CHAPTER I

INTRODUCTION

Food, water and air are essential elements for existence of every living being ever since their origin. People selected to pick and choose eatables according to their taste and by increase of population in the society, various means of agriculture were adopted to meet the needs of the people. When food was abundant, the attention of the people were not diverted to restrict or impose any limitation on use of such articles of food. Due to lack of agriculture incentive, complicity of the society, increased demand for food which were consumed by more members of the society gradually became scarce resulting in admixtures of similar substances to the food to meet the demands.

In European countries wine was the foremost article which attracted the attention of the people to check its admixture with other articles diminishing its potency. Restrictions were imposed prohibiting vendors from selling admixed food gradually apart from wine.

Although food adulteration and the sale of unhygienic food stuffs is a serious problem for the developing world, it is probably for more extensive and has a much more serious effect in the developing countries in which the people are illiterate and have fewer resources.1 This is exactly the case in India.

Fraud in business is of recent origin rapidly developing in all directions to achieve illegal gains without investment and pain. In spite of the relief normally granted by Courts to deceit, the activities became a menace to the society day by day due to shortage of products, increase in demand and rise in price level. Liability for sale of adulterated food arises only by contract. The offence of adulteration of food is said to be committed in all stages of a crime from 'preparation' till its actual 'commission' by sale to consumers. So there can be no liability in absence of inherent intention of 'sale'. Sale of adulterated food which was a civil wrong turned to a wrong arising out of a contract with the apprehension of adverse effect to the people at large. The remedies opened to the representee were limited to revocation of the transaction or claim for damages though motive of deceit was irrelevant for an action.  

As the victims could not take effective and proper recourse against the adulterater for obvious reasons and as the sovereign had no obligation to arrange for reliefs for the wrongs arising out of contract the menace developed rapidly. It has been rightly observed by Sir Federick Pollock in the following terms -

"There is no law of contracts 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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The controversial approach of the term 'deceit' towards consumers required the problem to be dealt with separately independent of contract without counting for damages to the victim. The views of the American courts were that a vendor or a lessor may be held guilty of deceit by reason of material untrue representation in respect of his own business or property, the truth of which representations the vendor or lessor is bound and must be presumed to know. Whereas the views of English courts were that even the grossest carelessness will not make a man liable for a false statement without a specific finding of fact that he knew the statement to be false or was recklessly ignorant whether it was true or false. This ignoring the loss or injury to the victim was considered constitutional to make the adulteration of food penal to check the growing menace of the problem in society.

"Sarira madhyam khalu dharma sadhanam" means the religious duty of every man is to keep his body healthy. "Health is wealth". A nation can be said to be healthy if its inhabitants are free from imperfect health. The increasing need and demand of food becomes disproportionate with production on account of growing population tempting to pollute pure food to recoup deficiency by the group of people dealing with transactions in food which gives rise to the development of a habit to earn easy money. It has become a problem in almost all parts of the world and its sociological study as to its etiology and penology has

4. See LeHigh Zinc and Iron Company V Bamford 1897 (150) U.S. 665, 673
5. See Angus V Clifford (1891) 2 Ch. P. 449
6. See Kalidas - Kumar Sambhava 2nd Ed.1975 Ch.V Line 33 P.26
drawn the attention of the legislators. It is a social evil phenomenon developing rapidly in all directions and thus remarkably significant for a research study aiming for a total curb of the menace.

The customs, having the force of law, restricting such admixtures or adulterations, were developed as early as late nineteenth century in England and by early twentieth century, statutes were enacted in England and various states in India, viz. Madras, Bombay, Bengal etc.

India being mostly an agricultural country, the scarcity of food was not felt till the end of eighteenth century as its population was thin. Only on occasional circumstances during floods, drought, war, cyclones and other unnatural exigencies, there used to be scarcity of food. The business people used to take an upper hand in selling various unnatural and uncommon products added with common food. It is not uncommon that even today articles which were not used as food mostly covering vegetable products, unknown cereals and other products which are not commonly used as food including grass, grass seeds etc., are also used as food during drought and other acute scarcity of known food.

In India, during the second part of nineteenth century provisions for selling noxious food and drink was made penal.

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8. Food and Drugs (Adulteration) Act, 1923 (18 & 19 Geo.5,C.31)
9. The Madras Prevention of Adulteration Act, 1918
The Bombay Prevention of Adulteration Act, 1925
The Bengal Food Adulteration Act, 1919
under the Indian Penal Code, 1860. In order to have affective control of the menace special statutes were also enacted by the federal States in the early parts of the twentieth century.

The food problem has two broad aspects, viz., (i) the production aspect and (ii) the distribution aspect. The problem of adulteration sticks to both the aspects and has become a stigma in view of the rampant practice by people dealing with the transactions.

The present problem, though ancillary is the base which magnifies the main problem. The policy on the subject is well developing. In 1952 the then Health Minister of India Rajkumari Amrit Kaur had remarked -

"We do not have a food policy. But we are moving towards one. We have framed our policy and programme which will take to out objectives in some years."10

Articles of food being originally derived from nature, any article of food offered for consumption to the society in its unnatural form was the sole subject matter before the Indian legislatures for enacting the uniform "Food Adulteration Act" in 1953 subsequently renamed as "The Prevention of Food Adulteration Act" in the year 1954.

With a view to secure the active association of growers, producers and exporters in the drive for export promotion, The Import and Export (Control) Order, 1953 was enacted to regulate the export business for all kinds of articles including articles of food as saved and appended in Appendix-III to the said Order. Standards fixed under the various quality control schemes provided

for standardised packing and marking.\textsuperscript{11} Inspite of these efforts, owing to the menace, the business has also been greatly affected.

Adulteration of food being a socio-economic offence, in order to bring uniformity and certainty throughout India, the Central Act, the Prevention of Food Adulteration Act was passed in the year 1954. The preamble of the Act states that it is -

An Act to make provision for prevention of adulteration of food".

The object of the Act as reaffirmed by the Joint Committee on the Prevention of Food Adulteration (Amendment) Bill 1974\textsuperscript{12} are as follows:

"Adulteration of food articles is rampant in the country and has become a grave menace to the health and wellbeing of the community. It makes a heavy dent in the already low nutritional standards and the benefits of public health programmes on which large sums of money are spent, are incendiately undermined keeping in view the gravity of the problem and the growing danger which it faces to the health of the Nation, it has become necessary to impose the Act of 1954 so as to plug loop-holes and provide for more stringent and effective measures with a view to curb the menace. The social evil of fraudulently selling adulterated food stuffs not only effects the health of the citizens but tends to demoralise the health of the Nation and grievously obstructs her moral and economic progress".

While considering penalty for sale of adulterated food, the spirit of the Act was pointed out by Dua, J. of Delhi High Court in Municipal Corporation of Delhi V Suryanaravana\textsuperscript{13} as follows:


\textsuperscript{12} See The Prevention of Food Adulteration (Amendment) Bill, 1974

\textsuperscript{13} 1965/2 Cr1.L.J. p.71
"The anti-social and anti-national conduct in fraudulently selling adulterated articles seems to meet to tend to breed mis-trust amongst the citizens and to that extent, it weakens democracy governed by the rule of law; it is in addition contrary to our ancient tradition of truth and honesty, the disappearance of which from out daily practical life tends to demoralise the Nation and grievously obstructs her moral and economic progress,"

The object of the Act is to prevent adulteration and misbranding of foods as defined therein; aims to provide for adequate punishments for food adulteration and to make the definition of the offences comprehensive so as to make it impossible for the culprits to escape on technical grounds.

While analysing the scope and object of the impugned Act, the Full Bench of Kerala High Court held in State of Kerala V Vasudevan Nair. 14 -

"The Act is a piece of consumer legislation regulates to some extent, the consumers supply regulations. The consumers demand enforcement of discipline amongst the producers, consumers and dealers of food to ensure safety in realm of food, the consumers' legitimate ignorance and total dependance on the fairness of 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".

The impugned Act tackles the problem by enlarging the meaning of the term 'adulteration' to attract all types of unhygienic food so as to bring a person dealing with such unhygienic food within the clutches of the Act for punishment. It further extends the liability not only against the dealers and vendors but also against the manufacturers, distributors and stokers of articles of food intended for sale for human consumption. Vicarious liability over and above strict liability, joint liability and liability of firms does not leave room to any person.

14. 1975/1 F.A.C. 8
to escape liability for selling unhygienic food. The stiffness of the meanings for various terms given under the Act with standards prescribed for common articles of food have been rigidly constructed by the Judiciary in order to achieve the object of the Act in many cases.

Inspite of these provisions, we continue in the position as quoted by Ben Jonson in Bartholomew Fair -

"who knows when he openeth the stopple, what may be in the bottle? Hath not a snail, a spider, yea, a newt been found there?

Malnutrition is prevalent in India and its study is important as it has attracted in international field. The United Nations Food and Agriculture Organisation has remarked that in India the practice of adulterating food has continued unabated. 15

An assessment of the problem shows although not all business in the food distribution chain engage in adulteration, it is found among producers of all sizes, wholesalers, distributors and retailers. 16

The anti-social and anti-national conduct in fraudulently selling adulterated articles breeds mistrust amongst the citizens and this weakens democracy governed by the rule of law. It undermines our traditional ideas of 'truth' and 'honesty' and demoralises the nation and thus hinders our moral and economic progress.

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The human society is ever changing and developing with complexities and this dynamism has been constantly throwing up challenges rendering the need of parallel growth of techniques of social control to keep the society abreast with the changing needs. Law having been considered to be the most formidable means of social control, its social relevance to keep the society in order is utmost important. According to Sir Kenny, Crimes originate in the Government policy and the governing power in society at any given period has made or accepted rules of law which forbids a man to bring about certain specified results by his conduct.\textsuperscript{17}

An attempt has been made in this study to describe how the law has evolved, how it became what it is today; and to try to evolute how far it reserves the ends of society and in particular the consumers in later part of the twentieth Century.

The object of the present study aims to analyse the adequacy of present legislation under the Prevention of Food Adulteration Act, 1954 in achieving its aim and objectives and to analyse the shortcomings through their case study in the background with suitable suggestions based on inferences arrived at by such analysis.

The study is confined to the scope of fixation and determination of liability under the Prevention of Food Adulteration Act, 1954 with reference to judicial pronouncements for acts, omissions, violations and contraventions made punishable under the Act.

\textsuperscript{17} P. Kenny's Outline of Criminal Law, 19th Ed. (Cambridge University Press) 1964 p.4.
The area of study enlightens the liability as fixed under the various provisions of the Prevention of Food Adulteration Act, 1954, and its Rules framed in 1955. The flexibility of the meaning of the terms 'adulteration', 'mis-branding', 'sale', and 'food' which have been interpreted in the impugned Act exhaustively and artificially, departing from its grammatical and literal meaning were found useless in some cases for the purpose of preventing the menace. The technicalities prescribed in the investigation process has failed in many cases. The stiffness restricting the judicial discretion in imposing penalty, has resulted strict observance of investigation provisions in as much as the limitations imposed have resulted negatively is not imposing adequate penalty when compared with the pains suffered by the victims for such crimes.

The nature and scope of the subject and its importance are discussed in the first chapter. The historical background as to the development of the law relating to food adulteration in India, England and America have been discussed in the second chapter.

The interpretation of various terms with their legislative intent under the Prevention of Food Adulteration Act, 1954 and their artificial meaning interpreted by courts have been discussed in the third chapter.

The practices and procedures prescribed for enforcement of the law has been discussed in the fourth chapter.
The concept of liability, its growth towards criminal liability under the Prevention of Food Adulteration Act, 1954 in India and England have been dealt with in both the parts of the fifth chapter.

Judicial trend in imposing penalty for various offences provided under the impugned Act has been stated in the sixth chapter.

Seventh chapter consists of the concluding remarks with the inferences and suggestions.