

A Legal Concept of Food Adulteration in India

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ABSTRACT

Adulteration in food has been of serious concern since the beginning of civilization, as it not only harms and decreases the quality of food products but also results in a number of ill effects on health. Authentic testing by Government Agencies of food and adulterant detection of numerous food products is most required for value assessment and to assure the protection of consumer against fraudulent practices. Through this review I intend to compile different kinds of adulterations made in various food items, the health risks imposed by these adulterants food material and detection methods available for them. Concerns about food safety and regulation have ensured the development of numerous techniques like biochemical, physical, immunological and molecular techniques, for adulterant detection in food. Molecular methods are more preferable in India when it comes to detection of biological adulterants in food, although biochemical and physical techniques are preferable for detection of other adulterants in food. Endeavour of this paper is to provide a vivid account of the development of the legislations relating to adulteration affecting the health of the masses and prosperity of the Country. Earnest attempt is being made to trace its various developments from the times of history. Its modern development in India is discussed in brief.

Key words : Food, Food safety, Adulteration, Legislations, Development, Masses, Prosperity.

Concept and Meaning of Food

Struggle for food and livelihood was always an unpalatable and difficult question to the human being and consumed much of his thoughts, time, and energy. In common parlance 'food' refer to those materials which are suitable and fit for human being consumption.¹

Everybody knows that without food we cannot live and what we consume and eat to live must act as a body building material. Thus good quality of food have a great effect on the body and life of the human. Nowadays, since most of the food articles consists of complex type biological materials, an important task of assessment of its quality is a very difficult task. Moreover, In this scenario development of science and technology added new types of food articles which were totally unknown to the past. So, it became difficult task for the common human being to assess the nature and quality of food articles. All this prompted the modern nations to formulate artificial definitions with new emerging standards for the term 'food' through various enactments.² The Indian Acts has defined 'food' as follows:

"Food means any article used as food or drink for human consumption other than drugs and water and includes:--(a) any article which ordinarily enters into or is used in the composition or preparation of human food, (b) any flavouring matter or condiments, and (c) any other article which the

¹ S. Abhirami, *Detection of Food Adulteration in Selected Food Items*, 54 (Arihant Publications, New Delhi, 3rd edn., 2001).

² M.R. Acharya, *Some Microbiological and Chemical Attributes of Mango Pulp Samples* 123 (Mannat Publications, New Delhi, 2nd edn., 2009).

Central Government may having regard to its use, nature, substance or quality, declare by notification in the Official Gazette, as food' for the purpose of this Act.

As a result of urbanisation and industrialisation, vast majority of population no longer lives within the reach of food sources. Hence numerous traditional methods of food processing, packaging and preservation became no longer useful. Consequently, many ingredients such as anti oxidants, anti microbial, sulfiting agents etc. were added to the preservation and preparation of food articles and such kinds of articles were brought under the definition of 'food' by the present clause. No doubt, ours is a nation having different types of culture and taste which is reflected and seen in the food habits of the population of India. What is treated as 'food' in one part of the nation but that same food is not treated as so in another part of the nation. Hence great care must be taken by judiciary while interpreting the word.

'Food' includes chewing gum, drink and other products of same nature and use, and substances used as ingredients in the preparation of food or drink or of such products, but does not include -

- (a) substances or articles used only as drugs.
- (b) live birds or animals ; water.
- (c) feeding stuffs for animals, birds or fish.³

³ N. Ankleshwaria, *A Study on the Awareness Pertaining to the Use of Safe Edible Food Colours* 187 (Armaan Publications, New Delhi, 4th edn., 2015).

Coconut oil is not universally consumed by people as food, still it is an article of food. In *Bharti Ram v State of Haryana*, the Supreme Court held that the occasional use of asafoetida for other objectives will not make it out from the category of item of food. Asafoetida is an article of food. Similarly, turmeric powder would not cease to be an item of food merely because it is used for external application as medicine to injuries or pooja. The motive of the Legislature is to describe any item of food, which is commonly or generally used in the preparation of human food or for human consumption as food article. On the other side, if an article is not commonly used in the preparation of human food, then, notwithstanding that it may be capable of being used on very rare occasions for human consumption, it may be a clear sign of indication that such item is not a food for the purpose of the Act.⁴

Primary Food

The term 'primary food' was introduced into the realms of the Prevention of Food Adulteration Act in 1976. It means an article of food which is in its natural form and is a produce of agriculture or horticulture. Being a produce of agriculture, it is beyond the control of human being to maintain the requisite standards. This aspect was clearly considered by the Joint Parliamentary Committee on PFA Bill in 1974 and they recommended to exclude primary food subject to the qualifications, mentioned in the Act from the definition of adulteration. Where a prescribed limits of variability solely due to natural causes and is beyond the control of human agency, such article must not be deemed to be

⁴ R.C. Anyawu, *Food Safety Control Systems for Developing Countries* 198 (Manav Publications, New Delhi, 2nd edn., 2006).

adulterated within the provisions of the Act .The proviso added to subsection 1 of Section 7 gives a command in the nature of prohibition to Food Inspectors. It specifies that no food inspector must collect samples of any primary food unless it is meant for sale. Moreover, the prohibition shall not apply to a vendor, who stores the primary food for the sale purpose. The benefit of the proviso added to section 7, can be provided only when it is proved that the deficiency in the sample was solely to the natural causes beyond the control of human being. In **Manjit Singh v.State of Madhya Pradesh**, the Supreme Court held that a primary food would not lose its status merely because husk is removed or splinted up. On appeal, the Division Bench reversed the decision of the Single Bench and held that ‘Vadaparippu,’ of which the sample was collected was derived from a product of agriculture by processing. Vadaparippu as such is not a product of agriculture in its natural form Therefore it does not come within the purview of primary food.⁵

If a sample of primary food is found to be below standard due to natural factors and causes beyond the control of human being it shall not be deemed to be adulterated. Provided the variation in purity or quality does not render injurious health. If it rendered injurious human health the sample will be deemed to be adulterated notwithstanding the fact that the variation was solely attributable to natural causes.

The interpretation of milk was very difficult question for the judiciary in the concept of "primary food." Whether to include milk into primary food or not. It is very true that agriculture in the in the concept of ‘Primary food’ includes husbandry also. In **Janak Ram v. State of Rajasthan**.⁶ the

⁵ Thomsan Mathew, *Principle and Specific Application* 165(Blackwell Scientific Publications,Birmingham, 2nd edn., 2003).

⁶ AIR 1999 SC 3102.

Supreme court of India, held that milk is not a primary food . But the same Court in **Krishan murthiv.State of Gujarat**⁷ had taken a contrary view. Regarding the deficiency in fat content, Court held that milk being a primary food would be affected due to numerous reasons such as quality of food, breed, manner of feeding and climate. Variability in such cases may be due to factors beyond the control of human being. A similar view was expressed by the Supreme Court in **Food Inspector v.State of Uttar Pradesh**⁸ But the Punjab and Haryana High Court had held that milk is not a primary food.

Concept and Meaning of Food Adulteration

The origin of evil of adulteration is not of recent time and it date back to the times of pre-history. However, the devices used to perpetrate the venture varied from time to time at the hands of unscrupulous traders. One of the generally accepted notion of adulteration in India is as follows:-

"Adulteration is the act of intentionally debasing the quality of food offered for sale either by admixture or substitution of inferior substances or by the removal of some valuable constituents to be used in another form for separate sale." In Black's Law Dictionary We can see a similar kind of definition couched in different terminology.Nowadays, the unscrupulous traders deceive the innocent consumers due to dawn of urbanization and industrialisation and continuously development in science and technology, the scenario of India has completely changed. Adulteration is the act of mixing something spurious and impure with

⁷ AIR 2009 SC 2524

⁸ AIR 2016 SC 1242.

something genuine or pure or an inferior article with a superior one of the same type.

Traditional and age old methods of adulteration slowly paved its way to new devices based on development in technology particularly in medical field. Therefore, the modern developed States were compelled to redefine the concept of adulteration through laws. History of India shows that many State enactments were in implementation prior to independence. Each State had their own definitions for the concept according to their notion. For the present attempt, it is necessary to quote one definition.

⁹The Bengal Food Act, 1919 defined adulteration as follows:

" An article of food shall be deemed to be 'adulterated' if it has been mixed or packed with any other substance or if any part of it has been extracted so as it either affects injuriously its quality, substance or nature" To achieve uniformity in combating adulteration in food, all State laws were repealed in 1954, simple and an exhaustive definition was conferred by the Parliament of India to the term, 'adulteration.' For the purpose of the Enactment, an article shall be deemed to be adulterated:-

(a) if an article sold by a person is not of the nature, quality or substance demanded by the customer and is to his prejudice, or is not of the nature, quality or substance which it purports.

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

⁹ Sanjeev Kulkarni, Food Adulteration⁷¹ (Chugh Publications, Allahabad, 2nd edn., 1993).

(c) if any cheaper substance has been substituted in part or wholly and the article so as to affect injuriously the nature, quality or substance thereof;¹⁰

Moreover, if the article had been prepared, packed or kept under unhygienic conditions whereby it has become injurious or contaminated to health; if the article consists in part or wholly of any rotten, decomposed or animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption; if the article is obtained from a deceased animal; if the article contains any poisonous or other ingredient which renders it injurious to health; if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health 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; if the article contains any prohibited preservative in excess of the prescribed limits; 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; 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 but which does not render it injurious to health;¹¹

Numerous Case Laws on Food Adulteration

¹⁰P. M. Shah, *Food Adulteration and Health* 90 (Defence Publications, New Delhi, 2nd edn., 1997).

¹¹Malvika Patnaik, *The Health* 181 (Oxford University Press, New Delhi, 4th edn., 2001).

In **Amir Chand v. State of Haryana**¹² Chennai, a commercial shop was inspected for the standard products and the result shows that the products sold were adulterated and it was sold in the name of branded products. About 70% of adulteration was seen in oils and ghee and 10% in masala products. Adulterants like metanil yellow (an artificial colour) is used to intensify the colour of the turmeric powder and saw dust are added to increase the quantity of turmeric powder for gaining more profit.¹³

In **Jasleen kaur v. State of Punjab**,¹⁴ the Supreme Court held, a study evaluated the presence of adulterant from daily used food materials like pulses, wheat flour, black pepper, chilli powder and coffee powder which were collected from different departmental and local grocery stores and were checked for the presence of different adulterants through biochemical qualitative analysis. According to the reagents added the colour of the sample changed which indicated the presence of various adulterants.¹⁵

Contamination due to insanitary conditions

Quality of food is affected not only by mixture of cheaper substances but also by insanitary and inhumane conditions. Contamination of food due to unhygienic conditions have direct consequences. For instance, around six million children lost their lives till 2010 in developing nations, due to contaminated food. The legislations of India ensures that no article should be prepared, packed or kept under unhygienic and insanitary conditions so as to affect the health of the purchaser and it means that no business in

¹² AIR 2017 SC 1154.

¹³ A. L. Anand, *The Abuse of Law* 98 (Asia Publishing House, Bombay, 2nd edn., 1991).

¹⁴ AIR 2018 SC 3216.

¹⁵ Shrinivas Gupta, "Right of Health : A Critical Study" 7 *Journal of the Indian Law Institute* 53-57 (1995).

food articles must be carried on in a premises which is insanitary and not cleaned or the use of which exposes the food to the risk of contamination, The word 'insanitary condition' occurring in the clause was considered by the Supreme Court of India in **S.K. Mehtacase**,¹⁶ in this case, on a petition, Supreme Court had taken the view that presence of dead insects is a condition for insanitary condition. If the insects are dead, it is not only case of insect-infestation but a case of insanitary conditions also. While pronouncing the judgement, Justice Sarkaria observed:

"It would be straining one's common sense to say that an article of food which is infested with dead insects and is eventually unwholesome for consumption of human ceases to be so and becomes wholesome when these insects die out and infestation turns into an infection by dead insects" But the presence of worms in an article will not render it insect-infested, since worms are not insects.

In **Mehndirattacase**¹⁷ the word 'insect-infestation' was read jointly with the expression 'unfit for consumption of human.' According to the Supreme Court, the former takes the hue from the latter. In such cases, the prosecution has to prove that owing to the insect infestation, the article has become unfit for human consumption. In **Gyan Das v. State of Himachal Pradesh**,¹⁸ the accused was prosecuted for selling insect damaged grains. The Court held that presence of 60% insect damaged grains comprising living and dead insects itself is an indication that the article is unfit for consumption of human being.

¹⁶(1988) 4 SCC 466.

¹⁷ AIR 1984 SC 802

¹⁸ AIR 1999 SC 996.

Articles of deceased animal

This paragraph ensures microbiological quality of food articles. This clause intends to prevent the spread of infectious disease owing to the consumption of articles of low quality derived from deceased animals. Recently, the flesh trade of U.S.A was collapsed due to the spread of a cattle disease called 'mad cow disease'. It was widely believed that beef extracted from cattle suffering from the disease may transmit the same into human being.

The Government of Karnataka has banned the sale of any poultry, live or dead or their low quality products or any part of such diseased birds which were infested with serious diseases at the time of its death. The ban was issued under the Karnataka Prevention and Control of Animal Diseases Act, 1967.

Substances injurious to health

The presence of any poisonous ingredients injurious to the health of the people will render the article as adulterated. Similarly, the deleterious nature of the packing material or container will render its contents noxious and hence the same will be treated as adulterated. In United Kingdom use of polychlorinated biphenyls (PCB) for packing food article is totally banned because of its toxic nature.

In **Sitaramcase**,¹⁹ prosecution was launched for the packing and sale of adulterated til oil in a tin made of plastic. Report of the Public Analyst confirmed that due to packing in plastic oil was adulterated and became a poisonous substance. Addition of any poisonous substances is an offence

¹⁹ AIR 1988 SC 543.

under the present clause. Normally, food contains organic and inorganic matters of natural origin.

Additions of colours and preservatives

Rule 23 to 310 of the Prevention of Food Adulteration Act, 1954, deals with mixing of various colouring matters into articles of food. Under the Rules addition of any colouring matter other than those specifically mentioned therein will be treated as adulterated. Since masala tea is not an article specifically stated anywhere in these Rules, addition of any colouring matters like sunset yellow will make it into adulterated within the meaning of this clause. In **Aslam Khan case**,²⁰ the accused was prosecuted for mixing and selling adulterated with metanil yellow (coaltar dye). In the instant case, the Supreme Court made a view that, where the product shows that a prohibited dye is mixed, the foodstuff must be considered as dangerous and adulterated under the Act irrespective of the quantity. Such sub-standard article may not be injurious to health of a human. For example sale of milk adulterated with water is not injurious to health, still it is a very clear and straight case of adulteration. The numerous standards are prescribed by scientific experts on scientific basis. In **Kartar Singh v. State of Rajasthan**,²¹ prescription of value for ghee was challenged on the ground of unreasonableness. The Supreme Court held in this case that in the absence of proof of arbitrariness or unreasonableness the Court cannot accept the view that the standards prescribed by the statute is of too high standard and hence unreasonable. If a statutory standard is clearly mentioned for an article, the article must conform that concerned standard. Even marginal

²⁰ AIR 1984 SC 802

²¹ AIR 2017 SC 8765.

variations from the prescribed standards are of serious nature for the Act. Nevertheless, when the statute itself does not mention any prescribed standard for a food article, no conviction can be ordered unless the article is unfit for consumption of human.

Conclusion

From the above discussions and review, we can summarize that the adulteration which is added in the food articles can cause tremendous and serious affects on health without our knowledge. Adulteration can be prevented by taking few alerting steps by our society. Hike of price of food articles must be checked by government. While purchasing food articles, selection of non adulterant and wholesome food is necessary to make sure that such kind of food do not cause any health problems. Though presence of adulterants cannot be checked and ensured by visual examination as toxic contaminants are present in very low level but visual examination before purchase can ensure absence of fungus, insects, and other foreign materials. The purchaser must avoid purchasing food from places which do not keep proper hygiene conditions. Both local and branded food stores must be inspected by various government bodies and Act of Prevention of Food Adulteration Act, 1954 must be implemented properly. The above general consciousness is simple and easy to initiate for our regular healthy life. If we tend to actively participate in these changes then we can bring about a healthy life and non venturous future for the upcoming generations.