
REGULATING THE INDIAN CHILD'S PLATE: A CRITICAL ANALYSIS OF FSSAI'S STRATEGY IN THE BATTLE AGAINST CHILDHOOD OBESITY

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ABSTRACT

India stands at the precipice of a dual burden of disease, with childhood obesity emerging as a critical public health crisis. This article provides a critical legal and policy analysis of the Food Safety and Standards Authority of India's (FSSAI) strategic response to this epidemic. Moving beyond a mere description of initiatives, it argues that the FSSAI's approach, while pioneering in its intent, is fundamentally fragmented and structurally limited. The analysis deconstructs three core pillars of the FSSAI's strategy: front-of-pack labelling (the draft 'Indian Nutrition Rating' or INR), marketing regulations, and the 'Eat Right India' campaign. It posits that a reliance on voluntary compliance, the creation of a consumer-centric rather than industry-punitive framework, and a siloed approach that fails to intersect with other crucial policy domains (such as education and agriculture) significantly dilute the regulator's efficacy. The article concludes by proposing a reconceptualized, multi-sectoral legal framework that advocates for mandatory, simplified warning labels, robust statutory marketing bans, and the integration of childhood obesity prevention as a non-derogable component of the state's constitutional duty under Article 21 (Right to Life) and Article 47 (Duty to raise the level of nutrition). The ultimate aim is to shift the regulatory paradigm from gentle nudging to legally enforceable protection, ensuring that the health of Indian children is not left to the vagaries of the market.

Keywords: FSSAI, Child, Obesity, Right to Health

Introduction

“The fundamental critique of using voluntary measures for public health goals is that they mistake politeness for policy, and hope for strategy.”¹

- Lawrence O. Gostin

The silhouette of public health in India is undergoing a dangerous metamorphosis. While the spectre of undernutrition persists, a new, more insidious shadow is rapidly lengthening: the rise of childhood obesity. Once considered a malaise of the affluent West, obesity and overweight now affect millions of Indian children, fuelling a future tsunami of non-communicable diseases (NCDs) like diabetes, hypertension, and cardiovascular ailments. The economic and social costs of this silent epidemic are immeasurable, threatening to cripple a demographically young nation.² In this battle for the health of the next generation, the primary regulator on the front lines is the Food Safety and Standards Authority of India (FSSAI). Its strategy, however, may be faltering at its foundation, risking the very critique of substituting politeness for effective policy.

The FSSAI's strategy, encapsulated in initiatives like the draft Food Safety and Standards (Labelling and Display) Regulations, 2020 (proposing the Indian Nutrition Rating), restrictions on marketing of foods high in fat, sugar, and salt (HFSS) to children, and the broader 'Eat Right India' movement, represents a significant acknowledgment of the crisis. However, this article contends that the current regulatory architecture is critically flawed, embodying the very weakness highlighted in the quote above. It is a strategy of admirable intentions but inadequate enforcement; a framework that seeks to inform the consumer rather than discipline the industry. Through a critical examination of its core components, this analysis will reveal a fragmented approach that privileges voluntary compliance over mandatory obligation, leading to a regulatory environment that is porous and ineffectual.

This article will first delineate the scope of the childhood obesity crisis in India, establishing the imperative for robust state intervention. Second, it will critically analyse the three central pillars of the FSSAI's strategy: front-of-pack labelling (FOPL), marketing regulations, and public awareness campaigns. Third, it will identify the overarching structural weaknesses,

¹ Lawrence O. Gostin, *Global Health Law* 173 (Harvard University Press 2014).

² *Noncommunicable Diseases: Key Facts*, World Health Org. (Sep. 16, 2021), <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>.

including the voluntary nature of key regulations and the lack of a cohesive, multi-ministerial strategy. Finally, the article will propose a reconceptualized legal framework, arguing for a rights-based, mandatory, and intersectional approach to truly safeguard the health of India's children.

The Expanding Waistline an Imperative for State Intervention

The data on childhood obesity in India paints an alarming picture. According to the Comprehensive National Nutrition Survey (CNNS) 2016-18, the prevalence of overweight and obesity among children and adolescents aged 5-19 years was significantly higher than previous estimates.³ This trend is not confined to urban affluence; it is percolating into rural India, driven by changing food environments, increased consumption of ultra-processed foods, and sedentary lifestyles.⁴

The state's obligation to intervene is not merely a matter of public health policy but a constitutional and fiduciary duty. The Supreme Court of India has consistently interpreted Article 21 of the Constitution to include the right to health and the right to food.⁵ Furthermore, Article 47, a Directive Principle of State Policy, explicitly mandates that the State shall raise the level of nutrition and the standard of living of its people as a primary duty.⁶ The FSSAI, established under the Food Safety and Standards Act, 2006, is the primary entity tasked with fulfilling this duty in the context of the modern food environment.⁷ Its mandate to ensure the availability of safe and wholesome food implicitly extends to protecting the most vulnerable, including children, from food-related harms that are not immediately toxic but chronically debilitating.

Deconstructing the FSSAI's Three-Pronged Approach

1. Front-of-Pack Labelling (FOPL): The Opacity of the "Indian Nutrition Rating"

The draft Food Safety and Standards (Labelling and Display) Regulations, 2020, introduced

³ Ministry of Health and Family Welfare, Gov't of India & UNICEF, *Comprehensive National Nutrition Survey (CNNS) National Report* 140 (2019).

⁴ A. Gupta et al., *Childhood Obesity in India: A Meta-Analysis*, 86 Indian J. Pediatrics 655, 659 (2019).

⁵ Consumer Education and Research Centre v. Union of India, (1995) 3 S.C.C. 42 (India).

⁶ India Const. art. 47.

⁷ The Food Safety and Standards Act, No. 34 of 2006, Acts of Parliament, 2006 (India).

the concept of the Indian Nutrition Rating (INR).⁸ Modelled loosely on the “Health Star Rating” system used in countries like Australia and New Zealand, the INR algorithm assigns a score from ½ to 5 stars based on the content of both “negative” (e.g., sugar, salt, saturated fat) and “positive” (e.g., protein, fibre, fruits) nutrients.⁹

The primary critique of this system is its potential to mislead. A product high in sugar and fat can still achieve a favourable star rating if it is fortified with protein or fibre, creating a “health halo” effect that misguides time-pressed parents and children.¹⁰ For instance, a highly sweetened breakfast cereal or a fruit-flavoured drink with added vitamins could receive a 3 or 4-star rating, falsely signalling it as a healthy choice. This stands in stark contrast to the global public health consensus, which strongly advocates for interpretive warning labels, such as the octagonal “high-in” warnings successfully implemented in Chile, Peru, and Mexico.¹¹ These warning labels are simple, unambiguous, and designed to empower consumers to make healthier choices quickly, without complex calculations.

Furthermore, the draft regulation initially proposed the INR system as voluntary. This creates a classic “race to the bottom,” where only products with favourable ratings will display them, while those with poor ratings will opt-out, leaving consumers in the dark about the least healthy options.¹² A voluntary system fundamentally undermines the regulatory purpose of creating a level playing field and ensuring consistent, comparable information for all.

2. Regulating the “Eyes”: The Half-Measures in Marketing Restrictions

The FSSAI’s regulations on the marketing of foods high in fat, sugar, and salt (HFSS) to children, outlined in the Food Safety and Standards (Advertising and Claims) Regulations, 2018, represent a step in the right direction but lack the teeth for meaningful enforcement.¹³ The regulations restrict advertisements that promote such foods or discourage healthy eating, but they are narrowly drafted and difficult to monitor.

⁸ Food Safety and Standards Authority of India, *Draft Food Safety and Standards (Labelling and Display) Regulations, 2020* (2020).

⁹ *Id.* at ch. IV, app. II.

¹⁰ *Building Momentum: Lessons on Implementing a Robust Front-of-Pack Food Label*, World Cancer Resch. Fund Intl. (2022), <https://www.wcrf.org/int/policy/nourishing-framework/building-momentum>.

¹¹ Lindsey Smith Taillie et al., *An Evaluation of Chile’s Law of Food Labeling and Advertising on Sugar-Sweetened Beverage Purchases: An Observational Study*, 4 *Lancet Planetary Health* e613, e615 (2020).

¹² Michelle M. Mello et al., *The McLawsuit: The Fast-Food Industry and Legal Accountability for Obesity*, 25 *Health Aff.* 603, 607 (2006).

¹³ Food Safety and Standards (Advertising and Claims) Regulations, 2018, § 4(2) (India).

The current framework fails to comprehensively address the multifaceted nature of modern marketing, which extends far beyond television commercials to include digital advertising, influencer promotions on social media, cartoon character endorsements on packaging, and in-game advertisements.¹⁴ A 2022 study from the University of Oxford found that child-oriented marketing in India is pervasive and predominantly promotes unhealthy products.¹⁵ The FSSAI's regulations, in their current form, are ill-equipped to handle this digital deluge.

A robust regulatory response would require a statutory ban on all HFSS food marketing directed at children across all media platforms, as recommended by the World Health Organization (WHO).¹⁶ The current self-regulatory and complaint-based approach places an undue burden of proof and vigilance on parents and civil society, effectively letting the industry off the hook. Countries like the United Kingdom have implemented a 9 pm watershed ban on TV advertising for HFSS foods and are moving towards similar restrictions online.¹⁷ India's strategy, by comparison, appears timid and outdated.

3. The 'Eat Right India' Campaign: Awareness vs. Structural Change

The 'Eat Right India' movement is a laudable effort to create a nationwide culture of healthy eating.¹⁸ Through initiatives like the 'Sajeev Khadya' (Wholesome Food) pledge and school-based programmes, it seeks to educate citizens about nutrition. However, this pillar of the strategy embodies a critical tension in public health: the conflict between individual responsibility and the need for structural reform.

Heavy reliance on awareness campaigns risks devolving into victim-blaming, implicitly suggesting that childhood obesity is a result of poor parental choices, while obscuring the powerful commercial and environmental determinants that shape those choices.¹⁹ When the

¹⁴ Emma Boyland et al., *Advertising as a Cue to Consume: A Systematic Review and Meta-Analysis of the Effects of Acute Exposure to Unhealthy Food and Nonalcoholic Beverage Advertising on Intake in Children and Adults*, 103 Am. J. Clinical Nutrition 519, 525 (2016).

¹⁵ Univ. of Oxford, Nuffield Dep't of Primary Care Health Sciences, *Exposure and Power of Food Marketing in India: Evidence from a Cross-Sectional Survey of Children* 12 (2022).

¹⁶ World Health Org., *Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* 5 (2010).

¹⁶ World Health Org., *Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* 5 (2010).

¹⁷ *New Obesity Strategy to Protect Children and Families*, UK Dep't of Health & Soc. Care (July 27, 2021), <https://www.gov.uk/government/news/new-obesity-strategy-to-protect-children-and-families>.

¹⁸ Food Safety and Standards Authority of India, *Eat Right India Handbook* 4 (2021).

¹⁹ Kelly D. Brownell & Kenneth E. Warner, *The Perils of Ignoring History: Big Tobacco Played Dirty and Millions Died. How Similar Is Big Food?*, 87 Milbank Q. 259, 265 (2009).

food environment is saturated with cheap, palatable, and aggressively marketed ultra-processed foods, simply telling parents to "eat right" is an inadequate response. Education is necessary but not sufficient. It must be underpinned by a regulatory environment that makes the healthy choice the easy and default choice.

Voluntarism, Silos, and Enforcement Myopia

The weaknesses in the individual pillars of the FSSAI's strategy are symptomatic of deeper, systemic flaws.

First, the principle of voluntarism that underpins key initiatives like the INR fatally weakens the regulatory framework. It signals a reluctance to confront powerful food industry lobbies and reflects a policy preference for "nudging" over mandating.²⁰ For a public health crisis of this magnitude, soft law is insufficient. The state must be willing to wield its coercive power to set and enforce mandatory standards.

Second, the FSSAI's approach operates in a policy silo. A truly effective strategy against childhood obesity requires intersectional action across multiple ministries: Education (for robust school food standards and physical education mandates), Information and Broadcasting (for stringent advertising codes), Finance (for fiscal policies like a "sin tax" on HFSS foods), and Urban Development (for creating child-friendly physical activity spaces).²¹ The current lack of a cohesive, whole-of-government strategy, led by a powerful inter-ministerial body, results in fragmented and often contradictory policies.

Third, there is a palpable enforcement myopia. Even the existing, somewhat weak regulations are poorly enforced due to the FSSAI's chronic infrastructural and capacity constraints.²² Without a massive investment in monitoring, surveillance, and a credible deterrent penalty regime, even the most perfectly drafted mandatory regulations would remain toothless.

Reconceptualizing the Framework towards a Mandatory, Rights-Based Approach

To effectively combat childhood obesity, India must reconceptualize its regulatory strategy

²⁰ Richard H. Thaler & Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* 6 (Yale University Press 2008).

²¹ Boyd Swinburn et al., *The Global Syndemic of Obesity, Undernutrition, and Climate Change: The Lancet Commission Report*, 393 *Lancet* 791, 812 (2019).

²² Comptroller and Auditor General of India, *Report of the Comptroller and Auditor General of India on Food Safety and Standards Authority of India*, Union Gov't (Civil) Rep. No. 38 of 2017, at 25 (2017).

from first principles. The following recommendations outline a path toward a more robust, rights-based framework.

1. Enact Mandatory, Interpretive Front-of-Pack Warning Labels: The FSSAI must abandon the complex and misleading INR system and adopt a mandatory, interpretive warning label system based on the Chilean model. Simple, black-and-white octagonal warnings stating "High in Sugar," "High in Sodium," or "High in Saturated Fat" should be mandated for all products that exceed scientifically determined thresholds.²³ This is a direct, evidence-based intervention that empowers consumers and disincentivizes the production of unhealthy foods.
2. Legislate a Comprehensive Statutory Ban on HFSS Food Marketing to Children: The regulations must be amended to incorporate a statutory ban on all HFSS food marketing across all media platforms where children constitute a significant portion (e.g., >25%) of the audience. This must include a clear definition of "child-directed marketing" that encompasses cartoon characters, celebrity endorsements, and digital targeting.²⁴
3. Anchor the Strategy in a Multi-Sectoral Legal Mandate: Parliament should consider enacting a dedicated "Childhood Obesity Prevention Act" or fortify the FSS Act to create a statutory National Committee on Childhood Obesity. This body, with representation from the Ministries of Health, Women and Child Development, Education, and I&B, would be tasked with developing and monitoring a unified national strategy, breaking down existing policy silos.²⁵
4. Invoke Constitutional Sanction for Enforcement: The judiciary must be approached to explicitly recognize the state's failure to regulate obesogenic foods as a violation of Articles 21 and 47, particularly concerning children.²⁶ Public Interest Litigation (PIL) could be a potent tool to compel the executive to adopt more stringent, evidence-based regulations, framing inaction as a dereliction of constitutional duty.

Conclusion

The FSSAI's battle against childhood obesity is being fought with the right intentions but the

²³ Marcela Reyes et al., *The Impact of the Chilean Food Labeling and Advertising Law on Food Product Reformulation*, 8 *Lancet Global Health* e782, e782 (2020).

²⁴ World Health Org. Reg'l Off. for Europe, *Evaluating Implementation of the WHO Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* 22 (2018).

²⁵ Lawrence O. Gostin, *supra* note 1, at 215.

²⁶ *Vikram Deo Singh Tomar v. State of Bihar*, A.I.R. 1988 S.C. 1782, 1785 (India).

wrong weapons. Its current strategy—reliant on a confusing labelling system, half-hearted marketing restrictions, and an overemphasis on awareness—is a regulatory placebo that provides the illusion of action without delivering substantive change. The voluntary, consumer-centric model is fundamentally mismatched to the scale and nature of the crisis, which is driven by powerful commercial determinants.

Protecting children from an obesogenic environment is not an act of paternalistic overreach but a core function of a welfare state. It is a constitutional obligation. The way forward requires a paradigm shift from nudging to shielding; from voluntary guidance to mandatory prohibition; and from a siloed regulatory agency to a unified, rights-based, multi-sectoral mission. The health of India's future generation is a public good that must be defended with the full force of law, not merely encouraged with well-meaning slogans. The time for gentle persuasion is over; the era of enforceable protection must begin.