CHAPTER VIII

CONCLUSION

Besides analysis of various provisions of liability for food adulteration, a separate statistical analysis of results have been made. The inference of the earlier chapters and the observations on the statistical analysis have been put together as conclusions and suggestions in this chapter.

Result of analysis of reported cases in India

(1) Persons prosecuted:
(ii) Persons prosecuted

<table>
<thead>
<tr>
<th>Persons</th>
<th>No. of cases examined</th>
<th>528</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Manufacturer</td>
<td>24</td>
<td>4.57%</td>
</tr>
<tr>
<td>(b) Storer</td>
<td>17</td>
<td>3.26%</td>
</tr>
<tr>
<td>(c) Distributor</td>
<td>10</td>
<td>1.90%</td>
</tr>
<tr>
<td>(d) Vendor</td>
<td>453</td>
<td>86.35%</td>
</tr>
<tr>
<td>(e) Firms and Company</td>
<td>43</td>
<td>8.26%</td>
</tr>
<tr>
<td>(f) Partner and Director</td>
<td>36</td>
<td>6.92%</td>
</tr>
<tr>
<td>(g) Servant</td>
<td>57</td>
<td>10.92%</td>
</tr>
<tr>
<td>(h) Exporter</td>
<td>1</td>
<td>0.19%</td>
</tr>
</tbody>
</table>

(2) Articles of food involved:
(ii) Articles of food involved

<table>
<thead>
<tr>
<th>Articles of food involved</th>
<th>No. of cases examined</th>
<th>557</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Grains</td>
<td>14</td>
<td>2.51%</td>
</tr>
<tr>
<td>(b) Dal</td>
<td>27</td>
<td>4.84%</td>
</tr>
<tr>
<td>(c) Milk and milk products</td>
<td>284</td>
<td>51.16%</td>
</tr>
<tr>
<td>(d) Prepared food</td>
<td>64</td>
<td>11.49%</td>
</tr>
<tr>
<td>(e) Dalda and oil</td>
<td>66</td>
<td>11.84%</td>
</tr>
<tr>
<td>(f) Spices</td>
<td>42</td>
<td>7.54%</td>
</tr>
<tr>
<td>(g) Others</td>
<td>60</td>
<td>10.77%</td>
</tr>
</tbody>
</table>
(3) **Manner of adulteration** (in the above cases):

(a) Grains: with extraneous matters and insect infestation

(b) Dal: with extraneous matters, insect infestation and colour

(c) Milk and milk products: with added water or extraction

(d) Vanaspati and oil: with extraneous matter, improper storing

(e) Prepared food: with colour

(f) Spices: mostly mirchi (capsicum) with colour, extraneous matter and insect infestation

(g) Others: mostly turmeric with colour, extraneous matter and insect infestation.

(4) **Nature of offences committed:**

(i) Cases examined 528

(ii) Nature of offence involved 544

(a) Adulterated

<table>
<thead>
<tr>
<th>Nature of Offence</th>
<th>No.</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substandard</td>
<td>76</td>
<td>13.97 P.C.</td>
</tr>
<tr>
<td>Unfit for consumption</td>
<td>6</td>
<td>1.10 P.C.</td>
</tr>
<tr>
<td>Added with extraneous matter</td>
<td>45</td>
<td>8.28 P.C.</td>
</tr>
<tr>
<td>Injurious to health</td>
<td>4</td>
<td>0.74 P.C.</td>
</tr>
<tr>
<td>Prohibited colour</td>
<td>69</td>
<td>12.69 P.C.</td>
</tr>
<tr>
<td>Insect infested</td>
<td>24</td>
<td>4.41 P.C.</td>
</tr>
<tr>
<td>Others</td>
<td>263</td>
<td>48.34 P.C.</td>
</tr>
</tbody>
</table>

(b) Misbranded 14 2.57 P.C.

(c) Contraventions 43 7.90 P.C.

(5) **Area of offence:**

(i) No. of cases examined 528

(ii) Area reported 514

<table>
<thead>
<tr>
<th>Area</th>
<th>No.</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban</td>
<td>387</td>
<td>75.28 P.C.</td>
</tr>
<tr>
<td>Rural</td>
<td>127</td>
<td>24.72 P.C.</td>
</tr>
</tbody>
</table>

(6) **Results of prosecution:**

No. of cases examined 528

Cases in which results declared 476

(a) Convictions

<table>
<thead>
<tr>
<th>Type of Punishment</th>
<th>No.</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine and imprisonment</td>
<td>174</td>
<td>36.85 P.C.</td>
</tr>
<tr>
<td>Fine or imprisonment</td>
<td>70</td>
<td>14.70 P.C.</td>
</tr>
<tr>
<td>Forfeiture</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>Benefit or probation granted</td>
<td>24</td>
<td>5.06 P.C.</td>
</tr>
</tbody>
</table>
(b) Acquittals (reasons)

(i) Lack of evidence 66 13.36 P.C.
(ii) Technical error of
(a) Food Inspector 65 13.65 P.C.
(b) Analyst/Director 26 5.46 P.C.
(c) Local(Health) Authority 13 2.73 P.C.
(d) Others 38 7.99 P.C.

Thus it is seen (i) that mostly the vendors are prosecuted more in number ignoring the manufacturers, stockists and distributors. The inference is that either the food inspector is unable to reach them or the vendors are really the offenders.

(ii) Milk and milk products are very commonly adulterated besides edible oils and prepared food.

(iii) Adulteration is commonly done by addition of extraneous matters, unpermitted colours or exposing insect infested articles of food.

(iv) In many cases the articles of food are found to be substandard or not of the nature, substance or quality of food purported or represented to be.

(v) Adulteration is rampant in urban areas than the rural areas.

(vi) The percentage of conviction is more than acquittal.

(vii) Acquittals are mostly due to technical errors.

A graphical analysis of some of the features of liability are also discussed hereunder in the form of conclusions besides the observations made at appropriate place of discussion in the earlier chapters.
Technicalities in the Act:

The Act read with its Rules are too technical and the maximum number of failure in prosecution is due to non-compliance of a particular rule in its interpreted form. The officers entrusted with investigation are not given adequate technical legal training so as to follow the procedures in its interpreted form. The compliance of the provisions are invariable worded as such to be followed as a must. The nature of compliance as mandatory or directory depends on the purpose of compliance but has been interpreted with the other corresponding provisions of the Act. Compliance of Rule 22 regarding quantity of sample to be sent to analyst continued to be controversial till it was set at rest by the Supreme Court. Many cases have been acquitted on that ground. The provision of Rule 9(j) of sending analysts report to vendor by food inspector repealed by Notification No. GSR 4(E) dated 4.1.1977 is also a controversial point as to its nature of compliance. Several cases have been acquitted for such non-compliance. The statistical analysis also shows more percentage of acquittals in adulteration cases for technical errors of technical personnels.

It is submitted that provisions declaring provisions mandatory or directory and consequences of their non-observance in the light of Sections 460 and 461 Cr.P.C. 1973 distinguishing non-compliances of those vitiating a trial from those that not vitiating a trial are necessary in the impugned Act. There are controversies on the procedures required to be adopted by the investigating agency at every stage and unless the ambiguities are removed, the object of the Act would continue to the frustrated. The mandatory procedures should be specifically stressed, non-
compliance of which would otherwise effect the sampling or analysis adversely to the prejudice of the defence and the rest shall be declared as directory with jurisdiction of court to determine prejudice pleaded by defence.

**Meaning and use of the term 'food':**

The meaning of the common words relating to common articles consumed by the common people available commonly and contained in a statute intended to protect the community shall construe its meaning from the commonsense of understanding of the word. The term 'food' under the Act covers all the articles that are available in reach at hand to the common people and everyday brought within the mischief of the Act. It is a grave concern to impute criminal liability on a person dealing with an article intending its sale as fodder which is used as food in some other parts of the country not to his knowledge. It is not expected that the vendors to ascertain and know the articles used as food in the whole of India. Appendix B of P.F. Rules 1955 is limited to a few articles of food only. It is therefore submitted that all species of food used in the whole of India be standardised in Appendix-B notifying the business class as well as the public to be conscious of the terms and their food. There are several instances where liability was not fixed for sale of adulterated food as no standard has been fixed for those food under the Rules which has undoubtedly affected the scheme of the Act.

Besides, the term 'food' has been liberally interpreted and their exposure for sale for any purpose exposes the dealer for protection. It is submitted to limit the scope of 'food' to those articles that are intended for human consumption only in unambiguous terms so as to be understood by common man.
Milk and milk products require to be regulated with more stiffly right from milking till it reaches the consumer.

Use of the term 'adulteration':

When several varieties of cereals are ground in a common huller one after the other which is not uncommon in India, it is likely to have admixture of two cereals that are so ground. The law as it stands, declares such admixtures also adulterated. The intention or the action of the vendor in such cases being unintentional, it is submitted to exempt liability for admixture of pure eatables if not misrepresented or misbranded for a higher price.

Meaning and use of the term 'sale':

The term 'sale' has been so liberally interpreted that petty dealers are likely to be subjected to the machinery of the Act. Mens rea being out of consideration, an intelligent manufacturer, or dealer can prevail upon credit purchasers and avoid liability shifting on them.

There requires synonimity of spirit in defining the two terms 'food' and 'sale' in common paralance so as to allow the common man to adjust within the law.

Analysis report, its use:

Neither the food inspector nor the Local (Health) Authority are trained in the techniques of analysis of food to warrant an opinion on the report of the public analyst as 'erroneous' in order to get it re-examined either by another analyst or by the director. There is no remedy in case the report of the analyst or director was found erroneous or incorrect. In order to have an effective control over analysis reports, it is submitted that the
Local (Health) Authorities may be trained with the rudimentary techniques of analysis and detection of adulteration. It is further submitted that the report of the analyst or the director may not weigh more than the report of an expert under the Indian Evidence Act.

**Administration through Food Inspector:**

There is no adequate check on the duties of the food inspectors and many State Rules do not prescribe maintenance of records by food inspectors to balance their existence, showing their activities and duties enabling the controlling officer to supervise. There is no effective system to supervise his activities. No job-chart fixing any target of his activities has been prescribed as a result, the food inspector has a wide discretion to 'pick and choose' such of the persons of his choice for prosecution. Each area comprises of manufacturers, stockists, distributors and vendors. Prosecutions other than vendors are not many in number. Prosecutions for contraventions and violations are very few. It is also submitted that provision of penalties for misfeasance, malfeasance and nonfeasance of duties by food inspectors will further proper prosecution. In view of the large number of acquittals for non-observance of technicalities by the food inspectors, it is submitted that they require better training with encouraging service prosperity.

**'Manufacture' Its scope under the impugned Act:**

Though the statute prohibits manufacture of adulterated food for sale but it does not totally prohibit for such manufacture. As long as manufacture of adulterated articles of food for any purpose are not totally prohibited, the menace cannot be checked. More and more articles of food are likely to be manufactured in adulterated form and the common sense would appeal to the utility
and purpose of such adulterated products. It is submitted that the consequence of such permissibility of production has not yet thought up though such manufacture for sale is prohibited by our legislatures.

'Store' - Its scope under the impugned Act:

The term 'store' finds place in sections 7 and 10 of the impugned Act. The interpretations under different circumstances held by judicial pronouncements have been discussed in Chapter VI supra. The spirit of the term can be inferred by conjunctively taking the meaning of the word 'sale' appearing in clause (xiii) of section 2 of the impugned Act. The term 'sale' includes not only contractual sales but also expression of intention for sale in any form for any purpose apart from human consumption extending to various forms of transfer, deviating from contractual rights and obligations under various governing contracts. Thus it has been artificially defined to suit the purpose of the Act.¹

It is submitted that while construing a term in a statute its language as used in the scheme of the Act, its object and scope are to be considered for an effective implementation of the provisions.

If any person is in possession of any adulterated food whether intended for human consumption or for other purposes unless are brought within the mischief of the Act, would jeopardise the societal contract. The Prevention of Food Adulteration Act, 1954 is mainly intended to protect the consumers from deceit and safeguard their interest in making them available with pure and non-injurious food.

¹ Supra Ch.III
Storage invariably refers to stocks over and above the normal requirements of possession of the person who has stored. It would be too hard to imagine a mother keeping milk with added water for feeding her baby tantamounting to storage of such milk for consumption. It is only the bulk of the articles of food that can determine the purpose of such storage. It is submitted that scope for such an interpretation is lacking under the impugned Act.

Similarly, if ordinarily a man stores articles of food in an adulterated form for his own consumption at his risk, it cannot be said to be storing within the mischief of the Act. It is submitted that notwithstanding the probability of sale of adulterated article of food, storage by stockists, dealers and vendors shall be held penal unless otherwise it is proved by defence for its purpose otherwise.

Despite the ratio propounded by the Supreme Court in 1975 in the case of Om Prakash V Delhi Administration and Municipal Corporation of Delhi V L.N. Tondon declaring that 'storing for sale' only is an offence under the Act, we get controversial interpretations.

The Allahabad High Court in 1976 in its Full Bench decision in Fakurrudin V State unanimously held that the whole scheme of the Prevention of Food Adulteration Act, 1954 and the

2. Supra Ch. VI n.102
3. Supra Ch. III n.132
4. 1976 FAJ 444. It was a revision directed against the judgement of conviction where in two questions of law were raised for interpretation. They were - (i) whether non-acceptance of price amounts to sale; and (ii) whether storage simplicitor of an article of food is an offence. Swaroop J. on behalf of the Full Bench observed... "we do not find any lack of clarity in the words of section 7 and 16 and therefore, find ourselves unable to accept the contentions of the learned counsel that we should add words 'for sale' after the word 'store' in section 7 and again 'stores' in section 16. If the words 'for sale' had occurred after the word 'store' they could have been read in
language of the relevant sections indicate that the storage and distribution contemplated by sections 7 and 16 of the Act need not be stored for sale or distribution by way of sale.

In a discussion of the scheme of the Act it was held that while import of adulterated food in all forms have been prohibited under section 5, it cannot be said that the scheme of the Act makes punishable only if the storage of adulterated article of food is for sale. A reference to section 7 and section 10 of the Act was also made. Sub section (l) of Section 10 empowers the food inspector to take sample of any article of food from not only persons selling such articles but also from persons who are in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee and also from a consignee after delivery of any such article to him. A consignee need not be a conjunction both with the word 'manufacture' and before the words 'or store', it is not possible to read the words 'for sale' as also controlling the words 'store' in section 7 or the words 'stores' in section 16".

Their Lordships referred to earlier decisions of Delhi High Court in Delhi Corporation V Laxminarain (A.I.R. 1970 Del.244) of Kerala High Court in Food Inspector v Punshl Desai (supra Ch.VII n.11), of Allahabad High Court in Narain Das v State (Supra Ch.VI n.96), of Punjab High Court in Rameswar Dass v State (A.I.R. 1967 Punj 132), and of Calcutta High Court in Giridhari v Calcutta Corporation (A.I.R. 1966 Cal.634) and disagreed with the views taken in the said cases observing that no adequate reasons or justifications have been shown in giving the meaning to the term 'store' as 'store for sale'. It was further justified that 'the purpose of the Act is to prevent the people from getting the occasion to consume adulterated food. 'Sale' is not the only mode of transfer of goods from one hand to another, or for making it available for consumption. The law appears to prevent the storage of adulterated food because the purpose of storage can be only for future consumption of the stored food. There is thus no reason why stored not meant for sale be not prohibited under the Act.
purchaser. When a sample is taken from a consignee after delivery to him, it may or may not be meant for sale. Hence if the term 'store' is meant 'store for sale' the powers conferred on the food inspector would be futile.

No reference was made by their Lordships to the decisions of the Supreme Court in Om Prakash's case or L.N. Tondon's case. 5

It is respectfully submitted that the interpretation of the term 'store' as laid down by their Lordships of the Supreme Court and the law relating to manufacture and store as contained under the Act infers enlarged circumstances as follows: (i) in case of manufacture, store and sale of adulterated articles of food, the penal liability for storing and manufacturing tend in backward direction after commission of the crime from vendor towards manufacture; (ii) no liability can be extended to any manufacturer or storer, if they are different person or persons from that of the seller; (iii) that the adulterated articles of food

5. See supra n. 2 and 3. In Tondon's case the respondent was a hotelier who was supplying food to his guests on consolidated charge for the room and other amenities including food, milk, curd, ice cream, stored for service to its customers were found to be adulterated. It was observed by Sarkaria R.S.J., that from a conjoint reading of the above referred provisions (Sec.7, 16 and 10) it will be clear that the broad scheme of the Act is to prohibit and penalise the sale, or import, manufacture, storage, or distribution for sale of any adulterated articles of food. The term 'store' and 'distribute' take their colour from the context and the collection of words in which they occur in sections 7 and 16. 'Storage' or 'distribution' of adulterated articles of food for a purpose other than for sale does not fall within the mischief of this section. The section (Sec.10) does not give a blanket power to the Food Inspector to take sample of an article of food from a person who is not covered by any of the sub-clauses of sub-section (1)(a) or sub-section (2) of Sec.10. The three sub-clauses of sub-section (1)(a) apply only to a person who answers the description of a seller or conveyor, deliverer actually or potential of an article of food to a purchaser or a consignee or his consignee after delivery of such an article to him. Sub-section (2) further makes it clear that sample can be taken only of that article of the food which is 'manufactured' 'stored' or 'imposed for sale'. In short the expression 'store' in section 7 means 'storing for sale' and consequently storing of adulterated article of food for purposes other than for sale would not constitute an offence in section 12(1)(c) of the Act.
are manufactured for sale or stored for sale can be inferred only after its actual sale as no one will readily agree to be manufacturing or storing adulterated articles of food for sale for human consumption; (iv) that the liability of a manufacturer (carrying only manufacturing process) or a storer (carrying on only storing business) is above the reach of the impugned law; (v) manufacturing or storing adulterated articles of food as such is not prohibited under law; and (vi) that there is no total prohibition of manufacturing, storing, selling or distributing adulterated articles of food under the impugned Act.

Such an interpretation ipso facto results that the provisions of the Prevention of Food Adulteration Act, 1954 is redundant in its cumulative effect.

Under the aforesaid circumstances, it is submitted for an amendment of the provisions by suitably wording section 7 prohibiting 'manufacture, store, distribution or sale of any adulterated or misbranded article of food' by deleting the words 'for sale' to have its intended affect in controlling the rapidly developing menace.

It is submitted that the impugned Act is silent about addition of flavouring agents to articles of food. Flavouring agents are invariably added in most of the prepared foods. It is therefore submitted that rules regulating addition of flavouring agents to articles of food need be introduced.6

6. Food additives and contaminants committee Report on the review of flavourings in Food (Published by Her Majesty's Stationary Office, 1976)
Penalty, its imposition:

Penalty for manufacturing or storing simplicitor of adulterated articles of food has been omitted. This shows such manufacturing or storing are not prohibited unless they are sold or attempted to sale for human consumption. The prosecution, in such cases are required to apprehend the use of such adulterated articles of food till their disposal. Hence the enforcement of the law is ineffective at its base.

It is submitted that there is disjuncture of approach in fixing culpability and penalty on a person for sale of adulterated article of food and there are inconsistent and controversial approaches of judiciary in imposing penalty. Any innocent person is likely to be penalised, viz. servants, for sale of adulterated articles of food without gaining advantage by such sale.

The penalty provisions are indiscriminate and such restriction debars individualisation. Social bandit and compensation to anticipated victims depending on the quantity of benefit intended to be derived by such action would check the menace a long way.

Emergency provision to check the menace at the spot needs to be provided in par with National Security Act, 1980.

In the age of promotion of rehabilitatory measures, limitations restricting the trial court prescribing the minimum punishments in all cases appear to be extremely stringent. It is submitted that usual discretion may be permitted fixing norms for the trying courts to consider the suitability of any rehabilitation measures in appropriate cases. As far as the juveniles...
are concerned, the benefits provided under the Indian Penal Code shall invariably be extended fixing liability on the employer in as much as employment of minors in food trades need to be an offence per se under the Act.

Various acts of commission, omission and violations have been covered as penal under the statute but are placed at different places. It is uneasy for any citizen to be conscious of his civic duties while dealing with articles of food. It is therefore submitted that all such acts, omissions, violation and contraventions declared penal to be categorised together at a place to attract any reader easily in par with American Federal Food, Drug and Cosmetic Act, 1938. The terms artificially defined in the Act may be more elaborate in the manner they are dealt in English Food and Drugs Act, 1955.

It is lastly submitted that the scheme of the Act has tilted more towards penalties then liabilities and is thus imbalanced. Effect of a law can be felt only by enlarging liability provisions but not by penalty provisions alone.