

THE FOOD SAFETY AND STANDARDS BILL, 2005 IS NOT IN THE INTEREST OF CONSUMERS

By

—YETUKURI VENKATESWARA RAO,
District & Sessions Judge (Rtd.),
Formerly President District Forum, Hyderabad,
A.P.

The Government of India prepared a draft 'Food Safety and Standards Bill' proposing to integrate the existing laws. From the date of its coming into force.

The Prevention of Food Adulteration Act 1954,.

The Fruit Products Order, 1955,.

The Milk and Milk Products Order, 1992,.

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 Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (41 of 1992).

and all other orders issued under the Essential Commodities Act, 1955 relating to food.

stand repealed.

The provisions relating to 'food' in 7 other Acts including The Bureau of Indian Standards Act, 1986; The Agricultural Produce (Grading and Marketing) Act, 1937; and The Standards of Weights and Measures Act, 1976 stand deleted or modified.

The Food Safety and Standards Bill, hereafter referred to as 'the Bill' is intended

to be "contemporary, comprehensive and ensure *better consumer safety* through food safety management systems and setting standards based on science and transparency *and also meet the dynamic requirements of International trade and Indian food trade and industry*".. ... The writer opines that the *Bill is not in the better interests of consumer* for the following reasons and invites public debate.

1. Punishments proposed for most of the offences including serious offences is Fine only.
2. For the first time offences under food laws including serious offences are made compoundable.
3. Maximum compounding fee payable is fixed at only Rs.2 lakhs.
4. The Bill shifts emphasis from regulatory regime to self-compliance by the industry which cannot be dreamt in present Indian market environment.
5. More interest on safety of consumers in 'convention countries' rather than on Indian consumers (Section 61 *vis a vis* Section 55).
6. Cryptic definition of the word 'adulterated'.
7. Defences that have the effect of granting virtual immunity from punishment.
8. Water is not yet included in the definition of 'food'.
9. Primary food is totally excluded from the definition of 'food'.

Lenient punishments:

One of the important statutes that is being repealed is the Prevention of Food Adulteration Act, 1954, hereafter referred to as PFA Act, which consolidated the then existing laws of different States of the country and held the field for 30 years. Voluminous case-law has developed and the Court settled several questions of law on interpretation of its provisions. It is the practise in law making that the settled interpretation is not disturbed when enacting new statute, except when the law itself is intended to be changed. The said Act was amended 7 times to plug the loopholes and to provide for more stringent and effective measures with a view to curb menace of adulteration. It is significant that while amending the Act in 1974, it was mentioned "adulteration of food articles is rampant in the country and has become grave menace to the health and to the well being of community. It makes a heavy dent in the already low nutritional standards and many public health programs are insidiously undetermined. A major offensive against the menace is overdue" (statement of objects and reasons annexed to the Bill). Situation is no better now.

An unadulterated food article is a scarce commodity. That the implementation of the Act is not satisfactory is a known fact and indeed the need of the hour is to prescribe more deterrent punishments and make the enforcement stricter.

There can be no two opinions that sentencing to jail works as more deterrent in the minds of prospective offenders than imposition of fine to the offenders. For a businessman, the fine is only a business risk and will be considered as a business loss which in turn will be passed on to the consumer in the shape of higher prices but does not work as an effective deterrent to the accused from repeating the offence or a prospective offender to abstain from

committing the offence under the Act. Huge fines also are no deterrent to a big businessman.

The Prevention of Food Adulteration Act prohibits manufacture, storing or sale, or distribution of any (i) adulterated food, (ii) misbranded food, (iii) any article of food in contravention of conditions of licence, (iv) any article of food sale of which is prohibited by the Food (Health) Authority, (v) any article of food in contravention of any other provision of the Act or any rule made thereunder, (vi) or any adulterant. [Section 7]. Section 24 of the Bill is identical to the Section 7 of PFA Act. While the punishment for violation of Section 7 of the PFA Act ranges from a mandatory minimum imprisonment of 3 months to maximum of 6 years and even to imprisonment for life (Section 16), the penalty under the new Bill is *only fine*.

Punishment for importing any food as mentioned in Section 7, is also punishable similarly under Section 16 of the said Act. But it is *only fine* under this Bill.

Under the PF Act any person who manufacture for sale or stores, sells or distributes any article of food, the quality or purity of which falls below the prescribed standard, or its constituents are present in quantities not within prescribed limits of variability, though it does not render it injurious to health is punishable with imprisonment of not less than 6 months which may extends to 3 years and fine. [Sec.16]. But under the Bill the punishment is *only fine*. [clause 57]

Any person who manufactures for sale or stores or sells or distributes any article of food adulterated within the meaning of sub-clauses (e) to (l) of Section 2(1a) is punishable with imprisonment for 6 years and fine. If the article of food when consumed is likely to cause death or grievous hurt is punishable with imprisonment for

a term not less than 3 years, which may extend to imprisonment for life. But the punishment prescribed under the Food Safety and Standard Bill for all the above offences is *fine only*.

Similarly, the punishment prescribed under the PFA Act for manufacture, sale or storing or distribution of any adulterant, which is injurious to health, was imprisonment extending up to 6 years, whereas the Bill under consideration prescribes *fine only*.

Strangely, the proposed Bill, *prescribes penalty of fine only for more than 20 offences and imprisonment for only 5 offences*.

Serious offences of rendering food injurious to health (Section 54), sale of food which is injurious to health (Section 55), misleading the consumers (Section 56), sale of food not of the quality demanded by consumer (Section 57), falsely describing or presenting food (Section 58). Failure of food business operator to ensure 'unsafe' food that is, food injurious to health or is unfit for human consumption is not placed in the market [Section 25]; import of adulterated, misbranded food, or any food without licence where prescribed, and any article of food including GM food in contravention of the provisions of the Act [Sections 47, 48], are punishable with *fine only*.

While the need of the day is to make the food laws more stringent, how is that, the proposed Bill prescribes only fine for all most all the serious offences affecting Indian consumer. Can it be said that reducing the deterrence of punishment for these serious offences in the interest of consumer? More so when the offender can walk away by paying a compounding fee of *not more than Rs 2 lakhs?*

What are the offences for which *imprisonment* is prescribed?

Clause 61 prescribes for punishment for violating the provisions relating to exports of

'*notified articles of food*' (Clauses 50 and 51) (relating to application for the registration of food business) of the Bill, where such contravention or failure results in any injury or death to any person, with imprisonment ranging from 3 years to imprisonment for life, depending upon the seriousness of the injury. In other words, better concern is shown to the safety of consumers abroad. The other offences punishable with imprisonment are—

Interfering with food articles and other materials seized by the Enforcement Officer (Clause 63), providing false information or producing false or misleading document before the official (Clause 64), obstructing or impersonating Enforcement Officer (Clause 65) and carrying on food business without licence (Clause 67), and repetition of commission of any above offences. (Clause 68) also are punishable with imprisonment. While the incidental acts are proposed to be punished with imprisonment, the offences of manufacture, storing and sale of food injurious to health are treated leniently.

The result is, all the major offences except the case of export of food articles and foreigner doing food business in India are punishable with fine and are compoundable. Note that the punishment is *fine only* even for repeatedly committing the same offence after conviction in case of an offence which is punishable with fine only. (Clause 68).

Compounding:

As per Clause 70 of the Bill, except the offences for which a minimum period of imprisonment has been prescribed [*i.e.* interfering with seized items- Clause 63; providing false information- Clause 64; obstructing or impersonating Enforcement Officer- Clause 65; carrying out business without licence- Clause 67; and repetition of commission of such offences- Clause 68;] all

offences under the proposed Act are compoundable. For the first time it is thought of to leave away the suspected offenders by collecting some amount.

Low Compounding fee:

The maximum compounding amount is only Rs.2 lakhs; there is no minimum. And the officer that may be empowered to compound is an Additional District Magistrate. Is it intended to add to the revenue? Is it intended to see that no offender is burdened with the heavy fine proposed under the Act?

Who enquires into these offences?

All offences punishable with fine only are triable by District Magistrate. Only an offence under Section 61 is triable by Special Court.

Successive appeals:

The offender under this Bill has not only the facility of compounding, but has the advantage of successive appeals if he wants to contest, drag on and postpone the evil day. An appeal is provided against the order of adjudicating officer (District Magistrate) to the Divisional Commissioner or the Commissioner of Food safety of the State and against their order a further appeal lies to Food Appellate Tribunal, the presiding officer of which also may be an executive official who is not bound by the procedure under Civil Procedure Code but will be guided only by principles of natural justice. There is also a provision for review of the order by the same Food Appellate Tribunal. Again there is a provision for appeal to the High Court against the order of Food Appellate Tribunal ... The appeals before 3 executive authorities with all their multifarious activities may take several years before the matter reaches High Court. Thus the possibility of punishing an offender under the Act even with fine appears to be at a distant point of time under the PFA Act there was only one stage below the

High Court, that is the Court of Judicial Magistrate of the first class. The delays may now stand multiplied.

An order granting compensation, if any, to the complaint also is subject to series of appeals and the fruits would be beyond the reach of the victim.

Definition of 'adulterated':

Clause 3(b), is attracted only when food is injurious to health (i) by itself, (ii) or its container being composed of poisonous or deleterious substance; or (iii) due to any filthy, putrid, rotten, decomposed or deceased animal substance or vegetable substance used in its processing or manufacture, and (iv) due to unhygienic processing or (v) due to presence of any harmful substance, where as the Prevention of Food Adulteration Act had as many as 12 sub-clauses.

Definition of 'food':

The definition of 'food' is not happily worded. The changes in the wording of the definition in PFA Act may lead to varying judicial interpretations, which is not in the interest of consumers.

Even under the proposed Act, except when it is used in some other food, water is not 'food'. As such bottled drinking water sold in the market may not attract the provisions of the new Act and standards cannot be fixed for drinking water under this law. So also ice, mineral water for which standards existed under the PFA Act, will not be covered by the new Act. Assuming that the 'colas' about which there was so much debate are covered as 'drink', included in the definition of 'food', status of carbonated water remains doubtful.

Primary food is defined in the Bill as 'an article of food being a produce of agriculture, horticulture or aquaculture in its natural form, resulting from the growing,

raising, cultivation, picking, harvesting, collection or catching' and is excluded from the definition of 'food'. If the interpretation of High Courts of Kerala, Bombay, Orissa, *etc.*, that milk is a produce of agriculture and hence is a 'primary food', is to be followed milk may go out of the purview of the new Act.

Defences:

Finally, there is a long list of defences running for a full page available to the offenders. [Clause 90] - sub-clause (2) of (c), of Clause 90 provides for a defence that an accused can plead *'that the person did not know and had no reason to suspect at the time of commission of the alleged offence that the act or omission would constitute an offence under the relevant section'*. This is quite contrary to the fundamental principles of criminal law. Persons are punished under various laws irrespective of knowledge. Can a person plead that he did not know that killing a person was an offence under Section 302 Indian Penal Code? It is common knowledge that the persons may not be aware of various laws that prescribe punishments but this practical difficulty is not allowed to be raised as a defence. In India, ignorance of law is no excuse. Not only that, the draftsmen went to the extent of adding yet another defence - *'no reason to suspect that the act or omission would constitute an offence'*!

The meaning of sub-clause (e) is not clear. It looks as if that a person who destroys or otherwise disposes of a food to which the offence relates can plead it as defence to the prosecution. Such disposal may prevent repetition of offence, but how does it wipe off an offence already committed?

The only sub-clause mentioning that *'it is no defence'* in clause 90 running for more than a full page is sub-clause (d), the wording of which is intriguing. Clauses 49, 50 and 51 referred to therein are not penal sections at all.

Thus an overall impression that one is likely to get is that the provisions of this Bill (prepared in the ministry of food processing and not in ministry of consumer affairs) are more helpful to the manufacturers and vendors of food articles and are not in the interest of professed 'better consumer safety'. As mentioned by Government of India itself, it is seen in the *'perspective of promoting food-processing industry in view of its income, employment and export potential'* than in the perspective of providing better health and safety to Indian consumers.

Suggestions:

1. The definitions of words 'adulterated', and 'food', need to be modified in the light of observations made above.
2. Clauses 61 and 67 are to be redrafted.
3. The offences under Clauses 54 to 59 and Clause 66 (which covers violations under Clause 18 to 38, 43, 46 to 48 and 60) also have to be made punishable with imprisonment.
4. Clause 68 is to be redrafted.
5. The provision dealing with compounding (added subsequently as 17A) deserves to be deleted.
6. The successive appeals provided in Section 70 have to be curtailed.
7. Sections 80, 81, 86, 89 need to be redrafted.
8. The defences sought to be provided to the accused in Clause 90, mentioned earlier have to be deleted.

This is with reference to one of the Acts to be repealed only. Discussion is to be continued with reference to other Acts and Orders to be repealed.