“Regarding Appointment”, 2017). Moreover, a total of 2200 trained food inspectors under Ministry of Health are yet to be placed since 2010 due to the lack of coordination among the ministry of health, ministry of food and the BFSA (“Regarding Appointment”, 2017). Apart from that, appointment of 70 more Food Inspectors under Bangladesh Public Service Commission is still pending for the last two years due to same type of coordination problem (Tanmoy, 2017). So, it seems that we are yet to utilize at least 2270 capable personnel due to lack of coordination. Such situation must be addressed as quickly as possible to appoint necessary numbers of food inspectors under a single or unified appointing authority.

4.7. Fixation of Labs and Reporting System

There is no provision in the FSA2013 for the fixation of labs for the examination of the sample of articles of foods or food ingredients. Apart from BSTI lab, adequate labs with modern facilities must be set up in different divisions to ensure authentic results. For example, Food Safety and Standards Authority of

India can notify private research institutions and laboratories for food testing under food analysts where they have been accredited by the National Accreditation Board for Testing and Calibration Laboratories (Swaniti Initiatives, 2015, p. 2). We may adopt such framework with scopes for private entrepreneurs duly accredited under fixed standards through an accreditation board. Welcoming private entities in the testing system under FSMS not only will ease the sole burden of the government under the FSA2013 but also open scopes for new business horizons for private entities.

Reporting system of the results achieved from lab inspection should be coordinated in such way so that BFSA can have them easily and take necessary measures. Results of the reports should be published in a public register or website anonymously so that general people may also have access to such results and consider contemporary status of various issues in the FSMS.

4.8. Issues in the Punishment, Pure Food Court and Administrative Sanctions

Regarding false advertisement as stated in section 42, a food producer must not be given the opportunity to defend himself or herself stating that he or she was not aware of such false advertisement despite of due diligence (FSA2013). Hence, such defence of food producer should be withdrawn. FSA2013 also seems to have provisions favouring the offender with reduction of punishment in case of an anti-food safety special offence despite other relevant laws come with higher penalty (§ 61). Such provision should be repealed. For instance, the Special Powers Act of 1974 has provided death penalty inter alia for adulteration of food (The Special Powers Act of 1974, § 25[c]). Such special provision should remain intact and should not be supplemented by lower punishment.

We hoped with eagerness to see the establishment of the long cherished effective PFC under FSA2013. But it has been a matter of sorrow that FSA2013 exhibits a declaration only regarding the establishment of necessary numbers of PFC to try offences under this Act (§ 64). Charges of these PFC have been entrusted to the Court of 1st Class Magistrate or Metropolitan Magistrate (§ 64) or the Mobile Court under the Mobile Court Act, 2009 (§ 75) under the FSA2013. Giving extra burden to the existing judicial magistrates may not give desired results to ensure proper and speedy justice envisioned under the said Act. Hence, provision should be inserted to designate PFC with judges appointed only for that purposes in every district areas. FSA2013 should also fix the

offences to be tried by the Mobile Courts in order to avoid exercise of concurrent jurisdiction with the Court of Magistrate or the PFC.

The BFSAs, according to the FSA2013 can give direction to the concerned business or person relating to food business to withdraw the suspected or risky food ingredient or article of food from the market if it has reasons to believe that article or ingredient is sub-standard or does not conform the standard prescribed by this Act or any other law, or contains any radioactive or irradiated substances or contaminant, or any hazardous or poisonous matter (§ 43). But the Act remains silent about the consequences if such directives are not complied with. Temporary closure of such business should be inserted in such non-compliance till the analysis report comes with filing of criminal cases in case of such suspicion comes true through report.

4.9. Time Limit for Accessing Criminal and Civil Justice Mechanism

FSA2013 bounds a time limit of thirty days to lodge a criminal case regarding any anti-food safety practice (§ 66). In fact this time limit is too short for a victim to seek remedy under this Act. This time limit should be increased to at least three months as necessary documents and analysis report shall have to be deposited during filing case. A victim may also face medium to serious degree of illness due to such anti-food safety practices. Moreover, no time limit has been prescribed under the FSA2013 to seek civil remedy for compensation and time limit for appeal has been fixed to ninety days (§ 77). A time limit of six months should be inserted to file civil suit for compensation with a time limit of thirty days for appeal.

4.10. Rights of Reparation for the Victims Unheard

The FSA2013 has introduced a share of fine in criminal prosecution allowing twenty five percent of the imposed fine to the complainant upon conviction of the accused (§ 62). As the complainant includes 'any person' under section 66, right of reparation may not be there for the actual victims of anti-food safety practices (FSA2013). Provisions should be inserted to award such percentage of reparation in preference to the actual victim or victims (if any) in addition to paying cost of filing case to the complainant.

4.11. Scopes for Tribunals and Alternative Dispute Mechanism

FSA2013 has provided separate courts to adjudicate criminal and civil matters in addressing the grievances under the said Act. Under this separate system,

an aggrieved will have no scope for speedy justice or justice within reasonable time if he/she needs to wait for civil compensation in separate civil court after the accused gets conviction in PFC. We can unify such courts under a special tribunal in each district to settle the disputes under the FSA2013 to provide speedy justice. Forming special tribunals or courts may be suitable as these tribunals or courts can be empowered with capacity to give both civil and criminal remedy within their rules of procedures. We can also recommend the imposition of mandatory Alternative Dispute Resolution (hereinafter ADR) under the FSA2013 as this can also be a proper way to curtail the overload of dispute. For example, we may indicate the application of ADR in the United Kingdom where conciliation, arbitration and mediation are frequently used in resolving consumer disputes (Chowdhury, 2010). Inserting ADR in the FSA2013 can provide speedy and low cost involved remedies in case of small matters to the food consumers or aggrieved apart from the formal judicial mechanism.

4.12. Inserting Provisions for Street Food Vendors

FSA2013 needs special provisions for street food vendors. This Act only provides provision under section 63 for taking help from Feriwala or street food hawker to identify the actual violator in case of food adulteration, misbranding and defective foods (FSA2013). Street vending has already been described by the World Bank as 'one of the important employment opportunities' as we are having approximately 97000 street vendors in Dhaka alone (Etzold, 2014, p. 62). This Business has also been described as 'a major health risk due to lack of infrastructure and control due to temporary nature, diversity and mobility' (Mamun, Rahman, & Chowdhury, 2013, p. 324). As street food vending and culture of eating street foods now-a-days are on the rise, the FSA2013 must come forward with provisions for regulating FSMS in the street food vendors relying on different important factors like technical and regulatory aspects related to the preservation, preparation and display of food sold in the streets, the consumer perspective, and educational programs. Reliance towards such factors is described as the core principle for a regulatory authority to determine food quality and safety for street food (Khairuzzaman, Chowdhury, Zaman, Mamun, & Bari, 2014, p. 7).

4.13. Regulation of Mobile Food Transporter and Online Food Groups

Due to the advent of diversified methods in food business, some entities are now having their activities as third-party transporters to transport food items to the food consumers. A lot of food consumers now are using these third-party

transporters like Foodpanda, Hungrynaki etc. to get food delivery at home or at their desired place (Foodpanda, & Hungrynaki, 2017). FSA2013 must provide provisions so that they can be forced to maintain the rule of hygiene while delivering the food items at distant places.

Apart from such third party transporters, online food consumer groups like Food Monsters etc. are now active in different social medias like facebook with approximately 4.3 lac members (Food Monster, 2017). These groups promote food items with discount if food items are bought and posted in the groups. A lot of negative reviews have been reported by the consumers when they venture for such food after being advertised. FSA2013 should have provisions to monitor the activities of such groups so that they are not engaged in activities like false advertisements and commission agents of the FBO.

4.14. Provisions for Accessing Annual Report

Annual report under FSA2013 must be published in details describing the core activities and results thereto. This type of report should be made accessible through website to assess the activities of the BFSa under the said Act. As a new entity, it will be too early to assess the success of the BFSa for ensuring safety food management system without reports of few years. Open access to such detailed report shall provide a good overview for academics and researchers to recommend more alternatives to reach the desired level of FSMS envisioned under this Act.

4.15. Inclusion of Various Lists and Limits in the Schedules

FSA2013 comes only with the offences and punishments in its schedule. In order to ensure proper FSMS, some more schedules should be inserted containing the list of prohibited additives, preservatives and contaminants. Highest limit of usage must be there in case of approved additives, preservatives and heavy metals etc. These schedules must be inclusive so as to include necessary items and usage limits in regular intervals allowing necessary amendments.

4.16. Recognition of Codex *Alimentarius* to Confirm International Standard

FSA2013 should insert a provision that in all level of FSMS, Codex Alimentarius shall be the guideline for assessing the standard system. Formed by the World Health Organization and the Food and Agricultural Organization, this codex

describes international standard of foods, codes of practice and guidelines for the quality and safety of foods (Codex *Alimentarius*, 2017). By adopting Codex *Alimentarius* as the key indicators for food standardization in FSA2013, we can indicate our adherence to international standards. FAO has already stressed that Bangladesh, being one of the 188 members should complete the harmonisation process with different regulatory regimes under that Codex as approximately 2.5 million people are engaged in the food business in this country (“Get more”, 2017).

5. Concluding Remarks

There is no doubt that effective legislation as well as a coordinated institutional and legal framework is necessary to ensure and promote food safety for all. The FSA2013, being the core legislation regarding food safety in Bangladesh shows us its weakness and challenges in many sectors. To overcome such deficiencies and challenges, the FSA2013 should undergo some rigorous alterations and additions in black and white. Adequate changes must be there in the FSA2013 inserting new definitions and schedules, restructuring the entities and their functions, ensuring proper management and regime for the coordination, fixing the labs and setting up international standards to be followed, creating single or unified authority to appoint food analysts and food inspectors, combining prevalent delayed and rigid redress mechanism to a single one with ensuring victim’s reparation, ensuring people’s access to the different reports of the entities etc. for its effective implementation. As the FSA2013 is yet to gain its proper motion, early amendments to the said Act may ensure the goals envisioned under this Act thereto. In addition to that, we need to bear it in mind that the government of Bangladesh had been forced to enact the FSA2013 and establish the entities under the said Act through the orders of the Supreme Court of Bangladesh following two writ petitions. It showed government’s reluctance to address the current worsened scenario of food safety in Bangladesh. Such reluctance seems to be present still now when we see that the BFSA, as the main authority for ensuring the FSMS under the FSA2013 has not yet been provided with minimum fund, logistic support, personnel, food analysts, food inspectors etc. Government should give up such attitude of unwillingness to ensure the effective implementation of the FSA2013. Proper amendments of the FSA2013 with government’s eagerness to implement the provisions as early as possible will be able to create food safety for all of us in the truest sense.

Notes

[1] These legislations include the Penal Code of 1860, the Poison Act of 1919, the Dangerous Drug Act of 1930, the Agricultural Products Market Act of 1950, the Fish Protection and Conservation Act of 1950, the Essentials Articles (Price Control and Anti-Hoarding) Act of 1953, the Food Grain Supply (Prevention of Prejudicial activity) Ordinance of 1956, the Animals Slaughter (Restriction) and Meat Act of 1957, the Control of Essential Commodities Act of 1957, the Pure Food Ordinance of 1959, the Agricultural Pest Ordinance of 1962, the Cantonments Pure Food Act of 1966, the Destructive Insects and Pests Rules (Plant Quarantine) of 1966, the Pure Food Rules of 1967, the Price and Distribution of Essential Commodities Ordinance of 1970, the Pesticide Ordinance of 1971, the Special Powers Act of 1974, the Drugs Control Ordinance of 1982, the Standards of Weights and Measures Ordinance of 1982, the Animal Slaughter (Restriction) and Meat Control (Amendment) Ordinance of 1983, the Breast-Milk Substitute (Regulation of Marketing) Ordinance of 1984, the Bangladesh Standards and Testing Institution Ordinance of 1985, the Marine Fisheries Ordinance of 1983, the Pesticides Rules of 1985, the Radiation Protection Act of 1987, the Tobacco Goods Marketing (Control) Act of 1988, the Iodine Deficiency Disorders (IDD) Prevention Act of 1989, the Essential Commodity Act of 1990, the Narcotics (Control) Act of 1990, the Fish and Fish product (Inspection and Quality Control) Rules of 1997, the Consumers' Rights Protection Act of 2009, the Local Government (City Corporation) Act of 2009, Local Government (Paurashava) Act of 2009, the Mobile Court Act of 2009, the Fish Feed and Animal Feed Act of 2010 etc.

[2] Such entities include the National Parliament (through Parliamentary Standing Committee on Food and Disaster Management), Ministry of Industry (through the BSTI), Ministry of Commerce (through the National Consumer Rights Protection Council and the Directorate of National Consumer Rights Protection), Ministry of Health and Family Welfare (through the Directorate General of Health Services, Institute of Public Health and Sanitary Inspectors in every local areas), Ministry of Food and Disaster Management (through the Directorate General of Food), Ministry of Local Government, Rural Development and Co-operatives (through the National Food Safety Advisory Council, Local Government Bodies and Sanitary Inspectors in City Corporations and Pourashavas), Ministry of Law, Justice and Parliamentary Affairs, Ministry of Agriculture (through the Department of Agricultural Extension and Plant Protection Wing), Ministry of Establishment (through Executive Magistrates), Ministry of Fisheries & Livestock (through the

Department of Fisheries and the Fish Inspection and Quality Control Wing), Ministry of Home Affairs (through the Bangladesh Police), Ministry of Science, Information (through the Bangladesh Atomic Energy Commission) etc.

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