In protecting consumer interest, criminal law is widely used as a measure that deters traders and producers from engaging in certain types of trading abuses. While civil remedies provide compensation for the harm suffered by consumers, criminal law prohibits certain undesirable practices. Criminal offences created for consumer welfare are mostly 'strict liability offences'. Public authorities enforce these statutory offences. This avoids expenses for consumers to enforce the law. Moreover, in strict liability offences, the prosecution is relieved of the responsibility of proving that the alleged offender has the necessary mens rea.

The Indian Penal Code, 1860 contains two separate chapters dealing with offences relating to consumer interest. Protection by way of punishment is provided against the use of false instrument for weighing or measuring, fraudulent use of false weight or measure, its making or selling and its possession. Adulteration of food and drinks and its sale is also made punishable. Here the prosecution, unlike in strict liability offences, is bound to prove the state of mind of the accused to impose punishment. Many special enactments are made to overcome the difficulties in properly prosecuting the offenders under the provisions of the Indian Penal Code.

1 For example, mental culpability is not envisaged in the penal provisions of the Prevention of Food Adulteration Act, 1954, Essential Commodities Act, 1955 and the Drugs and Cosmetics Act, 1940.
2 The phrase means 'guilty mind'.
3 The Indian Penal Code, 1860, Chapters XIII and XIV.
4 Id., s. 264.
5 Id., s.265.
6 Id., s.266.
7 Id., s.267.
8 Id., ss. 272 and 273.
Offences Relating to Weights and Measures.

Prohibited activities relating to weights and measures are seen dealt with in the Indian Penal Code, 1860, as well as in the Weights and Measures Act, 1976. Though these provisions may not have any direct bearing on the quality of the goods supplied, they provide an important mechanism to ensure fairness in dealings by sellers. Moreover, there exists an inseparable linkage between quality, quantity and price of every commodity that the consumer purchases. The Indian Penal Code deals with the following offences:

i) Fraudulent use of false weight or measure;

ii) Possession of false weight or measure;

iii) Making, selling or disposing false weight or measure.

The first set of offences can be committed in two ways; one by using a false balance and the other by the use of a false weight or measure. It must be established in both the cases that there is a fraudulent use of the instrument for weighing or false weight or false measure of length or capacity. The offender must have been using the instrument or weight or measure knowing that it is false.

Police can, when there is reason to believe that any false weights, measures or instruments for weighing is kept in a place, enter, inspect or search the place without

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9 See the Indian Penal Code, 1860, Chapter XIII and XIV.
10 Id., ss.264 and 265.
11 Id., s. 266.
12 Id., s. 267.
13 Id., ss.264.
14 Id., s. 265.
a warrant. If he is convinced about its falsity, he may seize the same with intimation to the magistrate.

The possession of any false instrument or measure, intending to use the same fraudulently is also an offence. Similarly, making or selling of any false weight or measure with the knowledge of its falsity is an offence. The punishment prescribed for all these offences are uniform.

All offences, except the offence of making or selling of false weight or weighing instrument or measure, have been made non-cognizable. Therefore, prosecution of the offender by police may not be possible. Hence aggrieved parties will have to lodge private complaints before magistrate courts. Considering the difficulties in privately prosecuting an offender, many consumers may not venture to make use of the opportunity. This in turn will act as a boon to the traders who often take advantage of it. Moreover, the prosecution has to prove that the offence was committed with the intention or knowledge to deceive the consumers. This may turn to be an onerous task for the people who wish to launch prosecution. So even when false weighing or measuring instruments are detected or even use of these instruments are established, conviction may not be possible. Hence many of the cases end in acquittal.

In the above circumstances, it is suggested that all the offences relating to Weights and Measures be made cognizable so that after formal information to the

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16 Ibid.
17 See supra n. 11.
18 Supra n. 12.
19 The Indian Penal Code, 1860, ss.264-267.
20 This situation warrants a shifting of burden to prove guilt by the prosecution, to the accused.
police, the prosecuting agency can take up the cause for and on behalf of the general consuming public. It is also necessary to shift the burden of proof to the accused when incriminating articles are recovered from him. Amendments that may be made towards this end will be in tune with the evolving consumer jurisprudence in India. The Standards of Weights and Measures Act, 1976 has attempted to set right many of the inadequacies found in the Penal Code.

The Standards of Weights and Measures Act, 1976

This enactment prohibits the use of non-standard weight or measure or numeral other than those specified. Manufacture and sale of non-standard weights and measures are also prohibited. Penalty is provided for violation of these provisions. For subsequent offence, enhanced punishment is prescribed. The standards prescribed by the Act for weights and measures are virtually enforced by the Director of Legal Metrology of the provincial governments. He makes periodical and surprise inspections. If the Director has reason to believe, either from any information given to him or obtained suo motu that an offence has been or is likely to be committed, he can enter and inspect any such premises. He is empowered by the Act to seize any weight or measure or other goods and any record, register or other document that evidence the commission of an offence. False or unverified weight or measure seized is also liable to be forfeited to the Government. Anybody who

21 The Standards of Weights and Measures Act, 1976, s. 21.
22 Id., s. 22.
23 The normal penalty prescribed is six months imprisonment and or fine up to one thousand rupees.
24 Id., s. 50.
25 Id., s. 29.
26 Ibid.
27 Id., s. 30.
causes objection to the Director or other officer in the due discharge of his functions can also be punished\textsuperscript{28}.

The Act has also made special provisions as to declarations\textsuperscript{29} to be made compulsorily on packaged commodities through labels securely attached on it. Violations are visited with penal consequences.

This enactment also does not provide effective public participation in its implementation. It has been provided that cognizance concerning the commission of an offence under the Act can be taken by a Magistrate, only on a complaint in writing made by the enumerated agencies\textsuperscript{30}. The plurality of weighing and measuring implements in use in the society makes periodical inspection by the Inspectorate to have only a marginal impact. In such a state of affairs it is not surprising if violations galore and supervision becomes ineffective. In this context, it is suggested to make use of wider public participation in the implementation and supervision of the Act.

Another noticeable weakness of the Act is the provision for punishment of officers who initiate vexatious actions, inspections and seizures\textsuperscript{31}. No doubt, erring officers are to be punished for the mischief that may occur from their side. There is a feeling that if the officers are also punished in the same way the people who violate standards of weights and measures, it is likely to affect their morale and motivation in sincerely performing their duties. Considering the paucity of staff attached to the

\textsuperscript{28} \textit{Id.}, s.54. The punishment may be two years imprisonment in normal situations. For subsequent offence, it may be five years imprisonment.

\textsuperscript{29} \textit{Id.}, s.39. The declaration should include —

i) the identity of the commodity in the package, (ii) the net quantity in terms of the standard unit of weight or measure, of the commodity in the package; (iii) where the commodity is packed or sold by number, the accurate number of the commodity contained in the package; (iv) the Unit sale price of the commodity in the package and (v) the sale price of the package.

\textsuperscript{30} \textit{Id.}, s.72.

\textsuperscript{31} The Weight and Measures Act, 1976, s.71.
Legal Metrology Department and the heavy task, which they are supposed to accomplish, this provision is likely to act as a deterrent in the due performance of their duties. The alternative to prevent abuse of power by the officers is to initiate departmental action or allow private actions by aggrieved parties.

Offences Affecting Public Health

The mixing of noxious ingredients in food or drink or rendering it unwholesome by adulteration is made punishable under the Penal Code. In order to establish an offence under this provision, it is essential to show that an article of food or drink has been adulterated. It should also be proved that it was intended to be sold or that it was likely to be sold as food or drink. But if a person exposes for sale milk adulterated with water, he may not be committing an offence under this section because the mixture is not noxious or injurious as food or drink. The sale or offer or exposure for sale of any noxious food or drink is also made punishable.

In order to preserve the purity of drugs sold for medicinal purposes, the Penal Code has incorporated few provisions. Adulteration of any drug or medicinal preparation, which would lessen its efficacy or making it noxious, has been declared as an offence. Knowingly effecting sale of any adulterated or noxious drug for medicinal purposes would also be punished under the Code. Sale of a drug as a different drug or preparation is also declared as an offence.

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32 The Indian Penal Code, 1860, s. 272.
34 Dhava v. Emperor, A.I.R.1926 Lah.49.
35 Id., s.273.
36 Id., s.274.
37 Id., s.275.
38 Id., s. 276.
Adulteration and sale of drugs for medicinal use is undoubtedly a serious health problem. But that seriousness is not seen depicted in the penal provisions enshrined in the Penal Code. Here also, what is noticed is the meager punishment prescribed\(^{39}\). All the offences are made non-cognisable and are of summary in nature. But it is interesting to note the amendments made by some state governments\(^{40}\). These states have increased the punishment to imprisonment for life, with or without fine.

The inadequacy of the Penal Code to meet the challenges and problems concerning food and drug quality has been rectified to some extent by the enactment of two important legislations, namely, the Drugs and cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954.

**Offences Relating to Drugs and Cosmetics**

The Drugs and Cosmetics Act, 1940 has initiated a more comprehensive measure by providing for a uniform control over the manufacture and distribution of drugs and its import\(^{41}\) into India. The magnitude of the enactment was enlarged by subsequent changes made by amendments\(^{42}\).

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\(^{39}\) The maximum punishment prescribed is imprisonment for six months or fine which may extend to one thousand rupees or with both.


\(^{41}\) The Bill was initially intended to regulate the import of drugs into British India only. The Select Committee appointed by the Legislative Assembly has suggested for a comprehensive legislation and hence the Act.

\(^{42}\) For instance, the Act was amended in 1960 to bring pharmaceutical profession under statutory control. The 1962 amendment brought in regulation over the manufacture of cosmetics. The 1964 amendment was intended to bring Ayurvedic and Unani preparation also under control and to enhance the punishment to make it more deterrent. The 1982 amendment widened the expressions 'cosmetics', 'drugs' and 'proprietary medicine' and enhanced the punishment further. The 1986 amendment was intended to empower recognised consumer associations to draw legal samples and launch prosecution.
Standards of quality of drugs and cosmetics are defined in the Act. The ‘standards of quality’ means:

a) in relation to drugs, compliance with the standards set out in the schedule and

b) in relation to cosmetics, compliance with standards which may be prescribed.

The second schedule to the Act states that ‘drugs’ included in the Indian Pharmacopoeia should comply with the standards of identity, purity and strength specified in the relevant edition of the Indian Pharmacopoeia for the time being in force and such other standards as may be prescribed.

It is a condition precedent for imposition of penalty for infringement of standards of quality that there is in existence a quality standard prescribed. In Gopilal Aggarwal v. State of Orissa, the appellant was prosecuted and punished for infringement of the standards quality of ‘gudakhu’. The Orissa High Court held that since no quality standards has been prescribed for ‘gudakhu’ by the Act and the rules, the penalty imposed was unsustainable.

The Act also imposes criminal sanctions for adulteration, misbranding, manufacture and sale of spurious drugs and cosmetics. Penal provisions are similar whatever may be the system of medicine involved in the case. Higher penalty is prescribed for repeat offenders. Where a company has committed the offence, the

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43 Id., ss.8 and 16.
44 A.I.R. 1973 Ori. 15.
45 Ibid.
46 Ss. 27 and 31-(I).
47 Id., s.27 A.
48 Id., ss. 30 and 33-(J).
person or persons responsible for the conduct of the business of the company as well as the company are deemed to be guilty of the offence.\textsuperscript{49}

For the smooth working of the Act, agencies such as Inspectors\textsuperscript{50} and Government Analysts\textsuperscript{51} have been appointed. Drugs Inspectors are the watchdogs of drugs quality standards at its production and distribution levels. They are empowered\textsuperscript{52} to have spot checks, to take samples of drugs and cosmetics, and to send it for analysis by Government Analysts and also to initiate prosecution.\textsuperscript{53}

The manufacture, import, stocking,\textsuperscript{54} sale and distribution\textsuperscript{55} of drugs are regulated by licences. Separate licences are required for different systems of medicine. The Central Government is empowered to prohibit\textsuperscript{56} the manufacture, sale or distribution of any drug or cosmetic if the use of that drug or cosmetic is likely to involve any risk to human beings or animals. It can exercise similar powers if the drug does not have the therapeutic value as claimed.\textsuperscript{57} Non-compliance with such an order of the Central Government is also made an offence.\textsuperscript{58}

\textsuperscript{49} Id., s.34.
\textsuperscript{50} The Drugs and Cosmetics Act, 1940, s. 21.
\textsuperscript{51} Id., s.20.
\textsuperscript{52} Id., s.22. This section confers enormous powers on the Inspectors. Also see, s.23 for the procedures to be followed by the Inspectors.
\textsuperscript{53} Id., s. 33-M.
\textsuperscript{54} Id., s.10.
\textsuperscript{55} Id., s.18 (c) and s.33 EEC (c).
\textsuperscript{56} Ss. 26A and 33EEED.
\textsuperscript{57} Governmental powers to prohibit the manufacture, sale, and distribution etc., of any drug or cosmetic have been challenged by manufacturers as arbitrary and violative of Arts. 14 and 19(1) (g) of the Constitution of India. The Court has held in all those cases that since the decision taken by the government is based on studies and opinions submitted by committees consisting of technical experts in the field, it cannot be said as arbitrary. It was held that the ban is imposed generally on public interest to sub serve public good and the restriction imposed by the prohibition is well within the reasonable restrictions permissible under Art. 19(6) of the Constitution. See, for instance, Franklin Laboratories (India) Pvt. Ltd. v. Drugs Controller (India), A.I.R. 1993, P&H. 107 and Systopic Laboratories Pvt. Ltd. v. Dr. Prem Gupta, A.I.R. 1994 S.C. 205.
\textsuperscript{58} Id., s. 27.
Leaving apart the threat of cancellation of the licence, the driving force behind adherence to the Act and rules is the criminal sanctions provided for violations. The punishments suggested widely vary depending upon the gravity of the offence. Minimum punishment is insisted for certain offences. For other offences, the courts are permitted to decide the proper punishment. Courts are also given freedom to move on from the minimum punishment prescribed, by giving special reasons for such variance. The State of West Bengal and Uttar Pradesh have provided for higher punishment of imprisonment for life by corresponding state amendments to the Act. Courts under these amendments have been given discretion to give a lesser punishment for special reasons to be recorded in writing.

The stringent punishment provided by the legislature is seen neglected by courts in some cases. In Ram Shanker Misra v. State of U.P. the Drugs Inspector purchased certain tablets from the appellant and sent it directly to the Central Drugs Laboratory for analysis. The test report indicated that the tablets were of sub-standard quality. The appellant was prosecuted and was found guilty. He was sentenced to undergo rigorous imprisonment for one month and a fine of rupees five hundred. On appeal, the Supreme Court found that the Act prescribes a minimum sentence of not

59 For Instance, by s. 27 (a), the manufacture, sale, distribution or stocking or exhibition for sale of any drug deemed to be adulterated or of spurious, the use of which is likely to cause death or grievous hurt under the I.P.C. solely on account of such adulteration or spurious nature or not of standard quality, shall be punishable with imprisonment for a term which shall not be less than five years which may extend to a term of life and with fine which shall not be less than ten thousand rupees. But under clause (b), if such adulteration is not going to inflict the injury or harm mentioned above, the minimum imprisonment is reduced to one year, which may extend to three years and with fine, which shall not be less than five thousand rupees. It is provided under this section that the court may for adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term less than one year and of fine of less than five thousand rupees.

60 The West Bengal Act, 42 of 1973, s. 5.
61 The U.P. Act, 47 of 1975, s. 5.
62 Ibid.
less than one year unless the court decides otherwise for reasons to be stated. Surprisingly, neither the trial court nor appellate court had given any reason for imposing a lesser sentence. The Supreme Court expressed its inability to enhance the punishment, as there was no prayer to revise the quantum of punishment.

It is true that the lower courts on many occasions have failed to appreciate the prescription of a minimum punishment by the Act. It is also true that the state government has failed to prefer a revision petition for correction of the discrepancy. But the Supreme Court could have found it as a fit case to be remitted back to the lower court for decision according to law. Similarly, there is nothing that prevents the Supreme Court in correcting the mistakes of the lower courts by awarding a proper punishment. Absence of a revision petition to enhance the punishment was not an obstacle to the Supreme Court in awarding punishment according to law. The view taken by the Supreme Court in this case therefore has resulted in negation of law which ought to have been avoided.

In *Rajasthan Pharmaceutical Laboratory v. State of Karnataka*, the Drugs Inspector conducted a search over the business premises of the appellant. About 42 items of drugs had been seized from a room. Thirty-three of them were found not in the approved list of drugs appended to the licence issued to the appellant. The Drugs Inspector demanded the disclosure of the source of the 33 drugs. The appellant denied the fact of seizure of those items from his premises. Test analysis established one drug to be of substandard quality. The appellant was prosecuted for keeping

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64 This was the position before the amendment of the Act in 1982.
drugs without licence,\textsuperscript{66} stocking drugs of substandard quality\textsuperscript{67} and non-disclosure of the name of the manufacturer\textsuperscript{68}. The trial court acquitted the appellants but the Karnataka High Court convicted them for all the offences charged and imposed a fine of two thousand rupees.

On appeal, the Supreme Court observed that no separate punishment is found imposed for the different offences charged. The fine imposed was in excess of the amount prescribed for any one offence. Hence the Supreme Court held that the High Court was in error in imposing the punishment. The case was remitted back to the High Court to decide the punishment afresh on all proved offences. This, it is submitted, is the correct approach.

In spite of stringent quality control measures provided in the Act, only a few states enforce them rigidly. In many states, its enforcement is not satisfactory. It has been pointed out that there exists in many states the most deplorable tendency to provide special concessions to firms located in their states in making purchases of drugs disregarding the quality control measures.\textsuperscript{69} It has also been pointed out that only very few states have a qualified Drugs Controller to head the drugs administration.\textsuperscript{70} It has been recommended that there shall be at least one Inspector of Drugs and Cosmetics for every 200 selling premises.\textsuperscript{71} But these requirements and suggestions are sparingly followed. In consequence, drugs quality control system fails on many respects and public suffer out of that.

\textsuperscript{66} Drugs and Cosmetics Act, 1940, s. 18 (c).
\textsuperscript{67} Id., s. 18 (a) (ii).
\textsuperscript{68} Id., s. 18 A.
\textsuperscript{69} B. Ekbal, A Decade After Hathi Committee (1988), p.69.
\textsuperscript{70} Ibid.
\textsuperscript{71} Id. at p.70.
According to the test reports published by the Consumer Education and Research Society Ahamedabad, many drugs are of sub-standard quality. Medical equipments, which are widely used in diagnosis and application, are found to be of substandard quality or unsafe. These test results establish that manufacture and sale of adulterated or spurious drugs are rampant in the country.

Protection Against Food Adulteration

The widespread evil of food adulteration and the sale of un-wholesome food to the people are regulated by the Prevention of Food Adulteration Act, 1954. By this Act, it is easier for the government to deal with companies or individuals who indulge in the terrible crime of adulterating articles of food. The deterrent punishment provided under the Act, does help to get rid of this dishonesty. Despite this Act, adulteration of food articles continue to be rampant in the country and has become a grave menace to the health and well being of the community. Due to the gravity of the problem, the Act was amended in 1974 to plug the loopholes and to provide for more stringent and effective measures. The judiciary also contributed to the efforts of the Legislators. This is done through a process of purposive interpretation of the Act. The courts also gave a wide interpretation to the term ‘food’ so that sales of many spurious goods are brought within the purview of the Act.


See the test report on I.V.fluids, Insight, May- June 1999, pp.6-14. It has been reported that out of the 41 brands of I.V.fluids tested, 14 brands were proved to be unsafe. More embarrassing is the test report on I.V.sets. All the 15 brands tested found to be unsafe. See the test report on I.V. sets, Insight, Nov.-Dec. 1999, pp. 6-9.

See the Drugs and Cosmetics Act, 1940, s. 3 (b). ‘Drugs’ under the Act includes, among others, all such devices intended for internal or external use in the diagnosis, treatment etc. of any disease or disorder in human beings or animals as may be specified by government from time to time.

The Prevention of Food Adulteration Act, 1954, statement of objects and reasons.

The Prevention of Food Adulteration (Amendment) Act, 1974, statement of objects and reasons.

See the Prevention of Food Adulteration (Amendment) Bill 1974, statement of objects and reasons.
Need for Purposive Interpretation

The necessity for a purposive interpretation to the provisions of the Act has been stated by the Supreme Court of India in Municipal Corporation Delhi v. Kacheroo Mal. The Court said:

"It is well settled that wherever possible, without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention."79

Similarly, Justice Krishna Iyer of the Supreme Court went heavily against those who indulge in adulteration of food. He emphasized the role of food laws in society and how it is to be interpreted to sub serve public good in Muralidhar Meghraj Loya v. State of Maharashtr. His Lordship observed:

"It is trite that the social mission of food laws should inform the interpretative process so that the legal blow may fall on every adulterator. Any narrow and pedantic, literal and lexical construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For, the new criminal jurisprudence must depart from the old canons, which make indulgent presumptions and favoured constructions benefiting accused persons and defeating criminal statutes calculated to protect the public health and the nation's wealth".81

78 A.I.R. 1976 S.C. 394. For a detailed discussion of this case, see infra.
79 Id. at p. 395 per R.S. Sarkaria J.
81 Id. at p. 1932. It is to be noted that these words came from a judge, who is known for his humane approach to offenders.
Justice Iyer had on a previous occasion, expressed the view that there is the necessity of educating the sentencing judges regarding attitudinal changes in dealing with economic offences. In Pyrali K. Tejani v. Mahadeo R. Dange and others,\(^2\) the Magistrate on conviction imposed a fine of Rs.100/- only on the accused while the law\(^3\) had prescribed a minimum imprisonment of six months and a fine of Rupees one thousand. Condemning the attitude of the Magistrate, his Lordship observed:

"The Magistrate has completely failed to appreciate the gravity of food offences when he imposed a naively negligible sentence of Rs.100/- fine. In a country where consumerism as a movement has not developed, the common man is at the mercy of the vicious dealer. And when the primary necessaries of life are sold with spurious admixtures for making profit, his only protection is the Prevention of Food Adulteration Act and the Court. If the offenders can get away with it by payment of trivial fines, as in the present case, it brings the law in to contempt and its enforcement a mockery."\(^4\)

**Widening the Meaning of the term ‘Food’**

The term ‘food’ is defined as any article other than drug and water,\(^5\) used as food or drink for human consumption.\(^6\) Any article ordinarily used in the composition or preparation of human food, any flavour or condiments or any other

\(^3\) The Prevention of Food Adulteration Act, 1954, s. 16(1) (a).
\(^4\) Id. at p.168. Also see Ishar Dass v. The State of Punjab, 1972 F.A.C. 150 (S.C.), wherein the Supreme Court opined that adulteration of food is a menace to public health. The Prevention of Food Adulteration Act, has been enacted with the aim of eradicating that anti-social evil and ensuring purity in the articles of food.
\(^5\) ‘Water’ though not covered by the Prevention of Food Adulteration Act, it is regulated under the Essential Commodities Act. For a discussion, see infra.
\(^6\) Id., s.2(v)
notified article also comes within the definition. The scope of this definition is still widened by judicial interpretations.

The Supreme Court in *State of Bombay v. Virkumar Gulabchand Shah,* while examining the question whether turmeric was 'food stuff' within the meaning of the Spices (Forward Contracts Prohibition) Order, 1944, held that the term food is susceptible of two types of interpretation. One can be in the narrow sense and other in a wider sense. In the narrow sense the term 'food' is limited to articles, which are eaten as food for nutrition and nourishments. Therefore, it would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. However, in its wider meaning 'food' includes everything that goes into the preparation of food to make it more palatable and digestible. Whether the term is to be taken in the narrow sense or in the wider sense, in the opinion of the court, must depend upon the context and background in which it is used. The object of the Act being to meet effectively the menace of food adulteration, the court opined that the definition of 'food' should be attributed a wider meaning.

Similar was the view taken by the Supreme Court in *Pyarali K. Tejani v. Mahadeo Ramachandra Dange.* In this case the Court was considering the question whether 'supari' can be considered as 'food' under the Prevention of Food Adulteration Act, 1954. The Court held that the term 'food' is defined in the Act very widely. Therefore, it would encompass any article used as food including every component that enters into it. Therefore, even flavouring matters and condiments

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87 Ibid.
88 A.I.R. 1952 S.C. 335
89 This order was issued under the Essential Supplies (Temporary Powers) Act, 1946.
come within the purview of the term 'food'. The term 'food' in this sense applied to all things that are eaten by men for nourishment including its subsidiaries. 'Supari' is something which people take for relish and therefore held food.

The Supreme Court in *Shah Ashu Jaiwant v. State of Maharashtra* examined the question whether 'Til seeds' that are generally used for 'pooja' can be considered as 'food'. The appellants had kept for sale insect infected 'Til seeds'. The Public Analyst certified it as adulterated and unfit for human consumption. The appellants contended that 'Til seeds' are not generally used as food by human beings. It is used only for 'pooja' for being burnt like incense or thrown into fire in the course of 'pooja'. Hence it cannot be considered as 'food' under the provisions of the Act. The High Court had held that the 'Til seeds' used for 'pooja' are consumed by the devotees and hence it is 'food'.

The Supreme Court held that mens rea is not required for proving an offence under the Prevention of Food Adulteration Act. It is enough that the article is either manufactured for sale, or stored or sold or distributed in contravention of the Act. However, the prosecution has to prove beyond reasonable doubt that what was stored or sold was 'food'. The question whether the goods kept by the seller was 'food' or not must be resolved by evidence. Food necessarily denotes articles intended for human consumption. Certain articles such as milk, bread, butter or food grains are meant for human consumption as food and these are matters of common knowledge. Certain other articles may be presumed to be meant for human consumption from representations made about them or from the circumstances in which they are offered.

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92 Id. at p.2180, *per* M.H. Beg J.
93 Ibid.
for sale. The Court opined that there is no evidence to dis-lodge the contention of the appellant that ‘Til seeds’ are sold only for ‘pooja’ purposes and not as food.94 The appellant also could not adduce evidence in support of his contention. The issue whether ‘Til seeds’ can be used as food or only for pooja purposes in the opinion of the court remains doubtful and the court allowed the appeal giving the benefit of doubt to the appellant. But the Court has categorically said that it is the duty of the prosecution to prove that the article, which is the subject matter of the offence is ordinarily used for human consumption as food. But if the goods sold or exposed for sale is ‘food’ as generally known, marking it with the inscription ‘pooja purposes’ or ‘for lighting lamps’ etc. will not alter its character as food.

The liberal trend shown by the Supreme Court in the above decisions is seen followed by the various high courts also. In State of Himachal Pradesh v. Raja Ram,95 the question before the Himachal Pradesh High Court was whether ‘country liquor’ falls within the definition of ‘food.’ The High Court itself on an earlier occasion had taken the view that country liquor is not food.96 But advertting to the decisions of the Supreme Court discussed above, it was opined by the court that from the statutory definition given to the term ‘food’, the intention of the legislature is clear. The legislature in the opinion of the Court intended to bring in all articles that are used as food or drink for human consumption other than drug and water to be covered by the definition. The Court also pointed out that if the legislature wanted to exclude ‘liquor’ from the definition of ‘food’ it ought to have done that expressly. The

94 Id. at p. 2181.
95 (1990) 2 F.A.C. 231 (H.P.).
existence of such exclusions in various state legislations were within the knowledge of the parliament when it defined the term 'food' in 1954. Therefore, it is natural to assume that Parliament ascribed the intention of not excluding 'liquor' and excisable intoxicants from the ambit of the word 'food'. Hence the Court came to the conclusion that liquor including country liquor is an article used as a drink and is meant for human consumption. The fact that everyone does not use liquor, or it is covered by provisions of the Excise Acts of various states, does not effect any change that 'liquor' is meant for human consumption.

In State of Tamil Nadu v. Krishnamurthy, the respondent was found selling gingelly oil mixed with 15% groundnut oil. The defence of the respondent was that he kept the oil in his shop to be sold not for human consumption but for external use only. The trial court rejected the defence and convicted him under the Act. But the Sessions judge before whom the respondent preferred an appeal against conviction accepted the defence and acquitted him. According to the Court the respondent could be punished only if it is established that the sale of gingelly oil was for human consumption. State's appeal to the High Court also failed. In the second appeal, the Supreme Court held that for the purpose of the Act 'food' means:

"Any article which is ordinarily used as food or drink for human consumption including any articles which ordinarily enters into or used in composition or preparation of human food. It is not necessary that it is intended for human consumption or for preparation of human food. It is also irrelevant that it is described or exhibited as intended for

97 For example the U.P. Pure Food Act, 1950, s. 2(g) defined 'food' to mean any article of food or drink other than drug, water, wine, liquors or other excisable articles (intoxicants) used for human consumption.
some other use. It is enough if the article is generally or commonly used for human consumption or in the preparation of human food.\textsuperscript{99}

The Court pointed out that due to poverty, many of those who live below the subsistence level would opt to consume that which may otherwise be thought as not fit for human consumption. They are often tempted to buy and use as food, articles which are adulterated and even unfit for human consumption but which are sold at inviting prices under the pretence or otherwise and are intended to be used for purposes other than human consumption. In the opinion of the Court, it is to prevent the exploitation and self-destruction of those poor, ignorant and illiterate persons that the definition of ‘food’ is couched in such terms as not to take into account whether an article is intended for human consumption or not.

If the article is not generally or commonly used as food but could have been used in certain cases, it may be a question of fact whether it is food in an instant case. The Court said that it is undisputed that gingelly oil mixed or not with groundnut oil and sold as gingelly oil whether described or exhibited as an article of food for human consumption or as an article for external use only, is food within the meaning of the definition contained in the Act.\textsuperscript{100}

In \textit{Food Inspector, Puri Municipality v. K.C. Anjamayulu},\textsuperscript{101} the accused was found selling adulterated ghee unfit for human consumption and was convicted. In his revision petition against conviction, he contended that the ghee was sold for lighting lamps in the Jagannadha Temple and not intended to be used as food. The Orissa High Court held that the fact that large quantities of ghee is required for

\textsuperscript{99} Id. at p. 539, per O. Chinnappa Reddy, J.
\textsuperscript{100} Id. at p. 540.
\textsuperscript{101} A.I.R. 1966 Ori. 144.
lighting purposes in the temple does not mean that such ghee must necessarily be adulterated. Ghee according to the Court is undisputedly a foodstuff as it is used in various forms in the preparation of human food. Although ghee may have other uses, it cannot lose its use or importance as a foodstuff. It was possible for the accused to sell it in any other name. But once he sells it in the name of ghee, he is bound to sell it in an unadulterated form and once it is found to be adulterated, the seller becomes liable under the Prevention of Food Adulteration Act. The Court held that the prescription on the label ‘for lighting purposes’ is no notice to the customer that it is unfit for human consumption. Moreover, there is no bar for pure ghee being used for lighting purposes and also for food.¹⁰²

Similarly, in Public Prosecutor v. Palanisami Nadar,¹⁰³ the accused was found selling adulterated ‘asafoetida’. He represented to the Food Inspector at the time of sale that it was being sold for feeding cows and goats. The Madras High Court held that ‘asafoetida’ is a well-known flavouring substance in the preparation of human food. When the article sold is intrinsically an article of food, which ordinarily enters into or is used in the preparation of human food, it is immaterial to consider whether there was any separate understanding between the buyer and the seller at the time of sale that the article sold should be used for some purposes other than food.¹⁰⁴
Penalty for Adulteration of Food

Import, manufacture for sale, or storage, selling and distribution of any adulterated\textsuperscript{105} or misbranded\textsuperscript{106} food has been criminalized.\textsuperscript{107} Similarly, contravention of the terms of license issued under the Act and failure to comply with the lawful directions of the administrative authorities are also made offences.\textsuperscript{108} The normal penalty prescribed is a minimum imprisonment of six months, which may extend to three years and with a minimum fine of one thousand rupees.\textsuperscript{109} It is possible for the court to award a lesser punishment for special reasons to be recorded in the judgment\textsuperscript{110}. In that case also, the term of imprisonment shall not be less than three months, and a fine of not less than five hundred rupees.\textsuperscript{111} For example, the court may award a lesser sentence if the adulteration or misbranding render the quality or purity of the article fall below the standard prescribed by the Act or the constituents present below the prescribed limits of variability without rendering the article injurious to health. But if due to the adulteration, injury to health is likely to occur, the term of imprisonment shall be a minimum period of one year.\textsuperscript{112} If such article of food or adulterant when consumed by any person is likely to cause death or grievous hurt, the punishment will be still higher.\textsuperscript{113}

\textsuperscript{105} The Prevention of Food Adulteration Act, 1954, s. 2(1-a).
\textsuperscript{106} Id., s. 2(ix).
\textsuperscript{107} Id., ss. 5 and 7.
\textsuperscript{108} Ibid.
\textsuperscript{109} Id., s. 16.
\textsuperscript{110} Id., s. 16, proviso (ii).
\textsuperscript{111} See, first and second proviso to s.16.
\textsuperscript{112} The punishment can be extended to six years and a fine of not less than two thousand rupees. See, s.16 (1-A).
\textsuperscript{113} The prescribed punishment is a minimum term of three years imprisonment, which may be extended to imprisonment for life and with a fine not less than five thousand rupees. See proviso to s.16(1-A).
Enhanced punishment is provided for repeat offenders. Moreover, court may also order cancellation of the licence granted to him. Likelihood of cancellation of a licence in this way is highly deterrent since it will throw him out of his business. It is suggested that provisions may be made to the effect that such persons shall be denied fresh license for a period specified or for a period proportionate to the seriousness of the violation. While granting a fresh license, they may also be required to execute a bond of good business behaviour.

The publication of the name, place of residence, the offence and penalty imposed on the offenders at his expense is another welcome measure envisaged under this Act. Publicity given about the offender and the offence will enable the consuming public to avoid the offender in their future dealings. Adverse publicity given in this manner can be an eye opener to other businessmen to discipline themselves and to refrain from such consequences. Conferring this power on judiciary also provides the safeguard against abuse.

Criminal law and Quality Control of Essential Commodities

The Essential Commodities Act, 1955 is primarily intended to exercise control over the production, supply, distribution and trade and commerce in certain commodities that are essential to the general public. Power has been given to the Central Government, to ensure the supply and distribution of essential commodities and their availability at fair prices. The government is also

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114 S. 16 (1-D).
115 S. 16 (2). Expenses in this regard shall be recoverable under the Act in the same manner as a fine.
116 But instances in which this provision has been made use of by courts are virtually nil.
117 The Essential Commodities Act, 1955, s. 3.
118 The term ‘essential commodity’ is defined in s.2 (1)(a). By clause (xi), the Central Government is permitted to add to the list of essential commodities, any commodity which the Central Government by order determine subject to its power to make laws under the concurrent list of the Constitution of India.
empowered to prohibit the production, supply and distribution of any commodity and its trade in public interest. These powers are often used to control quality of products as well.

The Central and State governments have issued large number of orders regulating the production, distribution, supply and price of many goods. In many instances licensing and inspecting regimes have been set up to enforce the orders. The Act does not appear to have the object of controlling quality of essential commodities. However, governments have on many occasions issued orders to ensure. It can be seen that the governments have adopted the same standards as prescribed by the Bureau of Indian standards on many occasions. In some other instances the licensing officers are empowered to prescribe the standards. Yet others empower the government to prescribe the quality. In certain cases the quality standards laid down by other statutes are also made applicable.

The governments are empowered to prohibit the production, sale or distribution of essential goods, which do not conform to the standards prescribed.

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119 See the Essential Commodities (Second Amendment) Act, 1967.
120 Formerly, the Indian Standards Institution.
121 See for example the following orders:
(i) The Household Electric Appliances (Quality Control) Order, 1981;
(ii) The Cement Control (Regulation of Production) Order, 1981;
(iii) The Oil Pressure Stoves (Quality Control) Order, 1987;
(iv) The Multipurpose Dry Batteries (Quality Control) Order, 1987;
(v) The General Service Electric Lamps (Quality Control) Order, 1989;
(vi) The Electric Wires, Cables, Appliances and Accessories (Quality Control) Order, 1993; and
122 For example, see the Fruit Products Order, 1955 and the Cold Storage Order, 1980.
123 For instance, the Fertilizer (Control) Order, 1985 and the Vegetable Oil Products (Standards of Quality) Order, 1975.
124 See for example the Edible Oil Packing (Regulation) Order, 1998. The quality standards laid down by the Prevention of Food Adulteration Act has been made applicable here.
125 The Essential Commodities Act, 1955, s.3 empowers the governments to issue the orders for this purpose.
Violation of the order is made an offence. In addition to the penalties prescribed, the offensive goods can be forfeited to the Government. Repeated or subsequent convictions may lead also to cancellation of the trade licence.

Orders may require the manufacturers to comply with the standards of quality laid down by the Bureau of Indian Standards. They may be required to obtain certification under the BIS scheme. This would ensure product quality since the entire production process and the system of quality control is thoroughly investigated by the BIS before certification is granted. These orders may also require that the sale, distribution or storage of goods shall be made only if it is manufactured by a certified manufacturer. In effect, the production, sale, storage or distribution of goods not in conformity with the prescribed standards are prohibited.

The Essential Commodities Act, 1955 has been effectively used by the governments even in the case of food products not covered by the Prevention of Food Adulteration Act, 1954. For example, water is specifically excluded from the definition of ‘food’ under the Prevention of Food Adulteration Act. The increased instances of public injury consequent to the sale of spurious mineral and drinking water prompted the governments to regulate the production, distribution and sale of mineral and drinking water. The need for such an action is clear from the guidelines issued by the World Health Organisation on the quality of drinking water.

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126 Essential Commodities Act, 1955, s.7 (ii)(b).
127 Id., s. 7 (2) A.
128 See for example, the General Service Electric Lamps (Quality Control) Order, 1989; the House hold Electric Appliances (Quality Control) Order, 1981 and the Electric Wires, Cables, Appliances and Accessories (Quality Control) Order, 1993.
129 Ibid.
Quality of Drinking Water

The Prevention of Food Adulteration Act, 1954 excludes water from the definition of 'food'. Natural water might not have required any type of legal controls at the time when the Act was made. Natural water was supplied everywhere free of cost and trading in mineral and bottled water was not so popular at that time. Now the collection, packing and sale of water have developed itself into a big business. In some cases water costs even more than milk. Bottled water use has become very common all over the country.

Now 'mineral water' is brought under the Prevention of Food Adulteration Act. Bottled drinking water is still exempt from this Act. The Bureau of Indian Standards has set specifications for both drinking and mineral water. Absence of compulsory certification helped the manufacturers of bottled drinking water to sell any water without any standard on its quality. The test results published by the Consumer Education and Research Society, Ahmedabad on 13 brands of bottled and mineral water, showed the necessity for effective legal controls.

It was found that two brands failed in the safety parameters laid down by BIS. Small quantities of floating particles were found in almost all brands of water tested. The tests could not find out any material distinction between mineral and drinking water brands.

Much more embarrassing was the test result published recently by the Quality Assurance and Management, a division of the Central Institute of Fisheries

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130 Bottled water is available for Rs.10/- per liter only in Railway Stations. In other places it is sold for Rs.15/- per liter. But the price of milk is only in between Rs.12 and 13 per liter.
131 Insight, Jan – Feb 1988, pp. 6-11.
132 Id. at p.7 (Key findings).
Test on the mineral water samples of six market leaders revealed that none of them met the mineral water standards. To the dismay of all concerned, the water samples contained toxic chemicals that are harmful to health. The samples recorded also the presence of heavy metals like mercury, lead, copper and manganese beyond the permissible limits. Excess presence of mercury can cause muscle paralysis in human beings, as it would destabilize body enzymes. The presence of excess copper in the body can cause blood poisoning as the metal reduces the oxygen carrying capacity of blood. All the samples, it is stated, contained higher presence of the poisonous metal lead in them. Even mild lead poisoning can cause lethargy. An increased dose as seen in the samples tested can even lead to death.

Three samples, recorded bacterial count beyond the permissible limit. Synthetic cleaning agents like detergents were also detected in the mineral water samples. None of the popular brands marketed under the label ‘mineral water’ contained desirable levels of minerals for being qualified as mineral water.

It is to be noted that mineral water companies are mushrooming each day. It has been stated that there are over a dozen mineral water companies functioning in Cochin area alone. Even though ‘mineral water’ is brought within the purview of

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134 Ibid. The BIS has fixed the permissible level of mercury as 0.001 Parts Per Million (ppm) in potable water. But the samples contained 0.1 to 0.6 ppm of mercury. Heavy metal was detected to 64 ppm in all the samples as against the permissible level of 1 ppm.
135 Lead content ranging from 7 ppm. to 27 ppm. against the permissible level of .01 ppm. was detected in the samples.
136 570-8600 cells per ml. were found as against the permissible 100 cells/ml.
137 As per the BIS norms, the mineral water should have 60 ppm hardness together with the presence of carbonates and bicarbonates mainly of sodium and potassium, for being labeled as mineral water. Of the samples collected, one recorded 120 ppm. hardness. All others recorded only 18 ppm, nearly ¼th of the desired level. Ibid.
138 Ibid.
the Prevention of Food Adulteration Act in 1995, the standards prescribed by BIS in this regard are not made compulsory. This will enable many manufacturers to escape from the penal provisions of the Act. It is high time that BIS standards are made applicable for mineral water. In the case of bottled drinking water, other than mineral water, practically no legal controls exist. Regulations sought to be imposed on sale of bottled drinking water under the Essential Commodities Act, 1955 would be a salutary measure. It is to be examined whether the WHO guidelines on the quality of drinking water is adopted in India.

**WHO Guidelines for Drinking Water Quality**

The World Health Organisation has formulated the Guidelines for Drinking Water Quality in 1984. The object of the guidelines is the protection of public health. It also seeks the elimination or reduction to a minimum of the constituents of water that are known to be hazardous to the health and well being of the community. Quality of water defined by the guidelines is such that it is suitable for human consumption and for all usual domestic purposes including personal hygiene. The guidelines treat it as ideal if the organizational arrangements to ensure quality of drinking water standards are entrusted to a separate agency. Even though the storage and supply function and surveillance over quality are mutually complementary, the guidelines suggest that these functions are better carried out if entrusted to separate agencies because of the conflicting priorities that exist when both functions are combined.

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140 Id., p.1.
141 Id., p.8.
142 Id., p.9.
Bottled water, as per the guidelines, should be at least as good in bacterial quality as unbottled potable water and thus contain no coliform organisms. The source used for bottled water should be free from pollution. The bottling process and subsequent transit and storage should not be allowed to contaminate the water. The source of water must therefore be protected and bottling must be done hygienically. These guidelines do not provide for mineral water although bottling procedures and standards of hygiene are same for both.\footnote{143}

WHO has estimated that each year about 500 million people are affected by water borne or water associated diseases. As many as 10 million—of these about half of them infants—die.\footnote{144} It has also been estimated that 25\% of the Worlds' Hospital beds are occupied by patients due to the use of unwholesome water.\footnote{145} The illness includes typhoid, cholera, infectious hepatitis, bacillary and amoebic dysenteries and many varieties of gastro intestinal diseases. Taking into account the large volume of illness and the possible health hazards associated with the quality of water, it is a felt need that the WHO guidelines be implemented in our country. The BIS have already laid down the safe water quality standards for bottled water and mineral water taking into account the WHO guidelines. What is required further is only a governmental decision to make the standards mandatory at least in the bottled water business.

Application of Criminal Law for Quality Control in England

The British consumer law is concerned with two separate consumer interests, namely, the economic interests and safety interests. Courts hold safety interests in

\footnote{143}{W.H.O, \textit{Surveillance of Drinking Water Quality} (1976).}
\footnote{144}{\textit{Id.} at p.13.}
\footnote{145}{\textit{Ibid.}}
high regard than economic interests. Very high standards are required of businesses, which prepare and supply food for human consumption or produce goods, which pose safety threats to consumers. Gorden Borrie, former British Director General of Fair Trading, has remarked that the creation of new criminal offences in the sphere of consumer protection has in fact overshadowed the importance of civil law.\textsuperscript{146} The Trade Descriptions Act, 1968 has been cited as the best example of the use of criminal law to combat trade abuses and excesses. This Act forbids false or misleading descriptions of goods and empowers the local weights and measures authority to adopt methods to enforce it.\textsuperscript{147} The Act prohibits the application of false trade descriptions in the course of trade or business in relation to any goods.\textsuperscript{148} Contravention of this provision is declared as an offence.\textsuperscript{149}

The Consumer Safety Act, 1978 is yet another example where criminal law is used to deal with new products which may cause new hazards. At present the Consumer Protection Act, 1987 regulate this aspect also\textsuperscript{150}. This enactment provides for compensation in case of defects in goods.\textsuperscript{151} However, the breach of safety requirements concerning goods supplied or exposed or offered for sale, is treated as an offence.\textsuperscript{152} Safety regulations are formulated by the Secretary of the State\textsuperscript{153} in consultation with trade organizations that are likely to be affected by the regulations.

\begin{footnotesize}
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\item \textsuperscript{147} The Trade Descriptions Act 1968, s. 26.
\item \textsuperscript{148} \textit{Id.}, s.1.
\item \textsuperscript{149} \textit{Ibid.} The punishment provided is imprisonment for a period of two years or with fine or both. See \textit{Id.}, s.18
\item \textsuperscript{150} See the Consumer Protection Act, 1987, Part II.
\item \textsuperscript{151} The Consumer Protection Act, 1987, Part I.
\item \textsuperscript{152} The Consumer Protection Act, 1987, s.10. The Punishment prescribed is six months imprisonment or fine or both.
\item \textsuperscript{153} \textit{Id.}, s.11.
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The views of consumer organizations and the Health and Safety Commission are also considered.\textsuperscript{154} 

The Consumer Credit Act, 1974 also makes it an offence to engage in an activity without a license, if license is required for engaging in such activity.\textsuperscript{155} It will also be an offence if a licensee carries on a business under a name not specified in the licence.\textsuperscript{156} This enactment criminalizes about thirty-five business conducts concerning consumer credit and provides for different periods of punishment.\textsuperscript{157} All these offences are strict liability offences.\textsuperscript{158} 

Similarly, contravention of orders issued by the Secretary of the State,\textsuperscript{159} prohibiting any 'consumer trade practice'\textsuperscript{160} is treated as an offence.\textsuperscript{161} The Food Safety Act, 1990, contains many provisions imposing criminal liability. They are (1) rendering food injurious to health by adding any article or substance to the food, (2) using any injurious article or substance as an ingredient in the preparation of food; or (3) abstracting any constituent from the food and subjecting the food to any other process or treatment with the intent to sell it for human consumption,\textsuperscript{162} (4) sale or offer for sale, or advertise for sale any food, which fails to comply with food safety

\textsuperscript{154} Id., s.11 (5). 
\textsuperscript{155} The Consumer Credit Act, 1974, s.39 (1). 
\textsuperscript{156} Id., s. 39 (2). 
\textsuperscript{157} See, Consumer Credit Act 1974, Schedule 1. 
\textsuperscript{158} In all these cases, the element of mens rea is dispensed with to render better consumer justice. 
\textsuperscript{159} The Fair Trading Act, 1973, s. 23 enables him to issue such orders. 
\textsuperscript{160} Id., s.13. The Advisory Committee constituted under the Fair Trading Act, 1973, decides what is a 'consumer trade practice' detrimental to the interesting consumers. 
\textsuperscript{161} Id., s.23 (a) and (b). 
\textsuperscript{162} The Food Safety Act, 1990, s.7.
requirements,

(5) sale of any food which is prejudicial to the purchaser because it is not in the nature or substance or quality demanded by the purchaser, and

(6) applying a false description or presentation of any food that is likely to mislead the consumer as to its nature, substance or quality. Criminal sanctions can be seen provided in other enactments also.

In most of the strict liability offence cases, the innocent offender is provided with a statutory defense of due diligence. The person charged can show that he had taken all reasonable precautions and had acted with due diligence in order to avoid the commission of the offence charged. The inherent weakness of this defense is that the effect of doing so is to accept that an offence has been committed but there is some excuse which exonerates him. Due to this reason, it is said that there seems to be a reluctance to use the defense provisions in the consumer protection statutes. Once such a defense to an offence is taken, he has to prove that he has both taken reasonable precautions and exercised due diligence to avoid the commission of the offence by himself or any person under his control. The defense therefore contains

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163 Id., s.8. For the purpose of this section, food will be to have failed to satisfy food safety requirements, if –

(a) it has been rendered injurious to health;
(b) it is unfit for human consumption or
(c) it is so contaminated that it would not be reasonable to expect it to be used for human consumption in that state. Id., s. 8 (2).

164 Id., s.14.

165 Id., s.15. Publication by advertisement which falsely describes or misleads the nature, substance or quality of any food will also be an offence (Id., s.15 (2)).

166 Strict criminal liability provisions can be seen in the Weights and Measures Act, 1985 and the Property Mis-descriptions Act, 1991.

167 See, the Trade Descriptions Act, 1968, s. 24 (1)(b); Fair Trading Act, 1973, s. 25(1)(b); Consumer Credit Act, 1974, s.168 (1)(b); Weights and Measures Act, 1985, s. 34(1); Consumer Protection Act, 1987, s. 39(1); Food Safety Act, 1990, s. 21(1) and the Property Misdescriptions Act, 1991, s. 2(1). In some enactments variables of this defense are coupled with other requirements such as mistake, reliance on information supplied by another, act or default of another act or accident or some other event beyond the defendants control. For example, see the Trade Descriptions Act, 1968, s. 24 (1)(a).

two distinct elements. Firstly, it must be shown that the initial precautions taken by
the accused are sufficient. Secondly, it must also be shown that he has continued to
act diligently thereafter in order to secure compliance with the regulatory scheme.\textsuperscript{169}

What is a reasonable precaution is a question of fact that will vary according
to the facts and circumstances of each case. Reasonableness is to be assessed
applying objective criteria that could reasonably have been expected in the
circumstances in question. For example, food producers and retailers must show that
they have taken specific steps to avoid the presence of some undesired substance in
food.\textsuperscript{170}

In due diligence defense it is not adequate enough to have a mere ‘paper system’
for avoiding the commission of an offence. That system must be put into operation in a
diligent manner. In \textit{Tesco Supermarkets Ltd. v. Nattrass},\textsuperscript{171} the branch manager of the
accused company allowed a misleading indication of the sale price on packets of soap
powder to be displayed in the store. The company claimed that they had set up a proper
system of education and training to the personnel concerned and hence had taken
reasonable precautions and acted with due diligence to avoid commission of an offence.
However, the House of Lords held that it was not sufficient for the company to show
that they had a system of training. They also had to show that they had diligently put
that system into operation.

The question whether due diligence defense can be considered sustainable
when the goods sold in question are in compliance with statutory standards and have

\textsuperscript{169} Ibid.
\textsuperscript{170} \textit{id.}, p.372.
been so certified by a third party, came for consideration before the Divisional Court in *Balding v. Lew ways Ltd.* The accused in this case was charged with supplying a 'tipper trike' (a toy), which was unsafe by virtue of a dangerous and accessible protrusion. This was in violation of the provisions of the Toys (Safety) Regulations 1989 and was amounting to an offence under the Consumer Protection Act, 1987.

It was found that there were material differences between the standards prescribed by the British Standards Institution and the standards required by the regulations made under the Consumer Protection Act, 1987. Moreover, it was established that when the BSI certificate was given, the producer was warned that this did not confer immunity from legal obligations. The court held the company guilty of the offence of violating safety regulations. It suggests that reliance on third party certification is not usually sufficient evidence of exercise of due diligence.

In addition to the criminalisation of diverse trade practices under the various enactments, there are large number of statutory instruments concerned with specific types of trading abuses creating criminal offences. These primary and secondary legislations jointly work to bring in discipline and responsiveness among the traders in England.

**Invoking Criminal Law for Quality Control: Judicial Response**

The study of the cases decided under the Prevention of Food Adulteration Act and other quality control legislations reveals that the judiciary has failed to appreciate

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173 The Consumer Protection Act, 1987, s.12 (1).
174 Hereafter referred to as BSI.
175 For example see the Consumer Transactions (Restriction on Statements) Order, 1976; the Business Advertisements (Disclosure) Order, 1977; the Property Mis-descriptions (Specified Matters) Orders, 1992; the Package Travel, Package Holidays and Package Tours Regulations, 1992; and the General Product Safety Regulations, 1994.
fully the need for criminal sanctions in this area. Punishments are imposed on
convicts at least for two purposes. The deviant behaviour ought to be punished
depending upon the gravity of the offence. The punishment must remain as a model
that will deter others from committing the offence. Considering the seriousness of
food adulteration cases, any leniency, other than those permissible under the Act are
uncalled for. The concern shown by the Supreme Court in many cases\textsuperscript{176} shows that
the lower judiciary often fails to acknowledge this. So far as the lower judiciary is
concerned, it is flooded with cases. Food adulteration cases are few among the
multitude of cases it is supposed to decide. The seriousness that ought to have been
shown towards this dangerous tribe is seen lost sight of. Food offences that
encompass a new criminal jurisprudence are overshadowed by presumptions and
favoured constructions benefiting the accused under the ordinary criminal law. In
spite of repeated exhortations by the Supreme Court of India, the situation has not
improved much.

In most of the cases, the issue in question reaches the Supreme Court after
long periods of protracted litigation before lower courts. Therefore, the Supreme
Court has been expressing its displeasure and helplessness in straightening the
position of law. These in turn allow the culprits on many occasions to escape from
the rigour of law.

For instance, in \textit{Municipal Corporation Delhi v. Kacheroo Mal},\textsuperscript{177} the
criminal proceedings lasted for 81 months. The Supreme Court refrained itself from
passing an order for remand of the case on the ground that defending the case for


\textsuperscript{177} A.I.R. 1976 S.C. 394.
81 months before various courts itself is ample punishment for the respondent. Hence the court refused to interfere with the High Court order of acquittal.

Similarly, in State of Orissa v. K.Rajeswar Rao, the offence was committed before the introduction of a provision for minimum punishment in the Act. The accused was acquitted by the lower courts. The Supreme Court found the accused to be guilty. But since 15 years were already passed after the commission of the offence, it was held that at this distant point of time, ends of justice might not be served by sending the accused to the jail. According to the Court the agony of prosecution suffered by him during these years would be a sufficient punishment for him.

Instances in which courts, clinching on procedural infirmities, set free the accuseds are not uncommon. In N. Sukumaran Nair v. Food Inspector, Mavelikara, a sample of ice cream was purchased by the Food Inspector from the appellant. The Public Analyst reported that due to reduction in milk, fat and solids, the ice-cream was adulterated. When prosecuted, the trial court acquitted the appellant on the ground that the mandatory rules for collection and sending of specimen were not complied with. In this case, the Food Inspector failed to support his testimony with the postal receipt to establish that he had sent not only the sample of ice cream properly sealed, but also the specimen of the seal separately. Hence the

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179 This clause was introduced by the Prevention of Food Adulteration (Amendment) Act, 1976.
181 Prevention of Food Adulteration Rules, 1955, rule 18 deals with the procedure. It says that a copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent in a sealed packet separately to the Public Analyst by any suitable means – immediately but not later than the succeeding working day. In State of Haryana v. Isher Das, 1985 Cri. L.J. 1061, it was held that rule 17, which deals with the manner of despatching containers of samples and rule 18 are interlinked and are part of the same scheme and both rules are mandatory.
public analyst could not certify that the seal affixed on the container and the outer cover of the sample tallied with the specimen sent separately to him. So the court concluded that the offence was not established.

On appeal, the High Court reversed the order on the ground that the Analyst had certified that the seals and specimen sent to him tallied and hence fit for analysis. The oral testimony by the Food Inspector was thus corroborated by the certificate from the Public Analyst. That was enough to find the accused guilty. The High Court reversed the sentence, and awarded simple imprisonment of six months and a fine of Rupees 1000/-. On appeal, the Supreme Court agreed with the finding of the High Court but observed that the offence was committed a decade before the imposition of sentence. Hence the Court directed the state government to formalise the commutation of six months simple imprisonment to a fine of Rs.6000/- thereby exempting the accused from imprisonment.

In State of Haryana v. Pawan Kumar,¹ the respondent was found exposing for sale adulterated red chilly powder. The trial court convicted him and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/-. Respondent's appeal to the Sessions Court failed and a revision petition was filed in the High Court. While upholding the conviction, the High court reduced the imprisonment to the term already undergone by the accused. In this case the term undergone was less than a month.

On appeal, the Supreme Court held that the High Court was in error in reducing the sentence as the minimum substantive sentence to be imposed under the

Act for the above offence being six months. In this case also, considering the fact that the offence was committed more than 16 years ago, the Court felt that the minimum sentence prescribed under the Act would meet the ends of justice. High Court order to that extent was ordered to be modified.

Considering the volume of criminal cases pending before various courts in the country, delay in the disposal of cases are inevitable. The appellate courts go on adopting a lenient view about punishment only on the ground of delay in the final disposal of cases. It is felt that this trend will only be antithetical to the purpose of the Acts. The culprits are likely to take advantage of the delay in the judicial process. Executive and legislative measures for establishment of special courts for food and drugs cases in each district are desirable. Such a step is necessary to keep the rigour of law and punishment prescribed by the Prevention of Food Adulteration Act. Sharpening of the existing tool in this manner would provide sufficient deterrence to the trade. This will help to improve the quality of food and drugs sold in the market. Enterprises, which thrive on compensating the few who complain and exploiting others by adulteration in the civil law regime, cannot thrive under the rigour of criminal law any more. This, it is expected, will pave the way for a qualitative change in the business practices concerning food and drugs. The experience in the U.K. also shows that the criminal sanctions have considerably helped to discipline the traders. It serves a predominant role in consumer transactions. But in India, the position is different. The compensatory regime of civil law is given supremacy and the criminal law is put into motion slowly. Even this is done only in areas where the health of the consumers is likely to be adversely affected. The courts also appear to be indifferent. It is doubtful whether the usefulness of criminal law as an instrument to ensure
fairness in trade practices is properly recognized in India. The relevance and significance of criminal law in regulating the market is to be understood in its true perspective. Laws need to be enacted and implemented properly to improve the performance of manufacturers and sellers.

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