

## THE PERSPECTIVE OF FOOD ADULTERATION

By

—V.G. RANGANATH<sup>1</sup>

Food adulteration is a growing problem in India, with rampant instances of adulteration of even essential food items such as milk, ghee and spices. Food activates human life to proceed with its activities or components. The healthy body is the result of intake of fresh and healthy food by a human being. Food and water are not only the elixir of life, but they are respected as divine beings. In spite of this fact, the evil of food adulteration is not only present in the society to a great extent, but its history can be traced back to the times of Kautilya<sup>2</sup>.

In fact, the secret of a good life is to have the right food at the right time. Owing to the importance of food, the modern society treats the adulteration of food as a heinous and unpardonable socio economic offence. In fact, “the Adulteration of food stuffs and other food” is an item under the Concurrent List in the Constitution of India. Adulteration of food is a threat to the society and the perpetrators cannot be let off lightly. Adulteration of food items can harm consumer health, and hence is a serious offence. Several instances of adulteration of food items like milk and ghee with detergents and other harmful chemicals have been witnessed in the country. Spices such

as turmeric, coriander and red chilly are also adulterated with stone powder, horse dung and chemicals. Manufacturers, in an attempt to make quick profits, are unmindful of the health of the public and resort to such mean techniques. Although there are stringent laws for consumer rights protection and for punishing culprits, Indian consumers are unaware of the laws and their provisions.

Food adulteration is a process of degrading the quality of food offered for sale by the addition or use of inferior quality substances or by extracting some valuable component of a food article. It is a common fraudulent practice adopted by sellers to earn extra profit. Pure and healthy food is a key requirement for maintaining good health. Adulterated food gives rise to various diseases and illnesses.

Earlier, the food adulteration complaints were prosecuted under the Prevention of Food Adulteration Act, 1954. The repealed Prevention of Food Adulteration Act, 1954 was enacted by the Parliament to prevent the adulteration of food. Pure, fresh and healthy food is essential for the health of the people. Adulteration of food stuffs was so prevalent, widespread and persistent and there was need to take a drastic remedy in the form of legislation, which is the need of the hour, to check this kind of anti-social evil, the repealed Prevention of Food Adulteration Act was enacted to correct and remedy the widespread evil of food adulteration to ensure the sale of wholesome food to the people. It is well settled that wherever possible, without unreasonable stressing and straining in all such statutes should be construed in a manner, which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circulation. As per

1. The Author is working as Faculty Member, Faculty of Law, IFHE University, Hyderabad

2 R.P. Kagle, 4(2) The Kautilya Arthashastra 260-270 (1970); see Chapter 2, Kagle has translated those proses into English as follows; “As to difference in weight or measure or difference in price or quality, for the weigher and measurer who by the trick of the hand brings about (difference to the extent of) one-eight part in (an article) priced at one panna, the fine is two hundred (pannas).... For mixing things of similar kind with objects such as grains, fats, sugar, salt, perfumes and medicines the fine is twelve pannas.”

the various judgments of the Supreme Court, the provisions of the Act are required to be observed in the strict adherence to safeguard the interest of the consumers of the article of food. Stringent laws will have no meaning if the offenders get away on some or the other technicalities. Basing upon the recommendations of Subject Group on Food and Agro Industries, Standing Committee of Parliament on Agriculture in its 12th Report submitted in April, 2005 desired that the much needed legislation on Integrated Food Law should be expedited. In that way, the Integrated Food Law has been enacted and received the assent by the President<sup>3</sup>, of India as 'The Food Safety and Standards Act, 2006'. This Act repeals and saves the Prevention of Food Adulteration Act up to three years from the date of the commencement of this Act.

The Food Safety and Standards Act, 2006 provides the definition of 'adulterant' under Section 3(a)<sup>4</sup>, of the Act. It is as follows:

"adulterant" means any material which is or could be employed for making the food unsafe or sub-standard, be employed for making the food unsafe or sub-standard, misbranded or containing extraneous matter.

By the above definition, the unsafe food, sub-standard food, misbranded food or containing extraneous matter will come under the purview of adulterant. The words unsafe food, sub-standard food, misbranded food or containing extraneous matter is provided under definition part of the Act. The Author avails those definitions here to have a crystal clear approach of the definition 'adulterant' as follows:

"Unsafe food"<sup>5</sup>, means an article of food whose nature, substance or quality is so affected as to render it injurious to health:

- (i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substances; or
- (ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance;
- (iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or
- (iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or
- (v) 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
- (vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or
- (viii) by the presence of any coloring 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
- (xi) by virtue of its being misbranded or sub-standard or food containing extraneous matter; or
- (xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.

(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

3. Assent by the President of India on 23rd August, 2006.

4. Section 3(a) of the Food Safety and Standards Act, 2006 and brought into force on 28.5.2008 *vide* S.O.1246(E) dated 28.5.2008.

5. Section 3(22) of the Act

“sub-standard food”<sup>6</sup>, means an article of food shall be deemed to be sub-standard if it does not meet the specific standards but not so as to render the article of food unsafe.

“misbranded food”<sup>7</sup>, means an article of food—

(A) if it is purported, or is represented to be, or is being—

(i) offered or promoted for sale with false, misleading or deceptive claims either:

(a) upon the label of the package, or

(b) through advertisement, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne the package containing the article or the label on such package; or

(B) if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but-

(i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labeled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents; or

(iii) the article is offered for sale on the product of any place or country which is false; or

(c) If the article contained in the package-

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labeled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

(ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or

(iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act;

extraneous matter<sup>8</sup>, means any matter contained in an article of food which may be carried from the raw materials, packaging materials or process systems used for its manufacture or which is added to it, but such matter does not render such article of food unsafe;

Chapter IX of Food Safety and Standards Act 2006 deals with offences and penalties. The penalties make available for sub-standard food, Misbranded food containing extraneous matter, possessing adulterant and punishment for unsafe food.

**Penalty for sub-standard food<sup>9</sup> :** Any person who whether by himself or by any other person on his behalf manufacturers for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees.

***Penalty for misbranded food<sup>10</sup> :***

(1) Any person who whether by himself or by any other person on his behalf

6. Section 3(zx) of Food Safety and Standards Act, 2006

7. Section 3(zf) of Act

8. Section 3(i) of the Food Safety and Standards Act, 2006

9. Section 51 of the FSS Act' 2006

10. Section 52 of the FSS Act' 2006

manufacturers for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees.

(2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed.

**Penalty for food containing extraneous matter<sup>11</sup> :** Any person whether by himself or by any other person on his behalf manufacturers for sale or stores or sells or distributes or imports any article of food for human consumption containing extraneous matter, shall be liable to penalty which may extend to one lakh rupees.

***Penalty for possessing adulterant<sup>12</sup> :***

(1) Subject to the provisions of the Chapter<sup>13</sup>, if any person who whether by himself or by any other person on his behalf, imports or manufacturers for sale, or stores, sells or distributes any adulterant shall be liable—

(i) where such adulterant is not injurious to health, to a penalty not exceeding two lakh rupees;

(ii) where such adulterant is injurious to health, to a penalty not exceeding ten lakh rupees.

(2) In a proceeding under sub-section (1), it shall not be a defence that the accused was holding such adulterant on behalf of any other person.

***Punishment for unsafe food<sup>14</sup> :***

Any person who, whether by himself or by any other person on his behalf,

manufactures or sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable—

(i) 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;

(ii) Where such failure or contravention 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;

(iii) Where such failure or contravention results in grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) 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.

***Right of Food Safety Officer to enter and seize adulterant :***

Under Section 38(2), the “Food Safety Officer may enter and inspect any place where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis”. As per Section 38(6), “Any adulterant found in the possession of an manufacturer or distributor of, or dealer, in any, article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the Food Safety Officer may be seized by the Food Safety Officer and a sample of such adulterant be submitted for analysis to a Food Analyst.”

**Injurious to health:** Section 48(1) mentions as to how an article of food may be rendered injurious to health. Section 48(2)

11. Section 54 of Food Safety and Standards Act, 2006

12. Section 57 of Food Safety and Standard Act, 2006

13. Chapter IX of FSS Act' 2006

14. Section 59 of FSS Act' 2006

specifies the factors which the Court has to take into consideration in determining whether a food is unsafe or injurious to health.

Perhaps, the same factors can be considered for determining whether an adulterant is injurious to health. Injury is defined as impairment, permanent or temporary. Hence, an adulterant will be deemed to be injurious to health if it causes permanent or temporary impairment.

Where powdered chillies contained an added colour and the Public analyst did not report that it was injurious to human life, the Supreme Court in *Shariff Ahmed v. State of Uttar Pradesh*<sup>15</sup>, held that merely because it was not specifically mentioned to be injurious, it did not follow that it was non-injurious. It observed “for ought we know, the prohibition under the Act and the Rules has been imposed because it is harmful to human health.”

**Penalty :** The penalty for possession of adulterant which is injurious to health extends upto Rs.10 lakh and Rs.2 lakh if it is not injurious to health.

**Recovery of penalty :** The penalty imposed by the Adjudicating Officer, if not paid by him, is recoverable as arrear of land revenue as per Revenue Recovery Act<sup>16</sup>.

Rules or Regulations Relating Adulteration of article/food Under Food Safety and Standards Act, 2006

i. Packaging requirements for Drinking Water (Both Packaged and Mineral Water) : It shall be packed in clean, hygienic, colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) (conforming to IS:10146 or polyvinyl chloride (PVC) conforming to IS : 10151 or polyalkylene terephthalate (PET and BT) conforming to IS : 12252 or polypropylene conforming to

IS : 10910 or foodgrade polycarbonate or sterile glass bottles suitable for preventing possible adulteration<sup>17</sup>, or contamination of the water.

ii. The refined vegetable oil shall comply with the following requirement<sup>18</sup> :

The oils shall be clear and free from rancidity, adulterants, sediments, suspended and other foreign matter, separated water, added colouring and flavouring substances and mineral oil.

Water-melon seed oil means the oil extracted from the clean, sound seeds of the fruit of water-melon (*citrullus vulgaris* schrad, family: cucurbitaceae). It shall be clear, free from rancidity, adulterants<sup>19</sup>, sediments, suspended and other foreign matter, separated water, added colouring and flavouring substances and mineral oil.

iii. Refined Rice Bran Oil shall be obtained from solvent extracted oil, neutralized with alkali, bleached with bleaching earth or activated carbon or both and deodorized with steam. Alternatively deacidification' bleaching and deodorisation may be done by physical means. The oil shall be clear and free from rancidity, adulterants<sup>20</sup>, sediments, suspended and other foreign matters, separated water and added colouring and flavouring substances.

iv. Refined salseed<sup>21</sup>, fat means the fat obtained from seed kernels of sal trees, *shorea robusta* Gaertn, F.(N..diperrocaspaeae which has been neutralized with alkali, bleached with bleaching earth or activated

15. AIR 1979 SC 1917/1979 (4) SCC 412/1980 Cr. LJ. 838

16. Section 96 of Food Safety and Standards Act, 2006

17. Packaging and Labelling, Regulation 2.1.1.5, Chapter 2 of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

18. 2.2.1 (16) of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

19. 2.2.2 (18) of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

20. 2.2.2 (23), ibid

21. 2.2.4 (6), ibid

carbon or both, and deodorized with steam, no other chemical agents being used. Alternatively, deacidification, bleaching and deodorisation may be done by physical means. The material shall be clear on melting and free from adulterants, sediment, suspended or other foreign matter, separated water or added colouring substance.

v. Kokum Fat<sup>22</sup>, means the fat obtained from clean and sound kernels of Kokum (*Garcinia indica choisy*) “also known as kokum, by process of expression or by a process of solvent extraction from cake or kernel. It shall be refined. The fat shall be clear on melting and free from rancidity, adulterants, sediments, suspended or other foreign matter, separated water, added colouring and flavouring matters and mineral oil.”

vi. When the food is not deemed to be adulterated:

A person selling :—

(i) ghee in such manner as specified in Regulation 2.3.8(1) and

(ii) Confectionery (including sweetmeats) in the preparation of which such ghee is used, shall give a declaration, in the Form A, to the Food Safety Officer when a sample thereof is taken by him for analysis under Section 47 of the Act and also to a purchaser desiring to have the sample analysed under Section 40 of the Act.

(iii) If on analysis such sample is found to be conforming to the standards of quality prescribed for the area where it is alleged to have been produced, the ghee shall not be deemed to be adulterated by reason only that it does not conform to the standards of quality prescribed for the area where it is sold.

*Existing Practices :*

The news paper reporter<sup>23</sup>, went to a

22. 2.2.4(7), ibid

23. DC Correspondent, July 23rd, 2010, “City cold to coloured food hazards” available at <http://www.deccanchronicle.com/hyderabad/city-cold-coloured-food-hazards-665> (Last visited on August 16, 2010).

restaurant in Hyderabad and ordered a tandoori chicken without the addition of any colouring, the reply was, Humare pass koi eisha chicken item nahi milta jisme rang nahi hota. Red colour sab mein daltein hain. (We don’t have any chicken item in our eatery wich is not coloured. We add red colour to all items).

Even with “permitted” food colouring, there is a limit on how much can be used which may not always be adhered to, say experts. Food items where colours can be added include cakes, ice-cream, yoghurt, sweets, wafers, biscuits, ice-candy, jelly crystals, jam, custard powder, papad, dal moth, carbonated and non-carbonated beverages, squash, syrup, juice and certain fruits and vegetables such as peas, strawberries and cherries.

In *Issar Das v. The State of Punjab*<sup>24</sup>, the apex Court dealt with the case under the provisions of Prevention of Food Adulteration Act observing that adulteration of food is a menace to public health and the statute had been enacted with the aim of eradicating that anti-social evils and for ensuring purity in the articles of food. The Legislature thought it fit to prescribe minimum sentence of imprisonment.

A Delhi Court has refused to discharge an employee of an international food chain who allegedly sold a ‘Veggi Crunch’ pizza containing a dead housefly. Additional Sessions Judge dismissed the revision petition filed by employee who was working at Pizza Hut’s Dwarka outlet, seeking discharge in the case.

The Court observed that the presence of a dead housefly in the food item would make the food unfit for human consumption as has been provided under the provisions of the Prevention of Food Adulteration (PFA) Act. *Prima facie* the sample of ‘Veggi Crunch Pizza’ lifted from restaurant (Pizza Hut) of the petitioner (*Kumar*) is shown to be adulterated. According to the prosecution, the inspector of department of PFA had gone to the Pizza Hut’s Dwarka outlet on

24. AIR 1972 SC 1295

April 21, 2010 and took a sample of its 'Veggi Crunch Pizza'. When the sample was taken, *Kumar* was found vending the food article to customers. PFA Inspector found a dead insect in the pizza and sent the sample to public analyst, who gave the report that the sample was adulterated because it contained one dead housefly. Under the provisions of the PFA Act, *Kumar* had sought to get the sample examined for the second time and it was sent to Central Food Laboratories (CFL) for analysis, which had given its report that the rest could not be performed as the sample was having fungal growth. *Kumar* sought his discharge in the case on the ground that the food item was not intended for sale but had only been placed on the counter for the purpose of display. *Kumar* also argued that the report of CFL takes precedence over the report of public analyst and in view of the fact that the sample got decayed, he was entitled to be discharged.

The Court rejected the contention saying that no analysis was needed as the housefly was found during physical examination. "The facts in the present case are peculiar in the sense that it was a sample of 'Veggi Crunch Pizza', in which only one housefly was found on physical examination. There was no analysis of the sample which was required to be done of this sample."

The Ministry of Health and Family Welfare has repealed the Prevention of Food Adulteration Act, 1954 replacing the Food Safety and Standards Act, 2006 with effect from 5th August, 2011.

The Author mentions that now a days Adulteration of food has become a deep rooted social evil. Why because, people are getting attracted by the mouth-watering and the delicious color of the sweetmeats or "Mithai", decorated with an equally attractive silver foil or so "Besan ladoos", the color so attractive, that people want to consume it. Is it the taste of that spicy deep yellow colored Indian snack called "Pakoda"? And

people wonder why whenever they make it at home, they never get that same yellow color. In the market, attractively decorated sweets and other edible items increase desire for food becomes almost insatiable. People get attracted to buy and eat, but in the process of eating to be cautious why because Metanil yellow a non-permitted coal tar dye commonly known as 'Kishori Rang' Rhodamin-B, Lead Chromate or perhaps Ultra Marine Blue. These are all non-permissible and banned colors and they cause serious health hazards and may also cause cancer in the long run. They are carcinogenic. Now what exactly is food adulteration? Well, the deliberate contamination of food materials with low quality, cheap, non-edible or toxic substances is called food adulteration. While the substance that degrades or lowers the quality of food is an adulterant.

It is obvious that food is the basic necessity of life. The people toil day and night for what? For that two morsel of wholesome nutritive food. And if at the end of the day we are not sure of what we eat, than what are we toiling for? The people may be eating a dangerous dye, sawdust, soap stone, industrial starch, and aluminum foil. The Author gives the contents of adulteration happening in day today routine life which were not recognizable and consumer is availing to his body and builds 'adulterated building'.

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process of eating to be cautious why because Metanil yellow a non-permitted coal tar dye commonly known as 'Kishori Rang', Rhodamin-B, Lead Chromate or perhaps Ultra Marine Blue. These are all non-permissible and banned colors and they cause serious health hazards and may also cause cancer in the long run. They are carcinogenic. Now what exactly is food adulteration? Well, the deliberate contamination of food materials with low quality, cheap, non-edible or toxic substances is called food adulteration. While the substance that degrades or lowers the quality of food is an adulterant.

**Milk :** Milk... that ever-enduring milk. For time immemorial it had been the basic staple food right from our growing up stage, to when we have grown up. As a child we need it for growth and as a grown up we need it for replenishing our nutrition daily. Tired and bogged down, need something to rejuvenate... take a glass of milk. But even this has not been spared.

Common adulterant, addition of water, flour, or any other starchy material say industrial starch. Addition of water and extraction of fat is very common and not harmful. But what when the milk you drink is not milk at all? Rather combination of urea, liquid detergent, a little sugar, vegetable oil and water.... A Synthetic Milk. There was the case in Delhi, where the racket was busted a few years back and there was a lot of hue and cry in the media regarding the same. So many children consumed the synthetic milk.

**Turmeric :** Turmeric is the basic ingredient of all our Indian cooking. Any Indian dish is not complete without it. It may be adulterated with, Lead chromate, (which adds color as well as weight to it, being heavier), Metanil Yellow dye or an starch based item like flour or rice powder or even industrial starch. Except flour or rice powder, all the other adulterants are health hazardous and cause irreparable damage to our system when eaten at regular intervals for a long period of time. For instance, lead chromate, it is one of the

most toxic salts of lead. It can cause anemia, paralyses, mental retardation and brain damage in children and abortion in pregnant women. Metanil yellow dye which is another non-permissible toxic colorant, is used mostly to color Besan or gram flour, pulses, miscellaneous prepared foods namely sweetmeats like laddoo, burfi, jilabi, dalmoth, papad, *etc.* to get that attractive deep yellow color. Food grade colors are available in the market but being more costly, traders take advantage of the lackadaisical approach of the law enforcing authorities and substitute it with the said cheap and non-permissible dyes and colors.

**Masalas :** The "Masalas" or spices, may also be adulterated. The coriander powder or chilli powder may be adulterated with sawdust, rice bran and sand. This is not only unethical, from the business point of view, but a sin committed against the society at large. Any trader who is found resorting to such means of adulterations should be taken to task very strongly. People should try as far as possible to buy whole spices and grind them at home or purchase properly packed spices (with proper informative labeling) of standard F.P.O I.S.I or AGMARK certified companies.

**Mustard Oil :** Argemone seeds that grow as weeds in the mustard fields are mixed with mustard seeds and its oil is mixed with mustered oil. Just a trace amount is all right, but when added deliberately it causes serious health hazards and even death. Dropsy is a straight after effect of consumption of this oil. It may also cause swelling, irregular fever, low pulse rate, enlargement of the liver, respiratory distress which may lead to heart failure. Adulteration of oil has become rampant, with a wide variety of oils available in the market, the consumer is not sure what combination of oils he gets when he buys it loose from the market. It is very harmful and hazardous to health when mixed with crude castor oil, industrial palmolein-oil, mineral oil *etc.* This is certainly a crime against humanity aimed at earning money at the cost of public health.



**Ghee :** Ghee is adulterated to the extent of 80 to 85 percent with Vanaspati. In actuality it is Vanaspati flavored with 15 or 20 percent of ghee by special process. Even in the year 1935-36 when, six samples of so called pure ghee was collected it was found that they were adulterated with vegetable products made from groundnut, and other oils and the extent of adulteration was up to 80 percent.

**Water :** Water that has been adequately chlorinated, by using the minimum recommended water treatment standard provide protection against viral and bacterial waterborne diseases. However, chlorine treatment alone, as used in the routine disinfection of water, might not kill some enteric viruses and the parasitic organisms that cause giardiasis, amoebiasis, and cryptosporidiosis. In areas where chlorinated tap water is not available or where hygiene and sanitation are poor, one is advised that only the following might be safe to drink:

- Beverages, such as tea and coffee, made with boiled water
- Beer and wine
- The safety of canned or bottled carbonated beverages, including carbonated bottled water and soft drinks is questionable nowadays.

Where water might be contaminated, one is advised that ice should also be considered contaminated and should not be used in beverages. If ice has been in contact with containers used for drinking, one should thoroughly clean the containers, preferably with soap and hot water, after the ice has been discarded.

It is safer to drink a beverage directly from the can or bottle than from a questionable container. However, water on the outside of beverage cans or bottles might also be contaminated. Therefore, one should be advised to dry wet cans or bottles before

they are opened and to wipe clean surfaces with which the mouth will have direct contact. Where water might be contaminated, one is advised to avoid brushing their teeth with tap water.

The following methods may be used for treating water to make it safe for drinking and other purposes.

- Boiling
- Chemical disinfection (for *eg.* chlorine tablets)
- Water filters

Proper selection, operation, care, and maintenance of water filters are essential to producing safe water. If no source of safe drinking water is available or can be obtained, tap water that is uncomfortably hot to touch might be safer than cold tap water; however, proper disinfection, filtering, or boiling is still advised.

#### **Other forms of Food Adulteration :**

Sand, dirt, earth, gritty matter, soap stone, common salt are added to flour, refined flour (maida), gram flour (besan), spices, sugar, tea-dust and coffee. And washing soda is added to table salt. In tea-dust one can even find iron filings. And remember that lovely silver leaves used to decorate sweetmeats, burfi, and pan, you may be surprised what it is. It may be aluminum leave or foil, which is again very bad for health, causing a lot of physical complications. Dried seeds of volatile oil are added to cloves, while mineral acids to vinegar, papaya seeds to black pepper. Aniseed or 'sauf' that after food tit-bit, is dyed with malachite green dye for that nice green color. In food grains and whole spices extraneous matter like stalks, stems, and foreign seeds are added. Generally, the castor oil which is often mixed in ground nut oil can cause abortion in cases of pregnant women. When the amount adulterated goes beyond 0.7 microgram per KG of body weight. Khesari Dal which is often mixed in Arhar Dal can

cause lower limb paralysis known as Lathyrism. *Lathyrus sativus* species (Khesari Dal) has a toxic Amino acid known as Beta oxalyl amino alanine which is responsible for the above condition.

Food adulteration is the act of intentionally debasing the quality of food offered for sale either by the admixture or substitution of inferior substances or by the removal of some valuable ingredient. Food is declared adulterated if:

- a substance is added which depreciates or injuriously affects it
- cheaper or inferior substances are substituted wholly or in part
- any valuable or necessary constituent has been wholly or in part abstracted
- it is an imitation
- it is coloured or otherwise treated, to improve its appearance or if it contains any added substance injurious to health

Food-preservatives have a very extensive use, which often constitutes adulteration. Salt is the classic preservative, but is seldom classified as an adulterant. Salicylic, benzoic, and boric acids, and their sodium salts, formaldehyde, ammonium fluoride, sulphurous acid and its salts are among the principal preservatives. Many of these appear to be innocuous, but there is danger that the continued use of food preserved by these agents may be injurious. Some preservatives have been conclusively shown to be injurious when used for long periods. In the changing economic scenario, consumer has a more important role to play. With consumer consumption pattern and behaviour changing, it is imperative to have legislations framed accordingly. Consumerism on the rise has given a boost to the Food Industry as whole. In the past it was said 'ignorance is bliss' now with consumer more educated, agile and active, it is the need of the hour to make this branch of law every dynamic.

### *Adulteration-Constitution of India*

Entry 18 of List III of the 7th Schedule to the Constitution of India reads as under:

“Adulteration of food stuffs and other goods”

Concurrent List, Article 246, List III Entry 18 and 33:

Entry 18:- Adulteration of food stuffs and other goods.

Entry 33:- Trade and Commerce in, and the production, supply and distribution of-

- (a) the products of any industry where the control of such industry by the union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
- (b) foodstuffs, including edible oil seeds and oils;
- (c) cattle fodder, including oil cakes and other concentrates
- (d) raw cotton, whether ginned or unginned, and cotton seed; and
- (e) raw jute.

The State and Union of India both have authority to pass legislation on this subject. The Act is, therefore, intravires the Central Legislature, Fundamental rights guaranteed under the Constitution are subject to constitutional restrictions in subsequent clauses for its Article or Articles subsequent to fundamental rights<sup>25</sup>.

*Mensrea*:- The Supreme Court pointed out that mensrea in same State of a guilty knowledge of adulteration of food stuff is not necessary to be proved for an offence under Section 7 of the Prevention of Food Adulteration Act<sup>26</sup>.

25. *Babulal Purate v. State of Maharashtra*, AIR 1961 SC 884.

26. *Sarjoo Prasad v. State of Uttar Pradesh*, AIR 1961 SC 631.

The offences under the Acts are not required to be proved with reference to the guilty mind of the accused but they raise presumption against the accused of their own violation in sense that a contravention mere is peril<sup>27</sup>.

**Whether repealed Prevention of Food Adulteration Act is a consumer legislation:** It is a 'consumer' legislation directed to regulate the consumer-supplier relationship with a view to protect the former against the fraud by the latter in matter food. Minor depatures from percentage proportion in analysis are viewed with serious concern<sup>28</sup>.

### *Judicial Analysis on Food Adulteration*

1. *Quantum of adulterant not specified in report*<sup>29</sup> : Where the percentage content of adulteration was not specified in the report, held that such certificate could not be acted upon.

2. *Adulterated article used in edible preparation* : Where an adulterated article is used in preparation of edibles, each one of them is adulterated<sup>30</sup>.

3. *Collection of Adulterated Food Article-Tata Salt* : Conviction of the accused based on the invoice allegedly issued by the co-accused cannot sustained as the genuineness of the bill and the invoice is not proved before the Court for the invoice stands in the name of different person and in absence of specific evidence to whom the invoice was issued and to whom adulterated article was allegedly sold by the accused, the conviction is unsustainable<sup>31</sup>.

4. *Burden of proof on person 'in possession of adulterant'* : When an adulterant is seized by the Food Safety Officer, under sub-section (6)

the burden of proving that such adulterant is not meant for purposes of adulteration, shall be open on the person from whose possession such adulterant was seized. Since, an adulterant is a material, which could be employed for making the food unsafe or substandard, misbranded or containing extraneous matter, the Act provides for drawing a presumption that the material was meant for such use and the burden of rebutting the presumption lies on the accused. The draftsmen used the expression "for purposes of adulteration", inadvertently, though the word 'adulteration' is neither defined nor used anywhere else in this Act. The expression has to be understood as "for purposes of making the food unsafe or sub-standard, misbranded or containing extraneous matter".

*Sale in the presence of the vendor-* Where a Food Inspector asked for an article of food for analysis and the accused ran away, held that the absconder is liable<sup>32</sup>. The word "adulterant"<sup>33</sup> means any material which is or could be employed for making the food unsafe or sub-standard, misbranded or containing extraneous matter; The definition given in this Act substitutes the expression 'for the purpose of adulteration' in the definition of adulterant in Prevention of Food Adulteration Act, 1954 with the expression 'for making the food unsafe or substandard, misbranded or containing extraneous matter'. An adulterant may not be injurious to health at all *e.g.* water added to milk, sugar added to honey *etc.* The Act covers both kinds of adulterants which are injurious to health as well as not injurious to health. Instances of 'adulterants' in foods:

- Argemone oil, seed oil, water-melon seed oil in vegetable oils;
- high melting and rancid fat or animal body fat in vanaspathi;
- foreign fat in cream:

27. *Andhra Pradesh Grain & Seed Merchants Association v. Union of India*, AIR 1971 SC 2346.

28. *State of Kerala v. Parmeswara*, 1975 FAJ 97

29. *In re: Abdul Azee*, AIR 1964 Ker 107

30. *Municipal Corporation of Delhi v. Jeibnand*, 1969 Del LJ 605

31. *Mohinder Kumar v. State of Haryana*, AIR 2004 SC 1694

32. *Corporation of Calcutta v. Raibhi and Co.*, AIR 1970 Cal. 435 at p.437

33. Section 3(1)(a) of FSS Act, 2006

- polished with lead chromate or metanil yellow-coaltar dye in turmeric;
- artificial red colour and foreign starch in chilli powder;
- sand, grit, tale and yellow earth in turmeric powder; cassia bark in cinnamon;
- light berries pin heads, dried papaya seeds in black pepper;
- Argemone seeds in mustard; fine sandy matter in Ajwain;
- stones, sand, grit, mud in rice, wheat *etc*;
- soap stone, chalk powder in atta and myda; tamarind seed powder in tea dust *etc*.

The 'Food Safety Officer' may enter and inspect any place where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis<sup>34</sup>. Any adulterant found in the possession of a manufacturer or distributor of, or dealer, in any, article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the Food Safety Officer may be seized by the Food Safety Officer and a sample of such adulterant be submitted for analysis to a Food Analyst<sup>35</sup>.

*Onus or Burden on possessor of adulterant:* When any adulterant is seized, the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized<sup>36</sup>.

### **Penalty:**

Penalty for manufacturing for sale, storing, selling, or distributing any adulterant, whether it is injurious to health or not is same under the FSS Act. Whereas the severity of punishment under the Prevention of Food

Adulteration Act, depends upon the fact whether the adulterant is injurious to health.

### ***Cases decided by Consumer Redressal Agencies pertaining to Food***

***Defect in food:*** In this case the complainant, *S.N. Sinha* travelled from Patna to Ahmedabad as passenger on Flight No.IC-295 of the Indian Airlines on 9th February, 1988. Since the flight took off from Patna only late in the evening after a delay of about two hours, dinner was served to the passengers by the Air lines on board the aircraft. While taking the food so supplied by the Airlines, *Sinha* suddenly experience some pain in his mouth because of some hard substances piercing the gum. It was found that it was a pierce of sharp metallic wire, which got into the mouth with rice and curry and airhostess refused to record the complaint. The State Commission stressed the fact that while fixing the fare structure the Airline would certainly have taken into account the expenditure incurred in the manner of serving food to passengers while on board the aircraft and held that it could not therefore be said that the food supplied by the Airline was provided gratis. The further pleas put forward by the Airline that it could not be held responsible for any defect in the food supplied by the caterers was also rejected by the State Commission by pointing out that there was absolutely no privity of contract between the passengers and the caterers and the caterer was functioning only as an agent of the Airline and hence the Airline in its capacity as the Principal must be held responsible for only deficiency in the food supplied by its agent.

The provision of food is one of the amenities provided to the passengers in return payment of the fare for the journey and its forms an essential part of the service rendered by it in the Airline for the consideration received by it in form of the price charged for the ticket. Any defect in the food supplied must therefore be regarded by the Airline.

34. Section 38(2) of the Food Safety and Standards Act, 2006

35. Section 38(6), *ibid*

36. Section 38(9), *ibid*

The view of the State Commission that the caterer who had actually supplied the food can only be regarded as agent of the Airline and in the event of there being any defect in the food supplied by the caterers, the Principal namely, the Indian Airlines will have to bear the responsibility for the same approval<sup>37</sup>.

*Service of Contaminated food:-* Where the complainant while travelling by Air was served with food containing broken glasses articles which was noticed while chewing the food, it was certainly deficiency in service. The complainants have come with the allegations of presence of broken glass particles in their food. The learned Counsel for the complainants argue that an exemplary compensation should be granted so that there is check on the Airlines in the matter of servicing of food on board. The complainants were without any food for 41/2/5 hours during their journey. The tension, anxiety and mental suffering can easily be imagined and think that for these the complainants should be suitably compensated by award of damages. There is no yardstick for assessment of compensation in regard to this type of cases and some guess work as required to be resorted to. In such circumstances for mental agony and suffering<sup>38</sup>.

*Railway – supply of food to passengers without drinking water-* Where the Railway supplied curd bhath to the passengers in the trains without drinking water. The question was whether the curd bhath without drinking water falls in the category of defective goods. It was held that curd bath was sold as distinct item of food and for that consideration charged was for the both exclusively without water and no-supply of water cannot render curd bhath as defective, and cannot be regarded as defective unless there was any fault, imperfection, or short coming in its quality, potency, purity or standard<sup>39</sup>.

*Half burnt piece of bidi found in the bottle of Fanta-* Compensation of Rs.80,000/- was claimed State Commission was unable to find out the basis on which the complainant had claimed such a huge amount of compensation. Applying the ratio of the case in hand the complaint was dismissed on the ground being devoid of merit. [Rajinder Singh Rangpuri v. Amritsar Beverage Pvt. Ltd., III (2002) CPJ 156 (Chandigarh).

*Cooking oil adulteration of-* A ratio shop supplied on ration card rape-seed oil adulterated with argemone oil and tricresyl phosphate both known toxic adulterants, to the complainant attached to the said ration shop. They have been the victims of the rape-seed oil tragedy. The complainant, an Advocate of High Court was severally attacked with paralysis of his lower limbs and in spite of prolonged treatment he did not recover fully. His wife in spite of the medical treatment has not been able to carry on her ordinary avocation as housewife because of ailment. His two daughters and a son, all growing-children, have also been affected and medical report was that they have severe attack. Their educational career was doomed. Considering all those facts, the Commission awarded a sum of Rs.1,50,000/- to the complainant and Rs.50,000/- to his wife and Rs.25,000/- to each of his children resulting in awarding of total Rs.2,75,000/- only<sup>40</sup>.

Adulteration of food items can harm consumer health, and hence is a serious offence. Instances of food adulteration and misbranding are common in both rural and urban areas, and the need for curbing them is urgent. Several instances of adulteration of food items like milk and ghee with detergents and other harmful chemicals have been witnessed in the country. Spices such as turmeric, coriander and red chilly are also adulterated with stone powder, horse dung and chemicals. Manufacturers, in an attempt to make quick profits, are unmindful of the health of the public and resort to such mean techniques. Although there are stringent laws

37. *Indian Airlines, New Delhi v. S.N. Sinha*, 1992 CPJ 62 (NC)

38. *Rishi Bagoria and others v. Lufthansa German Airlines and another*, 2003 (1) CPR 593 (Cal)

39. *Union of India v. Chairman, Madras Provincial Consumer's Association*, 1992 (2) CPR 710

40. *Barsad Ali v. Managing Director, West Bengal Essential Commodities Supplies Corporation Ltd.*, 1993 CCJ 476.

for consumer rights protection and for punishing culprits, Indian consumers are unaware of the laws and their provisions. Besides, consumers must also be vigilant about identifying adulterated food and wrong branding of articles by unscrupulous manufacturers.

Food adulteration is a process of degrading the quality of food offered for sale by the addition or use of inferior quality substances or by extracting some valuable component of a food article. It is a common fraudulent practice adopted by sellers to earn extra profit. Some examples of food adulteration are addition of flavours and colours to wine and addition of water in milk.

Pure and healthy food is a key requirement for maintaining good health. Adulterated food gives rise to various diseases and illnesses. Although different Legislatures on food adulteration exist in several States of India, these laws lacked uniformity and proper implementation.

*Reduction of Sentence on the ground of age and suffering from several ailments*<sup>41</sup>

*Facts of the case:* The appellant was convicted of an offence committed on 27th November, 1983, under Sections 7(1)<sup>42</sup> and 2(1)(m)<sup>43</sup>, of the Prevention of Food Adulteration Act, 1954. The appellant was running a grocery shop near the Roadways Bus Stand in Roorke, District Saharanpur (now within Haridwar District in Uttarkhand). The respondent No.2 who was a Food Inspector, Nagar Palika, Roorke, at the relevant point of time, went to the appellant's shop on the aforesaid date and

found the appellant selling and exhibiting mustard oil for sale. The respondent No.2 who was a Food Inspector purchased 375 grams of mustard oil from the appellant and obtained a receipt from him. Subsequently, on the report of the Central Food Laboratory, Kolkata, the appellant was charged Section 7(1) read with Section 2(i)(m) of the aforesaid Act and on being convicted by the Special Judicial Magistrate (Economic Offences), Roorke, was sentenced to one year's rigorous imprisonment and a fine of Rs.2,000/- and in default of payment of such fine, to undergo rigorous imprisonment for a further period of six months.

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then such article shall not be deemed to be adulterated within the meaning of this sub-clause.

*Explanation*—Where two or more articles of primary food are mixed together and the resultant article of food-

(a) is stored, sold or distributed under a name which denotes the ingredient thereof; and

(b) is not injurious to health

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;

The appellant preferred an appeal against the said order of the learned Magistrate before the IVth Additional District and Sessions Judge, Saharanpur, being Criminal Appeal No.168 of 1986, which was dismissed on 7th January, 1988. Aggrieved by the said order of the learned Additional District and Sessions Judge, the appellant filed a revision petition before the Allahabad High Court in 2004, being Crl. Revision No.195 of 2004 upon bifurcation of the State, the said revision petition stood transferred to the Uttaranchal High Court and was dismissed on 23rd March, 2006. The said

41. *Nand Lal v. State of Uttarakhand and another*, 2010 Crl. LJ 2426 (SC)

42. Section 7(1): Prohibitions of manufacture, Sale, etc., of certain articles of food-No person shall himself or by any person on his behalf manufacture for sale or store, sell or store, sell or distribute-

(i) any adulterated food

43. Section 2(i)(m): If the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

order of dismissal of the revision petition filed by the appellant is the subject-matter of the present appeal. The Counsel appearing for the appellant urged that the appellant had been wrongly convicted of the offence alleged against him since the mustard oil in question had been purchased by the appellant from the open market and was not meant for human consumption, but to be used for lighting lamps during Deepawali. It may immediately be indicated that the said defence of the appellant was accepted by the trial Court, the appellate Court or the High Court. The Counsel then pleaded that since the incident is alleged to have taken place about 27 years ago, the sentence of the appellant may be reduced to the period already undergone by him. In fact, notice was issued on 29th September, 2006, on the said ground.

The Supreme Court held that having regard to the fact that the incident had taken place almost 27 years ago and the appellant is now more than 70 years of age, suffering from several medicinal ailments, inclined to accept the submission made on behalf of the appellant for reduction of his sentence and reduced his sentence to the period already undergone.

Prevention of Food Adulteration Act, 1954, Sections 7,<sup>44</sup> 16(1)(a)(ii),

44. Section 7: Prohibitions of manufacture, Sale *etc.*, of certain articles of food-No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-

- (i) any adulterated food;
- (ii) any misbranded food;
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of licence;
- (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; (or)
- (vi) any adulterant

Explanation:- For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.

*Section 16(i)(a)(ii)(penalties)* : other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or any rule made thereunder]

Prevention of Food Adulteration Rules, Rules 22, 14 [Rule 22; Quantity of sample to be sent to the public analyst: The quantity of sample of food to be sent to the public analyst/Director for analysis shall be as specified in the Table below:

Rule 14: Manner of sending sample for analysis: Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and shall be carefully sealed.]

Adulteration of drinking water-appeal against acquittal officer who inspected premises and drawn sample was not authorized to do so as per instruction issued by Government-Sample taken by food inspector was not adequate for analysis-sample was sent to Court beyond prescribed period of seven days after receipt of the same-analysis of sample was conducted 35 days after prescribed period in violation of Section 11(4) - Further food Inspector drew samples into empty plastic container and thereby resorted to deliberate violation of Rule 14 [Section 11(4)-Procedure to be followed by Food Inspectors-An article of food seized under sub-section (4) of Section 10, unless destroyed under sub-section (4A) of that section, and any adulterant seized under sub-section (6) of that section shall be produced before a Magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the public analyst]

Further Food Inspector drew samples into empty plastic container and thereby resorted to deliberate violation of Rule 14-order acquitting accused-Not interfered with. Criminal P.C.S.378.

This appeal is filed by the State against the judgment dated 22.3.2002 passed by the I Additional Munsif Magistrate, Gurazala in CC No.139 of 2000 whereby and whereunder the learned Magistrate acquitted the respondents 2 and 3 for the offences under Sections 16(1)(a)(ii), 7(i) and 2(ia)(f) of the Prevention of Food Adulteration Act.

[Section 7(i): Prohibition of manufacture, sale *etc.*, of certain articles of food-No person shall himself or by any person on his behalf manufacture for sale or store, sell or distribute-

(i) any adulterated food]

[Section 2(ia)(f): if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;]

**Brief facts of the case<sup>45</sup> :** The brief facts giving rise for filing of the appeal are the PW1 (*V. Nageswara Rao*), the Food Inspector inspected the firm of the 3rd respondent-M/s. Krishna Water Works, piduguralla and drew samples in the presence of second respondent who is the managing partner of the firm and that PW2 (*V.V. Subba Reddy*) an independent witness who was taken as mediator, purchased 12 sachets into three equal parts and put them in three clean dry and empty plastic containers. Subsequent to conducting the sealing and sampling in accordance with the Act and Rules, sent one sealed along with the memorandum in Form No.VII to the public analyst. The report of the public analyst ultimately revealed that the sample contains moulds and colourless suspended particles, therefore, the drinking water therein adulterated. After obtaining written consent from the Director and State Food (Health) Authority, Andhra Pradesh, Hyderabad, he filed complaint against the respondents and A1.

As A1 was absconding, the case against him was separated and trial was proceeded against the respondents 2 and 3. The prosecution in order to prove its case, before the learned trial Court, examined the Food Inspector as PW1, the independent witness who was taken mediator as PW2 and marked Exs.P1 to P26. The respondents did not propose to examine any witnesses nor did they mark any documents on their behalf. The trial Court on a consideration of the oral and documentary evidence found that PW2, the independent witness did not support the case of the prosecution, the Food Inspector committed several irregularities and violations in conducting the sampling and sealing process and also in his inspection and ultimately the learned trial Court acquitted the respondents 2 and 3 herein. Feeling aggrieved, the State preferred the appeal.

The point for determination in the appeal is: Whether there are any valid grounds to interfere with the order of acquittal passed by the learned trial Court?

**Point:-** There are categorical admissions in the evidence of PW1, the Food Inspector, that according to the instructions in Ex.P5 (Proceedings Rc No.15/F8/99, dated 9.3.1999 issued by the Director of Institute of Preventive Medicine, Public Health Labs & Food (Health) Administration, Hyderabad) Assistant Food Controller, Zone III was authorized to make surprise visits and draw samples. He also stated that he did not seize any books of account in order to prove that the respondents 1 and 2 were transacting business of selling drinking water sachets. As per Ex.P5, PW1, the Food Inspector is only supposed to assist the Assistant Food Controller at the time of inspecting any business premises. But, Ex.P9, the mediator's name does not contain the signature of Assistant Food Controller inspected the premises and he assisted him at the time of his inspection. From Ex.P5 it is thus, obvious that under the Rule PW1 is not authorized to make any surprise visit or inspection that he is only supposed to assist the Assistant Food Controller.

45. *Food Inspector, Kakinada v. Gunturu Venkateswara Rao and another*, 2009 CRI. LJ 531



PW1 further admitted in the cross-examination that he took three samples of 100ml of each and sent them for analysis. But as per Article 38 of Rule 22 of the Food Adulteration Rules, the minimum quantity of samples shall be 3000ml. Further Ex.P14, the report of the public analyst also does not specifically mention that the sample taken by the Food Inspector is not adequate and it is very much in doubt whether with such a quantity, the analysis, can be done accurately. Further, Section 11(4) of the Food Adulteration Act mandates that the report of the public analyst has to be sent to the Court within 7 days after receipt of the same. But in the instant case, the sample was sent to the Court beyond the prescribed period. Further the sample was drawn on 13.3.1999, sent for analysis on 15.3.1999 and the same was analysed on 20.4.1999, thereby the analysis was conducted 35 days after the prescribed period. The sample has to be analysed according to Section 11(4)<sup>46</sup> of the Act within 21 days. Thus, there is a clear

violation of Section 11(4) of the Act in sending the sample and conducting analysis.

Moreover, polythene bag cannot be called as container within the meaning of Rule 14 of the Rules. The rule mandates that the samples have to be drawn in clean glass containers (bottles). Admittedly, in the present case, PW1 the Food Inspector drew samples into the empty plastic containers and thereby resorted to deliberate violation of Rule 14.

If found to be reliable and convincing, the Court can base a conviction solely on the evidence of PW1, the Food Inspector despite the fact the PW2 an independent witness did not support the prosecution version. But, in the instant case, there are several violations and material irregularities committed by PW1, the Food Inspector and on account of irregularities, the respondents are certainly entitled for acquittal. The trial Court, therefore, does not commit any mistake in recording an order of acquittal against the respondent 2 and 3. The judgment of the trial Court does not call for any interference in this appeal and the same is confirmed. Consequently, the appeal filed by the State against the acquittal is dismissed.

46. Section 11(4): An article of food seized under sub-section (4) of Section 10, unless destroyed under sub-section (4A) of that section, and any adulterant seized under sub-section (6) of that section, shall be produced before a Magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the public analyst:

Provided that if an application is made to the Magistrate in this behalf by the person from whom any article of food has been seized, the Magistrate shall by order in writing direct the food inspector to produce such article before him within such time as may be specified in the order.

Sub-section (4) of Section 10: If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided: and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst:

Provided that where the food inspector keeps such article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the food inspector deems fit and the vendor shall execute the bond accordingly.

(4A): Where any article of food seized under sub-section (4) is of a perishable nature and Local (Health) Authority is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the said authority may, after giving notice in writing to the vendor, cause the same to be destroyed.

Sub-section (6) of Section 10: Any adulterant found in the possession of a manufacturer or distributor of, or dealer in, any article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the food inspector, and any books of account or other documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the food inspector and a sample of such adulterant submitted for analysis to a public analyst.

Provided that no such books of account or other documents shall be seized by the food inspector except with the previous approval of the authority to which he is officially subordinate.

**Mensrea:** Supreme Court in *Sarjoo Prasad v. State of Uttar Pradesh*, AIR 1961 SC 631, pointed out that mensrea in same State of a guilty knowledge of adulteration of food stuff is not necessary to be proved for an offence under Section 7 of the Act.

The offences under the Acts are not required to be proved with reference to the guilty mind of the accused but they raise presumption against the accused of their own violation in sense that a contravention mere is peril. (*Andhra Pradesh Grain and Seed Merchants Association v. Union of India*, AIR 1971 SC 2346).

The word “adulterant”<sup>47</sup>, means any material which is or could be employed for making the food. The ‘Food Safety Officer’ may enter and inspect any place where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis<sup>48</sup>.

Any adulterant found in the possession of a manufacturer or distributor of, or dealer, in any, article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the Food Safety Officer may be seized by the Food Safety Officer and a sample of such adulterant be submitted for analysis to a Food Analyst<sup>49</sup>.

Onus or Burden on possessor of adulterant:

When any adulterant is seized, the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized<sup>50</sup>.

### Conclusion and Suggestions:

1. Consumers must be taught with the provisions of the Food Laws and Regulations and how they are protected under the said Law.

2. The people should aware of their rights to demand pure and nutritive food and start consumer movements, instead of bearing the brunt and suffering quietly and take to task any such unscrupulous traders or manufacturers by way of filling of PIL (Public Interest Litigation) in the Courts or dragging them to consumer Courts, will such serious social evils of food adulterations which has deep roots in our society can be uprooted and eradicated.

3. The consumer, to protect himself should avoid buying loose edible items from the markets, and go for tinned or packed items on which proper informative labels are displayed, which includes the date of manufacture and expiry as well. They should stress on products with F.P.O., I.S.I. or AGMARK certifications. These are the most commonly used certifications and at least gives the consumers third party guarantee of the product. The middle-class or the upper class can protect themselves by the above methods....but what about the lower strata of the society, the laborers, the poor class who cannot afford to buy expensive packed items, who have to purchase only in small loose quantities daily due to economic constraints. What about them? How can they be protected? They are the ones who are taken advantage off, the maximum? If, we go to the interiors and the rural areas of India and check for ourselves, the food articles that they are supplied with, are of the lowest and bottom most grade, adulteration is rampant and even the animals belonging to the highly snooty elite class would refuse eat it!

4. State health officials say that consumption of coloured food is due to lack of awareness among retailers as well as consumers and more programmes to alert

47. Section 3(1)(a) of FSS Act, 2006

48. Section 38(2) of the Food Safety and Standards Act, 2006

49. Section 38(6), ibid

50. Section 38(9), ibid

and educate consumers and hotel and eatery owners regarding PFA is the need of the hour.

5. Although there are stringent laws for consumer rights protection and for punishing

culprits, Indian consumers are unaware of the laws and their provisions. Besides, consumers must also be vigilant about identifying adulterated food and wrong branding of articles by unscrupulous manufacturers.

## THE IMPORTANCE OF COLLECTIVE BARGAINING IN SETTLEMENT OF INDUSTRIAL DISPUTES

*By*

—PEDDI RAVINDER, B.Com., L.L.M.  
Nallagutta, Kachibowli,  
Secunderabad, A.P.

### *Introduction :*

An individual is free to bargain for himself and safe guard his own interest. If an individual workman seeks employment he stands in a weaker position before his master who having command over wealth stands in better position to dictate his own terms and the individual has to accept the offer without any reserves for he has to feed his family.

However the position becomes different if a body makes a bargain or association of workmen. They can negotiate and settle their terms with the employer, in a better way and secure better wages, better terms of employment and greater securities. The object of collective bargaining is to harmonize labour relations, promote industrial peace by creating equality of bargaining power between the labour and the capital. Collective bargaining can exist only in an atmosphere of political freedom.

In political life, democratic countries have established system of discussions through representative assemblies for determining the laws by which they shall be governed. In international relationship we have gone only same along this road. Meanwhile in the world of industry and commerce a process has been evolving in the past century for the negotiation between management and the

employees of terms and conditions of service and the established of peaceful, orders relations at the place of work through mutual settlement of different and the co-operation or all those engaged in the establishment. The process is known as collective bargaining.

### *Present Context of Collective Bargaining:*

Industrial harmony is essential for economic progress of the nation. Unnecessary strike and lock-outs go against the interest of the community and severely effect on the growth of the nation. The industrial harmony can be better maintained in the parties are strong and develop the habit of planned collective bargaining then only fruitful human relations among men are possible provided. All members of the group observe certain rules of conduct. There was a time when primitive societies settled disputes by battle. The rule of judge prevailed and might was right. This gradually gave way to another stage when some central authority backed by force settled the differences of men.

The phrase "Collective Bargaining" is one of the recent origin. The basic tenet of collective bargaining is to meet, discuss and decide the simple and complicated issues affecting workers as group as well as individuals. It is the form of bargaining where representative of employers and employees bargain in good faith and arrive