CHAPTER VI

LIABILITY IN FOOD ADULTERATION ACT

After giving the various provisions and agencies for administration and implementation of the provisions under the Food Adulteration Act, it is contemplated to explain the concept of liability, its growth, development and the present position of criminal liability as provided under the Prevention of Food Adulteration Act, 1954 in this chapter. The menace of adulteration and mis-branding is aimed for prevention under the statute. The liability concept in all its dimensions together with its drawbacks and suggestions for improvement have been dealt with in this chapter.

Concept of liability:

He who does a wrong is said to be liable or responsible for it. Liability or responsibility is the bond of necessity that exists between the wrong doer and the remedy of the wrong. Where the remedy is a civil one, the party wronged has a right to compensation allowed by law, whereas in case of a crime the remedy is under a duty to pay or suffer such penalty as the law prescribes. Liability is thus either civil or criminal and their respective consequences are either remedial or penal. All criminal liability is penal; civil liability, on the other hand, is sometimes penal and sometimes remedial. Non-fulfilment of duty created by law gives rise to remedial liability.
Penal liability arises in case of acts of commission or omission prohibited by law on fulfilment of the conditions laid down in the maxim "actus non facit reum nisi mens sit rea"; the act alone does not amount to guilt, it must be accompanied by a guilty mind.1

While looking to the history when offences were unknown, any non-palatable act to an individual was considered to be a wrong. In order to preserve safety and security of persons and their properties, the term 'crime' from 'crimen' gradually developed as a separate wrong. The liability and administration of justice in early India was available in the Code of Manu (880 B.C) was based on religion wherein 'cheating' was used in a large sense comprising all cases of fraud of deceit whether practised in relation to property of otherwise and was as 'criminal breach of contract'.2 A man's liability consists in those things which he must do or suffer, because he has already failed in doing what he ought. It is the ultimatum of the law and has its source in the supreme will of the State.

Civil liability is the enforcement of the right of the plaintiff against the defendant in civil proceedings. Criminal liability is the liability to the criminal proceedings whose direct purpose is the punishment of the wrong doer. Criminal liability is always penal whereas civil liability is mostly remedial

2. See Gour, Sir Hari Singh—The Penal Law in India (1972) 9th Edition Vol.1 pp.9-11
Growth and development of liability for adulteration:

'Adulterate' means to debase, falsify, by mixing with something inferior or spurious thus amounting 'cheat' or 'decei.'

Under common law, persons whose active conduct appeared as the visible cause of the harm was only held responsible for the crime.

Frauds of a personal character whereby a man was induced by deceit or lies to part with his ownership of money or of other property, the common law provided no criminal punishment. Where however, the dishonest activity was of a sort which aimed at defrauding such members of the public as a whole who might come within its reach, then because of its generally injurious character, it was treated by the common law as a crime (although only in the degree of misdemeanour) in any instance in which any particular member of the public suffered by it. The law begins by affording protection against invasion of interest in bodily security. The liability was considered only in cases of either wrongful intention or culpable negligence. The liability for negligence was gradually considered to be the conduct, even without and an element of 'fault', where, duty to take care was the responsibility under common law. The duties were to abstain from wilful injury, to respect the property of others and to use due diligence to avoid causing harm to others. Sir Pollock has aptly remarked on liability through negligence vis-à-vis malice as –

"harm done without excuse cannot be made more wrongful than it is by the addition of bad faith or personal illwill, nor made lawful by its absence". The complicity of liability for selling unwholesome food was treated either as a civil or a criminal wrong. In Donoghue v Stevenson the plaintiff suffered by drink containing remainings of snail in an opaque coloured bottle manufactured by defendant. The defendant was held liable to pay damages for negligence in duty of care.

Fraud in business is of recent origin rapidly developing in all directions to achieve illegal gains. The laws for preventing sale of noxious and adulterated food came to statute books in the latter part of nineteenth century.

**Contractual liability for adulteration:**

The liability for sale of adulterated articles of food arises by contract. There can be no liability in absence of a fraudulent and intention for sale of adulterated articles of food under a contract. Thus hypothetically there can be no liability in absence of a sale. Sir Pollock rightly observed - "there is no law of contract in the modern lawyer's sense, only a list of certain kinds of agreements which may be enforced. Neither is there any law of delicts, but only a list of certain kinds of injury which have certain penalties assigned to them".

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7. In R v Dikon (1804/3 N&S 11) The defendant was a baker knowingly selling bread into which alum was added. He was held to have committed an indictable misdemeanour.
8. 1932 A.C. 562
9. The Indian Penal Code, 1860 (India); The Sale of Food and Drugs Act, 1875 (England); Sale of Food and Drugs Act, 1899 (England); Oleo Margarine Act 1921 (USA); The Food and Drugs Act, 1936 (US.
10. Supra n.6 p.16
Remedies for a contractual deceit was inadequate to check the menace. The victims had no effective and proper recours against the adulterator for obvious reasons. The crown had no obligation to arrange for reliefs unless sought for.

The views of the American courts were that a vendor may be held guilty of deceit by reason of an untrue representation in respect of his own business or property, the truth of which representation the vendor is bound and must be presumed to know, whereas the views of English Courts were that even a grossest carelessness will not make a man liable for a false statement without a specific finding of the fact that he knew the statement to be false or was recklessly ignorant, whether it was true or false.

In order to check the menace and to overcome the controversial approach of the term 'deceit' the problem was dealt separately independent of contract without counting for damages to the victim in due course of time by separate enactments.

**Liability for adulteration of food as a crime:**

While dealing with crimes, Lord Brill has classified them as 'male in se' and 'mala prohibita'. According to Sir Black Stone, every person is bound in conscience not to do an act, which is 'malum in se' and the doing of every such act is a crime whether it is so declared or not. As the Public health may be imperilled by use of unwholesome provisions, it is an indictable misdemeanour at common law knowingly to give to any person unwholesome food which is not fit for man to eat, or to mix noxious

11. See *Lehigh Zinc And Iron Co. V Baniford* (1897) 150 US pp.665-
12. See *Angus V Clifford* (1891/2 ch. pp.449)
ingredients with food intended for the use of man; and from the
the strict legal point of view it is immaterial whether the offenc
if committed out of malice or from a desire to gain.14

In view of the hindrances in resisting adulteration of
food in society, the menace increased fearlessly endangering
health and safety of people necessitating the State, to undertake
the responsibility of preventing such acts by treating them as
offences, prescribing punishment to eradicate and prevent sale
of adulterated articles of food and drink etc. It is no offence
if any person uses for himself any food after adulterating it or
mixing it with other stuffs. In case of free distribution of
noxious food or drink the offence is dealt separately like other
offences depending on the result likely to cause or after actu-
ally it is caused.15

The intention behind adulterating articles of food deve-
loped for personal gain in terms of money and are therefore
necessitated to be dealt with separately and specifically. Adult-
eration of food and their sale by defrauding the consumer is to
deceit the society at large and is an economic offence. As it
arises out of a contract between the adulterator and the consumer
is peculiar in nature, changed in form, from "wrong" to "crime".
It being an anti-social act affecting society at large more
dangerously than the other crimes recognised hitherto under
penal laws, has been treated as a heneous offence for all purpose.

8th Edn. p.35.

15. See Indian Penal Code,1860. Sec.319 - Hurt: whoever causes
bodily pain, disease or infirmity to any person is said to
cause hurt. Sec.320 - Grievous hurt - The following kinds of
hurt only are designated as "grievous" x x x Eighthly -
any hurt which endangers life or which causes the sufferer
to be during the space of twenty days in severe bodily pain,
or unable to follow his ordinary pursuits.
The untomate measures prescribed by law also determines the nature of liability under the Act. The liability of an adulterator has been fixed in terms of recognised modes of punishments (compensation, forfeiture, imprisonment, fine and social bandit and hence is now a 'crime'.

Even considering the laws of nature, articles of food are derived from natural resources alone and anything that is done unnatural was accepted as 'crimen' under the ancient laws in case it injured others. According to Sir Maine, every offence vitally touching security of interest of subjects of a state was punished and mens rea is a secondary consideration in such cases.

Liability under the Indian Penal Code, 1860:

The first systematic attempt in India was made in the year 1860 to safeguard public health by making provisions in chapter XV of the Indian Penal Code of 1860, prescribing penalty for acts which affect the health of the community. The Code has distinguished such acts into four categories, viz. (i) spreading


The nature of liability of the offence of adulteration for selling adulterated tea through servant was considered in Peraks Gunstone and Tea Ltd. V Ward (1902/2 K.3.1) under the Food and Drugs Act, it was observed by Channel Justice that the general principles of criminal law if a master is made liable for a criminal offence it is essential that there should be something in the nature of mens rea and, therefore master (cannot) be liable for an offence committed by his servant. But there are exceptions to this rule in case of quasi criminal offences, as they may termed that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty such as imprisonment, at any rate in default of a fine; and the reason for this is that the legislature has thought it absolutely forbids it to be done; and if it is done the offender is criminally liable to a penalty whether the master who, it is his servant, responsible and liable. (It shows the non-consideration of the ingredient...
of infection (Sections 269 to 271); (ii) adulteration of food, drink and drugs (Section 272 to 276); (iii) fouling of water (Section 277); and (iv) making atmosphere noxious to health (Section 278). Thus the act of adulteration of food, drink and drugs were made an offence under the Act.\(^{17}\)

These provisions are dealt in the Code in the forms of public nuisance being injurious to consumers at large and detrimental to the public health.

The provisions under the Penal Code were made as the duty of the State to preserve the health of its people by warding off diseases aiming at the purity of food, drink and atmosphere. The liability is limited to sale or offer of sale of noxious food only\(^{19}\) but not for adulteration\(^{20}\) as the menace was not so rampant.

**Noxious: meaning:**

The term 'noxious' was explained in *R v White and Ward* as the term not only means hurtful and offensive to the smell but it would appear also to include a case if it renders the enjoyment of life and property uncomfortable.

A mere trade of sale was held not an offence under the Penal Code in *Emperor v Saligram*\(^{22}\) sale of whole grain pitir mixed with pig's fat. It was held by Allahabad High Court that such admixture had not turned the ghee noxious in order to attract the criminal liability as provided in Sec.272 of the Indian Penal Code (See supra Ch.II n.26)

17. Supra Ch.II n.26
18. Supra Ch.II n.27
19. In *Ranjit Daval v King Emperor* (A.I.R. 1924 All 214) the prosecution was for sale of ghee mixed with pig's fat. It was held by Allahabad High Court that such admixture had not turned the ghee noxious in order to attract the criminal liability as provided in Sec.272 of the Indian Penal Code (See supra Ch.II n.26)
20. In *Abdul Rehrman in re* (Supra Ch.V n.2). It was held by Patna High Court that the appellant is not criminally liable for selling milk with added water though it can be said to be adulterated being not injurious to health.
21. See 189 E.R. 338
22. See Cr.L.J. 208
trade, a portion of which was found to be in a state unfit for human consumption was held not an offence. Thus the provisions prohibit sale, or offer or exposure for sale of noxious articles as 'food' or 'drink' and not mere sale or offer or exposure for sale of noxious articles.

**Food: Definition:**

The term 'food' has not been defined in the Indian Penal Code 1860 and its scope is very limited. Only in case it is found that the article of food was 'intentionally' rendered or has become noxious (injurious) or unfit for human consumption the person can be subjected to penal action.²³

**England:**

In England, sale of noxious adulterated article of food may be classified either as a public nuisance or as a common law cheat. The common law remedy by indictment is not affected by the provisions of Sale of Food and Drugs Act, 1955 and no liability accrues to a person unless it is shown that the food was 'intended' to be sold by him.²⁴

The criminal liability for intentional selling of articles of food unfit for human consumption is recognised under

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²³. See *Suleman Shamji V Emperor* (Supra Ch.V n.3). In the case the appellant was spreading used tea mixed with cow dung pills etc. on his terrace. He was held not criminally liable by Bombay High Court as there was no evidence that the said tea was intended for sale. It was further held that in order to convict a person, it is essential to show that an article of food or drink has been adulterated, and that it was intended to sell such article or that it was known that it would be likely to be sold, as food or drink.

²⁴. See *Food and Drugs Act, 1955* (4 & 5 Eliiz. 2.C.16) Sec.8 to 12. In *R V Dennis* (1394/2 O.0. 453) on an indictment under the Public Health Act, (Lond) 1391, it was proved that the respondent was a wholesale fruit dealer and received for sale a large consignment of foreign nuts, a major portion of which was proved to be bad. He, without examining their condition sold a quantity of them to retail dealers, who were however, warned by him to examine the nuts and destroy such (if any) as were bad before offering them for sale to the public. It was held that he could not be convicted since it was not shown that he intended to sell the bad nuts for
the common law irrespective of the seller's malice or desire for gain which extends up to manslaughter in case the consumer dies by consumption of such food. 25

U.S.A.:

The responsibility of the consumer believed in early times turned to be the liability of the seller for transactions of adulterated articles of food. 26 The first systematic study to group the offence of adulteration of food was suggested by Southerland as 'white-collar' crimes 27 and we see these principles of criminal liability in the Federal Food, Drugs and Cosmetic Act, 1938. 28

Liability under the Prevention of Food Adulteration Act, 1954:

In view of the inadequate provisions to check and eradicate the evil, special statutes were enacted by different states of India 29 till the Prevention of Food Adulteration Act

25. See Halbury's Laws of England (1977) 4th Edn. Vol.18 para 1023 pp.518-519. If any person knowingly gives unwholesome food unfit for man to eat or mixes noxious ingredients with food intended for the use of man commits an indictable offence of common law. It is immaterial whether the offence is committed out of malice or from a desire of gain. To sell or expose for sale, or have possession of with intent to sell diseased or unwholesome provisions is a common law nuisance, irrespective of the statutory penalties created by modern legislation, and if a person who eats diseased meat or unwholesome food there by contracts disease of which he dies, the seller may be indicted for manslaughter.

26. See Walter C. Reckless - The Crime Problem, 1971 Edn. Indian Reprint, p.345. Trade and business developed 'shart practi ces' that forced the buyer to be 'alert' to be assured full value for the price he paid.


(Act 37 of 1954) was enacted to bring uniformity of the law for the whole of India.

The provisions as to drugs and foods are dealt under two separate statues, viz. Drugs and Cosmetic Act, 1940 (Act 23 of 1940) and the Prevention of Food Adulteration Act, 1954 (Act 37 of 1954).  

The provisions of the Prevention of Food Adulteration Act, 1954 are directed for the purpose of securing purity of food and to inform purchasers of what they are buying. The legislators were satisfied to fit in the provisions to prevent the menace as was the problem then though not to the fullest extent.  

Liability for 'import' of adulterated or misbranded articles of food:

The earlier state laws which were in force in India prior to the Prevention of Food Adulteration Act 1954 had no provisions prohibiting importation into India any adulterated or


31. See Parliamentary debates: Rajya Sabha, Vol.VII No.8 Dt. 1.9.1954 p.1035. The object of the Prevention of Food Adulteration Act is to prevent adulteration and misbranding of foods as defined therein. The provisions of the Act are directed for the purpose of securing purity of food and to inform purchasers of what they are buying and they must be construed to effect such purpose. The object of the Act appears to be to provide for adequate punishment of food adulterators and to make the definition of the offence so comprehensive as to make it impossible for them to escape on technical grounds. No piece of legislation can be perfect or be so all-embracing as to provide for all cases of infringement but all that could be done appears to have been done so far as this Act is concerned.
misbranded articles of food. The insertion of the provisions of the Prevention of Food Adulteration Act 1954 are based on the principles of English law though not so extensively.

Section 5 of the Prevention of Food Adulteration Act, 1954 prohibits the importation of adulterated and misbranded food. It also restricts the importation of an article of food except on obtaining a licence and under the conditions prescribed thereunder. It also prohibits importation of articles of food in contravention of any of the provisions of the Act or the Rules framed thereunder.

Section 6 of the Prevention of Food Adulteration Act, 1954 extends application of law relating to sea customs and vessels powers with customs officers for prosecution over and above the powers vested on them under the Sea Customs Act, 1873.


33. See Bell's Sale of Food and Drugs, 13th Edn. p.512. It is an offence to import into England for sale found to be unfit for human consumption of any article of food in the manufacture or preparation of which any such article as aforesaid has been used and the same has been saved under the Food and Drugs Act, 1955. See also Sec.5 and 101 of the Food and Drugs Act, 1955. It bars importation of articles of food which are unfit for (a) human consumption (b) animal consumption and (c) other purposes thus covering all types of cases.

34. See Prevention of Food Adulteration Act, 1954 Sec.5, prohibition of import of certain articles of food - no person shall import into India (i) any adulterated food; (ii) any misbranded food; (iii) any article of food for the import of which a licence is prescribed except in accordance with the conditions of the licence; and (iv) any article of food in contravention of any other provision of this Act or any Rule made thereunder.

35. The Sea Customs Act, 1873 is repealed and replaced by Sea Customs Act, 1962 (Act 52 of 1962). See Sec.111. Confiscation of improperly imported goods etc. The following goods brought from a place outside India shall be liable for confiscation: x x x (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary
customs collectors are empowered to confiscate improperly imported goods and adulterated articles of food as provided in Section 111 and launch prosecution under Section 112 of the said Act. He can also analyse the article of food and launch prosecution in case they are found adulterated or misbranded.

**English Law:**

Section 5 of Food and Drugs Act indirectly bars importation of adulterated articles of food. The provisions indirectly prohibits importing articles of food which are unfit for (i) human consumption (ii) animal consumption and (iii) otherwise unfit. The ambit and scope of the provisions under English law is much wider when compared with Section 5 of the P.F. Act, 1954.

**Liability of manufacturer, stockist, distributor, dealer and vendor for selling adulterated, misbranded or prohibited articles of food:**

Section 7 of the Prevention of Food Adulteration Act, 1954 prohibits manufacture for sale, store, sale or distribution to any prohibition imposed by or under this Act or any other law for the time being in force.

- 36. It imposes duties on every person carrying on business in articles of food including production, importation or use or substances employed for such purpose to intimate ingredients, manner of its preparation, packing etc. by labelling to disclose the true nature to his consumer.

- 37. Prevention of Food Adulteration Act, 1954. Sec. 7. Prohibits manufacture, sale etc. of certain articles of food - No person shall himself or by any person on his behalf manufac-
of any adulterated or misbranded articles of food or an adulterant or of any article of food in contravention of the condition of the licence. It further prohibits selling, distributing, storing or manufacturing of any article of food prohibited by Food (Health) Authority in the interest of public health. In general it also prohibits manufacture, store, sale or distribution of food articles under any other provisions of the Act or the Rules framed thereunder.

An explanation to the section envisages to presume that if any person stores any article of food for which a licence is required, or an article of food the sale of which is prohibited by the Food (Health) Authority, or an article of food in contravention of other provisions of the Act or any misbranded food for sale only.

The provisions of Section 7 of the Food Adulteration Act has been amended twice. Originally in clause (iv) the prohibition was with respect to sale of any article of food "which was likely to spread any infectious diseases" was substituted prohibiting sale of any food "which has been made in the interest of public health" circumscribing the scope of extending to

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

Explanation: For the purpose of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii), or clause (iv) or clause (v) if he stores such food for the manufacture therefrom any article of food for sale.
prohibit manufacture, store, sale or distribution of any article of food by the Food (Health) Authority in the interest of public health in general without restricting such declaration apprehending of break or spread of infectious diseases only by the first amendment in 1964. 38

Secondly under the amendments made in 197639 the word 'or' originally appearing in clause (iv) at the end was deleted so as to read both the clauses (iv) and (v) together with the new clause (vi) 'any adulterant' inserted.

The explanation appended to the section was also inserted by the latter amendment.

By the amendments, the liability is extended, with regards to adulterants equally with adulteration. The insertion of the explanation has been further extended to clauses (iii), (iv) and (v) to the effect that if any person who stores any article of food for which licence is required or an article of food the sale of which is prohibited or dealing of an article of food in contravention of any other provisions of the Act or Rules made thereunder, storage of adulterated or misbranded articles of food shall be deemed to have been made for sale or for the manufacture of an article therefrom for sale.

Adulterated: meaning and scope:

The literal meaning of the term adulterated is falsifying by mixing with lesser ingredients. 40 Under law, it means

38. See Prevention of Food Adulteration (Amendment) Act 1964 (Act 49 of 1964)
to corrupt, debase or make impure by the addition of a foreign or inferior substance, to prepare for sale by replacing the more valuable with the less valuable or mix some foreign substance.41

The Prevention of Food Adulteration Act42 gives an exhaustive meaning to the term 'adulterated' for the purpose of the Act. It categorises firstly, where the constituent element make the food abnoxious from human health or the existence of the particular composition of it which makes the food adulterated, and secondly where the the adulteration is constituted by the fact that the prescribed standard has not been observed in selling what purports to be a food of that standard or quality. It covers all possible forms of deceit aiming to maintain the purity of the article so that it may pass to the purchaser exactly in the same form which it purports to be.

As the legislature has defined the meaning of the term 'adulterated' it has expressed most authoritatively its intent and its definitions and constructions are binding upon the courts.43

**Misbranding: meaning:**

The literal meaning of the term 'misbranded' is false representation in general. Any imitation, substitution, false representation as to be the product of any place or country; resemblance to deceit; falsely naming or labelling, coloured, flavoured, coated, powered or polished to conceal the damage

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42. Supra Ch.III n.61
or nature; incorrect or illegible labelling of articles of food
are 'misbranded' under the Prevention of Food Adulteration Act,
1954.44

Person: meaning and scope:

The opening words of section 7 of the Prevention of
Food Adulteration Act, 1954 45 indicated "no person" which is
calling in the sense that if fixed responsibility under the
impugned Act on every person irrespective of whether the act is
done by such person himself or through others signifying both
strict liability and vicarious liability.

The term 'person' has not been defined in the Preve­
tion of Food Adulteration Act, 1954. The literal meaning of the
term 'person' refers to a living soul or self-conscious being.46
'Person' means any human being, corporation, or body politic
having legal rights and duties.47 The 'person' as defined in the
Indian Penal Code, 1860 and Carriers Act, 1865, is an individual
and includes any company or association or body of individuals
whether incorporated or not.48

44. Supra Ch.III n.103. In Mathura Das V State (1975) 2 FAC 193
the Delhi High Court held sale of skimmed milk as cows'
milk as misbranded. Similarly in Municipal Corporation of
Delhi V Thou Ram (Supra Ch.III n.109) the accused declared
that barfi(sweets) offered for sale was prepared from gram
powder sugar and cream, but it was found that only a small
quantity of milk fat had been added in place of cream. It
was held by division Bench of Delhi High Court to be a
colourable variation to deceive the purchasers and hence
misbranded.

45. Supra n.26

46. See Chambers 20th Century Dictionary, Edited by Macdonald,

47. See Funk and Wagnallas New Standard Dictionary of the English

48. See The Indian Penal Code,1860 Sec.11. Carriers Act,1865
Sec.2. Under the Gift Tax Act 1953 in Sec.2(xviii) a 'person'
includes a Hindu Undivided family or a company or an associa­
tion or a body of individuals or persons whether incorporated 
or not. Under the Income Tax Act,1961 in Sec.2(31) 'person'
The interpretation of the term 'person' came up for consideration before the Madras High Court in Public Prosecutor V K.Kayavaram Cooperative Milk Supply Society. The respondent society was prosecuted for selling milk found to be adulterated on analysis. It was held that in absence of a meaning of the term in the statute either original or artificial, the meaning of the term as provided in the General Clauses Act has to be made applicable and the respondent society was thus held liable as a 'person' under the Act for selling adulterated milk.

The word 'person' has a wide scope to attract all types of persons, individuals or juristic persons for the purpose of extending criminal liability under the impugned Act. Anybody capable of acquiring the right of human being or of a corporation or other legal or fictitious person is 'a person' as interpreted under the Prevention of Food Adulteration Act, 1954.

An extreme circumstance of prosecuting a stranger was found in Food Inspector of Puri Municipality V Ram Gopal Agrawal.

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is specified which includes an individual, an Hindu undivide family, a Company, a Firm, an Association of persons, or a body of individuals, whether incorporated or not, a legal authority and every artificial judicial person. Under the General Clauses Act, 1897 section 3(42) 'person' include an Company, or association or body of individuals, whether incorporated or not.

49. Supra Ch.V n.44. In Public Prosecutor V Nellure Subramanyam (AIR 1960 A.P.584) the respondent was the Managing Director of the Company who was found selling 'dal' (gram) coated with non-permitted colour. It was held that the respondent being the Managing Director of the Company who being a 'person' in charge of the management and its affairs was held liable for selling adulterated 'dal'. The plea that the manager is not profited by such adulteration was not accepted.


51. A.I.R. 1967 Orissa 174. In Perry Mohan Shah V Harendranath Roy (A.I.R. 1930 Cal. 295) it was a prosecution for selling adulterated food under the Bengal Food Adulteration Act, 1919, which contains in Cl.(i) of Sec.6 as "No person shall directly or indirectly himself or by any other person on
The respondent was charged for selling adulterated 'arhar dal'. The plea of the accused was that he was merely a stranger sitting there in the shop casually having no control or authority over the shop. It was held by the Orissa High Court that the respondent was himself either the owner or agent of the owner or had the implied authority to sell on behalf of the owner. It was further held that the term 'person' includes everyone who sells adulterated food irrespective of the capacity in which he sells for the time being and hence was held liable for selling adulterated 'arhar dal'.

The question of interpretation of the word 'person' come up before the Supreme Court in R. Hari Prasad Rao V State in a case under Motor Spirit Rationing Order, 1941. Clause 22 of the said Order provided that:

"no person shall furnish or acquire supply of Motor Spirit otherwise than in accordance with the provisions contained in this order. x x x"

The appellant licensee and his employees sold petrol without coupon in contravention of the Order. It was held that since mens rea is an ingredient in such offences, every 'person' associated in trade is responsible for any contravention provided in the Order. The Appellant and his employees were held guilty for contravention of the Order.

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his behalf shall, expose for sale or manufacture, or store for sale any of the articles. x x ." The appellant was a servant found selling adulterated mustard oil. It was held by the Calcutta High Court that the word 'person' refers to every person and hence he was held guilty of selling adulterated food and was convicted. Similar view was held by the Madras High Court in Public Prosecutor V Pallu Narasimhulu (AIR 1953 Mad. 697) in a prosecution under the Madras Prevention of Adulteration Act, 1913. The respondent was the father working in the shop of his son as his servant and was found selling pottage powder admixed with kesari powder. It was held that a person who is working in a shop on behalf of the owner as his employee is certainly one who comes within the meaning of the term 'person' offering for sale of articles exhibited
Liability of Servant:

The ratio of R. Hari Prasad Rao's case was reaffirmed by the Supreme Court again in Sariu Prasad V State of U.P.53 it was held—

"if a owner of a shop in which adulterated food is sold is without proof of mens rea liable to be punished for sale of adulterated food, there is no reason why an agent or a servant of the owner is not liable to be punished for contravention who have guilty knowledge. x x x."

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there; as such every person who offers in the name of any food which is not upto the standard of purity by law is punishable.

52. A.I.R. 1951 S.C. 204.

53. See Supra Ch.V. n.29. The case was under Prevention of Food Adulteration Act, 1954. The appellant was a servant of one Thakurdin, the employer and was found selling adulterated mustard oil on behalf of the owner. It was held that the word 'person' has not been defined under the Act and the expression 'no person' shall himself or any person on his behalf includes "every person". Hence both the employer and the employee held criminally liable as the legislature prohibits all person for selling adulterated food irrespective of ignorance of the fact of adulteration as mens rea is out of consideration in these offences. In Public Prosecutor V P.B. Hasan (1973/2 A.W.R. 277) the respondent was found selling biscuits containing a prohibited coal tar dye who was acquitted by lower court accepting his plea having no concern with the business. On appeal by the State, it was held that the expression 'person' has not been defined in the Act, and so it prima facie includes everyone who sells adulterated food. The respondent having sold adulterated food was held criminally liable under the Prevention of Food Adulteration Act. Similarly in New Delhi Municipality Committee V Rajkumar Sharma (1975/2 FAC 12) the respondent was one of the waiters working in the Sankar Bar in Chanakyapuri who sold milk to the Food Inspector found to be adulterated on analysis. It was held by the Delhi High Court that the accused being a "person" as used in the Prevention of Food Adulteration Act, 1954 cannot escape his criminal liability merely on the ground that he is not the licencee or he is only an employee of the licencee.
The High Court of Calcutta and Orissa have distinguished and disagreed with this view and laid stress on their ignorance. 54

The intention of the legislature had been expressed by Pillai Narayan, J. of Kerala High Court in State of Kerala V V.S. Vasudevan Nair on behalf of the Full Bench as -

"The Prevention of Food Adulteration Act, 1954 is a piece of consumer legislation. It regulates to some extent the consumer supplier relations. The consumers' legitimate ignorance and his almost total dependance on the fairness and competence of those who supply his daily needs have made him a ready target for exploitation. The Act is intended to protect him against outright frauds."

54. The Calcutta High Court had given a different view on this aspect as to the liability of a servant. In M/s Poison Ltd. V Corporation of Calcutta (A.I.R. 1969 Cal. 247) the appellant was a manufacturing concern preparing ghee outside Calcutta and selling them in sealed tins at his sales counter at Calcutta. On appeal against conviction of the Company, and its sales manager, it was held that the salesman at Calcutta had no chance to know the nature of the article or any opportunity to prevent any adulteration as the ghee was manufactured and sealed in tins out of Calcutta. As such the salesman was held not responsible for adulteration of ghee. A similar view was also taken by Orissa High Court in Surivamani Swami V Basant Kumar Mohanty (Supra Ch.III n.83) where the appellant was a salesman of Government depot to sell controlled commodities supplied by the Government to card holders. Once such commodity viz. Suji (simolina) was found to be insect infested. It was observed that the appellant is not interested in profits of the business. It was further observed that if a poor ignorant salesman who was appointed yesterday not for anything else, but to make packages to deliver goods or even to weigh and measure them, cannot be made liable even in a profit concern unless his guilty knowledge can be ascribed.

55. Supra Ch.I n.14
In view of the intention of the legislature as has been interpreted to curb the menace, it is submitted that ignorance of an employee or servant may be consideration for showing leniency to sentence but not to exempt him from criminal liability. If ignorance or pretence are accepted as valid defences would encourage adulterators to represent as an employee or having no association with the business or otherwise with the complicity of the crime in case of prosecution. Thus it has been accepted that besides the owner his servant, agent or relative when sells or attempts to sell adulterated or noxious food is equally liable with the owner.

**English Law:**

The prohibition in the Food and Drugs Act, 1955 refers not only to 'persons' but also body corporates. In common law person includes a limited company. The term 'person' under the Food and Drugs Act 1955 extends to employers for vicarious liability. In *Meah V Robberts* and *Landsley V Robberts* the

56. The Interpretation Act, 1889, Sec.2(24) and Halsbury's Statutes, 2nd Edn. Vol.II p.206.

57. 1978/1 All E.R. 97.

In *Flour V Devis* (The Law Reports 1978 C.D. P.295) it was held that a person includes a company, and those persons who have control over the business are liable for any offence. The case was under the Finance Act, 1965 relating to the persons having control over the company. It was held that unless the context otherwise requires, whether two or more persons possess the greater part of the share capable or voting power in a company shall be taken to have control of the company. The reference to the manner of liability under
father (Landsley) was employed to clean equipment in restaurant
was prosecuted for leaving castic soda in the empty lemanade
bottle which was supplied by the manager of the restaurant to
a customer as lemonade by mistake. It was held that the supply
was a substance other than food. The manager sold 'food' not
of the nature demanded and it was unfit for human consumption.
Both the manager and the father were held liable.

Company's vis-a-vis Company officers liability:

Section 17 of the Prevention of Food Adulteration Act, 1954 provides that where an offence under the Act has been
committed by a company, any person who has been nominated by the

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Company's vs-a-vis Company officers liability:

the Prevention of Food and Drugs Act, 1975 was made by
Viscount C.J. in Monsell Bros. v L & N Rly C. (1917/2 K.B.
336) while dealing a case under the Railway clauses Conso-
olidation Act, 1845 in fixing criminal liability on the master
vis-a-vis his servant in the following words "Prima facie,
then a master is not be made criminally responsible for the
acts of his servant to which the master is not a party.
But it may be the intention of the legislature in order to
guard against the happening of the forbidden thing, to
impose liability upon a principal even though he does not
know of and is not a party to the forbidden act done by his
servant, many statutes are passed with this object. Acts done
by his servant without the knowledge of the master.
Under the Federal Food, Drugs and Cosmetics Act, 1938
(United States Code, U.S. Government printing office 1971
Edition Vol.V, title 21) in section 321(e) the term 'person'
includes an individual, partnership, corporation and associa-
tion.

58. See the Prevention of Food Adulteration Act 1954 Sec.17 -
Offences by companies:
(a) (i) the person, if any, who has been nominated under
sub-section (2) to be incharge of, and responsible to
the company (hereafter in this section referred to as
the person responsible) or
(ii) where no person has been so nominated every person
who at the time the offence was committed was incharge
of, and was responsible to, the conduct of the business
of the company; and
(b) the company shall be deemed to be guilty of the offence
and shall be liable to be proceeded against and punished
accordingly;

Provided that nothing contained in this sub-section
shall render any such person liable to any punishment
company to be in his charge, or every person who at the time of commission of the offence was in charge of, or was responsible to, the company for the conduct of its business, can also be prosecuted along with the company for the same offence and shall be deemed to be guilty of the offence and shall be punished accordingly, provided it is established that the offence was committed at the connivance or negligence of such person as Director, Manager, Secretary or other officer in charge of and responsible to the company for the conduct of its affairs. The term company referred to in the section covers all categories of recognised body corporates. If any offence under this Act is provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence. 

Explanation: Where a company has different establishments, branches or different units in any establishment or branch different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment branch or unit.

(4) Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any Director, Manager, Secretary or other officer of the company, not being a person nominated under sub-section (2) such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section -
(a) "Company" means anybody corporate and includes a firm or other association of individuals;
(b) "Director" in relation to a firm means a partner in the firm; and
(c) "Manager" in relation to a company engaged in hotel industry, includes the person in charge of the catering department of any hotel managed or run by it.

For definition of 'company' see Sec. 2 of the Companies Act 1966.
For definition of 'partnership' see Sec. 4 of the Indian Partnership Act 1932.
committed by a Company, the consequences is that its Director, Manager, Secretary or other officers are also considered guilty unless they prove that the offence was committed without their knowledge, and they used due diligence to prevent the offence.

The management of the body corporate can nominate any person for their business at a particular place to be responsible and liable for all the acts on behalf of the company.

The liability of a partner is coextensive with the firm. Thus in absence of a prosecution against the firm, a partner alone cannot be prosecuted. In Chander Bhan V State, the appellant was acquitted as his partnership was not prosecuted for selling adulterated food.

A proprietorship concern does not permit the concern to be a legal entity and as such the proprietors can be held personally liable but not representing the concern and in case the concern is a legal entity the person incharge can be prosecuted as person responsible to the concern but not individually.

Ignorance of the offence does not exempt a partner from liability.

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59. (1975) FAC 77

60. In R.Chandra V Bhagabati Shaw and another (1975 FAJ 399) the two respondents being the proprietors of a shop were prosecuted for storing or selling adulterated food. It was held by Calcutta High Court that the mere fact that two or more persons own one or more shops jointly and take the profit or bear the loss does not by itself indicate that they act, as an 'association of individuals' and hence were not 'persons' liable.

In Nathmal Patodi V The Corporation of Calcutta (A.I.R. 1967 Cal.150) the appellants were proprietors and employee of M/s Moharilal Nath Mal who received short delivery of Jeera (cumin) in torn bags from the railway carrier. The said jira was found to be adulterated on analysis. It was held that the proprietorship concern is not a company as explained in section 17 of the Prevention of Food Adulteration Act and as such all are individually liable. A person incharge of the firm cannot be found guilty before the firm is held to be liable. The provisions are not made applicable as the firm has no legal entity apart from its proprietors.

61. In Hazi K.K.Moidu V Food Inspector, Khazikote (1962)1 Cr.
English Law:

Over and above the principles of common law in extending liability to corporate bodies within the meaning of the term 'person' a separate provision has also been made in Section 107 of the Food and Drugs Act, 1955, though the provision is not exhaustive like section 17 of of the Indian P.F.Act. It covers the vital actions necessary to check the menace by corporations. The consent, connivance, neglect or action attributable to a person of the body corporate, by any designation, is an essential ingredient to fasten criminal liability on such person. A person not connected with the corporate body cannot be held liable.

In *Dean v Hiesler* the director being not duly appointed to the company was held not liable for the production of adulterated food in the company.

It was further held that the subsequent words "any person" who was purporting to act in any such capacity is significant for extending the liability to individuals who may not be a director, manager, secretary or other similar officer. Besides individuals, the corporate body is equally subjected to the liabilities as a juristic person.

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L.J.647 the appellant was a dealer in tea along with others constituting a business concern. It was held by Kerala High Court that as no charge was framed against him for selling adulterated tea in the concern as the person incharge or responsible to the concern, he was not liable.

62. In *Sadhuram v State of M.P.* (Supra Ch.V n.43) though the partner denied his knowledge and his presence at the time of taking sample in a prosecution against all the partners were also held liable. The Supreme Court of India in *Sarjoo Prasad v The State* (Supra Ch.V n.29) laid the dictum clearly. In the case one Ganga Ram and Sarjoo prasad formed a partnership in which mustard oil was sold. At the time of sample only Ganga was present but both were prosecuted for selling adulterated mustard oil. It was held that Sarjoo is equally liable with Ganga as they share profits of the partnership.

63. See *Food & Drugs Act.1955* Sec.107 Offences by Corporations

64. (1942)2 All E.R. 340
Carriers' Liability:

The prohibition in Section 7 of the P.F. Act 1954 extends for 'every person' irrespective of his position. Section 10 of the said Act authorises the food inspector to take samples of suspected articles of food from a carrier and for usual prosecution in case the sampled food is found to be adulterated, misbranded or prohibited article of food.

Thus the Kerala High Court in Food Inspector, Allepy Municipality V. K. Sukumaran held the servant guilty for carrying adulterated articles of food for sale on behalf of his master though he was found to be illiterate.

Unless the carrier is found to be carrying the article of food for sale, the food inspector does not derive any authority to take sample from such carrier. Thus there can be no prosecution for carrying adulterated articles of food if it is not intended for sale.

65. For meaning and interpretation of 'person' see supra n.36.

66. See P.F. Act 1954, clauses (ii) and (iii) of Section 10 which empowers the food inspector for inspection of articles of food with a carrier.

67. 1976 FAJ 270. The Rajasthan High Court in Manji V. The State (1978 FAJ 376) held the same view and convicted the servant for carrying adulterated milk for sale on behalf of his master.

68. In Municipal Council, Jaipur V. Mangal Ram (1977 FAJ 100) the respondent was found carrying adulterated milk on behalf of his master. As there was no evidence that the said milk was intended for sale, the acquitted of the respondent was confirmed by the Rajasthan High Court. In Public Prosecutor V. Pulla Reddy (AIR 1966 A.P.,302) the accused respondent was alone prosecuted for carrying adulterated milk to be delivered at a destination under the direction of his master. The Andhra Pradesh High Court held that the servant had no authority to sell and it was not proved to be for sale. Hence the case failed.
English Law:

The liability of a carrier under English Law was not at par with the present form as provided in sections 11 and 101 of the Food and Drugs Act, 1955.69

In Whittacker V Foshaw70 a farmer had a contract to deliver a pint of milk to a customer's house daily morning. On the date of occurrence he sent it in a can, carried by his young daughter. On the way the inspector demanded for sample for analysis who out of fear gave the same on receipt of price. The said milk was found to be adulterated. It was held that she had no authority to sell, but only to deliver that at the destination. Therefore, she was held not liable.

Section 9 of the Food and Drugs Act, 1955 now has made a provision for seizure of articles of food suspected to be unfit for human consumption and in case his suspicion is confirmed, the person from whom it was seized and the owner of the goods would be held guilty of the offence. The term "deposit" appearing judicially interpreted to extend liability to a carrier.71

Section 7 of the Prevention of Food Adulteration Act, 1954 prohibits manufacture, distribution, store or sale of adulterated, prohibited or misbranded articles of food. It is not open to the manufacturer or distributor to throw the blame

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69. See Food and Drugs Act, 1955 Sec.11 provides power to examine food in course of transit. Sec.101 authorises an authorised officer to enter ships, aircraft, vehicles etc. for the purpose of inspection and action.

70. (1919)2 K.B. 419

71. See Food and Drugs Act, 1955. Sec.9.
In Williams V Allen (1916)1 K.B. 425 meat was being carried in a carriage to slaughter house. It was held that such meat was "deposited" within the meaning public Health Act, 1875. Similarly in Queent V Henly (1919/2 K.B. 88) the articles of food were deposited with justice for distribution to retailers. It was held that such deposit is deposit for
on the person who actually did sell and claim not to be responsible for such sale. 72

The Prevention of Food Adulteration Act, 1954 prohibits manufacture, store distribute or sell adulterated articles of food. It does not provide exemption even when the purchaser is informed what he is purchasing is not pure. The Act is intended to protect the public from using adulterated food and therefore it has made it penal to sell such articles irrespective of the fact that the purchaser knew the articles to be adulterated or not. Thus articles of adulterated food cannot be sold in the market with the publication of the fact that it was adulterated. 73 Thus the

72. In M/s Bhanabab Das Jangish Chandra V Delhi Administration and others (A.I.R. 1975 S.C. 1305) the appellant was a dealer in ghee manufactured by one M/s Sivasankar Prem Narayana. M/s Laxmin Stores actually sold samples of such ghee to the Food Inspector which was found adulterated on analysis. The dealer and the vendor were prosecuted in this case. It was held by the Supreme Court that proof of guilty mind is not necessary in statutes creating absolute liability for offence against public health and public welfare; that there was a unity of purpose between the manufacturer and the distributor with the vendees is unwarranted as the said sale is indication of such unity. Sale of such articles of food by a manufacturer, distributor or dealer is a distinct and separable offence. A company, manufacturing articles of food for sale but does not sell itself is also a vendor and the terms cover everybody from manufacturer, distributor, dealer down to the last vendor.

73. In Raghubhunath Chandra Dutta V Purna Chandra Ghosh (A.I.R. 1930 Cal 273) the appellant was prosecuted under Bengal Food Adulteration Act, 1910. Mustard oil was mixed up with tilm oil for lighting purpose. It was observed by Calcutta High Court that the Food Adulteration Act makes it penal to sell adulterated articles. It does not excuse the offence on the ground that the purchaser knew what he was purchasing was not pure food stuff. The Act entails to protect the public from using adulterated articles and therefore it was made penal to sell these adulterated articles to persons irrespective of the fact that the purchaser knew the articles to be adulterated or otherwise. The plea of defence that the articles of food were sold in the adulterated form in market with the publication that they were adulterated was not accepted. Similarly in Ganapati Santaram More V Lingappa Ballapoo Gatada (A.I.R. 1962/I Cr.L.J. 562) the accused
law as it stands now is in variance and short of a provision to exempt liability for sale of unwholesome food for other purposes other than human consumption. It impliedly and indirec­tly prohibits sale of adulterated food articles even for any purpose in absence of specific prohibitions.

In order to fasten liability, ownership or authority on the article of food to deal with it is essential. In State V Ratanlal and others74 the accused respondent No.2 took delivery of milk on behalf of his master the accused respondent No.1 from the bus stand and at that stage, milk was taken by food inspector and found it to be adulterated on analysis. It was held that the Food Inspector was not authorised to take sample as the accused No.2 was not selling that milk and though he was in the course of conveying the milk to his master, he was not conveying to a purchaser or a consignee. The accused No.1 having not yet accepted was not the owner by the time of sample. Hence liability was not imposed on any of them.

Mens rea requirement:

Mense rea is completely ruled out of consideration in an offence under the Prevention of Food Adulteration Act, 1954. Though it is considered sometimes on equitable principles taking into consideration the over all circumstances of a particular case as is evident from the following cases.

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was found selling adulterated butter labelled on the packing as 'adulterated'. It was held by the Bombay High Court that the Food Adulteration Rules, 1955 required labelling of packed food. They can never mean that such labelling can exempt them from liability. Thus in every case where such adulteration is made by a vendor of an adulterated article, he can always claim to be entitle to sell such articles with impurity and the consequences would be that the object of the Act would be entirely fraustrated. He was hence held liable.

74. Supra Ch.IV n.40
The Punjab and Haryana High Court in Municipal Committee, Amritsar v Baldev Rai where the respondent was found selling adulterated article of food pleaded that (a) he is not aware about the nature of quality of goods he deals; (b) he is not concern with the articles of food having no ownership, control or authority over the business, and (c) he does not manufacture the food and therefore not liable. It was held that the mere fact that the shop from which the sample of adulterated article of food was purchased does not belong to the person who sold the sample but to a relation of his, or the seller of the sample does not prepare the particular article of food himself, in no way effects the liability of the seller. It is not only the person who procures the adulterated article of food is made liable but also the one who sells the same. It was further held that the plea that the article of food sold by him was not known to him to be adulterated is of now avail so far as his guilt in concern, though it may be taken into account in determining the quantum of punishment.

Putting a label on the container with the article sold for other purposes but not as food is no guarantee that the article which is food will not be used as such by the purchaser and it will not absolve the vendor from the criminal liability of 'sale' of adulterated food.

75. 1973 F.A.C. 65. In S.S. Dhanao v The Municipal Corporation of Delhi (1978 FAJ 30) an officer of the Union Government, while on deputation to surap bazar of New Delhi as its General Manager was held liable by Delhi High Court for selling adulterated honey in the said market on the ground that a public servant cannot claim to sell adulterated articles of food in performance of his duties. The Kerala High Court in State of Kerala v Rajan Nanwar (1977 FAJ 393) did not accept the plea of accused that he had exposed manjal-podi (turmeric powder) for puja (worship) on the ground that an article which is a food does not lose its character as food by the fact that it is also used or usable or sold for other purposes. See also Supra n.52.
The Delhi High Court in *Municipal Corporation of Delhi V Sewati Devi* acquitted the owner. The respondent accused had a grinding mill holding licence for grinding of articles of food in her premises. She was prosecuted along with one Syamlal for manufacturing adulterated turmeric powder in the said mill. Syamlal was convicted but the respondent was acquitted on the ground that she had proved to have let out the business to Syamlal without sharing the business.

It is respectfully submitted that the respondent in this case continues to be a licence holder having been authorised under law for manufacturing turmeric powder in her small mill.

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76. 1975/2 F.A.C. 28. In *Dayachand V State and Union of India* (1977 FAJ 79) the penalty prescribed for selling adulterated articles of food was not extended to the case where the article of food was found to be unintentionally damaged and had become unfit for human consumption. In this case Amchur (pickles) received by accused by Railway was damaged due to rains. It was held by Delhi High Court that the damage was caused by act of nature beyond control of the vendor and hence the type of mens rea as contemplated in the Act to the effect that it is 'otherwise unfit for human consumption' cannot be located in the vendor. The Rajasthan High Court in *Municipal Council, Jaipur V Mangal Ram* (supra n.63) while dealing with the prosecution of the respondent for passing large quantity of adulterated milk not intended for sale held that he did not fulfil the character of a seller, conveyor, deliverer, consignee, manufacturer or storer for sale. It was further held that the food inspector was not competent to purchase sample from such a person. (For powers of Food Inspector see section 10 of Prevention of Food Adulteration Act, 1954) In *Municipality of Jammu V Bala Mukunda and another* (1977 FAJ 249) the accused respondents were charged for selling adulterated mustard oil (sarsoon oil) with labels affixed 'unfit for human consumption' under section 7 and 16 of the Jammu and Kashmir Prevention of Food Adulteration Act, 1953. (The P.F. Act 1954 was extended to the State of Jammu and Kashmir with effect from 26.1.1972 vide G.S.R. 70 dated 18.12.1971 by the Prevention of Food Adulteration (amendment) Act, 1971) It was held by Jammu and Kashmir High Court that the respondents are not liable as they did not make any sale to the food inspector. The other articles in the shop were also labelled 'as unfit for human consumption'.

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and she having leased out the mill and her business to Syamlal is deemed to have committed the offence in view of the words of section 7 extending liability to any person committing himself or through others.

It is further submitted that the implication of the statute either has been liberally narrowed or elastically stretched. The circumstances in which the adulterated article of food is exposed for sale should be the determining factor in fixing criminal liability. If a vendor exposes for sale an adulterated article of food branding it for human consumption along with other eatables, the reasonable inference may be that the adulterated articles of food are also intended for sale.

The Supreme Court of India reaffirmed this view in clear term in The State of Tamil Nadu v. R. Krishnamurty where Gingelly oil mixed with groundnut oil was held adulterated notwithstanding the fact that the seller had expressly stated at the time of sale that it was intended for external use only.

Absolving liability by permitting sale of adulterated article of food branding 'unfit for human consumption' will result havoc in the manner the 'cigarettes' are now a days sold with labels as 'smoking is injurious to health' which in fact has resulted increase in production to meet the demands of smoker 77.

77. 1980 FAJ 339. It was further held that whatever be the purpose of sale it is a sale for the purpose of the Act taking into account that 'sale for analysis' though cannot be a 'sale for human consumption' is still a 'sale' under the Act. It was also held that in order to be 'food' for the purposes of the Act, an article need not be 'fit' for human consumption; it is enough it it is generally or commonly sued for human consumption or in the preparation of human food.

The earlier ratio in Andhra Pradesh Gram and seed Merchants' Association v Union of India (Supra Ch. III n.55) was that in case what is imported, manufactured, or stored, sold or distributed is not an article of food, evidently no
English Law:

The principle of English law as to the liability for selling adulterated articles of food labelled as unfit are equally penal.  

Liability for negligence:

If any article of food is prepared, packed to kept in insanitary conditions resulting in contamination or injurious to health is equally penal as that of adulteration in view of the definition of the term adulterated given in clause (e) of sub-section (i)(a) of Section 2 of the Prevention of Food Adulteration Act 1954. 

English Law:

The liability for negligence in 'duty of care' has also been extended under Food and Drugs Act, 1955. In Smedley's Ltd. v Bread the packed tin of pea manufactured by the defence penalty is attracted. But nonetheless coconut oil though used only in some parts as food was held to be a food. The ratio in Shah Ashu Jaiwant v State of Maharashtra (Supra Ch.III para 7) wherein it was held that certain articles such as milk, or bread, or butter, or food grains are meant for human consumption as food. Other articles may be presumed to be meant for human consumption from representations made about them if they are matters beyond common knowledge. It was a case of black Til seeds not commonly used as food.

78. In Haigh v Aerated Bread Co.Ltd. (1968/2 A.B. 82) the article of food viz. bread exposed for sale was found injurious and the respondent was held liable even though a declaration by label indicating the presence of injurious ingredients were known to the purchaser.

79. See Prevention of Food Adulteration Act, 1954 Sec.2(ia)(B) if the article had been prepared, backed or kept under insanitary conditions whereby it has become contaminated or injurious to health is adulterated.

80. 1974/2 All England Reporter p.21). Negligence in respect of a company, was considered in Tesco supermarket Ltd. v Nathress (1972 A.C. 153). It was held that in case of a Company the persons who himself have exercised due diligence are those who can be identified with the controlling mind of the company. The manager was held thus not guilty for
dants under mechanical screening process found to contain a caterpillar of the size of pea by a consumer. It was held that the caterpillar could have been removed from the peas during the processes of collection or preparation. As the food was not of the nature, substance and quality demanded, the sale was to the prejudice of the consumer. Hence the vendor was held guilty.

**Liability for violation:**

The manner of packing and labelling of packets has been prescribed in Part VII (Rules 32 to 43) of the Prevention of Food Adulteration Rule 1955. Sale of any article of food in packed condition in contravention of these rules are penal under sub-clause (ii) of clause (a) of sub-section (1) of Section 16 of the Prevention of Food Adulteration Act, 1954.

Rules 32, 32A and 33 of the P.F.A. Rules, 1955 directs for mention of the name, trade name, business address of the manufacturer or vendor and the description of the food with its nature of the label of the packet when it is sold in packed condition. The label should also contain the fact of admixture of preservative colouring matter and anti-oxidant, added vitamins, volume or net weight of the article of food with batch or code number to ascertain freshness and quality of the stock inside the package.

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81. See P.F.A. Rules, 1955 Rs 32 to 43.

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the negligence act of the persons who were responsible for such negligence. The degree of negligence was taken into account in fastening criminal liability in J. Miller Ltd. V Battersea Barrough council (1956/1 Q.B. 43). It was held that presence of small pieces of metal other similar extraneous matters in an article of food does not make the article unfit for human consumption although it may be construed an offence of sale to the prejudice of the purchaser. But in David Grig Ltd. V Gold Finch (1961)59 L.G.C.304 It is held that a small amount of harmless mould of pie was guilty of the offence as made it unfit for human consumption though not injurious to health.
In Dwarkanath v Delhi Municipality\(^{32}\) the appellant was prosecuted for selling pure ghee in sealed tins labelled as 'Mohan Ghee Laboratories Delhi-5' (Pure ghee) at Delhi which was found with no batch or code number or the date of manufacture etc. He was held liable for violation of Rule 32 of the P.F.A. Rules, 1955 by the Delhi High Court.

On appeal to the Supreme Court, while reversing the judgement of the High Court, their lordships held that the rule making powers of the Central Government (under section 23 of the P.F.A. Act, 1954) directing labelling of packed food in the manner provided in rule 32(6) of the P.F.A. Rules is not necessary except the provisions directing to mention batch number and code number in clause (c) of the said rule as the direction does not serve any purpose in absence of an obligation to mention date of manufacture or date of expiry for consumption. Thus there being no object for prescribing such an obligation was held invalid.

Rules 34, 35 and 36 of the P.F.A. Rules directs the manner of presenting the label on the food packets.

Rules 37 to 41 of the P.F.A. Rules, 1955 are prohibitory provisions. They prohibit false or misleading statements, reference to laws, words implying recommendations by medical profession or imitations on the label of packed food.

In Rule 42 of the P.F.A. Rules, 1955 samples of designs or labels have been shown. Rule 43 directs for making a declaration of all additions, admixtures and deficiencies of the packed food.

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82. A.I.R. 1971 S.C. 1844
The object of prescribing obligation on labels is to promote fair transaction between the manufacturer, vendor or distributor and the consumer.

**Liability for contravention:**

Prohibition in regulating sales of articles of food has been provided in Chapter VIII with rules 44 to 49 of the P.F.A. Rules, 1955. Over and above fixation of criminal liability for selling adulterated food, Rule 44 prohibits sale of admixture of food articles listed therein as an additional prohibition not coming within the meaning of the term 'adulterated'.

In *Murali Dhar V State of Maharashtra* the appellant was found selling a mixture of two edible oils viz. groundnut oil and khursani oil. The explanation offered by the appellant were that (i) he had crushed both the oils by rotation one after the other in the same crusher; (ii) there was no profit motive as groundnut oil being costlier and found higher in proportion and (iii) the admixture is non-injurious. It was held by Supreme Court that where the law lays down an absolute liability, alibis cancelling mens rea are out of consideration. It was further held that the facts are probably right to ex-necessiataelegis; the court has to inflict the heavy minimum sentence of six months R.I. and fine of Rs.1000/- for the contravention prohibited in Rule 44(e) of the P.F. Rules 1955.

**Prohibition:**

Sale of offer or expose for sale or even possession of kesari gram (*lathyrus sativus*) in its natural form or as dal or

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83. *A.I.R. 1976 S.C. 1929*
as flour or mixed with any other grain in any form is prohibited. The prohibition is left to the option of State Government who have to proclaim the prohibition from a specified date in order to enforce it with penal sanction.

Excessive consumption of the pulse kesari (lathyrus sativus) produces 'lathyrison' a form of crippling paralysis of both the lower limbs mostly in boys and men in age group of 5 to 45 years.

The lathyrus plants grow easily with minimum efforts and yields abundant crops. It is easily and conveniently mixed with other pulses in any form. It is cheaper than any other pulse.

There is no total ban of kesari in the States of Madhya Pradesh, Bihar, Orissa and Gujarat where the pulse is widely cultivated, may be for fodder. In other States there is a total ban of this cereal and its sale for human consumption in any form either singly or mixed with other articles of food is totally prohibited.

In Govinda Pillai v Padmanabha Pillai the accused took the plea that he had kept kesari meant for cattle food and

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34. See Prevention of Food Adulteration Rules, 1955 Rule 44-A
36. A.I.R. 1965 Kerala 123. In State of U.P. v Babulal (AIR 1977 All 339) it was held by the Full Bench of Allahabad High Court that when the ban of kesari is total as per the notification of the State Government and there is no scope for any exception or exemption, it is no defence to a prosecution under the Act to say that the accused did not intend to use kesari as food or that he never intended to sell it as food. This overrules the earlier decisions of the same court in Nagarmahapalika, Varanasi v Smt. Siddheswari Devi (Supra Ch. III n.70) where it was held that the prohibition does not extend to sale of kesari for cattle food or where it is not intended for sale as food. The Bombay High Court in Municipal Council of Akola v Srinath Ganeshbhai (1973 Cr.L.J. 1490) did not accept the plea of the accused that he never intended kesari to sell as an article of food on the ground that mens rea is totally irrelevant and so is the question of use to which an article is put.
not for human consumption. The Full Bench of Kerala High Court observed -

"In view of the matter there can be little doubt that the rule prohibits the possession of kesari dal for the purpose of sale, under any description whatsoever the evidence that some of the accused used to write 'C.F.' to mean 'Cattle Food' in their cash bills for the sale of dal, is therefore, of no account, irrespective of whether or not the sale is for human consumption or use."

The 'Agmark' standards were set up to cover the various quality levels of agricultural commodities depending on the degree of purity in each case. These standards also specify the type of packing to be used for different products, gives consumer an assurance to quality in accordance with the standards laid down.\(^{87}\)

Sale of ghee, til oil and honey without Agmark has been prohibited under Rules 44B, 44C and 44D respectively under the Prevention of Food Adulteration Rules, 1955.

Rule 46 prohibits sale of use for sale of admixture of ghee or butter.

Sale of permitted food colours and additions of artificial sweetners to food have been prohibited without mentioning the said fact on the label and requires a licence for selling such sweetners under Rules 47 and 48A of the P.F.Rules, 1955.

Rule 48 prohibits sale of flesh of natural dead animals or fouls.

Contravention of any of these provisions are penal as provided in sub-clause (2) of clause (a) of sub-section (1) of Section 16 of the P.F.A. Act, 1954.

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Part IX (Rules 49 to 51) of the Prevention of Food Adulteration Rules, prescribe restrictions and regulations regarding conditions for sale of food and requirement of a licence to deal with articles of food.

Rule 49 requires the containers or utensils used for manufacturing, preparing or storing of any food to be clean and in good sanitary conditions, perfectly enamelled or tinned so as to retain the quality safe for consumption. It prohibits use of such containers or utensils for any other purpose. It further prescribes that 'asafoetida' exceeding one kilogram to be sold only in sealed tins and no 'hingra' (admixed asafoetida) shall be sold without label and declaration as to its place of import and to its quality as standardised in India.

Rule 50 of the Prevention of Food Adulteration Rules, 1955 prohibits manufacture, sale, store, distribution or expose for sale of milk, milk products, edible animal body fats, edible vegetable oils, edible fats, including margarine, pulses, grams, nuts, starches, bakery products, non-alcoholic beverages, tea, coffee, chicory, coca, spices, condiments, asafoetida, sweetening agents, flavouring agents, anti-oxidents, permitted preservatives, artificial sweetenings, confectionary sweet-meats, ice candies, edible gelatin, molasses, coconut, meat and meat products and silver leaf (excluding those covered by Fruit Products Order, 1955, Solvent Extracted Oils, Deoiled Meal and Edible Flour (control) Order, 1957 and Vegetable Oil Products Control Order, 1947).  

88 See Fruit Products Order, 1955. It deals with synthetic beverages, syrups and sherbats, vinegar, pickles, dehydrated fruits and vegetables, squaches, crushes, cordials, barley water, barrelled juice, fruit pulp, jams, jellies, mamalades, tomato products, crystalised fruits and peas, chutneys, canned and bottled fruits, juices pulps and vegetables,
Part X of the P.F.A. Rules, 1955 deals with preservatives. They prescribe specified preservative quantities to be mixed with specified articles of food appended in the schedule attached to Rule 55 and directs not to label food containing preservative as 'pure' in Rule 56.

Part XI of the P.F. Rules 1955 prohibits addition of excess quantity of metal than prescribed in specified articles of food shown in the schedule appended to Rule 57.

Part XII of the Prevention of Food Adulteration Rule, 1955 provides restrictions on use of specified anti-oxident in Rule 59 and emulsifying and stabilising agents in Rule 61 in any article of food.

Part XIII of the Prevention of Food Adulteration Rules provides restrictions in use of solvents and flavouring agents in any article of food.

Part XIV of the Prevention of Food Adulteration Rules provides the pesticides and insecticides prescribed and appended in the schedule attached to Rule 65 in specified quantities relating to their use in specified modes so as not to effect the nature of food.

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frozen fruits and vegetables, aerated water containing fruit juice or pulps or any other unspecified items relating to fruits and vegetables. Solvent Extracted Oils, Deoiled meal and Edible flour (control) Order 1967 deals with deoiled meal which means a residual material left over when oil is extracted by a solvent from any oil bearing material, edible flour, which means the grounds material prepared from deoiled meal derived from oil cake obtained by single pressing of food quality, edible oil seeds and solvent extracted oils means any vegetable oil obtained from oil bearing material by the process of extraction by solvent.

Directions have also been provided for the licencensing authorities who are required to observe strict sanitary conditions before granting a licence to deal with food articles. The duration of licence under these rules have been left to the State Governments who in turn have fixed it as one calendar year or financial year.
The contravention of any of these provisions or deviation from the directions are penal under the section 16 of the P.F.A. Act, 1954.

**Liability for use of adulterant:**

An 'adulterant' means any material which is or can be employed for the purpose of adulteration. It also means any material which is or and be employed for the purpose of adulteration. Adulterant may be of inferior articles easily mixed with eatables to increase volume or deceit consumers. The criminal liability for use or intended use of adulterants is the same as that of adulteration.

Common adulterants like saw dust is easily mixed with turmaric and chilly powder, suji (semolina) with sugar, use of non-permitted and cheaper colouring materials to any nutritive substance in making the food more attractive in appearance, or addition of injurious substances to make an article of food more palatable are also adulterants.

By insertion of the new term 'adulterant' the legislature has intended to extend criminal liability right from the stage of contemplation till the commission of the offence.

The explanation added to section 7 of the P.F.A. Act providing the presumption clause that (i) if any person who store any article of food for which a licence is required (ii) or an article of food the sale of which is prohibited by the Food (Health) Authority; (iii) an article of food in contravention of any other provisions of the Act or any Rule made thereunder for

39. The definition of term 'adulterant' was added by Prevention of Food Adulteration (Amendment) Act, 1976 (Act 34 of 1976) See Act (P.F.A.) Sec.2(i).
manufacture there from any article of food for sale shall be deemed to store such adulterated or misbranded food for the manufacture therefrom any article of food for sale. Such presumption clause extending criminal liability expresses the legislative intent to curb the menace with all rigidity though it appears inconvenient to find fault with an innocent person who accepts employment in such business.

**Liability for dealing with articles not confirming to the standard prescribed under P.F. Rules, 1955:**

The standard of common articles of food has been appended to in Appendix 'B' of the P.F.A. Rules, 1955. An article of food is adulterated if it does not confirm or falls below the prescribed standard. The term adulteration covers sub-standard articles of food irrespective of their injurious or non-injurious nature if they do not confirm to the prescribed standards.

The standards prescribed under the Rules are strictly observed and even the slightest variation in any of the constituent parts prescribed under standards does not exempt a person from criminal liability. The maxim de minimus non curat lex has not been made applicable in cases of marginal variations from the prescribed standard. The leniency shown by courts for borderline or marginal deficiencies in component parts of an article of food from the prescribed standards is no longer the law as would be seen from the following cases.

In Gooinath Navar V Palani the accused was charged for selling adulterated milk which did not confirm and below the standard.

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90. See Prevention of Food Adulteration Act, 1954 Sec.2(ia)(1) and (m)

91. For meaning of the term standard, its technicality and importance - See supra Ch.III standard of food page 58

92. Supra Ch.III n.70
prescribed standards negligibly. The accused was acquitted by the Kerala High Court as a border line case. The Delhi High Court in Municipal Corporation of Delhi V Om Prakash also acquitted the accused for selling substandard milk as a marginal case.

Both these cases relied on the decision of the Supreme Court in Malwa Cooperative Milk Union Ltd. V Biharilal and erroneously approached in acquitting the accused persons. There was no ratio laid down in the case showing any leniency on the ground that the articles of food were marginally sub-standard.

The Supreme Court in a like case in Jagdish Prasad V State of West Bengal laid the dictum of adhering to the pres-

93. 1970 Cr.L.J. 1047. Cr.As,235-236 of 1964 decided on 14th August 1967. In the cases two samples of buffaloe milk purchased from the appellant milk Union were found on examination by the analyst to contain less than the required minimum solids in one sample by 0.1% and in the other by 0.4%. Since the milk union was the major milk distribution project in the city of Indore, the City corporation considered withdrawal of the prosecution against the milk union in the public interest as none of the accused persons had benefited by making the milk sub-standard. On the application made by the prosecution to that effect the prosecution was permitted to withdraw the cases. Though permission for withdrawal was confirmed with the Sessions Court, the High Court directed re-trial of the cases setting aside the orders of withdrawal. On an appeal to Supreme Court it was observed that the variations of the solid contents of both the samples having been taken from the same milk Union and analysed by the same common analyst causes doubt on the accuracy of the analysis. Besides, the prosecution if intended to be withdrawn on the ground of public interest. Apart from these circumstances it was also considered to be a border line case where prima facie no case appears against the accused persons and hence the order of the magistrate for withdrawal of the prosecution was reaffirmed.

94. A.I.R. 1972 S.C. 2044. In the case the appellant was prosecuted for selling mustard oil which did not confirm to the prescribed standards indicated in A.17.06 of Appendix 'B' of the Food Adulteration Rules, 1955. Public Analyst made only the saponification test and as the said test indicated the sample of oil not confirming to that standard, he omitted to proceed with the further tests. It was held that even assuming the other four prescribed tests indicated normalcy, the only saponification test is sufficient to hold the sample of oil as adulterated. In Bichitrnananda Naik V
ribed standards, prescribed under the Prevention of Food Adulteration Rules, 1955. It was observed that the decisions of courts could not alter or vary the standards. They are fixed by the Central Committee for Food Standards in exercise of powers conferred on them by the Act. Standards are prescribed in Appendix B attached to the Rules. As the standardisation have been fixed with great care in the statute, any person, who deals in articles of food not confirming to the standards is liable irrespective of the degree of variation from the standards.

Strict liability for storing adulterated articles of food:

'Storing' grammatically means to keep or lay up for future use. The Statute is silent with regards to the purpose of storage and hence there are conflicting judicial pronouncements in interpretation of the word as used in Section 7 of the Prevention of Food Adulteration Act, 1954.95

In Narayan Das V State96 the appellant was prosecuted and convicted for storing of adulterated articles of food. It was held by Allahabad High Court that the word 'store' means storing for sale and hence storing for any other purpose other than sale does not constitute an offence under the Act.

95. Supra n.37.
96. A.I.R. 1962 Allh. 82. The High Court of Punjab interpreted the term 'store' in the same manner in Rameswar Das Radhevnlal V State (1967 Cr.L.J. 513) holding that even words may be added and the construction of sentence may be changed in order to avoid absurdities and addities obviously not intended by legislature. The Andhra Pradesh High Court in V.Govinda Rao in re (1960 A.P.366) held a similar view
But we find inconsistent views of other High Courts in interpreting the term 'store' in the line that storing simplicitor is an offence under the Act.

The High Court of Calcutta in its Division Bench interpreted the meaning of the word 'store' in *Shipping and Carrying (agents) Pvt.Ltd. V Corporation of Calcutta* where the appellant was prosecuted for storing adulterated tea. It was held that storing of an adulterated article of food is per se an offence, dissenting from Allahabad High Court in Narayan Das case, Punjab High Court in Rameswar Das case and Andhra Pradesh High Court in V.Govind Rao's case.

The language of the Prevention of Food Adulteration Act, 1954 had been liberally interpreted for the term 'store' by the High Courts of Assam and Gujarat in prosecutions for 'storing' adulterated food fixing liability on the accused on the presumption that it was stored for no other purpose than sale for human consumption extending the explanation appended to Section 7 relating to adulterants.

The Punjab and Haryana High Court gave a wide cannotation to the term 'store' along with other terms and language of the Act in *Re Jethananda*. It was a prosecution for using adulterated ghee for service with meals on the ground that the said ghee was not meant for sale as ghee. It was further held that mere storing is not an offence under the Act.

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97. A.I.R. 1967 Cal. 110 and Supra n.96
99. 71 P.L.R. 349
rated flours and oils in preparation of edibles for sale in his sweet-meat shop. It was held that each item prepared with the said adulterated stuff is adulterated and hence liable. Taking into consideration of the meaning of the term 'sale', as interpreted by Supreme Court in Mangaldas case, it was held immaterial whether the article of food is fit or unfit for human consumption. In the aforesaid light 'storing' of an article of food as food or otherwise attracts the mischief of the impugned Act. When an adulterated food is exposed in the shop along with the other articles of food exposed for sale for human consumption it is deemed that all article as in the shop are exposed for sale and not store simpliciter.

The contraventions were distinguished and set at rest by the Supreme Court in Om Prakash V Delhi Administration where the appellant was prosecuted for selling adulterated milk in contrast with the definition that the milk was not intended for sale. Bhagawati Justice speaking for the court observed:

"The law is now well settled that the Act of storing of adulterated article of food would be an 'offence' only if storing is 'for sale'. If adulterated article of food is stored by any person for consumption or for any purpose other than sale, it would not come within the inhibition of the section."

100. The Supreme Court in Mangaldas Raghabjee V State of Maharashtra (Supra Ch.IV n.35) while considering the prosecution of the appellant for selling adulterated turmeric powder held that the sample sold to Food Inspector for analysis though not consensual was still a sale under the Act and hence his plea of storing simpliciter of the adulterated turmeric powder was held to be storing for sale.

101. In Mada lal V State (Supra Ch.III n.136) where storing simpliciter of adulterated oil was held to be an offence by the Full Bench of Delhi High Court on the ground that the Prevention of Food Adulteration Act, 1954 makes no distinction between filtered and unfiltered food stuffs and storing of unfiltered food stuff was therefore held an offence.

102. The Supreme Court in Madan Mohan Dhummanal Ltd. V State of West Bengal (1980 FAJ 86) held the appellant guilty for
Criminal Liability for Distribution of Adulterated Articles:

The term 'distribution' means the act or process of dispersal; division; allotment; It also means the act of dealing out to others dispersion.

'Distribution' as such under the Prevention of Food Adulteration Act, 1954 is outside the scope of 'sale' and has been included to extent the position of 'storage' to a larger extent.

In State of Mysore V Udipi Cooperative Milk Society Ltd, the distribution of milk by the servant of the society for his master was held to be within the mischief of the term 'distribute' contained in section 7 of the Prevention of Food Adulteration Act, 1954. The prohibition being in the terms 'no person shall distribute' the accused was held criminally liable.

It is respectfully submitted that the Prevention of Food Adulteration Act, 1954 in Section 7 uses the terms 'manufacture' 'store' 'distribution' and 'sale' of articles of food as distinct and separate offences. Manufacture for sale of any article of food in adulterated form has been prohibited. As far as storage and distribution are concerned, they need not be for

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storing. Mustard oil sent by the firm appellant No.1 in a railway tank addressed to itself was found adulterated on analysis. It was held that the appellants were in possession of the oil in the tank wagon from which its sample was taken and hence the oil was stored for sale.

104. See Wartoners Law Lexicon 14th Edn. p.333
105. Supra Ch. IV n.70
sale as has not been expressly stated in the section. Absence of words for sale before or after the word 'store' either in Section 7 or in Section 16 of the P.F.Act is deliberate and intended expressly prohibiting storage of articles of food and cannot be interpreted otherwise.

Criminal liability contingent upon failure to comply with statutory provisions:

Section 22A of the Prevention of Food Adulteration Act, 1954 has been newly inserted by the Amending Act of 1976 which provides that the Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of all or any of the provisions of this Act and the State Government shall comply with such directions. The idea being that the Central Government can keep control over the State Governments in maintaining uniform execution of the provisions of the Act.

Section 23 of the impugned Act further authorises the Central Government to frame suitable corresponding rules to carry out the provisions of the Act in consultation with the committee which means the Central Committee for food Standards, which was also inserted in 1976. However, in case of existence of a circumstance, the Central Government may even ignore the committee, to be consulted later, within a period of six months of the making of the rules and consider its suggestions. There are sixteen matters on which the Central Government may frame rules in conformity with the corresponding provisions of the Act.

106. See P.F.Act, 1954 Sec.22-A Power of Central Government to give directions.

When rules are framed under the authority conferred by
the Statute they are deemed to be part of the statute itself and
have the same force and effect as if they were included in the
statute itself. 108 Rules framed, should however, be consistent
with the provisions of the Act. The rules which are not in accor-
dance with the provisions of the Act cannot be given effect to. 109
Rules framed under the rule making powers given by an Act should
not be repugnant to the Act and in case of conflict between the
two, provisions of the Act, should prevail. 110 The rules are
made part of the statute and in this respect they supplement the
provisions of the statute itself within the prescribed limits.

Where rules are framed for carrying out the purposes
of the Act, such rules cannot go beyond the four concerns of the
Act. 111 Rules are framed for carrying out the purposes of the
Act and they cannot control the language of the Act. 112 The court
should not sit in judgement of propriety of the rules but should
give effect to them. At the same time it is no part of the duty
of the court to start with the presumption that every rule has
been validly made. 112

Part VI containing Rules 23 to 31 of the Prevention of
Food Adulteration Rules, 1955 which deals with the various pro-
hibitions framed by the Central Government relating to addition
of colours to articles of food in par with the provisions of
the Act.

108. See Giridhari lal V P.Rameswar A.I.R. 1916 Cal. 197
109. H.Santon Das V B.Paman Das (A.I.R. 1934 Sindh 110)
110. See Central Karnataka Motor Service Ltd. V State of Mysore
(A.I.R. 1957 Mysore p.7)
111. See H.Sved Shah V Commissioner of Wakfs (AIR 1954 Cal 436)
112. See Madan Singh and others V Collector Siker (AIR 1954 Raj 104
113. See Municipal Board,Benaras V Samiullah (AIR 1949 All 225)
The addition of colouring matter to any article of food except as specifically permitted by the rules are prohibited under rule 23 and the restrictions on use of colours have been enumerated in the subsequent Rules 24 to 31.

No extraneous colouring matter is permitted without a label to that affect and not at all permissible to certain milk products. Inorganic colouring matters and pigments are totally prohibited. Though permissible coaltar dyes are enlisted are prohibited except with ice cream and milk and milk products. The percentage of colouring matter to be added to food is limited and is always required to be pure safe for health.

Rules regarding packing and labelling:

Part VII of the Prevention of Food Adulteration Rules, 1955 containing rules 32 to 43 prescribes the manner of packing and labelling of food articles meant for sale for human consumption so as to give a clear indication as to the nature and manner of food inside the packing.

Rules 44 to 48 in Part VIII of Prevention of Food Adulteration Rules, 1955 prescribe prohibitions and regulations of sale of articles of food.

Rules 49 to 51 in Part IX of the Prevention of Food Adulteration Rule, 1955 prescribes conditions for sale and licence.

The name, trade name or description of food contained in the package with the name and business address of the manufacturer or importer or vendor of packet should be indicated on the label with indications of colouring agents or preservatives added to the food and its net weight in standard weight with batch
number in common national language has to be mentioned provided the package weighs more than 60 grams net. No such label need be affixed if the package contains less than 60 grams by net weight.

Weight and batch number need not be assigned in case of carbonated water and confectioneries. The label may be displayed in writing or by impression.

The Supreme Court of India in Dwarkanath V Municipal Corporation of Delhi held that the rule requiring batch and code number to be stated on labels on containers specifying the date of packing or manufacture (Rule 32) is ultra vires the rule making power (Sec. 23) and hence invalid.

Rule 32-A requires to indicate the added nutrients on the label and the declaration as to the contents surrounded by indicating its suitability for babies as directed in Rules 34 and 35 and the same should not be less than the minimum size as provided under Rule 36. The label shall not be false or misleading in any particular given there though can bear the trade name or fancy name as permitted in Rule 37-A.

The label should not contain reference to any law or recommendations for its use. It should not labelled as an imitation or substitution for any other food and in such a case shall not indicate as pure food. Any fruit or vegetable product alleged to be fortified with Vitamin C shall contain not less than 40 mgm

114. Supra n.32. In this case appellant exposed ghee in sealed tins for human consumption with a label with words 'pure ghee' Mohan Ghee Laboratories, New Delhi-5 and the name of the vendor. The labels did not contain the batch number, code number, the date of manufacture or the name and address of the manufacturer. It was further held that the purpose of directing to indicate batch number, code number is to apprise the consumer about its freshness.
of ascorbic acid per 100 gm of the product. Notice of addition of admixture or deficiency in food shall be stated on the label.

Rule 44 prohibits sale of (a) cream not prepared from milk; (b) milk added with water; (c) ghee not derived from milk fat; (d) skimmed milk as milk (e) two or more edible oils as one edible oil (f) vanaspati added with ghee; (g) food containing non-permitted artificial sweetener; (h) turmeric with any extraneous matter; (i) admixture of coffee and any other substance except chicory; (j) curd prepared from raw milk and (k) impure milk and milk products.

It was held by the Supreme Court of India in K. Trinubakthula V State of Maharashtra that cows milk and buffalo's milk are not same. As buffalo milk was sold as cow milk, he was held guilty for misbranding.

It was held by Allahabad High Court in Sultan Singh V State that whether fat content in the cow milk is higher than the prescribed standard, it leads to the inference that no water is added. If non-fatty solid content is below the standard, the inference is that either the cow in question is not given proper food or that Analyst report is erroneous.

Rule 44-A prohibits sale of kesari gram (Lathyrus sativus) with effect from the date of notification made by the State Government in respect to that State.

The Bombay High Court in Akola Municipality V Sripal Ganeshlal held the accused guilty for sale of kesari dal.

115. 1971 S.C.C. 300
116. 1973 Cr.L.J. 97
117. Supra n.80. For rule making powers of the State Government See Sec.24 of the Prevention of Food Adulteration Act, 1954.
(lathyrus sativus) in Bombay as the prohibition in the State was total. It was further held that the rule is not beyond the rule making powers of the State.

Rule 44-B prohibits sale of ghee having less reichert value than that specified in the rule for the area where such ghee is sold without Agmark.

The til oil obtained from white sesame seeds are different in constituent from the til oil prepared from the common sesame seeds and hence unless til is prepared from white sesame seeds carrying Agmark label, the standard given for common til oil would be made applicable.

Carbia Callosa and Honey dew shall be sold only in sealed containers bearing Agmark seal.

Kangre tea shall be only sold after grading and marking as provided in the Agricultural Produce (Grading and Marking) Act, 1937 (Act 1 of 1937).

Sale or sale of admixture of ghee or butter is prohibited in Rule 46. Use of flesh of naturally dead animals or fowls it prohibited under Rule 48. Coaltar food colours should not be manufactured, sold, stored or exhibited for sale without licence to that effect. Sale of insect damaged dry fruits and nuts are prohibited under Rule 48-B.

In a prosecution for selling supari (betel nut) coated with saccharine in P.K.Tejani V M.R.Dange and others it was observed by Supreme Court that it is not the judicial function to enter the thicket of research controversy or scientific dispute.

118. Supra Ch.III n.46.
where parliament has entrusted the Central Government with the power of protecting public health against potential hazards and the Central Government after consultation with the high powered technical body has prohibited the use of saccharine and cyclamates. The fact that for a long time this substance was allowed is no argument against the reasonableness of their later ban; for human knowledge advances and what was regarded as innocuous once is later discovered to be deleterious. So long as the exercise of power is not sweared by bad faith influenced by extraneous considerations uniformed by relevant factors, it is within the limits of reasonableness. It becomes out of bounds for judicial revaluation. Supari though not standardised was held to be a food.

So far as contraventions of the provisions of the Act or the rules in the shape of an offence under section 16(1)(c) of the Act is concerned. Rule 44 is a more material provision. It prohibits sale of the categorises of articles mentioned in it but it makes a exemption in the case of saccharine. Use of saccharine having been permitted does not contravene the prescribed rule.

In Bad shamal V State the Allahabad High Court was of the view that Rule 44 of the P.F.Rules permits use of saccharine in aerated water though the standard prescribed for aerated water under the rules does not permit its addition. As sale of aerated water with saccharine was not prohibited, the conviction of the appellant was set aside.

But a contrary view had been taken by Kerala High Court in Food Inspector, Calicut Corporation V P.Naravana. It was also

119. A.I.R. 1965 All 486 - For standards of aerated water see para A.O1.Q1 of Appendix of the P.F.Rules, 1955
120. 1964 K.L.T. 1032.
held that the standards for aerated water prescribed under rules permit the use of only sugar as a sweetening agent and expressly prohibits the addition of any substance other than that mentioned in the said rules. Hence aerated water containing an admixture of saccharine was held to be adulterated.

Rules 44 and 47 as substituted in 1963 does not totally prohibit addition of saccharine but permits restricted use limited by the standards. Para A,01.01 of the standards has also been substituted by notification to remove this anomaly.

Rule 49 lays down conditions for sale requiring the containers to be clean, perfectly enamelled free from danger and injury to health or render noxious fitted with lid or cover protecting from sand, dust, files, insects etc. to be kept out of reach from all injurious things or elements and shall not be rusted or broken. Use of plastic container being toxic or injurious is prohibited. It further provides that asafoetida over one kilogram shall be sold in sealed container and no hingra shall be sold without label having the required declaration.

Rule 50 prohibits manufacture, sale, stock, distribute or exhibit for sale of the articles of food enlisted therein without a licence. It covers most of the common food articles that are in use in India. The Fruit Products Order, 1955, Solvent Extracted Oil, Deoiled Meal and Edible Flour (Control) Order, 1967 and vanaspati covered by Vegetable Oil Products Control Order, 1947 are exempted from this rule. No second licence is necessary in those cases under this rule. One licence may be issued for

one or more articles of food, Licensing Authorities are to be appointed either by the State Government or the local authority. Separate licence are not necessary for transaction of food articles at separate places. This rule is not applicable to itinerant vendors having no specified place of business. If the premises of business are free from sanitary defects, licence shall be granted.

The persons dealing with prepared foods should display in a board the preparation in ghee edible oil, vegetable oil (vanaspati) and other fats for information of the purchaser. Persons suffering from infectious, contagious or bathsome disease shall not be employed by any licensee. The place of dealing with articles of food shall be separate or away from urinal, drain, latrine etc. Persons dealing with oils and fats shall maintain correct account of the transactions to be inspected by the licensing authority. The State Governments have been authorised to fix up duration of the licence under Rule 51.

Contravention of the rules framed under the Act are not offences involving moral turpitude as was held in Inderlal V Lachuran. 123

In Food Inspector, Calicut Corporation V V.K.Appu, 124 the application of the accused for licence was refused and accused conducting trade without a licence was held liable.

123. Ch.IV n.57
124. 1966 M.L.J. (Crl) 367. In State V Prem Prakash Adhikari (AIR 1966 All 504) the respondent was prosecuted separately for selling aerated water, ice cream and bread without a licence. He was held guilty only in one case as his business premises was one for all articles of food. His plea that he had applied for licence was not accepted by Allahabad High Court. In Shabbir V State (1956 Cr.L.J. 93) as the appellant did not apply for renewal of his licence, he was held guilty for dealing with articles of food without a licence violaging the statutory provisions.
Vicarious Liability:
(a) Master and servant:

One who asks to do his work through another is deemed in law to have done it himself. The civil liability of the master for the acts of his servant in course of employment is well known under the common law. Where the duty is not duly performed or negligently performed, the person committing the act was made responsible. As the agent or the servant is employed for the benefit of his master, the liability was extended to the master who may not have knowledge of the wrongful acts of his servant. Such liability is extended to the master even to the fraudulent actions of his servant.

In Barwick v English Joint Stock Bank, the classical view propounded by Willies, J. as:

"The master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved."

The rule is founded on the principle of social duty, that every man in the management of his own affairs, whether by himself or by his agents or servants, shall so conduct them as not to injure another.

In due course of development of socio-economic offences, mens rea is ruled out and criminal liability for such offences extends to all persons up to the ultimate benefactor. They are now accepted as statutory offences and liability under these statutes are being attempted supprescribing at around the offence.

The opening words of Section 7 of the P.F.Act, begins with the words referring to persons exposed to liability;
viz. "No person shall himself or by any other person on his behalf ...." indicates fixation of vicarious liability for committing offences in rough others. Though a master cannot be made criminally liable for criminal acts of his servant or agent without his association, directly or indirectly, a departure has been intended under the Act.

The justification of making a master liable for the criminal acts of his servant was made by Lord Atkin, J. as:

"I think that while prima facie principal is not to be made criminally responsible for the acts of his servants, yet the legislature may prohibit an act or enforce a duty in such words as to make the prohibition of the duty absolute in which case the principal is liable, if the act in fact done by his servant..." 127

This principle was accepted in India in Hari Prasad Rao V The State by the Supreme Court.

While dealing with cases of adulteration of food, the principle of extending vicarious liability to the master had been made applicable in England,129 America130 and India131 in the same line.

The liability of the master is insisted upon invariably in the statute as otherwise every master will be able to play the

127. See Monsoll Brothers Ltd. V London & N.W.Railways Supra n.57 It was a case under the Railways clause consolidation Act,134
128. AIR 1951 S.C. 204. It was a case under Motor spirit Rationing Order 1941. It was held that the supplier (master) is liable for the act of his servant in contravening the provisions of the Order.
129. See Brown V Foot (1892) 61 LJMC 110. Lord Hawkine, J. said "I think myself that the master for all purposes must be deemed to be the seller of the milk; that is to say it is impossible to say, that he was not a seller of the milk."
130. See U.S. V Mayfield (DCA La 177-F. 765) It was held that officers and stock holders in a corporation are liable for violation of the pure food laws by their manager to the
game profitably through servants or agents getting the ball rolled disowning his liability frustrating the enforcement of the provisions of the law. The liability as fixed under the impugned Act is thus absolute and vicarious.

Thus under the impugned Act, an attempt has been made to cover various apprehended types of circumstances to curb menace of adulteration. Even circumstances exist to punish innocent vendors.

Contd...

extent that they confer on him the authority to do the acts which are performed by him in course of his employment.

131. See Public Prosecutor V Meenakhi Achi 1970 Cr.L.J. 926. The respondent who was the owner of the ice cream company had engaged a manager to look after the business of the company. The ice cream sold by the company was found adulterated on analysis. The High Court of Madras held that as long as the respondent continues to be the owner of the company, she is vicariously liable though her plea of ignorance may be considered as a mitigating circumstance while imposing penalty.