CHAPTER - IV

LEGAL CONTROL ON CRIMES AGAINST CONSUMER'S HEALTH
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INTRODUCTION

Consumer's health is very precious for its life. The crimes against consumer health ought to be controlled very seriously to build a healthy society or nation. There is provision of compensation for loss arising out of infringement of right's of consumers and the followed procedures thereby. But the commercial mentality and endless lust for making money of some industrialist is so great that they become practically blind towards the adulteration in food items, they do endanger the life and health of consumers. The owners of big industries become indifferent towards this crime. The bye products are emitted in water and make it poisonous; at the same time, the poisonous chemical fumes enter the bodies of consumer through breathing air which is a compulsory natural process for every living entity. The drugs manufactures for the sake of earning more money produce sub-standard drugs in place of standard ones. These drugs become life killers instead life savers.
In order to protect the health and life of consumers from such above mentioned crimes, and punish the criminals, different Acts have been enacted ex. - Prevention of Foods adulteration Act 1954, Adulteration in Drugs Control Act, Environmental Laws; Drugs and cosmetics Act 1940, Amendments have also been done in above Acts as per needs periodically. Indian penal consists of provision in these connection rights from the beginning, but the menace could not be curbed fully to protect human health.

**Laws in different states for controlling crimes**

Different states have also enacted laws as per their condition:

providing him compensation. But in case of commercial competition where the consumer's health is put on state; the damaged caused to consumers cannot be relieved only by compensation. In these cases, punishment seems to be a must for wrong doers who are committing these wrongs knowingly or by negligence to make profits. In October, 1943, a committee called the health survey and development committee was appointed by the then Government of India under the Chairmanship of Sir Joseph Bhole. This committee submitted its report in 1946 its detailed findings. According to the Bhole Committee, the low level of health of Indians in general may be attributed to factors relating to (i) Nutrition; (ii) Health Protection; and (iii) the Environment. It is apparent that the health of the community is mostly affected by (1) consumption of food, drinks, drugs and use of cosmetics which are adulterated or of inferior quality (or are insufficient in quantity) causing ill-health; and (2) environmental contamination through pollution of water and air aggravation of noise and generally in sanitary conditions tending to spread infection.

Turner C.E. has rightly analysed the concept of public health that: "The health of the public of a nation is anonymous with the health of the nation itself. The physical and mental vigour of a
people is one of the most important factors which determine national survival. Goods health, in this context, does not merely mean the absence of illness but it includes physical, mental and social wellbeing. It is much more than merely not being "sick in bed."  

Every individual is entitled to enjoy good health which is one of his most valuable possessions. Salman A.C. has thrown light very precisely on the responsibilities of state that: "It is the responsibility of the state to maintain and protect public by health legislation and social measures. At the same time, it is now recognised that every individual has a fundamental duty to the society of which he is a member to protect it from any undesirable, harmful and deleterious conditions. Further, every individual must, in his methods of living, conduct himself with due regard for the rights, comfort and health of others.

The human body is a divine creation and it may be claimed that the human organism is subject to natural or divine laws. It is thus the first and foremost duty of every human being to live in harmony with the laws of health.² Simillie, Wilson G. points out the actual aims and meaning of public health laws that Public Health Laws, in fact are meant for the protection and promotion of the individual and the community, because the protection of the health
of an individual worker is not an individual question demanding social regulation.\textsuperscript{3} The laws for protection of consumer's health are the need of the day because taking advantage of the helplessness of consumers, unscrupulous traders play with the life and happiness of consumers and millions of innocent people by selling adulterated articles of food, drink and drug at a cheaper rate and make huge profits. They resort to various undesirable methods of adulteration starting from the stage of manufacture to that of sale of the articles, even at the risk of the consumer's health, happiness and life.\textsuperscript{4}

It is a matter of great concern that poisonous constituents are often added to article of food and drinks and spurious drugs are sold resulting in number of deaths and causing in number able diseases. A survey conducted by the Consumer Council of India reveals that as much as 774 and 1063 deaths took place in the year 1972 and 1973 respectively due to adulteration of food articles, sixty-five percent of deaths were attributed to liquor poisoning.\textsuperscript{5} Serious consequences have resulted by the addition of polish to alcoholic beverages and lak dal, a prohibited dal, which is sometimes used as an adulterant and which causes paralysis, argemone seeds and adulterant added to mustard seed, cause epidemic dropsy and glaucoma. Even an adulterant such as water may be contaminated or infected with
typhoid germs. One adulterant commonly added to turmeric powder produces hydrochloric acid in the stomach which destroys useful enzymes. Adulteration reduces the nutritional value of food.

In the absence of honest social and political order, unscrupulous businessman is busy in devising new ways and means for increasing production though dubious methods. Adulteration has become so widespread and persistent that it is difficult to get even air, water and light unpolluted. In a welfare state it is the duty of the state to conserve the health of its people. The purity of food and drink and of the atmosphere, and the existence of sanitary surroundings are some of the essentials for warding off the appearance of a disease.

**Legal control in Ancient times**

In ancient India during the reign of Mauryas as long ago as 300 B.C. the act of adulteration was considered 'a dharma' and viewed with disgrace and distribution of adulterated articles of food and drugs was prohibited. The law provided protection to the consumers from the evil effects of adulteration and provided severe punishment for adulteration of grains, food articles and medicines.

Now a days, in the field of drugs and patent medicines the markets are flooded with quite useless and often injurious medicines.
Fake and misleading advertisements are made and published in newspapers, magazines, radio and television etc. about the quality and effect of drugs and medicines, false assurances are given regarding the treatment of chronic diseases etc. causing incalculable harm and irreparable damage to the people. It is very surprising that the food, drink and drug adulteration is not confined to one particular area, like also the traditional and conventional crimes, such as that of offences against human body and property but it is widespread. That is to say, its influence on society is not only economic but social, moral, psychological and legal as well. Adulteration causes irreparable injury to public moral and public health. In fact, adulteration is an unmitigated nuisance and menace to society. The anti Social Act of adulteration has attracted the attention of social reformers throughout the world since long. They have analysed and defined adulteration to uproot it with the aid of prevailing laws.

Few authentic definitions and elaborations of adulteration are:

- As per Encyclopedia Britanica: "Adulteration in ordinary sense means an act of debasing a commercial or substituting an inferior article for a superior one in order to gain illegitimate profit. As per Universal Dictionary of English language: In literal and grammatical
sense the term 'adulterate' means to debase, falsity by mixing with something inferior or spurious, not perfectly genuine, having foreign substance, to make impure by admixture of other or baser ingredients. In 1873, the court of queens Bench Division in England defined adulteration that - "In flushing of some foreign substance or the mixing up with any substance intended for sale any ingredient which is some of the legislative measures taken to uproot and control adulteration causing damage to health of consumer's.

**Legal Control: Law of Crimes**

The first and foremost is Indian Penal Code 1860: "The Code in chapter XIV dealing with offences affecting public health and safety has made sale of food and adulterated articles of food and drinks and spurious drugs punishable with imprisonment of either description for a term which may extend to six months or with fine or with both under sections 272 to 276. However, the previsions contained under the code are not comprehensive. The criminal liability under the Act is limited only to the extent of sale adulterated articles of food or drink.

But I.P.C. had many limitations, so the Govt. of India and many states framed different enactments for different types of adulteration: "(i) Assam pure food Act, 1932; (ii) Bengal Ghee
The parliament enacted "Prevention of Food Adulteration Act, 1954 (Act 37 of 1954), which came into operation from June 1, 1956; and several amendments were incorporated in the Drugs and Cosmetics Act of 1940 (Act 23 of 1940). A number of major amendments were also made in 1964, 1971 and 1972 respectively to make the provision effective. The Act of 1954 was again thoroughly amended in 1976 in order to make the provision more effective and workable. The object of the Food Adulteration (Amendment) Act 1976 reveals the gravity and magnitude of the malady: "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 on which large sums of money are spent are insidiously 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 plug loopholes and provide for more stringent and effective measure with a view to curb this menace."
Crime against consumer's health through misbranding:

Misbrand consists of two words 'mis' and 'brand' which means to brand falsely or in a misleading way. The Random House Dictionary of English Language defines misbranding as to brand or label erroneously with a stipulated trade mark or trade name. The Indian Penal Code, 1860 has prescribed penalty under sections 481 and 482 for using a false trade mark or property mark. A person it liable under the code to punishment for falsely marking goods, cases, packages or other receptacles of food and using false property mark so as to make a customer believe that such an article is genuine. The offences relating to the infringement of trade and property marks have a dual purpose firstly, they are designed to product the consumer against a deception being practiced on him by palming off on him goods different to those he believed himself to be buying. Secondly they protect the trader himself by preventing the limitation of his goods and thus cause him loss by destroying his credit.\textsuperscript{13} In Payton and Co. V. shelling Lampard and Co.,\textsuperscript{24} it is said that whether a customer would be likely to be deceived is not a proper question to put to a witness for it is for the court and not for the witness, to decide after inspection of the exhibits and paying regard to the evidence, whether a customer could be likely to be deceived.
by the make-up of. In the case of Eno V. Dunn, the plaintiff Eno for several years used the words 'Fruit Salt' as his trade mark for a saline aperients. The defendant applied to register 'Fruit Salt' as his trade mark for baking powder. Eno apposed and it was found that the defendant had adopted those words from Eno's Fruit Salt and Key, J. refused him permission to register the trade mark as one calculated to deceive the public into a belief that the baking powder contained Eno's Fruit Salt as one of its ingredients, but this judgment was reversed on appeal by the majority of the judges who held that since the name was applied to a totally different thing, the plaintiff had no right to complain. As Lindley, L.J. remarked: "He has sought to obtain the benefit of the words, although not the benefit of the trade." Against the judgment there was, however, another appeal to the House of Lords where again the judges differed, but the majority of the court agreed in restoring the judgment of Key, J. which was consequently restored. A different view was, however, taken where the plaintiff used Neostyle as a trade mark for a duplicating machine, and the defendant used the word to designate their paper used for "Neostyle duplicator".

Section 5 of the prevention of Food Adulteration Act, 1954 prohibits import of any misbranded food into India and section 7
prohibits manufacture for sale or stone, sale or distribute any misbranded food either by himself or through others, and section 16 of the said Act treats misbranded article of food at par with adulterated articles of food in respect of penalties. In Laxmandas Sarvottamdas Deshi and Co. V. sta. Examples of different type of misbranding, ignoring the possible damage to the health of consumers are evident - In Laxmandas Sarvottamdas Deshi and Co. V. State of Maharashtra the Bombay High Court held that the accused liable for selling 'tur dal' (gram) coloured with coal tar dye (tartrazine) as misbranded. In Municipal Corporation of Delhi Vs. Balkrishan Thapar the High Court of Delhi held that the sale of packet with article labeled as 'Saccharine' containing admixture of glucose and saccharine misbranded. In Jagneswar Sen Gupta Vs. Gopal Chandra Saha, the accused was found guilty of filling of mustard oil from a large barrel bearing no particular brand into a smaller tin having embossed marks of manufacturers of various brands of mustard oil. After filling, the tins were sealed with lid. It was held that the accused was guilty of the offence of misbranding. In V.K. Srinivasom V. Food Inspector, it was held by the Madras High Court that the packets of tea were not labeled as sample and there was no other documentary evidence to show that they were
not part of the tea received in the shop for sale for the public and when these packets were exposed among other packets for sale, it amounts to misbranding of these packets intended for sale.

It was found necessary to by down the various situations causing adulteration injurious to consumer's health. Hence section 2 (1a) the "adulterated" state that an article of food shall be deemed to be adulterated: (a) If the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be; (b) If the article contains any other substance which effects, or if the articles is so processed as to affect, injuriously the nature, substance or quality thereof; (c) If any inferior of cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof; (d) If any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof; (e) If the article had been prepared, packed or kept under in sanitary conditions whereby it has become contaminated or injurious to health; (f) If the article is obtained from a diseased animal; (g) If the article is obtained from a diseased animal; (h) If the article contains any poisonous or other ingredient
which renders it injurious to health; (i) If the container of the article is composed, whether or in part, of any poisonous or deleterious substance which renders its contents injurious to health; (j) If any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability; (k) If the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits; (l) If the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health; (m) If the quality or purity of the article falls below the prescribed standard or its constituent are present in quantities not within the prescribed limit of variability but which does not render it injurious to health; Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then such article shall not be deemed to be adulterated within the meaning of this sub clause;
**Explanation:** Where two or more articles or primary food are mixed together and the resultant article of food - (a) is stored, sold or distributed under a name which denoted the ingredients thereof, and (b) is not injurious to health then, such resultant article shall not be deemed to be adulterated within the meaning of this clause. Similarly, Sections I-B and 17-B or Drugs and Cosmetics Act, 1940 has defined adulterated in the same manner as above, prevention or Food Adulteration Act.

Effects of adulteration on consumer's health and other social hazards - It is difficult to ascertain with precision the evil effects of adulteration, it deleteriously affects the health and happiness of the country, and has a number of other undesirable consequences. The act of adulteration brings about frustration amongst the people and has a demoralising effect on an honest and law abiding citizen when he notices that adulterators who are enemy number one to one society are getting honour and respect in the society. They are not treated as ordinary criminals, nor punished adequately. Persons found guilty of such offences often get away with a fine of a few rupees and succeed in moving about in society as respectable citizens. An adulterator feels proud in selling adulterated articles. There is no moral or social censure for his acts.
Adulteration being practiced unchecked on such a large scale adds to the feelings of frustration of the honest taxpayers, places a premium on dishonesty and encourages dangerous disrespect for laws in particular and others in general. Adulteration leads to inflation in the market, because of the large sums of money in the hands of adulterators, a handful of person's monopolies things, and regulates the market. The prices to suit their own ends.

**Effects of water pollution on community health and its legal impact:** The effects of the pollution of public waters are numerous. The effects of pollution actually depend much upon the degree of pollution because to a certain extent polluted water can be used but when the pollution becomes of a higher degree, it adversely affects. It can describe in-hygienic in character, i.e. adversely affecting public health and recreation. The water pollution is not limited only to the extent that water is made less fit or unfit for human consumption, bathing, washing, cooking or for any other like purposes, trade purposes or animal or aquatic life, but the causing of stagnation of water so as to give rise to the breeding of mosquitoes and giving rise to offensive smell and causing to the persons living in the vicinity danger to their health.¹⁶
The intensity of water-borne infection in any community is in
direct proportion to the degree of and duration of the pollution of
the water by human wastes. The water, so polluted is no doubt a
source of many of the most fatal diseases which attack man.\textsuperscript{17} Such
activities directly affecting the Human health ought to be curbed and
controlled by Consumer Protection Law.
CITATION


4. "Hazards of Food Adulteration" Souvenir 1964, Bharat Sewak Samaj, pp. 20-21. Some of the common adulteration in various articles as amended (i) Ice cream and Kulfi; injurious colours, such as saccharin, sacrol and dutten which are injurious items and starch, (ii) Panir prepared from extracted milk : addition of paper, moisture and soapstone, (iii) Spices (chillies) powdered : spices colours, geru, danta, soluble colours ratanjot, sand, powdered or rice or bran, (iv) Amchur (mango) : sand etc. (v) Dhania : powdered horse dung, powdered bran etc. See Table No. 1 for details of the constituents of adulteration.

5. See "Adulteration of Food and other Commodities", Consumer Bulletin 18, Feb. 1974, pp. 18-19, For a detailed discussion of the health dangers of food adulteration, see T. Jacod : FOOD ADULTERATION, 1976. Some non-food commodities, such as cement, are also frequently adulterated by sellers.

6. It is estimated that the Indian consumer is cheated to the tune of Rs. 1,600 crores year through deceptive and defective weights and measures. No estimates about the monetary loss (apart from the physical hazards) to the consumer as a result of adulteration have been made, but it is pretty sure that the Indian consumer, unlike his western counterpart, suffers a great deal on this account. The presence of stems of small in tea leaves, sawdust in chilly power, diesel or mineral oil in edible oils, black pebbles in black and harmful colouring agents in soft drinks are very common. See Sudhir Sharma: Consumer, Vol. 11, No. 8, 1980, p. 11.


9. See N.H. Sutherland: Crime and Business, the Annals of the American Academy of Political and Social Science, Vol. 217, p. 113: The manufacturers of practically, every class of articles used by human beings have been involved in legal difficulties with there commissions with more or less frequency, including the manufacture of surgical instrument with which an infant be assisted into the world, the bottle and nipple from which he may secure his food, the milk in his bottle, the flask which the father displays his celebration of the event and so on throughout life until he is finally laid away in a casket which was manufactured and sold under the condition which violated the law.


11. See UNIVERSAL DICTIONARY OF ENGLISH LANGUAGE, 1946, p. 15.


14. 1901 AC 308.

15. 15 App Cas 252.

Rama: The Problem of Water Pollution, paper read at Seminar on Legal Control on Environmental Pollution held from 20th to 22nd May, 1977, at I.I.I., New Delhi.