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REGULATING ULTRA-PROCESSED FOODS IN INDIA: LESSONS FROM 3S AND OUR HEALTH SOCIETY V UNION OF INDIA

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ABSTRACT

The increasing consumption of ultra-processed foods (“UPFs”) has raised concerns about their potential contribution to growing public-health problems, including obesity and non-communicable diseases. India’s existing food regulatory framework, however, primarily regulates products through their nutritional characteristics, particularly their levels of fat, sugar and salt, rather than the degree of processing involved in their production. This paper examines whether such a nutrient-centric approach is adequate to address the concerns associated with UPFs, particularly in light of *3S and Our Health Society v Union of India*. It argues that while nutrient-based regulation remains necessary, it does not fully capture the distinct concerns raised by ultra-processing. At the same time, treating UPF status as an independent indicator of harm may lead to over-inclusive and disproportionate regulation. The paper therefore proposes a hybrid, risk-proportionate framework in which processing characteristics supplement, rather than replace, existing nutrient-based standards. It further examines the role of front-of-pack labelling, restrictions on child-directed marketing, food environments and periodic scientific review as complementary regulatory measures. The paper concludes that India should move towards a differentiated regulatory model in which the intensity of intervention corresponds to the nature and degree of demonstrated risk. Such an approach can strengthen public-health protection while preserving consumer autonomy, regulatory certainty and the need for evidence-based policymaking.

I. INTRODUCTION

The increasing consumption of ultra-processed foods has raised concerns about whether existing food safety and labelling regulations are capable of addressing the health risks associated with modern food production and consumption. In India, regulatory interventions have largely focused on the nutritional composition of food, particularly its levels of sugar, salt

and fat, with the regulation of foods high in these nutrients forming an important part of the existing framework.¹ Ultra-processed foods, however, present a more complex regulatory problem. Their potential health implications are not limited to the presence of individual nutrients but may also be associated with the degree and nature of industrial processing, the use of additives and the formulation of products intended for consumption.² This raises an important question as to whether a framework centred primarily on nutritional content can adequately address the concerns associated with ultra-processed foods. The Supreme Court's decision in *3S and Our Health Society v Union of India* provides an important context for examining this question.³ While the proceedings primarily concern the regulation of foods high in fat, salt and sugar and the effectiveness of front-of-package labelling, the Court's engagement with scientific evidence, nutritional thresholds and public health regulation highlights the broader challenges involved in determining what forms of food regulation are necessary and proportionate.⁴

This paper therefore examines whether India's existing regulatory framework is equipped to address the distinct concerns associated with ultra-processed foods. It first distinguishes ultra-processed foods from foods that are high in fat, sugar and salt, and examines why a purely nutrient-based approach may not adequately capture the concerns associated with ultra-processing. It then evaluates India's existing food regulatory framework and considers whether it is equipped to recognise and regulate UPFs as a distinct category. The paper next examines *3S and Our Health Society v Union of India* and considers what the decision indicates about scientific evidence, public health and regulatory intervention in the food sector. It thereafter develops a risk-proportionate framework for UPF regulation, focusing on the relationship between processing characteristics and existing nutrient-based standards, while considering measures such as labelling and restrictions on child-directed marketing. Finally, the paper considers the limits of UPF regulation, including scientific uncertainty, consumer autonomy, affordability and the appropriate boundaries of judicial intervention, before proposing a calibrated regulatory approach for India.

¹ *Food Safety and Standards Act 2006, ss 16 and 23; Food Safety and Standards (Labelling and Display) Regulations 2020, reg 5(3).*

² *Carlos A Monteiro and others, 'Ultra-Processed Foods: What They Are and How to Identify Them' (2019) 22 Public Health Nutrition 936; Carlos A Monteiro and others, 'Ultra-Processed Foods and Human Health: The Main Thesis and the Evidence' (2025) 406 The Lancet 2667.*

³ *3S and Our Health Society v Union of India MA No 1177 of 2025 in WP (C) No 437 of 2024, 2026 INSC 988 (SC, 10 September 2026).*

⁴ *On the structured test of proportionality applied by the Supreme Court, see Modern Dental College and Research Centre v State of Madhya Pradesh (2016) 7 SCC 353; Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.*

II. UNDERSTANDING THE REGULATORY PROBLEM: HFSS ≠ UPF

The distinction between foods high in fat, salt and sugar and ultra-processed foods is central to understanding the limits of a purely nutrient-based regulatory approach. Although there may be considerable overlap between the two categories, they are based on different methods of classification. HFSS regulation is primarily concerned with the nutritional composition of a product and seeks to identify foods that contain excessive amounts of particular nutrients.⁵ The focus is therefore on the quantity of nutrients that a consumer is exposed to through the consumption of a particular product. The concept of ultra-processing adopts a broader approach by examining the manner in which food is industrially formulated and processed. It takes into account the use of substances and techniques that are uncommon in ordinary household preparation, including certain additives, flavourings and other ingredients used to modify the taste, texture, appearance or shelf life of a product.⁶ The two categories therefore cannot be treated as interchangeable. A product may contain high levels of sugar, salt or fat without necessarily being ultra-processed, while an ultra-processed product may not always cross the threshold prescribed for any one of these nutrients.⁷

This distinction becomes particularly significant when considering the limitations of nutrient thresholds as a basis for identifying unhealthy foods. Nutrient-based regulation provides a relatively objective and administratively convenient method of identifying products that warrant regulatory attention. It also allows regulators to establish measurable thresholds and apply them consistently across products.⁸ However, such an approach may overlook characteristics that are not captured by the quantity of individual nutrients. The formulation of a product, the extent of processing and the use of certain additives may remain outside the regulatory inquiry even where these characteristics form part of the broader concerns surrounding ultra-processed food consumption. At the same time, treating every ultra-processed product as inherently harmful would create a different difficulty. Processing is not, by itself, sufficient to establish that a food poses the same level of health risk as a product containing excessive quantities of sugar, salt or fat.⁹ The regulatory challenge therefore lies

⁵ WHO Regional Office for South-East Asia, *WHO Nutrient Profile Model for South-East Asia Region (WHO SEARO 2017)*; ICMR–National Institute of Nutrition, *Dietary Guidelines for Indians (ICMR-NIN 2024)*.

⁶ Carlos A Monteiro and others, 'The UN Decade of Nutrition, the NOVA Food Classification and the Trouble with Ultra-Processing' (2018) 21 *Public Health Nutrition* 5; Monteiro and others, 'Ultra-Processed Foods: What They Are' (n 2).

⁷ Monteiro and others, 'The Main Thesis and the Evidence' (n 2); cf Michael J Gibney, 'Ultra-Processed Foods: Definitions and Policy Issues' (2019) 3 *Current Developments in Nutrition* nzy077.

⁸ Codex Alimentarius Commission, *Guidelines on Nutrition Labelling (CXG 2-1985, revised 2021)* annex 2.

⁹ Gibney (n 7); Véronique Braesco and others, 'Ultra-Processed Foods: How Functional Is the NOVA System?' (2022) 76 *European Journal of Clinical Nutrition* 1245.

not merely in recognising ultra-processing as a relevant characteristic but in determining the extent to which it should influence the legal treatment of a food product.

The distinction also exposes the difficulty of relying on a single classification to determine regulatory consequences. HFSS and UPF classifications answer different questions and consequently may call for different regulatory responses.¹⁰ Nutrient-based regulation may be more appropriate where the objective is to reduce excessive consumption of particular nutrients, while processing-based considerations may become relevant where the concern extends to the broader composition and formulation of industrially produced foods. A regulatory framework that treats these categories as identical risks either leaving certain products outside the scope of meaningful regulation or subjecting products to restrictions that may not be proportionate to the harm sought to be addressed. The question for Indian food regulation is therefore not whether HFSS regulation should be replaced by UPF regulation, but whether processing should be recognised as an additional regulatory consideration alongside nutritional composition. This distinction provides the basis for examining whether the existing Indian regulatory framework has sufficient legal and institutional tools to respond to the concerns raised by ultra-processed foods.

III. INDIA'S EXISTING REGULATORY ARCHITECTURE: IS IT EQUIPPED FOR UPFs?

India's regulation of packaged food operates through a combination of food safety standards, nutritional disclosure requirements, labelling rules and restrictions concerning the marketing of certain food products. The Food Safety and Standards Authority of India (FSSAI) occupies the central position within this framework and is responsible for prescribing standards and regulating the manufacture, storage, distribution, sale and import of food to ensure that food available to consumers is safe.¹¹ The existing framework is therefore capable of addressing several aspects of unhealthy food consumption. However, its effectiveness in dealing with ultra-processed foods depends on whether the characteristics associated with ultra-processing are themselves recognised as relevant regulatory concerns.

A. THE FSSAI FRAMEWORK AND THE FOCUS ON NUTRITIONAL COMPOSITION

A significant part of India's regulatory approach is based on the nutritional characteristics of

¹⁰ See Ministry of Finance, *Economic Survey 2024–25 (Government of India 2025)*, recommending that FSSAI define ultra-processed foods and adopt stricter front-of-pack labelling.

¹¹ *Food Safety and Standards Act 2006*, preamble and s 16(1).

food. The regulation of foods high in fat, salt and sugar reflects this approach by identifying products through measurable nutritional parameters rather than the manner in which they have been processed.¹² Nutritional labelling requirements similarly seek to provide consumers with information about the composition of a product and enable them to make informed choices.¹³ This approach has an important regulatory advantage. Nutrient content can generally be expressed through identifiable and measurable parameters, allowing the regulator to prescribe thresholds that can be applied across different categories of food.

The difficulty arises when nutritional composition is treated as the principal indicator of whether a product warrants regulatory concern. A product's nutritional profile does not necessarily reveal the extent to which it has been industrially formulated or the range of ingredients and additives used in its production. Consequently, two products may appear similar when assessed through conventional nutritional parameters while differing considerably in their degree of processing. The existing framework can therefore identify certain nutritional risks without necessarily addressing the broader characteristics that form the basis of the UPF concept.

This does not mean that nutrient-based regulation is inadequate in itself. Nutritional composition remains an important and comparatively objective basis for regulating food products. The problem is one of regulatory scope. If the objective of food regulation extends beyond preventing excessive consumption of particular nutrients to addressing the wider health concerns associated with highly processed diets, a framework based exclusively on nutrient thresholds may not be sufficient.

A. THE PROBLEM OF REGULATORY FRAGMENTATION

The regulatory response to unhealthy food consumption is also distributed across different regulatory mechanisms. Labelling seeks to improve consumer information, food standards address the composition and safety of products, while advertising and marketing restrictions seek to regulate how products are presented to consumers.¹⁴ These mechanisms serve different purposes and cannot necessarily be assessed through the same criteria. Nevertheless, their effectiveness depends upon whether they operate as components of a coherent public health

¹² *Food Safety and Standards (Safe Food and Healthy Diets for School Children) Regulations 2020*, which identify such foods by their content of saturated fat, trans fat, added sugar and sodium; see also ICMR-NIN (n 5).

¹³ *Labelling and Display Regulations 2020*, reg 5(3); see also FSSAI, *Draft Notification on Front-of-Pack Nutrition Labelling (Indian Nutrition Rating)* (September 2022).

¹⁴ *Food Safety and Standards Act 2006*, s 24; *Food Safety and Standards (Advertising and Claims) Regulations 2018*; *Consumer Protection Act 2019*, ss 2(28) and 21; *Cable Television Networks Rules 1994*, r 7.

strategy.¹⁵

This becomes particularly relevant in the context of ultra-processed foods. Information about nutritional content may enable consumers to identify excessive levels of sugar, salt or fat, but it may not communicate that a product falls within a broader category of ultra-processed foods. Similarly, regulating the composition of a product through specific nutrient thresholds does not necessarily address the manner in which the product has been formulated. The result is a regulatory framework in which individual aspects of a product may be subject to oversight without the degree of processing itself becoming a distinct regulatory consideration.

The fragmentation is not necessarily a defect in itself. Different regulatory objectives may legitimately require different instruments. The more important question is whether these instruments collectively address the harm that the regulator seeks to prevent. If the concern is limited to excessive consumption of certain nutrients, existing measures may be sufficient in principle. If the concern is instead the increasing role of ultra-processed products in the diet, a regulatory framework that does not formally account for processing may leave an important aspect of that concern unaddressed.

B. WHERE DO ULTRA-PROCESSED FOODS FIT WITHIN THE EXISTING FRAMEWORK?

The absence of a distinct regulatory category for ultra-processed foods presents the principal difficulty. The UPF concept has gained prominence in public health research, but its incorporation into legal regulation requires more than recognising that highly processed foods may be associated with adverse health outcomes.¹⁶ A regulator would need to determine what constitutes ultra-processing, which characteristics should form the basis of classification and what legal consequences should follow from that classification.¹⁷

This raises an important distinction between **classification and regulation**. Even if a food can be scientifically classified as ultra-processed, it does not follow that it should automatically be prohibited, taxed, subject to warning labels or restricted from particular markets. The classification may instead serve as one factor within a broader assessment of risk. Treating UPF status as an independent basis for regulatory intervention without considering the nature

¹⁵ Boyd A Swinburn and others, 'The Global Syndemic of Obesity, Undernutrition, and Climate Change: The Lancet Commission Report' (2019) 393 *The Lancet* 791.

¹⁶ Melissa M Lane and others, 'Ultra-Processed Food Exposure and Adverse Health Outcomes: Umbrella Review of Epidemiological Meta-Analyses' (2024) 384 *BMJ* e077310; Monteiro and others, 'The Main Thesis and the Evidence' (n 2).

¹⁷ Braesco and others (n 9), reporting low consistency among specialists in assigning foods to NOVA groups.

and extent of the associated health risk could produce an overly broad regulatory framework.¹⁸ The more appropriate question is therefore whether processing should supplement, rather than displace, existing nutritional criteria. A hybrid approach could allow the regulator to continue addressing established risks arising from excessive sugar, salt and fat while also considering processing characteristics where there is sufficient scientific evidence to justify doing so. Such an approach would preserve the relative objectivity of nutrient-based regulation while allowing the regulatory framework to respond to concerns that cannot be captured through nutritional thresholds alone.¹⁹

The present framework thus reveals a gap between the **scientific classification of food** and its **legal classification for regulatory purposes**. Ultra-processed foods may be increasingly recognised as a distinct public health concern, yet that recognition does not by itself determine the appropriate legal response. It is against this background that *3S and Our Health Society v Union of India* assumes significance. The case provides an opportunity to examine how scientific evidence, regulatory expertise and judicial scrutiny interact when the adequacy of India's existing approach to unhealthy food is placed before the Court.

IV. 3S AND OUR HEALTH SOCIETY: FROM FOOD LABELLING TO PUBLIC HEALTH REGULATION

The regulatory questions surrounding unhealthy packaged foods have acquired a constitutional dimension in *3S and Our Health Society v Union of India*.²⁰ The proceedings concern the implementation of Front-of-Package Labelling (FoPL) for packaged foods and the extent to which such labelling can enable consumers to identify products containing high levels of nutrients of concern. The Supreme Court has approached the issue not merely as one of technical food labelling but in the context of the State's responsibility to protect public health.²¹ In its earlier order dated 13 August 2026, the Court recognised the connection between HFSS and UPF products and health conditions such as obesity, diabetes, heart disease and hypertension, while emphasising the need for effective implementation of FoPL, particularly in the interests of children.²²

The significance of the proceedings lies in the Court's scrutiny of the regulatory choices made

¹⁸ Cf *Shayara Bano v Union of India* (2017) 9 SCC 1, on manifest arbitrariness as a ground for invalidating State action.

¹⁹ *ICMR-NIN (n 5)*, which considers the degree of processing alongside nutrient content; see also *3S and Our Health Society (n 3)*.

²⁰ *3S and Our Health Society (n 3)*.

²¹ *Constitution of India*, arts 21 and 47.

²² *3S and Our Health Society v Union of India MA No 1177 of 2025 in WP (C) No 437 of 2024 (SC, 13 August 2026)*.

by FSSAI. Pursuant to the Court's directions, FSSAI proposed a pictorial front-of-pack warning in the form of a red hexagon for products high in specified nutrients of concern.²³ The proposal contemplated a phased system, with the first phase applying to products high in two or more specified nutrients and the second extending the system to products high in any one nutrient. Rather than accepting the proposal as a matter of regulatory discretion, the Court identified several aspects that required further justification, including the scientific basis for the two-nutrient threshold, the absence of a definite timeline between the two phases and the choice of nutrients and thresholds.²⁴

The Court's approach is particularly relevant to the regulation of UPFs because it demonstrates that the effectiveness of food regulation cannot be assessed solely by asking whether a regulatory mechanism exists. The regulatory design itself must be capable of achieving its stated public health objective.²⁵ A warning label that technically discloses information may have limited value if the threshold for triggering the warning excludes products that pose relevant health concerns, or if the information is presented in a manner that consumers cannot readily understand. The Court therefore questioned not only the substantive basis of the proposed thresholds but also matters such as the size and placement of the warning, the use of pictorial representations and whether separate warnings should be used for individual nutrients.²⁶

This approach also places scientific evidence at the centre of regulatory decision-making. One of the principal concerns before the Court was whether requiring two or more nutrients to cross the prescribed threshold was scientifically justified when sugar, salt and fat may each be associated with different health risks. The objection raised by the petitioner was that a cumulative threshold could exclude products in which only one nutrient is present at a level of concern. The Court's questions therefore reveal an important distinction between a regulatory criterion that is convenient to administer and one that is capable of being defended on scientific grounds.²⁷

At the same time, 3S does not establish that the Court should itself determine the scientific content of food regulation. FSSAI remains the specialised regulatory authority and the Court has sought clarification from it rather than simply replacing its proposed framework with a

²³ FSSAI's affidavit of 28 August 2026, as recorded in 3S and Our Health Society (n 3).

²⁴ Ibid.

²⁵ Helen Croker and others, 'Front of Pack Nutritional Labelling Schemes: A Systematic Review and Meta-Analysis of Recent Evidence Relating to Objectively Measured Consumption and Purchasing' (2020) 33 *Journal of Human Nutrition and Dietetics* 518.

²⁶ 3S and Our Health Society (n 3).

²⁷ Cf *Cellular Operators Association of India v Telecom Regulatory Authority of India* (2016) 7 SCC 703, where regulations unsupported by the material before the regulator were held to be arbitrary.

judicially prescribed alternative. This distinction is important because food regulation involves questions of scientific assessment, risk evaluation and implementation that may require institutional expertise.²⁸ Judicial scrutiny can test whether the regulatory choice is rationally connected to the objective sought to be achieved and whether relevant considerations have been taken into account, but it must operate within the limits of judicial competence.²⁹ The proceedings therefore raise a broader question about how courts should review technical regulatory decisions where public health and scientific uncertainty intersect.

The constitutional dimension of the case further strengthens this inquiry. The Court has linked the protection of health with Article 21 and referred to the State's responsibility under Article 47. The significance of this approach lies in its recognition that the State's obligation to protect health may require affirmative regulatory measures rather than merely the absence of State action.³⁰ However, recognising a constitutional interest in health does not by itself determine which regulatory intervention is justified. The question remains whether the particular measure adopted is supported by adequate evidence and proportionate to the public health objective.

This becomes particularly important when the regulatory discussion moves from HFSS foods to UPFs. The Court's present scrutiny is principally directed towards the proposed FoPL framework for nutrients such as sugar, salt and fat. Yet the proceedings have expressly acknowledged the relationship between HFSS foods and UPFs, creating an opportunity to examine whether the existing nutrient-based framework captures the broader concerns associated with ultra-processing.³¹ If processing is itself considered relevant to health outcomes, the regulatory inquiry cannot end with the question of whether a product contains excessive levels of a particular nutrient. It must also consider whether and how the degree of processing should influence regulatory classification.

The case therefore exposes a tension at the heart of India's emerging food regulation. On one hand, measurable nutrient thresholds provide a relatively clear basis for regulatory intervention and avoid treating all processed foods as equally harmful. On the other hand, a framework confined to such thresholds may fail to account for characteristics that distinguish ultra-processed foods from other products. 3S does not resolve this tension, but it makes the underlying question more difficult to ignore. The case consequently provides a useful basis for

²⁸ *BALCO Employees' Union v Union of India* (2002) 2 SCC 333; *Internet and Mobile Association of India v Reserve Bank of India* (2020) 10 SCC 274.

²⁹ *Tata Cellular v Union of India* (1994) 6 SCC 651; Lon L Fuller, 'The Forms and Limits of Adjudication' (1978) 92 *Harvard Law Review* 353.

³⁰ *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37; *Consumer Education and Research Centre v Union of India* (1995) 3 SCC 42; *Vincent Panikurlangara v Union of India* (1987) 2 SCC 165.

³¹ 3S and Our Health Society (n 3).

examining whether India should continue to rely predominantly on nutrient-based regulation or develop a more comprehensive framework in which processing characteristics are also considered when assessing public health risk.

V. SHOULD INDIA REGULATE ULTRA-PROCESSED FOODS? A NORMATIVE FRAMEWORK

The question that follows from the limitations of the existing framework is not whether ultra-processed foods should be regarded as a public health concern, but whether their status as ultra-processed products should have independent regulatory significance. The answer requires caution. While the growing body of research concerning UPFs provides a basis for regulatory attention, the category is broader than foods that are conventionally understood to be unhealthy. A regulatory framework that treats all ultra-processed foods as equally harmful may therefore be both over-inclusive and difficult to justify. At the same time, excluding processing characteristics altogether would leave the regulatory framework unable to address concerns that cannot be captured through nutrient composition alone. Three possible approaches can be considered in determining the appropriate regulatory response.

A. STRENGTHENING THE EXISTING HFSS FRAMEWORK

The first approach would be to retain the existing nutrient-based model and strengthen the regulation of foods high in fat, salt and sugar. This approach has the advantage of relying on relatively objective criteria. Nutrient levels can be quantified, thresholds can be prescribed and compliance can be assessed without requiring regulators to determine whether a particular manufacturing process falls within a potentially contested category of ultra-processing. It also avoids treating processing as an independent indicator of harm when the relationship between processing and specific health outcomes may not always be uniform.³²

The approach would also be consistent with the concerns raised in 3S. The Court's scrutiny of the proposed FoPL framework demonstrates the importance of ensuring that regulatory thresholds are scientifically justified and capable of effectively informing consumers. Improving the existing framework could therefore involve revisiting nutrient thresholds, ensuring that warnings are triggered where an individual nutrient presents a significant concern

³² Lane and others (n 16), grading the credibility of the evidence as convincing for some outcomes but weak or limited for others.

and making the information sufficiently prominent to influence consumer choice.³³

The principal limitation, however, is that strengthening HFSS regulation does not address the conceptual gap identified earlier. A product may remain outside the scope of an HFSS threshold despite possessing characteristics associated with ultra-processing. Reformulation may also allow manufacturers to reduce the quantity of a particular nutrient without fundamentally altering the nature of the product.³⁴ A stronger HFSS framework may therefore improve the existing system without resolving the question of whether processing itself should have regulatory relevance.

B. CREATING A SEPARATE REGULATORY CATEGORY FOR UPFS

The second approach would be to recognise ultra-processed foods as a distinct regulatory category. Under such a framework, foods could be classified according to the degree and nature of processing, with regulatory consequences attached to that classification. This would allow Indian food regulation to address a characteristic that is presently not adequately captured by nutrient-based criteria.³⁵

Such an approach, however, presents significant difficulties. The first is definitional. A legal definition of UPF would need to identify the characteristics that distinguish ultra-processed products from other processed foods with sufficient precision to support regulatory enforcement. Scientific classifications may provide a useful starting point, but a classification developed for epidemiological research cannot automatically be converted into a legal standard.³⁶ A regulatory definition would need to be sufficiently certain for manufacturers, consumers and enforcement authorities while remaining capable of adapting to changes in food technology.³⁷

A second difficulty concerns the relationship between classification and harm. The fact that a product falls within a category of ultra-processed foods does not necessarily establish that every such product poses the same level of health risk. A broad UPF classification could consequently capture products that differ substantially in nutritional composition and consumption patterns. If the same legal consequences were imposed on all such products, the

³³ *Ley No 20.606 sobre Composición Nutricional de los Alimentos y su Publicidad 2012 (Chile)*; Lindsey Smith Taillie and others, 'An Evaluation of Chile's Law of Food Labeling and Advertising on Sugar-Sweetened Beverage Purchases from 2015 to 2017: A Before-and-After Study' (2020) 17 *PLoS Medicine* e1003015.

³⁴ *3S and Our Health Society* (n 3), noting that reformulation away from fat, sugar and salt may increase the use of artificial preservatives and emulsifiers.

³⁵ *Ministry of Health of Brazil, Dietary Guidelines for the Brazilian Population* (2nd edn, Ministry of Health 2014).

³⁶ *Braesco and others* (n 9); *Gibney* (n 7).

³⁷ *Cf Shreya Singhal v Union of India* (2015) 5 SCC 1, on the constitutional infirmity of vague and open-ended legal standards.

regulatory response could become disproportionate to the risk being addressed.³⁸

There is also a practical concern. Once UPF status becomes a legally significant classification, questions would arise regarding the appropriate consequence of that status. A classification may justify disclosure, but it does not necessarily justify advertising restrictions, taxation or restrictions on sale. The regulatory response must therefore be determined separately from the classification itself. Treating classification as synonymous with harmfulness would weaken the scientific and legal basis of the regulatory framework.³⁹

C. TOWARDS A HYBRID MODEL

A more appropriate approach would be to combine nutrient-based regulation with processing-based considerations. Under such a model, HFSS criteria would continue to identify products that contain excessive levels of nutrients of established concern, while UPF characteristics could provide an additional basis for information, monitoring or proportionate regulatory intervention. This would avoid replacing one imperfect classification with another.

The principal advantage of a hybrid model is that it recognises that nutritional composition and processing address different aspects of food-related risk. Nutrient thresholds can continue to provide the basis for stronger regulatory measures where excessive consumption of particular nutrients is the primary concern. Processing characteristics can then supplement this assessment where there is sufficient evidence that the formulation or degree of processing creates an additional public health concern.

Such a model would also allow regulatory consequences to be graduated. The identification of a product as ultra-processed need not automatically result in a prohibition or an additional tax. Depending on the evidence and the nature of the risk, it could instead trigger enhanced disclosure requirements, restrictions on health-related claims, additional scrutiny of marketing directed at children or inclusion within public health monitoring.⁴⁰ More restrictive measures could be reserved for products that combine ultra-processing with high levels of nutrients of concern or other demonstrable risks.

This approach would also be more consistent with the principle of proportionality. Regulation should be sufficiently responsive to public health risks without treating products presenting materially different risks as though they were identical.⁴¹ A hybrid system allows the regulator

³⁸ Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (CUP 2012).

³⁹ Food Safety and Standards Act 2006, s 18(1)(b), requiring food safety measures to be based on risk analysis.

⁴⁰ Advertising and Claims Regulations 2018; World Health Organization, *Policies to Protect Children from the Harmful Impact of Food Marketing: WHO Guideline* (WHO 2023).

⁴¹ *Modern Dental College (n 4)*; *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

to distinguish between the fact that a product is ultra-processed and the separate question of what regulatory response is justified by that characteristic.

The hybrid approach, however, would require greater regulatory capacity. FSSAI would need to establish clear criteria for identifying relevant processing characteristics and periodically assess the scientific evidence supporting their regulatory significance. The system would also require coordination between different regulatory measures so that labelling, advertising restrictions and other interventions operate towards a common public health objective. These difficulties should not be underestimated, but they are preferable to adopting an overly broad UPF classification without a clear relationship between classification and regulatory consequence.

The appropriate lesson from 3S is therefore not that India should simply add UPFs to the list of foods requiring regulation. The more significant lesson is that regulatory classification must be connected to a demonstrable public health objective and supported by a defensible scientific basis. The Court's scrutiny of nutrient thresholds illustrates why the same principle should apply if processing characteristics are brought within the regulatory framework. India should consequently move towards a system in which UPF status is recognised as a relevant regulatory factor, while the nature and intensity of the regulatory response remain dependent upon the specific health risk demonstrated by the evidence.

Such an approach would preserve the strengths of the existing HFSS framework while addressing its limitations. More importantly, it would avoid creating a false choice between nutrient-based and processing-based regulation. The objective should instead be to develop a risk-sensitive framework in which both characteristics can inform regulatory decisions without either being treated as an automatic proxy for harm.

VI. FROM LABELS TO A REGULATORY ECOSYSTEM: WHAT SHOULD INDIA DO?

If ultra-processed foods are to receive greater regulatory attention, the response cannot be confined to the design of a warning label. Labelling can improve consumer awareness, but it operates at the final stage of the food chain, after the product has already been formulated, marketed and placed before the consumer.⁴² A regulatory framework directed towards public health must therefore address the different ways in which consumers encounter and respond to ultra-processed foods. This requires a combination of information-based measures, restrictions

⁴² Omri Ben-Shahar and Carl E Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press 2014).

on marketing and targeted interventions in environments where consumers, particularly children, may be more vulnerable to unhealthy food consumption.

A. FRONT-OF-PACKAGE LABELLING AS THE FIRST LAYER OF REGULATION

Front-of-package labelling should remain an important component of India's regulatory response. Its principal value lies in simplifying nutritional information that may otherwise require consumers to examine detailed nutrition tables. The effectiveness of such a system, however, depends on whether the information provided is sufficiently visible, comprehensible and relevant to the decision that a consumer is making. The concerns raised by the Supreme Court in *3S* regarding the design and effectiveness of the proposed warning system are therefore significant.

A revised FoPL framework should distinguish between communicating excessive levels of specific nutrients and communicating that a product is ultra-processed. These are not necessarily the same forms of information. A warning indicating that a product contains excessive sugar, salt or fat conveys a relatively specific nutritional risk. A general UPF label, by contrast, communicates a broader characteristic whose relationship with health outcomes may depend on the nature of the product. Requiring every UPF to carry an equivalent warning could therefore dilute the significance of nutrient-specific warnings and create confusion among consumers.⁴³

A more proportionate approach would be to retain prominent nutrient warnings while considering additional disclosure where a product meets clearly established UPF criteria. Such disclosure should be introduced only after the relevant classification and its public health rationale have been scientifically validated. The objective should be to improve consumer understanding rather than increase the quantity of information presented on packaging.

B. REGULATING THE MARKETING OF ULTRA-PROCESSED FOODS

Consumer choice is influenced not only by information on packaging but also by the manner in which products are marketed. This is particularly relevant where manufacturers associate highly processed foods with health, convenience, fitness or social desirability. Marketing can therefore undermine the value of nutritional disclosure when the broader presentation of the product creates an impression that is inconsistent with its nutritional characteristics.⁴⁴

⁴³ Cass R Sunstein, *Too Much Information: Understanding What You Don't Want to Know* (MIT Press 2020).

⁴⁴ *Advertising and Claims Regulations 2018*; Advertising Standards Council of India, *Guidelines for Advertising of Food and Beverages* (ASCI 2017).

Greater scrutiny should consequently be given to health and nutrition claims made in relation to products that fall within relevant HFSS or UPF categories. A product should not be able to rely on selective claims concerning individual ingredients to create an overall impression of healthfulness when its nutritional composition or processing characteristics raise significant concerns. This does not require a blanket prohibition on marketing. Instead, restrictions could be directed towards claims that are misleading, particularly where they are likely to influence vulnerable consumers.⁴⁵

The case for stronger restrictions is even greater in relation to advertising directed at children. Children may have a limited ability to evaluate commercial information and may be more susceptible to marketing strategies that associate food products with entertainment, popularity or aspirational lifestyles. Restrictions on the use of child-oriented characters, influencers and similar promotional techniques for products meeting specified risk criteria could therefore operate as a complementary measure to FoPL.⁴⁶

C. PROTECTING CHILDREN THROUGH THE REGULATION OF FOOD ENVIRONMENTS

The regulation of children's food environments deserves separate consideration because relying exclusively on individual consumer choice may be inadequate in such settings. Schools, for example, provide an environment in which food choices are shaped not only by individual preference but also by availability and institutional purchasing practices. Restricting the sale or promotion of products meeting defined HFSS or UPF criteria in schools could therefore address exposure at an earlier stage.⁴⁷

Such restrictions should nevertheless be carefully framed. A prohibition based solely on the label of a product as ultra-processed may be unnecessarily broad. Instead, schools could adopt nutritional standards that limit products exceeding specified thresholds for sugar, salt and fat, with processing characteristics serving as an additional factor where supported by evidence. This would allow school food policies to address established nutritional risks without assuming that every processed product presents the same level of harm.

⁴⁵ *Consumer Protection Act 2019, s 2(28); Central Consumer Protection Authority, Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022, guideline 8.*

⁴⁶ *Emma J Boyland and others, 'Advertising as a Cue to Consume: A Systematic Review and Meta-Analysis of the Effects of Acute Exposure to Unhealthy Food and Nonalcoholic Beverage Advertising on Intake in Children and Adults' (2016) 103 American Journal of Clinical Nutrition 519; WHO, Food Marketing Guideline (n 40).*

⁴⁷ *School Children Regulations 2020, restricting the sale of foods high in fat, salt and sugar in school canteens and within 50 metres of school premises.*

The same principle could extend to government procurement and publicly funded nutrition programmes. Where the State purchases food for institutions, hospitals or welfare programmes, nutritional and processing criteria could be incorporated into procurement standards. This would allow the State to influence the food environment through its purchasing power without directly restricting the availability of products in the wider market.⁴⁸

D. MOVING BEYOND CONSUMER INFORMATION

The broader regulatory framework should also recognise the limits of information-based interventions. Labelling assumes that consumers will notice, understand and act upon the information provided. That assumption may not hold uniformly across different sections of the population. Differences in literacy, nutritional knowledge, income and access to healthier alternatives can all affect the extent to which disclosure translates into meaningful choice.⁴⁹

This does not diminish the value of FoPL. Rather, it suggests that information should be treated as one component of a broader regulatory strategy. Public nutritional education, particularly through schools, can improve the ability of consumers to interpret labels and understand the significance of excessive nutrient consumption. In the context of UPFs, however, educational initiatives should avoid presenting processing as a simple binary distinction between healthy and unhealthy foods. Consumers should instead be provided with sufficient information to understand why particular products may warrant greater caution.

E. THE POSSIBILITY OF FISCAL AND MARKET-BASED MEASURES

More interventionist measures such as taxation could also be considered for products associated with established public health risks. However, taxation should not be imposed merely because a product falls within a broad UPF classification. A fiscal measure would require stronger evidence connecting the targeted category with the health outcome sought to be addressed and should be designed to avoid disproportionate effects on consumers with lower incomes.⁵⁰

A more defensible approach would be to consider taxation primarily on products that satisfy clearly established nutritional risk criteria, particularly where evidence supports the

⁴⁸ World Health Organization, *Action Framework for Developing and Implementing Public Food Procurement and Service Policies for a Healthy Diet* (WHO 2021).

⁴⁹ Ben-Shahar and Schneider (n 42); International Institute for Population Sciences and ICF, *National Family Health Survey (NFHS-5), 2019–21: India* (IIPS 2021).

⁵⁰ Hunt Allcott, Benjamin B Lockwood and Dmitry Taubinsky, 'Regressive Sin Taxes, with an Application to the Optimal Soda Tax' (2019) 134 *Quarterly Journal of Economics* 1557; World Health Organization, *Fiscal Policies for Diet and Prevention of Noncommunicable Diseases* (WHO 2016).

effectiveness of fiscal measures in reducing consumption.⁵¹ UPF status could be used as a supplementary consideration in determining the scope of such measures, but should not by itself determine tax liability. This distinction reflects the broader principle that different regulatory instruments should correspond to different levels and forms of demonstrated risk.

Taken together, these measures suggest that effective UPF regulation should not be conceived as a single intervention. FoPL can address information asymmetry, advertising restrictions can address the influence of commercial promotion, school-based measures can protect vulnerable consumers and procurement standards can alter institutional food environments. More interventionist measures such as taxation can be reserved for products for which the evidence of harm and the effectiveness of the proposed intervention are sufficiently strong.

The resulting framework would therefore operate as a regulatory ecosystem rather than a single UPF prohibition or labelling requirement. Its effectiveness would depend on maintaining a clear relationship between scientific evidence, the risk identified and the regulatory response chosen. This is also where the reasoning underlying 3S becomes particularly relevant. If food regulation is to serve a constitutional public health objective, regulatory measures must be capable of demonstrating not only that they address a legitimate concern but also that the means adopted are rationally connected to that concern. The regulation of ultra-processed foods should consequently proceed through graduated interventions rather than a uniform regulatory response to a heterogeneous category of products.

VII. THE LIMITS OF UPF REGULATION: A CASE AGAINST OVER-REGULATION

The case for greater regulation of ultra-processed foods must be balanced against the risks of extending regulatory control on the basis of a category whose boundaries and health implications are still subject to scientific debate. Public health provides a strong justification for State intervention, but the existence of a legitimate objective does not make every regulatory response justified. The regulation of UPFs must therefore account for the limits of current evidence, the difficulty of translating scientific classifications into legal standards and the consequences that regulation may have for consumers and manufacturers. These

⁵¹ M Arantxa Colchero and others, 'Beverage Purchases from Stores in Mexico under the Excise Tax on Sugar Sweetened Beverages: Observational Study' (2016) 352 *BMJ* h6704; WHO Regional Office for South-East Asia and Indian Council for Research on International Economic Relations, *The Growth of Ultra-Processed Foods in India: An Analysis of Trends, Issues and Policy Recommendations* (WHO SEARO 2023), recommending a nutrient-based tax model. India already levies GST at 40 per cent on aerated and caffeinated beverages: GST Council, *Recommendations of the 56th Meeting* (3 September 2025).

considerations do not undermine the case for intervention but indicate that any such intervention must remain evidence-based and proportionate.

A. SCIENTIFIC UNCERTAINTY AND THE PROBLEM OF CAUSATION

The strongest objection to independent UPF regulation concerns the nature of the scientific evidence supporting the category. Research has increasingly associated higher consumption of ultra-processed foods with adverse health outcomes, but an observed association does not necessarily establish that processing itself is the cause of those outcomes. Ultra-processed foods may also be associated with broader dietary and socioeconomic patterns, including lower nutritional quality, higher energy consumption and different patterns of food consumption. It is therefore difficult to isolate the effect of processing from the other characteristics of the diet in which these foods are consumed.⁵²

This distinction is important for regulatory purposes. A regulatory framework may reasonably act in the presence of scientific uncertainty where the potential public health consequences are significant, but the degree of uncertainty should influence the intensity of the regulatory response. Where evidence establishes a clear relationship between excessive consumption of a nutrient and a particular health risk, stronger intervention may be justified. Where the evidence concerning processing is less conclusive, the appropriate response may initially be limited to disclosure, monitoring and further research rather than prohibition or taxation.⁵³

The reasoning in *3S* reinforces the importance of this distinction. The Court's scrutiny of the scientific basis underlying FSSAI's proposed thresholds demonstrates that regulatory measures must be capable of being supported by evidence. The same standard should apply to UPF regulation. The mere existence of scientific literature associating UPF consumption with adverse outcomes should not, by itself, determine the legal consequences attached to the classification.

B. THE DIFFICULTY OF CONVERTING UPF CLASSIFICATIONS INTO LEGAL STANDARDS

A second limitation concerns the translation of scientific categories into enforceable legal rules. The concept of ultra-processing is useful for distinguishing certain forms of industrial

⁵² Lane and others (n 16); but see Kevin D Hall and others, 'Ultra-Processed Diets Cause Excess Calorie Intake and Weight Gain: An Inpatient Randomized Controlled Trial of Ad Libitum Food Intake' (2019) 30 *Cell Metabolism* 67, a short inpatient randomised trial suggesting a causal effect of ultra-processed diets on energy intake.

⁵³ *Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647; *AP Pollution Control Board v Prof MV Nayudu* (1999) 2 SCC 718; Cass R Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (CUP 2005).

food production, but a legal classification must provide greater certainty than a broad scientific description. Manufacturers must be able to determine whether their products fall within the regulated category and enforcement authorities must be able to apply the criteria consistently. This creates difficulties where products occupy a spectrum between minimally processed, processed and ultra-processed foods. Modern food production frequently involves multiple stages of processing and the use of ingredients that may serve both functional and technological purposes. A rigid legal definition may consequently become outdated as manufacturing practices evolve, while an excessively flexible definition may provide insufficient certainty for regulatory enforcement.

The choice of classification system therefore becomes a substantive regulatory decision rather than a purely technical one. India would need to determine whether an existing classification should be adopted, modified or replaced with a framework developed specifically for regulatory purposes. That process should involve scientific experts, manufacturers, consumer groups and public health authorities. It should also provide for periodic review so that the legal framework does not remain fixed while scientific understanding and food technology change.

C. CONSUMER AUTONOMY AND THE ROLE OF INFORMED CHOICE

Regulation also raises a question of consumer autonomy. Adults ordinarily possess the ability to decide what foods they wish to consume, even where those choices may not be optimal from a public health perspective. The State may legitimately provide information and discourage harmful consumption, but a more restrictive approach requires stronger justification.⁵⁴

This is particularly relevant where the proposed intervention is based on UPF status rather than a clearly established nutritional risk. A warning label may support informed choice without substantially limiting autonomy. A restriction on sale or a significant tax, by contrast, alters the economic or practical conditions under which the consumer makes that choice. The difference between these interventions is therefore not merely one of degree but of regulatory character.⁵⁵

A proportionate framework should consequently begin with measures that improve the quality of consumer choice and move towards more restrictive interventions only where less intrusive measures are demonstrably inadequate. This would also be consistent with the broader principle that the State should not treat consumers as incapable of making dietary choices

⁵⁴ *Puttaswamy (n 4)*; *Common Cause v Union of India* (2018) 5 SCC 1; *John Stuart Mill, On Liberty* (first published 1859, Penguin 1974).

⁵⁵ *Richard H Thaler and Cass R Sunstein, Nudge: Improving Decisions about Health, Wealth, and Happiness* (Yale University Press 2008).

merely because those choices carry health risks.

D. AFFORDABILITY AND DISTRIBUTIVE CONSEQUENCES

The economic consequences of UPF regulation also require greater attention. Packaged and processed foods can be relatively affordable, convenient and widely available, particularly for consumers with limited time or access to fresh food. Measures that increase the price or reduce the availability of such products could therefore have effects that are not evenly distributed across society.

A regulatory intervention designed without considering these effects may unintentionally place a greater burden on lower-income consumers. Taxation provides a clear example. While higher prices may reduce consumption of targeted products, the immediate financial burden is borne by consumers. The effectiveness of such a measure should therefore be assessed alongside its distributive consequences and the availability of affordable alternatives.

This suggests that regulation cannot operate in isolation from broader food policy. If the State seeks to discourage consumption of certain products, it must also consider whether healthier alternatives are sufficiently accessible and affordable. Public procurement, school food programmes, nutritional education and support for healthier food options may therefore be necessary complements to restrictive measures.

The final concern is institutional. Food regulation involves scientific assessment, economic considerations and technical expertise that are ordinarily entrusted to specialised regulatory institutions. Courts have an important role in ensuring that regulatory action remains lawful, rational and consistent with constitutional requirements, but they are not necessarily equipped to determine the precise nutritional or processing thresholds that should govern an entire food market.⁵⁶

The proceedings in *3S* illustrate the importance of maintaining this distinction. The Court's scrutiny of FSSAI's approach demonstrates that judicial review can require the regulator to justify its scientific assumptions and explain the relationship between the proposed measure and its public health objective. However, such scrutiny should not result in the judiciary becoming the primary designer of food policy. The institutional responsibility for developing and periodically revising technical standards should remain with the specialised regulatory authority, subject to constitutional and administrative review.

⁵⁶ *Godawat Pan Masala Products IP Ltd v Union of India* (2004) 7 SCC 68; cf *Scotch Whisky Association v Lord Advocate* [2017] UKSC 76; *R (British American Tobacco UK Ltd) v Secretary of State for Health* [2016] EWCA Civ 1182, [2018] QB 149.

The same principle applies to the regulation of UPFs. If the category is incorporated into Indian law, its definition and regulatory consequences should emerge through a transparent regulatory process supported by scientific evidence and stakeholder consultation. Judicial intervention should ensure that this process is rational, non-arbitrary and consistent with constitutional obligations rather than substitute judicial preferences for regulatory expertise.⁵⁷

These limitations suggest that the case for UPF regulation should not be framed as a choice between regulation and non-regulation. The more appropriate question is one of regulatory intensity. Where evidence is strongest, the State may legitimately adopt stronger measures. Where evidence is developing, less intrusive measures such as disclosure, monitoring and education may be preferable. This approach recognises the legitimate public health concerns associated with ultra-processed foods while avoiding the assumption that a broad classification can, by itself, justify uniform restrictions.

A cautious regulatory approach is therefore not inconsistent with the objectives of 3S. On the contrary, the Court's insistence on scientific justification and effective regulatory design provides a basis for demanding the same discipline from any future UPF framework. The challenge for Indian food regulation is to respond to emerging public health evidence without allowing the uncertainty surrounding UPFs to become either a reason for regulatory inaction or a justification for disproportionate intervention.

VIII. TOWARDS A RISK-PROPORTIONATE UPF FRAMEWORK FOR INDIA

The preceding analysis demonstrates that India's response to ultra-processed foods should neither be confined to the existing HFSS framework nor move towards blanket regulation of all products classified as ultra-processed. The more appropriate approach is to develop a risk-proportionate framework in which processing characteristics supplement, rather than replace, nutritional criteria. Such a framework would allow the State to respond to emerging public health concerns while ensuring that regulatory intervention remains supported by evidence and proportionate to the risk identified. Four reforms are particularly relevant in developing such an approach.

⁵⁷ *Centre for Public Interest Litigation v Union of India* (2013) 16 SCC 279; *Swami Achyutanand Tirth v Union of India* (2016) 9 SCC 699.

A. DEVELOPING A REGULATORY CLASSIFICATION FOR ULTRA-PROCESSED FOODS

The first step should be to develop a clear regulatory classification of ultra-processed foods. At present, the absence of a legally recognised category makes it difficult to determine whether processing should have any independent regulatory consequence. FSSAI should therefore undertake a scientific and stakeholder-driven exercise to identify the characteristics that should form the basis of an Indian UPF classification.

The purpose of such classification should not be to label every UPF as harmful. Instead, it should provide the regulator with an additional tool for identifying products that warrant closer scrutiny. The classification should distinguish between the fact of ultra-processing and the degree of demonstrated health risk. This distinction would prevent the category from becoming an automatic trigger for restrictive regulation.

The classification should also be periodically reviewed. Food manufacturing practices evolve rapidly and a static definition may become either over-inclusive or under-inclusive. A review mechanism would allow regulatory standards to respond to developments in scientific evidence and food technology without requiring a complete restructuring of the legal framework each time.

The introduction of a UPF classification should not result in the replacement of the existing HFSS framework. Nutrient composition remains a more direct basis for regulating excessive intake of sugar, salt and fat and provides relatively objective criteria for enforcement. The regulatory framework should therefore retain nutrient thresholds while allowing processing characteristics to supplement them.

This could operate through a tiered model. Products that exceed established nutrient thresholds could remain subject to mandatory warnings and other applicable restrictions. Products that meet the UPF classification but do not cross the relevant nutrient thresholds could initially be subject to enhanced disclosure or monitoring rather than equivalent warnings. Products that are both highly processed and high in nutrients of concern could attract stronger regulatory measures.⁵⁸

Such differentiation would allow the regulatory response to reflect differences in risk. It would also avoid the conceptual difficulty of treating a product's UPF status as conclusive evidence of harm. The objective would be to identify combinations of characteristics that warrant intervention rather than creating a single category to which identical restrictions apply.

⁵⁸ *Modificación a la Norma Oficial Mexicana NOM-051-SCFI/SSA1-2010, Diario Oficial de la Federación (27 March 2020) (Mexico); Ley No 20.606 (Chile).*

The protection of children should form a distinct component of the framework. Children are not simply ordinary consumers with less information. Their ability to evaluate commercial messaging is more limited and their preferences can be significantly shaped by advertising and product presentation. Regulation should therefore pay particular attention to the marketing of products that combine high levels of nutrients of concern with characteristics of ultra-processing.

Restrictions could focus on practices that are particularly likely to influence children, including the use of child-oriented characters, promotional content associated with entertainment and marketing through platforms primarily accessed by children.⁵⁹ Health and nutrition claims should also be subject to greater scrutiny where they may create an overall impression of healthfulness that is inconsistent with the nutritional characteristics of the product.

This approach would be preferable to imposing a general prohibition on advertising all UPFs. The regulatory focus would remain on the manner in which a product is promoted and the vulnerability of the audience rather than on the mere fact of processing.

The fourth reform should be institutional rather than substantive. FSSAI should establish a mechanism for periodic review of the scientific evidence underlying HFSS and UPF regulation. The concerns raised in 3S demonstrate the importance of ensuring that regulatory thresholds and classifications remain connected to contemporary scientific evidence.

Such review should examine whether existing thresholds continue to reflect established health risks, whether consumer understanding of warnings has improved and whether the regulatory measures have produced their intended effects. Where evidence changes, the regulatory framework should be capable of being revised without waiting for judicial intervention.

The review process should also improve transparency. Scientific studies relied upon for establishing thresholds or classifications should be identified, and the reasoning connecting the evidence to the regulatory measure should be made available to the public. This would strengthen institutional accountability while enabling affected stakeholders to meaningfully participate in the regulatory process.

The most important principle underlying the proposed framework is that classification and regulatory consequence should remain distinct. The identification of a product as ultra-processed should not automatically determine whether it is taxed, restricted, prohibited or subjected to a warning. Each intervention should require a separate assessment of its necessity and effectiveness.

⁵⁹ *Food (Promotion and Placement) (England) Regulations 2021, SI 2021/1368; CCPA Guidelines 2022, guideline 8.*

This approach would allow India to adopt a graduated regulatory structure. Information-based measures could apply where the primary concern is consumer awareness. Marketing restrictions could apply where commercial promotion creates a heightened risk, particularly among children. Stronger measures could be considered where ultra-processing is accompanied by excessive levels of nutrients of concern and where there is sufficient evidence that the proposed intervention would reduce the relevant health risk.

Such a framework would also provide a more principled basis for judicial review. If each regulatory measure is connected to a clearly identified public health objective and supported by evidence demonstrating its suitability, the regulator would be better placed to defend its decisions when challenged. Conversely, measures based merely on the assumption that all ultra-processed foods are harmful would be more vulnerable to challenges based on arbitrariness and proportionality.⁶⁰

The proposed framework therefore seeks to move Indian food regulation from a binary question of whether a product is healthy or unhealthy towards a more differentiated assessment of risk. *3S and Our Health Society* is significant in this regard because it demonstrates the importance of examining the scientific basis, design and effectiveness of food regulation rather than treating regulatory intervention as an end in itself. The same principle should guide the future regulation of ultra-processed foods.

India need not choose between preserving the existing HFSS framework and introducing a new UPF regime. A carefully designed hybrid system can retain the certainty offered by nutrient-based regulation while recognising that processing may provide relevant additional information about public health risk. The legitimacy of such a framework, however, will depend on the discipline with which the State distinguishes scientific evidence from assumption and regulatory necessity from regulatory convenience. A risk-proportionate approach would therefore provide the most defensible path towards addressing the growing concerns surrounding ultra-processed foods without extending State intervention beyond what the State can justify.

IX. CONCLUSION

The regulation of ultra-processed foods presents a challenge that cannot be addressed adequately through a framework concerned only with the nutritional composition of food. India's existing focus on sugar, salt and fat remains important, but the growing evidence

⁶⁰ *Shayara Bano* (n 18); *Anuradha Bhasin* (n 41).

surrounding ultra-processed foods indicates that the manner in which food is formulated and processed may also be relevant to public health. The question, therefore, is not whether nutrient-based regulation should be replaced by UPF regulation, but whether processing characteristics should form an additional part of India's regulatory approach.

3S and Our Health Society v Union of India provides an important context for this debate. The case demonstrates the increasing significance of scientific evidence, regulatory effectiveness and public-health considerations in determining how food products should be regulated. At the same time, it also highlights the need for regulatory measures to be supported by credible evidence and implemented in a manner that is rational and proportionate. These principles are particularly relevant to UPF regulation, where scientific understanding continues to develop and where a broad classification may encompass products with significantly different nutritional profiles.

India should therefore adopt a risk-proportionate and hybrid regulatory framework. Nutrient-based standards should remain the foundation of food regulation, while a scientifically defined UPF classification can operate as an additional regulatory factor. Products that are both ultra-processed and high in nutrients of concern may warrant greater regulatory scrutiny, while UPF classification alone should not automatically trigger prohibitions, taxation or other severe restrictions. Regulatory intervention should instead correspond to the nature and degree of demonstrated risk.

Such an approach would also allow regulation to extend beyond front-of-pack labelling. Restrictions on child-directed marketing, regulation of food environments in schools, greater transparency in product information, public nutrition education and periodic scientific review can complement existing measures. The objective should be to create a regulatory ecosystem in which different interventions address different dimensions of the public-health problem rather than relying on a single label or classification.

Ultimately, effective UPF regulation requires India to move beyond a binary distinction between healthy and unhealthy food. The more appropriate approach is to recognise varying degrees and forms of risk and to calibrate regulatory responses accordingly. *3S* offers an important constitutional and regulatory context for this transition, but the development of a coherent UPF framework must remain primarily a function of evidence-based policymaking by specialised regulators. Judicial review can ensure that such measures remain lawful, rational and proportionate, but should not substitute judicial judgment for scientific and regulatory expertise. A carefully designed hybrid framework would therefore allow India to respond to

the emerging concerns surrounding ultra-processed foods while preserving consumer choice, regulatory certainty and proportionality.

