Penal Law on Food Adulteration

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Act of debasing articles of food with the ulterior motive of passing it off as genuine is adulteration. Substitution of an inferior article for a superior one to the detriment of the purchaser also is adulteration.

When scarcity occurs, the unscrupulous traders take undue advantage. They supply adulterated articles, sometimes at a comparatively cheaper rate. There are even sad news of adding poisonous materials to food and drinks causing death.¹

There are indications of the prevalence of this heinous crime even in ancient India. Laws were in vogue. Kautilya in his *Arthasasthra*² gives a vivid description of the consumer protection measures that ought to be adopted. He prescribes

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“As to difference in weight or measure or difference in price or quality, for the weigher or measurer who by a trick of the hand brings about (a difference to the extent of) one-eighth part in (an article) priced at one *pana*, the fine is two hundred (*panas*). By that is explained the increase in fines by two hundred (*panas*) successively. For mixing things of a similar kind with objects such as grains, fats, sugars, salts, perfumes and medicines, the fine is twelve *panas*”. 
various penalties and thus indicates the need for control of adulteration. When society became more and more impersonalised, food adulteration assumed diverse proportions. In the complexity and multiplicity of transactions in the modern age, the traditional contractual and tortious remedies turned to prove themselves inadequate.

**Penal Law in India**

The Indian Penal Code, 1860 deals with food adulteration treating adulteration of food and drinks as offences. This provision\(^3\) considers mixing of noxious ingredients in food or drinks as punishable. But mere adulteration with harmless ingredients with an eye on more profit is not punishable under it. Mixing milk with water is an example.

A reading of the provision in the Indian Penal Code goes to show that mens rea is an essential element of the offence therein.\(^4\) An old Bombay decision explained its scope.\(^5\) The court in that decision held that in order to find a person guilty under Section 272, it should be proved that the article was intended to be sold as food. Thus it can be seen that under the Code, adulteration as such is not made punishable.

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3. Indian Penal Code, Section 272 reads as follows:

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


5. *Salaitnan Shanji v. State*, A.I.R. 1943 Bom. 445. In this case the servant of the accused was found spreading used tea leaves on his terrace. He had a packet of white powder with him. The accused arrived on the scene. The Medical Inspector collected some of those used tea leaves and sent for analysis. It was found adulterated with foreign materials. The court held that there was no evidence to show that the mixture which was sent for analysis was intended to be sold as an article of food or drink.
Another provision which deals with adulteration of food is Section 273 of the Indian Penal Code. The ingredients of this provision are three in number.

(a) Selling or offering for sale as food or drink,

(b) Such article must have become noxious or must be in a state unfit for food or drink and

(c) Sale or exposure must have been made with a knowledge or reasonable belief that the article was noxious as food or drink.

The provision is comprehensive and includes an article of food which has gone bad by being kept too long. The food which never was at any time fit for consumption will also come under the purview of the provision. Thus, what is punishable under the section is the sale, offer or exposure for sale, of noxious articles of food or drink. Here also an element of mens rea becomes relevant.

Prevention of Food Adulteration Act 1954

An examination of the above provisions in the Indian Penal Code reveals that if a person sells inferior article of food at a cheap rate, it does not constitute an offence. Moreover, in order to find that a person is guilty, it should be proved that the act of adulteration was with an intention to sell the same as food or drink.

In order to remedy this lacuna Parliament passed an exclusive legislation dealing with food adulteration, called the Pre-

6. Indian Penal Code, Section 273 reads:

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

7. Ibid., see the words, "knowing or having reason to believe...."
Adulteration: Meaning and Definition

In the ordinary sense, adulteration means the act of debasing a commercial commodity or substituting an inferior article for a superior one in order to gain an illegitimate profit. A literal and grammatical meaning of the word 'adulterate' is to debase, falsify, by mixing with something inferior or spurious. If adulteration defined as such were declared an offence, even the genuine end-products manufactured by combining various components, sometimes spurious or inferior, would fall within the definition of adulterated stuff. In order to eliminate this dilemma, the law has to lay down specific standards of purity in different articles of food. The PFA Act and the Rules have moved on in this direction. The Act in its definition clause stipulated the circumstances in which an article of food shall be deemed to be adulterated. The standards are prescribed by the Rules framed under the Act.

8. For the text of the Act see A.I.R. 1954 Act, p. 64.
9. P.F.A. Act, the relevant part of Section 7 reads:
   “No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute
   (i) any adulterated food;
   (ii) any misbranded food;
   (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;
   (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health.”
12. Clause (i-a) of Section 2 of the P.F.A. Act enumerates the various circumstances under which an article of food shall be deemed to be adulterated.
has been made very comprehensive. It embraces within its pur-
view all persons who adulterate various kinds of foods and
drinks and render it extremely difficult for such people to escape
punishment. However, this result depends to a large extent upon
how successfully the Act can be implemented.

The first instance when an article can be treated as adul-
terated is illustrated in sub-clause (a) of Section 2(i-a) of the
PFA Act. That clause has got two parts, the first denoting the
ingredient of not only sale but also the prejudice caused to the
purchaser and the second having no relevance to the prejudice
of the purchaser.

The main difference between the first and second part is
that in the first part it is the purchaser who demands the article
of food of certain nature, substance or quality. The seller does
not expressly say anything about the nature, substance or
quality. In the second part it is the seller who says what the
nature or quality of the article is. ‘prejudice to the purchaser’
is an additional fact to be proved in that context. In the second
part it is enough that the seller declares an article to be of a
certain nature, substance or quality. It can be applied even while
the article is offered or exposed for sale or manufactured for
sale without there being a purchaser.

In all the above mentioned situations, it is an inevitable
factor that there should have occurred a sale. The definition of
‘sale’ in the PFA Act is much wider than the commonly accep-

14. The provision reads as follows:
“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;”

15. Ibid.

16. P.F.A. Act, Section 2 (xiii). It reads:
“Sale” with its grammatical variations and cognate expressions,
means the sale of any article of food, whether for cash or on
credit or by way of exchange and whether by wholesale or
retail, for human consumption or use, or for analysis, and
includes an agreement for sale, an offer for sale, the exposing
for sale or having in possession for sale of any such article, and
includes also an attempt to sell any such article;”
ted definition in the Indian Sale of Goods Act. A sale for analysis, an act of exposing for sale, instances of possession for sale, even an attempt to sell are all brought within the definition of 'sale' of the PFA Act. If the word 'sale' is to be construed in its ordinary dictionary meaning or in the sense it is used in statutes like the Sale of Goods Act, the purpose and object of the PFA Act itself will get defeated. This difficulty was pointed out by the Kerala High Court in *Food Inspector v. Suwert Dhalakia (P) Limited.*

Adulteration may arise in a different way. Under sub-clause (b) of the definition, if any one of the two conditions enumerated therein is fulfilled, an article of food is considered as adulterated, i.e., (1) any foreign matter which affects the nature, substance or quality of the article is present or (2) the article has been so processed as to affect injuriously the nature, substance or quality thereof. Thus adulteration can be caused not only by the presence of foreign substances but also by a defective processing of the article whereby the quality is injuriously affected. The words "affect injuriously the nature" do not go with the earlier words namely, "if the article contains any other substance" but clearly go with the words "if the article is so processed". Therefore, in the case of mere mixing up, the very presence of a foreign

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17. Section 4(3) of the Sale of Goods Act, 1930 defines a 'sale' as follows:

"Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell."

18. 1982 K.L.T. 364. It was argued before the court that in order to constitute sale, there must be an agreement between the parties for the purpose of transferring title to goods and that since the third respondent had no authority to sell, there was no sale of adulterated tea. The High Court did not agree with that contention. *Per Janaki Amma, J.* at p. 367.

19. Sub-clause (b) of Section 2(i-a) of the P.F.A. Act reads:

"if the article contains any other substance which affects, or if the article is so processed as to affect injuriously the nature, substance or quality thereof;"

substance will attract the prohibition of law where as in a manufacturing process it should injuriously affect the nature and quality of the substance.

There are other modes of adulteration of food and drinks as enumerated in the definition clause. Sub-clauses (c), 21 (d) 22 and (e) 23 need no explanation. The main difference between clauses (c) and (d) is that in the former the adulteration is done by any substance and in the latter any constituent of an article.

Sub-clause (f) 24 contains several conditions, satisfying any of which would render the food adulterated. The phrase "insect-infested" has given rise to interpretative difficulties. An article of food would be "insect-infested" if it has been attacked by insects in swarms or numbers. 25 Even if the insects are dead, it would render the article insect-infested. 26 Again it can be in whole or in part. 27 In view of the fact that the expression ‘insect-infested’ includes infestation even by dead insects, a further question may arise, whether mere insect-infestation, without

21. Sub-clause (c) of Section 2(i-a) of the P.F.A. Act says:
   “if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;”

22. Sub-clause (d) of Section 2(i-a) of the P.F.A. Act reads:
   “if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;”

23. Section 2(i-a)(e) of the P.F.A. Act reads:
   “if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;”

24. Section 2(i-a)(f) of the P.F.A. Act follows:
   “if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;”


more, would be sufficient to hold an article to be adulterated. This was extensively discussed and decided by the Supreme Court in *Municipal Corporation of Delhi v. Kacheroo Mal.*

It took the view that the expression "insect-infested" is to be construed in the context of an article of food meant for human consumption. The adjectives 'filthy', 'putrid', 'decomposed', 'rotten' or 'insect-infested' refer to the quality of the article and the test to be applied is whether it is nonfit for human consumption. It buttressed its reasoning by pointing out that there are some articles of food like nutmeg\(^2\) (Jaiphal), coriander\(^3\) (Dhania) and food grains\(^{31}\) in respect of which the Rules lay down minimum proportion of insect-infestation which is not deemed to make the article nonfit for human consumption. This shows that only because a food or drink is insect-infested in part, it would not make the article nonfit for human consumption unless the degree of infestation is of the 'nonfit' proportion. The reasoning of the Court went on as follows:

"The phrase 'or is otherwise unfit for human consumption' can be read conjunctively as well as disjunctively. If it is read conjunctively, that is in association with what precedes it, sub-clause (f) with slight consequent arrangement would read like this: If the article is unfit for human consumption on account of (a) its consisting wholly or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased

\(^{28}\) A.I.R. 1976 S.C. 394. Since there was no living insects present at the time of analysis, the High Court acquitted the respondent who was alleged to have sold insect-infested cashewnuts. The Supreme Court reversed the decision. It held that, if an article of food which was infested with living insects and consequently unwholesome for human consumption, it could never become wholesome by infestation by dead insects. At p. 396, *per* Sarkaria, J.

\(^{29}\) The Prevention of Food Adulteration Rules 1955 - Appendix B-A. 05-16—Nutmeg. The proportion of extraneous matter and infestation shall not exceed 3.0 percent by weight.

\(^{30}\) *Id.*, Appendix B-A. 05.08.01—Coriander (Dhania). The proportion of extraneous matter including dust, dirt, stones, tumps of earth, chaff, stalk, stem or straw, edible seeds of fruits other than coriander and insect damaged seeds shall not exceed 8.0 percent by weight.

\(^{31}\) Prevention of Food Adulteration Rules 1955, Appendix B-A. 18.06.
animal or vegetable substance or being insect-infested, (b)
or on account of any other cause”.32

According to the above decision, proof of unfitness of article for human consumption is a must for bringing the case within its purview. But in a later decision, Justice A. P. Sen of the Supreme Court adopted a diametrically opposite view.33 Thus now there are two conflicting decisions. Yet, a recent decision of the Supreme Court did not make any authoritative pronouncement on the issue, though raised.34

Section 2(i-a) enumerates the circumstances under which an article of food can be treated as adulterated. The manufacture of such adulterated articles for sale, storing, selling or distributing similar articles of food in contravention of the provisions of the Act and Rules made thereunder is punishable under Sec-


“... On the plain language of the definition section, it is quite apparent that the words ‘or is otherwise unfit for human consumption’ are disjunctive of the rest of the words preceding them. It relates to a distinct and separate class altogether. It seems to us that the clause ‘or is otherwise unfit for human consumption’ is residuary provision which would apply to a case not covered by or falling squarely within the clauses preceding it. If the phrase is to be read disjunctively, the mere proof of the article of food being ‘filthy, putrid, rotten decomposed.... or insect-infested’ would be **per se** sufficient to bring the case within the purview of the word ‘adulterated’ as defined in sub-clause (f) and it would not be necessary in such a case to prove further that the article of food was unfit for human consumption.” Id. at p. 362.

34. Municipal Corporation of Delhi v. Man Mohan Lal, A.I.R. 1983, S.C 506. The High Court acquitted the first respondent. The ground was that there was no sufficient evidence to show that the insect-infested article was unfit for human consumption. On appeal, the Supreme Court did not go into the controversy but found that in this case the article was not only insect-infested but also unfit for human consumption.
tion 7 of the Act. A number of decisions would show that the word 'store' in the above section means storing for sale and storing simpliciter is not an offence under the Act.

The preamble to the Act says that the Act is "an Act to make provision for the prevention of adulteration of food" and the word 'adulterate' implies an element of deceit. In many cases the actual culprits have escaped from punishment on the technical plea that the food was not intended for sale. If an article of food is not intended for sale and is in the possession of a person who does not fulfil the character of a seller, conveyor, deliverer, consignee or manufacturer, the Food Inspector is not competent to take samples and if found adulterated, to validly launch a prosecution. The result is that many of the real culprits escape from punishment. It is open for the defendant to claim that the article of food was not intended for sale. Moreover, it makes possible for storing adulterated articles by persons other than the seller on behalf of him. It is a common man's knowledge that nobody will store adulterated articles simply for the sake of storing. It is true that in certain instances, for example, for experimental purposes, adulterated articles may be stored. The safest rule, it seems, is to

35. The provision reads: "Prohibition of manufacture, sale etc. of certain articles of food:
   No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute - (i) any adulterated food; (ii) any misbranded food; (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence; (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; (v) any article of food in contravention of any other provision of this Act or any rule made thereunder; or (vi) any adulterant.

Explanation:- For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (ii) or clause (iv) or clause (v) if he stores such food or manufacture therefrom of any article of food for sale."

place the burden of proof on the person who stores adulterated articles of showing that it was not intended for sale rather than to totally exempt him from responsibility. The shifting of burden to the accused is a technique adopted to meet some types of rampant offences for which evidence is difficult to come up. 36a

The above discussion relates to the various instances in which an article shall be considered as adulterated. The different clauses in the statute are not mutually exclusive but overlap one another. 37 The legal consequence is that it is possible that an article of food may be found adulterated under two or more clauses. The inevitable conclusion is that merely because an article of food is covered by one clause, it does not exclude the applicability of another clause.

MENS REA AND PFA ACT

The Latin maxim, actus non facit reum nisi mens sit rea is considered to be one of the basic principles of criminal liability in common law. This ancient maxim denotes that an act does not make one guilty unless the mind be guilty. 38 The classical criminology, which was borne out of the principle of “freedom of will” also asserted criminal behaviour as the product of intentional human behaviour.

Now it has become the tendency of the legislature to rule out mens rea in many of the statutes expressly or by necessary implication. It is comparatively a new trend in the field of cri-

37. Thus where an article of food contains a foreign substance which affects the quality thereof and at the same time renders it nonfit for human consumption it would clearly fall within clauses (b) and (f) of Section 2(i-a) and the article will be considered as adulterated under both these clauses. So also the case where a colouring matter not permitted under the Rule is added to an article of food and thereby affects injuriously the quality of the food, that would come within the purview of sub-clauses (b) and (j). Prem Ballab and Another v. The State, A.I.R. 1977 S.C. 56 at p. 60.
minal jurisprudence. Accordingly, conviction may be had for an offence without regard to the mind or intent of the doer. This trend is attributable to the shift in emphasis from individual interest to public or social interest. It is with a view to foster effective enforcement of economic and social welfare legislative measures with the aid of strict criminal responsibility.

Under the PFA Act, manufacture, sale and distribution of adulterated food are prohibited in absolute terms. Mens rea is not an essential ingredient of an offence under it. An offence within the Act is committed even if the seller did not know the nature, substance or the quality of a particular food. Precisely speaking, knowledge is not a necessary ingredient. In *Andhra Pradesh Grain and Seeds Merchants' Association v. Union of India,* it was held by the Supreme Court that proof of a guilty mind is not necessary for an offence creating absolute liability in statutes like the one, the PFA Act.

Eventhough lack of mens rea is not a defence under the PFA Act, it cannot be said that the element of mens rea is completely excluded from its purview. Section 19 makes an exception in the case of vendors who sell articles of food under a war-

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39. *Sarjoo Prasad v. State of Uttar Pradesh,* A.I.R. 1961 S.C. 631. The appellant contended that he sold adulterated edible oils without knowledge that it was adulterated and hence not liable. The contention was not accepted by the Supreme Court and held that mens rea is not necessarily to be proved to convict a person under the P.F.A. Act. per Justice Shah, at p. 632.

40. (1970) 2 S.C.C. 71. In this case the petitioners challenged the validity of the P.F.A. Act and Rules as the creation of absolute liability amounts to unreasonable restrictions on the freedom to carry on trade guaranteed under Article 19 (1) (g) of the Constitution. Holding that absolute liability is not an unreasonable restriction, the court held that a person can legally be punished under the Act without proof of mens rea. *Id.* at p. 78, per Justice Shah.

41. The relevant part runs as follows:

"(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-

(a) that he purchased the article of food -

(f. n. contd.)
ranty. Here a vendor is not deemed to have committed an offence pertaining to the sale of an adulterated or misbranded article of food if he proves that he purchased the article from a duly licensed manufacturer or dealer. The principle underlying this provision is to attach liability to the actual trader who might be responsible for adulteration.

Section 19 is supplemented by Section 1442 which makes it incumbent on the manufacturers, distributors and dealers in articles of food to give warranty in writing. The nature and quality of the article sold should be clearly indicated therein. It is to be noted that the obligation to give warranty is cast on the manufacturer, the distributor or the dealer. In Public Prosecutor v. K. V. R. Annamalai Chettiar,43 the accused purchased butter after taking all reasonable precautions like getting letters of patent. Later the employee in his shop sold butter to the Sanitary Inspector when the accused was absent. On analysis, the article was found to be adulterated with 8.1% excess of water. The Madras High Court held the accused not guilty on the ground

(i) in case where a licence is prescribed for the sale thereof: from a duly licenced manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

(3) Any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence.”

42. “Manufacturers, distributors and dealers to give warranty. No manufacturer or distributor of, or dealer in, any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor, provided that a bill, cash memorandum or invoice in respect of the sale of an article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.”

43. A.I.R. 1953 Mad. 862.
that the appellant had taken a warranty and whatever done by
the servant was without his knowledge, consent or connivance.44

In Barborally Sardar and Other v. Corporation of Calcutta,45
the Supreme Court had the occasion to deal with this question.
The appellants contended that they had purchased the tins of
condensed milk from another firm, and the goods were in the
same condition as and when they purchased. As there was no
warranty, their conviction was affirmed by the Court. The Court
also pointed out that the fact that the vendors sold tins of con-
densed milk “in the same state as they purchased them” was by
itself not sufficient to absolve them from liability.46

The above discussion clearly evidences that the element of
mens rea is not completely excluded from the operation of the
Act and the provisions47 are enacted to protect innocent retailers.
In effect, the provisions scarcely act beneficial to them. Retailer
is only a middleman and acts as an instrument for bringing the
manufacturer and the consumer together.48 It is a common know-
ledge that these small tradesmen purchase food materials from
wholesalers, and sometimes directly from manufacturers. Usually
the Food Inspectors take no pity on them. They catch hold of
the petty traders and try their level best in sending them to jail
for the act of others. The manufacturers and wholesalers who
really adulterate food very often escape. Justice Bhagwati of the
Supreme Court frowns upon this inequity of operation of law and
bitterly comments in Ganeshmal Jashraj v. Government of Guja-
rat and Another.49

44. Id., p. 864, per Ramaswami, J.
46. Id., p. 1571, per Mudholkar, J.
47. See nn. 41, 42 supra.
49. A.I.R. 1980 S.C. 264 at p. 266. The appellant was a petty trader
who pleaded guilty before the trial court. On appeal by the State,
the High Court of Gujarat enhanced his punishment. The Supreme
Court remanded the case back to the magistrate for fresh disposal.
The relevant comment was made as an obiter dictum.
“Ordinarily it is not the small retailers who adulterate the articles of food sold by them. Yet it is only the small retailers who are caught by the food inspectors and the investigative machinery of the food department does not for some curious and inexplicable reason turn its attention to the wholesalers and manufacturers.... It is only the smaller flies which get caught in the web of these laws while the bigger ones escape. This syndrome of soft justice to big economic criminals and harsh justice to the humbler offenders is a systematic weakness which affects the credibility of the rule of law itself.”

In our present social and economic set up, a provision for warranty does not seem to afford real protection to retailers. The manufacturers are well-organised and are in a very different position from the retailers. They are very often reluctant to give warranties. The retailers are not in a position to press the manufacturers to give warranties. Adding more to the agony, most retailers are even ignorant of such a provision. It is pertinent here to note that no facilities are available to these traders to test the purity of the articles at the time of purchase. The ultimate result is that these poor men become the victims of big manufacturers and industrial tycoons. Penalising these innocent persons without taking pain to detect the actual adulterators defeats the purpose of the PFA Act. In this context it is necessary for the formulation of a postulate that since the manufacturers are not likely to give express warranties, an implied warranty should always be presumed.

Imposition of strict liability coupled with the above mentioned hardships lead one to suggest that in imposing penalties a distinction can be made between conscious offenders and unknowing violators. The Federal Food, Drug and Cosmetics Act 1938 of the United States\textsuperscript{50} has made such a distinction. A similar provision in our statute will be a welcome step.

Another method of lessening the harshness of the penal law is to prescribe some sort of mental element for attaching

\textsuperscript{50} Section 303 (b). Any violation “with intent to defraud or mislead” may lead to penalties of three years imprisonment, a $ 10,000 fine, or both.
criminal responsibility. After a thorough study of the problem in Britain, Prof. J. Ll. J. Edwards proposed that negligence can be accepted as a sufficient degree of mens rea in statutory offences including food laws.\textsuperscript{51} If negligence is accepted as a basis for liability, inspection at all levels of production and distribution should be strictly enforced.

**Minimum Punishment**

The object of criminal trial is to find out the real offender and to prescribe appropriate penalty. To choose a penalty from among a variety is a cumbrous task. The sentencing judge has to take into various factors such as the age of the offender and the circumstances in which the offence was committed. Today reformation of the offender has become the prime object of punishment. The discretion of the judge should be so applied to suit this purpose. When the guilt of the accused is established, he should be heard on the question of sentence. The Indian Code of Criminal Procedure\textsuperscript{52} imposes a duty on the trial judge to hear on the question of sentence. The hearing contemplated under these sections is not confined merely to oral submissions. It is intended to give an opportunity to the prosecution and the accused to place before the court all the relevant materials. The decision of the Supreme Court in *Santa Singh v. State of Punjab*\textsuperscript{53} is very relevant here. In this case the Court held that the non-compliance with these provisions would definitely vitiate the trial.


\textsuperscript{52} Section 235 (2) reads:

"If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law".

Section 248(2) is as follows:

"Where, in any case under this chapter, the magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 235 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him."

In fine, the provision for minimum penalty will to a great extent, curtail the sentencing discretion of the Judge as well as cause injustice and lead to unfairness in certain cases. The Law Commission also expressed its view against minimum punishment.\(^\text{54}\) Strict liability offences are an example where even explaining the circumstances the offence happened to be committed without any mens rea, the accused will be punished. Even the provision for discretion in the Act does not seem to do any good\(^\text{55}\)

**ENFORCEMENT**

Success of any legislation depends to a large extent upon the way in which it is enforced. A large number of legislation have been enacted but failed to achieve their purpose due to defective enforcement. In this context it will be worthwhile to consider the working of the machinery provided under the PFA Act.

*Central Committee for Food Standards*

The PFA Act provides for the establishment of a Cen-

\(^{54}\) The Law Commission of India also deprecated the idea of prescribing minimum penalties, thereby curtailing the freedom of the judge. It was of the opinion that if the harm is nominal, the provision for minimum punishment should not be binding. See The Law Commission of India, 47th Report on the Trial and Punishment of Social and Economic Offences (1972) at p. 59.

\(^{55}\) There is a proviso to Section 16(1) which gives discretion to courts to impose a sentence of imprisonment for a term of less than six months or fine which is less than rupees thousand. But as observed by Krishna Iyer, J. in *Kisan Trimbak Kothula and Others v. State of Maharashtra* (1977) S.C.C. 300 at p. 304, even if the offence charged falls under both categories i.e., proviso offences and others, there being some overlapping in the definitions, the delinquent earns the severer penalty. To earn the eligibility to fall under the proviso, the appellant must establish not only that his case falls under the offences specified in the said proviso but also that his facts do not attract any of the non proviso offences. So in actual practice the proviso also does not help in lessening the hardships caused by the prescription of minimum punishment.
Accordingly, the Government of India constituted the Central Committee for Food Standards consisting of 30 members including the Chairman. It is a highly representative body whose members are drawn from some of the Central and State Government Departments. All the States, industry and commerce, and medical profession are appropriately represented in the Committee. The Director General of Health Services is the ex-officio Chairman of the Committee and the Director General of Central Food Laboratory is an ex-officio member. Other members are nominated either by the Central Government or the State Governments. The Indian Council of Medical Research has the power to nominate one member to represent the medical profession. The nominated members hold office for three years, unless their seats become vacant by either resignation, death or otherwise. After the 1976 amendment of the PFA Act there are five members representing consumers. The members are eligible for re-nomination.

The functions and powers of the Central Committee for Food Standards are advisory only. The Central Government and the State Governments may refer to the Committee for advice such questions as they think fit, being questions relating to the administration of the Act. The Committee has no concern with the day-to-day working of the Central Food Laboratory maintained by the Central Government or the Public Analysts appointed by the State Governments. The Central Government may consult the Committee in framing rules prescribing the functions of the Central Food Laboratory and the procedure regarding the submission of samples of articles of food for analysis. The Central Government and the State Governments

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56. Section 3, Sub-section (1).
57. Section 3, sub-section 2 (gg) provides:

"five representatives nominated by the Central Government to represent the consumer's interests, one of whom shall be from the hotel industry;"
are required to consult the Committee in making rules under the Act.⁵⁸

**Enforcement Hierarchy**

In every State the Director of Health Services will be at the apex of the hierarchy. The responsibility of enforcing the provisions of the PFA Act is vested upon the various local health authorities. Two categories of Food Inspectors, one functioning under the direct control of the Director of Health Services and the other under local self-government bodies like Corporations, are entrusted with the duty of enforcement.

**Collecting samples**

PFA Act empowers a food inspector to take samples of articles of food from any person selling, conveying delivering or preparing to sell and to send such samples for analysis to the analysts.⁵⁹ This should be done under intimation to the Local Health Authority. The procedure to be followed by a food inspector is that he must divide the sample into three parts, mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken.⁶⁰ If such person refuses to sign or put his thumb impression, he shall call one or more persons as witnesses and take their signature or thumb impression in lieu thereof. It is crucial to note that the statutory duty is

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⁵⁸ The Central Government after consultation with the Central Committee for Food Standards, has framed rules called the Prevention of Food Adulteration Rules, 1955. The State Governments are also empowered to make rules after consultation with the Committee. The rules made by State Governments are subject to the condition of their previous publication. The main object and purpose of publication is that before the rules are made, an opportunity should be given by the authority, to those who may be affected by them, to object to all or any of the rules or to make suggestions to alter any of the rules or modify them. The objections so received should be considered before the rules are finally put into effect. See Ss. 23 and 24 of the P.F.A. Act.

⁵⁹ S. 10 of the P.F.A. Act.

⁶⁰ P.F.A. Act, S. 11.
only to call one or more persons as witnesses.\textsuperscript{61} The inspector has no authority to compel anybody to be a witness or to sign. If a person refuses to testify himself as a witness, there is no violation of the statutory duty. The food inspector can, in that contingency, proceed without witnesses because he cannot compel them to testify.

If the provision is not mandatory, what is the effect of its non-compliance? It is true that in a case where there are no witnesses to attest to the acts of the food inspector, the court may not for that reason consider that there is any statutory violation. In \textit{Rajan v. Food Inspector, Palghat Municipality},\textsuperscript{62} the Kerala High Court held that what it needs was that he should call one or more witnesses. It has been made clear that since the food inspector has no means of enforcing the presence of witnesses and the section does not provide any penalty for failure to attend his call, Parliament could not have intended that the presence of such persons is a mandatory requirement for the validity of the action by the food inspector. On the other hand it is due to a sense of caution based on prudence that courts insist that the testimony of the food inspector should be corroborated by some independent witnesses. The Kerala High Court appreciated the matter more or less in the same period from another angle. It said that if the evidence adduced at the trial was sufficient to warrant a conclusion that the action of the food inspector was regular, the fact that no independent person was called to be present at the time of action should have no adverse consequences on the case of the complainant.\textsuperscript{63} The provision is enacted as a safeguard against any possible allegations of malpractices or unfair means by the food inspector. Hence the Kerala High Court has cautioned the prosecuting authorities against non-compliance with the provision and warned that in

\textsuperscript{61} \textit{Ibid.}


some cases it might even result in the testimony of the food inspector being rejected.64

**Fairness**

The statutory duty of taking samples in the presence of witnesses is intended to ensure fairness in the actions of the food inspector. But experience shows that people are very often reluctant to testify as witnesses. This may be due to several reasons. Our litigation process is a prolonged and embarrassing one. Most of the people do not like to get involved in it. Very few people dare to say against a person whom they are familiar with. Perhaps the most important reason may be that they do not want to be involved in cases which cause a lot of harassment and waste of time without much personal gain.65 What is needed is that the public should be educated of their role as witnesses, informants etc. Here consumers and consumer organizations become relevant. If the food inspectors themselves procure witnesses it may lead to impression by the court that the witnesses are tutored and evidence cooked up. If well organized consumer associations are formed, preferably government recognized ones, the representatives of those organisations can very well act as witnesses.66

**Difficulties in taking samples**

There is a practical difficulty in taking sample. At the time of taking samples, the food inspector should pay the cost of the

64. Id., at p. 224.
66. In this connection, the comments made by a Chief Justice of a High Court are illuminating

“Once the consumer becomes aware of the gravity of the problem it is natural that he will organize himself realizing that it is the organized force that does count as an effective factor for putting up a fight. Such voluntary consumer organizations must be given semi-official status. People who feel (f. n. contd.)
article taken.\textsuperscript{67} Samples of articles taken will be large. Hence the cost may also be much. Authorities like Corporations will be able to bear this burden. But what about those Municipalities and Panchayats which do not have sufficient fund? Their inability may induce them to prescribe a maximum of cases to be taken from leaving the food inspector without any work. This limitation will even freeze the potentiality of the machinery even when complaints are received. In such a situation a trader who gets the information that the required number has been already exhausted, can sell adulterated and misbranded articles without any fear.

\textit{Time lag before analysis}

Out of the three samples taken, one must be sent to the public analyst for analysis, the other two samples must be sent to the Local (Health) Authority. There was no time limit prescribed within which such sample was to be sent for analysis. This created difficulties especially in cases where the sample taken was of a perishable nature when it was not sent immediately. The aggrieved can approach such organizations to make their complaint and seek a remedy. These organizations must be empowered to investigate into the matter and on being satisfied with the sustainability of the complaints, to initiate action. Such steps will be more effective than entrusting the task to a purely state machinery, access to which may be difficult for the common man. This can be achieved only by the government making appropriate legislation for recognizing such bodies and entrusting them with statutory duties. These bodies can act as arbitrators too. In course of time, it is likely that such organizations may be able to exercise considerable influence to reduce the evil of consumer exploitation.”


\textsuperscript{67} Section 10 (3) of the P.F.A. Act, reads as follows:

“Where any sample is taken under clause (a) of sub-section (1) or sub-section (2), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.”
Amendment in 1976 brought about a change in this regard. Accordingly now it is imperative that the food inspector shall send the sample taken to the concerned public analyst by the “immediately succeeding working day”. Before the amendment of sub-rule (j) of Rule 9, the food inspector was required to send a copy of the report of the public analyst to the person from whom the sample was taken. Rule 9(j) was omitted in 1976. Now the public analyst should send the report of analysis to the Local (Health) Authority. It should in turn give notice of it to the person from whom the sample was taken. This should be done immediately after the filing of the prosecution.

The word ‘immediately’ has been subjected to scrutiny by courts.

It has been interpreted in Perumal v. Kumbakonam Municipality to mean without any delay, i.e., forthwith. This view was accepted in Kunhappa v. Food Inspector in which the Kerala High Court held that in the normal course the copy of the report would have to be despatched on the same day on which the prosecution was instituted. The matter was elaborately discussed by the full Bench of the Kerala High Court in Food Inspector v. Prabhakaran and gave a liberal interpretation.


69. P.F.A. Act, S. 11(3). The sealed containers of the remaining two parts of the sample have to be sent along with two copies of the memoranda in Form VII in a sealed packet to the Local (Health) Authority immediately but not later than the succeeding working day by any suitable means.

70. Sub-rule 3 of Rule 7 insists that when an article of food is received by the public analyst for analysis, he should send the report of it within forty-five days of the receipt of the sample to the concerned Local (Health) Authority. Along with it he should also send four copies of it.

71. 1981 Cri. L.J. 1366 at p. 1369. In this case the notice of the institution of the prosecution was delayed by two months. In such a situation the court held that it would definitely vitiate the trial.

72. 1982 K.L.T. 95 at p. 96, per Narendran, J.

“...the time element involved in the concept of ‘immediate’ is relative and may vary from case to case and situation to situation. By its very nature, the term is elastic. It is perhaps this elasticity which persuaded the amendment of the rule and replacement of the term “within 10 days” by the term “immediate” in the corresponding provision. It would not therefore be possible to say that “immediate” can in no case go beyond 10 days or that upto 10 days could be taken in all cases.74

In giving a wider meaning to the term, the Court opined that when interpreting the provisions of such enactments as the PFA Act, it should never be read in such a way as to search for and find a purely technical reason for dropping the penal proceedings. It stressed the point that prosecution against a person who has committed a very serious offence ought not to fail merely on technical grounds. It should not fail only on the ground that the Local (Health) Authority took sometime, not unreasonable, in sending a copy of the public analyst’s report to the person concerned.75 The Supreme Court in Dalchand v. Municipal Corporation, Bhopal and Another,76 dealt with the criteria of declaring a statutory provision mandatory. It pointed out that only because a particular provision is couched in language which appears to be imperative, the provision need not be mandatory. The delay should not be so excessive to deny a legal right. The connotation of Rule 9(j) is that the person should have got an opportunity to get the articles tested by the Director of the Central Food Laboratory.77

There are complaints that the food inspector harass the vendors in the matter of taking samples and the powers given to them under the Act are being misused for their advantage.78

74. Id. per Subramonian Poti, Ag. C.J. at p. 819.
75. Id. at p. 821.
77. Id. at p. 304, per Justice O. Chinnappa Reddy.
Experience showed that the vendors were deliberately tampering with the samples kept in their custody and were trying to put the blame on the food inspectors. Sometimes the samples in the custody of the vendors were changed in collusion with the food inspectors. Now two samples are to be kept in the custody of a higher authority, namely, the Local (Health) Authority. As a result, neither the vendor nor the food inspector can tamper with the sample.

Facilities for analysis

At present, in every State, there is a Public Analyst and a number of Regional (Food) Analytical Laboratories with other analysts and Deputy Analysts. A visit to one of the laboratories in the Kerala State would soon reveal how inadequate are the facilities. For the quick working of the machinery mobile laboratories can also be established. The Food Inspector along with this mobile laboratory can go straight to shops and take samples and analyse on the spot. Its feasibility certainly depends upon the nature of each commodity and the time required for analysis of each category. When the article is found adulterated, the inspector can get the signature of the person from whom the article of food was taken. This will lessen the work of the Government Analyst and will definitely increase the efficiency of the department.

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quoted the instances of evidence before the Joint Committee of Parliament on the Prevention of Food Adulteration (Amendment) Bill, 1974. Taking this aspect into consideration, the Committee thought to curtail the powers of the food inspectors so as to reduce the chance of corruption in this regard.

79. In Kerala three laboratories form a single unit of which the controlling officer is the Chief Government Analyst whose office is at Trivandrum. There are three regional laboratories in three centres of the State.

80. For example when I paid a visit to the regional analytical laboratory in Cochin, I found that it had not even a power generator. In cases of power failure, which is not an uncommon feature here, there is every possibility of articles getting decayed, thus frustrating the purpose of analysis.
Delay in launching prosecutions

The accused can avail of the valuable right conferred by the PFA Act to get the article retested by the Central Food Laboratory only after the launching of the prosecution.\textsuperscript{81} There is no time limit prescribed within which the prosecution is to be launched after getting the report of the public analyst. The Local (Health) Authority can drag on the entire process of litigation by not instituting prosecution at an earlier date. The prescription of time limit in other processes becomes meaningless if the prosecution is not instituted immediately. The copy of the report to the accused is to be sent only after instituting the prosecution. It is a lacuna. If unreasonable delay is caused in instituting the case there is every possibility of the sample getting deteriorated. If this happens, the Local (Health) Authority is not answerable. The interest of the general public also demands that prosecution should be launched immediately. Then only the guilty will not escape.

The testing of the sample in the Central Food Laboratory could not be successfully carried out if the prosecution commences late. This may be due to the laxity or the negligence on the part of the officers of the Local (Health) Authority. Sometimes it may be deliberate delay in filing complaint so as to render the provisions nugatory. This has to be discouraged. In two cases decided in 1977, the prosecutions in respect of adulterated

\textsuperscript{81} Section 13(2). It reads:

"On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority, shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory".
The court gave its benefit to the accused in both cases. If the samples have become deteriorated and decomposed by reason of delay in the prosecution to such an extent as to have become incapable of analysis, the accused must be deemed to have been prejudiced. This deprives the accused of the valuable right conferred on him by the legislation. May be he has not yet made a formal application challenging the report of the Public Analyst and asking for analysis by the Director of Central Food Laboratory. The deprivation of such right will be fatal to the prosecution.

Delay in prosecutions results in defeating the provisions of a statute. This is true of PFA Act also. In Nebh Raj v. The State the Supreme Court observed:

“To launch a prosecution at such a belated stage may result in causing harassment to the accused in some cases and may also result in genuine offenders escaping punishment.”

Supreme Court has in many cases pointed out the fatal consequence of delayed trial and has said that delayed trial by itself constitutes denial of justice. Eternal vigilence against adultera-

84. A.I.R. 1981 S.C. 611, In this case, on analysis by the Public Analyst, the food was found adulterated with unpermitted coaltar dye. Complaint was filed only after two years. Later, when the food was analysed by the Director of the Central Food Laboratory, it was found that coal tar dye was absent. Instead free fatty acid as oleic acid was found. It was contended by the appellant before the Supreme Court that the presence of oleic acid is due to passage of time. Benefit of doubt was given to the appellant and he was acquitted.
85. Id. at p. 612, per Chinnappa Reddy, J.
86. Hussainara Khattoon and others v. Home Secretary, State of Bihar, A.I.R. 1979 S.C. 1360; The Court was concerned with the indefinite postponement of the trials of certain undertrial prisoners; see also Kadra Pehadiya and others v. State of Bihar, 1981 Cri. L.J. 481.
tion warrants prompt prosecution. A time limit for instituting prosecution will only help achieving this objective. Perhaps bureaucratic lethargy may not like this vigilence. Prosecution delayed leads to justice denied.

Complaints by individuals

Under the Act, there is no provision enabling a person to complain effectively to the authorities about an adulteration case. True that there is provision empowering any purchaser other than the food inspector to have the food analysed at his own cost. The condition precedent is that he should conform to the procedure prescribed for taking samples by a food inspector. The purchaser shall inform the vendor at the time of purchase of his intention to have such article so analysed. If the food is found to be adulterated, he can file a complaint in a court. But due to the formalities to be complied with, an ordinary purchaser is not in a position to avail of this opportunity. Think of the fate of a person who enters a shop and asks for some food material giving notice that he is going to send it for analysis; most probably he will not get such article from the shop. The statute seems to have no pragmatic approach to the question. It is necessary that the individuals should have the right to complain without any formalities. They should be allowed to complain to the food inspectors or the Local (Health) Authorities on the basis of which such authorities should initiate action against the accused. What harm is there if it is made compulsory for the food inspectors to act whenever complaints are received?

87. It is true that a person can complain to the vigilance squad or to the public analyst. But they are not accessible to him easily. Moreover launching of actual prosecution is the discretion of the authority.

88. P.F.A. Act, S. 12. The relevant part of which is as follows:

“Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a food inspector from having such article analysed by the public analyst on payment of such fees as may be prescribed and from receiving from the public analyst a report of his analysis”.

Government as an Adulterator?

In the modern Welfare State not only the private sector but also the public sector is engaged in trading activities. Consequently the Central Government and the State Governments may also be responsible for adulterated food and other commodities. The imported wheat and other articles of food can in certain instances be adulterated with iron filings and other foreign materials. The Central Government and the Food Corporation of India are responsible for its import, storing and distribution. The PFA Act is definitely binding on them. Ignorance of the nature, substance or quality is not a defence under the Act. Those who import food materials are bound to give a warranty about the nature and quality of the article of food while selling it. Failure to give warranty constitutes an offence. Vicarious liability also attaches to every officer of a Government owned Corporation responsible for the conduct of its business. In the case of import of an article of food by a private party, normally the samples of the imported article of food are checked by the Port Health Authorities at the port of entry. The consignment is not cleared unless the article is certified to be unadulterated. Food inspectors rarely touch these Government godowns. From the point of view of the people, it does not make any difference whether or not a private person or the Government distributes and supplies adulterated food. It is a mandatory duty on the food inspectors to inspect Government warehouses where food materials are stored, to take samples from there and send them for analysis.

Provision for Warranty and Retailers' Liability

One of the consequences of the defective implementation of the Act is that many prosecutions are directed against small tradesmen such as grocers, vendors etc. It is well known that these tradesmen purchase food stuff from whole-salers or directly from manufacturers. Usually it is not the small traders who adulterate food materials. Yet it is only these small retailers who are caught in the legal net. The small tradesmen who make a daily living out of the sale are often sent to jail for selling food materials which are not often adulterated by them. The wholesalers and the manufacturers who really adulterate often escape and
continue their act of adulteration resulting in the mockery of the legal process.89

The food inspectors responsible for enforcement, do not care to find out from which wholesaler or manufacturer the small retailer had purchased the particular food material. The situation is made all the more worse when there is no opportunity available to these tradesmen for getting their articles tested at the time of purchase. It is true that there is a provision in the Act90 to the effect that if a warranty in writing is taken by the dealer from the wholesaler or manufacturer from whom he had purchased the food, he would be exempted from responsibility. The section is intended for saving innocent dealers. But it is obvious that in a country like ours where there are small tradesmen who make their living from small daily sales, who are economically dependent on the wholesalers, such a provision does not afford any real protection to these traders. So the investigating machinery should be processed in such a way as to find out the real adulterators by making genuine investigation at the place of business of the manufacturer or wholesaler immediately after catching hold of the instances of adulteration.

CONCLUSION

An investigation into the working of the Act reveals that it is inefficiently implemented. The enforcement machinery provided under the Act does not seem to be adequate enough to tackle the problem of adulteration. The food inspectors are not in a position to exercise their powers efficiently. There is lack of enough food inspectors in each locality and there is also no adequate staff to assist them. To mitigate this inadequacy, more food inspectors should be appointed in each village and panchayat. In certain places they are being attacked by shop


90. See supra, n. 41.
owners. Food inspectors may visit shops and other places accompanied by police if necessary. It is also suggested to appoint checking inspectors to supervise the functions of the food inspectors. The food inspectors are now overburdened with the task of detection, prosecution, and the conducting of cases. It is difficult to do all these functions simultaneously and at the same time effectively. By reducing their local jurisdiction this burden can be minimised. Bifurcation of the functions may not be advisable because it may affect effectiveness of prosecution.

It can be seen that the reasons for defective implementation of the Act are both due to lack of legal provisions and insufficient administration. Some existing provisions have created difficulties. Absence of certain provisions in the Act have also created difficulties. There are socio-economic problems also which contribute to the defective implementation of the Act.

Prevention of food adulteration is essentially a matter of serious concern for consumers. Civil action for consumers' grievances has achieved much strength in U.S.A. and other advanced countries. It is mainly attributable to the formation of consumer groups and consumer associations. The changing character of retail markets, both in terms of range and type of products available for sale and the conditions of trade, has generated problems for individual consumer. The government in those countries positively responded to these problems. Consumer councils have been formed in U.S.A., Britain and Canada. In England, the government regularly consults organisations like consumers’

91. See, Kerala Kaumudi, 14th April, 1981.

92. As an incentive for efficient and honest working, the Directorate of the Municipal Administration has designed a plan to give awards to Food Inspectors based upon the number of samples taken, number of prosecutions launched etc. See, notice issued to all Corporation Commissioners, Municipal Commissioners and all Special Officers from the office of the Director of Municipal Administration dated 23-11-1981.

associations and the National Consumer Councils before introducing consumer protection measures.  

It seems that consumers in India have not been sufficiently organised to become powerful enough to protect the consumer interests by themselves. The failure of criminal law in eradicating the social evil of adulteration calls for the re-introduction of civil remedy in this field. In India, there has not been extensive development or use of possible tort remedies even by individuals because of high cost litigation involved. If consumers are mobilized into effective groups, they can easily resort to civil action against food adulterators. Class action is particularly useful in situations where individual injury is nominal but the over all damage is great.