CHAPTER - II

HISTORICAL DEVELOPMENT OF FOOD ADULTERATION LAWS

It is proposed in this chapter to give an account of historical developments of law relating to penal sanctions for indulging into the mischievous act of adulteration of food articles effecting health and happiness of the community in India. An attempt has also been made to trace the development of law under England legal system which has got a direct bearing on the Indian laws. The development of the law in U.S.A. has also been discussed.

England:

According to history of English law, malice, which was an essential element in tort was implied by law in mediaeval period. It is now recognised that it is not an essential element in tort. The thought of man is not 'triable' for determining civil liability and hence was not considered to be a necessary element. Such an idea excluded any direct reference to negligence as a cause of liability. The extent of damage was considered to be the proximate result of the so called negligence. In the Middle Ages they were said to be liable because their conduct was regarded by law as wrongful. 1

Both Athens and Rome made provisions against adulteration of wine with the growth of mediaeval towns there was a gradual transfer of certain forms of food manufacturing from the home to the artisan shop. As bread baking, milling, wine

and beer making and slaughtering became recognised trades, the
Government began to regulate them. During Sixteenth century in
many English towns tasters were employed. The size of a bread
regulated the price of the loaf and gradually clauses controlling
adulteration of bread and other products were added until the
latter Acts finally abrogated in 1836 and acquired some of the
characteristics of general law. From the early eighteenth cent­
ury onwards social legislation, primarily to protect the revenue
controlled such articles as tea, coffee, chicory, beer and wine.²

Adulteration of food is an act intentionally debasing
the quality of food offered for sale either by admixture or
substitution of inferior substances or by the removal of some
valuable ingredients. The Greek and Roman classics contain
allusions to wine makers and dealers, who coloured and flavoured
their wine.

In England, as early as thirteenth century, for the
first time, made effort to prevent fraudulent dealings on the
part of butchers and brewers. About the middle of nineteenth
century economical microscopical knowledge has reached a stage
that food adulteration began to be studied from the stand point
of the rights and welfare of the consumer. The laws relating to
adulteration of food lacked sufficient means of enforcement and
remained largely ineffective until 1872 through the general
regulatory laws.

In 1874, the Society of Public Analyst was established
which set up standards of food quality and purity. The Sale of

². See Gupta J.P. - Commentary on Prevention of Food Adulteration
Food and Drugs Act, 1875 with the Amendments of 1879, Margarine Act, 1887; The Sale of Food and Drugs Act of 1899, The Butter and Margarine Act, 1907 and the Sale of Food and Drugs Act, 1927 and 1938 from the existing English law and finally reached the enactment, The Food and Drugs Act, 1955.

In the latter part of the nineteenth century the medical science had hold that the birth right of all living creatures is health. Sickness and disease are perversions of the natural conditions. According to the opinion of Dr. Tomspies -

"We are what we eat" i.e. all diseases are caused by chemicals and all diseases can be cured by chemicals. All the chemicals used by the body except for the oxygen which we breath and the water which we drink, are taken in through food. If we only knew enough, all diseases could be prevented and could be cured through proper nutrition."

So far as it concerns the Food and Drugs Act 1927 the most serious are the lack of authority to inspect warehouses of any restriction whatsoever upon the use of most virulent poisons in drugs over fraudulent statements other than those in or upon the package of food or drugs. Further more, the common practice of adulterating such commodities of common house-hold use sometimes with dangerous substances, was altogether uncontrolled.

In early mediaeval times, the law stepped into protect the buyer of adulterated wine or mostly bread. For greater emphasis was placed on the maxim 'caveat emptor' (let the buyer beware.

3. Id. p.7-8.
5. See Encyclopedia of Science - Vol.VI pp.291-301
and no one should be surprised that nineteenth century advocates of laissez-faire, individual principles took to it with natural enthusiasm. Transactions or sale and even barter between strangers were few and rare. When trading did take place, it was in markets and fairs, where the goods were openly displayed. The idea of caveat emptor merely reflected the actual practice. Fraud has never been easy to prove, for the burden of showing that the seller knew that what he said was false was a heavy one. The fraud had been accepted for an action as early as 1603 in _Chandelor V Lopus_\(^7\) where the jeweller misrepresented and sold bezoar stone for a considerable price was penalised with damages.

In nineteenth century the conflict arose between laissez-faire outlook which characterised the convictions of most influential men in that age and the desire of the judges to do justice in the individual case. The view was gaining ground through it was still for the buryer to look out for himself. There were situations where caveat emptor could no longer represent the practice of even the most prudent buryer and situations becoming more common in the era of increasing trade, where the buryer had no opportunity to examine the goods before the purchase.\(^8\)

**Commercial Codification:**

It was accepted that if a man sells an article he thereby warns that it is mercantile, that is fit for some purpose. If he sells it for a particular purpose, he thereby warns it fit for the purpose.\(^9\)

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7. 8 Harvard Law Review 283
9. Supra n.6
The fourth quarter of nineteenth century has been termed "an era of commercial codification". This was a time of keen and radical reform though the reforms related more to the machinery of law than of its substance.

The Sale of Goods Act, 1893 still governs many consumer transactions. By the end of nineteenth century there was a complete erosion of the principle 'caveat emptor'.

From the earliest days, common law had differentiated between the obligations of the ordinary man and the duties of those who professed a particular calling whose goods or services were available to all. The follower of these 'common callings' were subjected to the liabilities that arose, not out of agreement but rather from their status and from the idea that it was in the interest of community that people who offered their services to the public at large should show care, skill and honesty in their dealings. Thus the more general obligations imposed on sellers can be regarded as logical extension of the duties imposed much earlier on the suppliers of food and of services. The liability imposed by law on the seller was essentially founded on the 'contract of sale' it nationally formed part of the agreement between seller and buyer. The manufacturers liability was bound by his contract with the wholeseller or dealer. The manufacturers' liability to consumer was well found in Donoghue v Stevenson\(^{10}\) wherein it was held that manufacturers owed a duty to the ultimate consumer to take care in making their goods till it reaches the ultimate consumer. The decomposed snail

found in the zinger beer by the consumer made the manufacturer liable. Lord Atkin explained the principle as -

"..... a manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumers life or property, owes a duty to the consumer to take that reasonable care."

The growth of 'brand names', advertisements, of manufacturers etc., exposed the manufacturer to be more reliable before his consumer and his responsibility has increased to satisfy the customer with his products with the same degree of liability in case of breach of the implied warranty.

The idea of negligence with its duty to take care; and the law of contract which governs the duties of seller of goods - both of these concepts are creations of common law, that is to say, they have been created by judges in the course of deciding cases in the court.11

Liability to pay damages for breach of contract can be expensive and mostly neglected. In order to administer equality under contract a number of technicalities have been evolved by the courts to deal with contracts which attempted to evade obligations imposed by law. The three possible remedies for the buyer viz. (i) repair or replacement of the faulty goods; (ii) compensation for the fault or return of the goods and (iii) refund of the price. As all the remedies were not enforced by the consumers due to their slackness, the State undertook the responsibility

11. Supra n.8.
of dealing with breach of contracts relating to food and drugs as a statutory offence and the law developed from time to time till it reached the shape as reflected in Food and Drugs Act, 1955.12

According to Lord Halsbury the law relating to food has developed from the prescriptions of the mediaeval guilds to maintain the purity of the commodities and from early statues which dealt only specific food stuffs, viz. Tea, Bread, Coffee, wine etc. and not with general principles. The first Act was the Adulteration of Food or Drink Act, 1860, which made it an offence knowingly to sell food containing an injurious ingredient or material and to sell food which was adulterated or not pure. This statute was replaced by the Sale of Food and Drugs Act 1875. The first consolidating statute was the Food and Drugs(Adulteration) Act 1928, the second was the Food and Drugs Act 1938, the third was the Food and Drugs (Milk, Dairies and Artificial cream) Act 1950 and the last and the existing full consolidating Act is the Food and Drugs Act 1955.13

The spirit of the law has been observed in Smedleys v. Breed14 as that the offences contemplated in the Act is an 'absolute offence' and all that is meant an absence of mens rea. It is one of those offences which are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty. It is also not an absolute offence in the sense that no defence is possible once the prohibited Act is proved.

12. Id. pp.30-41
United States of America:

In the United States the Federal Food and Drugs Act, 1906 was the result of long and stormy champaigne of Dr. Harvey Washington Willey. The law defined food adulteration and misbranding of products; it provided regulations covering the interstate movements of food and penalties for violations. The Act of 1906 was superseded in 1938 by more rigorous Food, Drugs and Cosmetics Act 1938 since 1940 by the Food and Drug Administration (Now within the Department of Health, Education and Welfare).

The Food, Drugs and Cosmetics Act, 1938 broadened the definitions of 'adulteration', 'misbranding' and lack of informative labelling; it provided for factory inspection; and it increased the penalties for violations. 15

This Act of 1938 was amended in 1958 and 1962 to define and regulate food and food colouring. Imported goods that violated the provisions of the Act may be denied admittance to the United States. 16

Food and Drug administration is a part of the Government of United States. The job of Food and Drug Administration is to see that the laws about pure foods and drugs and obeyed. About fifty years ago, people got very upset about the conditions in the food and drug industries. They found that often the Company that packet and sold foods and drugs were not stating the truth about their products. Tests were made that showed that many foods were not pure and could be very harmful to the people.


Many drugs had in their ingredients that were harmful and even poisonous. So from 1906 onwards several laws were passed viz. Haridson Narcotic Act, 1914; Meat Inspection Act etc. to regulate trades. Finally the Food Drug and Cosmetics Act 1938 was passed. The law applies to all foods and drugs etc. that are shipped out of the United States or are sent from one State to another. Under the Section 344 and 355 it says that all food must be pure, clean and healthy. Food and Drugs must be carefully measured and labels must tell how much is in each package. The law has also regulations about advertisement. The label should indicate the extent of poisonous the drug is. The manufacturers shall tell the truth about their products.

The old statutes including the Federal Food and Drugs Act, 1876 was vague and ambiguous in its language regarding adulteration of food and was inadequate and flagrant abuses in the market were growing relating to adulteration and packing of adulterated food. A large number of the proprietary penace as brought by the American consumer each day were useless and in certain cases dangerous. The popular tide of the consumer discontent which was beginning to build by the early years showed up in other ways. The highly militant Consumers Research Organisation was founded in 1929 which provided people with needed data and it served to inspire, by means of various publications, the indignation of the public at the state of drug, cosmetics, food and advertisement market. It was in 1936 the Washington office of the Food and Drugs Administration began to take up the aura of the show.

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17. Supra N.15
The Food, Drugs and Cosmatics Act, 1938 provided for Government promulgating of a definition and standard of identity for foods as well as reasonable standard of quality and field for food containers. The old statute contained no authority to establish definitions and identity or standards.\textsuperscript{19}

Under the Uniform Commercial Code, the buyers and sellers have the general power, subject to the provisions of unconscionability, reasonableness, and remedies to custom-design the remedies that will be available for breaches of warranty. They may also provide that resort to a particular remedy to be 'exclusive'. More specifically the law allows the parties to limit the buyers remedy to 'return of the goods and repayment of the price or to repair and replacing of non-confirming goods or parts'.\textsuperscript{20}

A manufacturer who achieves 'goodwill' for his products gradually attempts to meet the rising demand of his favourable consumers adopting means of adding low materials.

\textbf{India:}

\textbf{Ancient period:}

In India, during the reign of Mauryas some time in 325 B.C. though food was not scarce, much stress was laid for increase of production proportionate to the anticipated growth. The idea for increased production was due to the apprehension

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and forethought of Kautilya - the prime minister of Chandra Gupta to balance with the increasing population. The Kautilyan State in view of the situation evolved a policy to control and direct agricultural activities in such a way as to ensure more and more surplus production and also to see that the greater part of the surplus could be brought under Government control to regulate distribution. Sale and distribution of pure food was one of the object of the state policy. The need for growing population and still more for non-food producing sections of the people keeping in view the industrial and military growth necessiated to bring more and more land under plough for more and more food and revenue. 21

The menace of adulteration committed by deciet was treated ad 'adharma' in Sastras basing on religious ideology. 'Debasing' is an unacceptable activity under all 'dharmas'. Kautilya had made it clear that 'dharma' (religion) is fixed in truth; 'vyavahara' (character) in witness;'charitra' (honesty) in judicial precedents and 'Rajasasana' (administration) in the edicts of the kings. These duties were considered to be sacred for every people in the State. 22

Acts of deceit, cheating people by debasing, adulteration, poisoning of articles of food was considered to be 'adharma' (unreligious) under the Vedas which are still ancient to Kautilya's Arthasastra. It had preached sacrifices and described acts of deceit or injurious acts as 'adharma'. The entire Vedas (excluding Upanishads) declare to treat dharma

22. id. pp.119
i.e. acts of duty as foremost, amongst which are sacrifices.²³

The Muslim Jurists did not recognise the adulteration menace as a separate and specific crime. They even did not recognise the distinction between civil and penal law, personal and other divisions of law. They treated all acts that are injurious or that are prohibited under their 'Koran' as 'akarma' (wrongs).²⁴

The responsibility of the state was diverted to protect the health and safety of its consumers commonly under the Dharma-sastra and Arthasastra systems and found in other sources as well as the obligation of vedic sacrificial rituals for purpose of State administration. The State considered its foremost duty to protect the health and safety of its people. Sale, supply or distribution of injurious food or any unnatural food was seriously viewed. The various penalties for traders using false balances as well as those guilty of the sale of adulterated commodities, all concerning the market or failed to give delivery of articles to the purchasers after payment of the price, various other transactions of cheating were in vogue during the pre-Mauryan and Mauryan period.²⁵

Pre-Independence period:

During British Rule in India the first attempt was made to deal with poisonous or noxious food under the Indian Penal Code, 1860.²⁶ This was the first systematic attempt made in

²⁶. See Taxmann's Indian Penal Code, 1860,1974(Edn.) (Sec.272 to 273)
Sec.269: Whoever unlawfully or negligently does any act
India to safeguard public health by making provisions under the Penal Law to deal with contingencies that affects the health of the community.

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which is, and which he knows, or has reason to believe to be likely to spread the infection or any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with both.

Sec.270: Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Sec.271: Whoever knowingly disobeys any rule made and promulgated by the Central or any Provincial Government or the Cro Representative for putting any vessel into a state of quarantine, or for regulating the inter course of vessels in a state of quarantine with the shore or with other vessels, or for regulating the inter course between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Sec.272: Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sec.273: Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Sec.274: Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used, for, or knowing it to be likely that it will be sold or used for any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
The Code has distinguished such acts into four categories, viz. (i) spreading of infections (Sec. 269 to 271); (ii) Adulteration of Food, drink and drugs (Sec. 272 to 276) (iii) Fouling of water (Sec. 277) and (iv) making atmosphere noxious to health (Sec. 273).

The limited scope under the Code relating to penalty is confined to sale or intended sale of noxious food and drink only. It also dealt with acts of adulteration of food, drink and drugs under the Code. The provisions are dealt in Code in the form of public nuisance being injurious to a private person and also

Sec. 275: Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers to expose it for sale, or issues it from any dispensary for medicinal purposes as unadulterated or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Sec. 276: Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sec. 277: Whoever voluntarily corrupts or foul the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Sec. 278: Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.
detrimental to the public. These prohibitions cause hurt or conducive to the injury, destruction, danger or annoyance of a person or persons collectively. The provisions deal only with such nuisance that affects the public and not only some of its members. 27

In order to meet the instances of adulteration that was being done in many ways other than noxious viz. sub-standard, addition of extraneous matters, substraction of constituent parts, etc., a number of State Governments finding the provisions under the Penal Code inadequate have enacted special legislations to prevent and check the menace of adulteration rampant on a large scale in the country. 28


Post Independence Period:

In order to bring uniformity in all the laws of States, a consolidated Act was passed by Parliament after placing the subject in the concurrent list of Constitution of India. The degree of the menace by the time of enactment and inadequacy of the law had been felt by the legislatures.29

The Prevention of Food Adulteration Act, 1954 (Act 37 of 1954) received assent of the President of India,30 and came into force on 1,6,1955.31

The Act is a comprehensive piece of legislation and extends to whole of territory of India including (a) State of Jammu & Kashmir32 (b) The Union of Dadra and Nagar Haveli33

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29. See Gazettee of India, Part II Sec. 2 Dated 25th September, 1952. The following is the Statement of objects and reasons annexed to the Original bill of the Act, 1954.

"Law exists in a number of states in India for the prevention of adulteration of food stuffs, but they lack uniformity having been passed at different times without mutual consultation between the States. The need for central legislation for the whole country to bring uniformity has been felt................ since 1947, when a committee appointed by the Central Advisory Board of Health recommended the step..........

The offence under the Act is now a cognizable offence and a great many sections has been brought in after consultation with all states and after close scrutiny of all existing measures in the States in order to see that it becomes easier for the State Governments to deal with companies against humanity. This Act will go a long a way towards checking the evil or at any rate giving the State Governments means to check the evil. Though legislation done cannot get rid of dishonesty, deterrent punishment does have some effect..........

30. See Gazettee of India Extraordinary Part II Sec.2 Dt.30.9.54 Notification of Government of India, Ministry of Health S.R.O. No.1085 dated 9.5.54


33. The Regulation VI of 1963 (1.7.1965)
(c) The Union Territory of Pondicherry\(^{34}\) (d) The Union Territory of Goa, Daman & Diu\(^{35}\) (e) Mokak Chung and Kohima District (Nagaland State)\(^{36}\)

Originally the short title of the Act was "The Food Adulteration Act\(^{37}\) which was renamed by the Select Committee to which it was referred as 'The Prevention of Food Adulteration Act',\(^{33}\)

As is evident from the title of the Act the object of such a legislation is to protect the health and safety of the people and eradicate the evil of adulteration.

The philosophical approach of the legislature in indicating this law is clear from the title of the Act which was changed from 'The Food Adulteration Act' to 'The Prevention of Food Adulteration Act'. The Legislature has prescribed the course of conduct of finally offering an article of food from the time of its production till deliverable state in a restricted manner so as to prevent its adulteration in any manner simultaneously enlarging the scope of the term 'adulterated' to achieve its object. Provisions making certain acts and omissions penal under the Statute has an ideal impact on the set of people causing fear in their mind deterring them from committing and omitting specified statutory obligations.

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34. The Regulation VII of 1963 (1.10.1965)
35. The Regulation XI of 1963 (1.2.1965)
37. Bill 101 of 1952 supra 29
38. See Gazettee of India Extraordinary Part II Sec.2 dated 9.2.1953
The object of the Prevention of Adulteration Act, 1954 is not to 'punish' but to 'prevent' adulteration and mis-branding of foods as provided therein. The provisions of the law 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. To achieve such an object, the Act has provided adequate punishment to food adulterators and made the obligations widely comprehensive and has attempted to make it impossible for them to escape liability.

Thus any article of food exposed in its unnatural form for human consumption should be free and safe without injuring or endangering the health of the people as expected under the scheme of the Act.

The legislators have expressed their grave concerns while presenting the bill in the Parliament and have intended to guard the nation from such anti-social behaviour in rough the norms prescribed under the impugned Act.39

While dealing with the prosecution for selling cashews which were found insect infested on analysis, the Supreme Court of India in Municipal Corporation of Delhi V Kacheroomal40 observed that the Prevention of Food Adulteration Act, 1954 was


"Adulteration of food stuffs is so rampant and evil has become so wide-spread and persistent and nothing sort of drastic remedy provided for in the bill and hope to change the situation.

Under the concerted and determined onslaught on this anti-social behaviour and hope to bring relief to the nation, I believe the bill meets those requirements".

enacted to curb and remedy the wide spread evil of food adulteration, and to ensure the sale of wholesome food to the people.

It was further observed that wherever possible, without unreasonable stretching or straining the language of such a statute should be construed in a manner which would (a) suppress the mischief; (b) advance the remedy; (c) promote its object (d) prevent its subtle evasion; and (e) foil its artful circumvention.

The Fruit Products order, 1955 is an order under the Essential Commodities Act 1955 which regulates dealings with fruit products and is not repealed even after commencement of the Prevention of Food Adulteration Act. The Supreme Court while dealing with the prosecution under the Food Adulteration Act for selling adulterated fruit juice in Municipal Corporation of Delhi V Shiv Sankar held that the provisions of this Act and that of the Fruit Products Order are supplement and cumulative in their operation and stand together, neither render compliance with each impossible nor involve any violation. If particular acts or omissions constitute an offence under either, the offender may be punished under either this Act or under the Order, but of course not under both. As the respondent was prosecuted under the Fruit Products Order, it was held that he cannot be further prosecuted under the Act.

Amendments made to the Prevention of Food Adulteration Act, 1954:

The Act has been amended in 1964, in 1971, in 1972 and in 1976.

41. S.R.O. 1052 published in Gazette of India Part-II Sec.4 dated 3.6.1955. See the Essention Commodities Act 1955 also
42. A.I.R. 1971 S.C. 315
43. Act 49 of 1964
44. Act 41 of 1971 supra n.32
45. Act 24 of 1972 supra n.36
46. Act 34 of 1976
The changes made by the Amendment Act, 1964 are:

(i) the power to declare a 'local area' and 'local authority' which was formerly vested in the State Governments alone was also given to the Central Government and now they have concurrent powers for such declaration;

(ii) the representations to 'Central Committee for Food Standards' have been substituted by design action of officers assigned with ancilliary duties;

(iii) the liability prescribed under clause (iv) of Section 7 for sale of any article of food 'with a view to preventing the outbreak, or spread of infectious diseases' was substituted with the words 'in the interest of public health.'

(iv) the central Government was given concurrent powers with the State Governments to appoint Public Analysts and Food Inspectors in the State;

(v) the Food Inspectors were authorised to ask the vendor to execute a bond for a sum of money equal to the value of the article given in the custody of the vendor with sureties for the like amount in case of seizure;

(vi) to safeguard the accused, independent witnesses during processes of investigation was emphasised by deleting the words 'as far as possible' with the words 'one or more persons to be present at the time when such action is taken and take his or their signature' in sub section (7) of section 10 by setting at rest the controversy and making the duty obligatory as explained by Supreme Court in Rana Labhava V Delhi Municipal.

47. A.I.R. 1974 S.C.678. In the case the evidence was that the inspector did call to some persons while taking sample. It was held that the statutory requirement by using the word 'call' indicated to make an honest effort to 'call' but not to take samples duly in presence of outsiders.
(vii) it was made obligatory upon the manufacturer, distributor and dealers of any article of food to give warranty in writing about the nature and quality of the article sold to the vendor to disclose to the Food Inspector, on requisition, the name and address and other particulars of the persons from whom he had purchased the article of food in question;

(viii) the power hitherto vested in the State Governments only of calling upon the medical practitioners to report occurrences of food poisoning is also conferred on the Central Government as well;

(ix) far-reaching changes were brought in the nature of punishments that may be awarded for breach of the provisions of the Act and Rules;

(x) The Central Government was given concurrent powers with the State Governments for launching prosecutions;

(xi) Courts were empowered to implead manufacturers distributors and dealers in any proceeding if they are found to be liable without consent of the Local (Health) Authority as required under section 20 of the Act.

The changes brought by the Amendment Acts of 1971 and 1972 were nothing but in extending the provisions of the Act to Jammu and Kashmir with the saving clause to the other laws in force in that State and extended the application of the provisions of the Act to Kohima and Mokok Chung District.

In 1976, the Act was amended thoroughly in order to make the provisions more effective and workable. Perhaps it would be appropriate to quote the verbatim, the object and reasons for making such drastic amendments. The object clause to the Prevention of Food Adulteration (Amendment) Act, 1976
"Adulteration of food articles is rampant in the country and has become a grave menace to the health and well-being of the community. It makes a heavy dent in the already low nutritional standards and the benefits of many public health programmes of which large sums of money are spent, are incidiously undermined. A major offensive against this evil is overdue. Keeping in view the gravity of the problem, and the growing danger which it poses to the health of the nation, it has become necessary to amend the Prevention of Food Adulteration Act, 1954 so as to plug loopholes and provide for more stringent and effective measures with a view to curb this menace."

The main changes brought by the Amendment Act of 1976 are:

(i) A new term 'adulterant' is defined and the liability extended to persons who manufacture, sale, or store, sell or distribute any such adulterant;

(ii) Admixture of 'primarily foods' if not injurious to health have been excluded from the mischief of the term 'adulterated' and has defined the term 'primarily food' as the natural form of agriculture product;

(iii) Restriction for appointment as Director of Central Food Laboratory to person having financial interest in manufacture, import or sale of any article of food is introduced;

(iv) The Central Government is authorised to declare any 'food' as prohibited by notification in the official Gazette for the purpose of the Act having regard to its use, nature, substance or quality other than those mentioned in the clause (a) and (b) of sub-section (v) of Section 2.

(v) The definition of 'Food (Health) Authority' has been substituted referring to 'Director of Health Services or Chief Officer of Health Administration of a State and officers empowered by central or state Governments for the purpose notified in the official Gazette in respect of such local areas as may be specified.

(vi) Local (Health) Authority is newly defined authorizing both Central and State Governments to appoint any officer as such for the purpose of being incharge of Health Administration in any local area with such designation as may be specified.

(vii) By inserting definition of 'manufacturer' extending its meaning to not only manufacturing of an article of food but also includes any processes incidental or ancillary to the manufacture of an article of food.

(viii) The Central Government to nominate one representative each of Agricultural, Commercial and Industrial interest instead of two, as under the old provision and to appoint a Secretary and other staff to the Central Committee for Food Standards was inserted with powers to make rules and prescribing the functions of a Central Food Laboratory and its local limits for area of operation.

(ix) Storing of any article for manufacturing any other articles of food for sale in adulterated or mis-branded form is also made punishable.

(x) Different Public Analysts can be appointed for different articles of food.

(xi) Authority to Food Inspectors to prohibit the sale of any article of food in the interest of public health with the previous approval of the Local (Health) Authority is introduced;
(xii) To protect the interest of a bonafide consumer, purchasing or receiving an article of food for his own consumption is exempted from the scope of the term 'consignee' in sub clause (iii) to clause (a) of Section 10 and no sample can be taken from such consignee;

(xiii) The powers of Food Inspectors to enter and inspect any place where any article of food is manufactured or stored for sale has been made very wide and he can inspect and enter even in such places where articles for manufacturing other articles of food are stored for sale or exposed or exhibited for sale and even where an adulterant is manufactured or kept and also authorising him to ask the vendor to execute a bond for a sum of money equal to the value of the article with one or more sureties while keeping the article of food in the safe custody of the vendor;

(xiv) Where any article of food seized is of a perishable nature and the Local (Health) Authority is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the said authority may, after giving notice in writing to the vendor cause the same to be destroyed is newly inserted;

(xv) A restriction on the powers of the Food Inspectors to open the packet or door of a premises, where an adulterated articles of food is kept is allowed only when if the occupant of the premises is present and refuses to open the packet or the door being called upon to do so and the Food Inspector is required to record the reasons which compelled him to do so;

(xvi) Authority to Food Inspector to seize an adulterant and books of accounts and other documents found in possession
of a manufacturer or distributor or dealer in any article of food or in any premises occupied by him as such after obtaining prior approval of the authority to whom he is subordinate with a direction to return the same within thirty days and after securing the copies of the same certified to be true copies by the person from whom seized or on his refusal after being certified by Court is added to the powers of the Food Inspector;

(xvii) Laying burden to prove on the person from whom adulterant is seized to show that such adulterant is not intended for adulteration is inserted;

(xviii) Punishment for taking a sample of food vextiously and without any reasonable ground of such suspicion by the Food Inspector has been enhanced to Rs.1000/- prescribing a minimum of Rs.500/-;

(xix) A direction to the Food Inspector to send the sample for analysis and to deposit the rest of the two samples with the Local (Health) Authority instead of one to vendor on the same day or on the next succeeding working day was introduced;

(xx) It is made incumbent upon the Food Inspector to produce the adulterated articles of food or adulterant when seized before a magistrate within seven days after receipt of the report of the public Analyst;

(xxi) Authorises the Magistrate for forfeiture or destruction in case of offence proved to have committed or for return of the articles of food seized to the person from whom seized as the case may be was inserted;

(xxii) The Public Analyst is required to furnish his report to the Local (Health) Authority but not to the Food Inspector as the law was and the Local (Health) Authority shall
send a copy of the report of the Public Analyst to the vendor and such other persons against whom the prosecution is launched informing that they can get the sample kept with him analysed by the Director, Central Food Laboratories if they so desire:

(xxiii) The court before which prosecution is pending shall on application by either party within ten days of the receipt of the report of the Public Analyst ask the Local(Health) Authority to forward the sample to the court and the court then forward it to the Director, Central Food Laboratory within five days from the date of such receipt of sample;

(xxiv) Requires manufacturers, distributors and dealers to give warranty and making a bill cash memo or invoice compulsory in respect of sale of any article of food given to any vendor to be a warranty;

(xxv) Punishments prescribed have been made highly deterrent extending up to life imprisonment for repeaters;

(xxvi) Authorises magistrates to try cases summarily;

(xxvii) Companies are required to send intimation about their nominees in charge of management to the Local(Health) Authority and in the event of failure, to fix liability on every person in charge of management at the relevant time and the company itself. The employees can be saved on proof of their ignorance of the offence;

(xxviii) Prosecution under the Act can only be instituted with the consent of the Central or State Governments or a person authorised by them;

(xxix) The offences are triable only by a Metropolitan Magistrate or Judicial Magistrate First Class, and offences punishable under section 16(1)(AA) have been made cognizable and non-bailable;
The benefit of the provisions of the Probation of Offenders Act, 1958 and Section 360 of the Cr.P.C. 1973 can be invoked only in case of persons below the age of 18 years;

The Act as it stands even today appears to have not achieved its object due to increased complexities, lack of successful administrative procedure and extending culpability directing from vendor to distributor and manufacturer. The type of conduct that a particular society considers as sufficiently worthy of condemnation to prohibit it by criminal sanction is deeply influenced by the values governing that society, which is variable from country to country and from time to time.

The terms have been interpreted artificially creating ambiguities and under these circumstances the principle is that where the legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented, it is not competent for a court to extend them.

The accepted principles is that the process of judicial decisions may be regarded as either deductive or inductive. In modern continental system, as examplified by Fresh Law there is a great deal of extra judicial or jurist made doctrine which is recognised as a necessary and constant factor in Legal theory.

Keeping in view of the aforesaid principles the Act even after its amendment in 1976, has not fully considered the

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50. Maxwell's Interpretation of Statutes. 9th Edition P.270
judicial precedents. The legislature had not kept in view to solve controversial judicial pronouncements or clarity in certain provisions which could not be interpreted unambiguously. By the time of the amendment brought in force, the scope of the amended law extended in new directions due to long legislative procedures. No effective provision has been made directly or in-directly to prevent adulteration within the meaning of the Act resulting its ineffectiveness in the modern society where corruption, dishonesty, greed, insincerity exists due to absence of any statutory obligation to perform civic duties.

The Prevention of Food Adulteration Act as it stands now, is consolidated and covers undoubtedly many things together leaving a long hand for interpretation by Courts. It has dealt with all types of foods together and by the Rules, framed under the rule making powers by the Central Government and the State Governments have precisely laid down the cumbersome procedures to be rigidly adopted by the prosecuting agencies alike.

The English Food and Drugs Act 1954, The American Federal Food, Drugs and Cosmatic Act, 1938 are elaborate and unambiguous, though have dealt several categories of articles of food separately. The Regulations and Schedules framed and prescribed under these Acts are exhaustive and eloborate making it clear and easy for courts, prosecutors as well as the citizens to be conscious of the obligations over and above their rights and duties on the subject.