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GOVERNMENT OF INDIA  
  
LAW COMMISSION OF INDIA  
  
Report No.264  
  
‘The Criminal Law (Amendment) Bill, 2017  
(Provisions dealing with  
Food Adulteration)  
  
January, 2017  
  
  
Page 2:  
3 Merg, New Delhi-11000  
  
7-A, Motilal Nehru Marg,  
New Delni-11001t  
“Tet! 23012708,  
  
D.O. No.6(31305/2016-LC(LS) 17 January 2017  
  
‘The Law Commission of India is working on a Comprehensive Review of  
(Criminal Justice System. As part ofits study, the Commission is working on the  
need to suggest amendments to the Indian Penal Code, 1860, Code of Criminal  
Procedure, 1973 and the Indian Evidence Act, 1872.  
  
‘That being s0, in November last year, the Commission was asked by the  
Ministry of Home Affairs, “to examine the amendment to section 272 of IPC’ in the  
light of the judgement and order of Supreme Court in Swami Achyutanand  
Tirth & Ors. v. Union of India &Ors. AIR 2016 SC 3626, wherein the Court  
held that “as observed by this Court in the orders dated 05.12.2013 and  
10.12.2014, it will be in order, if the Union of India considers making suitable  
amendments in the penal provisions at par with the provisions contained in the  
‘State amendments to the Indian Penal Code.”  
  
‘The Commission accordingly undertook a review of sections 272 & 273 of  
the IPC in view of the judgment of the Supreme Court. It studied the punishment  
Prescribed with reference to these sections. After detailed discussions, the  
Commission felt that the punishment provided for is too inadequate in the  
Present scenario. Therefore, the Commission is of the view that there must be  
‘more stringent punishment in offences relating to adulteration of food, which is  
a threat to human life. The Commission feels that the punishment must be seen  
in the light of the harm caused to the consumer by consuming adulterated food  
items and drinks. The Food Safety and Standards Act, 2006, may not be  
‘occupying the entire field of food adulteration and thus, would not render the  
provisions of sections 272 & 273 of the IPC redundant.  
  
  
  
Page 3:  
‘The issue as to whether criminal proceedings con be initiated under  
sections 272 and 273 of the IPC after commencement of the Act of 2006, is still  
under consideration of the Supreme Court. Therefore, it is not appropriate for  
the Commission to comment upon the matter at this stage, Nevertheless, in the  
light of the directions of the Supreme Court, the Commission is suggesting  
certain amendments to sections 272 & 273 IPC as annexed to its Report No.264,  
titled “The Criminal Law (Amendment) Bill, 2017 (Provisions dealing with  
Food Adulteration)” which is sent herewith for consideration by the  
Government.  
  
‘The Commission would like to place on record its appreciation for the  
valuable advice rendered by Hon'ble Mr. Justice Pratyush Kumar, Judge,  
Allahabad High Court. The Commission also acknowledges the commendable  
assistance provided by its Consultants Shri Ariject Ghosh and Shri Lalit Panda,  
at various stages of preparation of the Report.  
  
Yours sincerely,  
  
ister for Law and Justice  
Government of India  
  
Shastri Bhawan  
  
New Delhi ~ 110115  
  
  
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Report No.264  
  
‘The Criminal Law (Amendment) Bill, 2017  
(Provisions dealing with Food Adulteration)  
  
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CHAPTER-I  
Background  
  
1.1. Our increasing daily need and fast growing lifestyle has resulted  
in availability of innumerable ‘food’ and ‘food products’ in the market,  
instant food and instant cooking has become a common requirement  
in every household today. Regional to multinational brands of food  
and food products are expanding their markets day by day; and are  
welcomed at homes on the note of instant servings for our needs  
Various processes along the way transform and modify the food  
product so as to enhance or customize its characteristics. This is an  
inexorable process linked to the increased specialisation of functions  
  
in society and cannot be reversed.  
  
1.2. Securing the ‘wholesome food’ for human consumption has  
since long been secured through laws. Food legislations are brought  
into place to ensure that the acceptable minimum level of food safety  
is ensured; and the standards that secure such safety are strictly  
enforced. The ever growing food and food products market bring along  
with it, the greed of antisocial persons engaged in food adulteration,  
which is a serious crime against society. The increasing menace of  
food adulteration in the country is driving the citizens to health  
hazards that ultimately result in various ailments and even premature  
  
deaths,  
  
1.3. The Law Commission's Report is to address such threats and  
covers two provisions in the Indian Penal Code 1860 (hereinafter  
referred to as the IPC) that deal with food adulteration: Sections 272  
and 273. As this Report will briefly explain, the present framework on  
food safety which is enshrined in the Food Safety and Standards Act,  
  
2006 (hereinafter referred to as the Food Act); where the food  
1  
  
  
Page 6:  
adulteration is dealt with under the provisions of the Act by creating  
‘an offence relating to “unsafe food” and creating a basis for standard-  
  
setting in the industry.  
  
1.4, The object of this Report is to create a uniform scheme of  
punishment for food adulteration offences. Most significantly, the  
suggested amendments aims at eliminating the low quantum of  
punishment provided in the IPC; and updates it to bring it in line with  
the provisions of the Food Act as well as the punishments as found in  
‘the amendments of the IPC made by Odisha, Uttar Pradesh and West  
Bengal. Appropriate amendments to the relevant Schedule of the  
Criminal Procedure Code are also proposed. These proposals are  
  
appended at the end of the Report as an ‘Amendment Bill’,  
  
1.5, It is necessary to present the events briefly that resulted in this  
project being taken up by the Law Commission. The Supreme Court  
judgement in Swami Achyutanand Tirth & Ors. v. Union of India &  
Ors. and the Ministry of Home Affairs’ reference are brought into  
focus to explain the objective with which the Commission undertook  
  
this study.  
  
1.6. This Report precisely provides a description of the current  
framework on food safety laws in India and how they have changed,  
not too long ago to meet the increasing demands of food regulations  
keeping in view the best practices followed in the world all over. This  
will contextualize the IPC provisions and show/teflect the importance  
of the proposed changes. This role is made clear in the section  
immediately following the discussion on the relation between the IPC  
  
and food adulteration.  
  
AIR 2016 SC 3026  
  
  
Page 7:  
1.7. Certain alternative proposal is presented in relation with the  
incoherent nature of those two sections and this is followed by a  
justification for the proposed application of the ‘principle of  
proportionality’ in the punishments. In a perspective, the Report is  
aimed at removing perceived incoherency and reinforcing the deterrent  
  
intent behind our food safety laws.  
  
  
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CHAPTER-II  
  
Judgement of the Supreme Court  
  
2. While dealing with a writ petition filed in public interest  
highlighting the menace of growing sales of adulterated and synthetic  
mill in different parts of the country and the inability of concerned  
State Governments and the Union to take effective measures for  
combating the adulteration of milk with hazardous substances, the  
Supreme Court (supra) directed the Central Government to come up  
with suitable amendments in the Food Act and the IPC. Reiterating its  
stance in its orders dated 5.12.2013 and 10.12.2014, the Court  
highlighted that, ‘it was desirable to make penal provisions of IPC at  
par with the provisions contained in the State Amendments made by  
Odisha, Uttar Pradesh and West Bengal, wherein the punishment for  
adulteration of food and products is enhanced to imprisonment for life  
and also fine’? Further, it suggested that it was desirable if the Union  
of India revisits the Food Act, revise the punishment for adulteration  
making it more deterrent in cases where the adulterant can have  
  
adverse impact on health,  
  
Paragraph 19 of the Judgment  
  
  
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CHAPTER-III  
Reference of the Proposal  
  
3. The Law Commission of India has received from Ministry of  
Home Affairs, a letter dated 2.11.2016 making reference of the  
Supreme Court Judgement in Swami Achyutanand Tirth & Ors. (supra)  
requested the Law Commission to examine the specific issue of  
amending penal provisions as contained in sections 272 and 273 of  
IPC at par with the State Amendments made in sections 272 and 273  
by the States of Odisha, Uttar Pradesh and West Bengal. In the letter,  
itis also stated that “many States are also contemplating amendment  
to the section pursuant to the court case. As the Law Commission of  
India is already carrying out a comprehensive review covering all  
aspects of criminal law so that comprehensive amendments can be  
made in the various laws viz. Indian Penal Code, Code of Criminal  
Procedure and the Indian Evidence Act, ete. It is therefore, requested  
that the Commission may also examine the amendment to section 272  
  
of IPC as observed by the Supreme Court.”  
  
  
Page 10:  
CHAPTER-IV  
Present Framework governing Food Safety Regulation  
  
A. Food Safety and Standards Act, 2006  
  
4.1 In our country, there were a number of pre-constitutional and  
post-constitutional laws, orders, rules that aim at the protection of the  
consumer interests with special reference to safeguard food safety and  
the health of the consumer. They were introduced to complement and  
supplement each other in achieving total food safety and quality.  
However due to multiplicity in the specifications/standards in  
different Acts/Orders, and administration by different Departments  
and agencies, there were implementation problems and a lack of  
importance given to safety standards over a period of time. The food  
industries were facing problems as different products were governed  
by different orders, rules and regulations in the Country which needed  
consolidation.  
  
4.2 With the aim to consolidate all the previous existing laws, the  
Food Act was enacted by Parliament which establishes a single  
reference point for all matters relating to food safety and standards, by  
  
moving from multi  
  
level, multi-departmental control to a single line of  
command.® To this effect, the Food Act establishes an independent  
statutory Authority - the Food Safety and Standards Authority of  
India (Food Authority}, \* which has been created for laying down  
science based standards for articles of food and to regulate their  
manufacture, storage, distribution, sale and import to ensure  
  
availability of safe and wholesome food for human consumption.  
  
Please sc: hupswww Food Act. gov infbomelabout-usinuoduction ml (last accessed on 22d  
December, 2016.  
\* Section The Food Safety and Standards Act, 2006,  
6  
  
  
Page 11:  
4.3. The Food Act which came into effect in 2011, subsumes various  
central Acts like the Prevention of Food Adulteration Act, 1954 (37 of  
1954); the Fruit Products Order, 1955; the Meat Food Products Order,  
1973; the Vegetable Oil Products (Control) Order, 1947; the Edible  
Oils Packaging (Regulation)Order, 1998; the Solvent Extracted Oil, De-  
Oiled Meal and Edible Flour (Control) Order, 1967; the Mille and Milk  
Products Order, 1992 and also any order issued under the Essential  
Commodities Act, 1955 (10 of 1955) relating to food.  
  
4.4 For the purposes of the enforcement of the Food Act, the Food,  
Authority along with the State Food Safety Authorities are responsible  
for monitoring and verifying the relevant requirements under the Act  
and its enforcement.¢ The Act also provides for the appointment of a  
Commissioner of Food Safety of the State by the respective State  
Governments for efficient implementation of food safety and standards,  
and other requirements laid down under the Food Act and the rules  
and regulations made thereunder.” The Commissioner of Food Safety  
for each State is responsible for appointing Food Safety Officers for  
local areas who are responsible for enforcement and execution of the  
provisions of the Act.\* The Food Safety Officer also has been entrusted  
with the power of search, seizure, investigation as well as prosecution  
  
for the purposes of enforcement of the provisions of the Food Act.  
  
4.5. The Food Act in chapter IX deals with offences and penalties  
which provides for punishments for contravention of the provisions of  
the Act. While section 48 describes how an offence may be committed  
in regard to food adulteration, sections 50 to 67 prescribes  
punishments in case an offence is committed. In particular, section 59  
  
prescribes punishment for unsafe food. Section 3(1)(22) defines  
  
“Please ster o Sections 89 [Overiing effect of his Act ver ll ther fo related laws}. 97 (1) & 97  
(2) Repeal and savings of the Ac.  
‘Chapter VIL Section 29 (1) & (2) Food Safty and Standaeds Act, 2006.  
7 Section 30 (i) Fod Safty and Standards Act, 2006.  
® Section 37, Fd Salty and Standards Act, 2006,  
» Section 41; Bod Safty and Standards Act. 2006,  
7  
  
  
Page 12:  
“unsafe food” as any article of food whose nature, substance or quality  
  
is so affected as to render it injurious to health,  
  
graded system of punishment which is mentioned as under:  
  
Section 59- “Any person who, whether by himself or by  
any other person on his behalf, manufactures for sale or  
stores or sells or distributes or imports any article of food  
for buman consumption which is unsafe, shall be  
punishable,-  
  
0  
  
(i)  
  
(ii)  
  
)  
  
where such failure or contravention does not result  
in injury, with imprisonment for a term which may.  
extend to six months and also with fine which may  
extend to one lakh rupees;  
  
where such failure or contravention results in a  
non-grievous injury, with imprisonment for a term.  
which may extend to one year and also with fine  
which may extend to three lakh rupees;  
  
where such failure or contravention results in a  
grievous injury, with imprisonment for a term  
which may extend to six years and also with fine  
which may extend to five lakh rupees;  
  
where such failure or contravention results in  
death, with imprisonment for a term which shall  
not be less than seven years but which may extend  
to imprisonment for life and also with fine which  
shall not be less than ten lakh rupees.”  
  
It provides for a  
  
4.6 The Food Act also provides for adjudication by an Adjudicating  
  
Officer'® and establishes an alternative forum known as the Food  
Safety Appellate Tribunal.'! The procedures to be followed and the  
  
powers of the adjudicating officer as well as the Appellate tribunal are  
  
provided for in the Act!?  
  
4.7 The Food Authority has the power, with the prior approval of the  
  
Central Government and after pre-publication, by notification, to  
  
make regulations consistent with the Food Act and the rules made  
  
Seetion 68 Fod Safety and Standards Act, 2006  
" Section 70 did  
" Setins I-80 = Chapter X, did  
  
  
Page 13:  
‘there under to carry out the provisions of the Act. For the same, the  
Food Authority has made the Food Safety and Standards Rules, 2011  
  
as well as the following regulations:  
  
1. The Food Safety and Standards (Licensing and  
Registration of Food businesses) Regulation, 2011  
  
2. The Food Safety and Standards (Packaging and Labelling)  
Regulation, 2011  
  
3. The Food Safety and Standards (Food Product Standards  
‘and Food Additives) Regulation, 2011  
  
4. The Food Safety and Standards (Prohibition and  
Restriction on Sales) Regulation, 2011  
  
5. The Food Safety and Standards (Contaminants, Toxins  
and Residues) Regulation, 2011  
  
6. Food Safety and Standards (Laboratory and Sampling  
Analysis) Regulation, 2011  
  
B. Food Adulteration and the Indian Penal Code  
  
4.8 The IPC in chapter XIV (Of Offences Affecting the Public Health,  
Safety, Convenience, Decency and Morals) prescribes punishment for  
adulteration of food or drink intended for sale (Section 272) and sale  
  
of noxious food or drink (Section 273).  
  
Section 272 states that:  
  
“Whoever adulterates any article of food or drink, so as to  
make such article noxious as food or drink, intending to  
sell such article as food or drink, or knowing it to be likely  
that the same will be sold as food or drink, shall be  
punished with imprisonment of either description for a  
term which may extend to six months, or with fine which  
may extend to one thousand rupees, or with both.”  
  
Section 273 states that:  
  
“Whoever sells, or offers or exposes for sale, as food or  
drink, any article which has been rendered or has become  
noxious, or is in a state unfit for food or drink, knowing or  
having reason to believe that the same is noxious as food  
  
© Section 9, Food Safty and Standards Act, 2006  
9  
  
  
Page 14:  
or drink, shall be punished with imprisonment of either  
description for a term which may extend to six months, or  
with fine which may extend to one thousand rupees, or  
with both.”  
  
4.9 Subsequently, the States of Uttar Pradesh, West Bengal and  
Odisha have made amendments to sections 272 and 273 wherein the  
term of imprisonment which could have been extended up to 6  
months has been substituted with imprisonment for life along with  
  
fine, The State Amendments are produced as under:  
  
(1) State of Uttar Pradesh  
In sections 272, 273, 274, 275 and 276 of IPC for the words "shall be  
punished with imprisonment of either description for a term which  
may extend to six months, or with fine which may extend to one  
thousand rupees, or with both” the following shall be substituted,  
namely:-  
  
‘shall be punished with imprisonment for life and shall also be liable  
to fine:  
  
Provided that the court may, for adequate reason to be mentioned in  
‘the judgement, impose a sentence of imprisonment which is less than  
  
imprisonment for life."  
  
(2) State of West Bengal  
In its application to the State of West Bengal in sections 272, 273,  
274, 275 and 276 of IPC for the words “of either description for, a  
term which may extend to six months, or with fine which may extend  
to one thousand rupees, or with both" the following shall be  
substituted, namely:-  
  
Yor life with or without fine:  
  
Provided that the Court may, for adequate and special reasons to be  
mentioned in the judgement. impose a sentence of imprisonment  
which is less than imprisonment for life."'S  
  
WU. AatNo. 47 of 1995  
  
'SW.B. Act No. 42 of 1973, wef 29th. April, 1973,  
10  
  
  
Page 15:  
(3) State of Odisha  
In its application to the State of Odisha in sections 272, 273, 274, 275  
and 276 of IPC for the words ‘of either description for, a term which  
may extend to six months, or with fine which may extend to one  
‘thousand rupees, or with both” the following shall be substituted,  
namely:-  
  
“shall be punished with imprisonment for life and shall also be liable  
to fine:  
  
Provided that the Court may, for adequate and special reasons to be  
mentioned in the judgement impose a sentence of imprisonment  
  
which is less than imprisonment for life."!®  
©. Certain words and expressions defined only in the Food Act  
4.10 An article of food shall be deemed to be adulterated---  
  
Section 3(1}(22) of the Food Act defines when an article of food shall be  
deemed to be “unsafe food” -  
‘(@2) “unsafe food” means an article of food whose nature,  
  
substance or quality is so affected as to render it  
injurious to health:  
  
() by the article itself, or its package thereof, which is  
composed, whether wholly or in part, of poisonous  
or deleterious substances; or  
  
(i) by the article consisting, wholly or in part, of any  
filthy, putrid, rotten, decomposed or diseased  
animal substance or vegetable substance; or  
  
(i) by virtue of its unhygienic processing or the  
presence in that article of any harmful substance;  
(iv) by the substitution of any inferior or cheaper  
substance whether wholly or in part; or  
"Orissa Act 3 of 1999, 6.2, wie. 27" January. 199,  
  
a  
  
  
Page 16:  
(%) by addition of a substance directly or as an  
ingredient which is not permitted; or  
  
(vi) by the abstraction, wholly or in part, of any of its  
constituents; or  
  
(vil) by the article being so coloured, flavoured or  
coated, powered or polished, as to damage or  
conceal the article or to make it appear better or of  
greater value than it really is; or  
  
(vil) by the presence of any colouring matter or  
preservatives other than that specified in respect,  
thereof; or  
  
(ix) \_ by the article having been infected or infested with  
worms, weevils or insects; or  
  
(x) by virtue of its being prepared, packed or kept  
under insanitary conditions; or  
  
(x) by virtue of its being mis-branded or sub-standard  
or food containing extraneous matter; or  
  
(xil] by virtue of containing pesticides and other  
contaminants in excess of quantities specified by  
regulations.”  
  
4.11 The words “unwholesome” and “noxious” when used in relation  
to an article of food mean respectively that the article is harmful to  
  
health or repugnant to human use.  
  
4.12 The necessity of highlighting this nexus between the repealed  
Prevention of Food Adulteration Act, 1954 (hereinafter referred to as  
PFA Act) and sections 272 & 273 of IPC is to bring forward the issue  
that the Food Act (which repeals the PFA Act), does not provide  
definitions for the above mentioned terms and instead defines the  
words ‘adulterant’”” and ‘unsafe food"\* which do not find any mention  
in Sections 272 and 273 of IPC.  
  
" Section 3 (1) a), Food Safety and Standards Act, 2006,  
" Section 3 (1) 22), Food Safety and Standards Act, 2006,  
12  
  
  
Page 17:  
4.13 ‘The Supreme Court in the matter of Swami Achyutanand Tirth &  
rs. (supra) while pronouncing its judgement refers to the interplay of,  
section 59 of the Food Act and sections 272 & 273 of the IPC. It refers  
to the judgement passed by the High Court of Judicature at Allahabad  
in the matter of M/s Pepsico India Holdings (Put) Ltd. & Anr.v. State of  
U.P. & Ors.!° wherein the Court stated that invoking of sections 272 &  
273 of IPC in relation to adulteration of food was considered to be  
unjustified as the authorities could have taken action only under the  
Food Act. However, the Supreme Court decided not to go into the said  
question at this stage and delisted the appeals preferred by the State  
of U.P in the above mentioned matter (Criminal Appeals No. 476-478  
  
of 2012) which are pending and thus the matter is sub judice.2°  
  
4.14 In the matter of M/s Pepsico India Holdings (Put) Lid. &  
Anr.(supra), petitioners therein questioned the validity of the Orders  
issued by the State Government directing the police to register cases  
and initiate action under Sections 272/273 IPC inter alia on the  
  
grounds;  
  
() The authorities had chosen to invoke Sections 272/ 273 IPC  
without even waiting for the report of the public analyst.  
Since the alleged offence as disclosed in the FIR are covered  
under the provisions of Food Act and as such there cannot  
be any violation of sections 272/273 IPC, and  
  
(i) There are certain ingredients which are required for  
constituting an offence under Section 272 IPC. Similarly  
Section 273 requires certain ingredients to be fullfilled before  
the offence of adulteration can be said to be made. The  
ingredients are, ‘that somebody selling food article or drinks  
which has been rendered noxious/ unfit for consumption’,  
with such knowledge or having reasons to believe that the  
same is a noxious food item. To put it differently, Sections  
272/273 IPC are only attracted if it is shown that the  
adulteration is deliberate, intentional or with knowledge.  
  
2011 (2) Crimes 280, 2010(6.A13 30.  
> Paragraph 13, of Swami Achyitanand Tih Judgment  
13  
  
  
Page 18:  
(ii)  
  
)  
  
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415  
  
upon  
  
272 & 273 IPC.  
  
‘The Food Act, repealed the PFA Act and occupied the entire  
field in respect of adulteration of food and drinks for sale.  
‘The Food Act, provisions would operate and provisions of  
  
Sections 272 & 273 were not attracted, and  
  
‘There was nothing on record to show that food material,  
seized, was meant for sale, rather a board “not for sale” had  
  
been put there.  
  
‘The Allahabad High Court upheld the said contentions relying  
  
Section 5 of the IPC”! and observed;  
  
“Section 272 IPC, reproduced hereinabove is attracted  
when a person adulterates an article of food with the  
intention to sell such an article or knowing that it is  
likely that the article will be sold as food or drink. In the  
instant case, there is no allegation in the FIR that the  
petitioner-company or its employees or agents had kept  
its products with the intention to sell the same or  
knowing that the products are likely to be sold as food or  
drink or that the said products were exposed or offered  
for sale, ‘The definite stand of the company was the  
articles seized were kept in the godown where even a  
board “not for sale” was also hanging at the time when  
the search was conducted.  
  
One thing is crystal clear that nothing in the Penal Code  
shall affect any provisions of any Special Act and when  
for any act or omission in a particular subject, a special  
set of rules have been framed, in that situation, the  
provisions of the IPC have to be ignored or overlooked. In  
the cases at hand FIRs have been registered under  
Sections 272 and 273 IPC pursuant to the impugned  
Government Order although adulteration of Food Stuff is  
  
ection $ wes that Cesta laws nto be ae by this Act- Nothing in his Act shall ft he  
[rovsions of any Act for punishing mutiny and desertion of offices, soldiers sas or airmen ia  
{he service of the Government of Inia othe provisions of any special Heal a.  
  
4  
  
A special law prevails over general law. Provisions of PFA Act,  
1954 on coming into force eclipsed the provisions of Sections  
  
  
Page 19:  
418  
  
‘the subject matter of prosecution was not for sale’ and secondly, the  
provisions of Food Act would prevail and the procedure prescribed  
  
under the State Act would be applicable as the provisions of ¢.272 and  
  
covered by a Special Act ie. The Food Safety and  
Standards Act, 2006.”  
  
It also added that:  
“..PFA Act was enacted for the prevention of adulteration  
of food, being a special Act, it eelipsed Sections 272 and  
273 of IPC. In other words, the said Act made Sections  
272 and 273 of IPC redundant as punishment provided  
under the PFA Act was much more (sic) man what was  
provided under Sections 272 and 273 IPC.” (Emphasis  
added)  
  
‘The Court concluded observing:  
  
that for adulteration of food or misbranding, after  
coming into force of the provisions of FSSA vide  
notification dated 29th July, 2010, the authorities can  
take action only under the FSS as it postulates an over-  
riding effects over all other food related law including the  
PFA Act...Therefore, invoking Sections 272 and 273 of  
‘the Indian Penal Code in the matter relating to  
adulteration of food pursuant to the impugned  
Government order is wholly unjustified and non est.  
Furthermore, it appears that the impugned Government  
Order has been issued without application of proper  
mind and examining the matter minutely and thus the  
State Government travelled beyond the jurisdiction.”  
  
‘The aforesaid observations / findings make it clear that, firstly  
  
8.273 IPC stood eclipsed.  
  
4.19  
  
implied repeal.2?  
  
© Municipal Council Pala v. T-.toseph & Ors. AIR 1963 SC 1561; Municipal Corporation of Delhi  
Sho Shankar, AIR 1971 SC 815! Justiniano Augusto De PedadeBarretov. Antonio Vicente Da  
  
It is a legal proposition that there is a presumption against an  
  
15  
  
Whenever the legislature enacts a statute, it is  
  
  
Page 20:  
presumed that it proceeds with legislation with a complete knowledge  
of all existing laws pertaining to the same subject and the failure to  
add any particular law or part thereof in a repealing clause, would  
indicate that the intent was not to repeal a particular existing  
legislation or a part thereof. In case the two laws ~ earlier and later  
enacted laws ~ cannot stand together, the implied repeal may be  
inferred for the reason that the later laws abrogate earlier contrary  
laws. It is to be kept in mind that the repugnancy between the two  
  
statutes must exist in fact and not depend merely on a possibility.  
  
4.20 It is a well-established principle that a special Act shall prevail  
over a general Act. It provides that the ‘provisions’ more specifically  
directed to the matter at issue prevails as an exception to or  
qualification of the provision which is more general in nature provided  
that the specific or special statute clearly includes the matter in  
controversy. This doctrine envisages the same as generalia  
specialibus non derogant (the provisions of a general statute must  
  
yield to those of a special one).  
  
4.21 Where the special subsequent legislation is a complete code  
dealing with the entire subject matter, it will exclude the provision of a  
  
general law.29  
  
4.22 The Food Act puts on guard any running food industry from  
indulging into any activity that may be detrimental to public health  
  
‘and safety. More so, the Food Act is still in the preliminary stage of  
  
‘Fonseca, AIR 1979 SC 984; RS. Raghunath v Sate of Karnataka, AIR 1992 SC B1:Om Prakash  
‘Shukla ARbilesh Kiar Shabla & Ors, AIR 1986 SC 104% Kuna Lal v. Hd Additonal Diet  
Suge, Nantel, AIR 1995 SC 2078: Syndicate Bunks. Prabha D. Nak, AIR 2001 SC 1968; Union  
“of Indias. Ventateshan 8, AIR 2002 SC 1890; DAR. Yadav: RK. Singh, AIR 2008 SC 3935; an  
{Lal Sha Babe Darga Tras Magnum Developers & Ors. AIR 2016 SC 38  
  
secretary of Sate for India, in Council v. Hindustan Cooperative Insurance Society Li, AIR 1931  
PC 149; Sram Mandir Sansthav. Vatualabai, AIR 199 SC $20, Jeevan Kumar Raat & An.  
Cenral Bureau of Investigation AIR 2009 SC 2763: Jamvuddin Ansari = Central Bureau of  
Inestigaion & Ors. 2008) 6 SCC 316: and Commercial Tax Officer Raj. ¥. M/s Bani Cement  
Lid. nr 2015 3) SCR 1  
  
16  
  
  
Page 21:  
implementation.  
  
‘The powers of the police under the Food Act will  
  
have to be reviewed to make its provisions more effective. In view of  
  
the above, if the Food Act is compared with sections 272 and 273 of  
  
IPC, the following picture emerges:  
  
a  
No.  
  
Basis of  
differentiation  
  
the Food Act  
  
we  
  
1  
  
‘Object,  
  
To regulate food industry as  
reflected from the long title,  
provisions contained in  
section 2 of the said Act  
and provisions mentioned  
thereinafter indicating the  
object underlying the Act.  
  
These provisions  
have been enacted  
for protecting  
public health and  
safety  
  
Nature  
  
Most of the provisions are  
regulatory to streamline the  
food industry and improve  
quality of food articles. Its  
contravention have been  
made offences but from the  
scheme of the Act, it  
reflects that the making of  
such offences is incidental  
in nature which is to  
achieve the object of the  
Act.  
  
Preventive and  
deterrent.  
  
Procedure  
  
Target Group  
  
Tn Food Act, for enhancing  
quality of "food articles,  
elaborate scheme has been  
given. For bringing  
awareness, emphasis has  
been laid on publicity and  
preventive measures and  
contravention have been  
taken note of as a  
mechanism to fulfil the  
above.  
  
in view of the provisions  
contained in section 3 (n),  
(0) and (2d), manufacturers  
and persons connected  
therewith, as also food  
operators including  
organized vendors are  
subject to the provisions  
contained in Food Act,  
‘especially the penal ones.  
  
Prompt\_action by  
the police on spot  
to prevent mass  
mishappening.  
  
‘Any person.  
  
7  
  
  
Page 22:  
Nature of the  
offence  
  
Under section 69 of Food  
Act, the offences are  
‘compoundable. It shows  
offences have been created  
for brining improvement in  
the quality of food articles.  
  
Under section 320  
of Cr.PC, these  
sections do not find  
place. It shows  
that these offences  
fare against the  
State and society  
  
Effectiveness  
  
The Food Act aims to  
improve the quality of food  
articles and conspicuously  
it is silent about arrest /  
detention of the offender  
‘and grant of bail to such an  
accused irrespective of  
seriousness of the offence  
  
at large.  
  
Under the  
provisions of  
CrPC, the offence  
is" cognizable.  
Police can take  
prompt action,  
  
larrest the accused,  
keep him in  
custody and he can  
bbe detained in jail  
will the bail is  
granted,  
  
18  
  
  
  
Page 23:  
CHAPTER- V  
  
Proportionality of Punishments in Sections 272 and 273  
of the IPC  
  
5.1 In comparison to the Food Act, the IPC prescribes inadequate  
punishments firstly for adulteration that results in making food  
articles noxious and secondly for actual sale of noxious food articles.  
‘The inadequacy of the quantum of punishment prescribed in the Code  
necessitated the present reform initiative. Given the importance of  
hygienic, nutritious food for the maintenance of healthy lives, it would  
appear that the maintenance of its safety is essential to public health  
in a commercialized world where individuals obtain their nutrition  
from food articles produced by others. A legal system must be  
comprehensive enough to meet the demands of this significant health,  
and other social issue, providing protection against anti-social  
  
elements endangering health and human lives by adulteration,  
  
5.2 The threat to the safety of food is its adulteration by individuals  
for profit and the mode of defence against this threat is the effective  
criminal justice system equipped with penal provisions for such acts.  
Much is written about the appropriate method by which penalties  
should be provided for a criminal legislation. The law generally  
provides ample scope for discretion on the part of judges to modulate  
punishment to meet the peculiar circumstances of each case. In some  
instances, however, the penal provisions are made more restrictive so  
that the circumstances under which punishments are inflicted are  
laid down in the law itself. This limitation on judicial discretion is  
aimed to ensure that a vital message of deterrence goes to society,  
undiminished by any circumstance which may be put forward for  
lenient sentencing. In such instances, the law prescribes criteria that  
must be met for different ranges of punishment and streamlines the  
law for its effective application by foreclosing the scope of  
consideration of these circumstances in sentencing.  
19  
  
  
Page 24:  
5.3 In our country, the foremost aide in determining the appropriate  
quantum of punishment is the judicial decisions that has evolved in  
course of time. The Law Commission proposes modification of  
Sections 272 and 273 of the IPC so as to bring the penal framework in  
it on par with the existing punishments scheme provided in the Food  
‘Act and the State Amendments to the Code. Whereas the State  
Amendments made in section 272, 273 of the IPC enhance the overall  
quantum of punishment, the proposal in this Report is the  
prescription of punishment that is graded according to the nature of  
the act (intentional or otherwise) and the extent of harm suffered by  
the victims of adulterated food. This is apposite, as merely raising the  
overall punishment may leave the matter free for courts to adopt  
lenient or otherwise attitudes from time to time. The State  
amendments do make an attempt to restrain such attitudes. We may,  
  
for example, see the Odisha amendment, which reads as follows:  
  
In section 272 for the words “shall be punished with  
imprisonment of either description for a term which may extend  
to six months, or with fine which may extend to one thousand  
rupees, or with both", the following shall be substituted,  
namely:—  
  
“shall be punished with imprisonment for life and shall also be  
liable to fine:  
Provided that the Court may, for adequate and special reasons  
to be mentioned in the judgement, impose a sentence of  
  
imprisonment which is less than imprisonment for life.”\*  
  
‘The Uttar Pradesh and West Bengal amendments to section 272  
  
of IPC run along the same lines.  
  
® Onis Act 3 oF 1999, 06.2 (Wel 271-1999),  
20  
  
  
Page 25:  
5.4 On examination of the issue the law Commission is of the view  
that the appropriate punishment scheme to be adopted is, the one  
that exist in section 59 of the Food Act. The State amendments do  
raise the overall limit of punishments but the mode of restraining  
leniency does not create an appropriate framework. The  
individualisation of punishment require drawing a balance between  
‘the punishment’ with ‘the gravity of the offence’, designing the  
penalties as per the social challenges that the offences may raise. The  
governing principle in this area is the principle of proportionality of  
punishments. By prescribing a maximum punishment of life  
imprisonment and requiring courts to give ‘adequate and special  
reasons” for deviation from the same, the provisions of the State  
amendments would push up the aggregate quantum of sentences for  
this crime. Moreover, by leaving open the range of punishment from  
few months all the way up to life imprisonment with no guiding  
principle except the words ‘adequate and special reasons”, the  
provision may allow for the evolution of an alternative punishment  
framework in which case law could fix upon various contingencies  
that may be used as mitigating factors. Therefore, as stated above,  
there is a clear requirement that the relevant provisions must have  
enhanced punishments that are meted out with certainty so that the  
  
required deterrent effect persists.  
  
5.5 The ‘principle of proportionality’ works side by side with the  
principle of deterrence by making clear the situation and  
circumstances under which leniency of punishment is to be adopted.  
‘The listing of punishments in the proposed amendments to Sections  
  
272 and 273 is as follows:  
“() where such adulteration does not result in injury, with  
  
imprisonment for a term which may extend to six months  
  
and also with fine which may extend to one lakh rupees;  
  
a  
  
  
Page 26:  
(i) where such adulteration results in non-grievous injury,  
with imprisonment for a term which may extend to one year  
  
and also with fine which may extend to three lakh rupees;  
  
(ii) where such adulteration results in a grievous injury, with  
imprisonment for a term which may extend to six years and  
  
also with fine which shall not be less than five lakh rupees;  
  
(iv) where such adulteration results in death, with  
imprisonment for a term which shall not be less than seven  
years but which may extend to imprisonment for life and also  
with fine which shall not be less than ten lakh rupees:  
  
Provided that the court may, for adequate reason to be  
mentioned in the judgement, impose a sentence of  
  
imprisonment which is less than imprisonment for life:  
  
Provided further that such fine shall be just and  
reasonable to meet the medical expenses and rehabilitation  
of the victim:  
  
Provided also that any fine imposed under this section  
shall be paid to the victim.”  
  
5.6 The quantum of imprisonment and fine both enhances as the  
gravity of the harm arising from the offence rises. There is no denial of  
the fact that prescribing the “appropriate penalty”  
  
is a very complex  
and difficult tasks. However, in view of the demands of society, the law  
must fix a particular criteria as the foremost principle guiding the  
quantum of harsher punishment. In such a case, the gravity of harm.  
from the offence has been chosen as the appropriate criteria; and the  
intent is to put individuals on guard that their act would be measured  
  
in light of the consequences that may arise from them. The Supreme  
  
22  
  
  
Page 27:  
Court has made extensive reference to appropriate sentencing and the  
role of proportionality in sentencing. Here, we may look into extracts  
from judgements that the Commission has considered in adopting the  
  
abovementioned punishment scheme.  
  
5.7 In Alister Anthony Pareira v. State of Maharashtra,?5, the Apex  
Court was considering the enhancement of sentence for an offence  
under Section 304 Part I It stated, regarding the method to be  
adopted:  
  
“The courts have evolved certain principles: the twin  
‘objective of the sentencing policy is deterrence and  
correction. What sentence would meet the ends of justice  
depends on the facts and circumstances of each case and  
the court must keep in mind the gravity of the crime,  
motive for the crime, nature of the offence and all other  
attendant circumstances.  
  
‘The principle of proportionality in sentencing a crime-doer  
is well entrenched in criminal jurisprudence. As a matter of,  
law, proportion between crime and punishment bears most  
relevant influence in determination of sentencing the  
crime-doer. The court has to take into consideration all  
aspects including social interest and consciousness of the  
society for award of appropriate sentence.”  
  
5.8 It may be relevant to say that without any legislative  
guidance, the courts usually consider a wide range of  
circumstances in determining the appropriate penalty. This  
proposition, as well as the requirement that all relevant criteria  
be considered thoroughly, may however be taken care of by the  
legislature to create adequate deterrence through certainty of  
  
punishments,  
  
5.9 The judicial and legislative search for appropriate penalties in  
  
the case of intractable and grave crimes like rape is instructive. In the  
  
> AIR 2012 SC 3802,  
23  
  
  
Page 28:  
case of State of Karnataka v. Krishnappa,%, the Apex Court has  
stated:  
  
“The measure of punishment in a case of rape cannot  
depend upon the social status of the victim or the accused  
It must depend upon the conduct of the accused, the state  
and age of the sexually assaulted female and the gravity of  
the criminal act. Crimes of violence upon women need to be  
severely dealt with. Socio-economic status, religion, race,  
caste, or creed of the accused or the victim are irrelevant  
considerations in sentencing policy. Protection of society  
and deterring the criminal is the avowed object of law and  
that is required to be achieved by imposing an appropriate  
sentence. The sentencing Courts are expected to consider  
all relevant facts and circumstance bearing on the question  
of sentence and proceed to impose a sentence  
commensurate with the gravity of the offence. Courts must  
hear the loud cry for justice by the society in cases of  
heinous crimes of rape on innocent helpless girls of tender  
years as in this case, and respond by imposition of proper  
sentence. Public abhorrence of the crime needs reflection  
‘through imposition of appropriate sentence by the Court.”  
  
5.10 Such expositions are significant because the set of criteria that  
courts have found to be relevant to the question of sentencing has  
always been limited to ensure that irrelevant considerations do not  
result in uncertain, variable punishments that arbitrarily allow some  
perpetrators to go scot-free; while others are greeted with heavier  
burdens. It is also significant that the punishment is more  
individualized to the characteristics of the offence than the  
characteristics of the perpetrator. This operation of limiting matters of  
relevance to the quantum of punishment may be taken forward so  
that only the most relevant facts regarding the gravity of the offence  
hold sway over other considerations.  
  
> AIR 2000 SC 1470,  
24  
  
  
Page 29:  
5.11 This offence-centric approach to punishment may also be seen  
in allied jurisprudence regarding probation, for example in Dalbir  
Singh v. State of Haryana,””:  
  
“Parliament made it clear that only if the court forms the  
opinion that it is expedient to release him on probation  
for his good conduct regard being had to the  
circumstances of the case. One of the circumstances  
which cannot be sidelined in forming the said opinion is  
‘the nature of the offence.  
  
In State of Gujarat v. Jamnadas G. Pabri and Ors. [1975] 2  
SCR 330 a three Judge Bench of this Court has  
considered the word "expedient". Learned Judges have  
‘observed in paragraph 21 thus:  
  
Again, the word ‘expedient’ used in this provisions,  
has several shades of meaning. In one dictionary  
sense, ‘expedient’ (adj.) means ‘apt and suitable to  
‘the end in view’; ‘practical and efficient’; ‘politic’  
‘profitable’; ‘advisable’, ‘fit, proper and suitable to  
the circumstances of the case’. In another shade, it  
means a device ‘characterised by mere utility rather  
than principle conductive to special advantage  
rather than to what is universally right’ (see  
Webster's New International Dictionary)  
  
10. It was then held that the court must construe the said  
word in keeping with the context and object of the  
provision in its widest amplitude. Here the word  
expedient” is used in Section 4 of the PO Act in the  
context of casting a duty on the court to take into account  
‘the circumstances of the case including the nature of the  
offence...". This means Section 4 can be resorted to when  
the court considers the circumstances of the case,  
particularly the nature of the offence, and the court forms  
its opinion that it is suitable and appropriate for  
accomplishing a specified object that the offender can be  
released on probation of good conduct.”  
  
"AIR 2000 SC 1677  
25  
  
  
Page 30:  
5.12 State of Uttar Pradesh v. Sanjay Kumar,2\* is yet another case of  
‘the Supreme Court that presents a clear picture of the role of  
  
sentencing policies:  
  
“The principle of proportionality, ...., prescribes that, the  
punishments should reflect the gravity of the offence and  
also the criminal background of the convict. Thus, the  
graver the offence and the longer the criminal record, the  
more severe is the punishment to be awarded. By laying  
‘emphasis on individualised justice, and shaping the result  
of the crime to the circumstances of the offender and the  
needs of the victim and community, restorative justice  
eschews uniformity of sentencing. Undue sympathy to  
impose inadequate sentence would do more harm to the  
public system to undermine the public confidence in the  
efficacy of law and society could not long endure under  
serious threats.  
  
Ultimately, it becomes the duty of the courts to award  
proper sentence, having regard to the nature of the offence  
and the manner in which it was executed or committed,  
etc. The courts should impose a punishment befitting the  
crime so that the courts are able to accurately reflect  
public abhorrence of the crime. It is the nature and gravity  
of the crime, and not the criminal, which are germane for  
consideration of appropriate punishment in a criminal  
trial. Imposition of sentence without considering its effect  
‘on social order in many cases may be in reality, a futile  
  
5.13 Articulating upon the policy surrounding death sentence and  
life imprisonment punishments, the case explains the objective for  
guidelines to sentencing. In doing so, it also explains the aspect of  
criminal justice that allows it to reflect the public nature of the  
consequences of criminal activity. It is difficult to gauge the extent of  
damage caused by a crime to society as a whole; and yet, this very  
public effect must be considered in determining punishments. Where  
  
the public abhorrence for a crime is significantly higher, sentencing  
  
S012) 88ce 537.  
  
26  
  
  
Page 31:  
policy should be moulded to reflect the source of the abhorrence. In  
the instance of food adulteration, it is the risk that such offence  
creates for all persons. Those who adulterate food often do so behind a  
perverse veil of ignorance that makes their victims into faceless,  
unseen sources of profit. By linking the punishment to the gravity of  
the injury resulting from the adulteration, the proposed provision  
  
brings home to the criminal the reality of the consequences of crime.  
  
5.14 The objective in all such endeavours has been to bolster the  
deterrent effect of the punishment. The inadequacy of the judicial  
response to a particular form of crime is difficult to gauge, when  
working case to case, as the effects of leniency are seen finally when  
crime levels as a whole are altered due to encouragement or  
discouragement of criminals. Such foreclosure of lenient judicial  
behaviour through the application of proportionality was pointed out  
by the Supreme Court in State of Madhya Pradesh v. Babulal & Ors.2°,  
later reiterated in State of Madhya Pradesh v. Surendra Singh,9  
  
“that one of the prime objectives of criminal law is the  
imposition of adequate, just, proportionate punishment  
which is commensurate with the gravity and nature of the  
crime and manner in which the offence is committed. The  
most relevant determinative factor of sentencing is  
proportionality between crime and punishment keeping in  
mind the social interest and consciousness of the society. It  
is a mockery of the criminal justice system to take a lenient  
view showing misplaced sympathy to the Accused on any  
consideration whatsoever including the delay in conclusion  
of criminal proceedings. The Punishment should not be so  
lenient that it shocks the conscience of the society being  
abhorrent to the basic principles of sentencing.  
  
‘Thus, it is the solemn duty of the court to strike a proper  
balance while awarding sentence as awarding a lesser  
  
2013) 12 SCC 308,  
» 015} 180 22,  
27  
  
  
Page 32:  
sentence encourages a criminal and as a result of the same  
society suffers.”  
  
5.15 A leading case on the matter is Sevaka Perumal, ete. v. State of  
Tamil Nadu,\* which makes an illuminating discussion on the social  
function of punishments. The case draws our attention to the existing  
  
‘and felt needs of society with regards to a particular crime:  
  
“The law regulates social interests, arbitrates conflicting  
claims and demands. Security of persons and property of the  
people is an essential function of the State. It could be  
achieved through instrumentality of criminal law.  
Undoubtedly, there is a cross cultural conflict where living  
law must find answer to the new challenges and the courts  
fare required to mould the sentencing system to meet the  
challenges. The contagion of lawlessness would undermine  
social order and lay it in ruins. Protection of society and  
stamping out criminal proclivity must be the abject of law  
which must be achieved by imposing appropriate sentence.  
‘Therefore, law as a corner-stone of the edifice of “order  
should meet the challenges confronting the society.  
Friedman in his "Law in Changing Society" stated that,  
‘State of criminal law continues to be - as it should be - a  
decisive reflection of social consciousness of society’  
  
‘Therefore, in operating the sentencing system, law should  
adopt the corrective machinery or the deterrence based on  
factual matrix. By deft modulation sentencing process be  
stern where it should be, and tempered with mercy where it  
warrants to be. The facts and given circumstances in each  
case, the nature of the crime, the manner in which it was  
planned and committed, the motive for commission of the  
crime, the conduct of the accused, the nature of weapons  
used and all other attending circumstances are relevant  
facts which would enter into the area of consideration.  
  
‘Therefore, undue sympathy to impose inadequate sentence  
‘would do more harm to the justice system to undermine the  
public confidence in the efficacy of law and society could not  
long endure under such serious threats. It is, therefore, the  
duty of every court to award proper sentence having regard  
  
Saget) 38ce 47  
28  
  
  
Page 33:  
to the nature of the offence and the manner in which it was  
executed or committed etc.”  
  
5.16 The above proposition is reproduced in Shailesh Jasvantbhai &  
Any, v. State of Gujarat & Ors.% which further elaborates upon the  
principle of proportionality and also presents an incisive and sincere  
  
examination of judicial discretion which is ordinarily a necessary evil:  
  
“After giving due consideration to the facts and  
circumstances of each case, for deciding just and  
appropriate sentence to be awarded for an offence, the  
aggravating and mitigating factors and circumstances in  
which a crime has been committed are to be delicately  
balanced on the basis of really relevant circumstances in a  
dispassionate manner by the Court. Such act of balancing.  
is indeed a difficult task. It has been very aptly indicated in  
Dennis Councle MCG Dautha v. State of California (402 US  
183: 28 L.D. 2d 711) that no formula of a foolproof nature is  
possible that would provide a reasonable criterion in  
determining a just and appropriate punishment in the  
infinite variety of circumstances that may affect the gravity  
of the crime. In the absence of any foolproof formula which  
may provide any basis for reasonable criteria to correctly  
assess various circumstances germane to the consideration  
of gravity of crime, the discretionary judgment in the facts of  
each case, is the only way in which such judgment may be  
equitably distinguished.”.  
  
5.17 A similar view has been reiterated in Bantu v. State of U.P. In  
the case of State of Punjab v. Bawa Singh, the significance of the  
burden of judicial discretion in sentencing is highlighted and, relying  
upon the judgment in Hazara Singh v. Raj Kumar, the importance of  
the principle of proportionality in alleviating that burden is also set,  
  
out.  
  
© 006) 250¢ 359,  
© Dogs (10)SCALE 336  
S018) 380C 44  
2013} 950C 516,  
  
29  
  
  
Page 34:  
5.18 Similarly, the Supreme Court in Jameel v. State of Uttar  
Pradesh’, also describes the process of proportional sentencing when  
it explains that “[bJy deft modulation, sentencing process be stern  
where it should be, and tempered with mercy where it warrants to be.”  
It further highlights the relevant criteria and facts that are significant  
  
in carrying out this modulation process.  
  
5.19 These cases all raise the important question of the relationship  
between the demands of a deterrent theory of criminal justice and a  
principle of proportionality. The Supreme Court in State of Punjab v.  
Prem Sagar & Ors.27 while dealing with the case affecting the public  
health referred to the object of enacting Article 47 of the Constitution  
and held:  
  
“There are certain offences which touch our social fabric. We  
must remind ourselves that even while introducing the  
doctrine of plea bargaining in the Code of Criminal  
Procedure, certain types of offences had been kept out of the  
purview thereof. While imposing sentences, the said  
principles should be borne in mind.”  
  
5.20. Arguably, the two principles are not in opposition to each other  
and should indeed be applied together. After all, the measure of a  
proportionate response to crime cannot be taken with a blinkered view  
only to the specific circumstances of a case but keeping in mind the  
effect of the crime upon society, specifically the deterrent effect. This  
form of proportionality ensures that punishments are meted out in a  
forward-looking manner. Nonetheless, it is true that proportionality  
forms an alternative to a uniformly harsh policy aimed purely at  
deterrence. This is, however, eschewed for a more measured response  
because, as noted in Shailesh Jasvantbhai, “uniformly  
disproportionate punishment has some very undesirable practical  
  
consequences”. This understanding highlights the manner in which  
  
S010) 12 sce 532.  
” 2008) 7 SCC 550,  
30  
  
  
Page 35:  
uniformity of harsh punishments inequitably places the burden of  
deterrence on perpetrators of less grave crimes and also incentivizes  
petty criminals to scale up their operations as the punishment  
  
remains the same in any case.  
  
5.21 In Dhananjoy Chatterjee @ Dhana v. State of West Bengal,.® the  
  
Supreme Court has stated:  
  
“In our opinion, the measure of punishment in a given case  
must depend upon the atrocity of the crime; the conduct of  
the criminal and the defenceless and unprotected state of  
‘the victim. Imposition of appropriate punishment is the  
manner in which the courts respond to the society's cry for  
Justice against the criminals. Justice demands that courts  
‘should impose punishment fitting to the crime so that the  
courts reflect public abhorrence of the crime. The courts  
must not only keep in view the rights of the criminal but also  
the rights of the victim of crime and the society at large while  
considering imposition of appropriate punishment.”  
  
5.22 In Ahmed Hussein Vali Mohammed Saiyed & Anr. v. State of  
Gujarat,®, the Supreme Court explained the scope of considerations  
involved in terms of taking a view to the long term effects of leniency  
and the holistic effects on society as opposed to the individual  
  
criminal and victim:  
  
‘Any liberal attitude by imposing meagre sentences or  
taking too sympathetic view merely on account of lapse of  
time in respect of such offences will be result-wise  
counterproductive in the long run and against the interest of,  
society which needs to be cared for and strengthened by  
string of deterrence inbuilt in the sentencing system. Justice  
demands that courts should impose punishment befitting  
the crime so that the courts reflect public abhorrence of the  
crime. The court must not only keep in view the rights of the  
victim of the crime and the society at large while considering  
‘the imposition of appropriate punishment. The court will be  
failing in its duty if appropriate punishment is not awarded  
  
S99) 2800 20,  
» (2009) 75CC 254  
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Page 36:  
for a crime which has been committed not only against the  
individual victim but also against the society to which both  
the criminal and the vietim belong.”.  
  
5.23 In Guru Basavaraj @ Benne Settapa v. State of Karnataka,\*®, the  
  
‘Apex Court explained the demands upon courts when faced with a  
  
question that requires them to consider the needs of society over those  
  
of particular persons:  
  
“The cry of the collective for justice, which includes adequate  
punishment cannot be lightly ignored.”.  
  
5.24 A similar appeal is made in Gopal Singh v. State of  
Uttarakhand,\*!, but is appropriately placed alongside a counterpoint  
  
‘on the necessity of proportionality:  
  
“The principle of just punishment is the bedrock of  
sentencing in respect of a criminal offence. A punishment  
should not be disproportionately excessive. The concept of  
proportionality allows a significant discretion to the Judge  
but the same has to be guided by certain principles.”  
  
5.25 In conclusion, it is clear that punishment schemes and  
sentencing policies must adhere to a general principle of  
proportionality and as such the required deterrence be achieved  
without arbitrary slips into leniency; and at the same time  
unnecessary distress is not created through uniformly high  
  
punishments,  
  
5.26 Much of the case law makes a listing of relevant criteria to be  
considered when determining appropriate punishment. However,  
notably, the proposed amendment limits these relevant criteria and  
forwards the gravity of harm resulting from the offence as the  
foremost standard of differentiation. The reasons for this have been  
  
made clear above: the appropriate level of deterrence has not been  
  
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Page 37:  
achieved by allowing for judicial discretion and the consideration of all,  
relevant criteria, The low quantum of punishment and uncertainty  
surrounding sentencing lends itself to and encourages the  
commission of food safety offences. Raising the overall limit of  
punishment cannot be enough, however, and a graded framework is  
hence proposed. At the same time, the relevant criteria for the  
quantum of the punishment have been limited so as to achieve the  
requisite certainty that would ensure that the increased quantum of  
  
punishment is inflicted without exceptions.  
  
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Page 38:  
CHAPTER - VI  
  
Incoherency in Laws  
  
6.1 The Law Commission reviewed sections 272 and 273 of IPC to  
address the concern of the Supreme Court in matters relating to food.  
adulteration. It also revisited the punishment with reference to  
sections 272 and 273 of IPC stipulated for food adulteration, which is  
not only inadequate but also incompatible in the present scenario,  
and thus requires to be made more stringent. The Law Commission  
considers that the provisions to deal with production and sale of  
adulterated food, which is harmful to human beings be made more  
stringent keeping in view the gravity of offence, the existing maximum  
punishment of six months for such offences under the IPC is grossly  
  
inadequate.  
  
6.2 In view of above, the Law Commission is of the opinion that the  
punishment essentially be graded with reference to the harm caused  
to the consumer due to consumption of adulterated food and drinks.  
‘Therefore, it is recommendable that the provisions contained in  
sections 272 and 273 of the IPC may be suitably modified on the lines  
of the provisions of the Food Act for the reasons discussed  
  
hereinabove,  
  
6.3 While considering the amendments to sections 272 and 273 of  
the IPC, the Law Commission considered imbibing compensation  
aspect into the provisions taking into account various elements that  
constitutes the seriousness of the offence and harm caused to the  
persons upon consumption of the adulterated foods. In this regard,  
the Commission considered provisions of sections 357, 357A and  
387B of Cr.P.C. which deal with compensation in general and in  
  
specific cases. Section 357 makes a general provision for  
  
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Page 39:  
‘compensation applicable to all cases other than those provided in  
sections 357A & 357B. Section 357 reads as under:-  
  
“357. Order to pay compensation.  
  
(1) When a Court imposes a sentence of fine or a  
sentence (including a sentence of death) of which fine  
forms a part, the Court may, when passing judgment,  
order the whole or any part of the fine recovered to be  
applied-  
  
(b) in the payment to any person of compensation for  
any loss or injury caused by the offence, when  
compensation is, in the opinion of the Court,  
recoverable by such person in a Civil Court;  
  
(3) When a Court imposes a sentence, of which fine  
does not form a part, the Court may, when passing  
judgment, order the accused person to pay, by way of  
‘compensation, such amount as may be specified in the  
order to the person who has suffered any loss or injury  
by reason of the act for which the accused person has  
been so sentenced.”  
  
6.4 The provisions for compensation contained in sections 357A  
and 357B of Cr.P.C. apply to cases covered under sections 326A of  
IPC (voluntarily causing grievous hurt by use of acid etc.) and section  
376D of IPC (gang rape). Keeping in view the heinous nature of crime  
in those provisions, two proviso have been provided with the intent  
that the amount of fine to be imposed by the court shall be just and  
reasonable to meet the medical expenses of treatment of victim and in  
the latter case for rehabilitation of the victim as well; and any such,  
fine shall be paid to the victim. The quantum of compensation is  
always determined by taking into account the nature of the crime, the  
manner in which it has been committed, the justness of claim by the  
  
victim and the ability of the accused to pay.  
  
6.5 As we are aware that adulteration of food causes several health  
  
problems in humans, Most of the food adulterants are very harmful  
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Page 40:  
and toxic; yet, the greed and profit motive encourages anti-social  
persons for adulteration. Therefore, the tackling of food adulteration is  
required to be given due importance for its serious effect on the health  
of the public. From the above, it may be seen that though the  
offences covered under sections 357A and 357B of Cr.P.C. stand at a  
different pedestal than the food adulteration; yet, in case where the  
food adulteration causes grievous injury or where such adulteration  
results in death seems to be the cases which can be squarely covered  
under section 357B keeping in view the health hazards due to food  
adulteration which results in various ailments and premature deaths.  
‘Thus, keeping in view the serious nature of the crime, the aforesaid  
  
‘two cases be covered under section 357B of Cr.P.C.  
  
6.6 In strict legal sense crime generally takes in its sweep  
intentional invasion of personal rights and not those which are  
accidental, mistaken or irrational or provoked. Chapter XIV of the IPC  
deals with offences affecting public health, safety, convenience and  
morals ete. Sections 272 & 273 deals with adulterated or noxious  
(unfit for human consumption) food or drinks intended for sale, etc.  
As discussed in Chapter IV, the Food Act may not be occupying the  
entire field and thus may not render provisions of sections 272 and  
273 IPC redundant. The Supreme Court while deciding the case in  
‘Swami Achyutanand Tirth & Ors. (supra) had taken note of the  
judgement of the Allahabad High Court in M/s Pepsico India Holdings  
Put. Ltd & Anr. (supra) and further noticed that against the said  
judgement Criminal Appeals no. 472, 476- 478 and 479 of 2012, ete.,  
are pending consideration. Appeals against the said judgements of the  
Allahabad High Court have been de-tagged from the writ petition in  
‘Swami Achyutanand Tirth & Ors. (supra).  
  
6.7 In such a fact situation as the issue as to whether criminal  
proceedings can be initiated under sections 272 and 273 IPC after  
  
‘commencement of the PFA Act or the Food Act in force, is sub judice it  
  
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Page 41:  
is not appropriate for the Commission to comment upon the merits of  
‘the said judgement. Be that as it may, in compliance with the  
Supreme Court order, a draft Amendment Bill is prepared  
recommending it for the consideration of the Government,  
Accordingly, a comparative statement showing the changes proposed.  
in the IPC and CrPC and a draft Amendment Bill prepared by the Law  
  
Commission is enclosed at Annexures-A and B respectively.  
  
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Justice Dr. B.S. Chauhan)  
  
‘Chairman  
  
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[Justice Ravi R. Tripathi] (Prof. (Dr.  
  
Member Member  
  
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[Suresh Chandra]  
  
Excolficio Member  
  
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Page 42:  
ANNEXURE-A  
  
Comparative Statement showing the changes proposed in the IPC and CrPC  
  
(Part-I Amendments suggested in IPC)  
  
Provisions under IPC  
  
‘Amendments suggested by Law Commission of India  
  
272. Adulteration of food or drink intended for sale —  
Whoever adulterates any article of food or drink, so as to  
make such article noxious as food or drink, intending to  
sell such article as food or drink, or knowing it to be likely  
that the same will be sold as food or drink, shall be  
punished with imprisonment of either description for a  
term which may extend to six months, or with fine which  
may extend to one thousand rupees, of with both.  
  
‘The text of the State Amendment in respect of Orissa is as  
under:  
  
Orissa.- In section 272 for the words “shall be punished  
with imprisonment of either description for a term which  
may extend to six months, or with fine which may extend  
to one thousand rupees, or with both”, the following shall  
be substituted, namely:—  
“shall be punished with imprisonment for life and shall  
also be liable to fine:  
Provided that the Court may, for adequate and special  
reasons to be mentioned in’ the judgment, impose a  
sentence of imprisonment which is less than  
imprisonment for life.”  
[Vide Orissa Act 3 of 1999, sec. 2 (w.e.f, 27.1.1999)]  
  
‘Substitution of new section for section 272. In the  
Indian Penal Code, (45 of 1860) (hereinafter referred to as  
‘the Penal Code), for section 272, the following section shall  
be substituted, namely  
  
°272. Adulteration of food or drink intended for sale.  
Whoever adulterates any article of food or drink, so as to  
make such article noxious as food or drink, intending to  
sell such article as food or drink, or knowing it to be likely  
that the same will be sold as food or drink, shall be  
punished,  
  
() where such adulteration does not result in injury,  
with imprisonment for a term which may extend to six  
months and also with fine which may extend to one  
lakh rupees;  
  
(i) where such adulteration results in non-grievous  
injury, with imprisonment for a term which may  
extend to one year and also with fine which may  
extend to three lakch rupees;  
  
(ii) where such adulteration results in a grievous  
injury, with imprisonment for\_a term which may  
  
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Page 43:  
Uttar Pradesh. ~ In section 272 for the words “shall be  
punished with imprisonment of either description for a  
term which may extend to six months, or with fine which  
may extend to one thousand rupees, or with both",  
substitute the following words, namely:-  
  
“shall be punished with imprisonment for life and shall  
also be liable to fine:  
  
Provided that the court may, for adequate reasons to be  
mentioned in the judgement, impose a sentence of  
imprisonment which is less than imprisonment for life.”  
[Vide Uttar Pradesh Act 47 of 1975, sec. 3 (wef.  
15.9.1975)}  
  
West Bengal.-In section 272 for the words “of either  
description for a term which may extend to six months, or  
with fine which mays extend to one thousand rupees, or  
with both", substitute the following words, namely:~  
  
“for life with or without fine:  
  
Provided that the Court may, for adequate and special  
reasons to be mentioned in the judgment, impose a  
sentence of imprisonment which is less than  
imprisonment for life.”  
  
{Wide West Bengal Act 42 of 1973, sec. 3 (w.e.f. 29.4.1973]  
  
273. Sale of noxious food or drink. - Whoever sells, or  
offers or exposes for sale, as food or drink, any article  
which has been rendered or has become noxious, or is in  
a state unfit for food or drink, knowing or having reason  
to believe that the same is noxious as food or drink, shall  
be punished with imprisonment of either description for a  
  
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‘extend fo six years and also with fine which shall not  
be less than five lakh rupees;  
  
(iv) where such adulteration results in death, with  
imprisonment for a term which shall not be less than  
seven years but which may extend to imprisonment for  
life and also with fine which shall not be less than ten  
lakh rupees:  
  
Provided that the court may, for adequate reason to be  
mentioned in the judgment, impose a sentence of  
imprisonment which is less than imprisonment for life:  
  
Provided further that such fine shall be just and  
reasonable to meet the medical expenses and rehabilitation  
of the victim:  
  
Provided also that any fine imposed under this section  
shall be paid to the victim.”  
  
‘Substitution of new section for section 273. In the  
Penal Code, for section 273, the following section shall be  
substituted, namely:-  
  
273. Sale of noxious food or drink.- Whoever sells, or offers  
or exposes for sale, a8 food or drink, any article which has  
  
  
  
Page 44:  
term which may extend to six months, or with fine which  
may extend to one thousand rupees, of with both.  
  
In section 273, State Amendments are the same as  
under section 272  
  
been rendered oF has become noxious, oF is in a state uniit  
for food or drink, knowing or having reason to believe that  
the same is noxious as food or drink, shall be punished, -  
  
(i) where the sale, offer for sale or exhibition for sale of  
such food or drink, does not result in injury, with  
imprisonment for a term which may extend to six  
months and also with fine which may extend to one  
lakh rupees;  
  
(i) where the sale of such food or drink, results in  
non-grievous injury, with imprisonment for a term  
which may extend to one year and also with fine which  
may extend to three lakh rupees;  
  
(ii) where the sale of such food or drink, results in a  
grievous injury, with imprisonment for a term which  
may extend to six years and also with fine which shall  
not be less than five lakh rupees;  
  
(iv) where the sale of such food or drink, results in  
death, with imprisonment for a term which shall not  
be less than seven years but which may extend to  
imprisonment for life and also with fine which shall  
not be less than ten lakh rupees:  
  
Provided that the court may, for adequate reason to be  
mentioned in the judgment, impose a sentence of  
imprisonment which is less than imprisonment for life:  
  
Provided further that such fine shall \_be just and  
  
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Page 45:  
Feasonable to meet the medical expenses and rehabilitation  
of the victim:  
  
Provided also that any fine imposed under this section  
shall be paid to the victim.".  
  
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(Part-II Amendments suggested in CrPC)  
  
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West Bengal  
  
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ANNEXURE-B  
  
‘THE CRIMINAL LAW (AMENDMENT) BILL, 2017  
  
A  
BILL  
  
{further to amend the Indian Penal Code, and the Code of Criminal  
Procedure, 1973  
  
Be it enacted by Parliament in the Sixty-seventh Year of the  
  
Republic of India as follows:  
  
CHAPTER I  
PRELIMINARY  
  
1. Short title. This Act may be called the Criminal Law  
(Amendment) Act, 2017.  
  
CHAPTER IL  
AMENDMENTS TO THE INDIAN PENAL CODE  
  
2. Substitution of new section for section 272. In the  
Indian Penal Code, (45 of 1860) (hereinafter referred to as  
the Penal Code), for section 272, the following section  
  
shall be substituted, namely :  
  
"272. Adulteration of food or drink intended for sale.  
Whoever adulterates any article of food or drink, so as to  
make such article noxious as food or drink, intending to  
sell such article as food or drink, or knowing it to be likely  
that the same will be sold as food or drink, shall be  
  
punished,  
  
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Page 50:  
() where such adulteration does not result in injury,  
with imprisonment for a term which may extend to six  
months and also with fine which may extend to one  
  
lakh rupees;  
  
(i) where such adulteration results in non-grievous  
injury, with imprisonment for a term which may  
extend to one year and also with fine which may  
  
extend to three lakh rupees;  
  
(ii) where such adulteration results in a grievous  
injury, with imprisonment for a term which may  
extend to six years and also with fine which shall not  
  
be less than five lakh rupees;  
  
(iv) where such adulteration results in death, with  
imprisonment for a term which shall not be less than  
seven years but which may extend to imprisonment for  
life and also with fine which shall not be less than ten  
  
lakh rupees:  
  
Provided that the court may, for adequate reason to be  
mentioned in the judgment, impose a sentence of  
  
imprisonment which is less than imprisonment for life:  
  
Provided further that such fine shall be just and reasonable  
to meet the medical expenses and rehabilitation of the  
victim:  
  
Provided also that any fine imposed under this section shall  
be paid to the victim.”  
  
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Page 51:  
3. Substitution of new section for section 273. In the  
Penal Code, for section 273, the following section shall be  
  
substituted, namely:-  
  
"273. Sale of noxious food or drink. Whoever sells, or  
offers or exposes for sale, as food or drink, any article  
which has been rendered or has become noxious, or is in  
fa state unfit for food or drink, knowing or having reason  
to believe that the same is noxious as food or drink, shall  
  
be punished, -  
  
(i) where the sale, offer for sale or exhibition for sale of  
such food or drink, does not result in injury, with  
imprisonment for a term which may extend to six  
months and also with fine which may extend to one  
  
lakh rupees;  
  
(ii) where the sale of such food or drink, results in non-  
grievous injury, with imprisonment for a term which  
may extend to one year and also with fine which may  
  
extend to three lakh rupees;  
  
(ii) where the sale of such food or drink, results in a  
grievous injury, with imprisonment for a term which  
may extend to six years and also with fine which shall  
  
not be less than five lakh rupees;  
  
(iv) where the sale of such food or drink, results in  
death, with imprisonment for a term which shall not  
be less than seven years but which may extend to  
imprisonment for life and also with fine which shall  
  
not be less than ten lakh rupees:  
  
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Page 52:  
Provided that the court may, for adequate reason to be  
mentioned in the judgment, impose a sentence of  
  
imprisonment which is less than imprisonment for life:  
  
Provided further that such fine shall be just and  
reasonable to meet the medical expenses and  
  
rehabilitation of the victim:  
  
Provided also that any fine imposed under this section  
  
shall be paid to the victim.”  
  
CHAPTER IIL  
  
AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE,  
1973,  
  
4. Substitution of new section for section 357B.- In the  
  
Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter  
  
referred to as the Code of Criminal Procedure], for section  
  
357B, the following section shall be substituted, namely:-  
  
“357B. Compensation to be in addition to fine under section  
272, section 273, section 326 or section 376D of indian  
Penal Code.- The compensation payable by the State  
Government under section 357A shall be in addition to  
‘the payment of fine to the victim under section 272,  
section 273, section 326A or section 376D of the Indian  
Penal Code (45 of 1860)  
  
Explanation.- For the purposes of this section, the  
expression “victim” shall be construed as defined in  
clause (wa) of section 2.”  
  
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Page 53:  
5S. Amendment of First Schedule. In the First Schedule to  
  
‘the Code of Criminal Procedure under the heading  
OFFENCES UNDER THE INDIAN PENAL CODE (450f  
1860)", for the entries relating to sections 272 and 273,  
  
the following entries shall be substituted, namely  
  
T 2 z a = é  
"272, | Adulterating  
food or drink  
intended for  
sale, 0 28 to  
make the same  
noxious Imprisonment | Cognizable | Bailable | Any  
where such | which may extend Magistrate  
adulteration | to six months and  
foes not result | with fine to be  
ininjury ‘paid 0 the victim,  
where such | Tmprisonment | Cognizable | Ballable | Any  
fdulteration | which may extend Magistrate  
results in non- | to one year and  
grievous injury | with fine to be  
paid to the victim,  
(i where the | Imprisonment | Cognizable | Non | Any  
Sale of stich food | which may extend Bailable | Magistrate  
for drink, results | to six years and  
with fine to be  
paid to the victim,  
{ey where the | Imprisonment of —| Cognizable | Non | Court of  
sale of such food | not less than Bailable | Sessions  
or drink, results | seven years but  
in death which may extend  
to life and with  
fine to be paid to  
the viet.  
273\_\_| Selling any food  
or drink, as food  
or drink  
owing the  
same to be  
noxious. Imprisonment | Cognizable | Bailable | Any  
Gwherethe | which may extend  
sale, offerfor | to six months and  
sale oF with fine to be  
  
exhibition for  
Sale of such food  
or drink, does  
fot result in  
injury,  
  
‘paid 0 the victim,  
  
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Page 54:  
WH where the  
fale of sich food.  
or drink, results  
Jn non-grievous  
injury  
  
Tmprisonment  
which may extend  
to one year and  
with fine to be  
‘paid 0 the victim,  
  
Cognizable  
  
(i) where the | Tmprisonment | Cognizable  
fale of stich food | which may extend  
  
fr drink, results | to six years and  
  
Inagrievous | with fine tobe  
  
injury, ‘paid 0 the victim,  
  
{ey where the | Imprisonment of | Cognizable | Non | Court of  
sale of such food | not less than Bailable | Sessions”  
  
or drink, results  
in death  
  
seven years but  
  
to life and with  
fine to be paid to  
the viet.  
  
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