DEFINITION OF IMPORTANT WORDS USED IN THE ACT

In the previous chapter the historical development of the law relating to the adulteration of food in India, England and United States have been discussed. The present chapter is devoted to find out the meaning and scope of the important terms used under the Act so as to find out their true impact in interpreting the Statute. These words are food, primary food, adulterant, food standard, adulterated, mis-branding and sale. The aforesaid terms have been artificially defined and interpreted in the impugned Act and are responsible for fixing criminal liability under the Food Adulteration Act, 1954.

Interpretation of Statutory terms:

The words of a statute, when there is doubt about the meaning, are to be understood in the sense in which they harmonise with the subject of the enactment and the object with which the legislature had in view. The legal meaning of the words used are not to be departed from, unless it appears from the context that Parliament had intended them to be used in popular and wider sense. They are not to be extended by equity or enlarged by parity of reasonings. When the legislature defines a term in its definition it is binding upon the court and this is so even though the definition does not coincide with the ordinary meaning of the words used.

1. See Maxwell's Interpretation of Statutes, 10th Edition p.52
The interpretation of terms in a statute was considered by the Supreme Court of India in *H. F. Subbarayav V State of Mysore*. It was held that in order to come to a decision as to the true meaning of a word used in a statute, one has to enquire as to the subject matter of the enactment and the object which the legislature had in view. In *Hamdard Dawakhana V Union of India*, the Supreme Court of India had held that when the Act itself provides a dictionary for the words used, the court must look into that dictionary for the interpretation of the words used in the Statute.

(i) "Food" - Meaning and Scope:

'Food' is that which is eaten or drunk for nourishment. In view of the risk concerned with society relating to food it has been artificially defined under the Prevention of Food Adulteration Act, 1954 for an effective protection in the interest of consumers.

The term food as defined in Clause (v) of Section 2 of Prevention of Food Adulteration Act, 1954 is comprehensive and determinative. The clause is as follows:

'food' means any article used as food or drink for human consumption other than drugs and water and includes - (a) any article which ordinarily enters into or is used in the composition or preparation of human food; (b) any flavouring matter or condiments; and (c) any other articles which the central Government may, having regard to its use nature, substance or quality, declare by notification in the official Gazette as food for the purpose of this Act.

5. (1975) 2 F.A.C.355
Its scope is further extended by insertion of clause (c) to the definition authorising the Central Government to declare any article as 'food' for the purpose of the Act. The term 'food' seems to imply solid material such as meat, bread etc., that the mere fact that milk, as all other liquids may be classified as food cannot deprive the consuming public to mean a 'liquid' and not food.

The words 'ordinarily' and 'used' appearing in the definition covers larger scope of the term authorising the courts to determine a particular article within the purview of the meaning of the term as defined under the Food Adulteration Act 1954. Such a flexible definition has given rise a controversial interpretation to the full Bench of Allahabad High Court in Municipal Board, Kanpur v Janaki Prasad.

The case involved a prosecution for selling adulterated linseed oil. The majority view was that by using the word 'ordinarily' the legislature intended to provide if an article enters into or is used in the composition or preparation of human food by some people usually, and not as an exception, it would be deemed to be food. The dissenting view was taking the technical meaning of the word 'ordinarily' as common, general, usually, the majority people did not use linseed oil as food; it is largely used for paints and varnishes. It is solely not used as food even in south India. Hence 'ordinarily' it cannot be said to be a food in the locality where it is sold to the Food Inspector for

7. Prevention of Food Adulteration (Amendment) Act, 1976 came into force with effect from 1.4.76 vide notification in Gazette of India, Extraordinary, dated 20.3.76, Part II Sec.3
8. Rialto v Luncheonette, 1970 Misc.754
9. A.I.R. 1963 All 433
analysis. The majority view was that the word 'ordinarily' does not mean primarily nor does it mean universally and also does not mean generally but intended that if the article enters into or is used in the composition or preparation of human food even by some people usually and not as an exception has been accepted as 'food' overruling the earlier pronouncements made by the said Court in *State of U.P. v Brijmohan.*

The term 'food' has been more liberally interpreted by Mysore High Court in *D.A.Kar v State of Mysore.* Long besan (Horse gram) which is extensively used as fodder and uncommonly used as food was held to be a food having been sold to the Food Inspector for analysis and as an article capable of being used as food for human consumption though no standard has been fixed for it under the Prevention of Food Adulteration Rules, 1955.

10. 1960 A.L.J. 194
Linseed oil was held to be an article which is ordinarily not used as food and is not to be treated as food; not a common article of food in the country atleast in U.P. and therefore, it does not amount to food. In *Bisan Das v Union of India* (A.I.R. 1970 Delhi 167) the Delhi High Court held Katha (Catechu) to be a food on the ground that the term 'food' means not only an article which is usually eaten or drunk but also includes every article which enters into or is used in the composition or preparation of human food as well as every flavouring matter and condiment. Betal when digested with Katha serves as nourishment. The Division Bench of Rajasthan High Court in *M/s Khedan Lal & Sons v State of U.P.* (1981 FAJ 192) were held that Zarda (chewing tobacco) is an article which is ordinarily enters into and is used in the composition or preparation of pan (bettle), hence it is food. It is not correct to say that it is actually when used in pan is food but not otherwise.

11. 1970 M.L.J. (Crl.) p.154. This view was also approved by the Supreme Court of India in *P.K.Telani v Ram Chandra Dange and others* (A.I.R. 1974 S.C.223). The prosecution was for selling adulterated supari (betal nut) for which no standard has been prescribed under the Prevention of Food Adulteration Rules, 1955. Supari is eaten with relish for nourishment. It was held ...."The meaning of common words relating to common articles consumed by the common people available commonly and contained in a statute intended to protect the community generally, must be gathered from the commonsense understandin of the word".
The scope of the term 'food' as defined under the Prevention of Food Adulteration Act, 1954 is very wide, covering all articles used as food and every component which enters into it including flavouring matters and condiments. It covers almost all the articles that are available in reach at hand of the common people so as to be brought within the mischief of the Act. Anything that is eaten is only for nourishment except drugs. In that sense any article used parenterally, directly or indirectly or through the media of other article in any form in any manner comes within scope of the term 'food' under the Act and in case of uncommon articles as is represented by the vendor.\textsuperscript{12}

There are many articles which are eaten for nourishment only viz. betal nut, catechu etc. There are articles used as food only in certain parts of the country but not in other parts viz. coconut oil used as a common edible oil in the southern parts of India but not used as such in the northern parts vis-a-vis mustard oil used as common edible oil in northern India are not used as such in southern India. The judicial pronouncements and the liberal construction of the term shows any substance taken through mouth for nourishment, even by a class of people or a group of people, occasionally or periodically, is a 'food' within the meaning of the term under the Act.

The earlier view of the Allahabad High Court on the intoxicant 'tobacco' as food in Abdul Karim V State was that it is not a food under the Prevention of Food Adulteration Act 1954\textsuperscript{12}.

\textsuperscript{12} The Supreme Court in Shah Ashu Jaiwant V State of Maharashtra (1971) S.C.R.166 laid the dictum as — "It is self evident that certain articles, such as milk, or bread, or butter, or food grains are meant for human consumption as food. These are matters of common knowledge. Other articles may be presumed to be meant for human consumption from representations made about them or from circumstances in which they are offered for sale".
but subsequently in State of U.P. V Rangopal Lal it was held that 'Jarda' is prepared from tobacco and has its own peculiar and characteristic aroma and odour that relishes pan (bettle) taken through mouth and therefore as a flavouring matter comes within the scope of 'food' as defined under the Act.

Thus if tobacco is considered to be a flavouring matter, it is afraid that all other intoxicants having much flavour that are used singly or with other events will easily come within the definition of food.

The word 'used' in the definition in clause (a) was a matter of deliberation before Punjab High Court in Lilaram V State. The prosecution was for sale of adulterated 'hing' (asofoetida) held to be a food through it has got other uses for agricultural purposes and the Court is not concerned about its actual use.

14. 1972 All W.R.658
15. A.I.R. 1964 Punj. 627
16. In A.Agrawalla V State (1965 O.J.D. 215) the Orissa High Court held that as dal (gram) is 'used' as a food, the defence plea that the same was exposed for sale as fodder was not believed and the appellant was convicted for selling adulterated dal. But the Orissa High Court in a later case in Mithun Lal V State (1971 C.L.T. 396) dealt with the prosecution for sale of Harad dal (Bengal gram) in an adulterated form. The plea of the defence that he intended to sell it for fodder which was admitted by the prosecution was accepted and it was held that the accused is not liable as he had no intention to sell adulterated 'dal' for human consumption.

The gravity of the word 'used' was also interpreted liberally by Andhra Pradesh High Court in Public Prosecutor V V Nagabhushanam (A.I.R. 1965 A.P.118) and by Orissa High Court in State V Uma Charan Ram (1965 CLT 13). The prosecutions were for selling adulterated coconut oil. Coconut oil is not commonly used in these states (Andhra and Orissa) as an article of food; but is being used as food very commonly in Kerala State. Taking the language of the definition it was held that coconut oil is a food in Andhra and Orissa and the accused is liable for sale of adulterated coconut oil.
Thus any article which is capable of being used or if can be used as food shall not be exposed for sale for any purpose in the adulterated form and these circumstances would lead to apprehension of risk for a vendor to deal with food stuffs as fodder or even as manure with the fear of being prosecuted under the Act. In such cases mens rea is a requirement for consideration.

It is submitted that the object of the Prevention of Food Adulteration Act is not to expose any article which is capable of being 'used' as food. But the judicial approach shows that no food shall be exposed for sale for any purpose in the adulterated form.

Though such interpretation to some extent, hits at the economic condition of the State (in utilising the food articles from being used as otherwise), the purpose of the Act cannot be served if the intention of the parties (vendor and consumer) are kept in list for considering whether the article transacted was meant for consumption or not.

India is a large country with people having different religious habits and different manner of living. Forest products commonly used as food by interior villagers are unknown to urban people and many food products used by citizens are unknown to the said villagers. A person having no idea about the use of an article of food is likely to deal with it ignorantly making himself liable for prosecution. Ignorance of law has no excuse. Hence every citizen has a right to know precisely the law of his contd...

In Corporation of Calcutta V Jatish Ch. Saha (1968) 72 C.W.N. 621) the accused was prosecuted for selling unfiltered oil commonly used in the locality found to be adulterated on analysis. It was held that taking of sample for testing is necessarily for detection of adulteration and if such plea is accepted no sample can be taken and there can be no possibility of prosecuting a person guilty under the Act.
land so as to make himself adjusted to the norms of the society and the existing law. India being an agricultural country with less average literates requires easy interpretation of penal statutes. All the articles including the common articles of food have not been standardised under the Prevention of Food Adulteration Rules 1955. The interpretation of the term 'food' uncommon with literal paralance has become a complex to common man.

The common articles of food known commonly in the territory of India which are though not standardised under the Prevention of Food Adulteration Rules 1955 had been accepted as an article of food under the Act. The Indian Judiciary is also conscious of the complexities of law and has interpreted the term 'food' equitably on exceptional circumstances.

**English Law:**

Under the English Law 'food' includes chewing gum, drink and articles and substances used as ingredients of foods or drinks of such products. The extension of the meaning of the term 'food' is over and above the literal meaning of the term. It also excludes water, live animals or birds, fodders, food stuffs for animals, birds or fish or such of the articles or

Ice fruit was held to be a food. In Public Prosecutor V Sanka Summavra (1970) 1 An W.R 27 VAMU (Ajwan) was held to be a food.

18. The Supreme Court of India in M.V. Joshi V N.U. Simpi (A.I.R. 1961) S.C. 1494 observed butter prepared from curd standardised under Prevention of Food Adulteration Rules 1955 refers to the product prepared exclusively from the milk or cream of cow or buffalow or both. As the butter before the court was an admixture of goat and other butter, was held not comparable with the standard under the Rules.

19. Food and Drugs Act, 1955 Sec.135.
substances exclusively used as drugs. The meaning as given in
the Food and Drugs Act relates to the intention of the vendor
for the purpose for which it is to be sold or sold.

**United States of America:**

The interpretation as given for the purpose of Food and
Drugs Act 1906\(^1\)^ - 'food' includes all articles used for food,
drink, confectionary or condiment, by men or other animals, whether
simple, mixed or compound. It thus covers all articles used as
food or in the preparation of food for man or animals.

Under the Federal Food, Drugs and Cosmatic Act 1938\(^2\)
the term 'food' means (i) an article used for food or drink for
man or other animals, (ii) chewing gums and (iii) articles used
for components of any such article.

Thus it is seen that the interpretation of the term
'food' under the Indian Act has drawn the basic idea from the
English Act.\(^3\) But the term has been more extensively interpreted
under the American Law covering articles used as food by man or
animal which is not the case either in India or in England.

(ii) "Primary Food":

The new term 'primary food' was inserted by the
Prevention of Food Adulteration(Amendment) Act, 1976\(^4\)

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printing office, 1971 edition Vol.V Title 21 Sec.321(f)
22. Food and Drugs (Adulterated) Act, 1928 1319 G.E.05,
See Sec.34 - Food includes every article used for food by man,
other than drug or water and any article which ordinarily
enter into or is used in the composition or preparation of
human food and also includes flavouring matters and condiments.
Food and Drugs Act, 1955 - the same spirit has been carried
over in the subsequent Food and Drugs Act, 1955 (Sec.135)
23. Prevention of Food Adulteration(Amendment) Act 1976 (Act 34
of 1976)

contd..
purity of agricultural produces, sometimes, does not confirm to the range of standards prescribed under the Prevention of Food Adulteration Rules 1955 beyond human control as has been felt by legislators in making such a provision, giving it a meaning, and exempting from criminal liability for sale, store or distribution of such articles of food in its natural form. An admixture of two primary foods, if not injurious to health, have also been exempted from criminal liability by Amendment Act of 1976.  

The liability of admixture of two or more articles of food is exempted only when they are in their natural form but not when processed, The High Court of Calcutta in Aswin Kumar Khan V Corporation of Calcutta held the appellant guilty for

Contd...

Section 2 Clause (xii)(a) - 'primary food' means any article of food being a produce of agriculture or horticulture in its natural form.

24. Prevention of Food Adulteration Act, 1954 - Sec.2(1)(a)

"adulterated" - an article of food shall be deemed to be adulterated x x x "provided that, where the quality or purity of the article, being primarily 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, than, 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 ingredients thereof; and (b) is not injurious to health, then, such resultant article shall not be deemed to be adulterated within the meaning of this sub clause"

25. A.I.R. 1963 Cal.460

The Allahabad High Court in Badri Prasad V State (1979 Cr.L.J. 1095) held that the prosecution for selling a mixture of edible oils, mustard oil and linseed oil though not injurious to health has been sold under a name which does not denote its nature. Such mixture may not be deemed to be adulterated if the same is sold as a mixture, but would be adulterated if it is sold either as mustard oil or as linseed oil. Though oils were articles of primary food and their mixture is not injurious to health but having been passed their natural form does not attract the scope of explanation appended to the definition 'adulterated'.
selling iron nut oil mixed with linseed oil as not of the nature, substance or the quality which it purports or represented it to be and they having been processed were not in their natural form.

Sometimes where varieties of the edible oils, in small quantities are extracted by the same crusher or machine, one followed by the other, there may be mixture of those oils beyond the control of the crusher. In such cases, innocent professional traders (oilmen) are likely to involved and as such, such an ambiguous provision acts as a stumbling block in encouraging the cottage industries or small scale industries in India.

The meaning of the term 'primary food' has been interpreted by their Lordships of Kerala High Court in State of Kerala v Abdul Khadar. The prosecution was for selling sub-standard milk with tea. It was held that the term 'produce of agriculture' does not merely refer to that which grows on the land but also that which lives on the land by sustenance from that which grows on land, (hay, grass cereals etc.) namely cattle. Milk is a produce of such cattle and is therefore a produce of agriculture and hence a 'primary food'. Besides, such milk as was intended for preparing tea for sale, the prosecution for selling such milk though found to be adulterated on analysis is not maintainable.

It is respectfully submitted that such a liberal construction stretching the interpretation of the term elastically to cover up milk as a primary food is absurd in its spirit.

The insertion of the term of 'primary food' is to protect the innocent agriculturists. As we do not adopt the modern scien-

tific agricultural technologies for cultivation, the agricultural produces are likely to be mixed up with other vegetable products grown in the field unintentionally and unavoidably.

English Law:

Though the term 'primary food' has not been defined under the Food and Drugs Act 1955 the principle is being considered by courts in determining criminal liability under the Act. 27

The following results are found on analysis of prosecutions for various articles of food manufactured, stored, distributed or sold found either adulterated or sub-standard during the period 1970 to 1979.

The figures are collected from the reported cases in All India Reporter, Criminal Law Journal, Food Adulteration Journal, Food Adulteration Cases, Cuttack Law Times and Cuttack Weekly Reporter.

<table>
<thead>
<tr>
<th>Article of Food</th>
<th>No. of prosecutions</th>
<th>Percentage of prosecution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grains</td>
<td>14</td>
<td>2.51</td>
</tr>
<tr>
<td>Grams</td>
<td>27</td>
<td>4.84</td>
</tr>
<tr>
<td>Prepared food</td>
<td>64</td>
<td>11.69</td>
</tr>
<tr>
<td>Vanaspati and oils</td>
<td>66</td>
<td>11.83</td>
</tr>
<tr>
<td>Spices (turmeric &amp; capsicum)</td>
<td>42</td>
<td>7.54</td>
</tr>
<tr>
<td>Milk and milk products</td>
<td>284</td>
<td>51.00</td>
</tr>
<tr>
<td>Others</td>
<td>60</td>
<td>10.79</td>
</tr>
</tbody>
</table>

Types of adulteration observed in the above prosecutions:

Grains - Adulterated with extraneous matters and insect infested.
Grams - do -
Prepared food - Adulterated with prohibited colours

27. In Moore v Ray (1975 1 K.B. 93) Primary food was accepted as a natural food.
Vanaspati & oils: Adulterated with extraneous matters, improper preparation or storing.
Spices: Adulterated with extraneous matters, prohibited colours or insect infested.
Milk or milk products: Adulterated by substraction of constituent elements or with added water or with prohibited colour.
Others: Adulterated with extraneous matter, prohibited colours or insect infested.

N.B.: Sub-standard is adulterated within the meaning of the term as defined under the Prevention of Food Adulteration Act of 1954.

The above table indicates the common types of adulteration in India. Damaged or insect infested (adulterated) articles of food are sold in the usual terms of contract of sale which may or may not be injurious to health. The percentage of the adulteration in case of milk and milk products are extremely high and covers 51% of the total prosecutions. The high rate of adulteration with milk and milk products are due to their scarcity, high demand and easy methods of their dealings for adulteration.

In view of the menace with respect to milk, special and separate provisions for dealing with milk and milk products regulating production, storage, packing and transportation would be beneficial.

Vanaspati, edible oils and prepared food are next in the degree of adulteration above grains, grams and spices.

It is evident from the aforesaid table that 30.97% (excluding prepared food and spices) of the common articles of food used mainly by common people in India are exposed to adulteration.
Keeping in view of the principles that all immoral acts are not offences and all immoral transactions are not unlawful, the extension of liability under the Act appears to have derived from the principles ruling out the required mense rea. The criminal liability under the Act extends to dealings of articles of food irrespective of their 'purpose of sale' or 'use'. The law appears to be extensive so as to cover even eatable fodders and intoxicants apart from other common articles of food. The judicial interpretation of the term 'food' extends to all articles of food found within the territory of India capable of being used by any person as such in any manner even for preparation of other articles of food.

Though section 7 and 16 of the Prevention of Food Adulteration Act, 1954, in terms, makes a person criminally liable for sale of adulterated food for human consumption, the definition of the term 'food' excludes the purpose of sale. The determinative factor for grading an article to be a 'food' is normally to be inferred from the transactions made by a manufacturer, dealer, stockist or vendor. The definition of the term 'food' does not include articles intended for the purpose of sale and appears to be not synonymous with the prohibitory provisions of sections 7 and 16 of the Act.

The social change and complexity of the society, intoxicating and polluting the atmosphere and affecting produces, whether processed or unprocessed are likely to be varied in their standards from place to place and from time to time. In the present urbanised and industrialised days where chemicals are constituent elements for agricultural operations likely to be
varied from place to place and time to time. Quality of an article of food thus changes with technological advances.\textsuperscript{27A}

Though mense rea has been ruled out in such offences, if the provision of the Act are liberally construed to extend its aplicability so extensively it would not leave a single dealer, manufacturer or distributor from the clutches of the Act. It is not sometimes possible to adhere to the prescribed standards. The standards with ranges prescribed under the Rules indicate that unwilling constituents constituting an article under such flexible circumstances, is therefore deplorable in fixing the standards of articles permanently.

(iii) "Adulterant" - Its scope and meaning:

The term 'adulterant' has been inserted by the P.F.A. (Amendment) Act, 1976, it means any material which is or can be employed for the purpose of adulteration.

It is a significant extension of the circumstance covering a wider range to extend liability for an offence of adulteration. The simultaneous insertions are made in clause (vi) of Section 7 prescribing criminal liability and equal penalty in Section 16 of the P.F.A. Act 1954 for manufacturing, for sale or store, sale or distribution of any 'adulterant.'

An adulterant is also subjected to analysis. The adulterants are amenable for seizure by Food Inspector and in absence of any satisfactory explanation, the books of accounts of adulterant can also be seized if they are found in possession of a manufacturer, distributor or dealer of articles of food.

\textsuperscript{27A} See Thankamma, J. - \textit{Food Adulteration}, 1976 Edn. pp 4-5
The common adulterants are kesari dal (lathyrus sativus) bark, sand, marble chips, stone, earth, talc, soap stone, chalk powder, starch, water, saccharine methonal, non-permitted colours etc. used in India. Thus once an adulterant is mixed with an article of food it becomes an adulterated food and no longer exists as adulterant independently after its admixture. The adulterants exist before they are mixed; thus are free existing factors and their inclusion in the statute is intended to prevent adulteration when they are detected and their possession with manufacturer storero, distributor or dealer without reasonable explanation has been made penal. In view of their nature and use, no standard has been fixed for adulterants under the Prevention of Food Adulteration Rules, 1955.

23. Ibid pp 9-35
Kesari Dal is admixed with masur, Bengal gram Arhar dal, Chena besan(grams) and other pulses; bark or other foreign matters or foreign seeds are mixed with cumin seeds; coffee powder with tamrind seeds; coloured saw dust with fresh tea; bran and saw dust in wheat flour and Suji etc.; Linseed oil, Arjemone oil, used motor oil, white oil, arthropitresyl phosphate are mixed with edible oils. Animal body fats and vanaspati are mixed with ghee; Sand, marble chips, stones, earth and other filth are mixed with food grains, pulses, sugar, salt etc. Kaju seeds are mixed with supari. Talc or soap stone or talc powder are mixed with arrowroot powder, wheat powder, coffee etc. Starch is employed as an adulterant in milk, milk powder, ice-cream, rasagolla, cheese, butter, ghee etc. Water is mixed in milk, curd and other milk products. Methonal is employed as adulterant in liquor. Non-permitted colours are used to various prepared foods.
"Standard" of food:

The standardisation of an article of food is deduced from the concept of quality. 'Quality' means that which indicates a thing what it is; nature, character, kind, property, status, grade of goodness, excellence etc. It means a basis for measurement.

'Standard' is something established for use as a rule or basis of comparison in measuring or judging capacity, quantity, content, extent, value, quality etc. 'Standard' is an authoritative or recognised exemplar of correctness, perfection or some definite degree of any quality. 'Standard' is that which is constituted by authority as fixed basis for comparison. 'Standard' is any measure of extent, quantity, quality or value established by law or by general usage and consent.

The International Codex Alimentarius Commission is the principal organ of world wide food standards programme, under the joint auspicious of Food and Agricultural Organisation and World Health Organisation, two specialised agencies of the United Nations Organisation. The Commissions' main task is to prepare an international Codex alimentarius, based on principles outlined by the commission itself. Quality of an article changes with technical devices.

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34. Supra no.27 p.5
Indian Standards are available for vegetable and fruit products, spices, condiments, animal products, and forest commodities, and various committees have been set up by the Indian Standard Institution for the purpose, which is the national standards organisation for India.  

The standards for fruit and vegetable products were introduced through Defence of India Rules in the year 1946, which was subsequently incorporated under the Fruit Products order, 1955. After enactment of the Prevention of Food Adulteration Act in the year 1954, food standards were fixed with constituent ranges taking into consideration of the quality of the article of food at different parts of India in Appendix 'B' of the Prevention of Food Adulteration Rules, 1955. Standards of various common articles of food have been prescribed on the recommendation of a specialised body constituted under the impugned Act. The object of fixing standards is to obtain a minimum level in quality of articles of food. The term 'standard' has not been defined under the Act of 1954.

The Central Committee for Food Standards:

In India the Central Committee for Food Standards is constituted by experts and representatives associated or concerned with articles of food, viz. officers of the Departments of Health, Food and Agriculture, Commerce, Defence, Industries, Supplies and Railways, representatives of States, Union Territories, representatives of consumers, hotel industries and representatives of Indian Standards Institution.

35. Ibid. p.7  
36. Prevention of Food Adulteration Act - 1954 Sec.3 constitutein Central Committee for Food standards 
37. Id.
The main functions of the Committee are - (a) to advise the Central and State Governments on matters arising out of and in connection with the administration of the Act; (b) to carry out the other functions assigned to it under the Act.

There was no provision under the earlier state laws and the standards were followed as recommended by Indian Standard Institution for the purpose. The standardisation is made in order to keep a check and watch on the analysis of the public analyst and to secure uniformity and purity of food all over India, and is as such a highly solitary provision.

The body of the committee was enlarged by including the representatives of consumers and hoteliers together with the Directors of Central Food Laboratories for balanced representation under the Amendment Act of 1976.38

The Prevention of Food Adulteration Rules 1955 prescribed average standards of common articles of food. The standards prescribing component parts of a few common articles of food have been graphically amended from time to time till 1979.39

The earlier standards followed for determining purity of an article of food were repealed.40

38. The Prevention of Food Adulteration (Amendment) Act, 1976
(Amendment of 1976)

G.S.R. 1211 dt. 20.12.1958
G.S.R. 425 dt. 16.4.1960
G.S.R. 74 dt. 11.12.1961
G.S.R. 1564 dt. 11.7.1962
G.S.R. 74 dt. 31.12.1965
G.S.R. 1256 dt. 17.8.1967
G.S.R. 938 dt. 26.5.1971
G.S.R. 133 dt. 23.1.1973
G.S.R. 2045 dt. 13.2.1974
G.S.R. 63(E) dt. 5.2.1976
G.S.R. 1417 dt. 20.9.1976
G.S.R. 55(E) dt. 31.1.1979

40. Supra note 27/A pp. 9-35.
All the earlier standards prescribed under the Defence of
The Committee set up under the Act formulates its own standards. Purity of an article of food is adjudged even in absence of the prescribed standard. Similarly, even in case an article of food confirms to the prescribed standard can yet be declared adulterated it is not of the nature, substance and quality demanded by the purchaser.

Standard of an article of food wherever prescribed plays an important role in determining criminal liability under the Prevention of Food Adulteration Act, 1954. It has the determinative factors to infer adulteration. An article of food is adulterated if its quality or purity falls below the prescribed standard whether injurious to health or not.

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India Rules concerning Fruit Product Order, 1946 were repealed. The unknown standards are the Agmark and Indian standards, the former concerned to prescribed quality of cereals, oils, oil seeds, butter, ghee, legumes by the Director of Marketing and Inspection, the latter prescribed for vegetable and food products, spices, condiments, processed and unprocessed food under the guidance of Indian Standard Institution.

41. Municipal Corporation of Delhi v Kacherumal (A.I.R.1976 S.C. 394) - Where insect infested cashew nut was held adulterated even in absence of any standard prescribed for it under the Prevention of Food Adulteration Rule 1955.

42. Aswini Kumar v Corporation of Calcutta (Supra n.25) The sample of iron nut oil confirmed to the prescribed standard but found mixed with linseed oil was held adulterated as was not of the nature, substance or quality purported to be.

43. Prevention of Food Adulteration Act, 1954 Sec.2 Definitions

(1)(a) 'adulterated - An article of food shall be deemed to be adulterated -

(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limit of variability, which renders it injurious to health;

(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 limit of variability but which does not render it injurious to health;
The importance and rigidity of standards can be seen from the case before the Supreme Court in Municipal Committee, Amritsar v Hazara Singh. The respondent was prosecuted for selling substandard (adulterated) milk. His conviction was set aside by the appellate court on the ground that the degree of difference of various constituents of milk with the prescribed standard is negligible which was confirmed by the High Court of Punjab. On appeal to Supreme Court, Krishna Iyer, J observed:

"The standard fixed under the Act is one that is certain. It is is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantage of the resulting impredictability, incertainty and impossibility of arriving at fair consistent decisions are great"

The acquittal of the respondent was not interfered in view of his (a) poverty, (b) prolonged litigation, and (c) acquittal by lower courts.

The judiciary is also not in a position to declare whether prefixation of standards is a prerequisite for prosecution. A person cannot be said to be criminally liable for selling substandard article of food for which no standard has been fixed under the Prevention of Food Adulteration Rules, 1955. Thus the Supreme Court of India in M.V.Krishnan v State of Kerala had held that the appellant is not liable for selling butter milk as no standard has been fixed for butter milk under the P.F.A. Rules, 1955.

44. 1975 F.A.J. 297.
45. A.I.R. 1966 S.C. 1676
The High Court of Delhi in Delhi Municipality v Md.Karim (1964 Cr.L.J. 372) acquitted the accused who was prosecuted for selling adulterated 'carum' on the ground that no standard has been fixed for such article of food. The Allahabad High Court in Sobhanlal v State of U.P. (1968 A.W.R. 301) held that as no standard is prescribed for prepared tea, refusal to give sample of such tea to the Food Inspector for analysis is not an offence.
Whereas the Orissa High Court in Rajendra Prasad V State held the appellant guilty for selling 'ajwan' mixed with extraneous matters like dust etc. It was held that though no standard has been prescribed for ajwan it was not of the nature, substance and quality purported to be. Thus an article or food is adulterated if it is not of the nature, substance and quality purported to be which can be inferred from other circumstances in absence of any standard.

The Appendix B attached to Prevention of Food Adulteration Rules, 1955 prescribes standards for common article of food and it is impossible to categorise and standardise each and every article of food existing in a country.

**English Law:**

The principle under the English Law as to the liability of a person for selling adulterated article of food for which no standard has been fixed is evident in Roberts V Loninas where it was held that though there is no statutory standard for magarine, the justice on such information must fix for themselves the standards of quality.

Later the Supreme Court, distinguished its earlier decisions in M.V.Krishnan V State of Kerala Supra N 45. In Pyarilal K. Teliani V Rama Chandra Danoe (1975 F.A.J.429) - The case was for selling prohibited sweetening agent sacha-rine coated on supari (betal nut) which are used in pan for taste and nourishment. It was held that supari is a food and though no standard has been fixed for it, as it was coated with non-permitted sweetening agent, sale of such supari is an offence under the Act and hence the accused was held liable.

The Allahabad High Court in Prem Das V State (A.I.R.1961 All 590) and in Saheb Singh V State and another (Cr.Rev. 175/63) the Punjab and Haryana High Court held that the standard prescribed for cows milk can be compared having the minimum components for gauging purity of mixed milks of cow, buffalo, goat etc. The Kerala High Court in State of Kerala V Krishnan Nambisan (I.L.R. 1964/1 Ker 304) in the prosecution for sale of dahi (curd) with added water, held that as the curd does not confirm to the standards prescribed for butter milk, it was sub-standard.

46. (1971) 1 C.W.R. 624

47. (1905) 65 J.P.417
a standard for margarine upon the evidence before them. In *Marstone V Lonev*[^43] the prosecution was for selling a mixture of cow and buffalo milk found below the standard of either milk. It was held that the court has to fix the standard by calculation as no standard is prescribed for such a mixture.

**United States of America:**

The standards for food has been prescribed by (a) Public Health Service Department; (b) The Department of Agriculture; (c) Department of Cultural Bureau of Commerce, Fisheries; (e) Department of Defence for their use (f) Treasury Department for wine, beer and whisky; Department of Commerce for measures, units etc. and federal trade commission.[^49]

The system exempts criminal liability in the following cases (i) when standard is increased by adding substance to increase nutritive value of a food; (ii) when the food is above the standard under the circumstances beyond the control of the vendor (iii) when the food is sub-standard beyond the control of the vendor, and (iv) admixture of stuffs of higher value either in price or in nutritive value.[^50]

There are no such defences available in India; rather, standard or no standard; if an article is manufactured, distributed, stored or sold when short of constituent elements as shown in the standard or if it consists of other things beyond the natural constituents of the said article is deemed to be

[^43]: 1955 Cr.L.R. 773
[^49]: See Gunderson F.L. - *Food Standards and definition in the United States* 1963 Edn. p.223
[^50]: Id p. 3 to 5
adulterated being not of the nature, substance and quality demanded. The court is bound to follow up to the last digits shown in the standard.

In State of Kerala v Vasudevan Nair\(^51\) the Full Bench of Kerala High Court have observed that there can be no via media acceptable when the constituent parts of an article of Food is either in excess or in less than the range prescribed under the standard. As such the maxim De Minimus Non Curat Lex (law does not concern itself about trifles) is not applicable. The prosecution relates to sale of cow milk found with marginal deficiency of constituents prescribed under the standard. The respondent was held guilty.

**Prescribed standard:**

The various constituent parts of an article of food have been categorised in fixing the standards prescribing the minimum and maximum range of the said constituents in appendix 'B' attached to the Prevention of Food Adulteration Rule, 1955. In this context it was held by Gujarat High Court in Kantilal v I.G. Patel\(^52\) that the words used are 'prescribed standard' and not 'prescribed standards'. Hence food that does not confirm to any of the prescribed standard is adulterated though the Public Analyst might not have done all the tests to find out the constituents of each component.

But the Delhi High Court in Municipal Corporation of Delhi v Md. Marim\(^53\) had held that there is no prescribed standard under the Rules for 'baby food' having skimmed milk or powdered

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51. Supra Ch.I n.14
52. 1972 (13) G.L.R. 725
53. 1974 Cr.L.J. 572
skimmed milk as basic material used in the preparation of such food, the baby food is therefore cannot be said to be adulterated in the absence of a specific standard.

It is submitted that the standards for baby food, skimmed milk and powdered skimmed milk having been provided under the Prevention of Food Adulteration Rules, 1955 the views of Delhi High Court was not correct.

Constitutionality of 'standard':

The constitutionality of standardisation of articles of Food attaching absolute liability under the prevention of Food Adulteration Act, 1954 came up for consideration before the Supreme Court of India in Andhra Pradesh Grainseed Merchants Association etc. V Union of India. The ground of challenge was based on technicality of standardisation and on the ground that its restrictions are unreasonable. It was contended that it is impossible for an ordinary trader without an assistance of an expert technician to ascertain whether the articles of food purchased by him comply with the prescribed standards and that in prescribing the standards of quality the imperceptible changes which takes place in food stuffs by passage of time are not taken into account. While holding it constitutional and rejecting the contensions, their Lordships of Supreme Court held:

54. See Prevention of Food Adulteration Rules, Appendix B: A.11 The Allahabad High Court in Ramebwar Singh V The State of UP (1981 FAJ 139) set aside the conviction of the appellant for selling a mixture of cow and goat milk deficient in non-fatty solids as was in excess of fat contents.

55. 1979 F.A.J. 383, Sec.19 of the Prevention of Food Adulteration Act provides defences which are available to an accused in a prosecution under the Prevention of Food Adulteration Act. It exempts a person from criminal liability in case he proves that he purchased the said article of food from the licenced vendor under a warranty and was properly stored and he sold in the same state as he purchased it. In view of the adequate defence made available under the Statute, it cannot be said to be unreasonable.
...... the court has to strike a balance between the individual right and public wheel. The court will not strike down an Act as imposing unreasonable restrictions merely because it creates an absolute liability for repugnant of the law which involves great danger to public health. The court will consider the object of the Act, apprehended danger to the public interest arising out of the activities if not controlled and the possibility of achieving the intended results by less stringent provisions......

The statutes imposing restrictions upon traders will not be deemed unreasonable merely because it makes a departure from the normal structure of statutes enumerating offence and prescribing punishments. By sub section (2) of section 19, even in respect of absolute offence, the Parliament has enacted that on proof of certain facts criminal liability will be excluded."

(v) "Adulteration" - Its scope and meaning:

The word 'adulteration' exists in the language but sparingly used as it cannotes hatred treatment in the society.

The term 'adulterate' in its grammatical and literal meaning cannontes - (i) to debase, falsify, by mixing with something inferior or spurious (ii) not perfectly genuine, having foreign substance added (iii) to make impure by admixture of other or baser ingredients.

The term 'adulterated' has been judicially interpreted as early as 1873 by the Queen's Bench division of England in Fitzpatrak V Kelly in the following terms:

57. See Universal Dictionary of English Language - Henry Lecil Zyyld, 1946 Edn., p.15
59. 1873 L.R. 3 Q.B. 337
"Adulteration is infusion of some foreign substance or the mixing up with any substance intended for sale any ingredient which is injurious to health, or which makes the nature or quality of such substance other than for which it is to be sold or passed. An article of food is adulterated when any substance, other than that which the article purports to be is mixed with, or added to or placed upon it, either to increase the bulk or weight or apparent size of the article or to give it a deceptive appearance."

In the United States, the acceptable view as to the meaning of the term 'adulterated' is exhaustive and covers a wide range of circumstances. 60

The earlier state laws in India defined the term 'adulterated' as a mixture or dilution with any other substance diminishing the nutritive or other beneficial properties of the food, when constituent elements are abstracted; extraneous matter injurious to health are added; does not confirm with prescribed standard; is not of the nature, substance, quality, colour or smell of the food demanded by the purchaser; any cheaper ingredient or material added to increase the bulk, weight and measure; is decayed, putrified, weevil infested or otherwise unfit for human consumption and if the article of food sold is to the prejudice of the purchaser is adulterated. There was no uniformity in the definition of the term under these statutes and while enacting the Prevention of Food Adulteration Act 1954, to


"except in special cases, a food in general is deemed to be adulterated if anything has been mixed with it so as to reduce or lower its quality or strength, or if anything inferior or cheaper has been substituted wholly or in part thereof; or if any valuable constituent has been abstracted wholly or in part from it; or if it consists wholly or in part of a deceased, decomposed, or putrid animal or vegetable substance; or if by colouring, coating or otherwise it is mad
bring uniformity in the legislature throughout the territory of India, the term has been defined in section 2(i)(a) of the Act, covering a wide range of circumstances taking into account the various interpretation provided under these State statutes.

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to appear of greater value than it really is; or if contains any added provisions or injurious ingredients, under any circumstances or article shall be deemed to be adulterated if the article is not of the nature, substance and quality, demanded by the purchaser or if it is not of the nature, substance and quality which the purchaser presumed to have expected.

61. See Prevention of Food Adulteration Act, 1954 Section 2(1)(a) - Definitions

(1)(a) "adulterated" an article of food shall be demed to be adulterated -

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part of the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

(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;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j) if any colouring matter other than that prescribed in respect thereof is present in the article or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;
The provision and the explanation to the definition has been inserted by the Prevention of Food Adulteration (Amendment) Act 1976, due to insertion of the new term 'primary food' in sub-clause (xii)(a) of section 2. Thus the analysis of the definition of the term adulterated shows the legislative intent to maintain the quality of the article of food so that it may pass on to the purchaser exactly in the same form in which it purports to be. Nothing should be abstracted from an article nor anything be added to it; no cheaper or injurious substance should be added and the quality of the article should not fall below the prescribed standard. It should not contain any poisonous or injurious ingredients or prohibited colours.

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(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) 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, which renders it injurious to health;

(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;

Provided that where the quality or purity of the article being primary food, has fallen below the prescribed standard 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 (for primary food see supra n.23) and the resultant article of food -

(a) is stored, sold or distributed under a name which denotes the ingredients 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.

It should not have been decomposed or affected with insect-infestation so as to make it unfit for human consumption. It should confirm to the prescribed standard fixed under the Prevention of Food Adulteration Rules, 1955. The definition is thus comprehensive and has been designed to cover all possible cases of adulteration irrespective of their non-injurious nature to health.

Relaxation has been shown to the maximum extent relating to 'primary foods' which are in their natural form.

The term adulterated is used in many sections of the impugned Act and wherever the word is used the definition of the term given in these clauses have been referred. The Act is designed 'to prevent' adulteration of food and as such in order to understand whether a particular article is adulterated or not the interpretation of term requires close examination. The judicial interpretation is not uniform as will be seen from the following cases due to flexibility of the language used in defining the term.

(a) **Food not of the nature, substance or quality demanded:**

This clause deals with two categories of adulteration, in both the cases, the common ingredient is that the article is not of the nature, substance or quality demanded. It is adulterated if (a) prejudicial to the purchaser and (b) misrepresented (purported to be).

The earlier view under the Madras Food Adulteration Act as held by Madras High Court in **Public Prosecutor V M. Kondavva** to the effect that though water is added to milk to prevent its boiling in heating when exposed for sale was

63. A.I.R. 1947 Mad 184
deficient in nature, substance or quality. The plea of ignorance taken by the accused was held no defence.

The same principle has been followed in the subsequent cases under the Prevention of Food Adulteration Act, 1954. The Delhi High Court in Purna Chand V State held that every article is presumed to be pure in normal course and hence milk sold not declared as pure, any deficient is default and hence penal.

The High Court of Kerala in Augustine V State of Kerala held the sale of coffee powder with chicory is an offence as adulterated being represented to be coffee on demand though such admixture in any preparation of coffee may not be ordinarily an offence.

It is interesting to note that the Madras High Court in Public Prosecutor V M.S.Chettiar while dealing with the case of ice cream held that though ice cream is a preparation with milk and other articles, ice cream prepared out of skimmed milk need not contain fat as standardised in the Prevention of Food Adulteration Rules 1955.

(b) 'Prejudice' to purchaser:

If the article sold to a consumer is not of the nature, substance or quality demanded and also to his prejudice it is adulterated. In Puri Municipality V Arjundas Agrawalla, the

64. Crl. Revision 184/67
65. 1973 F.A.C.347
   The Allahabad High Court in Prem Das V State (A.I.R. 1961 All 590) held the sale of mixture of cow and buffaloe milk with added water indicating more in milk fat than the prescribed standard and less non-fat solids was held to be adulterated as not of the nature, substance and quality demanded.
66. 1968/2 M.L.J. 210 (for standard see P.F.Rules, Appendix B Item 11.02.03)
67. 1965 O.J.D 215
   A similar view was taken by Delhi High Court in Municipal Corporation of Delhi V Chandra Prakash (1975 F.A.J.197) -
respondent was prosecuted for selling dal (gram) with non-permitted colour. It was held by the Orissa High Court that the adulterated substance need not be poisonous or injurious, indeed may even be conducive health. The colouring given to the dal by using a non-permitted colour supresses its natural form as well as its quality and as such the consumer was deemed to have been prejudiced by such colouring. He was therefore held liable.

But in Public Prosecutor v N. Subba Rao the Andhra Pradesh High Court while considering the prosecution of respondent for selling bengal gram flour which was found mixed with pee powder on analysis held that gravemen of the charges is that adulteration prejudice the purchaser and injuriously affects the nature, substance or purity of the article. As this is not the case to that extent, the respondent was held not liable.

It is respectfully submitted that this view is not correct as the demand was for bengal gram flour which was found containing extraneous matter and not of the nature, substance and quality demanded under the first part of clause (a) of sub section (1)(a) of section 2 though not prejudicial under the second part of the said clause.

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it was held that berfee (Sweets) manufactured from Khova (dry milk) and ghee (fat) for want of standard, as prescribed found to contain edible oil, hence held adulterated.

In Aswin Kumar v Corporation of Calcutta (supra n.25) it was held that the legislature did not intend by merely devising certain standards of purity. It provides that an article of food must not only confirm to the standard prescribed but also be pure. In the case groundnut oil sold was found confirming to the standard but contained linseed oil. It was therefore held adulterated being not of the nature, substance and quality of the groundnut oil demanded by the purchaser on the ground that purity of food is not synonymous with its quality.

68. 1964/1 Cr.L.J. 448
Addition of extraneous matters to the constituent parts of an article of food is adulterated. In Amar Singh V State of Punjab the prosecution was for selling ajwan mixed with dirt and dust. It was held by Punjab and Haryana High Court that though no standard or quality has been fixed for ajwan, dust and dirt are not its constituent parts and as such is prejudicial to the purchaser. The appellant was therefore held liable.

(c) Admixture of cheaper substances:

Very often cheaper substances are mixed with articles of food to increase its bulk and quantity affecting its nature coming within the meaning of 'adulteration'. In State of Kerala V Vasudevan Nair the Full Bench of Kerala High Court, while considering the case of sale of milk with added water held that it causes prejudice to the purchaser and further held that the prejudice is same whether the degree of adulteration is great or small.

69. Supra Ch.I n.5
70. Supra n.51. This decision overruled the earlier decision of the same court in Gopinathan Nair V Palam (1971 KLT 243) and disagreed with Delhi High Court in Municipal Corporation of Delhi V Om Prakash (1970 Cr.L.J. 1047) to the extent that border line marginal variations in standard to be ignored particularly in cases where water is not considered as food. For definition of food - See Sec.2(v) of the Prevention of Food Adulteration Act 1954.

The Madras High Court in S Moses V State (A.I.R. 1959 Mad 185) held a similar view when ghee was adulterated with pig fat or beef fat. It was further held that mixing of such fats may be conducive to health and nutritious. The offence of adulteration is complete as a substance not permitted by law, cheaper in value, had been mixed. The plea of non-prejudice or non-injurious was held not available to the defence. The Allahabad High Court in Nagarmahapalika, Varanasi V Sidheswari Devi (1966 Cr.L.J. 113) held the same view when ghee was found containing large portion of vegetable fat. It rejected the contention that the sample does not fall below the prescribed standard.
It is frequently urged that it must be proved by the prosecution that the sale was to the prejudice of the particular purchaser. The words 'to the prejudice of the purchaser' are used in the sense that there is a 'sale' to the prejudice of the purchaser. The goods might be sold under false description and might not inflict any actual injury. They may be in fact of a better quality than the goods demanded. In such case there would not be any prosecution. That is a reason why the words 'to the prejudice of the purchaser' are inserted. It was held by Bombay High Court in State v Amrutlal Bhagialal that when an article of food is supplied to the Inspector for the purpose of analysis on payment of price, it is as good a sale as to any other customer. At the same time it cannot be urged that the Inspector having purchased the article only for the 'purpose of analysis' was not prejudiced. These words thus mean to the prejudice of an ordinary person who purchases or may purchase such an article. If an ordinary person is likely to be prejudiced by the purchase of such an article, the offence of adulteration would be committed, even though the actual purchaser in the particular case may not have been prejudiced.

(d) Food not confirming to the standard but not injurious to health:

The term 'adulteration' extends to such of the articles of food which does not confirm to the standard prescribed under the Prevention of Food Adulteration Rules 1955 but not injurious to health. In Corporation of Madras v Armugham, deficiency in 'richert' value of ghee was noticed on analysis of the sample.

71. A.I.R. 1954 Bombay 216
72. A.I.R. 1966 Mad 194
It was held by Madras High Court that the quality or purity of the ghee falls below prescribed standard though not injurious is still adultered.

The standard prescribed for various articles of food in the Prevention of Food Adulteration Rules 1955 are the gauze for comparing the purity of an article of food and any constituent found in excess or short is termed 'adulterated'.

(e) **Addition of injurious ingredients:**

Consumption of injurious articles viz. Kesari gram (lathyrus sativus and its products) causes crippling paralysis of both the lower limbs in boys and adults and the disease is incurable.  

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There appears to be conflicting decisions among High Courts in India with respect to addition of foreign injurious materials in general to an article of food. For instance the Full Bench of Kerala High Court in *Govinda Pillai V G.N. Padmanabha Pillai* 74 and the Bombay High Court in *Dhirajlalvalji V Rama Chandra Jangalji* 75 have held that Kesari gram (Lathyrus sativus) in any form has been accepted under the statute to be injurious to health. The Orissa High Court has taken a contrary view on this issue. In *K. Bhima Raju V State* 76 had held that though pea powder contained Kesari (lathyrus sativus) is not adulterated

74. 1965 Cr.L.J. 446
75. 1970 Cr.L.J. 1062

The views of the Andhra Pradesh High Court in *Govardhanlal V Commissioner of Police Hyderabad* (1975 FAJ 363) is not at par with the Orissa view. In this case the sample sold contained a mixture of groundnut oil with Arjemone oil injurious to health. It was held that the accused cannot escape liability on the ground that the sample held was only for analysis and not for consumption and hence not prejudicial in any way.
within the meaning of the Act as the Public Analyst has not declared it injurious to health.

It is submitted that in view of the injurious nature of lathyrus, the views of the Orissa High Court appears to be incorrect.

(f) Insect infestation, but not unfit for human consumption:

The word 'insect' appears to have been derived from the Latin word 'infestare' which means to absolate or molest. The word 'infest' means to attack, assail, annoy or trouble in a persistent manner to swam in or about so as to be troublesome. The law does not confine the application of the term to insect-infestation alone but also applies to an article of food unfit for human consumption for a cause other than those caused by insect infested.

The phrase 'insect-infestation' has not been defined in the P.F.Act. 'Insect-infestation' is different from 'insect damaged.' All the insect damaged articles may not be insect infested and vice versa. Filthy, putrid, decomposed rotten or insect infested refers to the quality of the article and furnish indica for concluding the article to be unfit for human consumption. This conclusion of unfitness for human consumption may not be so in all cases irrespective of the character of the article and the nature or extent of the vice where the article is found to be insect-infested.

The Prevention of Food Adulteration Rules, 1955, while prescribing standard for different articles of food has

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79. See P.F.Rules 1955, Appendix B. Items A.05(Spices & condiments) A.18 (Cereals)
allowed a permissible percentage of insect-infestation and insect damages to certain articles of food for the reasons that such a degree of infestation or damage does not make the food unfit for human consumption. For example 3% by weight of extraneous matters and infestation between 2 to 5% is allowed in cases of spices, upto 8% by weight of extraneous matters including dirt and insect damaged seeds in case of Coriander (Dhaniya) have been allowed. In case of food grains a proportion upto 20 mg. of insect damaged grain per 100 mg. of sample and upto 5% by weight of fungus damaged grain is permitted. Thus mere insect infestation or insect damaged articles of food cannot be considered to be adulterated within the meaning of the term unless it is shown that such infestation or damage has rendered the article unfit for human consumption.

The Supreme Court while considering the prosecution for sale of insect infested cashew nut in Municipal Corporation of Delhi V Kacheroo Mai held that the expression 'insect-infested' is to be construed in the context of an article of food meant for human consumption. It takes its hue from the phrase unfit for human consumption occurring at the end of the sub clause. It was further held that the report of the Public Analyst ipse dixit would be conclusive but his opinion is not binding on the court. It is for the court to weigh the opinion and reach its own finding.

80. Supra n.41
The Punjab High Court in *Wazir Chand v. State* has made the distinction between 'insect-infested' and 'insect damaged' while considering the prosecution for selling insect-infested pearl barley. It was held that in case of 'insect infested' there is to be a large number of insects present in the article before it can be said to be insect infested. The presence of a few insects will not make the article of food coming under the mischief of 'insect-infested'.

It is true that the word 'insect infested' used in the Statute seems to be wide enough embracing infestation of either kind - infestation of fungus or bacteria. In *Sohanlal v. Municipal Corporation of Delhi* it was held by Delhi High Court that "the word 'insect infested' seems to be wide enough embracing infestation of either kind, i.e., infestation of fungus or bacteria."

81. 1975 F.A.J. 201

This view appears to be incorrect in view of the ratio declared by the Supreme Court of India in the subsequent decision in *Municipal Corporation of Delhi v. Kacherumal (supra n.80)* wherein it was held that there was no difference between presence of dead and living insects in an article of food for the purpose of determination of insect-infestation. The Delhi High Court in *Municipal Corporation of Delhi v. Jaganath and others (1975 Cr.L.J. 1599)* observed the sample of ginger containing 60% insect damaged rhizomes and living insects held to be unfit for human consumption and therefore adulterated. The Supreme Court reaffirmed its view again in *Municipal Corporation of Delhi v. Tek Chand Bhatia (1980 F.A.J. 106)*. The prosecution was for selling cashewnuts found to be insect infested. The trial magistrat acquitted the respondent holding inter alia that the mere fact of insect infestation (20-46 percent and also living insects) is not sufficient to hold it adulterated unless it is unfit for human consumption. The High Court of Delhi maintained acquitted in appeal.

But on appeal to Supreme Court, it was held that the whole clause (j) of sub section (i)(a) of Section 2 of the P.F. Act 1954 are to be read disjunctively separating the conditions one side and unfitness on the other which brings a food within the meaning of the term 'adulterated' in either case. Insect infestation per se was held adulterated. The acquittal was set aside and the respondent was convicted.

82. 1975/1 F.A.C. 137 (Extraneous matter and infestation upto 3% has been allowed in A.05.16 of Appendix 'B' in Prevention of Food Adulteration Rules, 1955).
that infestation under the Act, if is to be confined to insect infested alone, than a standard prescribed for katha (Catechu) and Jaiphal (nutmeg) will perhaps have to be held as being in excess of what is required by the Act which does not seem to be warranted by the language of the law.

(g) Insect infestation; and unfit for human consumption:

The phrase 'or is otherwise unfit for human consumption' has to be read conjunctively along with 'the reasons for such unfitness' as given in sub clause (f) of sub section (1)(a) of Section 2 of the Prevention of Food Adulteration Act 1954.

It was held by the Delhi High Court in Dhanraj V Municipal Corporation of Delhi in dealing with the prosecution for sale of casheqnut found to be insect infested upto 5% but not be injurious. The appellant was acquitted on the ground that the analyst had not opined the sample to be injurious to health and no standard is prescribed for the same to hold substandard.

It is submitted that the Public analyst is not the person to declare the sample unfit for human consumption. The ratio decided by Supreme Court in Kacheroomal case reaffirmed in T.K.Bhatia case requires the court to decide 'unfitness' of the article of food basing on the report of the analyst. Thus both the earlier views of Delhi and Orissa High Court were not correct.

83. I.L.R. 1970/2 Delhi 681
In Municipal Corporation of Delhi V Paras Das Jain (1975/2 FAC 245) the Delhi High Court acquitted the respondent who was prosecuted and convicted by the trial court or selling 'sabat amchoor pieces' found insect infested on the ground that the analyst has not opined the same as unfit for human consumption on account of the insect infestation. The Orissa High Court in Suryamani V B.K.Mohanty (1973 39 C.L.T. 17 had also held that the accused is not liable for selling insect infested 'suji' (semoline) as the analyst has not opined its unfitness on account of such infestation, (specific mention that semolina should be free from insect infestation has been provided with the standard under the Rules).

84. Supra n° 80
85. Supra n. 81
(g) Addition of non-permitted colours:

The Prevention of Food Adulteration Rules prescribe certain specific colours permitted to be added to an article of food prohibiting use of all other colours. In case of use of any other unpermitted colour is 'adulterated' within the meaning of the term.

In *S. Moses and another V State* it was held by the Madras High Court in the prosecution for sale of Bengal Gram coloured with unpermitted coaltar dye for attraction of customers liable for adulteration.

Article not exposed for sale:

The gravity of the offence being widespread, the criminal liability have been extended by enlarging the scope of the term 'adulterated' even to articles of food though not intended to be sold as such but are intended to be sold by mixing it with other articles of food. Groundnut oil used for preparing 'nimki' and 'samosha' (houts) when found adulterated, it was held by Delhi High Court in *Municipal Corporation of Delhi V Sukadev Pal* that though the said oil was not exposed for sale as oil, the accused cannot escape liability as he was using the said adulterated oil through prepared food.

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86. (1975) 2 FAC 270
The Delhi High Court in *Municipal Corporation of Delhi V Rati Ram and others* (1975 FAJ 321) Ladu (sweet) sold by respondents found to be coloured with non-permitted colour. It was held that though the analyst had not specified the colour, it being a non-permitted colour sale of such Ladu was adulterated. Similarly in *Food Inspector V A. Agrawala* (1965 O.J.D. 215) the defence that metallic yellow added to arhardal (grams) as preservative was not accepted by the Orissa High Court as the said colour being not permitted to be used as a dye, it was held adulterated.

87. 1975/2 F.A.C. 296
The same High Court in an earlier case had observed the same view in dealing with adulterated butter intended to be used at the bakery to be used in bakery products was held liable in *Municipal Corporation of Delhi V Kewal Ram* (1975/1 FAC 335)
Instances held not adulterated:

Where there is no prescribed standard for a particular article of food or where the article of food though mixed with other substances confirms to the prescribed standard are not adulterated in prosecutions under the impugned Act. In *State of Gujarat v N.K.O.Patel* the Gujarat High Court held that the sample of coconut oil found mixed with groundnut oil on analysis and further neither confirms to the standard of coconut oil nor of groundnut oil, cannot be said to be adulterated unless it is sold either as coconut oil or as groundnut oil to deceive the consumer. The pleas that both the oils are edible, non-injurious or no way prejudicial were not accepted.

33. 1975 F.A.C. 31
The Gouhati High Court in *S.K.Dutta v Chairman* (1975/1 F.A.C. 153) while dealing with the prosecution for selling mustard oil containing seassame oil but confirming to the prescribed standard of mustard oil was held not liable for adulteration.

The Madras High Court in *re P.Muhammad Sheriff Saheb* (A.I.R. 1962 Mad 342) and the Allahabad High Court in *Nagaramahapalika v Mushir Ahmad* (1978 F.A.J. 358) had considered the presence of excess percentage of oleic acid in ghee. It was held that Oleic acid denotes freshness and if kept for a long time and in open container, the acidity increases due to oxidation. More increase in acidity from the prescribed standard was held not to be adulterated.

The Supreme Court went a little further in observing the importance of prescribing standard of various articles of food including butter. In *M.V.Joshi v M.U.Shimpi* (Supra n.18) their Lordships while dealing with the prosecution for selling the admixture of goat butter and other butter held that as the standard for butter prescribed under the rules refers to the butter prepared from curd, the sale for analysis does not fall within the definition of the butter to attract any liability of adulteration.
Burden of proof:

The burden to prove the guilt of the accused beyond all reasonable doubts always lies on the prosecution. In a criminal trial, an accused starts with presumption of innocence in his favour till the prosecution succeeds in establishing the guilt of the accused beyond all reasonable doubt. It is the duty of prosecution to prove its case affirmatively by sufficient and legal evidence, and this burden never shifts.

The prosecution is not required to prove the intention of the accused in making transaction in adulterated or misbranded articles of food. The necessary mens rea is ruled out in such cases and it is presumed that the accused had required mens rea inferred from the transaction and in his dealing with prohibited food. Such a rule appeared even under the old State statutes and continues under the Prevention of Food Adulteration Act 1954.

In Rameswar Choudhury V Purulia Municipality it was observed by the High Court of Patna that the mustard oil sold did not conform to the standard. Though the accused had given

89. See Indian Evidence Act 1872 (Act 1 of 1872) Sec.101.
Burden of proof - Whoever desires any court to give judgement as to any legal right or liability dependant on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

90. See Badrinath V State (A.I.R. 1953 J & K 41)
91. See S.M.Shaw V State (A.I.R. 1953 Cal.634)
92. In re M.Rangarajulu Naidu (A.I.R. 1958 Mad.368)
93. A.I.R. 1933 Pat 193
The Calcutta High Court in Chairman District Board V Atul Gh.Pal (A.I.R. 1938 Cal.619) followed the principle in penalising the accused for selling mustard oil mixed with linseed oil though labelled as 'jalani Oil' (for burning) on the ground that mustard oil which was admitted as an article of food and being adulterated the accuses was guilty.
notice or other advertisement for the public disclosing that the oil has some other article other than mustard oil through playcards in his shop did not absolve him from liability for selling adulterated food. In such cases it is not necessary for the prosecution to prove that the said oil was injurious to health.

Rule of benefit of doubt:

The rule of benefit of doubt has been applied to cases of adulteration as is available in other penal statutes.

The Supreme Court of India in Malwa Cooperative Milk Union Ltd. V Braharilal94 acquitted the accused in a prosecution for selling adulterated milk on benefit of doubt. The analysis report showed overall deficiency of 0.4 percent. It was held that some inaccuracies could creep into the analysis carried out by the Analyst. The accused was therefore given the benefit of doubt and his conviction and sentence were set aside.

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The Delhi High Court in Dhanraj V Municipal Corporation of Delhi (Supra n.83) held that if the article of food Kaju (cashewnut) sold consisted of filthy, putrid, rotten, decomposed or deceased animal or vegetable substance or insect-infested, shall be deemed adulterated. The prosecution need not prove it to be adulterated.

The Supreme Court in Manibhal V State (A.I.R. 1974 S.C.434) held that it is not necessary for the prosecution to prove that the article was deliterious to health or how much powerful affect it will have upon the health. It is sufficient for the prosecution to show that the article of food was adulterated. It was a case of coconut oil which did not conform to the prescribed standard.

94. 1973 F.A.C. 375
The Punjab and Haryana High Court in Dalip Singh V The State (1975 FAJ 525) acquitted the appellant on benefit of doubt. The prosecution was for selling adulterated milk which showed excess in fat content and deficit in non-fatty solids as against the prescribed standard. The High Court relied on the Supreme Court decision in acquitting the appellant. In State of Kerala V P.T.Mathew (1976 FAJ 93) no prosecution preservative was added to the sample of 'madakasar'(prepared food). While the public analyst reported the sample to be adulterated, the Director of Central Food Laboratory reported the sample decomposed.
The Food and Drugs Act, 1955 does not define the term 'adulterated'. Various acts of prohibitions have been provided under the Act tentamounting to adulteration. Viz. addition of any substance to food or its preparation, processes or treatment and abstractions of any constituent rendering it injurious to health intended to be sold for human consumption. Sale, offer, expose or advertisement for sale of such injurious food is prohibited; but the professional advertiser is exempted. A person is guilty of an offence if he sells to the prejudice of the purchaser any food which is not of the nature, substance or quality demanded by the purchaser. False labelling or advertisement to mislead as to the nature, substance or quality by a manufacturer, producer, importer or vendor is an offence. Admixtures of extraneous matters unavoidable or as necessity have been exempted from liability.

The judiciary is conscious of its duties in considering the criminal liability under the law inspite of their artificial interpretation for fixing criminal liability through certain terms inspite of the artificial meaning assigned to the term 'adulterated' prescribing ranges of constituent elements of articles of food in the standards, the courts have considered the unintended and unavoidable variation in constituents beyond

95. See Food and Drugs Act, 1955, Sec.1
96. Id Sec.2
97. Id Sec.6
98. In Deardan V Whitely (1916) 85 L.J.K. 3. 1420 it was held that addition of water or dilution does not amount to abstraction. Interpretation of the term 'abstract' in relation to milk See - Penrice V Brander (1921) J.C. 63 where it was held as to mean no more than a failure to correct the natural tendency of constituent to rise or fall in the liquid. In Friend V Mop (63 J.P. 589) it was held that the butter sold got mixed with extra moisture unavoidably and was hence not guilty.
the control of human agency to be not coming within the scope of the term 'adulterated'. The principles of this aspect is same in England and India. 99

The methods of adulteration are by addition of extraneous matters, cheaper in value than the articles of food to which it is added besides addition of sand, mud, dust, water, gravel, stone, straw costing low value. The insect-infested or insect damaged articles of food are either added with better quality of the same article or coated or coloured to suppress its true nature for transactions. Sometimes the article of food are coloured or coated with non-permitted colours to attract customers making it either noxious or conducive. 100

99. Greek V Smith (17 L.T. 447)

The accused was the owner of a cow recently calved. He sold half pint of milk from the morning milk to the complainant. The cow was not fully milked, there was no addition or substraction from the milk sold. The milk was found deficient in milk fat and hence he was charged for selling milk not of the nature, substance or quality demanded. It was held that the deficient was due to the manner in which the cow had been milked and the milk having come in the same form from the cow, it was of the same nature, substance and quality demanded by the purchaser. In Sultan Shah V State of U.P. (1973 Cr.L.J. 1413) the accused was prosecuted for selling milk whose fat contents were found much higher than the minimum prescribed. It lead to the inference of the Allahabad High Court that no water had been added to the milk and the mere circumstance that the non-fatty solid contents were below the range of prescribed standard would only justify the inference either that the cow from which the milk was drawn was not given the proper feed or the report of the public analyst was erroneous, but not the inference that the milk in question was substandard.

100. See Ramkrishna E.V. - The Prevention of Food Adulteration Act, 3rd Edition (1978) pp. 50-51. Ajwan added with sand, foreign seeds, earth; Asafoetida - sand, chalk, ash, starch, coaltar; wheat flour (Maida) - sand, dirt, foreign bran, foreign starch, chalk powder; Besan (gram flour) - Kesari powder (lathyrus sativus), ash, and maida (wheat flour); Biscuit - talc, foreign matter; Black pepper (piper nigrum) - papya seeds, berries and foreign berries; Butter ghee - vanaspati, animal fats, starch, prohibited colour; Cream - foreign fat; Chana dal and mung - (Bengal gram and green gram) Kesari Dal (lathyrus sativus), prohibited colours
Mis-branding: Its meaning and scope:

Mis-brand means to label or brand improperly. Literally it means deception or mis-representation. Thus it is a fraudulent representation that amounts to mis-branding.

The criminal liability for false representations came to the statute under the Indian Penal Code which is at par with the liability under the common law for cheating with respect to trade, property and marks. Between an ordinary cheat and the user of a false trade-mark, the difference is that while the former achieves his purpose by means of fraudulent misrepresentation, the latter achieves his means by visual misrepresentation.

The Indian Penal Code, 1860 prescribes penalty for falsely making goods, cases, package or other receptacles of food in such a manner so as to make a customer believe that such a manner is genuine. Making or possessing any instrument for counterfeiting a property mark has also been made penal. Sell-

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earth; Chilly powder - powdered bran; Gingely oil - prohibited colour; coffee powder - powder of roasted seeds, tamarind seeds, husk, chicory; Cumin - foreign seeds, earth; Food grains - sand gravel dirt, stones, straw chaff, damaged grain; Honey-cane sugar, commercial invert sugar, dirt; Milk - extraneous water, starch flours; Mustard - Angimone seeds, dust, sand; Edible oils (coconut, groundnut, til) - cotton seeds oil, linseed oil, argimone oil; Supari (betal nut) - sand, foreign seeds, nut, colours; Tea - foreign leaves, dust wood stalks, blackgram-husk, cashew husk, weed fibre; Vanaspati - animal fat, prohibited colour, flavour; Turmeric powder - prohibited colour, earth, sand, talc bran.

103. See Indian Penal Code, 1860 Sec.481
ing goods marked with a counterfeit property mark is an offence unless the seller proves that he had acted innocently without any malafide intention. Making a false mark upon any receptacle containing goods unless he proves his goodfaith and bonafide intention. Tampering with property mark with intent to cause injury to any person is penal.

Thus the provisions under the Indian Penal Code, 1860 as to false representation are in general terms relating to properties at large.

The term 'mis-branded' has been defined in clause (ix) of section 2 of the Prevention of Food Adulteration Act, 1954:

104. Id Sec.485
105. Id Sec.486
106. Id Sec.487
107. Id Sec.489
103. The Prevention of Food Adulteration Act, 1954 Section 2 Definitions.

(ix) 'Mis-branded' - an article of food shall deemed to be mis-branded - (a) if it has the imitation, or is substituted for, or resembles in manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;
(b) if it is falsely stated to be the product of any place or country;
(c) if it is sold by a name which belong to another article of food;
(d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged, is concealed or if the article is made to appear better or of greater value than it really is;
(e) if false claims are made for it upon the label or otherwise;
(f) if, when sold in packets which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each packet are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;
(g) if the packet containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substance contained therein, which is false or misleading in any material particular; or if the packet is otherwise deceptive with respect
The meaning of the term as given under the P.F. Act 1954 is exhaustive and covers a wide range of incidents to attract the mischieves under the Act. The mis-branding of an article as per the definition results from its being an imitation or substitute for or resemble another thing so as to deceive for another article of food under the name of which it is sold and is not plainly and conspicuously marked or labelled so as to indicate its true character. It may result from denoting it to belong to a country to which it does not belong, or if it is sold by a name which belongs to another article of food. The colouring of an article of food to conceal the fact of its damaged condition or is made to appear better attraction or greater value comes within meaning of the term. Making of false claims on the label or non-mentioning the contents of a receptacle or package or false statement on a packet about its contents amounts to mis-branding. Putting up of the name of a fictitious person or company amounts to mis-branding. Even an article containing any artificial flavouring or artificial colouring preservatives in contravention of the Act is mis-branding. If an article is not labelled in accordance with the requirements of Prevention of Food Adulteration Act, 1954 or its Rules of 1955 is also mis-branding.

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to its contents;
(h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;
(i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order to sufficiently inform its purchaser as to its value for such uses;
(j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact or in contravention of the requirements of this Act or rules made thereunder;
(k) if it is not labelled in accordance with the requirements of this Act or Rules made thereunder.
Section 5 of the Prevention of Food Adulteration Act, 1954 prohibits import of any misbranded food into India and Section 7 prohibits manufacture for sale, or store, sale or distribute any mis-branded food either by himself or through others; and Section 16 of the said Act treats mis-branded article of food at par with adulterated articles of food in respect of penalties.

The judicial interpretation of the term 'misbranded' has been made keeping in view of the legislative intent in defining the term extensively. In Food Inspector, Municipal Council, Allepoy V Karappaiya Nadar, the Kerala High Court while dealing the case for sale of blackgram flour found on analysis containing 95.9% Calcium Carbonate and 3.6% sand with no black gram flour held that it was a sale of misbranded food and hence respondent was held guilty.

Giving colours prohibited under Rules to attract customers or to suppress the true quality of the article of food amounts to misbranding. In M/s Laxman Das Sarvottam Das & Co., V State of Maharashtra, the Bombay High Court penalised the accused for selling 'turdal' (gram) coloured with coaltar dye (tartrazine) as misbranded.

109. 1959 Cr.L.J. 840
The Delhi High Court in Municipal Corporation of Delhi V Dharam Singh (1975 FAJ 201) held that sale of aerated water labelled to be containing a mixture of sugar and saccharine when found to have not containing any such thing amounted to misbranding. The same High Court in Municipal Corporation of Delhi V Thouram (1974/1 FAC 122) held that the vendor sold 'burfi' (sweet meat) claiming to have prepared from besan (gram flour) sugar, and Khova (cheese) was when found to be false on analysis held to have sold misbranded food.

In Mithundas V State (1975/2 FAC 193) it was held by Delhi High Court when skimmed milk was sold as cow's milk it became a patent case of misbranding. The same High Court in Mol. Coron. of Delhi V Karam Chand (1974 FAC 490) held selling of skimmed milk as toned milk amounted to misbranding.

110. 1975/2 F.A.C. 153
In Municipal Corporation of Delhi V B.K. Thapar the High Court of Delhi held that sale of packet with article labelled as sachharine when found to be admixture of glucose and sacharine to be a case of misbranding.

Thus an article of food is deemed to be misbranded if the label bears any statement design or device regarding the ingredients or the substance contained therein which is false or misleading in any material particular.

A sale of an article of food represented to have been the product of a manufacturer who had actually not manufactured amounts to misbranding.

In Jagannwar Sen Gupta V Gopal Chandra Saha the accused was caught while filling of mustard oil from a big barrel bearing no particular brand into smaller tins having embossed marks of manufacturers of various brands of mustard oil. After filling, the tins were sealed with lid. It was held that the accused was guilty of the offence of misbranding.

In Srinivas V F.I. Madhurai it was held by the Madras High Court that the packets of tea were not labelled as sample and there was no other documentary evidence to show that they were not part of the tea received in the shop for sale for the public and when these packets were exposed among other packets for sale, it amounts to misbranding of these packets intended for sale.

111. 1975/1 F.A.C. 448. The same High Court in Municipal Corporation of Delhi V Dharam Singh (supra n.109) held the sale of aerated water showing to be containing a mixture of sugar and sacharine on its cork when found containing none as misbranded.

112. A.I.R. 1961 Tripura 18
113. 1965/1 M.L.J. 58
Difference between 'Mis-branding' and 'Adulteration':

There is a good deal of difference between adulteration and misbranding. Although offences are dealt with the same provisions viz. Section 7 and 16, they constitute different offences requiring proof of different facts.

The High Court of Andhra Pradesh in Public Prosecutor V K. Satyanarayana had held that where Public Analyst disclosed that the sample of food grain 'Uddi papu' (gram) contained 1.76% talc, it was a case of misbranding but not adulteration.

While adulteration is debasing, misbranding is false representation and the intention for both is for deceit.

Defences:

The interest of the accused has been safeguarded under sub-section (2) of Section 19 of the Prevention of Food Adulteration Act, 1954. It is for the accused to prove that he acted in good faith bonafidely having purchased the article and had sold it in the same condition as he purchased it under a warranty.

English Law:

The term 'misbranded' has neither been defined nor has been used in the Food and Drugs Act, 1955; but the meaning and spirit of the said term has been dealt with suitably under sections 6 and 7 of the said Act.

114. 1975 Cr. L.J. 1127
115. See Prevention of Food Adulteration Act, 1954 Sec. 19 - Defences which may or may not be allowed in prosecutions under this Act.
116. See Food and Drugs Act, 1955. Section 6 and 7 deals with false labelling or advertisement of food; any person exposing article of food for sale for human consumption under a label with false description or is calculated to mislead as to the nature, substance or quality of the food is an offence unless he proves that he did not know or was unable to ascertain inspite of reasonable deli-
The English law does not deal with the term 'misbranded' so exhaustively as in the Indian law. The following cases would indicate the manner of dealing with offences for misbranding to articles of food.

In *Donnelly v Rowlands*\(^1\) the respondent was a milk retailer supplied milk in bottle with label caps showing as 'untreated milk produced from T.T. Cows' followed by his name and address though the bottles were embossed with several names other than the respondent. It was held that as the foil cap indicated the correct trade description the words on the bottle did not refer to the milk which had already been accurately described.

The term 'misleading' had also been interpreted in *R v Mayling*\(^2\) as likely to mislead, the test being whether it would mislead an ordinary man. The proof of prejudice to a particular person is not necessary. In *Birkenhead and District Cooperative Society Ltd v Robberts*\(^3\) the defendant sold a leg of lamb to articles of food to be an offence unless the accused proves to have done it as he received from his customer without associating himself in false representation.

1. 1971/1 All P.9
2. 1963/2 Q.B. 71 R
3. 1970/3 All E. R. 391

Even where, prior to the sale, a seller has made false representation as to the nature or substance or quality of the article demanded, he does not commit an offence if he discloses the purchasers, at the time of sale, the true, nature, substance and quality of the article, but where a false representation is made at the time of sale, an offence may be said to have committed even if the purchaser must have known the representation was untrue and therefore was not deceived by it. (See *Halsbury Laws of England*, 4th Edn. Vol.13 para 1073, p.546.)
labelled as 'for roasting English' though it was if fact of Newzerland branded by mistake of servant as pleaded. The plea was not accepted and it was held that the words 'mistake' means a mistake by person charged and not a mistake by another person.

United States of America:

The Federal Food, Drugs and Cosmetic Act, 1933 has graphically defined 'misbranded food' as one which contains a false or misleading label or offered for sale in another name or an imitation or with a misleading container or package, false information on the label as to its nature, quality and standard, product or special dietary use, or artificially flavoured or coloured or added with chemical preservatives or in violation of any other regulation in force.\(^{120}\)

It is thus evident that the term 'misbranded' as defined under the Prevention of Food Adulteration Act covers a wider scope at par with the other statutes as shown above. Misbranding per se is an offence and the rule of fixing liability for misbranding is in existence, though in other forms, under the old existing penal statute.

"Sale" - Meaning and scope:

The term 'sale' is a later development after introduction of the coins when the price of an article was considered in terms of money. It is contemplated by contract. The liberal meaning of the term 'sale' is exchange of anything for money.\(^{121}\)


\(^{121}\) Chambers 20th Century Dictionary, 1972 Edn. 1191
It also means an act of selling or the exchange of real or personal property for money or its equivalent. In law it means a contract for transfer of property from one person to another for a valuable consideration. A contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in goods to the buyer for a price.

The terms 'sale' has been defined in the Prevention of Food Adulteration Act, 1954 in Section 2(xii) as:

"sale with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by whole sale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article;"

The term sale as defined under the Act thus includes the sale of any article of food, whether for cash or on credit or by way of exchange or for analysis and includes an agreement for sale, an offer for sale, exposing for sale or having in possession for sale of any article of food and includes also an attempt to sell any food. The definition is very exhaustive and much wider than the one given in the common law in as much as includes even a sale for analysis or an agreement for sale, an exchange, an offer for sale, exposing for sale, storing for sale, or having in possession for sale of any article of food. A comparative study of the definition of 'sale' in the Sales Tax Act,

1956\textsuperscript{124} and the Prevention of Food Adulteration Act, 1954 would show a canannation of the word for the purpose of the Act is far wider in its scope.

With a view of direct interpretation and to safeguard the interest of the accused, it is directed that the manufacturer distributor and dealer to give warranty at the time of sale to vendors, and an obligation is caste on the vendor to disclose the name, address etc. of the person from who the article of food was purchased to plead ignorance.\textsuperscript{125}

**Judicial approach to sale:**

The judiciary in India has not been able to evolve a set of principles as to what constitutes a 'sale' in law. A perusal of some of the important decisions would reveal conflicting and self-contradictory propositions. For instance, in State V Ratanlal\textsuperscript{126} the Himachal Pradesh High Court,

\textsuperscript{124} The Central Sales Tax Act, 1956 Sec.2 - Definition (g) 'sale' with its grammatical variations and cognate expression, means any transfer of property in goods by one person to another for cash or for differed payment or for any other valuable consideration, and includes a transfer of goods on the hire purchase and other system of payment by instalment but does not onclude a mortgate or hypothication or a charge or pledge of goods."

\textsuperscript{125} See Prevention of Food Adulteration Act, 1954 Sec.14 - Manufacturers, distributors and dealers to give warranty. - No manufacturer or distributor or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the proscribed form about the nature and quality of such article to the vendor.

\textsuperscript{126} A.I.R. 1964 Himachal Pradesh 10.
while dealing with a prosecution for carrying adulterated milk by accused not being the owner had held that there was no 'sale' within the meaning of the Act though price had been paid for the sample of milk; but in Arumugam V Food Inspector, Mettancherry, the High Court of Madras had held in a prosecution for carrying adulterated milk for sale to a hotel by the accused which was taken by the Food Inspector and found adulterated on analysis amounted to a sale as the Food Inspector had exercised statutory powers under section 10 of the Act.\[128\]

While dealing with a prosecution where butter was kept in a halwai's shop not for sale as butter, but for use in the preparation of samosas (hots) and sale, the Delhi High Court in Municipal Corporation of Delhi V Sri Ali Das etc.\[129\] held that the sample of butter taken by the Food Inspector found adulterated was a 'sale' of butter. But the same High Court in Municipal Corporation of Delhi V Kewal Ram\[130\] held that butter kept in bakery for use in the preparation of bakery products is liable for 'storing for sale' but not for 'sale'.

It is interesting to note the interpretation of the term 'sale' in case of supply of article of food in a lodging

127. 1962 M.L.J.(CrJ) 31
See Prevention of Food Adulteration Act, 1954, Sec.10
Powers of food Inspectors (l) A food Inspector shall have power -
(a) to take samples of any article of food from (i) any person selling such article; (ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee; (iii) a consignee after delivery of any such article to him; and
(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

129. 1975/1 F.A.C. 323
130. 1975/2 F.A.C. 335
house, who makes consolidated charges for boarding and lodging and other amenities. In *Food Inspector, Calicut V Ch.Gopalan*, the High Court of Kerala held that food provided by the hoteliers to guests against the consolidated charge for room and other amenities, if any article of food so supplied is found adulterated, cannot be said to be a 'sale' for the reasons that the consolidated charge cannot be apportioned rationally as a price for the food though a hotelier must have taken into account the costs of such food while fixing the consolidating charge.

But this view did not hold good in view of the decision of the Supreme Court in *Municipal Corporation of Delhi V Laxminarayana Tandon etc.* In this case the respondent was the manager of Oberie Maidens Hotel and ice cream, milk, curd and butter were being catered with meals to the boarders which were found to be adulterated on analysis. It was held that for the purpose of P.F.A. Act, 1954 a mere offer of an article of food for money consideration, irrespective of whether such consideration is ascertainable as distinct item or an inseparable item for a consolidated charge for a number of things would bring it within the meaning of the mischief of 'sale'. It was further held that it was not correct to say that the supply of food under such a composite transaction entered into between the hotelier and a resident customer does not amount to supply of food as an article of commerce. The fact remains that the supply or offer to such customer is for a money consideration as a part of business activities and as such constitutes 'sale' under the Act.

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131. A.I.R. 1969 Ker 179
132. 1975/2 F.A.C. 444
Sale by Distributor:

In M/s Bhagaban Das V Delhi Administration, the Supreme Court held that it is not correct to say that a distributor could not be prosecuted unless he sells articles of food without giving warranty as required under section 14 of the Act, 1954. The sale of an article of food by manufacturer, distributor or dealer is a distinct and separable offence. The distributor was therefore held liable for 'sale' of adulterated article of food, whether he had sold under a warranty or not as violation of section 14 is a separate offence.

Tender of price; Constitutes a sale:

High Courts have given a wide canntation to the term 'sale' and have even treated tender of price constituting 'sale'. In case of Devi Saran V State the accused did not accept the price of the milk purchased by Food Inspector as sample for analysis. It was held by Allahabad High Court that in order to constitute sale mere tender of price is sufficient; actual payment need not be proved. If the cost of the sample is tendered to the accused, there is full compliance of section 10(3) of the P.F.A. Act, 1954 irrespective of the fact that the later declined to accept the price.

Non-acceptance of price amounts to sale:

Non-acceptance of price for the sale of milk to Food Inspector for analysis was held to be not a sale by Andhra High Court in Public Prosecutor V M. Satyam. But the Full Bench of

133. A.I.R. 1975 S.C. 1309
134. 1974 Cr.L.J. 365
135. 1970 Cr.L.J. 393
Delhi High Court in *Madan Lal V State* held that if a person who is a dealer in an article of food as such, refuses to sell it to a Food Inspector, the latter has power to take a sample of the article of food for the purpose of analysis and the dealer cannot prevent him from taking such a sample. His unwillingness to accept the price of the sample will be wholly immaterial and he would still be guilty of the offence if the article is found adulterated on analysis. It does not matter whether the person from whom the sample is taken accepts such payment or not. It thus cannot be said that the appellant did not sell the milk to the Food Inspector because he did not accept its price.

The Supreme Court in *The State of Tamilnadu V R.Krishnamurty* interpreted the term 'sale' very liberally. The term sale in the P.F. Act 1954 refers to a real sale as well as an 'embrayonic' sale (like agreement for sale, offer for sale, possession for sale, attempt for sale) are sales for the purpose of the Act. The sale may be for cash or credit or by way of exchange. The sale may be for wholesale or retail. Thus every kind, manner and method of sale are covered. The sale may be for human consumption or use, or for analysis.

136. 1972 F.A.C. 481

In *Ramil V State* (A.I.R. 1955 NUC 451) it was held by Patna High Court that a transaction which can be described as purchased can only be based upon passing of consideration. Where the sanitary Inspector did not actually pay any price as the vendor did not accept it, the transaction cannot be held to be a purchase. However this view was not accepted at a later stage by the same court in *Purushottam Das V State* (A.I.R. 1955 NUC 455) by holding that if price is offered by Food Inspector and not accepted by the vendor it amounted to a sale.

137. 1980 FAJ 334. It was a case of sale of Gingelly oil mixed with groundnut oil and such admixture was informed to consumers expressly at the time of sale. As sale to food inspector for analysis is a sale under the Act, it was held that the said oil was exposed for sale.
Involuntary sale:

The Food Inspector under the Prevention Food Adulteration Act, 1954 has got statutory power to take sample of any article of food suspected to be adulterated in general if such adulterated article is exposed for sale. The law implies the enforcement of that power even against the will of the person selling or exposing that article for sale.138

Sale as defined includes voluntary and involuntary sales. The vendor even if accepted the price of the sample of article of food against his will, the transaction amounts to a sale under the Act.139

138. The Mysore High Court in Laxman Sitaram Pai V State of Mysore (1967 Cr.L.J. 382) held that, a sale of an article to the Food Inspector for analysis is though made in the presence of police officer and under threat is a sale within the meaning of the Act. Therefore a forced purchase of sample for analysis by Food Inspector was a sale. The Patna High Court in Chairman, Jugalsai N.A.C. V Mukram Sharma (A.I.R. 1969 Patna 155) had held that the Food Inspector who took sample of milk for analysis against the wishes of the accused - vendor even though the milk was stored for tea and not for sale. Though there was an element of exercising in the matter of taking sample but there was nothing to show that there was coercion in accepting the price and granting the receipt. Therefore it was a sale under the Act. The Allahabad High Court in State V Md. Yasin (1968 All L.J. 810) held that law implies power with the food inspector for enforcement of the law. Taking sample against the will of the person storing or exposing the article for sale completes a 'sale' under the Act.

139. The Madras High Court in Re Rethamalini (A.I.R. 1965 Mad 146) had held that if the vendor is aware that the sale is a forced one in the sense that an official of the department compelled the vendor to part with the sample because of the statutory obligation and further because prevention of taking of such sample by the Food Inspector is itself an offence under the Act, then there is no sale. This may be a case of seizure or compulsory acquisition though it may externally wear the form or semblance of a sale. Here the Food Inspector purchased ghee kept by a confectioner for preparing sweets. The said ghee was found adulterated on analysis. The delivery of ghee to Food Inspector held not a sale though the accused could have been prosecuted for having adulterated ghee in his possession.
The Food Inspector has got power not only to purchase sample but also to seize or acquire articles of food manufactured stored or exposed for sale for human consumption. Any person preventing the Food Inspector from exercising these powers are criminally liable with penalty to the same extent as that prescribed for adulteration or mis-branding of articles of food. 140

The Title of the Act 'The Prevention of Food Adulteration' envisages by its nomenclature that it is intended to prevent adulteration in articles of food. The law does not provide any prohibition or restriction for manufacture, store, distribution of any adulterated article of food or mis-branded food or adulterant if not intended for sale for human consumption. The criminal liability under the Act arises when the article of food is sold or intended for sale. In absence of the transaction of sale, there can be no offence said to have been committed under the Act. 141

140. See Prevention of Food Adulteration Act, 1954 Sec.16 Penalti

(c) prevents a food inspector from taking a sample as authorised by this Act; or (d) prevents a food inspector from exercising any other power conferred on him by or under this Act; he shall in addition to the penalty to which he may be liable under the provisions of Sec.6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees;

141. The Andhra Pradesh High Court in Public Prosecutor of Andhra Pradesh V K. Subba Rao (1968 Cr.L.J. 280) had held that when the respondent vendor refused to transfer the goods to any individual other than the Food Inspector, it did not amount to sale or intended for sale. The Assam High Court in Mahindranarayan V State (1977 Cr.L.J.1102) held that where the prosecution has failed to establish by any cogent and reliable evidence that the tins of 'Sankar Brand' mustard oil in question were intended for sale, the food inspector was not competent to take any sample from the said tins and to launch prosecution even if such sample was found adulterated. Thus if the food inspector was not competent under the law to take sample, the alleged sale to him for analysis could not amount to sale. The Orissa High Court in
Analysis of food by purchaser:

Besides the authorisation to the Food Inspector to take sample of articles of food exposed for sale, it is provided that any individual consumer is also competent to collect sample and send it for analysis in the same manner as prescribed for Food Inspector, thus recognising the rights of the consumers.¹⁴²

In view of the dictum laid down by the Andhra Pradesh High Court in Public Prosecutor of Andhra Pradesh v K. Subba Rao wherein it was held that there is no provision in the Act for penalising a vendor refusing to sell any article of food for analysis to a person other than a Food Inspector, no action is envisaged against such vendor. The provision is thus ineffective and idle in the statute.

English Law:

The term 'sale' has not been defined under the Food and Drugs Act, 1955. But under the presumptive clause provided in section 111, and the definition clause in sub-section (ii) of Section 135 the scope of the term 'sale' can be inferred.¹⁴⁴

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Damodar Prasad Sarma v State (1971 C.L.T. 1210) had held that when the accused had proved that the Jeera (cumin) did not did not belong to him, it was not stored for sale, it was kept in the inner side of the shop; as such, even though sample of such jeera was taken on payment of price under threat of arrest cannot amount to a 'sale' within the meaning of the Act.

¹⁴² See Prevention of Food Adulteration Act, 1954 Sec.12 - Purchaser may have food analysed. - it envisages that any purchaser is not prevented to purchase sample and send it for analysis by payment of price provided he informs the vendor at the time of his purchase of his intention to have such articles so analysed. The procedure prescribed for sealing and sampling is also applicable to the purchaser. The purchaser is entitled for refund of the amount paid by him for analysis in case if the article has found adulterated. The prosecution is to be launched by the State as usual after consent by the Local (Health) Authority.

¹⁴³ Supra n.141

¹⁴⁴ See Food and Drugs Act, 1955 Sec.III - It provides that any articles commonly used for human consumption sold, offered, exposed or kept for sale
On the analysis of the provisions it appears that besides contemplation, intention and attempt to sale are presumed to be sale for human consumption in case the article is commonly used as such. Similarly articles commonly used for human consumption or their products when found at the manufacturing, storing, or sales premises are presumed to be intended for sale or for manufacturing products for sale for human consumption. The meaning of the term 'sale' has been accepted for the purpose of the food law as interpreted under the Common Law (The Sale of Goods Act).

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amounts to a sale; any article commonly used for human consumption found on premises used for preparation, storage or sale is presumed to be intended for manufacturing, storing, exposing for sale; any substance capable of being used in the composition or preparation of any article commonly used for human consumption is deemed to have been intended for such use.

Sec.135: (ii) it covers an intended transaction of sale including supply of food.

145. In Fisher V Bell (1961/1 Q.B. 394) it was held that in order to escape an offer for sale there must be some evidence that the offer was communicated or put on its way although it need not be proved that the offer reached the person to whom it was made. In case of sale of controlled foods intention, but no offering, to sale is to be seen. In Whatson V Coupland (1945/1 All E.R. 217) it was held that there can be no sale unless the property in the goods passes from seller to buyer and upon a charge of selling goods in breach of Food and Drugs Act, the delivery of goods must be ascertained at the time the property passes. In Bastin V Davies (1950/2 K.B.579 on an information which alleged that the sale was 'not of the nature or not of the substance, or not of the quality demanded' was held bad for uncertainty. In Pharmaceutical Society of Great Britain V Boots Cash Chemists Ltd. (1952/2 Q.B.795) it was held that in a self-service shop the selling of goods from self by a customer is not an acceptance of an offer to sale till it is taken to cashier for payment of price. In Boak V Bedford (1964/1 All E.R. 311) it was held that a person sells 'when he appropriates or transfers goods under an agreement for sale, of unascertained goods, not otherwise.'
Supply of articles of food in the course of business in or from any place is an intended sale of that food besides where food is supplied in connection with any business as places of services and consumption of food are the places in which the said food is deemed to have been sold. In *Keating v Harwood* bags of paddy sent out in vehicle for delivery or sale to customers was held to be "exposed for sale".

Thus the statute has clarified several positions by specific provisions deriving the principles of common law instead of making it cumbersome by artificially interpreting the term to cover varieties of transactions.

The scope of the term 'sale' has been so enlarged in India by Judicial interpretation depending on the transactions of each case, that the ordinary trader is not sure of his position to be cautious of his duties and obligations. Besides, it is not possible in trades to get the articles tested by an Analyst before dealing with the article to keep it within the range prescribed under the standard. So Section 14 of the Prevention of Food Adulteration Act, 1954 directs the manufacturer, distributor and dealer to give warranty at the time of their sale to vendors and an obligation on the vendors under section 14 A of the said Act to disclose the name, address etc. of the person from whom the article of food was purchased enabling him to escape liability as a defendant under the sub-section (2) of Section 19 of the Act appears to be inadequate in view of the burden casted on him to link the chain in continuation till it was sold for analysis.

146. (1926) 135 L.T. 29

In *McNair v Terroni* (1915/1 K.B. 526) where in milk in pan labelled "pure milk" on the counter of an Eating House, although the milk may be intended only for an addition to cups of tea or coffee was held "exposed for sale". But in *Clark v Strachan* (1940 J.C. 29) where sausages made to order and in shop was held to be not 'exposed for sale'. 