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Legal Background of Food Safety Violation Internationally and in Saudi Arabia



الخلفية القانونية لانتهاك سلامة الغذاء دولياً وفي المملكة العربية السعودية

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Abstract

Tackling food safety violations worldwide in general and in the Kingdom of Saudi Arabia in particular is a major global concern that requires ongoing evaluation and revision of the food control systems and laws.

This paper addresses the legal classification of food safety violations by reviewing and examining several cases of food safety violations in different countries, including Saudi Arabia.

The study is based on theoretically driven research methods. It examines primary and secondary resources on the topic such as laws, precedents, academic books, journal articles and reliable websites.

This paper concludes with some recommendations that could contribute to minimizing (if not preventing) food safety violations.

المستخلص

إن انتهاكات السلامة الغذائية في تزايد مستمر في العالم بشكل عام وفي المملكة العربية السعودية بشكل خاص وذلك لعدة أسباب منها زيادة معدلات النمو السكاني وزيادة الاعتماد على الغذاء المستورد، والإقبال الكبير على الرحلات الدينية للحج والعمرة كما هو الحال في المملكة العربية السعودية ولذلك بات التصدي لانتهاكات السلامة الغذائية محل اهتمام كبير دولياً ومحلياً.

تهدف هذه الورقة إلى تسليط الضوء على التصنيف القانوني لانتهاكات السلامة الغذائية في العالم وتصنيفها إلى ثلاثة أنواع: أولها الانتهاكات العمديّة التي ينتج عنها أضراراً، وثانيها الانتهاكات غير العمديّة الناتجة عن الإهمال والتي ينتج عنها أضراراً أيضاً، وثالثها الانتهاكات غير العمديّة والتي لا ينتج عنها أضراراً ومع ذلك يكون فاعلها عرضةً للمسؤولية القانونية. ويُعرف هذا النوع بانتهاكات المسؤولية القانونية المشدّدة.

تعتمد هذه الورقة على البحث النظري المبني على المصادر الأولية والثانوية من تقارير منظمات دولية وقوانين واجتهادات قضائية وكتب وأوراق ومقالات علمية ومواقع إنترنت.

وتختتم ببعض التوصيات التي يمكن أن تسهم في تقليل (إن لم يكن منع) انتهاكات سلامة الأغذية.

Keywords: Forensic Science, Islamic Sharia, Food Safety Violation, Civil Liability, Strict Liability.

الكلمات المفتاحية: علوم الأدلة الجنائية، القانون، انتهاكات السلامة الغذائية، المسؤولية القانونية، المسؤولية المشدّدة.



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1. Introduction

The right to adequate food is a recognized human right by the Universal Declaration of Human Rights (1948) in clause 1 of article 25 that states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...” [1]. It is also recognized by the Convention on the Rights of the Child (1989) in its article 24 clause 2.c. The article emphasizes the right to adequate food and aims to: “...combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water” [2]. The right to adequate food is also emphasized by the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) whose article number 11.1 states: “Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing” [3]. Therefore, governments have a legal obligation to provide all individuals within their borders with adequate food. Not only does this mean to provide their people with means of survival but also to produce food that is appropriate for an acceptable healthy life. Recognizing the right to adequate food requires “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights” [4]

Tackling food safety violations worldwide in general and in the Kingdom of Saudi Arabia in particular is a major global concern that requires ongoing evaluation and revision of food control systems as a whole. During the past few decades, attention has been given to food safety violations; however, more research is needed to evaluate the gravity of food safety violation internationally and in Saudi Arabia. The purpose of this paper is to examine food safety violations in different countries, including Saudi Arabia. The study is based on theoretically driven research methods. It analyzes specific cases of food safety violations

by examining primary and secondary resources. Finally, it concludes with recommendations that could contribute to minimizing (if not preventing) food safety violations.

2. The legal Classification of Food Safety Violations

From a legal perspective, food safety violations are classified into three categories: intentional/unintentional violations, and strict liability violations. There are penalties for the intentional and unintentional violations which result in harming public health. The penalties also extend to violating food safety, even without causing any damage (strict liability) [5].

2.1 Intentional Food Safety Violations

Intentional food safety violations are the most serious violations because they have the most culpable form of mens rea (mental element of a crime) [5]. The defendant not only knows that his/her act or omission will cause grievous harm to public health, but he/she intends to do so [5]. This paper reviews several cases to show that intentional food contamination may take place for different purposes.

2.1.1 Food Contamination as a Military Weapon

As early as 590 BCE, food contamination was implemented as an armament [6]. In the war between Athens and Kirrha of the Amphictyonic League, the Athenian army successfully used the root of the plant ‘helleborous’ to poison the stored water of the Amphictyonic League, causing its people a gastrointestinal illness which made them sick, weak, and unable to defend their city, which resulted in the Athenians winning the war and occupying the city [6]. Reviewing the related literature on this case did not show that this act resulted in any legal action or penalties. The reason could be that Athenians won the war and being in that position gave them the upper hand, so they could not be held responsible by the less powerful nation.

2.1.2 Food Contamination to Achieve Terrorist Purposes

Intentional contamination of food for terrorist purposes



has been a serious threat to public health in the 21st century [7]. It happens via the most dangerous type of terrorism called 'bio-terrorism' [7]. The ease of trade movement between countries worsens the situation [8]. The availability of the biomaterials on the black market makes it easier for terrorists to acquire these biological agents by various methods such as buying or smuggling, etc. [7]. In December 2003, following the revelation that a cow was infected with mad cow disease in the US, there was panic as to whether terrorists were able to taint a portion of the food supply [7]. It was later stated that the cow had originated in Canada and had eaten tainted feed [7]. Following this, dozens of countries banned the importation of beef from the United States. This incident raised widespread panic among government officials, industry authorities, analysts and consumers about the ability of terrorist groups to taint the food supply in any country [7]. This fear stems from the fact that some terrorist groups had already undertaken attacks against food supplies in the USA. This was clear in a case where terrorists committed deliberately illegal and unethical food contamination by tainting salad bars with salmonella in Dallas [9]. In 1984, members of the religious Buddhist cult, the Rajneeshee, wanted to win the local elections in the county of Dallas. Their aim was to make their opponents very sick so that they could not go for voting [9]. They put the *Salmonella typhimurium* in blue-cheese dressing, table-top coffee creamers and potato salads at 10 local restaurants and a supermarket, causing 751 cases of salmonellosis. It was the first large-scale bioterrorism attack on American soil [9]. A criminal investigation was opened and continued until 1986. It revealed that members of the Rajneeshee had deliberately contaminated the salad bars. In the same year, the defendants pleaded guilty and were sentenced to four and a half years in prison [9].

2.1.3 Food Contamination to Undermine a Food Corporation's Reputation

Another reason for intentional food safety violations is to undermine the reputation of food corporations for different reasons such as unmet demands by extortionists. There was a £70,000 blackmail plot to put a poisonous weed

killer into two bottles of Coca Cola and distribute them with other normal bottles throughout the United Kingdom in 2005 [10]. The blackmail demand was sent to the Vice President of the Coca Cola Company in Britain and the case was reported to the police [10].

Another example is a criminal gang which blackmailed Cadbury Schweppes for £80,000 by distributing some of the company's product treated with lethal doses of poison. The gang sent the company an envelope containing a small amount of strychnine which was enough to kill up to 100 people and a note saying that the poison had been put into 6,000 packets of Cadbury's Smash potato granules [10]. It was impossible to check whether the company's product contained this lethal substance, because the product had been distributed on such a wide scale. However, the blackmailers were arrested when they attempted to collect a suitcase which they thought contained money [10].

In analysing the above examples, it can be said that organised criminal syndicates behaved in a confident manner when they threatened to destroy the company's reputation unless their demands were met. The reported reason for their confidence was that they had someone inside the company who was able to cooperate willingly for money according to their instructions [10]. In other words, blackmail in these examples is invariably pre-planned. Blackmailers often conspire with one of the victim company's employees to gather inside information [10]. It can be said that food safety violations in these two cases not only caused harm to public health but also to the economic prosperity of the country.

2.1.4 Food Contamination for Profit

This is called 'economically motivated adulteration' [11], and it is sometimes called 'food fraud' [11]. For this particular purpose, the focus of the paper will be on the case of Saudi Arabia as an Islamic country that implements Sharia law. Food adulteration was tackled as early as 1440 years ago in Islamic society, through the consumer protection policy [12]. The general principles of consumer protection were derived from the sources of Islamic law, i.e. the Holy Quran, Sunnah, Ijma (consensus), and Qiyas



(analogy or precedent) [12]. With this in mind, Sharia law condemns and strictly forbids all practices that violate food safety and may cause any harm to public health. A Muslim is ethically forbidden from dealing with any transaction that includes food products and services that are contrary to Islamic principles. The Sharia considers such practices as haram practices (unlawful practices) [12] and the money proceeded from them is considered as ill-gotten money, too. For instance, selling products such as pigs, carrions (dead meat), and adulterated food is not allowed in Islam. Accordingly, producers who manufacture haram food, and dealers and suppliers of such products are criminally and civilly liable in Sharia law [12].

Categories of crimes in Islam

According to Sharia law, there are three categories of crimes; Hudud, Qisas, and Tazir [13]. Hudud crimes are crimes against God, and their punishments are fixed in the Quran and Sunnah [13]. Qisas crimes are crimes against persons, including murders and intentional assaults of which the offender and the victim can settle for Qisas (retaliation) or diya (financial compensation) [13]. Crimes and punishments of Hudud and Qisas are fixed in the Quran and Sunnah. However, there are some crimes that were recognized in the Quran and Sunnah, but their punishments were not defined. Such crimes constitute the third category of crimes in Sharia law called Tazir [14]. Under the Tazir category, a determination of the penalty, whether it is a fine or imprisonment or a combination of both, is left to the judge based on a variety of factors such as who committed the crime, upon whom the crime was committed, and the motive behind the crime, etc. [14].

Food safety violations in Islam

Food safety violations fall within the scope of Tazir. All business activities including food contamination based on deception are condemned and prohibited by Sharia law. The Prophet Muhammad (Peace be upon him) asked his followers to refrain from conducting such unethical practices on many occasions by saying: "He who defrauds does not belong to us" [15] Moreover, Abu Sa'eed al-Khudree,

one of the prophet's companions, (May Allah be pleased with him) reports:

"I heard the Messenger of Allah (Peace be upon him) say, Whosoever of you sees an evil, let him change it with his hand; and if he is not able to do so, then [let him change it] with his tongue; and if he is not able to do so, then with his heart — and that is the weakest of faith." [16]. Food safety violations under this condition are considered evil acts that need to be seriously addressed.

In another hadith, it is narrated: "The Messenger of Allah (Peace be upon him) happened to pass by a heap of eatables (corn). He thrust his hand in that (heap) and his fingers were moistened. He said to the owner of the heap of eatables (corn), "What is this?" "Messenger of Allah, these have been drenched by rainfall." He (the Prophet) remarked, "Why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower)." [15]. It can be said that food safety violations, including violations intended to make profit, have not only been recognized in Islam but have not also been tolerated by Islam. Therefore, different Tazir punishments have been applied to such violations.

The Hisbah in Islam

In order to achieve socio-economic justice for people in the ambit of the Sharia [17], the Hisbah (audit/accountability) system was established by the Prophet Muhammad (Peace be upon him) and further implemented by the Caliphs to regulate the economic life of people in compliance with Islamic injunctions [12]. Al-Muhtasib (the inspector) in the Hisbah system is a reliable person who is responsible for inspecting the economic market to ensure the righteous conduct of individuals in order to protect consumers in particular and the public interest in general from any malpractices such as food adulteration [12]. In the event of food safety violation occurrence, Al-Muhtasib is authorised to take cognizance against the violator [12]. Furthermore, Al Muhtasib can impose penalties on the violator, depending on the degree of the violation, such as destroying the adulterated food, suspending or preventing the violator from



practicing his profession, naming and shaming the violator, and an imprisonment penalty in case of recidivism [18].

In one historical account, Caliphate Omer Ibn Khattab was checking the marketplace and he saw a man who diluted milk with water to sell it to achieve more profit. Caliphate Omer spilled the diluted milk out [19]. Omer Ibn khattab would punish anyone who worked in the market and did not know the rulings by saying that: “No one who should sell in our marketplace except one who has understanding of the rules of Islam, otherwise he is going to consume riba (usury) whether he wants to or not.” [19]. In order to prevent corruption and other illicit practises including food adulteration, Caliphate Omar established regulations for all merchants and workers in the market. Such regulations guided merchants in their transactions, exchanges, and other trade practices that guarantee the stability of the market and the righteous trade practices of people [19].

Food fraud in Saudi Arabia

Saudi Arabia (earlier called Najd and Hijaz) has been following Sharia law since the advent of Islam. According to Sharia law, any food safety violation falls within the scope of a ‘Tazir’ penalty. The penalties for food safety violations in modern Saudi Arabia are restricted to fines and destruction of the contaminated food [20]. However, due to the surge in the number of food safety violations, the Saudi Commercial Fraud Act has been modified to make the penalties harsher [20]. For example, anyone found guilty of displaying foodstuffs that are harmful or adulterated or banned will be imprisoned for up to 10 years and fined up to 10 million SAR or both [20]. Penalties will be doubled with the repetition of each violation. It is also stated in Saudi law that harmful, adulterated or rejected foodstuff will be taken off the shelves and destroyed at the expense of the violators [21]. Those involved in the sale of products without the permission of the authorities will be fined 50,000 SAR and their shop may also be closed [21].

2.2 Unintentional Food Safety Violations

The defendant under this type does not commit the food

safety violation with culpability but with gross negligence [5]. Under this title, the paper will review the case of ‘Sarah Lee hotdogs deli meat’, the case of the ‘peanut scandal’ in the USA and some cases in Saudi Arabia.

Sarah Lee hotdogs and deli meat

In 1998, the Sarah Lee Corporation unknowingly produced and distributed tainted hotdogs and deli meat which made many consumers fall ill, caused six miscarriages and was linked to 15 deaths [22]. Upon investigation, it was evident that the corporation committed gross negligence and therefore pleaded guilty to the misdemeanor of selling contaminated meat. The corporation was fined a total of 200,000 USD and gave 3 million USD to Michigan State University for food safety research [22]. The corporation also paid 1.2 million USD to settle a civil lawsuit over meat sold to the government and to cover its investigation costs [22].

Peanut scandal

In late 2008 and early 2009, a multi-state outbreak of Salmonella Typhimurium was linked to an institutional brand of peanut butter and other peanut-based ingredients from a single firm [23]. The outbreak made more than 700 people ill in 46 states, and it may have contributed to the deaths of nine people. The Food and Drug Administration (FDA) found out that the Peanut Corporation of America (PCA) did not clean its plants properly and did not take adequate care to prevent food contamination [23]. In February 2013, the US Department of Justice charged the employees of the PCA, including its president and owner Stewart Parnell, in 76 indictments including: “...failing to alert customers of presence of salmonella, fabrication of certificate of analysis (COAs) and attempted to obstruct FDA investigation” [23].

Food poisoning incidence in Saudi Arabia

Food poisoning is becoming a paramount health issue in Saudi Arabia [24]. There are several reasons behind the increase of food poisoning such as the increased tourism for the Omra and Hajj pilgrimages, the rapid growth in



population levels, and the high reliance on imported food. Saudi Arabia is one of the world's largest agri-food importers, since on average it imports 80% of its food needs [24]. This is due to the fact that agriculture growth is limited because of the scarcity of water resources [24]. Therefore, ensuring the safety of the large amounts of imported food creates a great challenge for the regulatory bodies. With this in mind, there has been a steady increase in food poisoning incidents in Saudi Arabia, especially during the Omra and Hajj pilgrimages.

For example, in 2006 during the Hajj pilgrimage, a group of male soldiers were diagnosed for gastroenteritis after eating rice tainted with *Bacillus cereus* and *Clostridium perfringens* [25]. In 2010, a wedding ceremony took place in Sulyyel (a small town near Riyadh). People who attended the wedding ceremony had a meal and after 21 hours suffered from gastroenteritis and were hospitalized. The investigation done in Sulyyel hospital showed that *Salmonella* was the cause of the food outbreak [25]. It can be said that food safety violations, in these kinds of cases, seem to be unintentional violations and are the most common violations in Saudi Arabia. Yet, eating unsafe food can make people ill or even kill them. This poses the question as to who is legally liable for foodborne illnesses? Laws address this issue through establishing the civil liability (civil claim) for foodborne illnesses. This is called a "tort" [26]. To explain, "civil liability determines the responsibility of an individual or entity has for harm caused by an illness or injury" [26]. Accordingly, the injured individual (plaintiff) must prove that the responsible party (defendant) failed to fulfill the "duty of care", showing that his/her failure to protect the injured individual was the cause of the illnesses (result). In doing so, the plaintiff can claim for compensation for a loss or injury caused by the defendant [26].

2.3 Strict Liability Food Safety Violations

Under this title, mens rea (the mental element of a crime) plays no role [5]. Strict liability is understood as an absolute liability and is aimed at business related to public health and safety [5]. To explain, strict liability is a legal

concept that stands for the idea that "someone can be held liable even if he or she did not cause the problem leading to the injury" [26]. Therefore, there is no need for the prosecution to prove mens rea by the accused [5]. Strict liability offences were first found in a few regulatory statues relating to adulteration of foodstuff and tobacco during the eighteenth century in the UK. In the nineteenth century, regulatory legislations relating to protection of food safety as one of many public safety and welfare matters increased [5]. The *Callow v Tillstone* case is an example of the strict liability offence.

Callow v Tillstone (1900)

In 1900 in Britain, a butcher asked a vet to inspect a carcass and examine whether it was suitable for human consumption. Upon examination, the vet confirmed the carcass' suitability and soundness for human consumption. The butcher offered the meat for sale. Later, the butcher's shop was inspected, and it was found out that the meat was not suitable for human consumption [5]. Although the butcher worked to ensure the meat being sold was fit for human consumption and the vet was negligent in his examination of the carcass, the butcher was convicted of offering unfit meat for sale [5]. With this in mind, "strict liability raises standards where the health and safety of the public is at stake and enforces those in a position of responsibility to take extra precautions" [27]. It is often argued that imposing strict liability will lead to people taking more care and will act as a deterrent to others. Strict liability ensures more convictions are secured, and it does not allow people to escape liability through a fabricated account of their state of mind [27]. Although the application of strict liability may seem unfair or tough, it is still necessary because it forces the defendants to take every possible precaution.

3. Conclusion and Recommendations

Food safety violations whether intentional, unintentional or of a strict liability can undermine the health of a lot of people in a very short time. Therefore, if the infrastructure of the food supply system is not improved in



parallel with advanced globalized food and with population increase, food safety violations will increase more, and public health will be at risk accordingly.

The purpose of this paper was to examine different levels of food safety violations through examining several cases in different countries. It concluded that despite the important achievements on several fronts in the ongoing fight against food safety violations, there is still a long way ahead. The important question is what should be done to eliminate food safety violations? In response to the question, it is relevant to suggest some recommendations on a national and international level as follows:

3.1 Legislative initiatives

Criminal liability for food safety violations could be established not only when the violation is intentional or unintentional but also when the violation constitutes a strict liability offence. On the other hand, in some regions that depend on imported food such as Saudi Arabia, it is very important to enact a special act to regulate all issues related to globalized food similar to the Food Safety Modernization Act (FSMA) that was established in the USA in 2011 to safeguard the US domestic food supply [28]. According to the FSMA, all food processing and food transportation companies should be fully aware of the Food Safety Modernization Act [28].

3.2 Litigations

The action suits against several restaurants in Saudi Arabia were a turning point in litigation against food safety violations. Announcing criminal penalties in judgments of cases on food safety violations to the public would be an important deterrence to food safety violations.

3.3 Awareness campaign

Minimizing food safety violations should be the social responsibility of everyone rather than the legal responsibility of certain people; this should be achieved through awareness campaigns on food safety violations at different

levels in schools and universities, and on television channels and social media. In this regard, people should report any food safety violation they notice in a café, restaurant, or supermarket, etc. In order to achieve this goal, it is suggested that the government should modify the law in place that imposes financial punishment on the accused in order to specify part of these fines as rewards for the informer.

3.4 Religion and ethics

In a society putting emphasis on Islamic values in general and on business ethics in particular, morality should be a strong measure that reduces food safety violations. This again could be achieved in Saudi Arabia through religious institutions such as mosques during sermons and religious speeches. Some of the suggested topics can be on the importance of avoiding food safety violations, since Muslims believe that such violations are against the principles of Islam.

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