2026 INSC 1275

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. 1177 OF 2025

IN

WRIT PETITION (CIVIL) NO. 437 OF 2024

3S AND OUR HEALTH SOCIETY ...PETITIONER

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS/ APPLICANT

J U D G M E N T

Signature Not Verified
Digitally signed by CHANDRESH
Date: 2026.01.26 11:47:36 IST
Reason:

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts:-

I. THE CONTEXT 3

II. THE FACTUAL BACKGROUND 6

III. ISSUES FOR CONSIDERATION 20

IV. ANALYSIS 20

A. PUBLIC HEALTH AND FOPNL: AN INTRODUCTORY DISCUSSION 20

i. Expanding the approach to public health: from clinical interventions to addressing the determinants of health 21

ii. The commercial determinants of health – regulating the industry 27

iii. The manner, scope and nature of interventions – the 'stewardship' model 29

iv. Reaching the most vulnerable 32

B. THE LEGAL LANDSCAPE 34

i. International law 35

a. The ICESCR and its framework on the right to health and the right to adequate food respectively 37

b. Obligation of States 42

ii. Article 21 of the Constitution and the State's positive obligations 49

a. The right to health 49

b. The right to food 57

c. The right to make an informed choice 61

iii. 'Steps taken' or 'measures adopted' by the State to realise the fundamental rights 63

C. CHARTING THE COURT'S ROLE 73

D. DEFICIENCIES PERTAINING TO CERTAIN BROAD ASPECTS OF THE FOPNL PROPOSAL 80

i. Prelude 80

ii. Threshold limits and the nutrients-of-concern *82*
iii. Format of the warning label *89*
a. Pictorial representation of the warning symbol 90
b. Singular Hexagons for each nutrient-of-concern 98
c. Dimensions of warning label 102
d. Font Size of warning symbol 107
iv. Same label to be used for the description of beverage categories *111*
E. DISCUSSION ON CERTAIN OTHER ASPECTS OF THE FOPNL PROPOSAL 113
i. Timeline for bringing regulations into force *113*
ii. Transition period *114*
iii. Curbing the use of artificial preservatives *118*
iv. List of foods exempted from the FoPNL *120*
F. NUTRITIONAL LITERACY 121
V. CONCLUSION 127

"The food you eat can be either the safest and most powerful form of medicine or the slowest form of poison."

1. We are tempted to preface our judgment with the words of Ann Wigmore, a health practitioner and writer. The statement articulated above resonates with an undiminishing force in the present petition as well. Every meal is a quiet wager with one's own body, and a wager is fair only when the player can see the odds. The issues before us turn on this simple fact – eating right is possible only when one knows what one is eating. The label is the only witness at the point of sale. This judgment answers whether that witness will speak to every purchaser, lettered or unlettered, young or old, or only to the privileged few who can understand it.

I. THE CONTEXT

2. India is currently facing a huge public health crisis ranging from malnutrition/under-nutrition in children to a surge in the incidence of non-communicable diseases ("**NCDs**") in the general population. In India, NCDs take the lives of approximately six million people, account for roughly 63% of all deaths annually[1] and are projected to account for an estimated 75% of the total mortality by the year 2030[2]. A Indian Council of Medical Research-India Diabetes ("**ICMR-INDIAB**") study

[1] Nandita Krishnan et al, *Prevalence of non-communicable disease risk factors and chronic conditions among middle-aged and older adults in extreme poverty: a nationally representative cross-sectional study in India,* 13 LANCET GLOB. HEALTH 1955, 1955 (2025).
[2] Arunika Agarwal et al, *Non-communicable diseases and their macro-economic impact in India,* 56 ECON. POL. WKLY. 1, (2021) https://www.epw.in/journal/2021/51/special-articles/non-communicable-diseases-and-their-macroeconomic.html.

estimated that, in the year 2021, 101 million people had diabetes, 136 million people were pre-diabetic, 315 million people had hypertension, 254 million people had generalised obesity, 351 million people had abdominal obesity, 231 million people had hypercholesterolaemia and 185 million had high LDL cholesterol.[3] An analysis of recent National Family Health Survey data, 2023-2024 ("**NFHS-6**")[4], reveals that the situation has progressively worsened in comparison to the numbers recorded by NFHS-5 2019-2021. Obesity in women has increased from 24% to 30.7% and in men from 22.9% to 27.3% respectively. Diabetes in women has increased from 13.5% to 17.8% and in men from 15.6% to 20.9% respectively.

3. Contrary to common beliefs, NCDs are not exclusive to aging populations; they also disproportionately affect children and young people.[5] The pre-existing poor nutritional status in children (which is a challenge India is presently facing) further worsens the situation as studies suggest that malnutrition, nutritional deficiencies etc., increase the risk of morbidities and mortality across multiple childhood NCDs.[6] In simple words, children are in acute danger because of a double burden i.e., malnutrition and NCD risk which interact and influence one

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[3] Ranjit Mohan Anjana et al, *Metabolic non-communicable disease health report of India: the ICMR-INDIAB national cross-sectional study (ICMR-INDIAN-17),* 11 LANCET DIABETES ENDOCRINOL. 474, 482 (2023) https://www.thelancet.com/action/showPdf?pii=S2213-8587%2823%2900119-5.

[4] GOVERNMENT OF INDIA, MINISTRY OF HEALTH AND FAMILY WELFARE, *National Family Health Survey (NFHS-6), 2023-2024 Fact Sheets*, https://www.nfhsiips.in/nfhsuser/assets/National%20Family%20Health%20Survey%20(NFHS-6)%202023-2024%20Fact%20Sheets.pdf.

[5] UNITED NATIONS CHILDREN'S FUND, *Placing Children at the Heart of the Non-Communicable Disease and Mental Health Agenda,* (2025), https://www.unicef.org/media/169746/file/Prioritizing-Children-NCD-Mental-Health-Agenda-2025.pdf.pdf.

[6] Michelle Walters et al, *Non-communicable diseases in children: Systems-based approaches to incorporating nutrition into medical care,* 12 CHILDREN (BASEL, SWITZERLAND) 1503, (2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC12651492/#B1-children-12-01503.

another. Sufficient attention requires to be paid to children and adolescents also because adult manifestation of NCDs is behaviorally acquired during childhood or adolescence.[7] Worldwide, the numbers indicate that over 2.1 billion children and adolescents under the age of 20 years are either affected by NCDs or exposed to the relevant risk factors.[8]

4. According to the World Health Organisation ("**WHO**"), the rise in NCDs is due to four major behavioural risk factors i.e., tobacco use, unhealthy diets including the consumption of foods high in Saturated Fat, Sugar and/or Salt ("**HFSS foods**"), harmful use of alcohol and insufficient physical activity.[9] While smoking, imbibing spirits and eschewing exercise are essentially personal choices and a healthy diet comes only with heightened awareness, consumption of toxic shelf-foods is driven by visual appeal and product advertising. Therefore, inevitably, in any targeted action to prevent the NCD public health crisis, the consumption of HFSS foods and Ultra-Processed Foods ("**UPFs**") respectively must receive sufficient attention. India, especially, has recorded some disturbing consumption trends in the past couple decades. Overall, the UPF sector in India grew 13.37% in retail sales value between the years 2011 and 2021.[10] Despite the daily consumption share of UPFs being lower than that of home-cooked

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[7] Tapaswi Puwar et al, *Noncommunicable diseases among school-going adolescents: A case study on prevalence of risk factors from Sabarkantha District of Gujarat, India,* 43 (Supp 1) INDIAN J. COMMUNITY MED. 33, (2018), https://pmc.ncbi.nlm.nih.gov/articles/PMC6324039/.

[8] *Supra* note 5.

[9] WORLD HEALTH ORGANISATION, https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases (last visited Oct. 18, 2026).

[10] World Health Organisation, *The growth of ultra-processed foods in India – an analysis of trends, issues, and policy recommendations,* (2023), https://iris.who.int/server/api/core/bitstreams/ad08983c-0361-4b86-99da-c2316422d45f/content.

foods, the forecasted values also show that there is a constant upward trend in the consumption of UPFs. It is this upward trend which needs to be curtailed with policy interventions especially in our efforts to prevent several NCD epidemics.[11]

II. THE FACTUAL BACKGROUND

5. The 3S and Our Health Society (hereinafter, the "**petitioner**") is a non-profit organisation established under the Indian Trust Act, 1882 whose work focuses on issues relating to improvement of public health, amongst others. By highlighting the scientifically backed and well-known nexus between HFSS foods, along with UPFs and the heightened risk of NCDs, including diabetes, cancer, cardiovascular diseases, hypertension, obesity and high cholesterol, the petitioner states that robust and mandatory policy frameworks which diminish or dissuade the consumption of these food products by the public at large must exist. According to the petitioner, such frameworks can manifest in two forms: *One,* as restrictions or bans on advertisements or *two,* through the implementation of consumer alerts in the form of labelling.

6. The original writ petition focused on the latter solution, i.e., the adoption of a clear Front-of-Package Nutrition Labelling ("**FoPNL**"), especially interpretative labels that would succinctly indicate or warn the customer about the amount of saturated fat, sugar and/or salt present in the packaged product. According to the petitioner, several countries implemented similar policies and have seen significant improvements in public health outcomes. Therefore, it was urged that

[11] *Ibid.*

it was imperative for the Union of India, along with all the States/UTs, to formulate appropriate policies and regulations on this aspect, on an urgent basis.

7. When the original writ petition was heard by this Court, the Food Safety and Standards Authority of India (hereinafter, the "**FSSAI/respondent no. 4**") was impleaded as a party *vide* order dated 14.11.2024.

8. Initially, the FSSAI submitted that it was undertaking proactive steps to implement the FoPNL framework in India. In that regard, it was stated that a draft amendment (hereinafter, the "**2022 draft amendment**") to the Food Safety and Standards (Labelling and Display) Regulations, 2020 (the "**2020 Regulations**") was notified and made available to the public for objections and suggestions on 13.09.2022. This 2022 draft amendment proposed the Indian Nutrition Rating ("**INR**") FoPNL format which adopts a star-rating system to rate the overall nutritional profile of packaged foods and assigns a rating ranging from 0.5 to 5 stars, where a higher star indicates a healthier product. The INR format is illustrated hereinbelow:



9. It was submitted that over 14,000 comments, in the form of objections and suggestions, were received from the public including several

stakeholders, food businesses and associations, consumers, consumer organisations, public health organisations and other regulatory bodies. The FSSAI constituted an Expert Committee on 17.02.2023 for the purpose of (i) analysing and addressing the 14,000 comments, (ii) assessing the implementation and success of existing global FoPNL models, and (iii) recommend any further research or review required for the INR format. It was submitted that the report of recommendations prepared by this Expert Committee along with the final draft amendment to the 2020 regulations would be submitted to the Scientific Committee for further recommendations and approval, after which the entire proposal would be placed before the FSSAI for final approval and escalation to the relevant ministries. For the aforesaid reason, it was prayed that the FSSAI be allowed to continue with its internal process and the original writ petition be accordingly dismissed.

10. The petitioner, however, expressed serious reservations about the adoption of a star-rating FoPNL system. It was stated that such a system would further confuse/mislead consumers, would not sufficiently help consumers identify the 'unhealthy' food products, be prone to manipulation, and be unnecessarily complex. Instead, the petitioner was of the view that a warning label format would be simpler, more effective and better align with global best practices in deterring unhealthy consumption behaviour. Numerous reports and studies were placed on record to substantiate this stance. In fact, this concern seems to have been a common thread running across several suggestions/objections received from other stakeholders in response to the 2022 draft amendment as well.

11. In view of all the aforesaid, while disposing off the original writ petition, we had directed the Expert Committee of the FSSAI to consider the comments received from the public stakeholders, prepare its recommendation and submit a report, so that the Union could undertake necessary changes, if any, to the 2022 draft amendment. We had directed that the Expert Committee submit the aforesaid report within a period of three months. The operative portion of our order dated 09.04.2025 reads thus:

> *"5. In Para 9 of the reply, it has been stated that around 14000 comments were received in the form of objections, etc. from the public including the stakeholders, etc.*
> *6. The Union has decided to undertake necessary amendments in the Food Safety and Standards (Labeling and Display) Amendment Regulations, 2022.*
> *7. We dispose of this Writ Petition with a direction to the Expert Committee to prepare its recommendation and submit a Report in that regard at the earliest so that relying on the report, the necessary amendments can be given effect to.*
> *8. Let this exercise be taken within a period of three months from today.*
> *9. All pending applications, including application for intervention, stand disposed of.*
> *10. List the matter after three months before this Court to report compliance of our directions."*
>
> (Emphasis supplied)

12. In the meantime, the FSSAI, in its 46th meeting, had also indicated that wider stakeholder meetings across the country had to be conducted before any draft/final regulation could be published in relation to the FoPNL system. This was to ensure that the draft/final regulation was truly reflective of the diverse opinions at the ground-level. Therefore, the FSSAI organised stakeholder consultations with the Food Business

Operators ("**FBOs**") and other stakeholders across four regions, i.e., Delhi, Goa, Hyderabad and Kolkata, wherein additional views pertaining to the 2022 draft amendment were shared. These views were also placed before the Expert Committee for further deliberation alongside the 14000 comments. Additionally, the viewpoints of industry representatives and public health advocates were taken during the Expert Committee meeting dated 05.08.2025 and multi-stakeholder consultation dated 13.08.2025 respectively.

13. By way of the present Miscellaneous Application, the FSSAI brought on record the Expert Committee Report dated 08.10.2025. Insofar as the 14000 comments were concerned, the report provided a glimpse of the kind of objections/suggestions that were received against the INR model. We find it necessary to reproduce the same. It reads thus:

> "***NATURE OF COMMENTS RECEIVED FROM STAKEHOLDERS***
>
> *The following table reflects the major issues raised through comments by different stakeholders:*

S. No	Issue raised	Public Health Organisations	Doctors/ Public health experts	Consumers	Consumer Orgs	Industry Associations	Food Business Operators	Activists
1.	Threshold values		1				200	
2.	FOPNL to be kept voluntary						2944	
3.	Lesser time to make FOPNL mandatory/lesser time	1		3527	4			

4.	Warning Label	1	2	2679	3			
5.	Warning Label along with Star Rating			1				
6.	Rejection/Dismissal for saving livelihood					8	7059	
7.	Traditional food replaced with western foods	1				6+2	6430	
8.	Red colour indicates danger/Change colour	1					1	
9.	Algorithm					6	199	
10.	Conduct Risk Analysis					6	199	
11.	Dimension/Size of logo						1	
12.	No positive nutrients included in the calculation of INR	1	2	661	2			
13.	INR makes entire food unhealthy despite of the serving size					8	5412	
14.	Others	1						3

14. The aforesaid table indicates that, on one hand, the consumers and consumer organisations overwhelmingly submitted comments, **(i)** favouring a warning label over other FoPNL formats, and **(ii)** advocating for lesser time to make the FoPNL mandatory for FBOs, whereas, on the other, the FBOs largely, **(i)** wanted the FoPNL regime to be voluntary, **(ii)** rejected a mandatory FoPNL framework arguing that livelihoods would be affected, **(iii)** argued for focus to be directed

towards strategies that replaced western foods with traditional foods instead of implementing FoPNL regimes and, **(iv)** stated that the INR system must take into account the serving size instead of being anchored on the 100ml/100g portion size of the packaged product.

15. Insofar as the views obtained from the various stakeholder meetings were concerned, the report observed that no consensus could be arrived at on the 2022 draft amendment which proposed the INR format. In facts, on competing ends, the industry supported a non-interpretive 'Facts-up-front' format where the values of the nutrients-of-concern (sugar, saturated fat and salt/sodium) presented as a % of the Recommended Dietary Allowance ("**RDA**") was provided at the front of the pack, whereas, the public health advocates suggested interpretive color-coded warning labels which clearly indicated whether the nutrients-of-concern were above the thresholds. Addressing these competing views, the Expert Committee made clear that the industry's idea of adopting non-interpretive labels could not be accepted owing to several drawbacks. Instead, while emphasising on the benefits of interpretive labels (which included the warning label format), the Expert Committee made some pertinent observations. It was stated that interpretive labels offer intuitive and quick recognition by consumers, is supported by global evidence for enabling both an accurate understanding and driving reformulation of the product, and aligns with leading international best practices in countries such as Chile, Mexico, Brazil and Israel. The relevant portions of the recommendations of the Expert Committee in its report dated 08.10.2025 read thus:

"Recommendations of the Reconstituted Expert Committee:

In reference to the ToR given to the Expert committee, the recommendations are as follows:

I. To review the comments/representations received on FoPNL.

In view of the rising incidence of Non-Communicable Diseases (NCDs) across India, there is a pressing need for mandating a relevant and contextually acceptable system of Front-of-Pack Nutrition Labelling (FOPNL) on packaged food products. Such a system, if it is interpretive in nature, will reduce the cognitive load and empower the consumers with clear and accessible information, enabling them to make informed choices about the foods they consume.

The previous committee (constituted on 17th February 2023) after carefully evaluating the comments (~14000) has provided clear recommendations which were also reviewed by this reconstituted expert committee.

• This reconstituted committee has again reviewed the outcomes of the stakeholder meetings conducted by FSSAI subsequent to submission of the earlier report by the committee (before the reconstitution). The Committee also took into consideration the views of Public Health advocates (presented in the multi-stakeholder consultation on food labelling held in Delhi on 13th Aug 2025 (Annexure XII). It also has heard the view-points of Industry representatives, MSMEs earlier in its 2nd Meeting.

*• **The Committee observed that there is no consensus among the stakeholders on INR format draft notified by FSSAI in 2022**, with one group (industry representatives) preferring non-interpretive "Facts- Up Front" format of bolding the numerical related to nutrients of concern presented as percent Recommended Dietary Allowances (RDAs) on the front of the pack, while the other suggesting interpretive Color-coded Warning Labels clearly indicating if the levels of nutrients of Concern are above the thresholds. The EC recommends not adopting the model that displays nutrients of concern in bold along with percentage daily value as the FoPNL format. This approach was not among the preferred formats in any of the consumer studies conducted in India or internationally,*

and there is limited evidence supporting its effectiveness in promoting informed choices or achieving the public health objectives of FoPNL. This system has been argued by the industry as, 'Simpler and More Practical', 'More Informative', 'Aligned with Global Examples' and 'Less Prone to Bias'. The EC's observations are as follows:

• *Bold text alone lacks the intuitive and quick recognition offered by interpretive labels like star rating or warning symbols or colour codes etc for consumers. Global evidence consistently finds that warning labels (e.g., black stop signs in Chile) or colour coded summary labels (eg., NutriScore in Europe and Singapore) outperform non-interpretive systems like bold text/GOA format in enabling quick and accurate understanding.*

• *Presenting numerical values in bold font for nutrients of concern is already being initiated by FSSAI at the back of the pack and it does not communicate health risks just by bringing it forward.*

• *As claimed, this hardly aligns with leading international best practices. Countries such as Chile, Mexico, Brazil, and Israel have adopted interpretive FoPNL systems (e.g., warning labels, stop signs, or "high in" symbols) that are scientifically proven to improve consumer understanding and drive reformulation. WHO, PAHO, and Codex recommendations support interpretive labelling formats which are far from mere display of numbers in the front, especially in contexts of high NCD burden.*

• *Interpretive systems are based on objective nutrient thresholds. When designed using evidence-based nutrient profile models, FoPNL can become less biased and scientifically grounded."*

(Emphasis supplied)

16. In the immediate aftermath of the aforesaid report, the matter seems to have been deliberated in the Committee of Secretaries ("**CoS**") meeting dated 09.10.2025, chaired by the Cabinet Secretary. Considering the lack of consensus on the INR FoPNL format, the CoS *inter-alia* recommended

that the FSSAI withdraw the 2022 draft amendment and re-evaluate its further course of action at the earliest.

17. *Vide* our order dated 20.01.2026, we had asked the Union of India along with the FSSAI what their next steps look like, particularly in light of the recommendations made by the Expert Committee report and the developments that further unfolded. In response, the FSSAI made clear its intention to withdraw the 2022 draft amendment altogether. *In lieu,* it was submitted that the draft Food Safety Standards (Labelling and Display) Amendment Regulations, 2025 (hereinafter, the "**2025 draft amendment**") which provided boldened nutritional information of the nutrients-of-concern, was notified on 20.02.2025 for public comments. The Union was of the view that this would act as an effective alternative. In addition, it was stated that certain existing regulations including, Regulations 5 and 6 along with Schedule II of the 2020 regulations, and the Food Safety Standards (Advertising and Claims) Regulations, 2018, sufficiently catered to the issues raised in this petition. To better contextualise their position, we deem it necessary to reproduce the relevant clause sought to be inserted *via* the 2025 draft amendment. The same reads thus:

> *"2. In the Food Safety and Standards (Labelling and Display) Regulations, 2020 (hereafter referred to as said regulations),-*
>
> *(1) In regulation 5, sub regulation (3) relating to Nutrition information, in clause (b), after sub clause (ii), the following clause shall be inserted, namely:-*
>
> *"(ii)(a) <u>The information regarding per serve percentage (%) contribution to Recommended Dietary Allowance (RDA) be given</u>*

in bold letters with relatively increased font size for added sugar, saturated fat and sodium content."

(Emphasis supplied)

18. On a bare perusal, it is evident that the aforesaid clause in the 2025 draft amendment neither related to the FoPNL nor did it capture the crux of the issues raised in the present petition. It is merely a proposal for altering the existing manner in which the nutritional information is provided 'at the back of the pack'. Moreover, even the Expert Committee was of the opinion that bold text alone would not offer benefits comparable to interpretive labels.

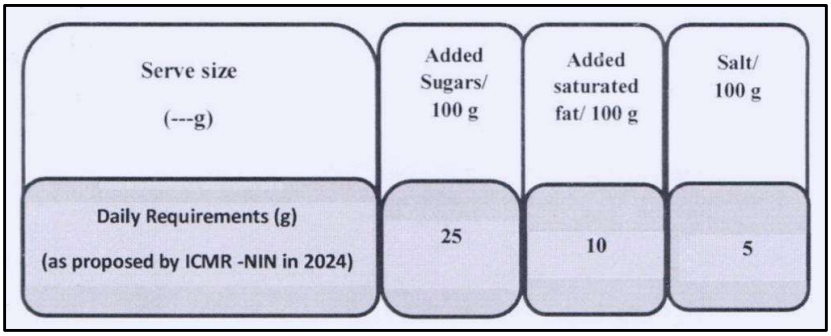
19. Hence, at this juncture, it is safe to say no progress worth the name had been achieved insofar as finalising any FoPNL system was concerned, and the situation is forced back to square one despite the conduction of extensive stakeholder meetings and the recommendations of the Expert Committee of the FSSAI.

20. In this background, the petitioner had re-emphasised the benefits of adopting a warning-style FoPNL when the matter was subsequently heard by this Court on 10.02.2026. Therefore, we had directed the FSSAI to take the suggestions of the petitioner into due consideration whilst finalising their proposal/approach.

21. Thereafter, the FSSAI proposed something altogether different. They proposed to simply display the recommended daily limits for added fat, added sugar and salt respectively provided under Guideline 15 of the Dietary Guidelines for Indians, 2024 (hereinafter, the "**DGI, 2024**") at

the front of the pack. The relevant extracts of their response *vide* affidavit dated 03.08.2026 and the proposed label is reproduced below:

> *"6. The FSSAI proposes to adopt the recommendations of DGI 2024 with respect to daily limits for saturated fat, added sugar and salt to ensure scientific alignment and consistency across regulatory framework and incorporate the same on labels in a tabular form.*
>
> *[…]*



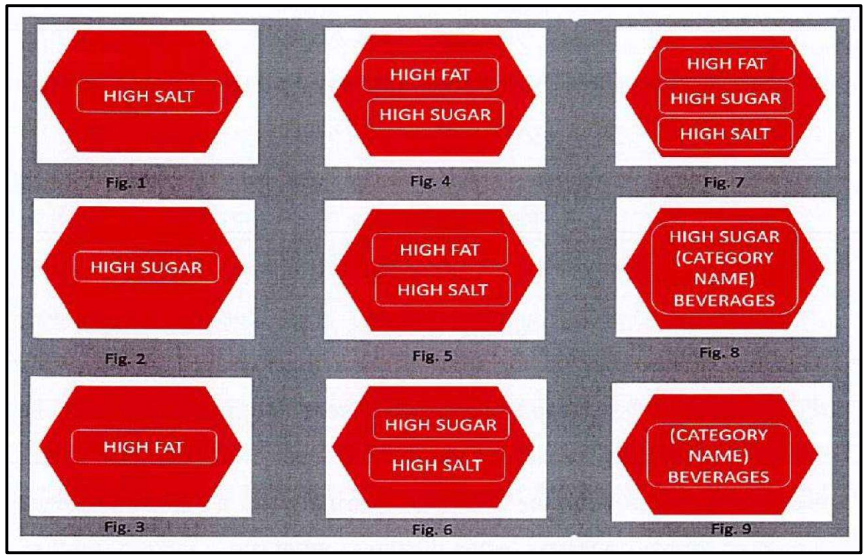
Serve size (---g)	Added Sugars/ 100 g	Added saturated fat/ 100 g	Salt/ 100 g
Daily Requirements (g) (as proposed by ICMR -NIN in 2024)	25	10	5

22. The petitioner vehemently submitted that merely restating, in a standard form, the daily allowance for the nutrients-of-concern says nothing about the product itself or its relative healthiness/unhealthiness. The consumer, in turn, would have to locate the product's nutrient declaration elsewhere on the pack, do an arithmetic and draw a conclusion. Therefore, it was submitted that this model, which did not inform the consumer of the nature or characteristic of the product, was not in essence a FoPNL at all.

23. Consequently, *vide* our order dated 13.08.2026, we briefly highlighted the FoPNL models that exist around the world and urged the Union to take inspiration from international best practices and standards in finalising an India-specific FoPNL. We had made clear that the Union in consultation with the experts may finalise their decision as regards

the visual appearance of the FoPNL including coloured indicators, interpretive words, numbers, letters or symbols, numerical information, percentage etc.

24. Taking all aspects into consideration, the FSSAI placed their proposal providing interpretive label(s) of the nutrients-of-concern in a pictorial form as a 'red hexagon' *vide* their affidavits dated 28.08.2026 and 23.09.2026 respectively. To illustrate, the final suggested format of the FoPNL looked like this:



25. Several aspects of the implementation of the aforesaid FoPNL including *inter-alia* the timeline, format, colour, placement, size, dimensions, threshold limits for the nutrients-of-concern, voluntary/mandatory nature etc., was discussed in detail on both sides. On most fronts, both parties were unable to see eye-to-eye. We shall advert to all these specific nuanced issues in the later parts of this judgment.

26. If we were to succinctly consolidate the submissions made on either sides;

i. The petitioner would vehemently argue that the FoPNL is an essential measure to secure the right to life and health of all persons under Article 21, read with the State's obligations under Article 47 of the Constitution. It was also argued that this duty is manifest under various provisions of the Food Safety and Standards Act, 2006 (hereinafter, the "**Act, 2006**"). Keeping in mind the sustained delay on part of the FSSAI, the petitioner would pray that directions be issued to the FSSAI, by way of a mandamus, to implement the warning-style FoPNL framework within a fixed timeline. They are also of the view that the present proposal of the FSSAI is riddled with several problems and/or ambiguities. Therefore, they would submit that certain basic characteristics of the label and other crucial aspects pertaining to its implementation, be specifically delineated within this Court's directions. In their opinion, this would be necessary to make the framework practically workable and also prevent the object/purpose of the FoPNL from being foundationally defeated.

ii. On the other hand, the FSSAI would submit that they would adopt an FoPNL framework as indicated in their affidavit dated 23.09.2026 and finalise the draft regulations as per the regulatory process envisaged under the Act, 2006, within a period of approximately four months from the date of this judgment and ensure that the regulations come into force as soon as possible.

III. ISSUES FOR CONSIDERATION

27. Having heard the learned counsel appearing for the parties and having gone through the materials placed on record, the following questions fall for our consideration: -

(i) Whether the right to health, the right to food, and the right to know and make an informed choice under Article 21 of the Constitution casts a positive obligation on the State to adopt regulatory measures, such as an FoPNL, for the protection of public health?

(ii) Whether the FoPNL proposed by the FSSAI suffers from any deficiencies, in its broad aspects, which would significantly undermine the very objective of bringing an FoPNL into force?

IV. ANALYSIS

A. Public health and FoPNL: An introductory discussion

28. Before we proceed to the legal discussion, it is important that we *first*, understand the wide and varied scope of public health strategies that can be adopted to safeguard the right to health of people, which may move beyond simply ensuring access to health care; *secondly,* look into how commercial interests factor into the health discussion, along with how businesses and their activities affect public health; *thirdly,* identify the importance of State intervention through public regulations; and *lastly,* emphasise on the need to ensure that all strategies remain accessible and available to the most vulnerable populations.

i. Expanding the approach to public health: from clinical interventions to addressing the determinants of health

29. Geoffrey Rose states that aetiology, which is the scientific study of the causes of disease, confronts two distinct issues i.e., *one,* the determinants of individual cases, and *two,* the determinants of prevalence or incidence rate.[12] To put it simply, in the first issue, the question is 'why do some individuals have hypertension or diabetes?' and in the other, it is 'why do some populations have hypertension or diabetes? or 'why do some populations record progressively higher numbers of hypertension or diabetes over time?'. Rose argues that the latter is the more pertinent public health question because it studies the characteristics of the population and identifies those mass influences acting on them as a whole.[13]

30. These two distinct questions have their own counterparts in public health preventive strategies. In the former (which he calls the "*High-risk strategy*"), you identify high-risk susceptible individuals and offer them individual protection in the form of hospitalisation, access to treatment, surgical procedures, prescription of medicines etc. In contrast, in the latter (which he calls the "*population strategy*"), you seek to control the determinants of disease incidence in the population as a whole, lower the mean level of risk factors and shift the whole distribution of

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[12] Geoffrey Rose, *Sick Individuals and Sick Populations,* 14 INT. J. EPIDEMIOL. 32, (1985). This early work is considered to be one of the ground-breaking contributions to public health.

[13] *Ibid,* to contextualise better, the paper uses this example, "*A more extreme example is provided by the population distributions of serum cholesterol levels in East Finland, where coronary heart disease is very common, and Japan, where the incidence rate is low: … but if we want to discover why Finland has such a high incidence of coronary heart disease we need to look for those characteristics of the national diet which have so elevated the whole cholesterol distribution…*".

exposure in a favorable direction through, *say*, mass environmental control methods or alteration of some norms of social behaviour.

31. In comparing the two strategies, Rose states that the 'high-risk' strategy of prevention is an interim expedient, needed in order to protect susceptible individuals, but only for as long as the underlying causes of incidence remain unknown or uncontrollable; however, if the causes can be removed, susceptibility ceases to matter. In this manner, he adjudges that the latter population strategy must be the priority of concern and receive sufficient attention in public health discussions.

32. Now, coming to why we have deemed it fit to encapsulate the ideas of Geoffrey Rose; much of our conception of what it means to secure or guarantee the health of the people, has predominantly involved measures which fall within the 'high-risk' strategy identified above. We have hyper-focused on ensuring that our country has sufficient hospitals, qualified doctors, access to medicines, mandatory health insurance for people exposed to hazardous work etc., in most of our health-related policies. And of course, this is not misplaced. In fact, in India, access to such services was and continues to be a serious problem, especially in the remote and rural areas of the country. A significant portion of government and policy action must, therefore, be perennially focused on ensuring such access. However, there is a pressing need for policy action in the realm of 'population strategy' as well. Because as previously stated – "*if causes can be removed, susceptibility ceases to matter*".

33. What exactly are these causes or determinants? How do we address them through policy or government action? In what order of priority? These questions have pre-occupied the minds of many and several public health models have attempted to explain them. To point out a few; Dahlgren and Whitehead propose a rainbow model of health determinants wherein the age, sex and constitutional factors, individual lifestyle factors, social and community networks, living and working conditions, and general socio-economic, cultural and environmental conditions respectively are all considered to influence health.[14] Hamilton and Bhatti created a cube-like model called Population Health Promotion Model ("**PHPM**") which identifies nine health determinants and proposes interventions at the individual, family, community, sector/system and societal levels respectively.[15] Landone[16] presents the 'health field' concept which identifies four broad categories in which the causes of adverse health outcomes and interventions can be situated[17]. Of greatest relevant for us, is the public health model developed by Frieden[18]. He does not deal with determinants of health *per say*; rather his model is singularly focused on how we must address these 'causes'. He advocates for a pyramidical model which, in a way, ranks the

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[14] Göran Dahlgren and Margaret Whitehead, *Policies and strategies to promote social equity in health,* INSTITUTE FOR FUTURE STUDIES, STOCKHOLM, SWEDEN, (1991).

[15] Nancy Hamilton and Tariq Bhatti, *Population Health Promotion: An integrated model of population health and health promotion,* Ottawa: Health Canada, Health Promotion Development Division, (1996), https://www.canada.ca/en/public-health/services/health-promotion/population-health/population-health-promotion-integrated-model-population-health-health-promotion/developing-population-health-promotion-model.html#Developing.

[16] Marc Landone, *A new perspective on the health of Canadians: a working document,* MINISTRY OF SUPPLY AND SERVICES, GOVERNMENT OF CANADA, (1981), https://www.phac-aspc.gc.ca/ph-sp/pdf/perspect-eng.pdf.

[17] The four broad categories are: Human Biology, Environment (including the 'food' environment), Lifestyle, and Health Care Organisation.

[18] Thomas R. Freiden, *A framework for public Health Action: The Health Impact Pyramid,* 100 American J. Pub. Health. 590, (2010), https://pmc.ncbi.nlm.nih.gov/articles/PMC2836340/.

effectiveness of the available forms of health policy interventions and strategies. Measures situated at the base of the pyramid have the greatest potential impact because of its capability to reach broader segments of society. As you move upwards, not only does impact decrease but the measures become increasingly dependent on individual action or effort. The model is reproduced thus:

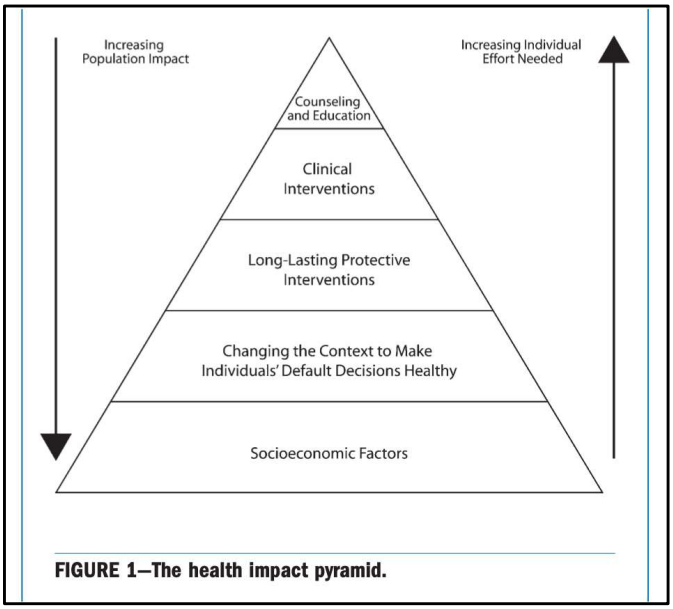

FIGURE 1—The health impact pyramid.

34. A noteworthy aspect of Freidman's model is that it immediately recognises the limitations of solely focusing on clinical health services and its delivery in public health strategies. This is apparent from its placement of 'clinical interventions' at the fourth tier from the base of the pyramid.

35. Now, as far as the first tier goes, it is no doubt that changes in socioeconomic factors like poverty reduction, improved education etc., would generate the greatest population effect. The WHO itself openly

acknowledges that it is *social injustice which kills people on a large scale*[19] and several other works including those by Marmot and Wilkinson[20] argue that health inequities follow the social gradient. However, addressing these factors require fundamental changes to be made in the socio-economic realm and no doubt, slow change is being effected in this sphere in India.

36. The second tier, which is the next most effective strategy, deals with 'Changing the context to make individuals' default decisions healthy'[21], and this is where the crux of this present matter lies. Aligning with Milio's popular slogan "*making healthier choices, the easier choices*"[22], creating such healthier defaults would include ensuring provision of clean water, air, and *food*[23], along with initiatives like passing smoke-free laws, taxing tobacco, alcohol and unhealthy foods, advertisement control, labelling regulations etc. Most changes in this tier are often

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[19] WORLD HEALTH ORGANISATION, *Closing the gap in a generation: health equity through action on the social determinants of health,* Final Report of the Commission on Social Determinants of Health, Geneva Switzerland, (2008), https://www.who.int/publications/i/item/WHO-IER-CSDH-08.1.

[20] MICHAEL MARMOT AND RICHARD WILKINSON, SOCIAL DETERMINANTS OF HEALTH, (OUP, 2005); MICHEAL MARMOT, THE STATUS SYNDROME: HOW SOCIAL STANDING AFFECTS OUR HEALTH AND LONGEVITY, (Times, 2007).

[21] Even Hamilton and Bhatti's PHPM model places great emphasis on "*creating supporting environments*", which in its content is quite similar to what is encapsulated in the second tier by Freidman.

[22] Peter Draper, *Nancy Milio's work and its importance for the development of public health promotion,* 1 Health Promotion (OUP) 101, (1986), https://www.jstor.org/stable/45153788?seq=6.

[23] *Supra* note 18, at 591, in the context of food related policies, Freidman illustrates the Mauritius initiative of changing from saturated to unsaturated cooking oils and the corresponding social impact of decreased cardiovascular risk factors; *Also,* at 592, he illustrates how a healthier food environment was created by decreasing salt in packaged foods in the United Kingdom where four-year sodium reduction targets were introduced and, in Finland, where dietary sodium intake was decreased approximately 25% in the past 30 years; *See also,* Steen Stender et al, *High levels of industrially produced trans-fat in popular fast foods,* 354 N. ENGL. J. MED. 1650, (2006), where the Denmark experience of introducing legislation for the restriction of trans-fatty acids in food production is explained.

politically unpopular, but necessary.[24] Freidman says that *the defining characteristic of this tier of intervention is that individuals would have to expend significant effort to not benefit from them.*[25] Such is the nature of a warning-style FoPNL as well; it operates under this tier in a two-pronged manner, *one,* at the time of purchase, consumers would have to go out of their way to ignore the label, and *two,* over time, manufactures and FBOs would be induced to reformulate their products thus creating healthier food environments.

37. Mckinlay[26] similarly highlights the shortcomings of placing clinical curative interventions at the focal point of public health frameworks. He calls them '*downstream endeavors*' by using the analogy of a swiftly flowing river an drowning men. He states that just when you jump into the river and rescue one person, there is another cry for help; this sequence goes without end, and whilst you are busy rescuing, there is no time to see who is pushing these people into the river in the first place. According to him, figuring out, solving and addressing the factors that push people into the river are '*upstream endeavors'* and the real drivers of change. If a comparison ought to be drawn, then Friedman's first and second tiers would qualify as 'upstream' efforts

[24] *Ibid,* at pg 594, "*Hence the greater popularity of school- based antismoking programs (despite consistent evidence they provide little to no benefit) than of proven tobacco control interventions such as taxation, smoke-free environments, and comprehensive marketing bans. Similarly, exhorting people to exercise more and eat less is politically popular, but taxation of soda and other sugar-sweetened beverages, bans on marketing junk food to children, and community redesign to encourage walking and bicycling, although far more effective, are also politically more difficult.*"
[25] *Supra* note 18, at 591.
[26] John.B.Mckinlay, *A case for refocusing upstream: the political economy of illness*, IAPHS OCCASSIONAL CLASSICS, (1979), https://iaphs.org/wp-content/uploads/2019/11/IAPHS-McKinlay-Article.pdf.

according to Mckinlay[27] and the higher you move in the pyramid, the more 'downstream' your endeavors get.

38. In short, it has long been acknowledged by public health experts that health policies which only focus on clinical interventions have inherent limitations, mainly on account of its incapability to address and remedy the root cause/determinants of health. Unanimously, it has been agreed that creating 'healthy environments' which make healthy decisions the default rule for consumers and restrict the activities of the 'manufacturers of illness' are one of the more effective ways to address public health issues.

ii. The commercial determinants of health – regulating the industry

39. Commercial determinants of health are the systems, practices and pathways through which commercial actors drive health and equity.[28] Mckinlay places significant emphasis on profit-driven commercial and entrepreneurial interests as one of the driving factors (that push people into the river) requiring urgent regulation.[29] According to him, such commercial interests including polluting industries who release effluents or emissions into the water and air, manufacturers of packaged HFSS foods or UPFs etc., produce inevitable and detrimental health

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[27] This comparison is drawn especially due to Mckinlay's statement that focus must be given to the *social and economic contexts* which foster and reinforce the behaviors that detrimentally affect health.

[28] Anna B Gilmore et al, *Defining and conceptualising the commercial determinants of health,* 401 THE LANCET 1194, (2023). As a case study, the author explores the sugar-sweetened beverage (SSB) consumption in South Africa and the relevant commercial sector practices and pertinently observes thus: "*…In these ways, the SSB corporations weakened and delayed evidence-based regulations, including the sugar tax and front-of-pack nutrition labelling*".

[29] This aspect on how commercial interests play a significant role in negatively impacting public health is also evident in the Dahlgren-Whitehead rainbow model, the Hamilton-Bhatti PHPM model and Freidman's health pyramid, albeit in an implied manner. Mckinlay is simply more vocal in drawing the causal connection.

consequences as a necessary by-product in the course of producing material goods and services.

40. Corporate activities, as a whole, shape the social and physical environment in which people live and work by dictating the availability, cultural desirability and prices of unhealthy food products.[30] The food industry heavily shapes the information environment; in fact, the industry is manifestly more effective in its use of behavioral science knowledge to promote at-risk behaviour. Many advertisements and packaging in foods are highly ingenious in their appeal. In this, what is especially concerning is that marketing efforts are disproportionately focused on exploiting the vulnerability of children, women, low and middle-income groups etc. Moreover, by binding the display of at-risk behaviour so inextricably to elements of our dominant culture, a situation is created whereby to request people to change is more or less to request the abandonment of dominant culture. This may include, *for example*, the consumption of sugar-heavy cereals or fruit juices for breakfast, sweets for festivals, calorie-heavy snacks for tea etc.

41. Combined with this is the prevailing ideology that ascribes culpability to a particular individual/consumer for the manifestation of their disease or their at-risk behaviour. '*You are the maker of your own destiny*' they say, despite every other external factor working against you.[31] If

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[30] Ilona Kickbusch et al, *The commercial determinants of health,* 4 THE LANCET 895, (2016), https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(16)30217-0/fulltext.

[31] See Boyd A Swinburn et al, *The global obesity pandemic: shaped by global drivers and local environments,* 378 THE LANCET 804, (2011), "*Undoubtedly the final decision to consume a particular food or beverage, or to exercise or not, is an individual decision. However, to negotiate the complexity of the environment and the choices it poses, many of these decisions are automatic or subconscious*".

we were to use Mckinlay's upstream-downstream analogy, one could argue that people are blamed (and, in a sense, even punished) for not being able to swim after they, perhaps even against their own volition, have been pushed into the river.[32] In reality, this focus on the particular individual may be an over-simplification. A consumer has to negotiate with the complexity and cues of the surrounding environment whilst making such decisions and consumption often occurs in ways that defy personal insight or are below individual awareness.[33]

42. Therefore, what becomes clear is that public health interventions must sufficiently address the 'commercial' drivers or determinants of health. Whilst doing so, instead of solitarily placing the burden on the individual consumer to make the 'wiser' choice, efforts must also focus on the surrounding food environment and regulating the commercial activities that shape such environment.

iii. The manner, scope and nature of interventions – the 'stewardship' model

43. The ethical duty of the State would be to create conditions that help maintain and improve the health of those under its jurisdiction and this is where the 'stewardship model' finds significance.[34] This model does not endorse highly coercive universal measures but adopts the least intrusive way of achieving public policy goals, keeping in mind factors

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[32] *Supra* note 26, at 4.
[33] Deborah A Cohen, *Neurophysiological pathways to obesity: below awareness and below individual control,* 57 DIABETES 1768, (2008), https://pubmed.ncbi.nlm.nih.gov/18586908/.
[34] Nuffield Council on Bioethics, Public Health: Ethical Issues, 25 (Cambridge Publishers, 2007); *See also* WORLD HEALTH ORGANISATION, *World Health Report 2000,* (Geneva, Switzerland), https://cdn.who.int/media/docs/default-source/health-financing/whr-2000.pdf?sfvrsn=95d8b803_1&download=true.

like effectiveness and proportionality. The mandatory use of seat belts while driving is an oft referred example of the stewardship model of public health intervention. The cost of improving vehicles may be high, making roads 'safe' may not be absolutely achievable, and improving road infrastructure would require heavy public expenditure. However, seat belts once installed are nearly costless and could save many lives.[35] Its inroad into individual autonomy is also minimal. Implementing an FoPNL framework would follow the same course. This is not to say that public health policies must always be steward-like; the nature and harshness with which interventions must be tailored would depend on the complexity and context of the problem sought to be tackled. Some issues warrant a higher degree of State action; like, *say*, the ban on e-cigarettes, endosulfan, certain pesticides etc.

44. Especially in relation to HFSS foods or UPFs and the resultant NCD crisis, the State cannot be a passive onlooker. Industry interests would, in fact, prefer a passive State and advocate for self-regulation or voluntary action on their part as a solution. However, self-regulation can be highly deficient and sometimes misguided, owing to the glaring conflict of interest between the profit-goals of commercial entities and public health aspirations.[36] As Dr. Margaret Chan, former Director-

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[35] *Ibid,* at 6, "*From 1975 to 1998, seat belts saved an estimated 112 000 lives in the United States, and total traffic fatalities continued to fall. The potential health gains were even greater: in 1998 alone, 9000 people died because they did not use their belts*".

[36] Rob Moodie et al, *Profits and Pandemics: prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries,* 381 The Lancet 670, (2013), "*Similarly, there is little evidence that self-regulatory approaches are effective. For example, the so-called voluntary decision by Kraft to ban trans-fats was a result of threatened litigation. Furthermore, legislation for clean air, asbestos, road trauma, and tobacco was introduced only after the repeated failures of the industries responsible for solving these problems through self-regulation. The argument against self-regulation is that even if some progressive food and alcohol companies use healthier approaches, the gap in the market would be filled by others.*"

General of the WHO would observe, "*efforts to prevent non-communicable diseases go against the business interests of powerful economic operators.*"[37] This is why public regulation (whether steward-like or paternal, depending on what the situation may require) instead of hopeful reliance on industry action, becomes highly necessary.

45. In bringing public regulation, several experts also warn against placing excessive regard or deference to the views of the industry interests, whether through stakeholder consultation or otherwise. This is because of their tendency to downplay or reject the most effective control measures[38], or flooding and thereby, slowing the consultative process with responses from interested third parties and with misleading evidence that they have commissioned[39]. Through these tactics, they simply make it harder to implement effective public health policies. Therefore, even in adopting the stewardship model of intervention, such aspects must be duly borne in mind by government and public

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[37] Dr. Margaret Chan, *Opening Address by Dr. Margaret Chan, Director General, World Health Organisation,* 29 HEALTH PROMOTION INT. 9, (2013), "*As the new publication makes clear, it is not just Big Tobacco anymore. Public health must also contend with Big Food, Big Soda and Big Alcohol. All of these industries fear regulation, and protect themselves by using the same tactics. Research has documented these tactics well. They include front groups, lobbies, promises of self-regulation, lawsuits and industry-funded research that confuses the evidence and keeps the public in doubt. Tactics also include gifts, grants and contributions to worthy causes that cast these industries as respectable corporate citizens in the eyes of politicians and the public. They include arguments that place the responsibility for harm to health on individuals, and portray government actions as interference in personal liberties and free choice. This is formidable opposition.*"

[38] *Ibid*, "*The second is efforts by industry to shape the public health policies and strategies that affect their products. When industry is involved in policymaking, rest assured that the most effective control measures will be downplayed or left out entirely. This, too, is well documented, and dangerous. In the view of WHO, the formulation of health policies must be protected from distortion by commercial or vested interests.*"

[39] *Supra* note 28, at 1206, "*These companies have since used such stakeholder consultations to that effect – to prevent, slow, weaken, and challenge policies by flooding consultations with responses from third-party organisations they have funded and with highly misleading evidence they have commissioned. These approaches advantage powerful commercial actors: stakeholder consultations embed the companies' right to participate (even where a conflict of interest exists) and provide a route through which they can channel their (often highly misleading) evidence; impact assessments that take a cost–benefit approach prioritise effects on business over other areas, such as health or the environment.*"

health authorities while attempting to address public health epidemics through regulatory action.

iv. Reaching the most vulnerable

46. There is no gainsaying that the effectiveness of any public health intervention is adjudged also through its capability to reach the most vulnerable populations. Hence, interventions and policy measures must be relevant to all ages and penetrate the diverse education, social and income levels.

47. Unfortunately, many lifestyles are structurally determined and not freely chosen.[40] Sometimes, food itself, whether healthy or not, remains a luxury; in such cases, access to and affordability of food becomes the immediate challenge. For many, the attainment of a basic level of education remains a big hurdle and therefore, what is written on the package of a food product may not be of any significance to them. It is in relation to this that experts speak of a 'need hierarchy'[41], wherein more primary needs (like employment, basic education, basic food etc.) eclipse the secondary needs (like exercise, balanced diet, nutritious food etc.). In such circumstances, one might argue that the introduction of an FoPNL would barely move the needle, especially for such individuals and populations. There is no doubt that this assertion may be true to a very large extent; as Freiden, Marmot and others would suggest,

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[40] *Supra* note 14 at 22.

[41] *Supra* note 26 at 6, Mckinlay introduces this notion of a need-based hierarchy to conclude that clinical interventions or any health worker intervention fails to generate significant outcomes in the lives of those having lower socio-economic status because more 'primary needs' like shelter, income etc., eclipse these measures. While he only applies this idea for clinical interventions, the same remains true for any intervention on all of Freidman's tiers, except obviously for the base tier which actually targets these 'primary needs' themselves.

fundamental changes in the socio-economic sphere would be the best public health solution for them. However, this must not necessarily mean that other measures which fall under the remaining four tiers of Freidman's pyramid must not be attempted at all or would remain completely useless. In fact, the attempt must nevertheless be made but with a renewed focus; we must tailor the measures in the other tiers in such a manner that vulnerable populations could derive the maximum benefit from them, should their situation allow/require them to access it or should they simply wish to utilise it.

48. Moreover, several studies identify that the HFSS food and UPF market have increased their stronghold within middle and low-income populations in the past two decades and these industries see the greatest potential for growth within such populations.[42] It is, therefore, of utmost importance that regulations remain ready to address such trends and protect such consumer bases.

49. In this context, one must deliberate on the best way to make the FoPNL framework accessible to all levels of the social and economic gradient. Simply put, we must make it relevant and useful for all and not just the

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[42] Carlos A Monteiro et al, *Ultra-processed foods and human health: the main thesis and evidence,* 406 THE LANCET 2667, (2023), "*From 2007 to 2022, annual per capita sales of UPFs increased by 60% in Uganda, the only low-income country assessed by Euromonitor; by 40% in lower-middle-income countries; and by nearly 20% in upper-middle-income countries. All ten UPF subgroups—sweetened carbonated drinks, sweetened non-carbonated drinks, baked goods, sweet snacks, ready meals, savoury snacks, dairy products, sauces and dressings, reconstituted meat products, and other solid foods—increased.… In the same 2007–22 period, annual per capita overall sales and sales of the ten UPF subgroups increased in south Asia, southeast Asia, and sub-Saharan Africa, as well as in central Europe, eastern Europe, Latin America and the Caribbean, central Asia, eastern Asia, north Africa, and the Middle East. UPF sales declined in North America, Australasia, and western Europe…*"; *See also, Supra* note 36 at 671, "*Tobacco, alcohol, and several categories of packaged food—a good proxy for ultra-processed food and drink products—are rising most rapidly in low-income and middle-income countries. Little, if any, growth is expected in high-income countries in the next 5 years because of the economic recession, strict tobacco-control policies, and saturation of established markets with ultra-processed food and drink products.*"

affluent/educated. Ensuring true prominence of the label through its size, distinct color and placement; mandating pictorial representations that can traverse linguistic, age and educational barriers etc., would be aspects that would enhance its accessibility and utilisation. Therefore, sufficient attention must be paid to such characteristics of the FoPNL before any mandatory policy is framed.

B. <u>The legal landscape</u>

50. According to the petitioner, the FoPNL is an essential measure which would secure the right to life under Article 21 read with Article 47 of the Constitution. The petitioner would state that:

i. It is settled law that the right to life includes the right to health within its ambit and imposes a positive obligation on the State to improve conditions of public health. On this aspect, reliance was placed on the decisions of this Court in ***Consumer Education & Research Centre v. Union of India*** reported in **(1995) 3 SCC 42,** ***Paschim Banga Khet Mazdoor Samity v. State of W.B.*** reported in **(1996) 4 SCC 37** and ***Vincent Panikurlangara v. Union of India*** reported in **(1987) 2 SCC 165** respectively.

ii. The provision of safe and wholesome food also falls within the scope of Article 21 and the FSSAI being the relevant regulatory authority was bound by the duty to ensure that adulterated and harmful food products were regulated through necessary measures. To drive home this point, they would rely upon the decisions of this Court in ***Centre for Public Interest Litigation v. Union of India*** reported in **(2013) 16 SCC 279** and *Swami*

Achyutanand Tirth v. Union of India reported in **(2016) 9 SCC 699** respectively.

iii. Every person should be able to make an informed choice about their food purchase and dietary decisions, and therefore, the right to necessary information about the nutrients-of-concern, in the form of an FoPNL, must be made available and accessible to all.

iv. In the last, they would place reliance on the decisions of this Court in ***Vishaka v. State of Rajasthan*** reported in **(1997) 6 SCC 241** and ***Vineet Narain v. Union of India*** reported in **(1998) 1 SCC 226** respectively, to persuade this Court to issue binding guidelines to the FSSAI and Union of India, in connection with the implementation of an FoPNL framework, and monitor compliance thereof.

51. Before we proceed to a discussion on the fundamental rights guaranteed under Article 21 of the Constitution, and how its content and scope would relate to the implementation of FoPNL, it is important for us to understand how the right to health along with the right to adequate and safe food has been normatively situated under international law and what kind of obligations are envisaged for State action.

i. International law

52. Internationally, there exist several resolutions and treaties that discuss socio-economic rights including the right to health and right to adequate food. One such resolution which has gained the status of customary international law is the Universal Declaration of Human Rights

("**UDHR**") which, under Article 25(1), states that everyone has the right to a standard of living adequate for the well-being of himself and of his family, including food and medical care, amongst others.[43]

53. The International Covenant on Civil and Political Rights ("**ICCPR**") does not deal with the right to health or the right to adequate food, explicitly. Instead, under Article 6, it provides that *Every human being has the inherent right to life* and states that the right to life shall be protected by law, and that no one shall be arbitrarily deprived of life. [44] The duty to protect life under Article 6 also implies that State Parties must take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.[45] These general conditions may include addressing the degradation of the environment, the prevalence of life-threatening diseases and widespread malnutrition.[46]

54. The right to health and adequate food, the contents thereof and the corresponding State obligations are dealt with in more detail under the International Covenant on Economic, Social and Cultural Rights ("**ICESCR**").[47] This instrument is popularly considered the north-star for socio-economic rights under international law.

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[43] United Nations General Assembly (1948) *Universal Declaration of Human Rights*, Resolution A/RES/217(III)A, art. 25(1).
[44] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 U.N.T.S. 171, art. 6.
[45] UN Human Rights Committee (HRC), (2018), *General Comment No. 36: Article 6 (Right to Life)*, 124th Session, 30 October. UN Doc. CCPR/C/GC/36, para 26, Available at https://digitallibrary.un.org/record/3884724?v=pdf.
[46] *Ibid.*
[47] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 U.N.T.S. 3.

a. The ICESCR and its framework on the right to health and the right to adequate food respectively.

55. The right to health shares a symbiotic relationship with other human rights; it is both the cause and the result; the catalyst and the consequence. It is said so because health is a fundamental human right indispensable for the exercise of other human rights, and at the same time, the right to health is also dependent upon the realisation of other human rights. Acknowledging its crucial role, Article 12.1 of the ICESCR recognises *the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*.[48]

56. Shedding some further light into the use of the expression "*enjoyment of the highest attainable standard*" of health, General Comment No.14 makes it clear that Article 12.1 is not confined to the right to health care alone. Instead, it embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extends to the *underlying determinants of health* such as *an adequate supply of safe food and nutrition, healthy environment,* and *access to health-related education and information*.[49] To put it simply, the right to health is not merely the right to be *healthy* and free from disease.[50] Although to be healthy and free from disease are parts of its content, the right is much

[48] *Ibid,* art. 12.1.
[49] United Nations, ECONOMIC AND SOCIAL COUNCIL, General Comment No. 14, (2000) para 11.
[50] It is generally agreed that the absence of disease or infirmity is a very narrow way of looking at the right to health. Right to health encapsulates much more. Therefore, the absence of disease, is the most basic conceptualisation of the right to health and is definitely a part of the normative content of the right. Of course, the biological and genetic make-up of the individual also accounts for disease or ill-health. Therefore, while the State cannot provide protection against every possible cause of ill health, it nevertheless has the responsibility to identify and prevent those contributors to ill-health which are beyond the individual alone.

wider in scope. It contains several freedoms and entitlements as well. These entitlements include the right to a "system of health protection"[51], which would encompass health facilities, goods and services, and the underlying determinants of health (like safe and nutritious food, health education/information), all of which is (a) available to everyone, (b) physically, economically and informationally accessible to everyone, (c) is non-discriminatory, (d) is culturally and ethically appropriate, and (e) is of good quality.[52]

57. Charting out the steps that must be taken by State Parties to achieve the full realisation of the right to health, Article 12.2 provides a non-exhaustive list of measures. It is said that this list must not only be taken as examples of the ways in which the State must act; rather, these measures must be seen as informing the content of the right itself. Article 12.2 states that the right to health includes those measures necessary for (a) the healthy development of the child, (b) the improvement of all aspects of environmental hygiene, and (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases. According to General Comment No. 14;

(a) *Healthy child development* would focus on all aspects affecting child/adolescent health including the provision of safe and nutritious food during the child's formative years, and providing safe and supportive environments for adolescents so that they can

[51] *Supra* note 49, at para 8.
[52] *Ibid,* at para 12.

acquire appropriate information to negotiate the health behaviour choices they make.[53]

(b) Whereas the *improvement of environmental hygiene* would include preventive measures which address the population's exposure to harmful substances, ensuring an adequate supply of food and proper nutrition for all, discouraging the abuse of alcohol, the use of tobacco, drugs and other harmful substances.[54]

(c) Whereas the *prevention, treatment and control of diseases* would include addressing behaviour-related health concerns.[55]

58. The right to health is, therefore, not synonymous to the right to health care. Health care is, at best, a component of the right to health. Achieving the "highest attainable standard of health" refers to something wider and more fundamental. It is to secure the conditions in which healthy life can be led. Hence, addressing the underlying determinants of health becomes a crucial means of securing the right to health itself. To put it in plain words, the right to health is not simply freeing individuals from disease or illness after a disease or illness has manifested in an individual, it is to also prevent such occurrence and manifestation in the first place, or to *nip the problem at the bud*. Viewed from this perspective, the right to health assures to people certain freedoms and entitlements. These freedoms and entitlements are many and incapable of exhaustive definition. However, attempting to lay out a few: (i) Children and adolescents must be assured conditions where

[53] *Ibid,* at para 23.
[54] *Ibid,* at para 15.
[55] *Ibid,* at para 16.

they are able to develop in a healthy manner, access healthy food, and obtain accurate health-related information, and (ii) the environment, natural or otherwise, that surrounds people must be improved and exposure to harmful substances must be prevented.

59. It is in the aforesaid light that the highly skewed nutritional composition of packaged foods combined with the acute susceptibility of children and adolescents; the inconspicuous manner in which relevant nutritional information is provided on the package of food products and the corresponding inability of people to effectively exercise informed health-related decision making; the increased exposure to sugars, saturated fats and salts that are proven to be harmful to health beyond minimum levels; the absence of mechanisms through which the consumption of HFSS foods and UPFs are discouraged (akin to alcohol or tobacco); and the increasing incidence of NCDs along with malnutrition in the country, must all be viewed. All of them strike at the very heart of the content of the right to health recognised under Article 12.

60. Moving on, let us understand the scope and content of the right to adequate food. Article 11.1 of the ICESCR recognises *the right of everyone to an adequate standard of living for himself and his family, <u>including adequate food</u>, clothing and housing, and to the continuous improvement of living conditions*.[56] The core content of the right to adequate food implies the availability of food in a quantity and *quality sufficient to satisfy the dietary needs of individuals*, which is *free from adverse substances,* and acceptable

[56]*Supra* note 47, art. 11.

within a given culture.[57] Now, the use of the expression "quality sufficient to satisfy the dietary needs" in the definition of the core content of the right, is particularly relevant to the present petition. In explaining the import of the words "dietary needs", General Comment No. 12 states thus:

> "*Dietary needs implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breast-feeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.*"[58]
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> (Emphasis supplied)

61. The aforesaid excerpt highlights that ensuring sustainable access to sufficient quantity of food and alleviating hunger are crucial aspects of the right to adequate food; however, that cannot be said to be the whole of its content. Along with it, for the right to adequate food to be truly secured, (a) the diet, as a whole, must contain a mix of nutrients necessary for growth, development, maintenance and physical activity, at all stages throughout the life cycle, (b) measures that maintain or strengthen dietary diversity along with appropriate consumption and feeding patterns are necessary, and (c) measures which ensure that changes in food supply do not negatively affect dietary composition are also crucial.

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[57] United Nations, ECONOMIC AND SOCIAL COUNCIL, General Comment No. 12, at para 8.
[58] *Ibid,* at para 9.

62. All these essential elements of the right to adequate food are of significance to our discussion, especially considering the prevalence of a harmful mix of nutrients i.e., the nutrients-of-concern in packaged food products, the nutritional transition towards HFSS foods and UPFs amongst the average population which has created worrisome consumption and feeding patterns, and the negative impact it has on dietary composition and intake. Akin to undermining the right to health, all these aspects pierce the right to adequate food as well. The right to adequate food is definitely not on the aspect of quantity alone, but encompasses quality; which eschews adverse and toxic elements.

b. Obligation of States

63. Considering that the NCD crisis, the risks posed by HFSS foods and UPFs, the insufficient regulation in the food sector and other issues pointed out in the present petition, impact the content of the international right to health and adequate food in the aforesaid manner, it is important that we look into the nature and extent of obligations required from the State Parties by the ICESCR to safeguard and secure these rights. Such an exposition on the international obligations will provide us with necessary guidance to interpret the nature and extent of similar positive obligations imposed on the State under Article 21 of the Constitution for the violation of the same rights. In short, how does the ICESCR require State Parties to give meaning to the aforementioned rights in the form of obligations?

64. Overarchingly, under Article 2, the ICESCR provides that all States must "*undertake to take steps to the maximum of its available resources, with*

a view to achieving progressively the full realisation of the rights recognised in the Covenant, by all appropriate means, including particularly the adoption of legislative measures".[59] The concept of "progressive realisation" constitutes a recognition that the *full* realisation of such economic, social and cultural rights will take a good amount of time. However, the fact that *full* realisation would occur over time must not be misconstrued to mean that no responsive and near action is required from the State at all. In fact, General Comment No. 3 clarifies that there exist various obligations which are of an immediate nature.[60] They would be: (a) the guarantee of non-discrimination of any kind, (b) the obligation "*to take steps*" towards the full realisation of rights, which would require States to adopt immediate measures which are *deliberate, concrete and targeted, within a reasonably short time*[61], and (c) abstaining from the adoption of any deliberate retrogressive measures.[62]

65. The means with which States must satisfy their obligations are stated in Article 2.1 itself. All appropriate means must be used, <u>*including particularly the adoption of legislative measures*</u>. This is because, in many instances, legislation is highly desirable, and in some cases, even indispensable. Having said so, every State does have a margin of discretion in assessing which measures are most suitable, necessary, feasible and appropriate, in the context of situation at hand.

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[59] *Supra* note 47, art. 2.
[60] United Nations, ECONOMIC AND SOCIAL COUNCIL, General Comment No. 3, para 1.
[61] *Ibid*, at para 2.
[62] Essentially refers to any policy, law or action taken by the government or any public authority that intentionally rolls back, downgrades or limits the existing level of enjoyment of any socio-economic right; *Ibid*, at para 9, "*Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.*"

66. The ICESCR also identifies certain *minimum core obligations* which would ensure the satisfaction of, at the very least, certain minimum essential levels of the right to health and adequate food.[63] In other words, the ICESCR states that certain basic aspects of right must be realised, with no exceptions. In order for a State to take the defence of a lack of available resources to justify its failure to meet the minimum core obligations, it must be demonstrated that every effort was made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. This establishment of a minimum core was considered necessary to keep the *raison d'être* of the ICESCR intact. Through this, developing countries were given some leeway to begin with a focus on the minimum core and gradually expand its reach towards the progressive realisation of wider aspects of the Covenant's rights. Nevertheless, as a whole, the States are bound to a clear, specific and continuing obligation, i.e., to move as *expeditiously and effectively* as possible towards the full realisation of the recognised rights.[64]

67. General Comments No. 14 and 12 respectively, give good guidance on the whole gamut of obligations that generally rest with the State insofar as the rights to health and adequate food are concerned. We have taken specific care to illustrate those obligations that would exist on the State

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[63] *Ibid,* at para 10, "*Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.*"

[64] *Ibid,* at para 9, "*Nevertheless, the fact that realisation over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realisation of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear obligations for States parties in respect of the full realisation of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.*"

in the context of the NCD burden, HFSS foods etc. The obligations are divided into three broad types or levels i.e., obligations to respect, protect and fulfil.[65] From amongst the range of measures that could be undertaken to fulfil such obligations, some are categorised as being in the nature of minimum core obligations.

68. The three broad 'types' of obligations cast on State Parties are:

(a) *First,* the "*obligation to respect*" which requires States to refrain from interfering, either directly or indirectly, with the enjoyment of the right to health or preventing existing access to adequate food.

(b) *Secondly,* the "*obligation to protect*" which refers to the State's role in taking measures that prevent third parties and private entities from interfering with the right to health or access to adequate food of persons. Say, *for example,* controlling the activities of groups, corporations or business entities in order to prevent them from violating the right to health[66] and right to food[67] through their direct regulation[68], protecting consumers from practices detrimental to health used by the manufacturers of food[69], discouraging the production, marketing and consumption of tobacco, narcotics and other harmful substances[70].

(c) *Thirdly*, the "*obligation to fulfil*" which requires States to adopt legislative, administrative and other measures towards the full

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[65] *Supra* note 49, at para. 33; *See also, Supra* note 57, at para 15.
[66] *Ibid*, at para. 51.
[67] *Supra* note 57, at para 19.
[68] United Nations, ECONOMIC AND SOCIAL COUNCIL, General Comment No.24, para 19.
[69] *Supra* note 49, at para 51.
[70] *Ibid.*

realisation of the rights. Say, *for example,* ensuring access to nutritiously safe food for all[71], provision of health education as well as information campaigns with respect to abuse of alcohol, use of tobacco, drugs and other harmful substances[72], taking measures against any threat to health as suggested by epidemiological data[73], the dissemination of appropriate information relating to healthy lifestyles and nutrition[74], supporting people in making informed choices about their health[75], implementing a comprehensive national health policy which secures the right to health for everyone[76], and a national strategy that ensures food and nutrition security for all[77] focusing on all aspects of the food system including the production, processing, distribution, marketing and consumption of safe food[78].

69. From amongst the *types* of obligations discussed above, the "minimum core obligations" with respect to the right to health[79] and right to adequate food[80] respectively, in the context of the NCD burden, HFSS foods etc., include;

(a) adopting and implementing a national public health strategy and plan of action, on the basis of epidemiological evidence, which

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[71] *Ibid*, at para 36.
[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid,* at para 37.
[75] *Ibid*.
[76] *Ibid,* at para 51.
[77] *Supra* note 57, at para 21.
[78] *Ibid,* at para 25.
[79] *Supra* note 49, at para 43.
[80] *Supra* note 57, at para 17.

addresses the health concerns of the whole population and gives particular attention to all vulnerable and marginalised groups, and

(b) adopting a national strategy to secure food and nutrition security, at the very least, to the minimum essential level to be free from hunger and malnutrition[81].

70. Especially, in relation to the right to health, the ICESCR also delineates certain obligations of "comparable priority"[82] to the minimum core which include;

(a) taking measures to prevent, treat and control epidemic and endemic diseases, and

(b) providing education and access to information concerning the main health problems in the community, including methods for preventing and controlling them.

71. What comes across from this discussion on the obligations imposed under the ICESCR is that, a State Party faced with the issues highlighted in the present petition has a great deal of obligations which range from implementing efficient measures for preventing and controlling the NCD epidemic; adopting robust national strategies which addresses health concerns like obesity, hypertension, diabetes etc. having population-wide effects and ensures nutrition security in an age where malnutrition is on a rapid rise; regulating the activities of the business entities like FBOs and protecting consumers from their detrimental

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[81] *Ibid.*

[82] *Supra* note 49, at para 44; The comparable priority measures would require the same level of scrutiny as the minimum core obligations.

practices; discouraging the production, marketing and consumption of harmful levels of sugar, salt and saturated fat which has detrimental effects on health; supporting people in making informed everyday choices about their health, to name a few.

72. This, rather, detailed exposition of the scope and nature of the right to health and adequate food under international law and the corresponding obligations of the State Parties, especially through the lens of the ICESCR, was necessary because, indisputably, they go a long way in guiding our understanding of the same or similar fundamental rights under the Constitution and the approach that must be taken by State in ensuring its realisation. In ***His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Another*** reported in **(1973) 4 SCC 225**, while discussing the inalienability of fundamental rights, the opinion of S.M. Sikri, C.J. (as he then was) stated that this Court must interpret the language of the Constitution, if not intractable, in light of international law.[83] In ***Vishaka*** *(supra)* it was observed that "*any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.*"[84] This principle that fundamental rights, including Article 21, has to be interpreted in conformity with international law, unless a contrary indication is plain and unambiguous in municipal law, has been demonstrated by this Court on multiple occasions.[85] Therefore, this

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[83] ¶151.
[84] ¶9.
[85] *See* ***People's Union for Civil Liberties v. Union of India and Another,*** (1997) 1 SCC 301; ***Jolly George Varghese and Another v. Bank of Cochin,*** (1980) 2 SCC 360; ***Chairman, Railway Board and Others v. Chandrima Das and Others,*** (2000) 2 SCC 465; ***National Legal Services Authority v. Union of India and***

necessary background, through international law, was required to be set before we could proceed directly to our discussion on Article 21.

ii. Article 21 of the Constitution and the State's positive obligations

73. The fundamental right to life forms the ark of all other rights. It has been well-established by a plethora of decisions that the right to life under Article 21 also brings within its ambit an obligation to protect and safeguard the life of every person, for "*preservation of human life is of paramount importance*"[86]. In turn, this duty of the State implies addressing the general conditions in society which directly threaten life or hamper its full and dignified enjoyment. As observed in ***Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Others*** reported in **(1981) 1 SCC 608**, it includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing, shelter etc.[87] Every person is, therefore, entitled to a standard of living which is adequate to the well-being of himself and of his family.

a. The right to health

> *"The Pith and substance of life is the health, which is the nucleus of all activities of life including that of an employee or other viz. the physical, social, spiritual or any conceivable human activities. If this is denied, it is said everything crumbles."*[88]

Others, (2014) 5 SCC 438; ***K.S. Puttaswamy and Another v. Union of India and Others,*** (2017) 10 SCC 1; ***Consumer Education & Research Centre and Others v. Union of India and Others,*** (1995) 3 SCC 42; ***CESC Ltd. v. Subhash Chandra Bose***, (1992) 1 SCC 441.

[86] ¶9, ***Paschim Banga Khet Mazdoor Samity v. State of West Bengal***, (1996) 4 SCC 37.

[87] ¶8.

[88] ¶5, ***State of Punjab v. Ram Lubhaya Bagga***, (1998) 4 SCC 117.

> *"Life, to be enjoyed in all its diverse elements, must be based on robust conditions of health."*[89]
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> *"Good health is the raison d'être of a good life. Without good health, there cannot be a good life"*[90]

74. Time and again, this Court has made observations which place the right to health at the heart of right to life; life exists only when this heart beats. The present petition begs for full effect to be given to these words penned down by this Court on earlier occasions.

75. Health as an important facet of the right to life was dealt with, for the first time, in the decision of ***Bandhua Mukti Morcha v. Union of India*** reported in **(1984) 3 SCC 161,** wherein P.N. Bhagwati, J., had stated that the right under Article 21 derives its life breath from the Directive Principles of State Policy and therefore, it must ensure, at the least, the protection of the health and strength of people along with providing opportunities for children to develop in a healthy manner.[91] It is at this juncture that we would like to reproduce Article 47 from Directive Principles of State Policy, which is germane to the present petition. Article 47 reads thus:

> "***47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.*** *– The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."*

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[89] ¶5, ***Dr. Narendra Gupta v. Union of India***, (2023) 15 SCC 1.
[90] ¶179, ***Independent thought v. Union of India,*** (2017) 8 SCC 800.
[91] ¶8.

(Emphasis supplied)

76. Article 47 places an obligation on the State to raise the level of nutrition and the standard of living of its people, along with the improvement of public health. The need for priority focus of the State in this area is reflected by the use of the words "*as among its primary duties*". In line with the emphasis in ***Bandhua*** *(supra),* Article 47 must also be taken as informing the content of the right to health under Article 21.

77. This duty of maintaining and improving public health flowing from Article 47 read with Article 21 was in the direct spotlight in ***Vincent*** *(supra)*. Therein, this Court specifically highlighted that, "*it is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health*" because a healthy body is the very foundation for all human activities.[92] Moreover, it was stated that;

> "*Attending to public health, in our opinion, therefore, is of high priority – perhaps the one at the top*"
>
> (Emphasis supplied)

78. Thereafter, jurisprudence developed in recognition of the fact that *health is a state of complete physical, mental and social well-being and more than just an absence of sickness, disease or infirmity.*[93] However, initially, this idea was on full display only in the context of workers and their right to safe and healthy conditions of work, access to medical care and health facilities, health coverage or benefits, compensation for injury etc.[94]

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[92] ¶16.
[93] ¶16, ***C.E.S.C. Limited and Others v. Subhash Chandra Bose and Others***, (1992) 1 SCC 441.
[94] *See,* ***C.E.S.C. Limited and Others v. Subhash Chandra Bose and Others***, (1992) 1 SCC 441; ***ESI Corporation v. Francis De Costa***, 1993 Supp (4) SCC 100; ***Consumer Education & Research Centre and Others v. Union of India and Others***, (1995) 3 SCC 42; 25; ***Occupational Health & Safety Assn. v. Union of India***, (2014) 3 SCC 547.

79. The next set of cases, and many even to date, predominantly focused on the access to medical care/medical services limb of the right to health, and not much attention was drawn to the wider surroundings dictating the health and well-being of a person. To point out a few, several decisions of this Court have held that the obligation of the State to preserve life would extended to, (a) ensuring that hospitals, both government and private, along with the medical officers employed therein provide timely emergency medical assistance to all injured persons[95], (b) making medical treatment affordable for all especially in State-run or aided facilities[96], (c) ensuring availability of specialist health care in hospitals particularly in remote areas[97], (d) imparting good quality education to doctors and ensuring admissions based on merit[98], (e) making reproductive health care including abortion accessible[99], (f) providing medical expense reimbursement for government employees[100], and (g) ensuring that medical facilities in prisons meet adequate standards of care[101].

80. The shift, or to put it more precisely, the expansion of the content of the right to health and corresponding State obligations was first seen in connection with environmental litigation. The need to address the wider

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[95] *See,* ***Pt. Parmanand Katara v. Union of India and Others,*** (1989) 4 SCC 286; ***Paschim Banga Khet Mazdoor Samity v. State of West Bengal,*** (1996) 4 SCC 37.
[96] *See,* ***Proper Treatment of Covid-19 Patients & Dignified Handling of Dead Bodies in the Hospitals, In re,*** (2021) 2 SCC 519; ***Union of India v. Moolchand Kharaiti Ram Trust*** (2018) 8 SCC 321, where a condition to provide free treatment to weaker sections of society in exchange for government land was upheld.
[97] *See,* ***Assn. of Medical Superspeciality Aspirants & Residents v. Union of India,*** (2019) 8 SCC 607; ***T.N. Medical Officers Association v. Union of India,*** (2021) 6 SCC 568.
[98] *See,* ***Modern Dental College & Research Centre v. State of M.P.,***(2016) 7 SCC 353.
[99] *See,* ***X2 v. State (NCT of Delhi),*** (2023) 9 SCC 433.
[100] *See,* ***State of Punjab v. Mohinder Singh Chawla,*** (1997) 2 SCC 83.
[101] *See,* ***Inhuman Conditions in 1382 Prisons, In re,*** (2017) 10 SCC 658.

determinants and conditions congenial to health as indicated in ***Vincent*** *(supra)* started occupying or re-entering the discussion.[102]

81. The decision in ***Arjun Gopal and Others v. Union of India*** reported in **(2017) 1 SCC 412** and its subsequent orders[103]**,** aptly pointed out that when the everyday conditions of life and work of workers, the industrial environment they occupy and its betterment, can be at the center of the discourse on right to health, why then must right to health be uninvolved, indifferent or downright apathetic to the everyday conditions of life and the environment occupied by people in general? If the defence is that the right must be invoked only to address hazardous, unsafe and health-damaging surroundings (which is why the focus shone on asbestos industries, mining activities etc.), the same can be said for general environment today. It is unfortunate, but it is the truth; health hazards are not confined to the hazardous industries alone. The ***Arjun Gopal*** *(supra)* series was concerned with the bursting of firecrackers during Diwali, the worsening air pollution[104], and its resultant adverse effects on the health of the population in the National Capital Region ("**NCR**") of Delhi. Everyone was said to be entitled to breathe unpolluted and good quality air. This pollution also affected the health of the most vulnerable i.e., the children, the elderly, persons with pre-existing respiratory and other conditions, and those with inadequate economic and social means to take preventive measures like

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[102] *See,* ***M.K. Ranjithsinh and Others v. Union of India and Others****,* (2024) 19 SCC 139 wherein it was observed in ¶ 25 that "*The right to health (which is a part of the right to life under Article 21) is impacted due to factors such as air pollution, shifts in vector-borne diseases, rising temperatures, droughts, shortages in food supplies due to crop failure, storms, and flooding.*

[103] Reported in (2017) 16 SCC 267, (2017) 16 SCC 280, (2019) 13 SCC 523, and 2019 SCC OnLine SC 3751 respectively.

[104] Which was plainly evident to plenty of us just a week ago and is a recurrent trend year-on-year.

working from home, wearing N-95 masks, using air purifiers[105] etc. While it was acknowledged that there are multiple contributors to air pollution, this Court was not detached from the fact that pollution levels hit its nadir during Diwali due to the indiscriminate use of firecrackers, the chemical composition whereof sharply increases the presence of harmful particulate matters like PM2.5 in the air. The aim was to 'strike at the cause' by targeting the supply chain of fireworks itself and this Court did so in a graded manner, through suspensions and partial bans.

82. What came to the fore from the ***Arjun Gopal*** *(supra)* series, apart from the need to broaden our concerns to the general conditions of life which impact health, is that the Court fixed an obligation on the State to prevent, through appropriate means, the infringement of the right to health by third parties including certain industries, by observing that;

> *"Celebration cannot be at the cost of the other's health. Under the guise of celebration, nobody can be permitted to infringe the right to health of the others, guaranteed under Article 21 of the Constitution of India and nobody can be permitted to play with the life of the others, more particularly the senior citizens and the children."*
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> (Emphasis supplied)

83. In close connection to the ***Arjun Gopal*** *(supra)* series, the decision in ***M.C. Mehta v. Union of India*** reported in **(2019) 17 SCC 490** was concerned with the compliance of vehicles with BS-VI norms and it was stressed that the automobile industry must be sufficiently regulated to safeguard the health of people while observing thus:

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[105] *See,* ***M.C. Mehta v. Union of India****,* 2025 SCC OnLine SC 2458, ¶3 wherein it was observed that "*One can imagine the effect of air pollution on the common man as everyone cannot afford to have air purifiers at their residence or place of work. There is a large section of population who works on streets and they are the worst affected by this pollution. They do not have proper houses to stay. This large section of population is worst affected during those three to four months.*"

"17. […] Therefore, if there is a conflict between health and wealth, obviously, health will have to be given precedence. When we are concerned with the health of not one citizen but the entire citizenry including the future citizens of the country, the larger public interest has to outweigh the much smaller pecuniary interest of the industry, in this case the automobile industry, especially when the entire wherewithal to introduce the cleaner technology exists.

18. It is therefore necessary to ensure that BS-VI compliance is uniform throughout the country so that even those areas of the country which fortunately have not suffered the ills of extreme pollution are safe in the future. The sale of automobiles and other vehicles is rising exponentially and the number of vehicles on the road is increasing day by day. Therefore, even a day's delay in enforcing BS-VI norms is going to harm the health of the people. We are dealing here with a situation where children and unborn children suffer from pollution and issues of intergenerational equity are involved. Do we as a society or as manufacturers of automobiles have a right to manufacture more polluting vehicles when we have the technology to manufacture less polluting vehicles? The answer is obviously a big NO. If we were to factor only economics even, then it makes no economic sense to have more polluting vehicles on the roads. The effect of pollution on the environment and health is so huge that it cannot be compensated in the marginal extra profits that the manufacturers might make. The amount spent on countering the ills of pollution such as polluted air, damaged lungs and the cost of healthcare far outweigh the profits earned."

(Emphasis supplied)

84. What becomes evident from the aforesaid discussion on the right to health is that its scope and content have, over a period of time, been expanded not only from dealing with access to health and medical care alone, but also to addressing the broad determinants of health; by placing an obligation on the State to sufficiently regulate the actions of industries and third parties. The endeavor has been to eliminate the *harms* to health, as best as possible, so that health, in its truest form, is assured to all. This idea of addressing the harms, through the

introduction of direct regulation of commercial entities and industries, was best illustrated in the ***Arjun Gopal*** *(supra)* series and ***M.C. Mehta*** *(supra)* respectively.

85. It is undisputably true that the food environment that surrounds us has a direct and real impact on health outcomes. Therefore, whilst seeking to promoting conditions in which people can lead a healthy life, the food environment must not escape our attention and slip through the cracks. The food environment must be made safe and supportive for good health. The State which is confronted with the duty to *improve public health* (which according to ***Vincent*** *(supra)* must attract the highest priority) should obviously strike at the root causes of disease incidence.

86. We are way past the age where only alcohol abuse or tobacco consumption had proven links to morbidity and health risks. At present, there exists widespread consensus that the consumption of HFSS foods and UPFs and the rise in various diseases share a direct causal relationship. In fact, there is overwhelming evidence in the form of epidemiological data. It is the State's duty to sever this causal link, as best as it can, in an effort to safeguard life, especially that of children and adolescents who stand at a greater risk due to their inherent susceptibility.

87. Simply put, the population's exposure to harmful substances must be controlled, their consumption must be discouraged, and consumers must be protected from practices detrimental to health used by the food businesses. Preventive measures, that are most effective, must therefore

be undertaken in an effort to respect, protect and guarantee the right to health.

b. The right to food

88. Though the Constitution does not explicitly provide for the right to food, the right to live with human dignity would include the right to food and other basic necessities.[106] Article 47, which also speaks of the State's *primary duty* to raise the 'nutrition level' of the people at large, would infuse the right to food guaranteed within Article 21 as well.

89. The right to food, on several occasions, has been assigned a narrow import. Mostly, its main content has been seen as simply alleviating hunger and starvation. It has been interpreted to include the supply or grant of food, in the most literal sense, to vulnerable or impoverished populations. Several decisions have followed this trajectory by stressing on the food distribution and food grain entitlement of people in drought-affected areas[107], of migrant laborers affected during the Covid-19 pandemic[108], of the aged, infirm, disabled, destituted persons, widows and single women, primitive tribes and Below Poverty Line ("**BPL**") cardholders.[109] Undoubtedly, the alleviation of hunger is a component of the right to food but it does not represent the full expanse of it.

90. The focus on nutrition, *per se*, as inherent in the right to food, came to the forefront a bit later; however, only with regard to children (until a

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[106] ¶6, ***Anun Dhawan and Others v. Union of India and Others***, (2024) 12 SCC 299.
[107] *See,* ***Swaraj Abhiyan v. Union of India and Others***, (2016) 7 SCC 498.
[108] *See,* ***Problems and Miseries of Migrant Labourers, In re***, (2022) 13 SCC 504.
[109] *See,* ***PUCL (PDS Matters) v. Union of India***, (2013) 2 SCC 688.

certain age), and pregnant and lactating mothers belonging to the poor and underprivileged sections of society.[110] This was so that child development and child malnutrition is specifically addressed. It has been consistently observed that, "*No one can doubt that children are the future of our country and if there is some stinginess in providing them with adequate nutrition, the country as a whole is deprived in future of taking the benefit of their potential.*"[111] In ***PUCL (PDS Matters) v. Union of India***, reported in **(2013) 2 SCC 688** and ***Swaraj Abhiyan v. Union of India*** reported in **(2016) 7 SCC 498** respectively, this Court made clearer the cruciality of the nutritional content in food by emphasising that protein and other micro-nutrient needs of children must be kept in mind under the Mid-Day meal scheme.[112]

91. Moving parallel to the aforesaid, was the decisions in ***Centre for Public Interest Litigation*** *(supra)* and ***Swami Achyutanand Tirth*** *(supra)* respectively, which cemented the right, not just to food, but to *safe* food. In ***Centre for Public Interest Litigation*** *(supra),* the issue pertained to evaluating the harmful effects of soft drinks on human health and checking chemical additives in foods. In recognition of the right to safe food and its nexus with health, this Court had directed that a Scientific Panel of the FSSAI consider the issue pertaining to the health hazards of

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[110] *See,* ***Dipika Jagatram Sahani v. Union of India and Others***, (2021) 2 SCC 740.
[111] *See*, ¶19, ***Dipika Jagatram Sahani v. Union of India and Others***, (2021) 2 SCC 740 and ¶125, ***Swaraj Abhiyan v. Union of India***, (2016) 7 SCC 498.
[112] *See,* ¶18 in ***PUCL (PDS Matters) v. Union of India***, (2013) 2 SCC 688, which states that a direction to provide 8-12gm of protein on each day of school for a minimum of 200 days under the Mid-day Meal Scheme was issued previously and ¶128.6 in ***Swaraj Abhiyan v. Union of India,*** (2016) 7 SCC 498, which states that the supply of milk, eggs and other nutritional substitutes, for preferably five or at least three days a week under the Mid-day Meal Scheme, must also be ensured.

soft drinks[113] and further stated that the presence of insecticide, pesticide, antibiotic, solvent and other residues in all food articles be checked by the FSSAI through periodical inspections and monitoring of markets.[114] Similarly, in ***Swami Achyutanand Tirth*** *(supra),* synthetic milk and its impact on the heart, liver, kidneys, connection to cancer, gastroenteritis, stomach ailments etc. was in concern[115].

92. What comes across from a conspectus of these cases is that while the right to food was and continues to be understood as predominantly dealing with the alleviation of hunger and starvation, focus has also been given to the '*quality*' along with the '*quantity*' of food. Food must be safe and meet the nutritional needs of people, especially growing children. On at least two prior occasions, the State has been required to assure safe food to the masses and thereby regulate, through its expert regulator i.e., the FSSAI, the practices of third parties that render food harmful or unhealthy.

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[113] *See,* ¶8 which provides the finding of the Scientific Panel which observed that the ingredients present in soft drink beverages do not *appear* to pose any health hazard, especially with the existing consumption pattern prevalent in the country. Moreover, it was stated that soft drinks were already regulated as 'carbonated drinks'. This Court had taken on record such a finding of the Scientific Panel and not deemed it fit to pass any specific directions in this regard. In our opinion, the use of the word "*appear*" by the Scientific Panel itself renders their findings inconclusive and it does not seem to have been the result of any comprehensive study. Additionally, their examination was limited to only looking at the health hazard posed by ingredients like caffeine in carbonated drinks, which is not the concern before us. In the present petition, we are concerned with nutrients-of-concern, which is quite different from ingredients like caffeine. Moreover, the FSSAI itself has not disputed that the high levels of salt, sugar and saturated fat in packaged foods pose direct health risks. They have, in fact, acknowledged them and pursuant to that acknowledgment have taken multiple efforts culminating into the proposal placed presently before this Court. Hence, to obviate any doubt, we must clarify that the findings on merits rendered by the Scientific Panel therein is of no value insofar as the present petition is concerned.

[114] ¶27.

[115] However, since sufficient regulatory mechanisms existed and the problem largely pertained to effective implementation, directions to the FSSAI were confined in that regard.

93. Indisputably food must be 'adequate', both in terms of its quantity and nutritional composition. When looked at only in terms of *quantity,* the corresponding obligation of the State is rather straightforward; you identify persons who do not have access to such quantity and directly provide them food. This is the logic behind food grain distribution and provision of free meals to those without means. The rest of the population, who have the means to get such 'quantities' of food, may not require targeted State attention. However, when the right to food is viewed through the lens of *quality,* i.e., nutrition and safety, the obligations are much wider. One cannot stop at focusing on the provision of nutritious and safe food to those at the bottom of the social gradient alone and ignore the general conditions of the food environment which undermine the nutritional needs of the remaining population or cause health risks. In other words, ensuring access to safe and nutritious food requires regulation of the general food environment to a large extent. The decisions in ***Centre for Public Interest Litigation*** *(supra)* and ***Swami Achyutanand Tirth*** *(supra),* respectively treaded this logic and thereby, required the FSSAI to address safety concerns in food items in the general market.

94. As previously indicated, food *quality* has two components i.e., nutritional composition and safety. Thus far, on the question of nutritional composition of food, emphasis has been on adding positive nutrients to the diet. For example, in ***PUCL (PDS Matters)*** *(supra)* and ***Swaraj Abhiyan*** *(supra)* respectively. However, equal, if not more focus must also be directed towards ensuring that negative nutrients do not surpass the minimum threshold levels. As far as food safety is

concerned, it must not simply entail ensuring that food is free of harmful additives. This would be a myopic view to take. Instead, it must be broadened to mean the absence or the minimal presence of *any substance* which is scientifically proven to be harmful to health. When evidence unflinchingly suggests that the presence of saturated fat, sugar, and salt beyond certain minimum levels, is harmful, then foods containing such nutrients-of-concern beyond permissible levels, can no longer be called 'safe'. It may be true that the consumption of such nutrients-of-concern may not immediately present as health issues; their negative effects incubate in your body for a significant amount of time before outward manifestation in the form of ailments or diseases. But just the fact that the symptoms take longer to present themselves cannot qualify products containing such nutrients-of-concern to be safe.

95. Furthermore, the use of the words "*raising the level of nutrition*" in Article 47, must be read as requiring the nutritional equilibrium to be raised for the entirety of the population. And for this purpose, the State's focus must also lie on strengthening the dietary diversity of the people at large and nudging appropriate consumption and feeding patterns across the country. The increasing trend of nutritional transition towards HFSS foods and UPFs should, therefore, receive sufficient attention to ensure the right to quality food for all.

c. The right to make an informed choice

96. The right to make an informed choice, especially in the context of health-related decision making and the State's duty to protect it, cannot be overstated.

97. The right to life includes the right to live with *dignity,* for without dignity human life is substantially diminished.[116] Dignity includes a respect for the individual and their choices. ***Common Cause v. Union of India*** reported in **(2018) 5 SCC 1** refers to Prof. Upendra Baxi's view of human dignity as "empowerment", according to which the respect for individual dignity encompasses a respect for one's capacity to make their own free choices and also, a respect for the choices so made. However, the matter does not stop here. In this framework, respect must also be accorded to an individual's need to have the "*context and conditions"* in which such free and informed choice-making can actually operate.[117] Only when such contexts and conditions are assured, can the social order be characterised as good and just. To put it simply, a person's freedom to choose means little if the surrounding circumstances make the choice unfree or uninformed.

98. The informational, social, economic and cultural contexts heavily shape the way in which a person decides. Therefore, it must be ensured that any person or consumer, in choosing between foods, is able to exercise *full, free* and *informed* choice by negotiating with the informational, social, economic and cultural contexts that surround him in the best way possible. Addressing these contexts or conditions comprehensively will require wide-scale interventions that improve the socio-economic conditions of life of all. Amongst these many measures, interventions that make the informational environment surrounding food robust, and accessible, must also occupy the State's attention.

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[116] ¶262, ***Prajwala v. Union of India and Others,*** 2026 SCC OnLine SC 1053.
[117] *See also,* ***K.S. Puttaswamy and Another (Aadhar) v. Union of India and Another,*** (2019) 1 SCC 1.

99. A consumer's choice is shaped by marketing, by dense and unreadable information, norms of social and cultural desirability etc., which are, in turn, shaped by several factors including businesses and their activities.[118] Therefore, the State in giving full respect for the individual right to free and informed choice must ensure a social and informational order in which consumer interests and public health is prioritised. If the informational environment surrounding food is lopsided in a way which may not be in the best interest of the consumer, regulations must immediately remedy it, so that a just social order which values individual dignity can exist.

iii. 'Steps taken' or 'measures adopted' by the State to realise the fundamental rights

100. The aforesaid discussion focused on the scope and content of the right to health, right to food, and right to make an informed choice, guaranteed under Article 21, and the corresponding obligations imposed on the State to secure it. We also ventured into a deep enquiry into the international law and the exposition of the aforesaid rights therein. Upon undertaking such an exhaustive exercise what has become plainly evident is that the trajectory adopted by this very Court has been in close tandem with international law. To put it in other words, over the course of time, consciously or not, the right to life guaranteed under Article 21 has moved in hand-in-hand with the

[118] We have dealt with this aspect in our introductory discussion relating to the "commercial determinants of health" where we spoke about how, on the one hand, the informational, social and physical food environment is heavily shaped by business and their activities, and on the other hand, the culpability of 'bad' decision making is placed on the individual alone. Therefore, we highlighted the need to shape or regulate the food environment to address such an imbalance in power.

parallel understanding in international law, especially in the context of socio-economic rights and the observations in ***Kesavananda*** *(supra)* and ***Vishaka*** *(supra),* respectively that, unless intractable, the guarantees under Article 21 must be informed by international conventions, has taken practical shape. The right to health has expanded from being limited to health care to addressing the broader determinants of health and conditions congenial to good health; the right to food now requires access to food which is sufficient in terms of both quantity and quality; and the right to informed choice has expanded its focus towards confronting the broader informational and social order that people live in.

101. Through the multiple decisions referred to hereinabove, this Court has also strongly cemented that a three-fold duty exists on the State in the context of socio-economic rights i.e., to *respect* and refrain from interfering with the enjoyment of such rights, to *protect* persons from the infringement of such rights at the hands of third parties, and *fulfil* the full realisation of the rights through legislative, administrative and other measures. While the obligation to *fulfil* was made evident in almost all cases, the obligation to *protect* was especially manifest in the ***Arjun Gopal*** *(supra)* series, ***M.C. Mehta*** *(supra),* ***Centre for Public Interest Litigation*** *(supra)* and ***Swami Achyutanand Tirth*** *(supra)* respectively.

102. Elucidating upon the scope and nature of each of these rights i.e., the right to health, food and informed choice, and the corresponding obligations placed upon the State was necessary because we are presently confronted with an issue which seats itself exactly at the

intersection of all three. The rising NCD burden and consumption of HFSS foods and UPFs, must be looked at from the perspective of all these fundamental rights. This contextualises the constitutional gravity of the situation we are faced with and reminds the State to adopt measures that holistically addresses the problem through this triadic or three-fold lens.

103. Implementing measures, in consonance with the duty to protect and fulfil, with a specific focus on the food environment surrounding us, therefore, obtains necessary backing from the aforesaid three rights guaranteed under Article 21. However, the next question which arises is, what must these measures which focus on the food environment look like? What measures would best enable the realisation of the fundamental rights to health, food and informed choice in the context of the NCD public health crisis and consumption of HFSS foods/UPFs in India? In this regard, admittedly, there is considerable latitude given to the State to adopt such measures that it deems appropriate and feasible. The only condition being that such measures must, nevertheless, be taken within a reasonable time, and be deliberate, concrete and targeted. Whenever there has been demonstrable inaction, ignorance or considerable delay on the part of the State, this Court has made explicit the measures which, at the least, must be adopted by the State to give effect to their positive obligations under Article 21; since, after all, it is the fundamental rights which are at stake.

104. At this juncture, it would be pertinent to note, that the legislature deemed fit to enact the Act, 2006 to consolidate the laws relating to food and to establish the FSSAI for laying down science-based standards for

articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure the availability of *safe* and *wholesome food* for human consumption and for matters connected therewith or incidental thereto. The relevant provisions of the Act, 2006 read thus:

> "***16. Duties and functions of Food Authority.*** *– (1) It shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food.*
>
> *(2) Without prejudice to the provisions of sub-section (1), the Food Authority may by regulations specify –*
>
> *[…]*
>
> *(h) food labelling standards including claims on health, nutrition, special dietary uses and food category systems for foods; and*
>
> *[…]*
>
> *(3) The Food Authority shall also –*
>
> *(a) provide scientific advice and technical support to the Central Government and the State Governments in matters of framing the policy and rules in areas which have a direct or indirect bearing on food safety and nutrition;*
>
> *(b) search, collect, collate, analyse and summarise relevant scientific and technical data particularly relating to –*
>
> *(i) food consumption and the exposure of individuals to risks related to the consumption of food;*
>
> *(ii) incidence and prevalence of biological risk;*
>
> *(iii) contaminants in food;*
>
> *(iv) residues of various contaminants;*
>
> *(v) identification of emerging risks; and*
>
> *(vi) introduction of rapid alert system;*
>
> *[…]*

(m) promote consistency between international technical standards and domestic food standards while ensuring that the level of protection adopted in the country is not reduced; and

(n) promote general awareness as to food safety and food standards.

-xxx-

18. General principles to be followed in administration of Act. *– The Central Government, the State Governments, the Food Authority and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following principles, namely: –*

(1) (a) endeavour to achieve an appropriate level of protection of human life and health and the protection of consumers' interests, including fair practices in all kinds of food trade with reference to food safety standards and practices;

[…]

(c) where in any specific circumstances, on the basis of assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment;

(d) the measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as reasonable and proper in the matter under consideration;

[…]

(f) in cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food,

the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk; and

[…]

(2) The Food Authority shall, while framing regulations or specifying standards under this Act –

(a) take into account –

(i) prevalent practices and conditions in the country including agricultural practices and handling, storage and transport conditions; and

(ii) international standards and practices, where international standards or practices exist or are in the process of being formulated,

unless it is of opinion that taking into account of such prevalent practices and conditions or international standards or practices or any particular part thereof would not be an effective or appropriate means for securing the objectives of such regulations or where there is a scientific justification or where they would result in a different level of protection from the one determined as appropriate in the country;

(b) determine food standards on the basis of risk analysis except where it is of opinion that such analysis is not appropriate to the circumstances or the nature of the case;

(c) undertake risk assessment based on the available scientific evidence and in an independent, objective and transparent manner;

(d) ensure that there is open and transparent public consultation, directly or through representative bodies including all levels of panchayats, during the preparation, evaluation and revision of regulations, except where it is of opinion that there is an urgency concerning food safety or public health to make or amend the regulations in which case such consultation may be dispensed with:

Provided that such regulations shall be in force for not more than six months;

(e) ensure protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume;

(f) ensure prevention of—

(i) fraudulent, deceptive or unfair trade practices which may mislead or harm the consumer; and

(ii) unsafe or contaminated or sub-standard food."

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92. Power of Food Authority to make regulations.—*(1) The Food Authority may, with the previous approval of the Central Government and after previous publication, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.*

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

[…]

(k) the manner of marking and labelling of foods under Section 23;"

(Emphasis supplied)

105. Section 16 of the Act, 2006 states that it shall be the duty of the FSSAI, to regulate and monitor the food environment so as to ensure safe and wholesome food. Section 16(2)(h), indicates that the FSSAI, in the exercise of its duties and functions, has the power to make certain regulations. Such regulations would include specifying *food labelling standards* including claims on health, nutrition, special dietary uses and food category systems for foods.

106. The other duties and functions that the FSSAI is entrusted with include, (i) searching, collecting, collating, analysing and summarising relevant scientific data particularly relating to food consumption and the exposure of individuals to risks related to the consumption of food, and

identifying emerging risks under Section 16(3)(b), (ii) promoting consistency between international technical standards and domestic food standards while ensuring that the level of protection which is adopted in our country is not reduced in comparison under Section 16(3)(m), and (iii) promoting general awareness as to food safety and food standards under Section 16(3)(n).

107. Alongside laying down the duties and functions of the FSSAI, the Act, 2006, under Section 18, also provides for certain general principles to be followed by the Central Government, State Governments, the FSSAI and other agencies, while implementing the provisions of the Act. These include an endeavour to *achieve an appropriate level of protection of human life and health and the protection of consumer's interests* under Section 18(1)(a) and bringing in regulations or standards which ensures the *protection of the interests of the consumer* and provides *a basis for consumers to make informed choices in relation to the foods they consume* under Section 18(2)(e).

108. What comes across from the aforesaid provisions of the Act, 2006 is that the State has created an expert statutory body, i.e., the FSSAI which would, in turn, undertake the task of regulating and monitoring the food environment. In performing its duties and responsibilities, it has been specifically stated that the FSSAI may resort to laying down food labelling standards for foods, packaged or otherwise, available in the market. The FSSAI would have to keep in mind that labelling standards achieve an appropriate level of protection of human health, protect consumer interests, and form a basis for the consumer to make informed choices in relation to the foods they consume. These statutory

elucidations of the duties of the FSSAI closely relate to the obligations, that our discussion on Article 21 identified, as resting upon the State.

109. Therefore, the constitutional and statutory obligations, taken together, unequivocally reveal a need to regulate the food environment, through measures including the introduction of labelling standards. The need and importance of a FoPNL system, as one of the measures to address the NCD burden and its link with HFSS foods/UPFs, had been emphasised by the Union of India on several occasions through various reports.[119] In this background, the FSSAI, initially and on its own accord, exercised its powers under Section 92(2)(k) read with Sections 16(2)(h) and 23 respectively of the Act, 2006 and proposed the 2022 draft amendment to the 2020 Regulations. This amendment, which was made available for public objections and comments on 13.09.2022, sought to bring in an interpretive FoPNL framework in the form of the INR star-rating system. According to the respondents, the FoPNL format proposed under the 2022 draft amendment was:

> "*[…]in line with global practices and adopts a star-rating system that presents simplified nutrition information on the front-of-pack of pre-packaged foods and provide information on the overall nutritional value of the food and/or on nutrients included in the FOPNL. It is designed to provide consumers with simplified, easy-to-understand information on nutritional content, assisting them in making healthy dietary choices*."
>
> (Emphasis supplied)

[119] *See,* GOVERNMENT OF INDIA, MINISTRY OF HEALTH & FAMILY WELFARE, National Multisectoral Action Plan for Prevention and Control of Noncommunicable Diseases, 2017, which at pg.36 speaks of the implementation of 'interpretive' front of pack labelling as a cost-effective measure to reduce risk of the NCDs.

110. In the opinion of the Union and the FSSAI itself, presenting simplified nutritional information on the front of the pack of pre-packaged foods was necessary. The object in proposing the interpretive FoPNL was two-fold[120]; *one,* to inform the consumer or purchaser of the nutritional composition of the product in a simplified and easy to understand method, thereby helping them to make an informed choice and *two,* to help the industry reformulate their products and reduce the quantities of the nutrients-of-concern used in their product so that they could avoid a low rating (in case of a health-star rating FoPNL or a traffic light system FoPNL), or avoid the very presence of the label (in case of a warning style FoPNL) on the front of the package, thereby contributing to healthier food environments.

111. The fundamental rights to health, food and informed choice under Article 21, the consequent positive obligations to *protect* and *fulfil* such rights which is cast upon the State, the statutory manifestation of the aforesaid fundamental rights through the Act, 2006 and the further steps taken by the Union and the FSSAI together in introducing the 2022 draft amendment to bring into force an interpretive FoPNL, all taken together communicate one conclusion, which is that introducing an interpretive FoPNL is a reasonable measure through which the fundamental and statutory rights of all persons could be secured. In other words, implementing an interpretive FoPNL framework in India had been chosen, by the Union of India and the FSSAI together, as a reasonable

[120] This is reflected also in the introduction to the Expert Committee Report dated 08.10.2025 which states that "*Front of Pack Nutrition Labelling (FoPNL) is one of the policy tools to support consumers in making informed food choices through the presentation of nutrition information on the front of the pack. In addition, it can promote reformulation of food products by Food Business Operators (FBOs)*".

means through which an appropriate level of human life and health is assured to all, as a reasonable means through which safe and nutritious food is assured to all, and as a reasonable means through which the opportunity to make informed food-related decisions is assured to all.

112. Owing to the interpretive FoPNL being a measure through which the fundamental rights find expression, a concomitant duty to ensure that such a framework is not only proposed, but is also capable of appropriate and effective implementation, is enjoined upon the State.

C. Charting the Court's Role

113. In the earlier parts of this judgment, we placed great emphasis on how any approach to public health should necessarily take into account 'upstream measures', such as the FoPNL, as these create an environment that makes healthy choices the default for consumers and thereby, addresses the root causes of diet-related NCDs. Our endeavour in establishing this link between upstream measures (and FoPNL in particular) and the rights to health, food and informed choice was to make clear, in no uncertain terms, that we were dealing with a matter of immense public interest and importance, which has a direct and substantive impact on the realisation of fundamental rights.

114. The discussion undertaken in the preceding paragraphs also allowed us to set out, explicitly and with reasons, two aspects implicit in the orders passed by this Court until now in this matter: ***first***, our jurisdiction under Article 32 to deal with this issue, which rests on a clear declaration of the fundamental rights engaged and their content and scope within the context of the present case; and ***second***, the need for

measures (such as the FoPNL system) for the effective realisation of the said fundamental rights.

115. The question that naturally comes to our minds is that, in the present scheme of things, what is our role as a constitutional court? We find it apposite to address ourselves on this question with a view to safeguard the aforementioned rights from being rendered illusory for consumers.

116. This Court, when called upon to enforce the fundamental rights of a large section of the public, the realisation of which depends on the fulfilment of positive obligations by State actors and authorities has always played a context-driven role. In fact, what is apparent from a rich history of such cases is that, where necessary, this Court has, for instance, filled legislative vacuums by issuing guidelines,[121] supervised existing schemes and monitored their implementation,[122] and constituted committees and called for their reports.[123] At times, the Court has played several of these roles within the same litigation. Such diverse approaches to enforcing the fundamental rights have been chosen depending on a host of factors, including but not limited to the rights at stake, the violation alleged and its extent, the consequences shown or anticipated, and the parties involved and their history of conduct.[124]

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[121] *See,* ¶7, ***Vishaka v. State of Rajasthan,*** (1997) 6 SCC 241; ¶ 35-36, ***D.K. Basu v. State of West Bengal,*** (1997) 1 SCC 416; ¶ 198 – 203, ***Common Cause v. Union of India***, (2018) 5 SCC 1; ¶ 303-306, ***Prajwala v. Union of India & Ors***, 2026 SCC OnLine SC 1053.

[122] *See,* ***People's Union for Civil Liberties v. Union of India,*** (2011) 12 SCC 673; ***Swaraj Abhiyan v. Union of India***, (2016) 7 SCC 498.

[123] *See,* ¶5, ***In Re: T.N. Godavarman Thirumulpad v. Union of India,*** (1997) 2 SCC 267; ***In Re: Destruction of Public and Private Properties v. State of A.P.***, (2009) 5 SCC 212.

[124] *See,* ¶11, ***Sheela Barse v. Union of India***, (1988) 4 SCC 226, *"...The grievance in a public interest action, generally speaking, is about the content and conduct of government action in relation to the constitutional or*

117. Such a context-driven role of this Court is plainly apparent even upon an examination of the course that the present matter has taken so far. In the original writ petition, the petitioner prayed that appropriate directions be issued to the Union of India along with the FSSAI for *making a regulation for an interpretive FoPNL in the form of a warning label* on packaged foods. However, during that time, the FSSAI had already made significant progress towards finalising an interpretive FoPNL in the form of a health-star rating (INR format), which was admittedly different from the one suggested by the petitioner (warning label format). The FSSAI was in the midst of considering the public stakeholder comments received in response to the notification of the 2022 draft amendment, conducting additional stakeholder meetings, and incorporating changes, if any, before the final regulations could be escalated to the relevant authorities. In light of such progress, this Court disposed off the original writ petition *vide* order dated 09.04.2025, with a singular direction that the recommendations of the Expert Committee be finalised in the form of a report within a fixed period of time, i.e., three months. Whatever be the format chosen by the FSSAI, it was the introduction of an interpretive FoPNL that remained crucial to the realisation of the fundamental rights and preoccupied this Court's attention.

118. However, the circumstances that unfolded subsequent to the disposal of the original writ petition were of great concern. A considerable

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statutory rights of segments of society and in certain circumstances the conduct of government policies. Necessarily, both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, ad hoc, according as the exigencies of the emerging situations. The proceedings do not partake of predetermined private law litigation models but are exogenously determined by variations of the theme"; ¶55, ***Bandhua Mukti Morcha v. Union of India***, (1984) 3 SCC 161.

amount of time had elapsed before the Expert Committee report was placed on record and it was found that no consensus could be reached among stakeholders insofar as proceeding ahead the INR format was concerned. The INR health-star rating format was consequently not pursued further, despite the significant time and effort spent towards it. Noting the lack of progress, we had directed the FSSAI, *vide* our order dated 10.02.2026, to give due consideration to the petitioner's suggestion of adopting a warning-style interpretive FoPNL, which was prevalent internationally and had garnered much support. Further, as the table categorising the responses received to the 2022 draft amendment notification and the stakeholder meetings conducted by the FSSAI indicated, this alternative had also found overwhelming favour with the consumers and public health advocates.

119. Yet another significant period of time had passed, during which FSSAI did not seriously consider the possibility of adopting any interpretive FoPNL. Instead, it proposed reproducing verbatim the recommended daily limits for added fat, added sugar and salt provided under Guideline 15 of the DGI, 2024, at the front of the pack, which was not an interpretive FoPNL to begin with. Adding to all this, in the proceedings before this Court on 13.08.2026, the FSSAI plainly stated that it was not possible to adopt measures akin to international standards of packaging and consider the appropriateness of introducing a warning-style interpretive FoPNL in India despite the statutory requirement to account for international practices under Section 18(2)(a)(ii) of the Act, 2006.

120. All this reflected that the FSSAI, which had a statutory duty to frame labelling standards, a statutory duty whose fulfilment had a direct and substantial bearing on the realisation of fundamental rights, and a statutory duty in furtherance of which it had itself taken 'proactive steps', had since shown no urgency to restart the process once the 2022 draft amendment had been scrapped. There was an unwillingness to build on what it had learned and bring an alternative interpretive FoPNL into effect as quickly as possible. In fact, the FSSAI showed a marked reluctance to engage with a seemingly viable alternative i.e., the warning-style FoPNL, without adequate reason or evidence, and instead suggested alternatives which were not FoPNLs at all. Simply put, inertia plagued the whole process despite the State's own recognition that an interpretive FoPNL was crucial to the realisation of the fundamental and statutory rights.

121. It was in the background of such circumstances that we, once again, reiterated to the FSSAI to consider alternate interpretive FoPNL models prevalent in other countries and urged them to take inspiration from global practices, *vide* our order dated 13.08.2026. This was done with a view to ensure that the inertia did not persist at the cost of endangering fundamental rights. Here too, we had made it clear that it was for the Union, along with its experts, to arrive at a decision on the visual appearance and other characteristics of the interpretive FoPNL. Resultantly, the affidavit dated 28.08.2026 was placed on record before this Court by the FSSAI. It was proposed that a warning-style interpretive FoPNL could indeed be adopted. The FSSAI also laid out the broad characteristics of the warning label FoPNL i.e., its appearance,

size, colour, placement, shape, along with the timeline and phases for its implementation.

122. This recapitulation of the facts was necessary in order to buttress that this Court has adopted a tailored and context-driven role, even throughout the course of the present matter. Our role in matters such as this ought not to be construed as that of an adversary.[125] As has been observed on several occasions, where the public interest and the effective realisation of the fundamental rights of a large section of the public are involved, the role of this Court is best understood as that of a facilitator, one that assists in the pursuit of the objective at hand and of the constitutional rights connected to it.[126]

123. In performing this role of a facilitator, we raised specific questions *vide* our order dated 10.09.2026 and sought the FSSAI's response, all in the spirit of bringing a well-considered FoPNL into effect. The efficacy of such an approach rests, in turn, on the FSSAI engaging with the questions raised in the same spirit, and furnishing reasons that are full and considered.

124. The trajectory of this matter thus far, and the absence of any real urgency exhibited on the part of the authorities, cannot be overlooked. Significant time and effort have already been expended towards bringing about an FoPNL, without any commensurate result. In these circumstances, our presence is required to ensure that the task to finalise

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[125] *See,* ¶36, ***State of Uttranchal* v. *Balwant Singh Chaufal***, (2010) 3 SCC 402; ¶46, ***Ashwani Kumar v. Union of India***, (2019) 2 SCC 636.
[126] *See,* ¶9, ***Bandhua Mukti Morcha v. Union of India***, (1984) 3 SCC 161; ¶24, ***State of H.P. v. Umed Ram Sharma***, (1986) 2 SCC 68.

FoPNL regulations, as undertaken by the FSSAI, is seen through till its end, and to also prevent it from either failing to fulfil its objectives or running into predictable difficulties further along the statutory process. Identifying the significant problems now will not only enhance the prospects for an effective FoPNL, but will also ensure that no more time and effort are lost by going in circles. For, if an effective FoPNL is not brought into force in a timely manner, that delay would itself significantly hinder the effective realisation of the fundamental rights on which we have placed so much emphasis. Our endeavour here must, therefore, be understood not merely through the lens of legality, but also through that of practicality. The rhetoric of rights would mean little if it did not translate into meaningful change in the lives of people, especially for the most vulnerable.

125. Further, we cannot remain as passive onlookers in this matter because of the groups involved, their competing interests, and the imbalance of power between them. On one side is the general public, which, while vast in number, is diffused and largely unorganised, and therefore at a disadvantage in influencing the process. On the other are the FBOs, which, though fewer in number, are organised and possess the means to influence that process considerably.

126. This Court, when assessing the reasons furnished by the FSSAI, is guided, first and foremost, by the object of securing the effective realisation of these rights, and, in addition, by whether the statutory considerations mandated under the Act, 2006, particularly the protection of consumers' interests, have been duly accounted for and taken care of.

127. There is no gainsaying that, in this matter, our intervention is required only on those aspects where it appears from the record that the proposal relating to an FoPNL regulation and its implementation, if pursued, would undermine the very objective of bringing an FoPNL into force.

128. We may clarify with a view to obviate any confusion that our role cannot be to dictate every little nuance relating to the FoPNL regulation or its implementation. Rather, it will be to see whether the proposal is such that the very reason and basis for bringing an FoPNL into force would be undermined. Ours, therefore, is a balancing role.[127] As such, deferring to the wide latitude of the FSSAI to an extent that the very purpose for which this Court's jurisdiction has been invoked gets subverted would be nothing short of an abdication of our duty.

129. We find it apposite to clarify that our directions in the subsequent parts of this judgment do not in any manner disturb or displace the statutory process that must be followed in framing and implementing an FoPNL regulation. That process would remain intact and would be duly followed by the FSSAI in bringing an FoPNL regulation into force.

D. <u>Deficiencies pertaining to certain broad aspects of the FoPNL proposal</u>

i. Prelude

130. After giving due consideration to the proposal placed before us by the FSSAI and the petitioner's response thereto, we had, *vide* our order

[127] Albeit in a different context, see this Court's observations of a similar nature at ¶10, ***Chaitanya Kumar v. State of Karnataka***, (1986) 2 SCC 594.

dated 10.09.2026, acknowledged that significant progress had been made by the FSSAI. At the same time, we noted that several aspects anchoring the practical implementation of the proposal remained ambiguous, or that the rationale behind them was unclear. We considered each such aspect in detail, explaining precisely where the ambiguities or gaps lay and why they called for clarification. We, then, framed specific questions for the FSSAI to address, so as to better understand its stance and the reasoning behind it.

131. Both FSSAI and the petitioner have since filed their responses by way of affidavits. Having given careful consideration to the responses on both sides, we are of the view that, on several key aspects, the FoPNL system as proposed by the FSSAI would, if pursued, undermine the very objective of bringing an FoPNL into force.

132. We have broadly categorised the issues with the proposed FoPNL system into two broad heads: (i) Issues pertaining to threshold limits and nutrients-of-concern; and (ii) Issues pertaining to the format of the FoPNL. In the sub-sections that follow, we address each issue in turn. For each, we first set out the reasons furnished by the FSSAI and the petitioner's response to them, and then explain where, in our view, the FSSAI's reasoning falls short, and how the proposal, if taken forward in its present form, would undermine the very reason and basis for bringing an FoPNL into force.

133. In doing so, we have laid special emphasis on Section 18(2)(a)(ii) of the Act, 2006. Section 18(2)(a)(ii) provides that, while framing the regulations or specifying standards under the Act, 2006, the *international*

standards and practices, wherever they exist, or are in the process of being formulated, *shall* be taken into account by the FSSAI. An exception to this principle or a deviation is allowed only when the FSSAI is of the opinion that taking into account such prevalent international practices and conditions, or international standards, or any part thereof, would not be an effective or appropriate means for securing the objectives laid out in the regulations, or where there is a scientific justification for not taking them into account, or where taking them into account would result in a different level of protection than what is deemed to be appropriate in the country. Therefore, proper reasons must exist for disregarding or not accounting for any prevalent international practice or standard which may be necessary for fulfilling the object of the Act, 2006 and the 2020 regulations respectively.

ii. Threshold limits and the nutrients-of-concern

134. The threshold limits for the nutrients-of-concern and the kind/type/nature of nutrients-of-concern themselves form the foundational skeleton upon which the warning-style label format, or any FoPNL for that matter, would be built. To put it simply, only when the concerned food product exceeds the determined threshold levels for these specific nutrients-of-concern, it would bear a red hexagonal label. Therefore, ensuring that the choice of the nutrient(s)-of-concern and their threshold levels are backed by science, are practically implementable, and capture the reality of the HFSS food/UPF market in India, is of utmost importance.

135. The FSSAI has submitted that it would adopt what is provided under Table 15.1 of Guideline 15 of the Dietary Guidelines for Indians, 2024 ("**DGI, 2024**") issued by the ICMR-MIN. The relevant portion is reproduced thus:

> ***"Table 15.1. Nutrients of concern threshold criteria for foods and beverages***
>
> | ***Nutrients per 100g or ml[1]*** | ***Liquids[2] (ml)*** | ***Solids (g)*** |
> |---|---|---|
> | *Calorie (kcal)* | *70* | *250* |
> | *Salt (mg)* | *175* | *625* |
> | *Added sugar (g)* | *2.0* | *3* |
> | *Added fat (g)* | *1.5* | *4.2* |
>
> *[1]Nutrient threshold criteria apply to all cooked/packaged foods and beverages with added sugar, added salt or added fat.*
>
> *[2] Liquids include any product such as all beverages, fruit juices, coconut water, butter milk, lassi, coffee and tea.*
>
> *For solid foods:*
>
> • *Threshold for sugar has been calculated at ~5% energy from added sugar, and not exceeding 10% energy from total sugar.*
>
> • *Threshold for fat has been calculated at ~15% energy from added fat, and not exceeding 30% energy from total fat.*
>
> *For liquid foods/ Beverages:*
>
> • *Threshold for sugar has been calculated at ~10% energy from added sugar, and not exceeding 30% energy from total sugar (including naturally present sugar in fruit juices/milk etc.).*
>
> • *Threshold for fat has been calculated at ~15% energy from added fat, and not exceeding 30% energy from total fat."*
>
> (Emphasis supplied)

136. The FSSAI wishes to draw benefit from the aforesaid table on two aspects. *First,* it is sought to be used for determining the nutrients-of-

concern themselves, which according to the proposal would be "salt", "*added* sugar" and "*added* fat" respectively. *Secondly,* it is sought to be used as a guide to determine the threshold quantity of such nutrients-of-concern, whose number, if surpassed, leads to a corresponding red hexagonal label being provided on the front of the pack.

137. On the first aspect, the FSSAI states that their focus is only on "*added*" sugars, i.e., sugar and sugar syrups added to foods and drinks over and above those inherently present in food during processing and preparation, and would include sucrose, jaggery, honey, glucose, fructose, dextrose, etc. Their current justification for not considering "*sugar*" or "*total sugar*", as a whole, is that naturally occurring sugars are accompanied by other nutrients including vitamins, minerals and dietary fibre, and contribute to the overall nutritional value of the diet. Hence, according to them, such natural sugars should not be accounted for in the label. They state that it is only added sugar which increases the total calorie intake without providing significant additional nutritional value. Similarly, insofar as fat is concerned, they have chosen "*added*" fat as the criterion. The only reason for this seems to be that the DGI, 2024 does not provide the relevant numbers for "*saturated fat*". Apart from this, no other coherent reasoning is discernible from their reply.

138. The FSSAI acknowledges that the meeting dated 30.06.2021 which deliberated upon the FoPNL, identified "*total sugar*" and "*saturated fat*" as the nutrients-of-concern. Even the 2022 draft amendment, which introduced the INR format of FoPNL, considered "*total sugar*" and "*saturated fat*". Despite this long-standing consensus, the only

justification for reversal of their stance is that these two events occurred at a point prior in time, i.e., in the years 2021 and 2022 respectively, and that the DGI, 2024 which is the more recent guideline, provides an "updated" dietary recommendation in this regard.

139. In response, the petitioner submitted that the FSSAI has cherry-picked one column of the DGI, 2024, rather than considering it in its entirety. They say that the table itself accounts for total sugar in its own manner, which is completely ignored by the FSSAI.[128] Moreover, their grievance is that added sugar or added fat cannot be verified in a finished product because a laboratory cannot independently distinguish what was added from what was inherently present in the product.[129] Since it is incapable of independent verification, any enforcement officer would have to rely on the FBO's own statements or declarations, which may not always reveal the true picture. According to the petitioner, therefore, a warning criterion that cannot be tested cannot be enforced. The added sugar criterion is also prone to misuse, they say, because a product may be sweetened with fruit juice concentrate, fruit pulp, or other ingredients that are as metabolically harmful as sugar but might escape the warning label altogether. Moreover, they state that the reliance on additional nutritional benefit obtained from natural sugars is misplaced in the

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[128] It is stated that in Table 15.1 itself, the sugar threshold for solids is set at about 5% energy from added sugar "and not exceeding 10% energy from total sugar", and for beverages "not exceeding 30% energy from total sugar"(including naturally present sugar in fruit juices/milk etc.). The petitioner uses this to drive home the point that the DGI, 2024's own benchmark is not based on '*added*' nutrients-of-concern alone and must be viewed more holistically.

[129] *See,* Lok Yin Chan et al, *Total and Free Sugar Levels and Main types of Sugars used in 18,784 local and imported pre-packaged food and beverages sold in Hong Kong,* 13 NUTRIENTS 3404, (2021), *"there are no analytical methods to distinguish between free sugars and naturally occurring sugars, which are chemically identical"*; *See also*, J.C.Y. Louie et al, *A systematic methodology to estimate added sugar content of foods,* 69(2) EUR. J. CLIN. NUTR. 154, (2015); Chris H.C. Yeung and Jimmy C.Y. Louie, *Methodology for the assessment of added/free sugar intake in epidemiological studies,* 22(4) CURR. OPIN. CLIN. NUTR. METAB. Care 271, (2019).

context of packaged foods, because their fibre matrix is usually removed and the sugars are in a concentrated form. In fact, the exact concerns of the petitioner were the reason why the meeting dated 30.06.2021 preferred total sugar as the metric. This is evident from the minutes of the said meeting, which read thus:

> "*After detailed deliberation, it was concluded that 'Total Sugars' appears to be the best option to proceed with, considering the health concerns, acceptability around the globe and ease of analytical testing. Moreover, energy calculations are based on total sugar and not added sugar and with energy in tandem on the FOPL, a consumer would have a better informed choice as against the Added Sugar. Hence, consensus was formed on using Total sugar for FOP labels.*"

140. Let us also look at what the international position is. Countries with mandatory regimes including Canada (the model which the FSSAI seeks to draw inspiration from on other aspects of the warning label), Chile, Colombia, Israel, Mexico, Peru, Uruguay, Iran, Indonesia, Sri Lanka, Singapore, and UAE respectively, and those with voluntary regimes like the United Kingdom, South Korea and Saudi Arabia respectively, all account for "total sugars" within their diverse FoPNL frameworks. Nevertheless, a few countries such as Venezuela, Brazil, Argentina and the USA respectively, consider "added sugar". As far as fat is concerned, all countries either account for "fat" and "saturated fat" together, or "saturated fat" alone. In fact, the concept of "added fat", which the FSSAI has proposed, does not exist anywhere in the world.

141. What becomes clear is that while a few "added sugar" regimes exist, it is "sugar" or "total sugar" which is driving the frameworks in most countries. There seems to be a good deal of force in the petitioner's

submission that verification of added sugars is impossible and that dubious strategies may realistically be adopted by FBOs to escape the warning label despite the presence of high levels of sugars within their products, if added sugar is taken as the criterion. As regards the metric for fat, added fat also faces the same drawbacks relating to the impossibility of independent verification, and it has neither been adopted anywhere across the world nor does it draw on any scientific support. Moreover, the DGI, 2024 seems to be the only document advocating for an added sugar and added fat model. Otherwise, the long-standing consensus has always been that total sugar and saturated fat are the appropriate nutrients-of-concern.[130] Apart from simply stating that the DGI, 2024 came at a later point in time, the FSSAI has not provided an adequate justification for their complete U-turn in approach. Therefore, to prevent the FoPNL framework from being endlessly delayed on this point alone, and in the absence of any serious objection, scientific or otherwise, as to why the original consensus should not be proceeded with, we are of the view that the FSSAI should adopt *total sugars* and *saturated fat* as the nutrients-of-concern. On the question of using "*salt*" instead of "*sodium*" as the third nutrient-of-concern, there seems to be no dispute from any quarter.

142. Moving on to the second aspect relating to the threshold levels of the aforementioned nutrients-of-concern, the very fact that "*total sugars*"

[130] Even the Report of the Expert Committee of the FSSAI which provided recommendations after reviewing the 14,000 comments received to the 2022 draft amendment notification and considering other matters related to the FoPNL, observes at pg. 5 that the FSSAI established a Consultative Group in the year 2020 comprising all relevant stakeholders to discuss and decide on the implementation of the FoPNL in the Indian context. The critical nutrients-of-concern identified by the said Consultative Group were "*energy, saturated fat, total sugars, and sodium (expressed as salt)*".

and "*saturated fat*" are to be considered as the nutrients-of-concern instead of "*added sugar*" and "*added fat*", along with salt, would require the FSSAI to revisit and reformulate the threshold levels. To put it more clearly, the values can no longer be what has been provided under Table 15.1 of the DGI, 2024 because, admittedly, they have been calculated keeping in mind added sugar and added fat, respectively.

143. Whether these thresholds should be based on the per 100ml/100g approach or be determined on a per serving basis is best left to the discretion of the FSSAI. It has been pointed out that the absence of standardised serve sizes and ease of consumer comprehensibility both favour the per 100ml/100g approach, which has been presently considered by the FSSAI.

144. In undertaking this process of adopting scientifically determined threshold levels, the FSSAI must ensure that these numbers are neither set too low nor too high. If they are set too low, then almost all packaged food products in the market would carry a warning label. The saturation of the labels in the market would quickly de-sensitise the consumers and induce 'label fatigue'. The threshold levels presently on record, if readily adopted, would lead to this very consequence.[131] Even the 2022 draft amendment which proposed the INR FoPNL model, pegs the threshold levels at 21g for total sugar, 5g for saturated fat, and 450 mg for sodium (the values provided under the DGI, 2024, with the

[131] A study conducted by NatFirst Private Limited Hyderabad examined the declared nutritional composition of 44,109 barcode records of packaged foods available in retail in India (roughly over 80% of the packaged food sold in India) applying the nutrient thresholds drawn from the DGI, 2024. It was found that 94.1% of products exceeded at least one threshold nutrient-of-concern level, while 85.3% exceeded two or more threshold nutrient-of-concern levels.

exception of sodium, are way lower than what has been provided under the 2022 draft amendment). On the other hand, if it is set too high, then most products would escape regulatory scrutiny, and consumers would still be exposed to harmful levels of saturated fat, sugar, and salt unknowingly. Therefore, the scales must be balanced, as we had previously mentioned, in cognisance of the reality of the HFSS food and UPF market existing in India, the international standards, and after due scientific enquiry. If not, the entire purpose and object of bringing an FoPNL framework would be undermined. Thereafter, the FSSAI must also earnestly work towards the progressive reduction of these threshold levels overtime, in a phased manner, to ensure that the food environment is constantly improved upon.[132] The FSSAI must therefore not view this as a one-time measure and continuous efforts along with monitoring are required.

145. Through the aforesaid exercise, the FSSAI would be able to bring about a comprehensive definition of HFSS foods which rests upon a clear, workable and scientifically defensible threshold.

iii. Format of the warning label

146. On food packages, a significant amount of weight is attached to appearance and presentation. This is because a purchaser chooses among many alternatives, often within seconds, and a message printed on a package must therefore reach the purchaser in the least possible time. This is what the interpretive FoPNL does. Its effectiveness lies

[132] Chile and Mexico are countries where such a phased implementation has been adopted with progressively stricter nutrient criteria and tightened thresholds.

largely in its visibility and comprehensibility. The following aspects of the format, i.e., (i) the pictorial representation of each nutrient-of-concern, (ii) the number of hexagons, (iii) the dimensions of the hexagons, (iv) the font size of the text within them, decide whether this FoPNL would be noticed, read, and understood. In other words, these four aspects are so fundamental to the effectiveness of FoPNL that, if left unaddressed, the FoPNL would fail at the point of purchase, however sound the threshold behind it may be. We therefore address each of them in turn.

a. Pictorial representation of the warning symbol

147. We had sought the FSSAI's response on the desirability of introducing pictorial representations along with text for each nutrient-of-concern. In response, the FSSAI submitted that the object of the FoPNL is to provide a simple and clear *textual indication* of the nutrients-of-concern and that pictures alone would not be able to communicate which nutrient-of-concern is being highlighted. According to the FSSAI, separate pictorial symbols for each nutrient-of-concern may, in fact, create additional scope for confusion or misinterpretation among consumers, particularly when multiple nutrients are involved.

148. On the other hand, the petitioner highlighted the need for pictorial representation, as a text-only label would fail to cater to the diverse population of this country. In furtherance of this, the petitioner also submitted that for the FoPNL to reach all consumers, the text of the high-in-nutrient be expressed in English, Hindi, as well as in regional languages.

149. In our order dated 10.09.2026, we had expressed our preliminary viewpoint behind the need for pictograms in the FoPNL. Our discussion reads thus:

> *"37. In our order dated 10.02.2026, we had reproduced certain illustrative FoPLs for the benefit of the FSSAI's deliberations. What is different in the proposal presently placed before us is that the FSSAI seems to have adopted a strictly word-based warning label i.e., one that denotes in words whether the product is high in fat, sugar and/or salt. This word heavy FoPL presupposes a certain level of comprehension, literacy, and reading capability across all States/regions, vernaculars, age groups, literacy levels, etc., of the consuming population. Ideally, an all-inclusive FoPL which effectively caters to the diverse population of this country should incorporate a combination of words along with pictorial representations of the individual nutrients-of-concern. This would ensure that the information provided in the FoPL is truly accessible. It is of note that Regulation 4(7) states that the contents of the label must be clear…under normal conditions of purchase and use. The normal conditions of purchase and use in India are itself difficult to fit into a single, homogenous box and must therefore, not be addressed by through a blanket approach. Moreover, the mode of purchasing foods products, in general, is going digital. Therefore, such trends in the realities of Indian consumption must also be taken into consideration and reflected in design choices made for FoPLs.*
>
> *38. The petitioner has, additionally, submitted that the word-based warning must be provided in the Hindi language as well so that the FoPL remains accessible to the widest possible section of Indian consumers. It is of the view that bilingual warning systems are entirely feasible, and Canada has adopted a system where food labelling is provided both in English and French. Considering the linguistic diversity of our country, the focus must not just be on Hindi. We leave it open to the FSSAI to consider whether a vernacular language (based on the State/region in which the packaged food is to be sold) along with warnings in the English language may be practicable.*

39. Therefore, we would like the FSSAI to take the aforesaid into account and revisit their conception of the FoPL as it stands presently."

(Emphasis supplied)

150. It appears from the response of the FSSAI that it had misconstrued our query on pictograms and understood it as being a replacement for textual information highlighting the nutrients-of-concern. However, in our order dated 10.09.2026, we had, in clear terms, stated that an inclusive FoPNL would "incorporate a *combination* of words along with pictorial representations of the individual nutrients-of-concern". What we tried to convey was that the FoPNL must be accessible to the diverse population of India, irrespective of age, education and literacy levels and reading capabilities. When the text of the nutrients-of-concern is accompanied by the pictorial representation, it will aid the understanding of the information sought to be conveyed. While there is reason in the FSSAI's submission that a pictogram alone would leave open some room for ambiguity, there is equal force in the submission that textual information without a pictogram would exclude a large section of the population that is not conversant with the English language.

151. The apprehension of the FSSAI that introducing pictorial symbols would lead to confusion is based on the understanding that pictorial symbols would be displayed in isolation. Where an icon such as a salt shaker, a sugar cube or a drop of oil appears with the name of the nutrient within the same hexagon, the text would anchor the meaning of the icon and the icon would reinforce the text.

152. In this context, various studies conducted amongst the Indian population as well as in other countries point to the benefits conferred by labels which provide both pictures and text.

153. In a study[133] conducted on consumer perspectives on FoPNLs, pictograms have reportedly performed better than text provided that they are not difficult to interpret. The study records that the participants faced several barriers in comprehending the back-of-pack information, which included the inability to read an exclusive English-only text. In another study[134] conducted on FoPNLs among South African consumers across socio-economic backgrounds, it was found that a combination of the pictures and text within the warning symbol grabbed participants' attention and increased their interest in the FoPNL. The pictograms, namely, a salt shaker or a sugar spoon, helped consumers with low literacy levels to identify unhealthy products.

154. In yet another study[135] conducted to assess the effects of pictures on health communication, it was found that adding pictures to written language increases attention, comprehension, recall and adherence. The findings of the study suggested that pictures proved to be helpful to viewers with low literacy skills as well as to children. Thus, pictures enable optimum utilisation of information being conveyed. The results

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[133] Lakshmi K. Josyula et al, *Designing front-of-pack labels for packaged food in low-literacy contexts: Consumer perspectives from India*, PLOS GLOB PUBLIC HEALTH (2026), https://pmc.ncbi.nlm.nih.gov/articles/PMC13505920/pdf/pgph.0007118.pdf.

[134] Bopape M et al, *South African consumers' perceptions of front-of-package warning labels on unhealthy foods and drinks*, PLOS ONE, (2021), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0257626.

[135] Peter S. Houts et al, *The role of pictures in improving health communication: A review of research on attention, comprehension, recall, and adherence*, PATIENT EDUCATION AND COUNSELING 61 (2006) 173-190.

of the study also record that pictures can improve the effectiveness of information when they are accompanied by clear text.

155. In this context, we are reminded of the decision in ***Nairobi Bottlers Ltd.* v. *Ndung'u & Anr.***, [2023] KECA 839 (KLR) wherein the facts before the Kenyan Court of Appeal were that Coca-Cola sold soda in plastic as well as glass bottles; the plastic bottles carried nutritional, storage and contact information. Whereas, the glass bottles did not. This difference was challenged on the ground of being discriminatory and violative of the right to information of a consumer. One of the issues before the Court was whether the failure to provide such information on the glass bottles violated the right to information and the right to health, which forms part of Article 46 of their Constitution.

156. In light of the constitutional and statutory protections, the Court therein held that the company was under an obligation to provide information to all consumers alike. It is noteworthy that the Court found the differential treatment of glass bottle consumers, which was based on their purchasing power, to be unreasonable and unjustifiable. Nothing was shown to explain why those consumers should be kept unaware of what was in the food they consume. The message being conveyed by the Court was that the right to information and informed choice belongs to every consumer equally. A manufacturer owes the same duty of disclosure to all, and that duty cannot be diluted by the price paid, or the packaging chosen by the buyer. The relevant observations read thus:-

> "57. *Undeniably, article 46 and the Consumer Protection Act impose explicit requirements for the content of food labels, which*

manufacturers are not free to ignore. These requirements include the nutritional label, which must include the name of the food, the disclosure of the quantity of contents, the name and place of business of the manufacturer or distributor, a list of their ingredients and nutrition information. Nutritional label can be defined as a description used to inform the customer about the nutritional properties of food, which also help the customer in purchasing nutritious food and consuming nutritionally balanced meals. (See WJ Koe (1997), Nutritional Labelling Legislation).

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59. In our view, the learned judge adopted an interpretation that upholds the tenor and intention of article 46 and the Consumer Protection Act by upholding the right for consumers to be provided with information pertaining to ingredients, nutrition claims and declaration of potential allergens as well as nutrition or health claims. Food warnings and labels inform consumption. Such information, as required by article 46, enables consumers to make informed decisions. As was held in Njoya & 6 others v Attorney General & 3 Others (No 2) (2004) 1 KLR 261, the Constitution should be construed liberally to give effect to the values it embodies and the purposes for which the makers framed it.

60. We have considered the finding by the learned judge on the obligation placed on the appellant and/or the 2nd respondent to provide nutritional information, e-mail address and storage directions. In our view, the learned judge's finding is grounded on article 46(1)(a), (b), and (c), which guarantees consumers products of reasonable quality, and the right to be provided with the information necessary for them to gain full benet from goods and services. The article also guarantees the protection of consumers ' health, safety, and economic interests.

61. In conclusion, we find that the appellant and the 2nd respondent have not persuaded this court that, pursuant to article 46 of the Constitution, they do not owe the consumers of their products an obligation to provide them with nutritional information, storage and contact information as held by the learned judge. On the contrary, we find and hold that the 1st respondent demonstrated to the

required standard that the said omission offended article 46 and the Consumer Protection Act. Consequently, on this ground, the appeal fails.

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75. Applying the three-stage test discussed in the above cited authorities, we find and hold that the appellant has not justified why it is only the consumers of the Coca Cola products in plastic bottles who are entitled to be aware of the nutritional information, access to customer mobile number and even storage directions. We also find and hold that it has not been demonstrated why consumers of the same product sold in glass bottles are deprived of the same information. We also find that the appellant and/or the 2nd respondent did not demonstrate that the provision of nutritional information, storage directions and customer care numbers and e-mail address to the consumers of the Coca Cola products packaged in glass bottles is inconsequential. Consequently, we find that the differential treatment of the consumers of Coca Cola product in plastic and glass bottles is not connected to a legitimate purpose or, for good reason, justifiable.

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77. The third enquiry is whether the limitation can be justified within the limitation provisions prescribed in article 24. On this third enquiry, counsel for the appellant submitted that both plastic and glass bottles were available and accessible to all consumers and, therefore, the issue of the consumers with lower purchasing power preference of the glass packaged products is not an issue of discrimination but one of choice. In our considered opinion, this reasoning is self-defeatist. We say so because it literally means that if a consumer has low purchasing power and can only afford the Coca Cola product packaged in glass bottles, then because of his financial position, he is not entitled to the information supplied in the other similar product, but in a different package. Such a reasoning flies on the face of articles 27 and 46. In the premises, we find and hold that the appellant and the 2nd respondent have not demonstrated that the reasons for the differentiation pass an article 24(3) analysis test. The

upshot is that, we uphold the finding of the learned judge on the issue of discrimination."

(Emphasis supplied)

157. The aforesaid observations are of some special importance to us as well. An FoPNL that can be understood only by consumers who can read and understand the language in which it is printed, in effect, creates two classes of consumers - those who can use the information and those who cannot. The right to health, and the right to choice and information, cannot be made subject to a consumer's literacy, language or means. The FoPNL must be designed so that it serves every consumer alike. Here, our initial introductory discussion on 'reaching the most vulnerable' applies with added force. We had indicated that measures that seek to realise fundamental rights must be tailored such that they remain truly *accessible* to vulnerable populations. The FoPNL must not be the exclusive reserve of the educated or the affluent. It must be ensured that vulnerable populations are able to derive the maximum benefit from it and therefore, a combination of text and a pictorial representation of each nutrient-of-concern in the FoPNL is absolutely necessary.

158. In this context, let us also take a look at the decision of the Ministry of Health, requiring all tobacco products to carry health warnings through the Cigarettes Act, 1975. The percentage of the warning was increased gradually from 50% to 85% of the principal display area. The Report on *Tobacco Control in India* by the Ministry of Health acknowledged that a tobacco product manufacturer has a legal duty to warn consumers of any foreseeable hazards associated with the product so that consumers

may exercise their 'informed choice' in deciding to use the product. The said report records that large warnings combined with photos were found to be effective in discouraging smoking and increasing public awareness, particularly for people with low literacy.

159. It is not an unknown fact that text combined with pictograms reaches those who have low literacy and ensures that information is received uniformly. The studies on the FoPNL before us point in the same direction. There is no reason why the aforesaid stance taken by the Union, i.e., to include pictures within the warning labels for tobacco products, must not equally apply to packaged foods that are high in the nutrients-of-concern. Although, admittedly the scale of harm differs, the reasoning about comprehension and informed choice does not.

160. For all the foregoing reasons, we see no reason why a standardised set of nutrient icons/pictograms, introduced with the awareness programmes as proposed by the FSSAI, would be subject to confusion or misinterpretation on the part of the consumers. The proposed labelling format appears to be aimed only at individuals who are literate and nutritionally aware. A pictorial representation would allow for better engagement and understanding of the FoPNL for all. Therefore, we are of the considered view that pictograms/icons need to accompany the text within the warning label and that the FSSAI needs to rework its proposal on this aspect.

b. Singular Hexagons for each nutrient-of-concern

161. The FSSAI has proposed that, for all packaged products, irrespective of whether they exceed the threshold levels of one or more nutrient(s)-of-

concern, the words "*High Sugar*", "*High Saturated Fat*", and "*High Salt*" would be placed within one single hexagon.

162. All countries which have adopted the warning-style FoPNL internationally have overwhelmingly used distinct shapes/hexagons for each nutrient-of-concern, irrespective of whether they incorporate pictograms or not. For example, Mexico, Peru, Chile, Argentina, Venezuela, Colombia, Israel, etc. Moreover, the very fact that a combination of pictogram(s) along with text is required for the FoPNL to reach the diverse Indian population (as cemented through our discussion in the previous sub-section) requires separate hexagons to be used for each nutrient-of-concern, in contrast to the single hexagon format proposed by the FSSAI. This is simply for the reason that a single hexagon cannot possibly crowd all the words and pictures of all nutrients-of-concern, in a legible and comprehensible manner. Where a product is high in more than one nutrient, on one hand, a text-only single hexagon requires the consumer to carefully read and parse the words to learn which nutrient is the concern, whereas, on the other, distinct hexagons with their own pictogram let the consumer see which nutrient is in excess without reading an extra word, as it conveys the message almost instantaneously. The latter serves the stated objective of the FoPNL, which is quick and informed choice at the point of purchase.

163. At this stage, it would be apposite to refer to certain existing provisions regulating labels on food packaging. Regulation 4 of the 2020 Regulations provides for the general principles governing the labelling of pre-packaged foods. Regulation 4(3) mandates that the manner of

labelling shall not be *likely* to create an erroneous impression regarding its character in any respect. Most importantly, Regulation 4(7) stipulates that the contents on the label shall be *clear, unambiguous, prominent, conspicuous, indelible and readily legible by the consumer under normal conditions of purchase and use*.

164. Separate hexagons, each carrying the words "High Saturated Fat", "High Sugar", and "High Salt", respectively along with pictograms offer several benefits. *First*, it decreases cognitive workload and the time spent reading and interpreting the label. For instance, a consumer looking at three separate hexagons would grasp, at a single glance, that the product is high in all three nutrients-of-concern, whereas, in a single text-based hexagon, this can be learnt only by reading each line.

165. *Secondly*, a single hexagon may not sufficiently pass the test of prominence and legibility. We say so because where several statements and pictograms would be placed within one hexagon, the size of every individual component would be reduced as more nutrients-of-concern are included. Separate hexagons would allow each nutrient to be given distinct emphasis, and bring the label closer to the requirement of Regulation 4(7). This will make the warning label clearly visible and distinguishable from other information on the principal display panel.

166. *Thirdly*, a single hexagon would be less likely to achieve the public health object of the FoPNL. A single hexagon may lead to a mistaken impression and is likely to cause the same mischief that Regulation 4(3) seeks to prevent. In all probability, a consumer may read a single hexagon as a general caution about the product, without registering

which nutrient is the concern or how many are involved. In a study conducted to assess whether the efficacy of the "High-In" label in improving consumer knowledge could be enhanced through pictograms and a multi-label format, it was found that the multiple-exclamations label was the most effective, even when compared to a single "high-in" label, at discouraging consumption of a product that is high in all three nutrients-of-concern.[136] The study cited that there is experimental and quasi-experimental evidence from Chile showing that "high-in" FoPNLs, more particularly, multi-label FoPNLs encourage manufacturers to reformulate products to lower levels of nutrients-of-concern.

167. The findings of the aforesaid study support that an FoPNL in which each nutrient-of-concern is flagged separately is more effective than a cumulative warning.

168. In our order dated 10.09.2026, we also highlighted the relevance of Regulation 4(7) of the 2020 Regulations in the digital marketplace. Regulation 4(7), which requires the content of the label to be clear under normal conditions of purchase, naturally includes online purchase, where the package is viewed as a small thumbnail on a mobile screen and fine text is difficult to read. In such circumstances, a distinct icon within separate hexagons would be recognisable even at reduced size and would show the warning sign even where words may not. After all, a design format that works on the shelf but not on the screen cannot be

[136] Brittany Lemmon, *"High-In" front-of-package labeling of foods high in added sugars, sodium, and saturated fat: A randomised experiment*, APPETITE 216 (2026) 108308, https://www.sciencedirect.com/science/article/pii/S0195666325004611?ref=pdf_download&fr=RR-2&rr=a5b4ee14eda354f0.

said to meet the standards of the aforesaid regulations, especially in this digital day and age.

169. The net effect of the aforesaid is that there is a need to revisit this aspect of the FoPNL format. A single hexagon would increase the effort needed to read and interpret the label. Whereas separate hexagons, each with pictograms, would let the consumer see at a glance which nutrient is in excess, and how many. Such an FoPNL would also be in compliance with Regulation 4(7) of the 2020 Regulations.

c. Dimensions of warning label

170. In paragraph 53(viii) of our order dated 10.09.2026, we had sought for the FSSAI's response on the dimensions of the 'red hexagon' proposed to be used as the FoPNL. Our query read thus:-

> *"What are the dimensions of the 'red hexagon' proposed to be used in the FoPL? Whether it would have standardised specifications or whether it would be calculated in proportion to the area of the package? Whether the font size used for the FoPL would be relative to the dimensions of the hexagon themselves? The manner and method of the placement of such hexagon(s)?"*

171. It appears from the response of the FSSAI that it proposes to adopt the Canada model as regards the size of the warning label, i.e., the red hexagon. The proposed warning label would comprise three components, viz, (i) a white square shaped background, (ii) a red hexagon within the white square shaped background, and (iii) the name of the nutrient(s). In response to the query on dimensions of the FoPNL, the FSSAI has proposed that the size of the warning label would align with the size of the warning label as provided in Canada.

172. In response, the petitioner submitted that the reliance on the Canadian model would be of no help, as the Canadian FoPNL is a magnifying-glass symbol rather than a hexagon. It has been further urged by the petitioner that the reliance must instead be on the FoPNL models of Chile or Mexico wherein the percentage occupied by each hexagon is *relative to* the size of principal display panel. They stated that international prevalent practice as regards the warning label occupies an area of about 15% to 20% of the principal display panel.

173. In addition to what has been stated by the petitioner in the aforesaid paragraph, there is another aspect to the matter; one which we seem to stress upon at every juncture. The FSSAI would have to bring in separate hexagons for each nutrient-of-concern, each with a combination of words and pictograms. Admittedly, the Canadian model only accounts for a single label in a rectangular shape, within which "High in Sat Fat, Sugar and Sodium" are all indicated together along with a magnifying glass symbol. The two models are more different than they are alike. Therefore, it does not bear any reason to seek inspiration from the dimensions adopted in the Canadian model.

174. We may look at the size of the interpretive FoPNL, in the nature of a warning label, adopted by Argentina, Colombia, Mexico, Chile, and Venezuela, respectively. In each of these jurisdictions, the prescribed size of the warning label is based on the surface size of the main display panel of the product. The average size of a warning label for a single nutrient covers roughly between 4% to 5% of the principal display panel (which is 300 cm^2 in size).

Countries	Size of warning label	Single warning (on a 300 cm^2 panel)
Argentina	The size of the warning seal is proportional to the size of the principal display panel. Size of a single icon must be at least 5% of the product's front side. However, the FoNPL size is dynamic and depends on the number of such seals, which can often exceed the 5% area, and is calculated using a mathematical formula.	At least 5%
Chile	The size of the warning seal is proportional to the size of the principal display panel. Where the principal display size is more than 300 cm^2, the size of the warning seal is 3.5 cm x 3.5 cm.	About 4.1%
Colombia	The size of the warning seal is proportional to the size of the principal display panel. Where the principal display size is more than 300 cm^2, the size of the warning seal is 15 % of the label. [2023 Regulation which is currently enforced]	About 15%
Mexico	The size of the warning seal is proportional to the size of the principal display panel. Where the principal display size is more than 300 cm^2, the size of the warning seal is 3.5 cm x 3.5 cm.	About 4.1%

Venezuela	The size of the warning seal is proportional to the size of the principal display panel. Where the principal display size is more than 300 cm^2, the size of the warning seal is 3.5 cm x 3.5 cm.	About 4.1%

175. The effectiveness of an FoPNL is in its noticeability, legibility, speed, cognitive workload, and informativeness. There is no doubt that most of these factors point towards prominence. What we are trying to convey is that the information that a food is high in fat, sugar, or salt is already available to the consumer in the nutritional information table at the back of the pack. However, what the FoPNL does is not add any new information but essentially brings visibility, followed by ease of understanding. Thus, prominence is therefore the purpose for which an FoPNL exists.

176. Size is a determinant of prominence and noticeability. In a recent study[137] on consumer perspectives on FoPNLs, it was found that information on the nutritional information table was not understood by most low to medium-income participants. A few exceptions were found wherein purchases were made by individuals being on a particular diet, or for households comprising individuals diagnosed with hypertension or diabetes. The participants reported facing difficulties in comprehending the back-of-pack information owing to technical information, small size of informational text, and use of complex terms. In such circumstances, the utility of the back-of-pack information was

[137] *Supra* note 133.

found to be limited. The consumption of processed food was also linked to lack of awareness of resultant health hazards, inability to read and comprehend the information provided at the back-of-pack. The participants preferred clear fonts, bold lettering, and contrasting colours for the FoPNLs, and that it be placed in a prominent place, to ensure that consumers do not miss the information on it. In one another study[138] conducted on preferences for FoPNLs, it was found that consumers preferred larger unified labelling sizes, in some cases to be a quarter of the front package, for attracting consumers' attention.

177. The evidence that warning labels discourage the purchase of foods high in nutrients-of-concern comes from systems in which the warning is of the sizes described above. The essence of warning labels is in their binary nature[139] which discourages consumption of unhealthy foods. When such warning labels are overshadowed by brand names, images, claims of health and other marketing gimmicks, the overall impression about the product would be either formed by what is most prominent, or would, in all likelihood, be at variance with the warning disclosed.

178. In such circumstances referred to above, the FSSAI must determine the size of the warning label in proportion to the size of the front display panel, across food packages of varying sizes. A fixed dimension that is adequate on a small package may be illegible on a large one. This squarely applies to digital displays where the pack appears as a thumbnail. It is imperative that the warning label occupies a share of the

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[138] Beixun Huang et al, *Chinese Consumers' Heterogeneous Preferences for the Front-of-Package Labeling on Fresh Pork, A Choice Experiment Approach*, FOODS (2022), https://doi.org/10.3390/foods11182929.
[139] S.K. Singh et al, *Front-of-Package Labels on Unhealthy Packaged Foods in India: Evidence from a Randomised Field Experiment*, NUTRIENTS (2022), https://www.mdpi.com/1750852.

front display panel that makes it prominent, allows the message to be grasped at a glance, and reduces the cognitive effort required of the consumer at the point of purchase.

179. The FSSAI, in deciding the overall dimension, shall also account for the dimensions of the pictorial representation and the text within each hexagon, so that both remain legible even on the smallest permissible pack size.

d. Font Size of warning symbol

180. It appears from the response of the FSSAI that insofar as the words "High Fat", "High Sugar", and "High Salt" within the hexagons are concerned, it proposes to keep them in a font size "*at least one point larger*" than that which is used for the nutritional information at the back of the package. The petitioner would submit that this font size would make the warning prominent or conspicuous as required by Regulation 4(7) of the 2020 Regulations.

181. Guidance on the minimum height of the numerals and letters to be used in the nutritional table can be obtained from Regulation 6 of the 2020 Regulations, which states the manner in which the information required under the regulations is to be given on the principal display panel. It reads thus:-

> "***6. Principal display panel***. – *(1) The information required under these regulations shall be given on the principal display panel of the package or container and such information may be given in following manner, –*
> *[…]*

(3) The height of any numeral and letter required under these regulations, on the principal display panel shall be as shown in table below:

Area of the Principal Display Panel	*Minimum Height of numeral and letter in mm*	
	Normal Case	*When blown, formed, moulded or perforated on contained*
Up to 200 cm^2	*1*	*2*
Above 200 cm^2 to 500 cm^2	*2*	*4*
Above 500 cm^2 to 2500 cm^2	*3*	*5*
Above 2500 cm^2	*6*	*8*

Provided that the size of numeral and/or letters required for declaration of net weight, retail sale price, date of expiry or best before or the use by date (wherever and as applicable) and Consumer care details on the principal display panel shall be as provided in the Legal Metrology Act, 2009 (1 of 2010) and the rules made there under:

Provided further that the size of numeral or letter required for all declarations under these regulations on the crown or closure of returnable glass bottle shall not be less than 1 mm.

The width of the letter or numeral shall not be less than one-third of its height, but this proviso shall not apply in the case of numeral "1" and letters i, I and l."

(Emphasis supplied)

182. Regulation 6 states that the minimum height of the numeral and letter measured in millimetres would be dependent on the area of the

principal display panel and for a panel which has an area of 300 cm^2, the minimum height prescribed is two millimetre. Therefore, according to the FSSAI, for a panel which has an area of 300 cm^2, the minimum height prescribed for the words in the warning label would be three millimetre (one point larger).

183. The font size of the warning text within the hexagon must be such that they remain clear, prominent and readily legible (as required under Regulation 4(7) of the 2020 Regulations) alongside the pictograms. It is essential that the font size ensures that the words do not completely disappear or take a backseat within the hexagon. Understanding it in this context, it is essential that the FSSAI is mindful of two things. *One*, the text must be of a size which is legible, as the words explain what the picture stands for. The idea behind a introducing a warning label that includes both text and pictorial representation is for both to reinforce and not weaken each other. Therefore, while it is important that both exist, it is more important that they exist in a clearly visible manner and form.

184. *Two*, the size must be prescribed being mindful of the fact as to why the FoPNL was introduced. One of the reasons being that the nutritional information at the back of the package is not clear, prominent or easy to read for all consumers under natural conditions of purchase.[140] The same was also observed by the 15th Standing Committee on Consumer Affairs, Food and Public Distribution dealing with *Regulation of Packaged*

[140] Sudershan R Vemula, *Use of food label information by urban consumers in India – a study among supermarket shoppers*, PUBLIC HEALTH NUTRITION, 2013 17(9), 2104-2114; *See also,* Manisha Singla, *Usage and understanding of food and nutritional labels among Indian consumers,* BRITISH FOOD JOURNAL, (2010) 112(1) 83-92.

Commodities with Specific Reference to Sugar Content in Baby Products and Other Food Products. The Committee noted that the present labelling framework is largely based on numerical disclosures which are not understood by all the consumers. The importance of FoPNL as a device to disclose high-in ingredients was underscored, which would serve as an easily understandable guide "at a glance" at the point of purchase for all the consumers. The relevant extract from the report reads thus:

> "*The Committee, therefore, recommend the FSSAI to finalise and notify the Front-of-Pack Nutrition Labelling regulations within a defined and time-bound framework. The front-of-pack nutrition labelling should provide accessible,* ***at-a-glance*** *information to help consumers quickly and easily identify the nutritional status of a product. The Committee further recommend that the notified regulations incorporate simple, clearly visible and interpretative labelling mechanisms, including colour-coded indicators for sugar levels in all products, using a three-colour format (red, yellow, and green) to denote high, medium, and low sugar levels, or appropriate warning labels for products high in sugar. The Committee may also be apprised regarding the status of the same.*"
>
> (Emphasis supplied)

185. We may look at the font size of the text within the warning label as prescribed by the countries which have an interpretive FoPNL in the form of a warning label. For many of the following countries, the font size is fixed for scale for legibility and prominence. The FSSAI may take inspiration, or rather strong persuasive guidance, from these countries while prescribing the font size of warning symbol.

Countries	Font for a 300 cm^2 panel
Argentina	**Warning text:** Encode Sans Black, 19.3 pt.
Chile	No point size fixed, letters need to scale for legibility and in

	proportion with the seal as prescribed.
Colombia	No point size fixed, letters need to scale for legibility and in proportion with the seal as prescribed.
Mexico	**Warning text**: Arial Bold, 6.5 pt.
Peru	No point size fixed, letters need to scale for legibility and in proportion with the seal as prescribed.
Venezuela	No point size fixed, letters need to scale for legibility and in proportion with the seal as prescribed.

186. In light of the aforesaid, the draft regulations on FoPNL must be mindful of the aforesaid considerations and be in compliance with Regulations 4 and 6, more particularly, Regulation 4(7), which states that the labelling and contents thereof must be prominent, conspicuous and readily legible by the consumer under normal conditions of purchase. The size of the font used in the hexagon must also be decided keeping in mind the size of other promotional information presented on the front panels of the product. It would be stating the obvious, but the FSSAI must ensure that all the design of the FoPNL across all products is visually alike.

iv. Same label to be used for the description of beverage categories

187. The FSSAI's proposal provides that the red hexagon would be adopted, (i) to indicate whether the product is high in one or more nutrient(s)-of concern, and (ii) to describe the name/category of the beverages

according to the Food Categorisation System applicable for licensing/registration such as Carbonated Water, Non-carbonated water based beverages (Non-Alcoholic), thermally processed fruit beverages/Fruit Drink/Ready to Serve Fruit Beverages, Fruit Syrup/Fruit Sharbat, Synthetic Syrup for use in Dispensers for Carbonated Water, Synthetic Syrup or Sharbat, Fruit Based Beverage Mix/Powdered Fruit Based Beverage, Carbonated Fruit Beverages or Fruit Drinks, Carbonated Caffeinated Beverage, and Non-Carbonated Caffeinated Beverage (refer to Fig.9 of the FSSAI's proposal).

188. In reply, the petitioner has stated that if the warning-label is used to describe the name of the beverage or its category, irrespective of whether the beverage exceeds the threshold level of the nutrients-of-concern or not, then the purpose of the FoPNL would be jeopardised. This is because it would teach the consumers that the warning label does not necessarily signify that a product is high in anything, thereby diluting the other warnings which may be present adjacently in the same shape and form.

189. We agree with the petitioner that the consumers must not be left confused, either directly or indirectly, by a similar-looking hexagon that serves two different purposes or seeks to convey two different things. We have, thus far, repeatedly emphasised that the FoPNL must be tailored in such a manner that it reduces the cognitive workload of the consumer at the point of purchase. Using the same red hexagon to describe the beverage category would defeat such emphasis. This is not to say that a ready indication of the beverage category must not be provided at the front of the pack at all. In fact, upon considering the

illustrative list provided by the FSSAI, it is safe to say all these beverage categories also lead to some health penalties, big or small, and consumers must be made aware of what kind of beverage they are purchasing or consuming. All that we are trying to convey is that the same format/hexagon must not be used to signify that the product is high in one or more nutrients-of-concern and also describe the beverage category. Therefore, the FSSAI must come up with a different manner or format with which they would make known the category name of the beverage at the front of the package.

E. Discussion on certain other aspects of the FoPNL Proposal

i. Timeline for bringing regulations into force

190. The FSSAI, in its affidavit, has stated that it proposes to adopt a single-phase approach for the implementation of the FoPNL regime. It further stated that, for the purpose of issuing and finalising the draft regulations, a period of approximately four months would be reasonably required to follow the regulatory process as envisaged under the Act, 2006 and the concerned regulations. It has stated that, in the said time period, it will undertake the following tasks: *first*, it will notify the draft amendment regulations, which are mandatorily required to be published for a period of 60 days for inviting comments from stakeholders through domestic consultation and the WTO platform. *Secondly*, the comments received will be examined. *Thirdly*, the FSSAI will approve the regulation, and thereafter the final notification will be forwarded to the ministry for publication in the official gazette.

191. In this regard, we are of the view that the timeline proposed by FSSAI for bringing the regulations into force is consistent with the statutory process and is reasonable. We emphasise, however, that FSSAI must do everything in its power to ensure that this timeline is strictly adhered to. As we have stressed at several points in this judgment, the effective realisation of the fundamental rights of a large section of the population is closely tied to this measure. Every day of delay means that packaged foods continue to be sold without such labels, to the detriment of the rights to health, food and informed choice, respectively. Any delay in bringing out the draft regulations must, therefore, be avoided. The FSSAI should anticipate potential impediments and take active measures to ensure that they are resolved or adequately addressed. A specific concern has been raised that significant delay may occur in an effort to secure absolute consensus from all quarters. It has been specifically stated that the FBOs and those advocating for consumer interests/public health may never be able to see eye-to-eye on the FoPNL and all its components, and if an attempt is made to get everyone on board on all aspects, the process might be prolonged endlessly, and the finalised FoPNL may never see the light of day. We would be stating the obvious that, in such a scenario, the approach that is consistent with improvement of public health and consumer interest must be prioritised by the FSSAI to avoid any deadlock.

ii. Transition period

192. In para 53(xii) of our order dated 10.09.2026, our query to FSSAI read thus:

> *"xii. Once the final regulations making the FoPL mandatory come to be notified, whether a voluntary period for compliance is envisaged? If yes, for how long?"*

193. In response to the aforesaid question, the FSSAI submitted thus:

> *"39. That in response to query raised in para 53(xii) of the order dated 10.9.2026, it is submitted as informed in para 6 of this affidavit, there shall be voluntary implementation period of 365 days by Food Business Operators (FBOs). In the 48th meeting of the Food Authority, as a matter of policy, it was decided that for amendments relating to the FSS (Labelling & Display) Regulations, as well as any changes in labelling requirements specified in other food safety & standards Regulations shall come into force on 1st of July subject to a minimum transition period of 365 days from the date of notification. This time period has been provided in order to avoid any commercial hardships to the food business operators as they have pre-packaged material already printed in bulk. It may be noted that the intention of the FSS Act is also to take into consideration that any measure taken by FSSAI should not be restrictive of trade same is evident from section 18(l)(d) of the FSS Act 2006. This is also based on the recommendations of High-Level Committee of NITI Aayog to reform on timeline for labelling compliance."*

194. The FSSAI has submitted that the FBOs shall be granted a period of 365 days from the date of notification of the regulation to transition into the mandatory FoPNL regime. In other words, the intervening 365 days will be a "voluntary implementation" period. The same has been justified by the need to avoid commercial hardship and prevent any restrictions on trade for the FBOs who hold pre-packaged/produced items in bulk. On the other hand, the petitioner has submitted that a transition period must not be given and the FoPNL must become mandatory from the get-go.

195. We are unable to accept the petitioner's contention on this aspect. Chapter III of the Act, 2006, lays down some guiding principles for its implementation. There is no gainsaying to the fact that the guiding principles envisaged throughout under Section 18 have to be balanced. Clause (a) of sub-section (1) provides that the provisions of the Act, 2006, must be guided by the principle of protection of human life and health, and protection of consumers' interests. On the other hand, Section 18(1)(d) of the Act, 2006, requires that measures should be proportionate and should not be more restrictive of trade than what is required to achieve the appropriate level of health protection. Thus, this principle guides that commercial interests must be balanced with public health.

196. Viewed in light of these provisions, we do not think that granting a period of 365 days to transition from the present regime to the FoPNL regime is misconceived or unreasonable. However, there are certain pertinent aspects that need to be taken into account.

197. While we are, in principle, in agreement that the proposed transition period is reasonable, we are conscious of the laxity that may be shown, and the mischief that may be played, during the said period. *First and foremost*, the transition period must be strictly adhered to, and the FBOs should not ordinarily be granted any further extension. During the transition period, the FSSAI should ideally set sub-deadlines for its various stages and monitor whether they are being met. Where any FBO shows laxity, immediate measures must be taken to bring it into compliance within the transition period. Non-compliant FBOs should be dealt with strictly, in accordance with law.

198. *Secondly*, there is a risk that the FBOs may use this transition period to either print and distribute large quantities of packaging without the FoPNL, or scale-up production of their products in their present composition, well ahead of the deadline, so that unlabelled products remain available in the market much after the regulations come into effect. The FSSAI should act pre-emptively and put in place measures to prevent such misuse of the transition period. In other words, how to phase out the products without labels that have already been manufactured and are in circulation, and how to prevent the excessive manufacturing of products without labels during the transition period, must be charted out by the FSSAI with a clear plan. Measures to address such issues may be incorporated within the final regulations themselves or be enforced through other mechanisms.

199. These are only illustrations. The FSSAI must remain vigilant to these and any other means by which the FoPNL may be circumvented, and take proactive steps to ensure that the FBOs comply with the transition period and do not misuse it.

200. *Lastly*, the FSSAI describes the period as one of "voluntary implementation". We have no objection to FBOs adopting the FoPNL earlier, and indeed encourage it. The FSSAI shall make it clear that compliance is mandatory upon the lapse of the 365-day period, and that FBOs seeking to adopt the FoPNL sooner are permitted to do so with necessary regulatory support.

201. At this juncture, we wish to make one further observation. Concerns have been raised that certain multinational FBOs operating in India

adopt practices towards Indian consumers that differ from those they follow elsewhere, including in the composition of their products and in the information provided on their labels. Such companies comply with, and in some instances voluntarily adopt, FoPNL requirements in other jurisdictions, yet resist similar measures here. If true, such double standards are deeply troubling. A consumer in India is entitled to no less protection, and no less information, than a consumer in the United States or the United Kingdom. We would, therefore, urge such multi-national FBOs to adopt uniform standards across jurisdictions, and to extend to Indian consumers the same regard and respect for their health that they extend to consumers elsewhere.

iii. Curbing the use of artificial preservatives

202. In para 53(xi) of our dated 10.09.2026, we had posed a query to the FSSAI on the potential increase in the use of preservatives as a result of the implementation of the warning labels. Our question read thus:

> "*How would the FSSAI regulate the potential increase in the use of artificial preservative, emulsifiers etc., which may result as a consequence of the implementation of the FoPL?*"

203. In response to the aforesaid query, the FSSAI in its affidavit has stated that use of food additives, preservatives, emulsifiers, etc., is already regulated under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (the **"Additives Regulations**"). It has been further submitted that the existing authorisation process for additives is rigorous and is continuously reviewed.

204. The object of FoPNLs is to protect health by aiding informed choice. In the process of implementing the warning label, it may happen that the FBOs may reformulate the ingredients with an increase in the use of artificial preservatives, emulsifiers, additives, etc., in order to enhance taste and palatability, texture and structure, shelf life and microbiological safety, and heat transfer and processing stability. We say so because, admittedly, fat, sugar and salt perform these functions to some extent, small or large. The object of introducing FoPNL would be defeated if a new product is born with additives or preservatives whose effect on health is equally dangerous. In other words, if a product carries no warning because its sugar has been replaced by a substitute which is not healthier by any standard, a consumer who interprets the absence of a warning as an assurance of safety would be misled. This would, again, defeat the purpose of FoPNL, which is to secure public health.

205. The FSSAI, as the regulator, must ensure that FBOs do not conceal or alter the composition of their products, or add additives, artificial preservatives, emulsifiers, etc., in order to soften the effect of FoPNL. The introduction of a warning label must not become an occasion for reformulation that is hidden from the consumer, or that places the consumer at comparable or greater risk. In such circumstances, the FSSAI must monitor the reformulation of products after the FoPNL comes into force, and take appropriate actions in the form of revision of the applicable Regulations.

206. We take note of the FSSAI's response that additives are regulated by the Food Standards and Additives Regulations. However, there may be

ingredients and methods that the FSSAI may not have identified, classified, or added to the said regulations, which FBOs may use to replace fat, sugar, or salt. Such ingredients or methods may escape scrutiny because they do not appear in the regulations. Therefore, it is incumbent on the FSSAI to be on the lookout for this aspect.

iv. List of foods exempted from the FoPNL

207. Another key aspect which remains crucial to the implementation of any FoPNL system is the creation of a robust or exhaustive list of foods, both solid and liquid, which are to be exempted from the application of a warning label. In this regard, the FSSAI's affidavit dated 28.08.2026 stated thus:

> "*The following categories are proposed to be exempted from the above Front-of-Pack warning requirement:*
>
> *a. single-ingredient food products; and*
>
> *b. food products which are inherently rich in fat, sugar or salt, such as ghee, edible oil, salt, sugar, jaggery and honey, subject to the applicability of other requirements under the food safety and labelling regulations.*"

208. There is no doubt that the range of products that would fall under the exemption list would have to be laid out more extensively than what has been indicated hereinabove. Sufficient clarity or definition must be given to what would fall under "*single-ingredient food products*" and "*food products which are inherently rich in fat, sugar or salt*". Although, in the latter, it has been illustrated that food products which are inherently rich in fat, sugar or salt would include ghee, edible oil, salt, sugar,

jaggery and honey, yet it is plainly evident that this is only an inclusive list and not an exhaustive one.

209. Needless to say, any inclusion or exclusion of food products should be based on sufficient reason, scientific or otherwise. In no manner should the exemption list be formulated such that products which ideally must contain a warning label escape the FoPNL. At this juncture, all that we wish to convey is that the FSSAI must address this aspect keenly and with more thoroughness to provide enough guidance to the FBOs and consumers alike regarding which products are and are not subject to the FoPNL regime that would be brought into force.

F. Nutritional literacy

210. Nutrition literacy concerns the competency through which nutrition-related information is accessed, understood, evaluated and used. In other words, it is the understanding of, and the ability to use nutrition information. Nutritional literacy broadly consists of four interlinked competencies – **(i)** accessing nutrition-related information, **(ii)** understanding such information, **(iii)** evaluating its credibility, and **(iv)** using it to make decisions.

211. This discussion assumes importance as the preferences, routines and attitudes towards food that a child acquires during early life tend to stay with her into adulthood, and are difficult to alter later in life. Early literacy is a form of preventive health care. There is also a larger dimension to nutritional literacy; since food choices shape what the market is encouraged to produce, a nutritionally literate population

would be able to generate healthier food environments by generating demand for healthier food.

212. Education in this regard must be such that children can seek information, interpret it in context, assess the quality of advice and claims, and translate understanding into action when needed to make appropriate nutrition decisions. Nutritional literacy for children also must comprise inculcating the ability to assess the credibility, quality and relevance of nutritional information, to compare it with competing claims, and to recognise misleading commercial messages. It includes awareness of food labels and media literacy, which teaches children to interpret nutritional information, compare products, more particularly, serving sizes, ingredients, allergens, nutrient quantities and front-of-package labels, and recognise and evaluate commercial persuasion.

213. In this context, policies must not be designed only in a fashion where a child is able to name healthy nutrients which form part of a "balanced diet" but also towards whether the child understands the nature of the nutrients and how they are processed by the body, is able to interpret labels and media claims, and use the information provided gainfully. A child-focused framework would impart knowledge of nutrition in a manner suited to the child's stage of growth and comprehension, educate them on food groups and their nutritional value, a balanced diet, the role of meals and snacks, food safety, lifestyle, and basic food preparation. This also includes managing cravings and resisting unhealthy eating pressures, as well as explaining or defending choices. Without such a foundation, even a well-designed FoPNL would remain underutilised by its youngest consumers.

214. It is important to note that these competencies cannot be developed in isolation. Children's capacity to make such choices is often shaped by the support provided by families, schools, and the environment around both.[141] The Food and Agriculture Organisation (FAO) describes the school food environment as including the spaces and conditions in and around schools where food is available, obtained, purchased, and/or consumed.[142] A school is, thus, both a place where literacy can be taught and practiced.

215. In the aforesaid context, interventions by schools can take the form of curriculum-based education, experiential learning in school meals and canteens, and an interactive peer-based pedagogy. School meals and canteens provide a "living curriculum" by prompting discussion on issues, namely conscious food choices and food-waste habits. It is important that there is a consistent reinforcement of what is taught, as the canteen may contradict classroom teaching. The Japanese approach to school lunches, where the meal is treated as part of education, would be worth noting in this regard.[143] The practice of *Shokuiku* extends beyond imparting nutritional information to developing knowledge about food, the ability to make appropriate food choices and the capacity to practise healthy dietary habits.

216. At the same time, it is also an equal responsibility of the family to ensure that the child gets to ask questions, communicate, exchange

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[141] *Healthy Food Environment and School Food*, Food and Agriculture Organisation (FAO), https://www.fao.org/school-food/areas-work/food-environment/en/.
[142] *Ibid*.
[143] *Japanese school lunches and Shokuiku*, Ministry of Education, Culture, Sports, Science and Technology (Japan); *See also*, Basic Act on Shokuiku, (Food and Nutrition Education), Japan.

information, and apply what has been learned in everyday situations. The ability to identify reliable nutrition information and discuss it with members at home is central to this idea. It is an undeniable fact that, at an early age, children's food choices are substantially shaped by what parents know, purchase, prepare and encourage them to eat. The teachings shared with children at home must include understanding nutritional requirements, interpreting food labels, and identifying healthy ingredients. It needs no reiteration that such habits cannot be inculcated only through education. Such practical competencies can be gained through experience, more particularly, in a way where parents actively involve children in grocery shopping, selecting ingredients and eating together. At the end of the day, the aim should be that, even when a child is not under parental supervision, she should be able to make healthy food choices on her own.

217. In pursuance of our query as to how the Union of India propose to impart nutritional literacy to children, the FSSAI along with State/UTs have decided to undertake steps to spread awareness and sensitise people on the FoPNL, with the objective of enabling consumers to understand the information provided on food packages. As regards the proposed measures at school-level, the FSSAI submitted a list of initiatives already being undertaken to promote healthy dietary practices and reduce the consumption of HFSS foods. It has also brought to our notice two letters dated 01.06.2026, addressed to the Ministry of Education and the Central Board of Secondary Education ("**CBSE**"), proposing inclusion of a dedicated chapter on the *Eat Right India Programme*, and nudging schools to acquire Eat Right School

certification in order to encourage schools to actively promote health and nutrition awareness. The Food Safety and Standards (Safe food and balanced diets for children in school) Regulations, 2020 ("**Safe Food for Children Regulations**"), were also brought to our notice, which cement the responsibilities of School Authorities, State Food Authority, and Department of School Education respectively, to ensure safe food and balanced diets on school premises.

218. In response to the aforesaid, the petitioner submitted that the affidavit does not state any curriculum change and the aforementioned measures are largely existing awareness campaigns. Thus, they urge for a comprehensive review of the syllabus and co-curricular space across grades to teach nutritional literacy.

219. From the careful perusal of the response of the FSSAI, it can be safely said that measures being undertaken at school-level are theoretical and administrative in nature. For instance, the inclusion of some chapters, or encouraging schools to acquire some certification. However, what we are trying to convey is that unless practical measures are undertaken, for instance, on how food-labels are read and understood, how unhealthy ingredients on a package are identified, and how commercial claims are analysed, as elaborately explained in the foregoing paragraphs, the theory would be of no use. In simpler terms, knowledge that is taught but never practised does not become a habit.

220. We also do not say that provisions as regards accountability are absent. The Safe Food for Children Regulations sufficiently ensure safe food for children in and around school premises. The said regulations place the

responsibility on the school authorities to ensure that food products high in saturated fat, trans-fat, sugar, or sodium are not sold in school premises.[144] A warning to this extent is also required to be prominently displayed at the gates of the school.[145] In the same vein, advertisement and marketing of HFSS foods is prohibited on the school campus and in the area within fifty meters from the school gate.[146] In this regard, a separate provision prohibits FBOs from marketing or selling HFSS foods through any promotional or non-promotional means.[147] The Regulations also require the Food Authority or the State Food Authority to encourage schools to take measures to promote safe foods and their serving size, balanced diets inclusive of local and seasonal food and no food wastage.[148] All these regulatory measures would be fruitful only when the authorities upon whom duties have been imposed by Regulation 6 of the Safe Food for Children Regulations duly perform their duties.

221. Thus, nutritional literacy is an investment in the health and productivity of the country. The regulations and education go hand-in-hand. On one hand, the regulations keep unhealthy food away from children, whereas on the other, literacy equips the child to make sound choices wherever the regulations do not reach. The FoPNL is the point at which the two meet. We therefore expect the authorities to move from theory to practice.

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[144] Regulation 3(5), Food Safety and Standards (Safe food and balanced diets for children in school) Regulations, 2020.
[145] *Ibid*, Regulation 3(6).
[146] *Ibid*, Regulation 5(1).
[147] *Ibid*, Regulation 5(3).
[148] *Ibid*, Regulation 4(1).

V. CONCLUSION

222. We have exhaustively discussed the constitutional scheme, including the fundamental rights and the positive obligations imposed on the State, the statutory framework as regards the issue at hand, and the recognition by the Union and the FSSAI together that an interpretive FoPNL constituted a reasonable measure to realise the fundamental and statutory rights in the face of the NCD public health crisis and consumption of HFSS foods/UPFs. In the interest of preventing the very object and purpose of the warning-style FoPNL proposed by the FSSAI from being undermined, we find it appropriate to direct the following:-

(a) As regards the nutrients-of-concern and threshold limits :

(i) The FSSAI shall ensure that the FoPNL treats "**total sugars**" and "**saturated fat**", rather than "**added sugar**" and "**added fat**", as the nutrients-of-concern, alongside "**salt**", in alignment with its own long-standing consensus existing prior to the DGI, 2024.

(ii) In view of direction (a)(i) above, the FSSAI shall revisit and reformulate the threshold levels for each nutrient-of-concern. The values provided under Table 15.1 of the DGI, 2024 shall not be adopted as they stand, since they were calculated with reference to "added sugar" and "added fat", and not "total sugars" and "saturated fat".

(iii) In fixing the threshold levels under direction (a)(ii) above, FSSAI shall ensure, based on evidence, that they are neither

too low nor too high. Thresholds set too low would result in almost all packaged food products carrying a warning label and thereby desensitise consumers and induce 'label fatigue'. The threshold levels presently on record fall in this category. Thresholds set too high, on the other hand, would allow most products to escape the label altogether, leaving consumers unknowingly exposed to harmful levels of saturated fat, sugar, and salt.

(b) As regards the format of the front-of-pack nutritional labelling:

(i) The FSSAI shall ensure that each hexagon in the FoPNL carries a **standardised pictorial representation** of the nutrient-of-concern, together with the corresponding words "High Fat", "High Sugar" or "High Salt", as the case may be.

(ii) The FSSAI shall ensure that the FoPNL provides for a **separate hexagon for each nutrient-of-concern**, each containing the words "High Fat", "High Sugar", "High Salt", respectively alongside their corresponding pictograms, rather than a single combined hexagon.

(iii) The FSSAI shall fix the size of each hexagon in proportion to the principal display panel of the package, such that each hexagon occupies not less than 4%/5% of that panel as evidenced by international practices, unless explicit reasons to the contrary exist as stated in Section 18(2)(a)(ii).

(iv) The FSSAI shall also prescribe the font size of the text within each hexagon such that it is prominent, conspicuous and readily legible to consumers when viewed together with the pictorial representation of each nutrient-of-concern under normal conditions of purchase and use.

(c) As regards sweetened beverages that do not exceed the threshold limits for the relevant nutrient-of-concern, the FSSAI shall ensure that no front-of-pack label which is identical or deceptively similar, in appearance, form or shape, to the warning label required for beverages that exceed the threshold limits, is displayed for the purpose of denoting its food category.

(d) The FSSAI shall ensure that a robust and exhaustive list of foods, both solid and liquid, which are to be exempted from the application of the FoPNL is provided, with sufficient clarity and reason, while simultaneously ensuring that products which must be included in the framework do not escape the warning label.

(e) As regards artificial preservatives and other additives, the FSSAI shall closely monitor the reformulation of products following the introduction of the FoPNL. Where it finds that such additives are being used to offset or defeat the objective of the FoPNL, the FSSAI shall take appropriate measures, including, where necessary, revising the existing regulations in accordance with the statutory process, to curb such use.

(f) The FSSAI shall bring the regulations into force within the timeline proposed by it and shall take all necessary steps, including pre-emptive steps, to ensure that this timeline is strictly adhered to.

(g) As regards the transition period, the FSSAI shall take all necessary steps to prevent its misuse and to monitor whether the FBOs are on track to comply with it. No further extension shall ordinarily be granted, and non-compliant FBOs shall be dealt with strictly, in accordance with law.

(h) As far as nutritional literacy is concerned, the Union of India shall ensure that existing regulations, including the Food Safety and Standards (Safe food and balanced diets for children in school) Regulations, 2020, are implemented strictly, both in letter and spirit. The Union of India shall also ensure that apart from bringing in changes and additions into school curricula, the pedagogy provides children opportunities to practice nutritional literacy in the form of other activities, including but not limited to, interactive workshops, extra and co-curricular activities, etc.

223. Registry shall notify this matter after a period of ten weeks for the FSSAI to share the progress on the draft regulations and place an affidavit in that regard before this Court. For this limited purpose, the matter shall be treated as part-heard.

224. Registry shall forward one copy of this judgment to the Principal Secretary, Ministry of Health and Family Welfare, Government of India.

…….. J.
(J.B. PARDIWALA)

…….. J.
(K. VINOD CHANDRAN)

New Delhi.
26th November, 2026.