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1-1-2013

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## Food safety and public health issues in Bangladesh: a regulatory

### Abstract

In Bangladesh, most of the foodstuffs, be they manufactured or processed, are unsafe for consumption or adulterated to varying degrees. This problem persists at every level of the food chain from preparation to consumption. Food manufacturers, processors, restaurants, fast food outlets and so forth are all involved in one way or another in this corrupt practice of adulteration. Foods are adulterated by using various harmful chemicals and toxic artificial colours, on the one hand, and rotten perishables turned to poisonous foods are stored, sold and served to consumers in an unhygienic atmosphere, on the other. The unhygienic and unsafe treatment of food is seriously impacting public health by causing numerous chronic and non-chronic diseases. Despite different reasons for the unsafe treatment and adulteration of foodstuffs in Bangladesh, this study will concentrate on the regulatory failures to combat the current food safety problems persisting in Bangladesh.

### Keywords

food, bangladesh, regulatory, issues, health, public, safety

### Disciplines

Arts and Humanities | Law

### Publication Details

A. Noman Mohammad Atahar. Ali, and Food safety and public health issues in Bangladesh: a regulatory (2013) 8 (1) European Food and Feed Law Review 31-40.

# Food Safety and Public Health Issues in Bangladesh: A Regulatory Concern

Abu Noman Mohammad Atahar Ali

*In Bangladesh, most of the foodstuffs, be it manufactured or processed, are unsafe for consumption or adulterated in varying degrees. This problem persists at every level of food from preparation to consumption. Food manufacturers, processors, restaurants, fast food outlets and so forth are all involved in one way or another in this corrupt practice of adulteration. Foods are adulterated by using various harmful chemicals and toxic artificial colours on the one hand; and rotten perishables turning to be poisonous foods are stored, sold and served to consumers in an unhygienic atmosphere on the other. This unsafety of food is contributing to the public health seriously with numerous chronic and non-chronic diseases. Despite different reasons for this unsafety and adulterations of foodstuffs in Bangladesh, this study will concentrate on the regulatory failures to combat the current food safety problems persisting in Bangladesh.*

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## I. Introduction

Food is a significant reason for the considerable number of diseases in the entire world. Bangladesh, a third world developing country of South Asia, is not an exception in this case. Consumption of unsafe food is a serious threat to public health in Bangladesh for last couple of decades. A survey conducted by the Institute of Nutrition and Food Science, Dhaka University, in early 1980s had revealed that inadequate diets and intake of adulterated foods are responsible for the malnutrition of 60 per cent of the people of Bangladesh.<sup>1</sup> The Institute of Public Health (IPH) in Dhaka and the World Health Organisation (WHO) in their joint study of 1994 on food adulteration tested 52 street vendors and found that, all of the vendors' food samples were contaminated with different types of disease breeding micro-organisms.<sup>2</sup> Another study of 2003 conducted by the same organisations as above in the capital city

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<sup>1</sup> The Survey was cited in Quazi Mohammad Ali, "Some Aspects of Consumer Protection in Bangladesh," *The Dhaka University Studies Part-C* (1984): 111.

<sup>2</sup> Neela Badrie, Sonia Y. De Leon, and Md Ruhul Amin Talukder, "Food Adulteration Management Systems: Initiatives of Trinidad and Tobago, West Indies, Philippines and Bangladesh" (paper presented at Caribbean Agro-Economics Society 26<sup>th</sup> West Indies Agricultural Economic Conference, Puerto Rico, July 2006), 85.

revealed that amongst 400 sweetmeats, 250 biscuits, 50 breads and 200 ice creams samples, 96 per cent of sweetmeats, 24 per cent of biscuits, 54 per cent of breads, and 59 per cent of ice creams were adulterated.<sup>3</sup> This 2003 study found that over the preceding decades, some 50 per cent of the food samples tested in IPH laboratory were adulterated.<sup>4</sup> Similarly, a recent official statistics published by the Ministry of Health and Family Welfare (MOHFW) of the Government of Bangladesh (GoB) reveals that nearly half of the food samples have been found adulterated tested by the IPH from 2001 to 2009.<sup>5</sup> This GoB statistics indirectly demonstrates that the situation of the prevailing food adulteration concerns in Bangladesh has not improved over the past 10 years.

Adulterated food has many deadly affects. The National Taskforce on Food Adulteration (NTFS) made by the GoB find out that adulterated foodstuffs each year causes various foodborne illnesses, including diarrhoea, malnutrition and other diseases leading to death of many people in Bangladesh.<sup>6</sup> Especially children are more vulnerable than adults as unsafe food is a major cause of child mortality.<sup>7</sup> Universally it is accepted that, unsafe food is an important factor of malnutrition, which causes various types of serious illnesses including diarrhoea along with other permanent consequences for the human body.<sup>8</sup> Hence, Bangladesh which has abundant adulterated foods cannot deny the contribution of unsafe foods for malnutrition. In a recent study recognised by the GoB portrayed the depressing picture of child mortality.<sup>9</sup> Pointing the forefinger to the malnutrition as a significant cause of child mortality, this report mentioned that in every 19 children 1 child die before they complete five years.<sup>10</sup>

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<sup>3</sup> Shah Mahfuzur Rahman, Md Asirul Hoque, and Md Ruhul Amin Talukder, "Food Security in Bangladesh: Utilization, Nutrition and Food Adulteration" (paper presented at the National Workshop on Food Security, Dhaka, Bangladesh, 19–20 October 2005), 45–6.

<sup>4</sup> See, eg, *ibid* 46; Badrie, Leon and Talukder, "Food Adulteration Management," 85.

<sup>5</sup> See the details of the table on "Public Health Interventions by Selected Institutions," Directorate General of Health Services, accessed November 15, 2012, [http://nasmis.dghs.gov.bd/dghs\\_new/dmdocuments/All/Public%20Health%20Interventions.pdf](http://nasmis.dghs.gov.bd/dghs_new/dmdocuments/All/Public%20Health%20Interventions.pdf), 6.

<sup>6</sup> National Taskforce on Food Adulteration, "Bangladesh Country Paper" (paper presented at the FAO/WHO Regional Conference on Food Adulteration for Asia and Pacific, Seremban, Malaysia, 24–27 May 2004), 6.

<sup>7</sup> "The State of the World's Children 2008: Child Survival," *United Nations International Children's Emergency Fund, December 2007*, accessed November 15, 2012, <http://www.unicef.org/sowc08/docs/sowc08.pdf>, 1.

<sup>8</sup> For details of the relation between food adulteration and malnutrition, see Motarjemi et al, "Contaminated Weaning Food: A Major Risk Factor for Diarrhoea and Associated Malnutrition," *Bulletin of the World Health Organization* 71 (1993): 79.

<sup>9</sup> The full report can be viewed at "Bangladesh Demographic and Health Survey 2011: Preliminary Report," National Institute of Population Research and Training, April 2012, accessed November 10, 2012, <http://www.measuredhs.com/pubs/pdf/PR15/PR15.pdf>.

<sup>10</sup> *Ibid.*, 24.

Given the numerous deaths and enormous sufferings of people caused by adulterated foods in Bangladesh, the regulators should not be allowed to avoid their responsibility to protect the people from such serious harm caused by the adulterated foodstuffs available to consumers. This is because the contribution of legal and regulatory failures in combating these human sufferings must be given due emphasis in any quest for a durable remedy against this evil.

The following parts and sections of this paper will endeavour to assert the key problems of food safety issues prevailing in Bangladesh along with their specific impact on public health. The loopholes of the *food safety regulatory regime of Bangladesh* (FSRRB) that are letting the entire food safety problems happen will be analysed with necessary recommendations.

## **II. Major Food Safety Concerns in Bangladesh and Their Impact on Public Health**

Little of the public health apprehensions regarding food safety issues in Bangladesh have been unveiled in the 'Part I'. However, this is an immense issue which warrants being elaborated more. World Health Organisation (WHO) has expressed its anxiety about the impact of food safety upon public health in Bangladesh in its website. It reveals that unsafe food can be a significant reason of many chronic and non-chronic diseases including but not limited to diarrhoea, cancer, heart diseases, various kidney diseases and birth defects.<sup>11</sup> Below find a discussion concerning the core food safety issues and their specific potential impact upon the public health.

### **1. Unhygienic Practice in Food Handling**

Unhygienic practices in food handling become a common phenomenon in the Bangladesh food industry. Countless restaurants, fast food outlets are cooking, baking and processing foods in extremely unhealthy environments.<sup>12</sup> Unhygienic food is a significant reason of diarrhoeal diseases as well as malnutrition.<sup>13</sup> Referring the data of International Centre for

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<sup>11</sup> "Sustainable Development and Healthy Environment: Food Safety," World Health Organization: Country Office for Bangladesh, accessed November 8, 2012, <http://www.ban.searo.who.int/en/Section3/Section40/Section104.htm>.

<sup>12</sup> For example, see Staff Correspondent, Rajshahi, "2 Fast Food Shops Fined," *The Daily Star* 24 February 24, 2010, accessed November 15, 2012, <http://www.thedailystar.net/newDesign/news-details.php?nid=127700>; Staff Correspondent, "2 Illegal Lube Factories Sealed Off in Chittagong," *The Daily Star*, August 31, 2005, accessed August 10, 2012, <http://thedailystar.net/2005/08/31/d50831060355.htm>; Staff Correspondent, "Food Adulteration: Mobile Court Faces Obstruction in Ctg," *The Daily Star*, August 12, 2005, accessed November 10, 2012, <http://www.thedailystar.net/2005/08/12/d5081201033.htm>.

<sup>13</sup> For details, see Motarjemi *et al*, "Contaminated Weaning Food," 79. See also Clydette Powell, "Nutrition" in *Understanding Global Health*, ed. William H. Markle, Melanie A. Fisher, and Raymond A. Smego, (McGraw-Hill Companies, 2007), 122.

Diarrhoeal Disease Research, Bangladesh (ICDDR), WHO suggested that in Bangladesh at least 501 people visits hospital every day for diarrhoeal diseases that are related to food safety.<sup>14</sup> The NTFS has also used by similar ICDDR data which mentioned that a total of 1,657,381 cases of acute diarrhoea and resultant deaths of 2,064 lives occurred in 1998 alone in Bangladesh.<sup>15</sup> Especially, the extent of attacks and deaths from diarrhoea has become alarming for the last couple of years in Bangladesh. The report of the Directorate General of Health Services (DGHS) mirrors the magnitude of the diarrhoeal diseases and confirms that this health problem is caused by mainly unsafe foodstuffs. The DGHS report suggests, from 2003 to 2009 17,999,284 people were attacked by diarrhoea and among them 4,674 people died,<sup>16</sup> which signifies that in average at least 3,850 people die for diarrhoea each year. NTFS report also mentioned that each year 5.7 million people become disable due to diarrhoeal diseases in Bangladesh.<sup>17</sup>

In addition, unhygienic processing of food has a severe impact on the export facilities in Bangladesh. For example, in 1997 European Union banned importing shrimp from Bangladesh due to the lack of maintaining proper hygiene standards in the shrimp processing plants.<sup>18</sup>

## 2. Use of Formalin and DDT<sup>19</sup> in Foods

Formalin use in foods is a crucial problem in Bangladesh currently. Supermarkets openly sell fruits, fishes and vegetables that have been treated with formalin to keep them fresh.<sup>20</sup> This widespread use of formalin in various foods is considered to be gravely dangerous for public

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<sup>14</sup> "Sustainable Development."

<sup>15</sup> National Taskforce, "Bangladesh Country Paper," 6.

<sup>16</sup> "Communicable Diseases," Directorate General of Health Services, accessed November 15, 2012, [http://nasmis.dghs.gov.bd/dghs\\_new/dmdocuments/Communicable%20diseases%20in%20Bangladesh.pdf](http://nasmis.dghs.gov.bd/dghs_new/dmdocuments/Communicable%20diseases%20in%20Bangladesh.pdf), 5-6.

<sup>17</sup> National Taskforce, "Bangladesh Country Paper," 6.

<sup>18</sup> S. M. Nazmul Alam and Bob Pokrant, "Re-organizing the Shrimp Supply Chain: Aftermath of the 1997 European Union Import Ban on the Bangladesh Shrimp," *Aquaculture Economics & Management* 13 (2009): 53.

<sup>19</sup> DDT is a pesticide that stands for 'Dichloro Diphenyl Trichloroethane'.

<sup>20</sup> See, eg, Staff Correspondent, "Trader Fined for Selling Fish Treated with Formalin," *Bangladesh2day*, September 1, 2009, accessed November 16, 2012,

<http://www.bangladesh2day.com/newsfinance/2009/September/1/Trader-fined-for-selling-fish-treated-with-formalin.php>; Amin et al, "Eating Away Our Health," *The Daily Star, Weekend Magazine*, November 5, 2004, accessed November 16, 2012, <http://www.thedailystar.net/magazine/2004/11/01/cover.htm>; Staff Correspondent, "RAB Seizes 24 Tonnes of Mangoes Mixed with Poisonous Chemicals," *The Daily Star*, July 10, 2008, accessed November 10, 2012, <http://www.thedailystar.net/newDesign/news-details.php?nid=45073>.

health. Scientific scholarships suggest that consumption of formalin directly through food can cause different types of cancers,<sup>21</sup> especially the lung cancer.<sup>22</sup>

Use of DDT is prohibited in 49 countries and restricted in 23 countries around the world.<sup>23</sup> Bangladesh also banned application of DDT,<sup>24</sup> but unfortunately its use remains rampant.<sup>25</sup> In Bangladesh DDT is commonly used in dried fish (locally called as ‘*sutki*’<sup>26</sup>) processing.<sup>27</sup> DDT saves its chemical features irrespective of the environmental circumstances and it is capable of generating to human body through breast milk.<sup>28</sup> Using of DDT is a significant reason of cancer especially breast cancer, liver cancer and pancreatic cancer.<sup>29</sup> DDT has also many adverse effects on various types of reproductive issues including unproductiveness, weaken semen, abortion, early menopause, birth defects and low birth weight of children.<sup>30</sup> WHO stressed about the frightening child mortality rate and mentioned that, 150,000 children die each year within first 4 weeks of their lives.<sup>31</sup> DDT can affect neurological issues on human health having trembling, seizures, nausea and dizziness etc.<sup>32</sup>

### 3. Use of Toxic Colours in Food

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<sup>21</sup> See generally Greg A. Wooster, Casandra M. Martinez, and Paul R. Bowser, “Human Health Risks Associated with Formalin Treatments Used in Aquaculture: Initial Study,” *North American Journal of Aquaculture* 67 (2005): 111.

<sup>22</sup> For details, see WHO Regional Office for Europe, “Indoor Air Quality: Radon Report on a WHO Working Group,” *Journal of Environmental Radioactivity* 8 (1988): 73-91

<sup>23</sup> M. A. Z. Chowdhury et al, “DDT Residue and Its Metabolites in Dried Fishes of Dhaka City Markets,” *Soil & Environment* 29 (2010): 120.

<sup>24</sup> Chowdhury et al, ‘DDT Residue,’ 117.

<sup>25</sup> Md Nurul Huda Bhuiyan et al, “Screening of Organochlorine Insecticides (DDT and Heptachlor) in Dry Fish Available in Bangladesh,” *Bangladesh Journal of Pharmacology* 3 (2008): 114.

<sup>26</sup> *Sutki* is generally called as a Bangladeshi semi-fermented fish or dried fish. It is considered as relatively cheap source of protein. They are generally dried in the sunlight. For details, see Khanum et al, “Head Space Gas Analysis of a Semi-Fermented Fish (Chapa Shutki) in Bangladesh and Comparison with Japanese Fish Products,” *Journal of Cookery Science of Japan* 34 (2001): 201.

<sup>27</sup> For details of DDT use in dried fish in Bangladesh, see Chowdhury et al, “DDT Residue,” 117-21. DDT is generally regarded as a likely carcinogen, a likely teratogenic substance, an endocrine disruptor and a chemical with adverse effects on reproduction.

<sup>28</sup> See generally Md Nurul Huda Bhuiyan et al, “Organochlorine Insecticides (DDT and Heptachlor) in Dry Fish: Traditional Washing and Cooking Effect on Dietary Intake,” *Bangladesh Journal of Pharmacology* 4 (2009): 46-47.

<sup>29</sup> See generally Bhuiyan et al, “Organochlorine Insecticides (DDT and Heptachlor) in Dry Fish: Traditional Washing,” 46-47.

<sup>30</sup> See the more details of DDT effect on the public health of Bangladesh on M. H. Rahman and M. J. B. Alam, “Risk Assessment of Pesticides used in Bangladesh,” *Journal of Civil Engineering* 25 (1997): 97-106; see also “DDT,” Pesticide Action Network North America (PANNA), accessed November 11, 2012, <http://www.panna.org/resources/specific-pesticides/DDT>; Powell, “Nutrition,” 122.

<sup>31</sup> “Country Profile on Reproductive Health in Bangladesh,” (World Health Organization, 2003): 29

[http://www.searo.who.int/LinkFiles/Reproductive\\_Health\\_Profile\\_chp-bangladesh.pdf](http://www.searo.who.int/LinkFiles/Reproductive_Health_Profile_chp-bangladesh.pdf).

<sup>32</sup> “DDT,” Pesticide Action Network. See more details on Powell, “Nutrition,” 122.

Unauthorised food colours, especially textile dyes are used in food, manufacturing and processing in Bangladesh.<sup>33</sup> Textile colours are especially applied in the various types of sweets, which is locally called as ‘*misti*’ in Bangladesh. Mentionable that, people of Bangladesh love *misti* or any sweet based foods and some people are even addicted to this.<sup>34</sup> Except *misti* some cultural foods named *beguni*, *peaju* are also adulterated by textile dyes. Generally, these harmful colours are used to make foods attractive,<sup>35</sup> ‘appealing and appetizing’.<sup>36</sup> Research suggests that the toxic colours in food can create indigestions, allergies, asthmas and even cancer.<sup>37</sup> Artificial colours can also risk the human body for sleeping disorders, vomiting, diarrhoea, heart diseases, and several kinds of neurological diseases.<sup>38</sup>

#### 4. Other Food Adulterations

Except the aforesaid specific food safety issues, Bangladesh experiences many types of food adulterations everyday. Few of the remarkable and relatively common adulterations are included below.

The puffed rice (locally called known as ‘*moodi*’) is contaminated by using the urea fertilizer to make it whiter and bigger in size.<sup>39</sup> Urea is extremely hazardous for human body which can create cancer and various ulcers. In a recent doctoral research on Bangladeshi food conducted by Al-Rmali, it is found that the level of cadmium in the puffed rice is nearly double than that of uncooked rice, which the writer suggests may be the result of using urea

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<sup>33</sup> For example, see Staff Correspondent, “Traders Fined for Selling Toxic Chemicals as Food Colour,” *The Daily Star*, January 30, 2007, accessed March 3, 2012, <http://www.thedailystar.net/2007/01/30/d70130013625.htm>; see also SM Masum Khan, “Toxin-Mixed Iftar Poses Serious Threat to Health,” *Daily Sun*, July 23, 2012, accessed November 13, 2012, [http://www.daily-sun.com/print\\_news.php?path=data\\_files/2012/07/23/212&cat\\_id=1&menu\\_id=2&news\\_type\\_id=1&news\\_id=43468](http://www.daily-sun.com/print_news.php?path=data_files/2012/07/23/212&cat_id=1&menu_id=2&news_type_id=1&news_id=43468); Rifat Munim, “Camouflaging Adulterants,” *The Daily Star*, August 19, 2011, accessed July 12, 2012, <http://www.thedailystar.net/magazine/2011/08/03/cover.htm>.

<sup>34</sup> Willem Van Schendel, *A History of Bangladesh* (Cambridge University Press, 2009), 265.

<sup>35</sup> Jack L. Radomski, “Toxicology of Food Colors,” *Annual Review of Pharmacology* 14 (1974): 128.

<sup>36</sup> Pratimo Rao and Ramesh V. Bhat, “A Comparative Study on the Synthetic Food Colours Usage in Foods Procured from Urban and Rural Areas of Hyderabad,” *Nutrition and Food Science* 33 (2003): 230.

<sup>37</sup> For details of the toxicity of the food colours, see Jack L. Radomski, “Toxicology of Food Colors,” *Annual Review of Pharmacology* 14 (1974): 127-37.

<sup>38</sup> “Food Adulteration,” Articlesbase, accessed November 8, 2012,

<http://www.articlesbase.com/nutrition-articles/food-adulteration-970523.html#ixzz17cWBtaB7>; see also S. Babu and I. S. Shenolikar, “Health & Nutritional Implications of Food Colours,” *Indian Journal of Medical Research* 102 (1995): 248.

<sup>39</sup> See Md Asadullah Khan, “Bitter Truth: Rampant Adulteration Plays Havoc,” *The Daily Star* August 4, 2012, accessed August 5, 2012, <http://www.thedailystar.net/newDesign/news-details.php?nid=244692>; Staff Correspondent, “Two Puffed Rice Factories Fined Tk 1 Lakh,” *The Daily Star* July 28, 2011, accessed March 12, 2012, <http://www.thedailystar.net/newDesign/news-details.php?nid=196107>.



in the puffed rice. Al-Rmalli mentioned ‘exposure to cadmium is linked with kidney disease and over 20 million people in Bangladesh suffer from chronic kidney disease.’<sup>40</sup>

Ghee, a popular food in Bangladesh made from the pure milk, is widely used in Bangladeshi cuisine. In the village culture children are encouraged to eat hot rice mixing with the ghee and palm sugar in the morning as breakfast. It is also used to manufacture various desserts in Bangladesh. Ghee is now adulterated in many ways. The impure ghee is made by rotten milk, palm oil, soybean, animal or vegetable fat, potato paste and with artificial colour flavours instead of milk.<sup>41</sup> Due to this tainting of ghee, people are deprived from the expected nutrition which ultimately may cause adverse effects on public health.

### **III. Legal and Regulatory Framework**

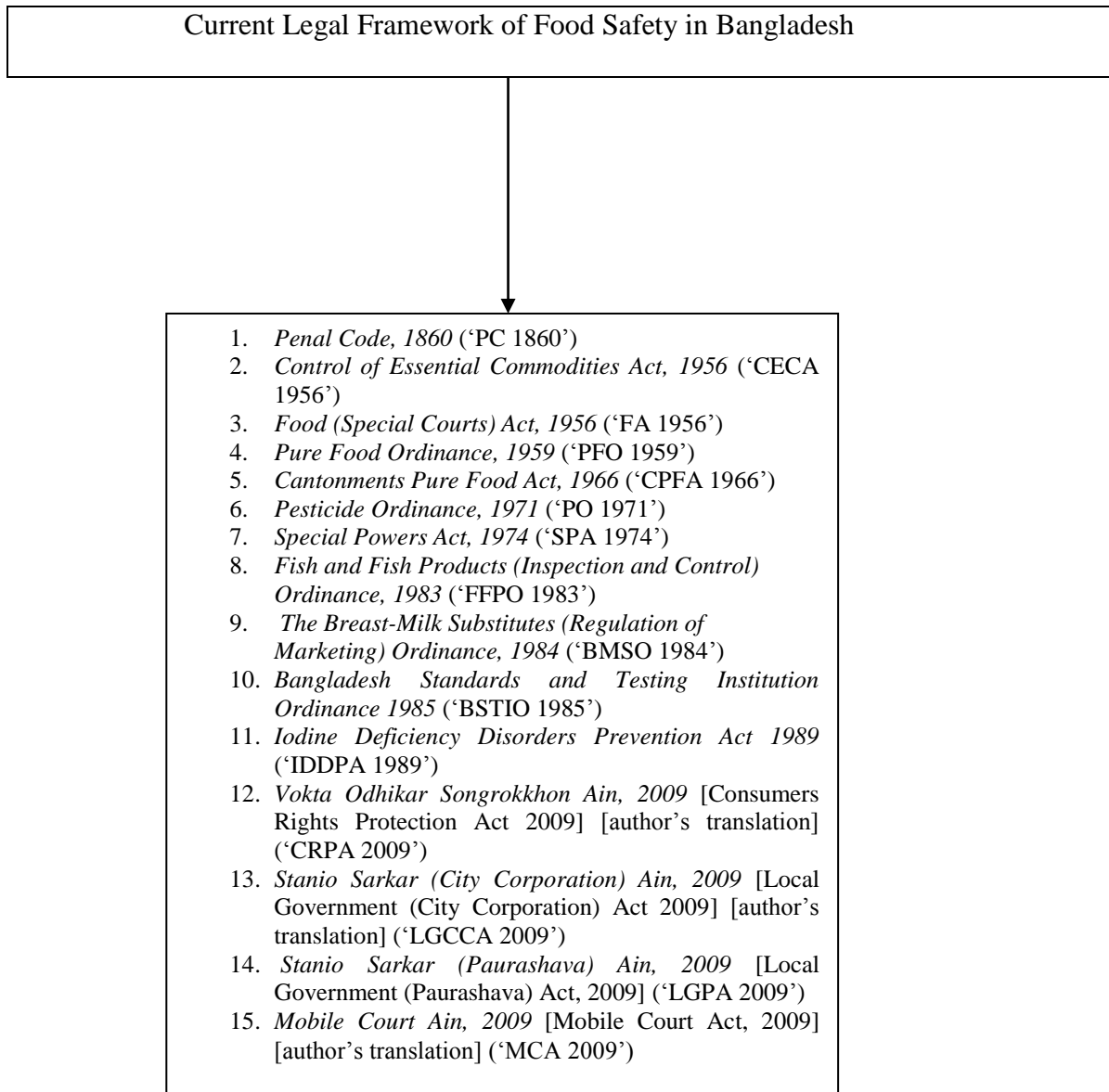
The existing food safety legal and regulatory regime of Bangladesh is governed by copious enactments and governmental bodies. More than dozen of laws deal with the food safety affairs excluding the common law provisions. The following ‘Table 1’ will demonstrate a precise overview of the legal framework of food safety of Bangladesh.

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<sup>40</sup> Shaban Wanis Al-Rmalli, “Arsenic and Other Trace Elements in Bangladeshi Foods and Non-Foods and Their Relationship to Human Health” (PhD thesis, De Montfort University, 2012), <https://www.dora.dmu.ac.uk/handle/2086/6015>, at page V.

<sup>41</sup> Staff Correspondent, “Ghee of 10 BSTI-certified Brands Found Adulterated,” *The Daily Star*, December 7, 2008, accessed November 13, 2012, <http://www.thedailystar.net/newDesign/news-details.php?nid=66453>; Staff Correspondent, Ctg, “Adulterated Ghee Seized,” *The Daily Star*, July 12, 2007, accessed October 15, 2012, <http://www.thedailystar.net/2007/07/12/d70712061480.htm>; “Two Jailed for Producing Adulterated Ghee,” *The Daily Star*, September 28, 2007, accessed October 14, 2012, [http://www.thedailystar.net/newDesign/photo\\_gallery.php?pid=5778](http://www.thedailystar.net/newDesign/photo_gallery.php?pid=5778).

**Table 1:**



It is worth to note that common law provisions and their practices will not be encompassed in the current article; it is an immense issue and hence it is saved for future endeavours. Among the statutory laws, some pieces of legislation are hardly used,<sup>42</sup> some cover quite limited jurisdictions.<sup>43</sup> Due to the volume limits of current study, the statutes that are frequently exercised for food safety in general will be discussed.

The laws referred in ‘Table 1’ are implemented by several ministries and their subordinate bodies. The relevant key bodies are the Parliament,<sup>44</sup> MOHFW,<sup>45</sup> Ministry of Agriculture (MOA),<sup>46</sup> Ministry of Local Government, Rural Development and Co-operatives (MOLGRD),<sup>47</sup> Ministry of Industry (MOI),<sup>48</sup> Ministry of Fisheries and Livestock (MOFL),<sup>49</sup> Ministry of Commerce (MOC),<sup>50</sup> Ministry of Establishment (MOE) and Ministry of Home Affairs (MOHA).<sup>51</sup>

‘Table 2’ demonstrates a diagram that glimpses the regulatory authorities in Bangladesh for managing food safety issues.<sup>52</sup>

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<sup>42</sup> For example, the CECA 1956 and FA 1956 are rarely exercised for food safety, but they are both still ‘on the book’.

<sup>43</sup> For example, the CPFA 1966 is only used for cantonment areas (where military personnel live) and the IDDDPA 1989 is only applicable for salt.

<sup>44</sup> Parliament is liable to enact every law.

<sup>45</sup> MOHFW mainly enforces the PFO 1959 in the entire Bangladesh except the city corporations and municipal areas.

<sup>46</sup> MOA is liable to regulate the PO 1971.

<sup>47</sup> MOLGRD enforces the PFO 1959 in the city corporations and municipalities.

<sup>48</sup> MOI is responsible to make food standards. It enforces the BSTIO 1985.

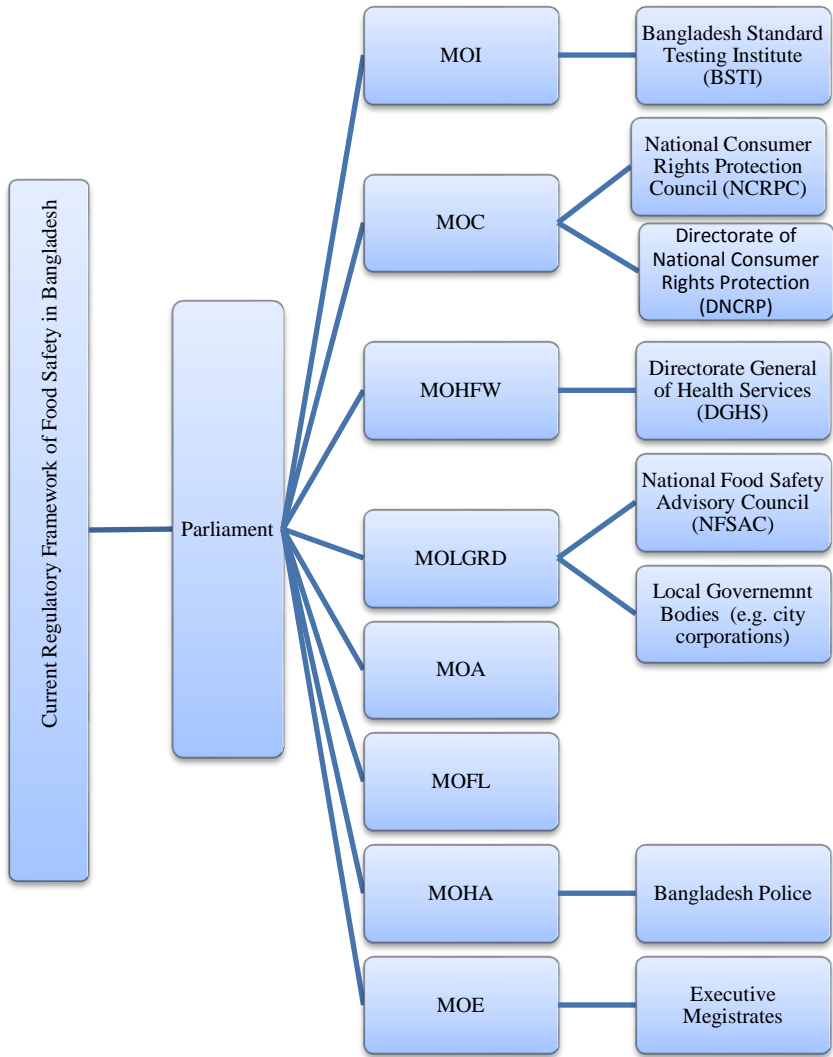
<sup>49</sup> MOFL implements the FFPO 1983.

<sup>50</sup> MOC administers the CRPA 2009.

<sup>51</sup> MOE and MOHA helps in every case of implementation of the laws. MOE provides the executive magistrates for imposing penalty and MOHA supplies the police force.

<sup>52</sup> The associated bodies that are principally responsible for the regulatory activities are mentioned in the right hand side of the respective ministries. However, considering the importance of these bodies for food safety concerns in Bangladesh, only a few associated bodies are taken in this paper for further elaboration.

**Table 2:**



#### IV. Drawbacks in the Legal and Regulatory Framework

The situations that exposed in ‘part I’ and ‘part II’ of this manuscript commonly signify that the total food industry have been blatantly ignoring the existing food regulations in Bangladesh.<sup>53</sup> Plenty of reasons such as, the regulatory failures, food price, choice of product, lack of consumer information, and educational and cultural influences can be liable for the existing food safety concerns in Bangladesh. However, as current study is a legal discussion, this paper will only concentrate on the regulatory loopholes of the FSRRB. It is stressed that, the FSRRB lacks a number of legal problems which has assisted to the failure of the overall regulatory mechanism. The following parts will focus on the issues that are liable for the ineffectively of the present FSRRB.

##### a) Multiplicity of Laws

‘Table 1’ shows that as a minimum 15 laws (excluding the common law provisions) govern the current legal framework of food safety in Bangladesh. It is important to note that, use of such a large quantity of laws for a single purpose like food safety is quite unusual. Two examples are given below.

Firstly, section 272 and 273 of the PC 1860 endorses *food adulteration* as an offence. The PFO 1959 also tries the same offence in section 6(1)(a) and prohibits the *food adulteration* in manufacturing. Section 16 of the PFO 1959 proscribes keeping of adulterants in places where food is manufactured. Later in 1974, the GoB repeatedly comprised *food adulteration* under SPA 1974 by inserting section 25C, which is simply considered as the alteration of the language, punishments (in this instance, death penalty) of the parallel provisions of PC 1860. While *food adulteration* had been criminalised under three aforementioned enactments simultaneously, in 2009 GoB enacted the CRPA 2009, where section 41 included the same offence over again.<sup>54</sup>

Secondly, the uses of DDT pesticides are controlled under the PO 1971. But an enforcement authority is entitled to penalise an offender for using DDT chemical on food under the above mentioned sections of the PC 1960, PFO 1959, SPA 1974, and CRPA 2009.

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<sup>53</sup> S. S. M. Sadrul Huda, Ahmed Taneem Muzaffar, and Jasim Uddin Ahmed, “An Enquiry into the Perception on Food Quality among Urban People: A Case of Bangladesh,” *African Journal of Business Management* 3 (2009): 228.

<sup>54</sup> CRPA 2009, s 2(20)(b).

This multiplicity of enactments creates confusion in the mind of manufacturers, processors, retailers or even to the enforcement authorities to realise which law deals with particular food safety issue. To recognize identical concern in United Kingdom, the Hampton Review mentioned a 2003 academic study which suggested that ‘62 per cent of small food business proprietors do not understand which food safety regulations are relevant to them’.<sup>55</sup>

The above discussion suggests that manufacturers and retailers may sometimes violate the laws from sheer ignorance. Therefore it can be argued that an integrated law is essential in the FSRRB to address the current food safety concerns,<sup>56</sup> and all the aforesaid statutes can be consolidated to enact a single food safety law.<sup>57</sup>

### **b) Non-coordination and Overlapping of Regulatory Bodies**

Despite the existence of the several bodies in the FSRRB as drawn in ‘Table 2’, there is no effective coordination among these regulatory authorities dealing with the food safety.<sup>58</sup> The NTFS mentioned that the cabinet is the universal coordinating authority for everything in Bangladesh.<sup>59</sup> But practically the cabinet is extremely overburdened with numerous state activities to proficiently coordinate the food safety issues. Realising this reality, in 2005 the PFO 1959 has been amended by inserting section 4A to introduce the provision regarding a coordinating body. Section 4A of the PFO 1959 provides to constitute a National Food Safety Advisory Council (NFSAC) which is regarded as a coordinating body.<sup>60</sup> But the NFSAC has

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<sup>55</sup> Philip Hampton, HM Treasury, *Reducing Administrative Burdens: Effective Inspection and Enforcement*, 2005, <http://www.berr.gov.uk/files/file22988.pdf>, 5.

<sup>56</sup> See generally External Advisory Committee on Smart Regulation, *Smart Regulation: A Regulatory Strategy for Canada* (Canadian Government Publishing, 2004), 34.

<sup>57</sup> Examples can be taken from the India (also a developing and neighbour country like Bangladesh) which made a single law named *Food Safety and Standards Act, 2006*, that consolidates all Acts and Orders to address the food safety issues of the country. See, “Food Safety and Standards Authority of India (FSSAI),” accessed November 13, 2012, <http://www.fssai.gov.in/AboutFSSAI/introduction.aspx>.

<sup>58</sup> See, eg, United Nations, “The Common Country Assessment Bangladesh,” September 1999, [http://www.un-bd.org/docs/CCA\\_Bangladesh\\_1999.pdf](http://www.un-bd.org/docs/CCA_Bangladesh_1999.pdf), 54; Government of Japan Asian Productivity Organization, “Country Reports- Bangladesh” (paper presented at the Study Meeting on Enhancing Food Certification Systems for Better Marketing, Tokyo, Japan, January 21–28, 2004), 8; Food Safety Project Team, “Improving Food Safety, Quality and Food Control in Bangladesh: Report on a Workshop on Food Inspection Arrangements in Bangladesh,” Food and Agriculture Organization of the United Nations, September, 2010, accessed November 16, 2012, <http://www.bdfoodsafety.org/admin/uploading/Rajshahi%20Inspection%20Workshop%20REPORT.pdf>, 5.

<sup>59</sup> National Taskforce, “Bangladesh Country Paper,” 5[2.1.8].

<sup>60</sup> Food Safety Project Team, “Improving Food Safety, Quality and Food Control in Bangladesh: Food Inspection and Enforcement in Bangladesh: Current Arrangements and Challenges,” Food and Agriculture Organization of the United Nations, October, 2010, accessed January 05, 2013, [http://www.bdfoodsafety.org/admin/uploading/file/Situation%20Analysis/Situation%20Analysis\\_Food%20Inspection%20in%20Bangladesh.pdf](http://www.bdfoodsafety.org/admin/uploading/file/Situation%20Analysis/Situation%20Analysis_Food%20Inspection%20in%20Bangladesh.pdf), 1.

a number of drawbacks, such as, it does not have adequate personnel, and it is not an independent body in practice, which made it useless.<sup>61</sup>

Several authorities carry out the anti-adulteration drives in Bangladesh. Some drives are conducted by the MOC, some are done by the MOI, and few are operated by the city corporations (under MOLGRD). All these anti-adulteration drives are accomplished by these authorities without any prior or follow up coordination by the NFSAC. In fact, the entire situation is perplexing with overlapping. It is difficult to realise for the manufacturers which body is actually liable for ensuring food safety and whom they have to answer for. Regarding this issue, Rouf, a government spokesman, stressed that the lack of coordination among the GoB agencies dealing with food safety<sup>62</sup> is one of the reasons for the failure of whole food safety arrangement in Bangladesh. In practical, the overlapping areas of responsibility of regulatory bodies results severe complexity.<sup>63</sup> The Better Regulation Task Force's report point out:

[R]egulatory regimes that involve several bodies can become confused and lack clear direction. This can lead to regulatory creep as each body pursues different objectives and takes a different focus. Those being regulated find themselves responding to competing or confusing demands.<sup>64</sup>

Finally, considering the preceding situation, it is argued that setting up an apex *independent* coordinating authority following the examples of UK,<sup>65</sup> USA,<sup>66</sup> Australia<sup>67</sup> and so forth can solve this issue.

### **c) Transparency, Autonomy and Bureaucracy Issues**

It is commonly accepted that a proper and effective regulatory framework should be based on transparency and accountability.<sup>68</sup> This is because regulatory transparency engages the whole

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<sup>61</sup> See more details in the next section ('c') of this paper.

<sup>62</sup> See generally Abdur Rouf, "Bangladesh" (paper presented at the Study Meeting on Enhancing Food Certification Systems for Better Marketing, Tokyo, Japan, January 21–28, 2004), 93.

<sup>63</sup> Hampton, *Reducing Administrative Burdens*, 59 [4.15].

<sup>64</sup> "Avoiding Regulatory Creep," Better Regulation Task Force (London, United Kingdom, 2004), accessed November 16, 2012, <http://www.videnet.nl/download/?id=3863592>, 36.

<sup>65</sup> See the details of the Food Standard Agency of UK at, <http://www.food.gov.uk/>. Accessed January 1, 2013.

<sup>66</sup> See the details of the Food and Drug Administration of USA at, <http://www.fda.gov/>. Accessed December 30, 2012.

<sup>67</sup> See the details of the NSW (Australia) Food Authority at, <http://www.foodauthority.nsw.gov.au/>. Accessed December 30, 2012.

<sup>68</sup> See generally Committee to Ensure Safe Food, *Ensuring Safe Food*, 77.

of a country's governance infrastructure.<sup>69</sup> A regulatory body should be transparent both externally and internally.<sup>70</sup> Regrettably, regulatory authorities engaged in the FSRRB are burdened with numerous members, especially the government officials. For example, the NFSAC is made under the MOLGRD. As per section 4A (1) of the PFO 1959 the NFSAC is comprised of 15 members; and 12 of them are government representatives including the ministers, secretaries of various ministries mentioned in the 'Table 2'. In addition to this, consumer's opinions are seriously overlooked there. Food safety is a sensitive issue and citizens (consumers) have the desire to participate in decision making. The External Advisory Committee on Smart Regulation of Canadian Government mentioned,

Regulators cannot simply decide behind closed doors what is in the best interest of citizens. They should be transparent in their decision making and involve citizens in a meaningful way. The regulator's ability to communicate with and engage citizens and other parties is a critical success factor in sustaining trust in the regulatory system.<sup>71</sup>

Moreover, the PFO 1959 does not include any provision regarding the decisions making of the NFSAC. The Minister of the MOLGRD is the ex-officio chairman who is essentially a part of the political government. Consequently, political influence cannot be disregarded in the decision making. Hence, owing to the lack of regulatory transparency, corruption becomes a grave concern in Bangladesh for last couple of decades.<sup>72</sup>

Further, regulatory autonomy is undeniable for good governance.<sup>73</sup> But due the excessive representation of the government employees in the regulatory bodies (e.g. the NFSAC)<sup>74</sup> none of the bodies shown in 'Table 2' do practically enjoy autonomy.<sup>75</sup>

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<sup>69</sup> See generally Robert Wolfe, "Regulatory Transparency, Developing Countries and the WTO," *World Trade Review* 2 (2003): 158.

<sup>70</sup> Wolfe, 'Regulatory Transparency,' 173.

<sup>71</sup> External Advisory Committee, *Smart Regulation*, 36.

<sup>72</sup> See generally Economic and Social Commission for Asia and the Pacific (ESCAP) and Ministry of Finance, Government of Bangladesh, "Implementation in Asia and the Pacific of the Brussels Programme of Action for the Least Developed Countries for the Decade 2001–2010: Progress Made, Obstacles Encountered and the Way Forward – Bangladesh" (paper presented at the High-level Asia-Pacific Policy Dialogue on the Brussels Programme of Action for the Least Developed Countries, Dhaka, Bangladesh, January 18–20, 2010), <http://www.un.org/wcm/webdav/site/ldc/shared/Bangladesh.pdf>, 12.

<sup>73</sup> See generally Wolfe, 'Regulatory Transparency,' 157–8.

<sup>74</sup> Also see the formation and structure of National Consumer Rights Protection Council (NCRPC) made under section 5 of the CRPA 2009 where 13 members are government representatives among the total 26 members; and among the rest 13 members, 6 of them will be selected by the government itself and 7 members will represent different NGOs.

<sup>75</sup> See generally Ferdous Arfina Osman, "Public Health, Urban Governance and the Poor in Bangladesh: Policy and Practice," *Asia-Pacific Development Journal* 16 (2009): 56. The author specially mentioned about the



Except the above, regulatory bodies under the FSRRB are terribly bureaucratic. For instance, section 18 of the CRPA 2009 has established the Directorate of National Consumer Rights Protection (DNCRP) to administer the functions of this statute. But section 71 of the CRPA 2009 stipulates that an aggrieved person needs to obtain permission from the DNCRP to sue against the culprit.<sup>76</sup> This unnecessary bureaucracy has ultimately made such an important consumer protection law ineffective.

#### **d) Inadequacy of Penalties**

One important factor in the FSRRB is the insufficiency of penalties. In fact, given the perspective of the ongoing food adulteration scenario, today question arises as to whether the sanctions provided in the statutes are adequate or not. Few examples are given below.

The penalty as set in section 272 of the PC 1860 for adulteration of food or drink is a maximum term of six months of imprisonment or up to a maximum fine of BDT (Bangladesh taka) 1000 (equivalent to EUR 10).<sup>77</sup> Considering and comparing the gravity of the offences and the duration of imprisonment together with the amount of the potential fines, it can be said that this punishment is truly absurd in the 21<sup>st</sup> century and scarcely a deterrent in situations where the potential profit of a food manufacturers may far exceeds any possible fine payable.

The PFO 1959 is one of the most important laws to combat the manufacture of unsafe food in Bangladesh; but regrettably this law also does not provide adequate sanctions. The PFO 1959 was amended in 2005 and the penalties applying increased substantially but are still inadequate. The *maximum* penalty for a *first* offence in regard to the manufacture of adulterated or stale food which is not of a fit nature, substance or quality has been raised to BDT 50,000 (equivalent to EUR 476) or imprisonment for a term of one year. The maximum penalties for the subsequent offences of the same nature are a fine of BDT 200,000 (equivalent to EUR 1904) or three years imprisonment with forfeiture of manufacturing stuffs or shop. For the use of formalin, toxic food colour in food manufacturing or processing the penalty awarded is a maximum BDT 50,000 or one year's imprisonment (for first offence); for the subsequent offence of the same nature there will be maximum fine of BDT 200,000 or

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autonomy of the local government bodies concerning public health (food safety is generally a part of public health in Bangladesh).

<sup>76</sup> Note: The problems regarding bureaucracy in Bangladesh can be understood from Huque, "Accountability and Governance," 62–4.

<sup>77</sup> The current EUR/BDT rate is 1 Euro = 104.04 BDT. See Yahoo Finance at, <http://finance.yahoo.com/q?s=EURBDT=X>. Accessed January 4, 2013.

three years of imprisonment as well as forfeiture of shop or factory and so on.<sup>78</sup> It is argued that from the perspective of Bangladesh, the BDT 200,000 fine or three years of imprisonment is not sufficient for an offence such as food adulteration or mixing formalin in foods which adulteration is slowly murdering millions of people every year.<sup>79</sup>

The penalty for the breaches of the CRPA 2009 is comparatively higher but not still adequate. Section 37 states that a person will be subject to a term of imprisonment of up to one year and/or a fine of BDT 50,000 if he fails to cover products. Under this law, a person will face a term of three years imprisonment and/or a fine of up to BDT 200,000 for 'mixing any prohibited chemical'<sup>80</sup> (such as formalin) in food products. The penalties for these offences will be doubled if the convicted person repeats the same offence.

Unlike the above mentioned negligible penalties, the SPA 1974 provides severe sanctions, such as life imprisonment and the death penalty for food adulteration.<sup>81</sup> Admittedly, the imposition of this kind of punishment is also not desirable; the death penalty is a very much brutal punishment for any offence. Use of death penalty should be considered from the human rights perspective as the *Second Optional Protocol to the International Covenant on Civil and Political Rights*,<sup>82</sup> suggested the abolition of death penalty from the civilised world.

#### e) **Enforcement Problems**

In Bangladesh, penalties are practised as the way of the execution of the statutes. But no persuasive measures like the training, caution notice, improvement notice are involved in the enforcement mechanism. Moreover, the administrative enforcement mechanism of Bangladesh is not organised. It has not designed inspection strategies and there is no clear method of detecting non-compliance with the regulations. It is important for a better enforcement regime to have outlined clear implementation strategies so that all instances of non-compliance can be easily identified and action taken promptly by the proper authority.<sup>83</sup> There is no particular enforcement authority or any authorised officer who is exclusively

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<sup>78</sup> PFO 1959, s 44.

<sup>79</sup> See M Abdul Latif Mondal, 'Pure Food Ordinance: Will the Amendments Meet People's Expectations?', *The Daily Star* (online), 29 September 2005 <<http://www.thedailystar.net/2005/09/29/d50929020329.htm>>; see also Star Business Report, 'Seminar Points to Shortcomings of Consumer Rights Protection Law', *The Daily Star* (online), 30 April 2010 <<http://www.thedailystar.net/newdesign/news-details.php?Nid=136517>>.

<sup>80</sup> CRPA 2009, s 42.

<sup>81</sup> SPA 1974, s 25C(1).

<sup>82</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, opened for signature 15 December 1989, 1642 UNTS 414 (entry into force 11 July 1991).

<sup>83</sup> See generally Robert Baldwin and Julia Black, "Really Responsive Regulation," *The Modern Law Review* 71 (2008): 61.

responsible to enforce the food safety regulations in Bangladesh. In general, the MOHFW is liable for the food safety throughout Bangladesh and laws are enforced by Sanitary Inspectors (SIs). But SIs have countless works to do and food safety is a minor part of their duties. Further SIs or any other inspectors under any regulatory body<sup>84</sup> used for food safety cannot penalise the culprits except with the help of executive magistrates, who work under the MOE. Executive magistrates, however, are seldom interested in doing this due to their busy work schedule, which is filled with lots of administrative duties. Thus not only are the inspection activities to ensure food safety are consistently hampered but so are enforcement actions.

## V. Conclusion

An effective food safety regulatory framework is imperative to ensure safe food for consumers in a country. Bangladesh is lacking it for a long time which resulted serious public health issues as discussed in this paper. However, considering the current situations, it can be recommended that the FSRRB requires a single well-drafted and up to date legislation that will provide for an autonomous and apex food safety regulatory body to perform all kind of coordination. Also such apex body needs to be built on the accountability and transparency that will be free from any kind of bureaucratic complexities. Laws should be amended providing the higher penalties for the wrongdoers as well as an efficient administrative enforcement regime need to be structured based on persuasive tools.

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<sup>84</sup> For example, a BSTI inspector under the MOI performs anti-adulteration drives to check the food standards; a Sanitary Inspector under the MOLGRD also conducts the anti-adulteration drives in the city corporations and municipal areas.