# QUALITY CONTROL AND PREVENTION OF FOOD ADULTERATION ACT: CRITICAL APPROACH

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The distribution of impure or adulterated food for consumption in a dangerous act affecting the human life. Unfortunately, large number of population in our country who live in an ordinary level. There are compelled to buy and use as food, articles, which are adulterated and even unfit for human consumption. The crafty traders taking undue advantage of the situation. With these circumstances, the criminal liability under the Indian penal code was limited; it did not prove effective control for preventing food adulteration. Therefore, in 1954 the Prevention of Food Adulteration Act was enacted by the central legislation. The provisions of this statute provide a strict sanction to the adulterants.

**The Indian Penal Code**

Adulteration of food or drink intended for sale.—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[1].

Sale of noxious food or drink.—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[2].

Adulteration of drugs.—Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may

1. S. 272 of IPC

2. S. 273 of 1pc

Extend to six months, or with fine which may extend to one thousand rupees, or with both[3].

However, this provision does not provide effective control for preventing food adulteration. Therefore the Ministry of Health and Family Welfare is responsible for ensuring safe food to

the consumers. Keeping this in view, a legislation called "Prevention of Food Adulteration Act, 1954" was enacted. The objective envisaged in this legislation was to ensure pure and wholesome food to the consumers and also to prevent fraud or deception. The Act has been amended thrice in 1964, 1976 and in 1986 with the objective of plugging the loopholes and making the punishments more stringent and empowering Consumers and Voluntary Organizations to play a more effective role in its implementation.

The subject of the Prevention of Food Adulteration is in the concurrent list of the constitution. The Central Government primarily plays an advisory role in its implementation besides carrying out various statutory functions or duties assigned to it under the various provisions of the Act.

The laws regulating the quality of food have been in force in the country since 1899. Until 1954, several States formulated their own food laws. But there was a considerable variance in the rules and specifications of the food, which interfered with inter-provincial trade. The Central Advisory Board appointed by the Government of India in 1937 and the Food Adulteration Committee appointed in 1943, reviewed the subject of Food Adulteration and recommended for Central legislation. The Constitution of India provided the powers to Central Government for making such legislation as the subjects of Food and Drugs Adulteration are included in the concurrent list. The Government of India, therefore, enacted a Central Legislation called the Prevention of Food adulteration Act (PFA) in the year 1954 which came into effect from 15 June, 1955. The Act repealed all laws, existing at that time in States concerning food adulteration.

**Prevention of Food Adulteration Act**

The term "contamination" is usually used for the inclusion of unwanted substances due to accident or negligence rather than intent, and also for the introduction of

Unwanted substances after the product have been made. Adulteration therefore implies that

3. S 274

the adulterant was introduced deliberately in the initial manufacturing process, or sometimes that it was present in the raw materials and should have been removed, but was not. Food adulteration is the process in which the quality of food is lowered either by the addition of inferior quality material or by extraction of valuable ingredient. It not only includes the intentional addition or substitution of the substances but biological and chemical contamination during the period of growth, storage, processing, transport and distribution of the food products, is also responsible for the lowering or degradation of the quality of food products. Adulterants are those substances which are used for making the food products unsafe for human consumption.

Consumers, particularly in developing countries, are often exposed to wilful adulteration of their food supply. This can lead to health hazards and to financial losses for the consumer. Adulteration of milk and milk products, honey, spices, edible oils, and the use of colures to mask product quality to cheat the consumer are quite common. Although risks associated with adulteration are usually low, such episodes invoke public outrage and anger as it violates public trust in the integrity of the food supply. With 60-70% of the income of middle class families in developing countries being spent on food, food adulteration can impact heavily on both the family budget and the health status of the family members.

"Adulteration" is a legal term meaning that a food product fails to meet federal or state standards. Adulteration is an addition of another substance to a food item in order to increase the quantity of the food item in raw form or prepared form, which may result in the loss of actual quality of food item. These substances may be other available food items or non-food items. Among meat and meat products some of the items used to adulterate are water or ice, carcasses, or carcasses of animals other than the animal meant to be consumed.

**Food Quality**

Food quality is the quality characteristics of food that is acceptable to consumers. This includes external factors as appearance, texture, and flavour; factors such as federal grade standards and internal. Food quality in the United States is enforced by the Food Safety Act 1990. Members of the public complain to trading standards professionals, who submit complaint samples and also samples used to routinely monitor the food marketplace to public analysts. Public analysts carry out scientific analysis on the samples to determine whether the quality is of sufficient standard. Food quality is an important food manufacturing requirement, because food consumers are susceptible to any form of contamination that may occur during the manufacturing process. Many consumers also rely on manufacturing and processing standards, particularly to know what ingredients are present, due to dietary, nutritional requirements, or medical conditions. Besides ingredient quality, there are also sanitation requirements. It is important to ensure that the food processing environment is as clean as possible in order to produce the safest possible food for the consumer.

"Adulterated"—an article of food shall be deemed to be adulterated—

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[4]

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 of primary food are mixed together and the resultant article of food—

"Adulterated"—an article of food shall be deemed to be adulterated—

(c) 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;

(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 insanitary conditions whereby it has become contaminated or injurious to health;

(f) 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, rotten, decomposed or diseased animal or vegetable substance or is insect-

4. S. 2 (m) of PFA Act

Infested or is otherwise unfit for human consumption[5] Prohibitions 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 license is prescribed, except in accordance with the conditions of the license;

(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 of any rule made there under;

No 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 any 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 sections[6].

Defenses which may or may not be allowed in prosecution under this Act;-

It shall be no defense in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale [7].

5. S 2 (I a)

6. S 7

7. S.19

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—

(i) In a case where a license is prescribed for the sale thereof, from a duly licensed 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.

(c) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of food—

(iii) Which is adulterated within the meaning of misbranded or the sale of which is prohibited under any provision of this Act or any rule made there under or by an order of the Food Health Authority.

Other than an article of food referred to in contravention of any of the provisions of this Act or of any rule made there under.

b) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any adulterant which is not injurious to health,

(c) Prevent a food inspector from taking a sample as authorized by this Act, or

(d) Prevents a food inspector from exercising any other power conferred on him by or under this Act; or

(e) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any adulterant which is not injurious to health; or

(f) uses any report or certificate of a test or analysis made by the Director of the Central Food Laboratory or by a public analyst or any extract thereof for the purpose of advertising any article of food; or

(g) whether by himself or by any other person on his behalf, gives to the vendor a false warranty in writing in respect of any article of food sold by him, he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees.

**The central committee on Food Standards**

The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Government on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act**.**

The Committee shall consist of the following members, namely**.-**

(a) The Director-General, Health Services, ex-officio, who shall be the Chairman;

(b) The Director of the Central Food Laboratory or, in a case where more than one Central Food Laboratory is established, the Directors of such Laboratories, ex-officio

(c) Two experts nominated by the Central Government;

(d) one representative each of the Departments of Food and Agriculture in the Central Ministry of Food and Agriculture and one representative each of the Central Ministries of Commerce, Defense, Industry and Supply and Railways, nominated by the Central Government;

(e) One representative each nominated by the Government of each State;

(f) Two representatives nominated by the Central Government to represent *the Union* territories*;*

(g) one representative each, nominated by the Central Government to represent the agricultural, commercial and industrial interests; five representatives nominated by the Central Government to represent the consumers'

interests one of whom shall be from the hotel industry;

(h) One representative of the medical profession nominated by the Indian Council of Medical Research**.**

(i) One representative nominated by the Indian Standards Institution [8].

8. S.2 (e) of Indian standards Institution (certification marks) Act, 1952

The members of the committee shall be hold office for 3 years and shall be eligible for re-nomination.

The functions of the Committee may be exercised notwithstanding any vacancy therein**.**

The Committee may appoint such and so many sub-committees as it deems fit and may appoint to them persons who are not members of the Committee to exercise such powers

and perform such duties as may, subject to such conditions, if any, as the Committee may ,
Subject to such conditions, if any, as the committee may impose, be delegated to them by the Committee**.**
The Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be food inspectors for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be:

No person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a food inspector under this section.
Every food inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code and shall be officially subordinate to such authority as the Government appointing him, may specify in this behalf.

- When a food inspector takes a sample of food for analysis, he shall:-

give notice in writing, then and there, of his intention to have it so analyzed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed[9].

- except in special cases provided by rules under this Act, divide the sample, then and there, into three parts and 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 in such place and in such manner as may be prescribed.

where such person refuses to sign or put his thumb impression, the food inspector shall call upon one or more witnesses and take his or their signatures or thumb impressions, as the case may be, in lieu of the signature or thumb impression of such person

9. S.14 A

- send one of the parts for analysis to the public analyst under intimation to the Local Health Authority; and
- send the remaining two parts to the Local Health Authority,
- Where the part of the sample sent to the public analyst is lost or damaged, the Local Health Authority shall, on a requisition made to it by the public analyst or the food inspector, dispatch one of the parts of the sample sent to it to the public analyst for analysis.
- When a sample of any article of food or adulterant is taken the food inspector shall,
  by the immediately succeeding working day, send a sample of the article of food or adulterant or both in accordance with the rules prescribed for sampling to the public analyst for the local area concerned.
- An article of food seized unless destroyed and any adulterant seized, shall be produced before a magistrate as soon as possible and in any case not later than seven days after the receipt of the report of the public analyst. If an application is made to the magistrate in this behalf by the person from whom any article of food has been seized, the magistrate shall, by order in writing, direct the food inspector to produce such article before him within such time as may be specified in the order.

**Procedure for taking samples:**

Any food Inspector can enter and inspect any place where any article of food is manufactured or stored for sale or stored for the manufacture of any other article of food for sale or exposed or exhibited for sale or where any adulterant is manufactured or kept and take samples of such article of food or adulterant for analysis. Notice will be issued by the Inspector in writing then and there to the seller indicating his intention. Three samples are taken and the signature of the seller is affixed to them. One sample is sent for analysis to Public Analyst under intimation to the Local Health Authority.

- Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a food inspector or a recognized consumer association, whether the purchaser is a member of that association or not from having such article analyzed 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:
- Such purchaser or recognized consumer association shall inform the vendor at the time of purchase of

his or its intention] to have such article so analyzed: Provided further that the provisions to have such articles so analyzed, as they apply to a food inspector who takes a sample of food for analysis.

- If the report of the public analyst shows that the article of food is adulterated, the purchaser or recognized consumer association shall be entitled to get refund of the fees paid by him.

**Report of public analyst.**

The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

On receipt of the report of the result of the analysis to the effect that the article of food is adulterated, the Authority shall, after the institution of prosecution against the persons 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 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.

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 analyzed by the Central Food Laboratory.

When an application is made to the court, the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.

On receipt of the part or parts of the sample from the Authority, the court shall first ascertain that the mark and seal or fastening and intact and the signature or thumb impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

Where two parts of the sample have been sent to the court and only one part of the sample has been sent by the court to the Director of the Central Food Laboratory the court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court.

Where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall proceed in the manner.

Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution.

If after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of shall, so far as may be, apply.

Where a certificate obtained from the Director of the Central Food Laboratory is produced in any proceeding under this Act, it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.

Any document purporting to be a certificate signed by the Director of the Central Food Laboratory may be used as evidence of the facts stated therein in any proceeding under this Act or under IPC.

Even though all these provisions tried to prevent the adulterated food from the commercial field, it could not prohibit the same. Therefore in order to protect the consumer from the noxious acts done by the manufacturers the consumer protection act was enacted by the parliament in 1986.

The Consumer Protection Act was enacted to provide for better protection of the interest of the consumers and for the purpose to make provisions for the establishment of Consumer Redressal Forums, Councils and other authorities in the settlement of consumer disputes and for matters connected therewith.

It seeks inter-alia,

1. To promote and to protect the rights of consumers such as protection against marketing of goods which are hazardous to life and property,

2. The right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices,

3. the right to be assured, wherever possible, access to variety of goods at competitive prices, the right to be heard and to be assured that the interest of consumers will receive due consideration at appropriate

forums,

4. The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and right to consumer education.

The object is also to provide speedy and simple redressal to consumer disputes-quasi judicial machinery is sought to be set up at District, State and Central Levels. These quasi-judicial bodies are to observe principles of natural justice and have been empowered to give relief of specific nature and to award, wherever appropriate, compensation to consumers.

**Loopholes of PFA Act**

- The Act does not provide standardization of food product.
- Special training is not provide for food inspector.
- Lack of demarcation (all kinds of adulteration have same punishment).
- It gives right to any person to get sample to be tested.
- Lack of coordination exists between food inspector and public analyst and public prosecutor which benefit the accused.

**Suggestions**

i. Effective enforcement machinery should be provided by the authority.
ii. Food inspectors are not in a position to exercise their powers efficiently. Therefore, coaching must be given to this inspector.
iii. Lack of legal provisions & insufficient administration.

In addition to legislation, a government needs updated food standards. In recent years, many highly prescriptive standards have been replaced by horizontal standards that address the board issues involved in achieving food safety objectives.

In preparing food regulations and standards, countries should take full advantage of Codex standards and food safety lessons learned in other countries. Taking into account the experiences in other countries while tailoring the information, concepts and requirements to the national context is the only sure way to develop a modern regulatory framework that will both satisfy national needs.

Food legislation should include the following aspects:

It must provide a high level of health protection. It should include clear definitions to increase consistency and legal security and is based on high quality, transparent, and independent scientific advice Following risk assessment, risk management and risk communication. The use of precaution and the adoption of provisional measure where an unacceptable level of risk to health has been identified and where full risk assessment could not be performed and the right of consumers to have access to accurate and sufficient information and tracing of food products and for their recall in case of problems. The primary responsibility for food safety and quality rests with producers and processors and obligation to ensure that only safe and fairly presented food is placed on the market. It should also recognize the country's international obligations particularly in relation to trade; and transparency in the development of food law and access to information .