CHAPTER - V
CRIMINAL SANCTIONS UNDER THE F.F. ACT

After discussion of the role of administration and enforcement machinery and discussing their scope and powers in the earlier chapter, it is proposed to discuss the penalties relating to prosecutions prescribed and imposed in cases of adulteration and contraventions and their adequacy under the F.F. Act and other Acts in this chapter.

While Justice is the prophetic emblem of God, administered through the colour of courts does not discriminate great or rich, from small or poor being uniform having political and penal sanction. Compelling obedience of the subjects of the State in conformity with their moral and social habits and impresses the ultimatum for the persons committing or omitting the acts in the law.

Punishment is a measure of safety and a means to an end signifying societies' disapproval for specific human conduct and the penal sanction acts as a threat to restrain people from committing the forbidden acts. It fails when it loses its significance in the society. Without threat of fear, there is no meaning to punishment. Its existence is a necessity for protection of individual rights and social co-existence. Equalised punishments for like offences have not proved effective for all types of criminals to serve social defence measures. Considering offence as a social phenomena, offences of adulteration of food motivated for economic purposes were of later
origin and the laws to prevent violations of adulteration rules are of recent origin. These offences are mainly confined between the businessmen and the consumers under the bandit of social contract.

Besides, Food Adulteration Act, prosecution for adulteration of articles of food are also sanctioned under (i) Indian Penal Code, 1860 (ii) Essential Commodities Act, 1954 (iii) Maintenance of Internal Security Act, 1971.

Prosecution under Indian Penal Code:

The provisions to prevent sale of adulterated or noxious food were codified under the Indian Penal Code in the year 1860. It provides punishment of imprisonment of either description for a term which may extend to six months or with fine which may extend to rupees one thousand or both. The punishment is same for adulteration of any article of food, or drink making it noxious as food or drink with an intention to sell as such food or drink.

The term 'intention' and 'knowledge' appearing in the language of the sections are the indica of mens rea in the absence of which no penalty is envisaged to be imposed. The further requirement is that the article of food or drink should be adulterated so as to make it noxious to be penal.

The provisions cover the contemplation of sale as well as a sale of an adulterated and noxious food in as much as an article of food if not noxious even though adulterated for 1. See Indian Penal Code 1860: Sections 272 and 273 Supra Ch.III N.102.
any other reasons is not penal. The nature of penalty is thus covers all types of noxious food and drinks intended to be sold in any form unfit to be used as food or drink whether adulterated or not.

In re Abdul Rehman the prosecution was for sale of milk added with water. It was held not to be an offence as 'intention' of the accused was found for 'profit' but not to make the drink 'noxious' or 'injurious'.

Unless the article of food is noxious there can be no penalty for sale of adulterated food under the penal law. No penalty was imposed in the case as it was not shown by prosecution that the adulterated articles of food was noxious and was intended to be sold or that it was known that it would be likely to be sold as an article of food or drink.

An abetment is an instigation to do an act, amounting to an offence, if the act abetted is committed in consequence of the abetment.

An attempt is the just previous stage to the commission of an act amounting to an offence. Attempt to commit an offence is also an offence under the Indian Penal Code.

2. 1902/1 L.B.R. 153
4. For Definition see Sec.107 of the I.P.C. 1860 and punishment for abetment is prescribed in the section 109 therein. Emperor V Ramaopal (1930 All W.R. 875). The Allahabad High Court had observed that an abettor for abetting an offence under the Food Adulteration Act is liable for punishment with the same penalty as prescribed under the special statute stretching the principles of abetment provided under the common law.
5. In R.R. Bakhat V Chairman, D.B.Rajasahi (172 I.C.869) (See I.P.C. 1860 Sec.511) It was held by Kerala High Court that an attempt to commit an offence under the Prevention of Food Adulteration Act is not penal and the principles of Indian Penal Code is not attracted. Respectfully it is submitted that the term offence referred to in the Penal Code was not referred in the case.
The definition of the term 'offence' as provided in section 40 of the Indian Penal Code 1860 includes also the offences prescribed under special laws though the views are controversial.

The stage of contemplation for sale of adulterated article of food is no doubt recognised as an offence under section 7 of the Prevention of Food Adulteration Act, 1954 and in case of manufacture, store and expose for sale of adulterated articles of food, the statute is deliberately silent to create any express liability for 'attempt' of such acts but has used the term 'intended' amounting to an attempt.

Public Duty to Report of Noxious food:

A person who has suffered or has a reason to believe about sale of noxious food is bound to report the fact to police for action. Such obligation to assist public servant is universally found and penalty has been provided for failure to perform such obligation as it amounts to suppression of the offence.

The Prevention of Food Adulteration Act 1954 lacks such a provision casting an obligation on the citizens even to assist an investigation for adulteration or other offences.

Since the Penal Code deals with noxious foods but not adulteration...

6. See I.P.C. 1860 Sec.40. The Division Bench of Punjab High Court applied the principle of 'jristles' provided in Sec.95 of the Indian Penal Code in Municipal Committee, Amritsar v Arian Singh 1973 FAC 241 and acquitted the accused for selling groundnut oil with traces of til oil. But the Andhra Pradesh High Court in Public Prosecutor v K.Satyanarayana (Supra Ch. III n.114 did not extend the said benefit where udipamu (grain) found coloured slightly with non permitted colour.

7. See Indian Penal Code,1860 Sec.176. In Re P.N.Numbruipad (17 M.L.T. 263) the Madras High Court convicted the accused as he omitted to inform police of the explosion resulting in death of a child to his knowledge.
ted foods it is necessary for insertion of such a provision covering the acts, omissions and violations prescribed in Prevention of Food Adulteration Act, 1954.

The procedural law provides destruction of the noxious food or drink\(^3\) beside penalties.

**Penalty under the Prevention of Food Adulteration Act:**

The state laws on food adulteration which were in existence prior to 1954 provided penalty of imprisonment of either description of 2 years or fine upto \text{\textcurrency{R}}1,000/- or both and there was no uniformity in the penalties.

The Prevention of Food Adulteration Act 1954 lays down punishments for various acts, omissions, violations and contraventions under Section 16.\(^9\)

The penalty for importing food into India, or manufacturing for sale or store or distribution of any article of food which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) Authority in the interest of public health is severe.

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8. See *Criminal Procedure Code, 1973* Section 455(2)

9. See *Prevention of Food Adulteration Act, 1954* Section 16

Penalties: (1) The penalties prescribed are besides confiscation in case of imported or injurious articles of food, imprisonment upto three years and fine subject to the minimum of six months imprisonment and fine of \text{\textcurrency{R}}1,000/- shall be imposed on conviction. In cases of violations and adulteration of primary foods by natural cases beyond the control of human agency the minimum sentences can be further reduced to but not less than imprisonment of three months and fine of \text{\textcurrency{R}}500/-. But this reduced minimum sentence should be on adequate reason assigned by the court.

Under sub-sec.(1A) severe penalties upto six years of imprisonment with the minimum of one year and minimum fine of \text{\textcurrency{R}}2,000/- is prescribed for importing injurious articles of food or adulterant besides liability provided under the customs Act. If the said article of food is likely to cause grievous hurt on consumption, the penalty prescribed is still sever with imprisonment for life and minimum fine of \text{\textcurrency{R}}5,000/-. 
health. Import, manufacture, store distribution or sale of any article of food in contravention of any of the provisions of the Act or the Rules made thereunder entails penalty. Preventing a Food Inspector from taking sample or preventing him from exercising any other power conferred on him, possession of adulterant by a manufacturer and using any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any food, giving a false warranty to a vendor in respect of any article of food sold to him, tampering or interfering in any manner with the articles of food kept in zimma of a person and omission or giving false statement as to the identity of the warranty have been dealt with similar penalty. The penalties prescribed for all such offences is imprisonment upto three years and fine which shall not be less than six months imprisonment and fine of Rs.1000/-.

Leniency in penalty is provided in case of adulterated primary foods not caused intentionally and for violations and contraventions on adequate and special reasons to be recorded by court for the purpose of inflicting lessor than the minimum prescribed punishment limited to three months imprisonment and fine of Rs.500/-.

Sub-section (1A) of Section 16 of Prevention of Food Adulteration Act, 1954 catagorises more dangerous forms of offences such as, import or sale of injurious articles of food or adulterant.

The minimum penalty provided is three years imprisonment to extend to the term of life and to a fine not less than Rs.5000/-. 
in case of an article of food or adulterant when consumed by a person is likely to cause his death or is likely to cause such bodily harm amounting to grievous hurt. 10

The first part of the sub-section deals with ordinary cases of importing or manufacturing for sale or storing, selling or distributing adulterated articles of food or adulterants injurious to health and provides for punishment for a term which shall not be less than one year or which may extend to six years and with fine which shall not be less than Rs. 2000/- in addition to the penalty of detention, a seizure, confiscation under section 6 of the Act.

The second part of the sub-section deals with offences of adulteration which is likely to cause death or grievous hurt with mere sever penalty of imprisonment which shall not be less than three years and fine not less than five thousand rupees.

Sub-section (1AA) provides penalty for tampering or in any other manner interfering with an article of food kept in the custody of any person after seizure and lays down punishment with imprisonment for a term which shall not be less than six months but may extend to two years and with fine which shall not be less than Rs. 1000/-. 

Sub-section (1B) deals with cases of persons in whose safe custody any article of food has been kept after seizure under the Act and who sells or distributes such article which is found 10. For grievous hurt see Sec. 322 and 325 of the Indian Penal Code, 1860 which deals with grievous hurt. The punishment prescribed with imprisonment with either description for a term which may extend to 7 years and shall also be liable to fine.
by the magistrate to be adulterated and which when consumed by a person is likely to cause his death or is likely to cause such bodily harm amounting to grievous hurt is punishable with imprisonment for a term which shall not be less than three years but may extend to life sentence and with fine which shall not be less than Rs.5000/- having an overriding effect on the preceding sub-section.

Sub-section (1C) deals with cases of contravention of the provisions of section 14 relating to sale of articles of food without a written warranty and section (14-A) relating to non-disclosure of name and address and other particulars of the person from whom the article is purchased inspite of an interrogatory by Food Inspector. It prescribes punishment for a term of imprisonment which may extend to six months and with fine which shall not be less than Rs.5000/-. The minimum sentence has not been prescribed in these cases unlike other cases as the offences of violations are in the form of "accessories".

Sub-section (1D) and sub-section (2) deals with second offences and repeaters and provides for publication of the name, place of residence, the offence committed and penalty imposed at the expenses of the vendor in such newspaper or in such manner as the court directs and also for cancellation of the license granted to the vendor under the P.F.Rules, 1955.

The penalty provisions has been amended twice viz. by substitution and the first was under Prevention of Food Adulteration (Amendment) Act 1964. 11

11. See Prevention of Food Adulteration Act, 1954 (Act 37 of 1954) vide S.R.O.1085 dated 9.5.1955 did not contain penalty for the category of offences now provided in the sub-sections 1(A), 1(AA), 1(B), 1(C) and 1 (D).
The amendment was necessitated for clarity and enlargement of penalty provisions to various categories of provisions prescribed under the Act more vigorously than earlier.

The Joint Committee of Parliament of India on the provisions of Prevention of Food Adulteration Amendment Bill 1974 opined that while persons who indulge in deliberate acts of adulteration should be punished severely; it should at the same time be ensured that innocent people should not unnecessarily harassed. Keeping in view of this object the provision of Prevention of Food Adulteration (Amendment) Act, 1976 (Act 34 of 1976) was enacted which substituted sub-section (1A) and (1B) and inserted section (1AA).

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In Government of India Gazettee Part II Sec.II dated 29.9.52 provided punishment for offences in relation to adulteration of food articles with imprisonment up to one year and fine up to R.2000/- with provision of enhancement of imprisonment of 2 years fixing the minimum at one year and fine of R.2000/- for the second offence. Further enhanced punishment of imprisonment up to four years fixing the minimum at two years and fine of R.2000/- for third and subsequent offences.

The broad features of amendments made by Act 49 of 1964 were (i) substitution of specific clause for penalty for adulterated, misbranded or sale of prohibited articles of food in clause (A) in sub-section (i); (ii) enlargement of old clause (e) relating to real hoarding of article of food seized and dealt with by inserting the new sub-section (1A) and 1(g); (iii) old clause (g) is provided as clause (f) and substituted with enlarged scope; (iv) sub-section (iii) of clause (g) of this sub-section is replaced by new sub-section (1D) prescribing higher penalty for second and subsequent offences in place of "third offence".


13. See Gazettee of India(extraordinary Part II, Sec.I dt.17.12.76)

The main changes affected by the amendment are (i) non-injurious primary food sub-standard due to natural causes beyond the control of human agency has been totally exempted from liability and such articles of food have been excluded from the definition of 'adulterated'; (ii) primary food, if it is adulterated by human agency, though non-injurious to health, the vendor is liable to penalty of imprisonment for a term which shall not be less than three months and may extend to two years and shall also be liable to a fine not less than R.500/- (iii) if the adulterated food is not injurious to health, the vendor shall be liable for imprisonment.
Thus by these amendments to the Act of 1954, the penalty provisions have been considerably enhanced prescribing the minimum sentence in order to check the growing menace. The degree of adulteration or the menace can thus be observed from the light of penalties prescribed from time to time since the date of enactment till the last amendment in the penalty provisions made in the year 1976.

If the punishment is considered to be in proportion to injuries caused by the offence it would be evident that the maximum punishment prescribed under the Indian Penal Code in the year 1860 for selling adulterated or noxious article of food has now been made the minimum punishment after 1860. A century of enforcement of law on the subject has rather increased the crime more scientifically giving rise to such a cumbersome stringent legislation.

The law, as it leaves no discretion to the court to impose lesser penalty than prescribed for each category of offences restricts the judicial discretion in passing sentence in an era where an 'offence' is accepted to be an 'abnormal social behaviour'.

Inspite of the dire provisions of penalties, the courts were reluctant in fixing liability and imposing penalty for a term which shall not be less than six months but may extend to three years and shall be liable to fine of not less than Rs.1000/- (iv) if the adulterated food is injurious to health but which does not cause, grievous hurt or death, the punishment shall vary from one year to six years with a minimum fine of Rs.2000/- (v) but if the adulterated food is injurious to health and is likely to cause death or grievous hurt, the penalty shall vary from three years to life imprisonment with a minimum fine of Rs.5000/- (vi) import, manufacture, storage, sale and distribution of adulterants have also been brought to the penalties equivalent to dealings of adulterated or misbranded food.
in cases where they have considered that the offence was committed beyond the knowledge or without the required criminal intent. A few cases are discussed below.

In **State v Anthony George**\(^14\) the High Court of Travencore and Cochin held the accused not guilty who was prosecuted for selling tea leaves mixed with tea stems (stalks of tea plant) as the same forms a part of tea plants.

In **Public Prosecutor v N. Subha Rao**\(^15\) the High Court of Andhra Pradesh inclined to impose any penalty on the respondent - accused who was prosecuted for selling gram flour mixed with a costlier substance i.e. pea powder but sold as gram flour on the ground that it was neither injurious nor injuriously affected the nature, substance or quality of gram flour. There was no profit motive by such admixture.

In **Aiadhya Prasad v State of U.P.**\(^16\) the High Court of Allahabad was reluctant to impose penalty for the prosecution of the accused selling mustard oil mixed with linseed oil and sold as pure mustard oil on the ground that it was a case of cheating or deception; the oils being edible and non-injurious. It was further held that the Prevention of Food Adulteration Act, 1954 does not provide penalty for deceit.

It is submitted that this view appears to be incorrect as the mustard oil sold was not of the nature, quality and substance and amounts to adulteration according to the definition which was not placed for consideration.

15. Supra Ch.III n.68
But contrary view was expressed in A.K. Khan V Corporation of Calcutta\textsuperscript{17} where iron nut oil mixed with linseed oil though confirmed to the standard held not of the nature, quality and substance purported to be. The Allahabad High Court in Nagrahamahapalika, Varanasi V Sisheswari Devi\textsuperscript{13} ghee found mixed with vegetable fats and oil held adulterated and the respondent accused was penalised with minimum sentence. The Madras High Court S. Moses in re\textsuperscript{19} held the admixture of pâyg fat with ghee though conducive and to deceive yet adulterated and the accused was penalised with minimum penalty. The Gouhati High Court in Baidyanath Sah V State of Assam\textsuperscript{20} reduced imprisonment to twenty days maintaining fine of Rs.1000/- as the accused was a poor shop keeper and adulteration of mustard oil with negligible variation from the prescribed standards.

With great respect it is submitted that if the object of the Act is for the benefit of the consumers to protect them from the outright frauds of the adulterators, the liberal interpretation are far reaching to achieve the objects of the Act. The express provisions in imposing the penalty limiting specified acts has given rise to complications in diverting the attention of the adulterators to deceive the consumers in all possible directions.

Penalty for First Offenders:

The penalty for the first offence of adulteration or misbranding of articles of food which are absolutely prohibited

\textsuperscript{17} 1963/2 Cr.L.J. 132
\textsuperscript{18} Supra Ch.III n.70
\textsuperscript{19} 1955 Cr.L.J. 608
\textsuperscript{20} 1980 F.A.J. 130
for manufacture, storage, distribution or sale are categorised together for the purpose of penalty.

For violations and contraventions of law which are considered lesser grave offences the courts have been empowered under special and adequate circumstances to sentence of imprisonment not less than three months and five not less than five hundred rupees. But after the amendment made in 1976 the penalty is in par with the punishment prescribed for adulteration in respect of offences of contravention except import of specified articles of food which requires a license or breach of conditions of the licence for sale of any article of food with a provision for award of lessor penalty under special and adequate circumstances.

The impugned Act in 1954 did not provide any penalty for sale of any article of food by manufacturer, distributor or dealer without a warranty of non-disclosure of name and address of persons from whom the articles were purchased by the vendor. Penalty has now been provided for such omission by the Amendment of 1964.

The further penalties prescribed under the Amendment of 1976 are:

(a) a penalty to a manufacturer in possession of 'adulterant' in the premises occupied by him even if such adulterant is not injurious to health;

(b) penalty for giving or using a false warranty in respect of injurious food;

(c) severity in penalty for import into India or manufacture for sale or store, sale or distribute any adulterated article of food or adulterant which is injurious to health over and above the penalties of seizure, confiscation etc. If the said goods are not injurious to health, to be liable for a penalty prescribed for sale of adulterated or misbranded article of food;

(d) graver penalty in case the article of food or the adulterant when consumed would likely to cause death or such bodily harm amounting to grievous hurt.

There are restrictions and prohibitions for export and import of articles of food under the Customs Act 1962. The Prevention of Food Adulteration Act, 1954 has extended also its provisions to import of adulterated articles of food. The Custom Collector is authorised to search and seize adulterated or misbranded articles of food and after enquiry, to confiscate the same besides imposing penalty of a fine upto Rs. 1000/- or five times the value of the goods which ever is greater. This penalty is over and above the penalties imposed under the Prevention of Food Adulteration Act 1954.

In view of the gravity in penalty under the Prevention of Food Adulteration Act 1954, isolated transactions of sale of adulterated articles of food have been considered and held to be 'sales' by various High Courts in India.

In *Hansrai v State*\(^23\) the Delhi High Court had held that the Act imposes liability on a person even in case of single transaction of sale of adulterated articles of food. In *Municipal Corporation of Delhi v Jethanand*\(^24\) the Delhi High Court had held that it is not necessary for penalty under the Act to show that the accused was selling articles of food as dealer regularly or irregularly, but the act of selling the adulterated article of food is itself an offence. The Punjab High Court in *Municipal Committee, Amritsar v Luchman Das*\(^25\) and the Himachal Pradesh High Court in *State v Dev Raj*\(^26\) held similar views. The Kerala High Court in *Food Inspector v G. Gopalan*\(^27\) further held that the accused need not be a dealer as such in that article.

**Mens rea requirement:**

Unlike the Indian Penal Code, 1860, the Prevention of Food Adulteration Act 1954 does not contain any words as to the state of mind of the accused to commit the crime. Though mens rea is a constituent element under the criminal jurisprudence to fix up liability for imposing penalty, the food laws are silent in that respect and provides a departure from the general principles and hence rules out the requirements of mens rea in such offences.

The Bombay High Court in *Isac Suleman v Emperor* had found the three isolated principal classes of offences where mens rea is not an essential ingredient viz. (i) acts which are not criminal in any real sense but are acts which in the public

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23. 1977 Cr.L.J. 92  
25. (1968) 70 Pun. L.R. 1063  
26. 1974 F.A.C. 281  
27. 1972 F.A.C. 9
interest prohibited under a penalty; (ii) all acts of public
nuisance; (iii) acts for which though the proceedings are crimin
in form but it is really a mode of enforcing civil rights. The

It was a prosecution under Motor Spirit Rationing order, 1941.

The prohibition under clauses (5) and (22) constitutes
not an absolute prohibition against the supply to Motor trans­
port otherwise than the methods laid down in the order. The plea
of the appellant that he had no malafide intention in delivering
the prohibited goods to a consumer was rejected. The legislature
had omitted to prescribe any particular mental condition as an
ingredient of the offence on the assumption that the offences
committed, are deemed to be intentional. The Impugned Act does
not prostatute the principle of pre-requisite mens rea for the
contraventions to attract penalty. For instance, In Sarju Prasad
V State of U.P. the Supreme Court held that the servant or
agent (appellant) is as much responsible and liable as the owner
himself; mens rea of the servant is not material. The plea of
the appellant that he was only a servant of the owner and does
not share in the business was not accepted.

28. A.I.R. 1948 Bomb. 364

In Bholanath Sahu V State (1972/1 CWR 634) the contention
the appellant accused was that he was an absentee proprietor
and had no knowledge of sale of adulterated sweet in his sho
by his servant. It was held by the Orissa High Court that me
rea is not the ingredient or offence under the Act. He was
imposed with penalty of six months imprisonment though no fi
was imposed. In State of Mysore V Udipi Cooperative Milk
Society (Supra Ch.IV n.70) the plea of the seller that he di
not know that the milk was not of the nature, substance and
quality demanded was out-rightly rejected by the Mysore High
Court on the ground that the penalty to be imposed when the
act is done, no matter how innocently. The Supreme Court of
India in P.K.Tejani V M.R.Dange (Supra Ch.III no 48) rejecte
the plea of the accused about his ignorance to the effect th
supari was a food. It was held that the Act casts an absolut
obligation regardless of scinter, bad faith and mens rea. The
Full Bench of Bombay High Court in D.L.Valji V Rama Chandra
But there was departure in considering mens rea in case of dealing with adulterants. It is for the prosecution to prove that the possession of adulterant was for the purpose of adulteration.

While the normal mens rea is ruled out on the presumption that the culpability is presumed in such offences, there is no justification to extend the same principle for manufacturing and storing of adulterated articles of food or adulterants. The very manufacturing or storing of adulterated articles of food or adulterants with all probabilities are only meant for sale and cannot be presumed to be for using otherwise. It is therefore submitted that possession of adulterated articles of food or adulterants by any person including the manufacturer and the storer may be made penal unless otherwise justified by him laying the burden on the defendant to prove that the said articles were not meant to be sold or used as an article of food. Thus to have an affect of intended legislation, the preparation and contemplation for commission of the offence should be prohibited to justify the title 'prevention of food adulteration' of the Impugned Act.

There is disjuncture of approach in fixing culpability and penalty on a person for sale of adulterated article of food.

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(Supra Ch.III n.75) rejected the defence plea that the accuse never intended to sell kesari dal (lethyrus sativas) as food or used it as food on the ground that the intention or mens rea of the accused vendor does not arise where the offender is found to have in possession for sale or he has sold. Intention to sell is not an essential ingredient.

30. In Municipal Health Officer, Khazikode V Arthala Tea Estate C (A.I.R. 1961 Ker 84) the respondent Co., who was not a manufacturer of tea was charged for storing adulterants. The High Court of Kerala did not penalise on the ground that the prosecution had not proved the intended use of adulterant though there was every likelihood of using them by the company in the tea meant for sale for human consumption. It was further held that mere storing of adulterant is not punishable.
and there are inconsistent and controversial approach of judiciary in imposing or neglecting to impose penalty for the acts of adulteration. The provisions of penalty appear to have been madly stretched in all directions with full grip to penalise any innocent person who sells adulterated articles of food under any status and circumstances. The penalties are imposed on vendors irrespective of their position in the transaction and degree of culpability indiscriminately. Out of the four stages of 'crime'—contemplation, preparation, attempt and commission, the earlier stages have not been made penal except the commission of the Act itself. The earlier stages require pre-determined mens rea.

It is submitted that there are no provisions for court to infer or presume possession of manufacturer or storer of adulterated articles of food or adulterants are only meant for sale for human consumption until and unless contrary is proved by defence. It is further submitted that the exemption clause may be extended to cases affecting articles of food beyond the control of human agency to protect the innocents from prosecution.

The penalty for importing, manufacturing, storing or selling articles of food which is injurious to health likely to cause death or grievous hurt to persons is the highest. If the article of food is injurious but not to the extent of likely to cause death or grievous hurt when consumed is next higher in degree. If the article of food is adulterated or misbranded but not injurious to health is next in grade of penalty and contraventions of any provisions of the Act or Rule is the last in degree of

31. See Food and Drugs Act of 1955 Sec.111 presumptions.
penalty. The extent of penalty thus varies with the extent of injury caused to society under the scheme of the impugned Act.

The law has prescribed the minimum punishment of imprisonment and fine to be imposed by court for commission of various offences barring the court to exercise its discretion by inflicting lesser penalty without recording adequate and special reasons. At the same time no norm has been fixed for imposing penalty though the maximums have been prescribed.

In Muralidhar Megraj Loya etc. v State of Maharashtra the accused was prosecuted for selling a mixture of Khursani and groundnut oil. He was sentenced to pay a fine of ₹250/- by the trial court. But on revision to High Court by State, the sentence was enhanced to six months rigorous imprisonment and fine of rupees one thousand. On appeal to Supreme Court, it was observed by Krishna Iyer, J as:

"Judicial punchuations in sentencing and social seriousness in punishing have combined to persuade parliament to prescribe inflexible, judge proof, sentencing minimum in the food adulteration law. This depravity punitive strategy sometimes inflicts harsher than deserved compulsory imprisonment on lighter offenders; the situation being beyond judicial discretion even if prosecution and accused consent to an ameliorative course."

The court is not left with any discretion to impose lesser penalty than rigorous imprisonment of six months and fine of rupees one thousand.

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32. 1976 F.A.J. 383

33. The Supreme Court in an earlier case Pyarali K. Tejani v M.R. Dange (Supra n.29) S.C.228) had held a similar view. While dealing with the quantum of sentence for selling scented supari (betal nut) with prohibited sweetening agent saccharin observed that the court has left with no discretion to impose a penalty lesser than the minimum prescribed under the
Penalty for adulteration and misbranding:

The minimum punishment for dealing with adulterated or misbranded articles of food is imprisonment of six months which may extend to three years with minimum fine of rupees one thousand to any amount.

In Radha Kishore V State of Uttar Pradesh the petitioner was convicted for selling adulterated 'ghee' and sentenced to pay a fine of rupees five hundred only. The appeal filed by the petitioner to sessions court was rejected. On revision to High Court, while admitting the petition issued notice of enhancement of sentence on the ground that the minimum prescribed under the Act had not been imposed.

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The sentence was enhanced by High Court to rigorous imprisonment of six months and fine of rupees one thousand was confirmed. The Supreme Court of India per majority in Bachan Singh V State of Punjab (A.I.R. 1980 S.C. 898) have determined the guidelines for fixing sentences after conviction. It overruled its earlier decision in Rajendra Prasad V State of U.P. (1979) 3 S.C.R. 646) The ratio was that the test of 'pith and substance' of the subject matter and of direct and of incidental effect of legislation is a very useful test to determine the question of legislative competence on sentence.

34. 1975 F.A.J. 534. It was further held that an exception can be made in the quantum of punishment whether regarding the imprisonment and fine or regarding both to which there are however three restrictions, namely (a) the departure can be made only if (i) the offence is in respect of an adulterated or misbranded article of food prohibited under the Act for sale (ii) if it is misbranded for special dietary use without proper labelling or the use of colouring, flavouring or preservative is not declared on the label and (iii) the import, manufacture, store or sale is only in contravention of any of the provisions of the Act or any Rule made thereunder. (b) the court making the departure has adequate and special reasons for it; and (c) such adequate and special reasons are mentioned in the judgement. The Orissa High Court in Bholanat Shhu V State (Supra n.29) sentenced the appellant to six months imprisonment and fine of rupees one thousand confirming to the trial court and setting aside the appellate courts order imposing fine of rupees one thousand only for selling adulterated sweetmeat. It was further held that the court has no discretion to award lesser sentence than the minimum prescribed. The Supreme Court in Brahmoal and another V Municipal Corporation of Delhi (FAJ 1975, 154) declined to show any
It was held that the prosecution being one for selling adulterated article of food, no leniency can be shown in view of the mandate of the law. It does not come within the scope of exception. There is also no scope for the learned trial court to give adequate and special reasons to award lesser sentence. It was further observed that:

"The mandate of the Parliament is that the punishment for all offences under the P.F.Act, 1954 shall be minimum six months imprisonment and a minimum fine of one thousand rupees, that is to say not merely a fine, but both to the extent of the limits aforementioned."

The sentence was enhanced to six months imprisonment and to fine of one thousand rupees.

The air tight provisions of the legislature coupled with the pungent attitudes of the judiciary has affected petty traders, hawkers and road side traders as the victims of food inspectors who were called upon for successive prosecution during proclamation of internal emergency in India during 1975.35

Even the Supreme Court of India in K.T.Kothule and others V State of Maharashtra36 had shown hesitation for deviating leniency for selling adulterated 'ladoo' (sweet meat) though the trial court sentenced to imprisonment till rising of the court and fine of one thousand rupees on the ground that the magistrate had no option except to award the minimum prescribed sentences.

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36. 1977 FAJ 39. The accused was convicted and sentenced to a fine of rupees five hundred only by the trial court which was enhanced by High Court on appeal by State imposing six months imprisonment and fine of one thousand rupees. The Supreme Court observed "adulteration of food is so dangerous and widespread and has so often led to large human tragedies, sudden or slow, insidious or open, that social defence
from the prescribed minimum sentence though the prosecution was against a petty trader who had kept a few litres of milk in his restaurant for preparing tea for sale which was found adulterated on analysis. There was no room left for consideration even in genuine cases.

The court also felt that they are not concerned with the nature of adulteration, and the degree of adulteration. The law does not discriminate adulterators in the matter of sentence. The punishment is the same irrespective of the degrees of variation in component parts compared with the prescribed standard.

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compels casting of absolute liability on the criminal even if the particular offence is committed with an unsuspecting man. To take risk in the name of very gullible dealers or very ignorant distributors when the consequence may spell disaster on innocent victims, few or many in legislative conduct, giving the widest hostage to fortune". It reaffirmed its earlier view in Prem Ballab and another V The State (1976 FAJ 390) It was a prosecution for selling mustard oil found containing linseed oil and prohibited colour. The Supreme Court of India held - "The P.F. Act has been enacted with the aim of eradicating that anti social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by the fact that a minimum sentence of imprisonment for six months and fine of rupees one thousand has been prescribed".

In Municipal Corporation of Delhi V Richpal (1977 FAJ 296) the accused was convicted for selling articles of food mixed with non permitted colour. He was sentenced to six months imprisonment and fine of rupees one thousand by the trial court. On appeal the Sessions Judge reduced the sentence to a fine of rupees five hundred only on the ground that the adulteration was only due to presence of non-permitted colour. On revision, the High Court of Delhi set aside the order of the appellate court being unreasoned and unjustified and restored the sentence of the trial court.

In Food Inspector Calicut Corporation V Chamu (1978 FAJ 444) the accused was convicted for selling adulterated milk and sentenced to rigorous imprisonment for one month and fine of rupees five hundred. The High Court of Kerala suo moto issued notice of enhancement of penalty and held that the learned magistrate committed illegality in awarding lesser sentence and the reason assigned by him is neither adequate nor special so as to warrant alineant view. The sentence was enhanced to the minimum prescribed.
The State of Kerala V Vasudevan Nair the respondent was prosecuted for selling adulterated milk who was acquitted by the trial court relying on an earlier decision of the Kerala High Court in Gopinath Nair V Palani holding the degree of adulteration was negligible. The Full Bench of Kerala High Court disagree with its earlier views and distinguished the decision of the Supreme Court, in Malawa Cooperative Milk Union Ltd. V Biharilal. It was held that the maxim 'De minimis non carat lex' does not apply to food adulteration offence. It was further held that the Act does not provide for exemption of marginal or boarder line variations on the ground that they are negligible is virtually to alter the standard itself fixed under the Act.

**Penalty for contraventions:**

The penalties prescribed for contraventions of any of the provisions of the Act or the Rules framed thereunder is imprisonment ranging from three months to two years and fine of not less than rupees five hundred. The minimum sentence of imprisonment ranging from three months to two years and fine of not less than rupees five hundred. The minimum sentence of imprisonment is three months.

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37. Supra Ch.III n.51
38. Supra Ch.III n.70. The accused was prosecuted for selling adulterated milk. The milk was found to be slightly varying in its component parts from the prescribed standard. He was acquitted on the ground that the degree of adulteration was negligible.
39. Supra Ch.III n.94. Here the Supreme Court was reluctant to interfere with the order of acquittal passed by the High Court. The constituent elements of milk sold by appellant though was found slightly varying with the prescribed standard with the remark that there might be errors in the analysis reports. It is respectfully submitted that the report of the Public Analyst is per se evidence under section 13(5) of the P.F. Act 1954. The court has to accept or reject such a report in total but cannot choose a via media.
spomment and fine has been prefixed by legislature and requires the court to justify lesser penalty with adequate and special reasons. 40

In Madan Gopal V State, 41 the accused was prosecuted for selling adulterated milk without obtaining a licence as required under Rule 50 of the P.F. Rules 1955. The accused was convicted both for sale of adulterated milk and for violation of the Rule.

He was sentenced to imprisonment for six months and fine of rupees one thousand on each count. On appeal, the High Court of Delhi recorded the special reason of sentence for selling adulterated milk warranting leniency for violation. The sentence for violation was reduced to a fine of rupees five hundred only.

Penalty to body corporates:

The companies, firms and other legal entities, though considered to be juristic persons are not subjected to corporeal punishment of imprisonment. The body corporate is liable for all other forms of penalty and the person responsible for the business of the body corporate is liable for corporeal punishment.

40. See Section 16 of Prevention of Food Adulteration Act 1954 (Supra) proviso to Section 16.

41. 1977 FAJ 11. Rule 50 of the Prevention of Food Adulteration Rules 1955 deals with conditions for licence and requirement of licence for dealing with articles of food enumerated thereunder. In Muralidhar Megraj loya etc. V State of Maharashtra (Supra n.32) the petitioner was prosecuted for selling a mixture of Khursani and groundnut oil. Rule 44(e) of the Prevention of Food Rules 1955 prohibits sale of mixture of two or more edible names as an edible oil. He was convicted and sentenced with imprisonment of six months and fine of one thousand rupees.
In Food Inspector, Khozikore Municipality V Calicut Cooperative Milk Supply Union Ltd. the cooperative Union was prosecuted for selling milk found to be adulterated on analysis. It was held that the cooperative society as a corporate body has separate existence apart from its officers or members. It was further held that sale by its servant is sale by the society. On conviction a fine of rupees one thousand was imposed.

Since the company cannot act itself, the personal responsible in its business held to be liable to the same penalty besides the company.

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42. (1963) 2 Cr.L.J. 45 This was based on the observation made by the Supreme Court in Sarioo Prasad V State of U.P. (Supra n.29) where the servant of the shop was found selling adulterated mustard oil. It was observed that "if the owners of a shop in which adulterated food is sold is without the proof of mens rea liable to the punishment for sale of adulterated food, we fail to appreciate why an agent or a servant of the owner is not liable to be punished for contravention of the same provisions unless he is shown to have no guilty knowledge.

In Municipal Corporation of Delhi V J.B. Bottling Company Pvt.Ltd. (1975 FAJ 463) the Full Bench of Delhi High Court held that a company does not enjoy immunity from prosecution. Though the minimum prescribed punishment of imprisonment cannot be imposed on it can be sentenced with fine alone. The company was sentenced to pay fine of rupees one thousand for selling aerated water added with unpermitted colour.

43. In Sadhu Ram V State of M.P. (A.I.R. 1967 M.P. 122) the prosecution was against the company and its partners for manufacturing adulterated edible oils for sale. The managing partner was the person who sold sample was held liable. The company was also held liable with him. The partners were sentenced with imprisonment of six months and fine of rupees one thousand each and the company was sentenced to fine of one thousand rupees only by the Madhya Pradesh High Court.

In Municipal Corporation of Delhi V Bhagwan Das (1972 FAC 177) it was held by Delhi High Court that natural persons are made vicariously liable if the offence was committed by a company because of the reasons that these persons had some nexus with the crime either due to their convenience or criminal negligence in consequence of which the offence was committed. The respondent was sentenced to imprisonment for six months and fine of rupees one thousand.
In Public Prosecutor v. K.K. Cooperative Milk Supply Society Ltd., the society was prosecuted for selling milk with added water along with its salesman. As the prosecution failed to prove the connivance or nexus of the salesman with the crime, the trial court acquitted both of them. But on appeal, it was held by the Madras High Court that the law does not require that the person incharge of the company should be found guilty before the company is held liable. The company alone was convicted and sentenced to pay a fine of rupees fifty only.

But the contrary view of Calcutta High Court was that an individual carrying on business on behalf of a company cannot be penalised without prosecuting the company as was held in Jagadish Prasad Gupta v. State of West Bengal.

A proprietorship concern was held not to be a company by Delhi High Court in Sardar Singh v. State and the name and style of the shop Bawa Masala company was held not to be a company as defined under the Act.

**Penalty for Repeaters:**

The additional penalty prescribed for repeater is cancellation of his licence prohibiting him to carry on the

44. A.I.R. 1964 Mad 301

45. (65 C.W.N. 1107). The prosecution was against proprietor of an oil mill as its product of mustard oil was found adulterated. It was held by Calcutta High Court that in absence of evidence that the accused was incharge or responsible to the business and in absence of prosecution of the company, the accused cannot be saddled with criminal liability.

46. 1975 FAJ 334. The petitioner was carrying on business under the name and style of Bawa Masala Company. Though it was described as a company, it was only a proprietorship concern. (For the interpretation of the term 'company' see Sec.17 of the P.F. Act 1954).
trade and to publish his name, residence, business, offence committed and the penalty imposed at the cost of the offender as a social bandit.

In Jagadish Prasad v State of U.P., the appellant was previously convicted for exposing articles of food in improper container in contravention to Rule 49(3) of the P.F. Rules 1955 and was subsequently convicted for selling articles of food with unpermitted dye was held to be a second offence. The licence of the accused was cancelled and the second prosecution with penalty sentencing him to imprisonment for three months and fine of rupees five hundred was published.

**Hearing on Sentence:**

The leniency shown by courts in sentencing the offenders inspite of the inflexible minimum sentence is not reasonable and not justified. It is now mandatory for the trial court to hear the accused on the question of sentence on conviction under the present criminal justice system.

The whole purport of hearing on sentence is to ascertain the reasons or circumstances for committing the crime, the status or personality of the accused to conclude for a performatory sentence.

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48. See Criminal Procedure Code, 1973 Sec.243. Acquittal or conviction: (1) x x x

(2) Where, in any case under this chapter, the magistrate find the accused guilty, but does not proceed in accordance with the provisions of Sec.325 (procedure when Magistrate cannot pass sentence sufficiently severe) or Sec.360 (order to release on probation of good conduct or after admonition), he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

Sec.248 comes under chapter XIX dealing with the procedure of trial of warrant cases. Warrant case is defined in clause (x) of Sec.3 which means a case relating to an offence punishable with death or imprisonment for life or imprisonment for
In *Lala Ram V Municipal Corporation of Delhi* the appellant was convicted for selling adulterated milk and was sentenced to imprisonment of six months and fine of one thousand rupees without hearing on sentence. The High Court of Delhi, while confirming the conviction, set aside the sentence and remanded it back for awarding proper sentence after hearing the accused.

The scheme of the *prevention of Food Adulteration Act, 1954*, it is submitted that this be diverted towards penalties more than the liabilities. It would be more profitable to be rigid and extensive in fixing liability but flexible in sentencing.

The liberal tendency of sentence by extending application of Probation to offenders of Food Adulteration aged below eighteen years by inserting Section 20AA, recently is diplomable as employment or entrustment of trade to teenagers is not uncommon in India.

**Penalty for negligence:**

As the concept of liability is well known from early times in dealing with articles of food, the impugned Act brings the specified negligence in handling, storing, dealing, packing a term exceeding two years. The penalty that can be imposed for various offences under the *Prevention of Food Adulteration Act, 1954* being more than two years is triable under the warrant procedure.

49. 1977 FAJ 483

of article of food making it unfit or injurious for human consumption and intended for sale as an offence of adulteration.

The term 'infest' means to disturb, or swarm about in a troublesome or injurious way. Filthy, putrid, rotten, decomposed, or insect infestation refers to the quality of the article and raises a presumption of its unfitness for human consumption.

Decomposition of milk to curd of fermentation of starch to alcohol when converted naturally or artificially are also food and not injurious to health and are not therefore adulterated though their component parts are altered materially.

Extraneous matters and infestation has been allowed in cases of specified articles of food as they are easily prone to such contamination inspite of reasonable care.

51. See Prevention of Food Adulteration Act, 1954. Sec. 2(ia)(b) (c) (f) and (i). They provide that if an article of food contains any other extraneous matter or if it is so processed as to effect injuriously the nature, substance or quality thereof; or packed articles of food kept in insanitary condition making it contaminated or injurious to health; or if it contains any filthy, putrid, rotten, decomposed or deceased animal or vegetable substance or is insect infested or is otherwise unfit for human consumption; if the container is composed of any deleterious or poisonous substance contaminating to its contents are 'adultered' within the meaning of the term as provided under the Act.


53. See Prevention of Food Adulteration Rules, 1955. Appendix B (Standards) - Items A.05.16, A0.5.03, A 18.05 etc. Extraneous matters and insect infestation upto thirty percent by weight in case of 'nutmeg', eight percent by weight in case of 'coriander', twenty miligrams of insect damaged grain per hundred miligram and five percent by weight of fungus damaged 'grains' are permissible.
In Dhanraj V Municipal Corporation of Delhi, the Delhi High Court set aside the conviction of the appellant who was prosecuted and convicted by trial court for selling insect infested chilli powder on the ground that unless the food has become unfit for human consumption, no penalty can be imposed.

The above view was overruled by Supreme Court in Municipal Corporation of Delhi V Kachereo Mal. Here the prosecution was for selling insect infested cashewnut. As there was no standard for cashewnut, insect infestation is deemed to be adulterated on that score.

**English Law:**

The penalty prescribed for sale of articles of food by addition of any substance or abstraction of any of its constituent parts rendering it injurious to health; possession, sale, offer, expose or advertise for sale of any article of food which has been rendered injurious to health; sale of any article of food which is not of the nature, substance or quality demanded or to the prejudice of the purchaser; or unfit for human consumption, is fine not exceeding one hundred pounds or imprisonment for a term not exceeding three months or both. In case of continuing offence, a further penalty of fine not exceeding five pounds for each day during which the offence continues after conviction has been prescribed. The same penalty is prescribed for manufacturer, producer or vendor of improper or false labelled packages of food for sale.

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54. Supra Ch.III n.33
55. Supra Ch.II n.40. In Municipal Corporation of Delhi V Om Prakash and another (1975 FAC 34) the Supreme Court of India disapproved the findings of the High Court of Delhi that in absence of living insects the article is only insect damaged but not insect infested was also disapproved.
56. Sale of Food Act 1955, Sections 1, 2, 6, 8, 9 and 10.
A provision for the court to presume in all cases under the Food and Drugs Act, 1955 that possession, manufacture, or store of adulterated articles of food or articles commonly used or capable of being used in preparation of adulterated article of food (adulterant in Indian law) was only for sale for human consumption until the contrary is proved by the defendant. 57

Obstruction in taking sample by specific conduct and refusal to sell or allow to take sample of an article of food by any authorised officer is punishable subject to a maximum fine of five pounds for the first offence and fine upto twenty pounds or imprisonment upto one month in case of a second offence if committed within the year. 58

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But Section 5 directs true declaration of the ingredients or substances used, the date and manner of production importation or use of articles of food intended for sale for human consumption and due observance of other laws in force for such importation or use. Contravention of the provisions are punishable with the maximum imprisonment of three months or maximum fine of fifty pounds or both on summary conviction but imprisonment upto two years or fine upto five hundred pounds or both on indictment. The offences relating to slaughter of animals are dealt with under Sec.12. Contravention of provisions relating to ice cream are dealt with in Sec.22 and 23 punishable to the maximum extent of fine upto twentyfive pounds. Sale of pure milk and creams is expected by the provisions of Sections 31,33, 35 and 36 and 46 to 48 and non observance of the provisions are offences punishable under section 106.

57. Ibid See Sec.111.

58. Ibid Sec.105.

Obstruction has been explained under two circumstances, firstly when sale of sample is refused and secondly when taking of sample is not allowed. But no person is required to seal sample from an unopened container duly labelled except in the same form. Refusal to open the container and sell sample is not penal. It is further provided that if a person fails to assist or gives false information knowingly to any person discharging authorised duties is liable to fine upto five pounds but no person is required to give any incriminating information.
Thus while the provisions of the Food and Drugs Act, 1955 is wider in scope for fixing criminal liability, the Prevention of Food Adulteration Act, 1954 provides for excessive penalty. The menace cannot be checked in either way without a combination of the two. The principles of fixing criminal liability, penalty and sentencing should be so balanced towards treatment to deter traders from unsocial contemplations.

Undoubtedly the adulteration of food is a serious matter and may endanger the lives of innocent consumers. The offences call for deterrent punishment as was observed by Allahabad High Court. 59

An analysis of the result shows that the percentage of convictions are more than the acquittals. But the acquittals are more on technical grounds. No forfeiture case have been noticed. Sentences of imprisonment and fine have been imposed in many case. Inspite of the mandatory provisions of penalty, a sentence of fine or imprisonment alone has been awarded under special circumstances where there are adequate reasons. Though application of probation has been limited in terms of Section 20AA of the P.F.Act, 1954, in suitable cases, it has been extended to persons even not coming within the limitations.

59. See Osman Ali Khan V State A.I.R. 1965 All 39
The Delhi High Court in Tiloram V State (A.I.R. 1967 Delhi 71) observed that offences relating to food adulteration have far reaching consequences on the entire community. The law relating to prevention of food adulteration is being defied with impunity and this evil has assumed an alarming magnitude. The health of the entire nation including children women and old and infirm persons is exposed to grave danger and it is a matter of vital importance which would engage the attention of all those who are concerned with the enforcement of this law.
The following case study from the reported cases I.R., Cr.L.J., F.A.J., C.L.T. during 1970-80 would throw light on the type of penalty imposed by courts on convictions.

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<th>Analysis of cases</th>
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<td><strong>No. of cases examined:</strong></td>
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3. **Convictions**
   - (a) Fine and imprisonment: 187 (36.55%)
   - (b) Fine or imprisonment: 70 (14.70%)
   - (c) Forefeiture: 0
   - (d) Benefit of probation: 24 (5.06%)

4. **Acquittals**
   - (a) Lack of evidence: 66 (13.36%)
   - (b) Technical error of
     - (i) Food Inspector: 65 (13.65%)
     - (ii) Analyst or Director: 26 (2.73%)
     - (iii) Local(Health) Authority: 38 (7.99%)

The aforesaid analysis indicate acquittals more on technical grounds. The prosecutors generally lay hands only on retailers and petty traders. Survival in the society at present appears to depend to a very large extent upon the rigid and effective enforcement both in letter and spirit of the provisions of the Adulteration Act. In the democratic society with the competing interest of the businessmen and the consumers, each measuring the strength of the other, and sound produced by the vibration can be heard not only in the public platform and legislature but also in Court. The gravity of the offence is much more high than any other offence prescribed in the Penal
Code. The offence effect the innocent consumers at large and requires to be dealt at par with the principle propounded by Baccaria to the extent that "the pain shall be proportionate to gravity of the offence sufficiently." The legislature alone may not be able to effectively tackle the menace without an efficient and incorruptible machinery of inspection and analysis of articles of food and a conscious public opinion.

Since the modern theory of punishment has diversified from 'offence' to 'offender', large discretion shall be vested with the courts to award appropriate sentences within the range. Though Section 21 of the Prevention of Food Adulteration Act, 1954 provides for enhanced punishment.

All the theories of punishments propounded by the criminalogists from the earliest time till today are nothing but retributive, deterrent, preventive and reformative, though more emphasis is laid on the later ones than former ones. The classical theory of punishment based on responsibility is no longer the object. Since true retribution can be only through true repentance for a punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime which is no consideration under the Social Defence pattern.

60. See Baccaria on Crimes and Punishments - The Library of Liberal Arts Publication 1963 Edn. pages 62-63

61. See Prevention of Food Adulteration Act, 1954: Section 21: Notwithstanding anything contained in section 29 of the Code of Criminal Procedure 1973(Act 2 of 1974) it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the First Class to pass any sentence authorised by this Act, except a sentence of imprisonment for life or for a term exceeding six years in excess of his powers under the said section.

If we take the manufacturers as the root, the distributors as trunk and branches, the vendor as the fruits, liability is imputed from bottom to top uniformly as the offence is committed with the conspiracy of all when put together.

The sentences prescribed under the Act has no effect as the offence is concerned and confined to businessmen for whom payment of fine is not painful in proportion to the profit they make. Besides detention having lost its sanctity and pain after the proclamation of Emergency (1975 to 1977) has little effect.

**Compensation to victims:**

There is no provision to compensate the victim who suffer bodily pain even up to death. Adequate provisions are therefore required for compensation to every possible consumer irrespective of the threatened or the actual injury suffered by them. The punishment for such offences shall include invariably social censure, forfeiture, fine and if necessary imprisonment which should be indeterminate. Prevention being always better than cure, provisions to prevent can be brought by including the accessories and making all the stages of the offence punishable.

Since the offence is confined to a particular class in the society, individualisation and classification of prisoners is highly essential to preserve self respect as to reform the offenders immediately after release. Sentence of imprisonment may be invariably indeterminate to facilitate individualisation so as not to harass the petty traders or violaters of licences.

It is submitted that due to harass nature of minimum punishment, the offender starts his attempt right from the beginning not to be prosecuted even by adopting unfair means.
There is no provision to check the integrity of the food inspection. The numbers are inadequate throughout.

Victimology being the common term attracted the criminologists urging payment of compensation to the victims. 63 This has been accepted by enactment of Section 357 in Cr.P.C. 1973. As there is no adequate provision under the Prevention of Food Adulteration Act, 1954 to supervise and analyse the articles of food in the manufacturing concerns, it is in the terms of Southernland we see that "many crimes are 'lost' between arrest and prosecution. 64 Law being the great standing policy of civil society and being the perpetual will of the society to give everyman his due 65 should not be allowed to be administered loosely.

The liability of juvenile offenders are not separately dealt under the Act as mens rea is no consideration. They are of recent origin and aims at social legislation.

The criminal intent of the offender has been completely ignored for the welfare of the society though they are mere liberally termed as 'violations' than 'crimes'.

The act having been enacted with a view to eradicate the anti-social evils and to ensure purity in the articles of food, innocence, ignorance, infancy etc. shall have no consideration. Further, the Act being a piece of consumer legislation, safeguarding the health of its subjects is the foremost duty of

64. Sutherland & Cressy - Principles of Criminology, 6th Edn.
the State in making it stringent not to allow any culprit to escape on technical grounds by inserting a clause in the penalty provisions.

**Juvenile Offenders:**

There is a clear delimitation of this type of offences from traditional and grave type of crimes and administration of such statutory provisions being essentially more a breach of administration, requires special administration in case of juveniles.

The juvenile offender who might be innocent or ignorant of the violations due to his tender age, is exposed to the ordinary process of criminal court. His regard and fear to law and courts are likely to be impaired and at the end of trial, even if he is acquitted or released on probation, will turn him carefree in the society. He is likely to develop hatred towards his parent or employer who has engaged him in such business. It is therefore desirable to try juvenile offenders of such types in special courts where the ordinary process of criminal law will have no applicability. The development of hatred towards others in tender age is not likely to change with normal treatment after conviction.

The law does not restrict employment or engagement of children in transactions violating the provisions of economic offences below the age of 12 in pari with Section 82 and 83 of the Indian Penal Code, 1860. Fixing liability for contraventions and exempting liability for offences appear to be incompatible to the morales of law and as such requires compatibility.
Penalty for not reporting offences and refusing to assist the food inspector in search, seizure and sampling may be provided for balancing and checking the arbitrary actions of the authorised officers.

The provisions of **Fruit Products Order 1955** framed under the **Essential Commodities Act** should be repealed and inserted in the P.F. Rules to avoid anomaly and double jeopardy.

Provisions of detention of offenders in urgent cases akin to **Maintenance of Internal Security Act 1971** under the Act can effectively react as a threatening to offenders in discharging them from indulging with adulteration offences.

66. In *Municipal Corporation of Delhi V Shiv Shankar* (Supra Ch.I n.42) the respondent had a licence under the Fruit Products Order 1955 for preparing and selling fruit juice. The said juice, on analysis, was found to be adulterated. It was held by the Supreme Court that the Fruit Products Order is supplementary to P.F. Act and Rules is an offence inspite of the peculiarity of Fruit Products Order.

For the bar of double jeopardy, see Cr.P.C. 1973 Sec.300.

67. See **Maintenance of Internal Security Act, 1971. Sec.3(1)(a) (iii)** provides detention of offenders for activities prejudicial to the maintenance of supplies and services to the community.

In *Bankatlal V State of Rajasthan* (1975 FAJ 1) the Supreme Court held that the detention of the petitioner for indulging in sale of adulterated chilly powder, anchoor and turmeric in a large scale is justified under MISA even without communicating the prosecutions and their result under the P.F. Act to the deteneue.