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FOOD LABELLING IN INDIA: PUBLIC HEALTH AND THE REGULATION OF UNHEALTHY FOODS

AUTHORED BY - ARNAV KALBHOR, ARINDAM GUPTA & MAHAK YADAV

National Law Institute University, Bhopal

ABSTRACT

“This article examines the Supreme Court’s orders in 3S and Our Health Society v Union of India, in which the Court has pressed the Food Safety and Standards Authority of India (FSSAI) to adopt interpretive warning labels on packaged foods high in fat, sugar and salt, and has tied that exercise to Articles 21 and 47 of the Constitution. The litigation raises two questions. The first is whether the right to health merely permits the State to regulate food or also requires it to shape the information environment in which food choices are made. The second is where judicial enforcement of that duty ends and judicial design of technical regulation begins. The article argues that front-of-pack labelling is better understood as an informational measure that makes consumer autonomy meaningful than as hard paternalism, although it is less neutral than its defenders suggest, and that the right to health supports a duty to decide and act within a reasonable time, not unlimited discretion over thresholds, label design and timelines, which must rest on transparent scientific reasoning. Drawing on the Chilean, Mexican and United Kingdom models and on the evidence on label comprehension and purchasing, it concludes that the Court stands on firm ground when it compels FSSAI to decide, and on less secure ground when it prescribes how. It recommends supervised, time-bound regulation by FSSAI in place of judicial administration of a food standard.”

INTRODUCTION

Food regulation has traditionally asked whether a product is safe to eat, and the Food Safety and Standards Act 2006 (“FSS Act”) was written largely to meet problems of that kind. A second question is harder to answer through inspection. What happens when a population is routinely exposed to packaged foods that are lawful and safe in the regulatory sense but high in sugar, salt and saturated fat, while the information needed to understand the cost of eating them sits in a table at the back of the pack?

The question matters because of what these nutrients are associated with. Non-communicable

diseases, including diabetes, hypertension and cardiovascular disease, already account for most deaths in India,¹ and the Supreme Court has treated obesity as a recognised public-health challenge.² Two terms need care. Foods high in fat, sugar or salt (“**HFSS**”) are identified by nutrient content; ultra-processed foods (“**UPFs**”) by the extent and purpose of industrial processing, most commonly through the NOVA classification.³ The two overlap but are not identical. The *Dietary Guidelines for Indians 2024* of the Indian Council of Medical Research-National Institute of Nutrition (“**ICMR-NIN**”) place HFSS foods in all three of their processing groups, including minimally processed food, and treat every food in the most processed group as a UPF whatever its nutrient profile.⁴

Front-of-pack labelling (“**FoPL**”) is one regulatory response. It places an interpretive signal on the front of the pack, such as a star rating, a colour code or a warning, in place of or alongside the numerical nutrition table at the back. It tells the consumer not how much sugar a product contains but what that amount may mean.

In India the issue has reached the Supreme Court in *3S and Our Health Society v Union of India*,⁵ a public interest petition under Article 32 of the Constitution.⁶ Over successive orders the Court has pressed the Food Safety and Standards Authority of India (“**FSSAI**”) to adopt warning labels, and has linked the exercise to the right to health under Article 21, the State’s duty under Article 47 to raise the level of nutrition and improve public health, and the protection of children.⁷ The problem is institutional as much as constitutional. If the State must protect health, how far may it go in shaping the information environment in which consumers choose what to eat, and who decides how far: the regulator, the legislature or the Court?

This article makes three arguments. First, FoPL is better understood as an informational measure that makes autonomy meaningful than as hard paternalism, though it is not as neutral as its defenders suggest. Second, the right to health supports a duty to decide within a reasonable time, not unlimited State discretion over the design of food information. Third, the Court is on its firmest ground when it compels FSSAI to exercise its statutory powers, and on

¹ World Health Organization, *Noncommunicable Diseases Country Profiles 2018* (WHO 2018).

² *3S and Our Health Society v Union of India* (SC, Writ Petition (Civil) No 437 of 2024, Order of 13 August 2026) paras 6–9.

³ Carlos A Monteiro and others, ‘Ultra-Processed Foods: What They Are and How to Identify Them’ (2019) 22 Public Health Nutrition 936.

⁴ Indian Council of Medical Research-National Institute of Nutrition, *Dietary Guidelines for Indians* (ICMR-NIN 2024); *3S and Our Health Society v Union of India* 2026 INSC 988 (SC, Writ Petition (Civil) No 437 of 2024, Order of 10 September 2026) paras 19–20.

⁵ *3S and Our Health Society v Union of India* (SC, Writ Petition (Civil) No 437 of 2024, Order of 9 April 2025).

⁶ Constitution of India 1950, art 32.

⁷ Constitution of India (n 7) arts 21 and 47; *3S and Our Health Society* (Order of 13 August 2026) (n 3) paras 8, 16.

less secure ground when it prescribes how. The better course is supervised, time-bound regulation by FSSAI, not judicial administration of a food standard.

FROM NUTRITION DISCLOSURE TO WARNING LABELS

Indian law already requires much information on a pack. The Food Safety and Standards (Labelling and Display) Regulations 2020 require a nutrition information panel, and fix legibility and minimum character heights.⁸ The difficulty is not absence of information. A table of grams and milligrams asks the consumer to know a sensible daily limit, convert a per-100g figure into the quantity eaten and compare products in a shop. Researchers describe the back-of-pack table as difficult to interpret, and the Supreme Court has said that the value of FoPL lies ‘not merely in disclosure but in clarity’.⁹

Interpretive labelling tries to close that gap, and four things that are often discussed together should be separated. A nutrient declaration states the quantity of a nutrient. A summary rating, such as the Health Star Rating or India’s proposed Indian Nutrition Rating, converts several nutrients into one score. A traffic-light label gives a graded, nutrient-by-nutrient signal in red, amber and green. A warning label is binary and appears only on products that exceed a defined threshold for a nutrient of concern. The first is disclosure. The other three interpret, differently: a rating says how healthy a product is overall, a traffic light how much of each nutrient it contains, and a warning that it contains too much of something. The World Health Organization (‘WHO’) supports interpretive FoPL as part of a healthy-diet policy but does not prescribe a single format.¹⁰

India’s regulatory history shows how much turns on that choice. On 13 September 2022 FSSAI published draft amendments to the 2020 Regulations proposing the Indian Nutrition Rating (‘INR’), a star rating from 0.5 to 5.¹¹ According to FSSAI’s affidavit before the Court, the INR scored energy, sugar, salt and saturated fat, with capped credit for positive components such as protein and fibre,¹² and compliance was to be voluntary for 48 months.¹³ FSSAI received over 14,000 comments and constituted an expert committee in February 2023.¹⁴

The move from that draft to a warning label was largely produced by litigation. In February

⁸ Food Safety and Standards (Labelling and Display) Regulations 2020, regs 4(7), 5 and 6.

⁹ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 10.

¹⁰ World Health Organization, *Guiding Principles and Framework Manual for Front-of-Pack Labelling for Promoting Healthy Diets* (WHO 2019).

¹¹ Food Safety and Standards Authority of India, ‘Draft Food Safety and Standards (Labelling and Display) Amendment Regulations 2022’ (notification of 13 September 2022).

¹² *3S and Our Health Society* (Order of 9 April 2025) (n 6) para 4 (affidavit, paras 7–8).

¹³ *3S and Our Health Society* (Order of 10 September 2026) (n 5) para 49.

¹⁴ *3S and Our Health Society* (Order of 9 April 2025) (n 6) para 4 (affidavit, paras 9–10).

2026 the Court accepted that the petitioner's suggestion of a warning made some sense.¹⁵ The Economic Survey 2025-26, as the Court records, noted a statement by 29 organisations recommending warning labels in place of the INR,¹⁶ and FSSAI's affidavit of 28 August 2026 then proposed a red hexagon.¹⁷

The change is more than a change of symbol. A rating answers through a compensatory calculation in which protein and fibre can offset sugar. A warning asks whether the product contains an excessive amount of a particular nutrient, and gives no credit for offsetting virtues. Each has a weakness. A compensatory score can hide the excess the consumer needs to see. A threshold warning treats a product just over the line like one far over it. The Indian experimental evidence is mixed. A randomised experiment with 2,869 adults in six states found warning labels the most effective format for identifying products high in nutrients of concern, but no format reduced purchase intentions. A survey experiment found Health Star Rating and warning formats easier to identify and understand than traffic lights, while another found a two-colour traffic light performed best. The evidence supports the claim that interpretive labels help consumers. It does not decide which one India should adopt.

THE STATUTORY FRAMEWORK AND THE ROLE OF FSSAI

The statute determines what kind of thing the Court is doing when it presses FSSAI. The FSS Act establishes FSSAI under section 4 to lay down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import.¹⁸ FSSAI itself describes section 16(1) as binding it to regulate food in the interest of public health, and section 16(2)(h) as the source of its power to specify labelling standards.¹⁹ Section 23 requires packaged food to be labelled as specified by regulations, and section 24 deals with advertisements.²⁰

Three consequences follow. First, there is no legislative vacuum. In *Vishaka v State of Rajasthan* the Court framed guidelines because no law occupied the field.²¹ Here a statute already gives the power to an expert body, so the Court is requiring that the power be exercised, not supplying a missing one. Secondly, the statute does not leave FSSAI free to proceed as it likes. Section 18 directs the Authority to aim at an appropriate level of protection of human life

¹⁵ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 1.

¹⁶ *ibid* para 9.

¹⁷ *3S and Our Health Society* (Order of 10 September 2026) (n 5) paras 3–4.

¹⁸ FSS Act (n 1) preamble and s 4.

¹⁹ *3S and Our Health Society* (Order of 9 April 2025) (n 6) para 4 (affidavit, paras 5–6).

²⁰ FSS Act (n 1) ss 23–24.

²¹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

and health and permits provisional measures where harm is suspected but scientific certainty is lacking.²² FSSAI's own account is that draft regulations are published for 60 days of domestic and WTO consultation, examined, approved by the Food Authority and then notified. Thirdly, the process cuts both ways. Consultation gives a regulation legitimacy, but it can also become a means of delay. The order of 13 August 2026 records the petitioner's reliance on the minutes of the 46th Food Authority meeting, at which the Chairperson directed wider and more frequent consultations before any draft or final regulation was published.²³

FoPL also does not stand alone. The Food Safety and Standards (Advertising and Claims) Regulations 2018 govern claims made about food.²⁴ A warning on a pack that also suggests a health benefit invites the consumer to favour the claim, so any warning depends on coherent claims rules.

3S AND OUR HEALTH SOCIETY V UNION OF INDIA

Origins and the orders of 2025 and 2026

The petition, Writ Petition (Civil) No 437 of 2024, sought a direction for front-of-pack warning labels on packaged foods.²⁵ FSSAI answered that it had already acted: the 2022 draft proposed the INR, an expert committee was examining the comments, and a revised draft would go to the Scientific Committee and then the Food Authority.²⁶ On 9 April 2025 Justices Pardiwala and Mahadevan disposed of the writ with a direction to the expert committee to prepare its recommendations within three months, and listed the matter to report compliance.²⁷ The order is modest, but it treated a pending regulatory process as something the Court could set a clock for, and kept the matter alive.

By 10 February 2026 the Court was dissatisfied. The order of 13 August reproduces its observations: the petitioner's suggestion made some sense, FoPL was internationally prevalent, and the authority should revert within four weeks.²⁸ On 13 August, before Justices Pardiwala and Vinod Chandran, the Additional Solicitor General submitted that the suggestion could not be considered because it was difficult to follow international standards of packaging.²⁹ Press reports of oral remarks, not the written order, say that the bench asked whether the regulator

²² FSS Act (n 1) s 18.

²³ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 2.

²⁴ Food Safety and Standards (Advertising and Claims) Regulations 2018.

²⁵ *3S and Our Health Society* (Order of 9 April 2025) (n 6) para 1.

²⁶ *Ibid* para 4.

²⁷ *ibid* paras 6–10.

²⁸ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 1.

²⁹ *Ibid* para 3.

was yielding to industry pressure. The written order is more measured. It describes FoPL as an assistive device placing readily understood information on the pack at the moment of purchase, invites the Union to take inspiration from Chile, Israel and Canada, leaves the visual appearance of the label to the Union in consultation with experts, states that Article 21 requires affirmative steps to protect health and that Article 47 makes public health a primary duty, and refuses to accept that India cannot match international standards.³⁰

The order of 10 September 2026

The order of 10 September 2026, reported as 2026 INSC 988, is the most detailed.³¹ It records FSSAI's affidavit of 28 August, which proposed a red hexagonal warning for products high in two or more of added fat, added sugar and salt, on 2024 Dietary Guidelines thresholds, with exemptions for single-ingredient and inherently rich foods such as ghee, sugar and honey, and a Phase II extending to products high in any one.³² The Court acknowledged progress but found implementation ambiguous.³³ Its response is framed largely as questions and not as directions. It asked what justified the 'two or more' trigger, which the petitioner called an unscientific redefinition of HFSS; why no timeline separated the phases; whether processing should matter; why total sugar and saturated fat, agreed at a stakeholder meeting in October 2021, had given way to added sugar and added fat; what the size, placement and colour of the hexagon should be, given the confusion of red with the non-vegetarian mark; whether a word-only label could serve consumers of differing literacy; and whether compliance should be mandatory from the start.³⁴ It also asked how schools would teach children to read nutrition information.³⁵ The Court noted that the 2024 Guidelines and the 2022 draft define HFSS differently, using 'and' and 'or' inconsistently, and said this must be resolved as a matter of priority.³⁶ It thought that the per-serving approach urged by an intervenor, the All India Food Processors Association, was scientifically sound but might prove 'a red herring' that is ignored.³⁷ Nothing in the order directs FSSAI to adopt a particular design.

FSSAI's September proposals and the hearing of 28 September

FSSAI's response, reported on 23 and 26 September 2026, changed its position on several

³⁰ *3S and Our Health Society* (Order of 13 August 2026) (n 3) paras 5–21.

³¹ *3S and Our Health Society* (Order of 10 September 2026) (n 5).

³² *ibid* para 3.

³³ *ibid* para 5.

³⁴ *ibid* paras 7–50, 53.

³⁵ *ibid* paras 51–53.

³⁶ *ibid* para 9.

³⁷ *ibid* paras 46–47.

points. It proposed a single phase in place of two, and a red hexagon on a white square at the top left of the pack, broadly on the Canadian model, triggered where a product exceeds the threshold for any one specified nutrient and applied irrespective of processing. It retained added sugar and added fat, explaining that naturally occurring sugars in fruit and milk come with other nutrients, and did not treat trans fat as an additional component because it is separately regulated. On timing it proposed about four months to finalise draft regulations, which would then be published for 60 days, followed by a 365-day voluntary period, intended as reported to avoid hardship from preprinted packaging.³⁸ These are proposals reported in the press, and none has been adopted as a regulation. On 28 September 2026 the bench reserved its order. It asked why a year of voluntary compliance was needed, and why a fresh round of objections was required when the exercise had begun in 2022; the Additional Solicitor General answered that the 2022 process concerned a star-rating system with different criteria. Justice Pardiwala said the forthcoming order would bind the regulator and that the matter would be listed again for compliance. The petitioner pressed for mandatory implementation from the outset, for total sugar, and against waiting for a definition of UPFs. At the time of writing no pronouncement has been reported, and nothing in this article assumes its content.

THE RIGHT TO HEALTH AND THE STATE'S DUTY TO REGULATE FOOD

The Court's constitutional reasoning is short. Article 21 has been read to include a positive State duty to protect health, enforced even where resources were limited; Article 47, though not enforceable in itself, has been used to give content to that duty;³⁹ and food regulation has been brought within it, the Court being reported to have read Articles 21 and 47 together as requiring an appropriate level of protection against food hazardous to health.

The question for FoPL is whether this authority supports only a negative duty, to prevent harm, or also a positive duty to build better information. Traditional food-safety cases fit the first, since contaminated food harms whatever the consumer knows. A high-sugar biscuit is lawful and no consumer is deceived about its ingredients. The State is asked instead to design how its health significance is communicated. The Court's statement that Article 21 casts a duty on the State 'to take affirmative steps' is therefore doing real work.⁴⁰

³⁸ *LawBeat* report (n 45); *LiveLaw* report (FSSAI response) (n 28).

³⁹ *Vincent Panikurlangara v Union of India* (1987) 2 SCC 165 (the maintenance and improvement of public health is indispensable to the physical existence of the community).

⁴⁰ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 16.

I think the better reading is that the right to health supports a duty of outcome and process, and not of design. The State cannot indefinitely leave a serious and well-documented source of ill-health to the market, and FSSAI, which holds the power, must decide whether and how to act within a reasonable time and with reasons. The right does not tell anyone that the hexagon must be red or that the threshold must be 3 grams. The Court's own order reflects this: it speaks of affirmative steps in general terms and leaves visual appearance to the Union and experts.⁴¹ The right to health therefore answers the first half of the central question. It does more than permit the State to regulate food. It requires the State to consider, and where the evidence supports it to adopt, measures of this kind. But it leaves the form of the measure to be justified on other grounds.

CONSUMER AUTONOMY AND THE PROBLEM OF PATERNALISM

The obvious objection is about autonomy. If a consumer knows that a product is high in sugar and buys it anyway, the choice is hers, and a State that intervenes treats her as a child. This deserves to be taken seriously.

Paternalism comes in kinds. The Nuffield Council on Bioethics describes an 'intervention ladder' that runs from doing nothing and providing information, through guiding choices by defaults and incentives, to restricting and eliminating choice.⁴² Hard paternalism sits at the top: the State bans the choice. Informational or soft paternalism sits near the bottom: the State leaves the choice open and tries to improve the way it is made.⁴³ A warning label belongs mainly to the second kind.

The stronger argument is that meaningful autonomy requires meaningful information. A choice made against a table that most people cannot read is not necessarily an informed one. Seen this way FoPL lowers the cost of acting on the consumer's own judgment, consistent with the right to receive commercial information recognised in *Tata Press Ltd v Mahanagar Telephone Nigam Ltd*⁴⁴ and with the consumer's right under the Consumer Protection Act 2019 to be informed about the quality and standard of goods.⁴⁵

This should not be accepted too quickly. First, a warning is not neutral information. 'High in sugar' is a statement of fact only relative to a threshold, and the threshold is a judgment.

⁴¹ *ibid* paras 15–16.

⁴² Nuffield Council on Bioethics, *Public Health: Ethical Issues* (Nuffield Council on Bioethics 2007).

⁴³ Cass R Sunstein and Richard H Thaler, 'Libertarian Paternalism Is Not an Oxymoron' (2003) 70 *University of Chicago Law Review* 1159.

⁴⁴ *Tata Press Ltd v Mahanagar Telephone Nigam Ltd* (1995) 5 SCC 139.

⁴⁵ Consumer Protection Act 2019, s 2(9)(ii).

FSSAI's thresholds come from Dietary Guidelines that fix them by reference to percentages of energy, for solid foods about 5 per cent from added sugar and 15 per cent from added fat.⁴⁶ These are defensible, but they are normative choices embedded in a label that reads as fact. Secondly, form carries meaning. A red hexagon is meant to be noticed and to discourage, and the Court itself observed that red already signals non-vegetarian food in India.⁴⁷ That does not make the label illegitimate, but the justification cannot be that it is merely information. Thirdly, a binary warning leaves every unlabelled product looking acceptable, while the Court saw the inverse risk: if thresholds are so low that most packaged foods carry a label, consumers cannot tell the better from the worse.⁴⁸ Either way the design determines whether the label clarifies or distorts.

Fourthly, how much must the State prove? If FoPL is defended as enhancing autonomy, it should be able to show that the label improves comprehension among the people who will see it, which Indian experiments have begun to do, with mixed results across formats. It need not, and should not claim to, show that the label will reduce obesity. Systematic reviews find that interpretive labels move purchases in a healthier direction,⁴⁹ though an earlier Cochrane review found the evidence for behaviour change limited and inconsistent,⁵⁰ and I have not found a study attributing a measured fall in obesity or disease to FoPL alone. The Court's statement in August that the Chilean change substantially reduced appetite for high-salt, high-sugar products across socioeconomic groups⁵¹ is broader than the studies I have seen, which report falls in purchases after a package of labelling, marketing and school measures.⁵²

CHILDREN AND THE PUBLIC-HEALTH JUSTIFICATION

The Court has returned repeatedly to children, and the justification for intervention is stronger here than for adults. Article 39(f), with Articles 21 and 47, supplies the constitutional basis.⁵³ The Convention on the Rights of the Child requires States to combat disease and malnutrition

⁴⁶ *3S and Our Health Society* (Order of 10 September 2026) (n 5) para 16.

⁴⁷ *ibid* para 43.

⁴⁸ *ibid* para 23.

⁴⁹ 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; Jing Song and others, 'Impact of Color-Coded and Warning Nutrition Labelling Schemes: A Systematic Review and Network Meta-Analysis' (2021) 18(10) *PLOS Medicine* e1003765.

⁵⁰ Rachel A Crockett and others, 'Nutritional Labelling for Healthier Food or Non-Alcoholic Drink Purchasing and Consumption' (2018) *Cochrane Database of Systematic Reviews*, Issue 2, CD009315.

⁵¹ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 12.

⁵² 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.

⁵³ Constitution of India (n 7) arts 21, 39(f) and 47.

through adequate nutritious food,⁵⁴ and the WHO has recommended that States restrict the marketing of foods high in saturated fats, trans fats, free sugars or salt to children.⁵⁵

The Court's factual premises come from the UNICEF Child Nutrition Report 2025: the share of overweight children and adolescents aged 5 to 19 rose from 2 to 10 per cent between 2000 and 2022, and while about 80 per cent of what is available inside schools is freshly cooked, nearly 80 per cent of what is available near them is packaged snacks.⁵⁶ These premises justify intervention in the food environment around children, but justify FoPL less directly. A label is read at the point of purchase, and the buyer may be a child who does not read it or a parent. The strongest child-specific tools lie elsewhere: restrictions on marketing to children and on sales in and around schools, and bars on child-directed appeals on labelled products, as Chile and Mexico adopted. The Court's question about nutritional literacy suggests FoPL alone is not expected to reach children.⁵⁷ The child-protection argument therefore supports FoPL, but not by itself every feature of FSSAI's design: whether an any-one-nutrient trigger is justified depends on the science, not on the vulnerability of children in general.

WHEN INFORMATION BECOMES STATE-COMPELLED SPEECH

FoPL requires manufacturers to carry a State-designed message on their own packaging, and Indian doctrine on this is thin. Commercial speech is protected under Article 19(1)(a), excluding deceptive and misleading advertisements,⁵⁸ while the right not to speak has been recognised only in a context of conscience and not commerce.⁵⁹ Restrictions are easier to justify under Article 19(1)(g), since Article 19(6) permits restrictions on trade in the interests of the general public, and the Supreme Court has stayed a High Court judgment striking down 85 per cent pictorial tobacco warnings, observing that the health of a citizen has primacy, though that was an interim order and tobacco is a harder case for industry than food. A manufacturer's challenge would probably be argued as one of proportionality, which asks for a proper purpose, a rational connection with it, the absence of a less restrictive equally effective alternative, and a proper balance between benefit and burden.⁶⁰ Public health is a proper purpose, and the comprehension evidence supports a rational connection. The contested stages are necessity and

⁵⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 24(2)(c).

⁵⁵ World Health Organization, *Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* (WHO 2010).

⁵⁶ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 8.

⁵⁷ *3S and Our Health Society* (Order of 10 September 2026) (n 5) para 52.

⁵⁸ *Tata Press* (n 56).

⁵⁹ *Bijoe Emmanuel v State of Kerala* (1986) 3 SCC 615.

⁶⁰ *Modern Dental College & Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

balance: whether a nutrition table or rating would do as well, whether size and placement are excessive, and whether the threshold is accurate enough not to mislead. United States law is only persuasive, but its more lenient review of factual and uncontroversial disclosures suggests that accuracy and factual character matter most.⁶¹ A label stating that a product exceeds a published threshold is closer to factual disclosure than alarming imagery. Food companies do not have an absolute right to refuse the label, but the State's justification has to be shown in the thresholds and not assumed.

WHO SHOULD DECIDE? JUDICIAL REVIEW, FSSAI AND THE LIMITS OF INTERVENTION

The proceedings show the Court doing different things that do not stand on the same footing. In April 2025 it required a statutory regulator to finish a pending process within a fixed time.⁶² In 2026 it first suggested content, reproducing illustrative labels from Chile and Canada,⁶³ and then examined design in detail: font size, number of hexagons, colour, trans fat.⁶⁴ At the hearing of 28 September it indicated that its forthcoming order would be binding on the regulator.⁶⁵ There is a good case for intervention. Articles 21 and 47 are engaged, and the statute gives FSSAI both the power and the duty. The INR draft was published in 2022 and no regulation had been notified four years later, and the draft itself contemplated 48 months of voluntary compliance.⁶⁶ Commentators have attributed delay to the food lobby, though the Court's written orders make no such finding. When a regulator is slow and the regulated industry opposed, the usual case for deference is weaker, and the continuing mandamus in *Vineet Narain v Union of India* gives the Court a method of supervision.⁶⁷

There is also a good case for restraint. The questions the Court asked on 10 September are largely scientific or regulatory: what threshold, per what quantity, for which categories, with which exemptions. FSSAI has scientific committees and statutory consultation, while the Court hears a few parties. The decision is polycentric: a low threshold labels most of the market, a high one little, exemptions affect small producers, and reformulation may replace one additive

⁶¹ *Zauderer v Office of Disciplinary Counsel of the Supreme Court of Ohio* 471 US 626 (1985).

⁶² *3S and Our Health Society* (Order of 9 April 2025) (n 6) paras 6–10.

⁶³ *3S and Our Health Society* (Order of 13 August 2026) (n 3) paras 11–14.

⁶⁴ *3S and Our Health Society* (Order of 10 September 2026) (n 5) paras 7–50.

⁶⁵ *LiveLaw* report (28 September hearing) (n 47); *AdGully* report (n 48).

⁶⁶ FSSAI, 'Draft Amendment Regulations 2022' (n 13); *3S and Our Health Society* (Order of 10 September 2026) (n 5) para 49.

⁶⁷ *Vineet Narain v Union of India* (1998) 1 SCC 226.

with another, as the Court noted.⁶⁸ The Court cannot test a label, commission a consumer study or revisit a threshold after a year's experience, and it accepted that experts might disagree.⁶⁹ The two positions can be reconciled if the Court's role is divided into three layers. The first is the duty to decide within a reasonable time. Here the Court is strongest. Unreasonable delay in discharging a statutory duty that protects health is classic ground for mandamus, and a fixed outer date is proportionate. The second is the quality of reasoning. Review of whether the regulator has reasoned consistently does not require the Court to choose the answer. Its questions about the inconsistent definitions of HFSS, and about why total sugar and saturated fat were replaced by added sugar and added fat, are of this kind.⁷⁰ They ask FSSAI to explain a departure, not to reverse it. The third layer is substance: the threshold figures, the colour, the font. These should remain with FSSAI. If the Court finds the reasons inadequate, the better remedy is to require fresh reasons within a time limit, not to substitute its own design. By this measure the written orders so far are largely within bounds, since they speak of inspiration and questions and leave visual appearance to the Union and experts. The risk lies ahead. A binding order fixing the colour, the basis of the threshold and the voluntary period would move from supervision to administration, and a regulator so instructed may find it hard to revise the standard when evidence changes. Deference that allows indefinite delay is answered by a supervised timeline, not by taking the decision over.

SCIENCE, THRESHOLDS AND REGULATORY DESIGN

This is where the dispute becomes a Health Law question and not only a constitutional one, because thresholds depend on epidemiology, nutrition science and behavioural research. FSSAI proposes the thresholds in Table 15.1 of the Dietary Guidelines: for solid foods per 100 g, 250 kcal, 625 mg of salt, 3 g of added sugar and 4.2 g of added fat, and for liquids per 100 ml, 70 kcal, 175 mg of salt, 2 g of added sugar and 1.5 g of added fat.⁷¹ The Court observed that, applied literally, these may capture most packaged foods.⁷² Chile's staged tightening is one answer: the sugar threshold fell from 22.5 g to 10 g per 100 g between 2016 and 2019.⁷³ The choice is between phasing coverage, as FSSAI first proposed, and phasing stringency, as in Chile and Israel. Phasing stringency labels the worst products early and widens the net as

⁶⁸ *3S and Our Health Society* (Order of 10 September 2026) (n 5) para 44.

⁶⁹ *ibid* para 26.

⁷⁰ *ibid* paras 9, 33–35.

⁷¹ *ibid* paras 16–17.

⁷² *ibid* para 23.

⁷³ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 11.

reformulation occurs. FSSAI's September proposal drops phasing altogether.

Other design questions have real scientific content. On added versus total sugar, FSSAI's point that naturally occurring sugars in fruit and milk come with other nutrients is reasonable, but the 2021 stakeholder consultation preferred total sugar, among other reasons for ease of analytical testing,⁷⁴ and a threshold that regulators cannot verify in a laboratory is hard to enforce. On per-100g versus per-serving values, the industry intervenor argued for the latter and the Court preferred a label about total content,⁷⁵ but a per-serving figure is only as reliable as the serving size, which the manufacturer sets unless it is standardised (my own assessment; I have not seen FSSAI's reasons).

HFSS and UPF, distinguished in the introduction, raise a different issue. FSSAI says nutrient content, not processing, should decide whether a label appears, and the petitioner says the label should not wait for a definition of UPFs;⁷⁶ the Economic Survey, as quoted by the Court, recommended defining UPFs in addition to HFSS foods, not instead.⁷⁷ The science supports keeping the categories apart: most of the evidence linking UPF exposure to adverse health outcomes is observational and the definition is contested,⁷⁸ and a nutrient-based warning will miss a UPF that is not high in the three nutrients and will label some minimally processed foods.

Two further matters need testing and not assertion. Reformulation can be partial: the Chilean beverage data reflect both changed purchasing and reformulation, including the replacement of sugar by non-nutritive sweeteners. And colour and wording should be tested with Indian consumers across languages and literacy levels, as the Court's concern about word-heavy labels suggests.⁷⁹ What then makes a threshold legitimate? I suggest four tests. It must be derived from a stated scientific method, applied consistently across the regulator's own documents, capable of verification, and open to revision. One that does not is vulnerable even if the policy behind it is sound.

COMPARATIVE PERSPECTIVE

Chile, Mexico and the United Kingdom give three different answers, summarised in Table 1. Chile's Law 20.606, in force from June 2016, paired black octagonal warnings with limits on

⁷⁴ *3S and Our Health Society* (Order of 10 September 2026) (n 5) para 34.

⁷⁵ *ibid* paras 46–47.

⁷⁶ *LiveLaw* report (28 September hearing) (n 47).

⁷⁷ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 9.

⁷⁸ Melissa M Lane and others, 'Ultra-Processed Food Exposure and Adverse Health Outcomes: Umbrella Review of Epidemiological Meta-Analyses' (2024) 384 *BMJ* e077310.

⁷⁹ *3S and Our Health Society* (Order of 10 September 2026) (n 5) para 38.

child-directed marketing and school sales, and tightened its thresholds in phases.⁸⁰ Mexico's 2020 amendment of NOM-051 followed the octagon model, bars child-directed appeals on labelled products, and was phased in over several years despite industry attempts to obtain injunctions.⁸¹ The United Kingdom's front-of-pack label is a voluntary multiple traffic light. Three lessons follow for India, and none is that India must copy any of these systems.

- **Autonomy.** Graded colours leave the consumer to weigh the nutrients, while a warning announces a conclusion, and so needs the firmer scientific justification.
- **Thresholds and timing.** Chile staged by stringency, and the Court's reference to Chile and Israel points that way, though the effect cannot be attributed to labelling alone.⁸² Mexico phased in over five years, so phasing is not itself the problem. The problem is open-ended phasing without dates, which is what the Court objected to.⁸³
- **Institutional design.** In Chile and Mexico the label sat within a package of marketing and school measures and was adopted by statute or national standard, not by judicial supervision, and Mexico's standard provides for periodic review.

REFORMING INDIA'S FOOD-LABELLING FRAMEWORK

A label can improve the information environment, but it cannot alone transform an unhealthy food environment. The commercial determinants of health literature describes how marketing, lobbying and product design shape outcomes,⁸⁴ and FoPL meets each of them. Claims on the same pack can dilute the label, which is why the Economic Survey, as the Court quoted it, recommended prohibiting nutrient and health claims on UPFs.⁸⁵ Section 24 of the FSS Act and the 2018 Regulations give FSSAI the tools to align claims with the label.⁸⁶ Child-directed marketing and school environments are the second concern. Reformulation is the third: the Court sees FoPL as a long-run driver of it,⁸⁷ and the Survey floated taxation of UPFs, which is for another branch of government.⁸⁸ Trade law adds little, since a warning applies equally to

⁸⁰ Ley 20.606 sobre composición nutricional de los alimentos y su publicidad (Chile, 2012); Taillie and others (2020) (n 65).

⁸¹ Modificación a la Norma Oficial Mexicana NOM-051-SCFI/SSA1-2010, Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preenvasados (Mexico, Diario Oficial de la Federación, 27 March 2020); (n 70).

⁸² Lindsey Smith Taillie and others, 'Changes in Food Purchases after the Chilean Policy on Food Labelling, Marketing, and Sales in Schools: A Before and After Study' (2021) 5 Lancet Planetary Health e526.

⁸³ *3S and Our Health Society* (Order of 10 September 2026) (n 5) paras 11–12.

⁸⁴ Ilona Kickbusch, Luke Allen and Christian Franz, 'The Commercial Determinants of Health' (2016) 4 Lancet Global Health e895.

⁸⁵ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 9.

⁸⁶ FSS Act (n 1) s 24; Advertising and Claims Regulations (n 30).

⁸⁷ *3S and Our Health Society* (Order of 10 September 2026) (n 5) para 1.

⁸⁸ *3S and Our Health Society* (Order of 13 August 2026) (n 3) para 9.

domestic and imported products and the objection that it restricts trade more than necessary returns to the evidence on formats. The reforms follow from the problems identified above, and I have selected those the evidence supports.

1. **Publish the method, test the label and review at intervals.** FSSAI should state the scientific basis for each threshold, reconcile its definitions of HFSS, and explain any departure from the 2021 stakeholder consensus. Comprehension testing across languages and literacy levels should precede the final design, including colour and wording, and thresholds should be reviewed at fixed intervals, as the Mexican standard provides.
2. **Give reasons for the compliance period.** Any voluntary period should be justified by evidence on stock and reformulation, with a date for mandatory compliance.
3. **Align the surrounding rules.** Claims and advertising rules should be consistent with the label, and child-directed marketing of labelled products should be restricted.
4. **Keep the Court's role supervisory.** The Court should fix an outer date, require reasons and hear compliance reports, remanding for fresh reasons where they are inadequate.
5. **Consider a statutory mandate.** Parliament could amend the FSS Act to require interpretive FoPL and leave thresholds and design to regulations, as in Mexico, where the General Health Law was reformed in 2019 before the standard was amended.

CONCLUSION

This article began by asking whether the right to health merely permits the State to regulate food or requires it to shape a healthier food-information environment. The answer argued for here is that it requires the State to consider and to act, within a reasonable time and on reasons, where a serious and well-documented source of ill-health is left to a market that cannot be expected to correct it. FoPL is one lawful way of doing so. It removes no choice. It changes what the consumer is told, from what a product contains to what that composition may mean. That shift is not self-justifying. A warning is a State judgment placed on a private pack, and its legitimacy depends on the quality of the reasons behind it: thresholds that rest on a stated method, a label Indian consumers can understand, a compliance period explained by evidence, and a candid account of what the evidence shows. That account is that labels influence consumer response, while effects on population health remain to be demonstrated. It also depends on protection for children beyond the pack, and on proportionality towards those who must carry the label.

Finally, it depends on who decides. The Supreme Court has been right to refuse to let a pending

regulation stay pending. But the stronger the Court's remedy becomes, the more it should resemble the writ it began with and the less a food standard. The Court can say that FSSAI must decide, by when and with what reasons. It cannot supply those reasons without losing what makes a food standard defensible, which is that someone accountable has explained it. The Court can make the State speak. Only the regulator can make what it says worth believing.

