

Food Adulteration in India: Legal Provisions and Judicial Trends

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Abstract:

Food is necessary for the survival of human body. Adulteration or contamination of natural food product is one of the major challenges in today's society. Food Adulteration leads to several health issues including certain nutrition deficiency diseases, kidney disorder and failure of an individual organ including heart, kidney, liver etc. The Supreme Court held that any food article which is hazardous or injurious to public health is a potential danger to the fundamental rights to life guaranteed under article-21 of the Constitution of India. Article 47 of the Constitution of India provides that the state shall regard the rising of the level of the nutrition and the standard of living of the people and the improvement of public health as among its primary duties. The Food Safety and Standard Act, 2006 has been enacted with the intention of eradicating the evil of manufacture, distribution and sale of adulterated article of foods which is a menace to the public health. Therefore the authorities have a duty to protect interest of citizens from the potential danger of contaminated or adulterated food article or substances.

Keywords: Constitution, Food, Adulteration, Human.

Introduction:

Food is essential for the sustenance of life.¹Life is a glorious gift from God.² It is the perfection of nature, a masterpiece of creation. It is majestic and sublime. Human being is the epitome of the infinite prowess of the divine designer³. Life is not merely living but living in health⁴. The relation between health and human society is a matter of ageless interest⁵. A Great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life⁶. Right to health is an integral to the right to life⁷. Every reasonable man on the earth wishes to have good health and tries to maintain it till his last⁸. So preservation of health is a duty⁹, for all human activities¹⁰. Izaak Walton said "For health is the second blessing that, we mortals are capable of; a blessing that money cannot buy"¹¹. Right to live in its ambit includes right to health and health gives a serene and halcyon signification to life¹². Without good health the civil and political rights assured by our constitution cannot be enjoyed". Health is the first of all liberties". It is not the absence of illness but a glowing vitality the feeling of wholeness with a capacity for continuous, intellectual and spiritual growth". The first wealth is health¹⁶. The health of the people is really the foundation upon which all their happiness and all their powers as a state depend¹⁷.

The basic needs of man have traditionally been accepted to be three - food, clothing and shelter¹⁸. Right to life guaranteed in any civilised society implies the right to food such as adequate nutrition¹⁹, water, decent environment, education, medical care and shelter". The right to food is a justifiable, reviewable, expandable; legally enforceable, constitutional and thus inviolable right opened up new avenues both for political discourse

and for concrete action²¹. It is a vital human right that, if denied, renders human life stunted, painful or null²². So it is the basic necessities of life and also the right to carry on such functions and activities as constituted the bare minimum expression of the human self²³. Food as a part of life but something much more than physical survival²⁴. Good health and good sense are two of life's greatest blessing²⁵. Physically fit and mentally alert for leading a successful life, economically, socially and culturally²⁶. That the Upanishad speaks:- "*Annamayamhi Somya Manah*". It means mind is nourished by food²⁷. Therefore food security exists when all people at all times have physical and economic access to sufficient safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life²⁸. It is the primary

⁶ Ibid.

⁷ State of Punjab Vs Mohinder Singh Chawla, (1997) 2 SCC 83; Bandhua Mukti Morcha Vs Union of India. (1984) 3 SCC 161.

⁸ Han D. Ankolkar Vs The Director General Medical, on 17 September 2008, Indian Kanoon org/doc/1997488.

⁹ Supra 2. ¹⁰ Supra 5.

¹¹ Supra 2.

¹² Ibid.

¹³ Supra 4.

¹⁴ Supra 8.

¹⁵ Supra 4.

¹⁶ Supra 8.

¹⁷ Ibid.

¹⁸ Shatisatare Builders Narayan Vs Khimalal Totame, (1990(1) SCC 520), Chameli Singh Vs State of U.P., AIR 1996 SC 1051, (1996) 2 SCC 549, 1995 Supp 6 SCR 827;

¹⁹ Francis Coralie Mullin Vs The Administratore Union, 1981 AIR 746, 1981 SCR (2) 516.

²⁰ Devendra Jain Vs State of Rajasthan And Anr, 2001, 2002 CriLJ 1655, 2002 (1) WLC 540; Chameli Singh Vs State of U.P., AIR 1996 SC 1051, (1996) 2 SCC 549, 1995 Supp 6 SCR 827;

²¹ People's Union for Civil Liberties vs. Union of India & others, Writ Petition(Civil) No. 196 of 2001.

²² Supra 19.

²³ [ibid.

²⁴ Ibid

²⁵ Supra 8.

²⁶ Ibid.

²⁷ CHHANDOGYA UPANISHAD, Verse 6.5.4.

²⁸ World Food Summit (WFS) 1996, FAO, 1996.

duty of the state to raise the level of nutrition and standard of living of people and public health as well²⁹. Good nutrition is the foundation for human health and well-being and physical and cognitive development³⁰. Nutrition is defined as a basic human right not only essential for human development³¹, but also grow in every aspect physical, mental and intellectual³². Food provides various nutrients to regulate body process, protect from diseases and satisfies hunger which gives us a sense of psychological satisfaction. Human nutrition describes the process whereby cellular organ cells, cells, tissues, organ systems and the body as a whole obtain and use necessary substances obtained from foods (nutrients) to maintain structural and functional integrity³³. The deficiencies of essential vitamins and minerals (micronutrients) continue to be widespread and have significant

adverse effects on child survival and development, as well as adolescent girls and women's health as well as for all³⁴.

Adulteration of Food is a menace to public health³⁵. It is a social evil and major problem of the every society³⁶. *Centre for public interest Vs Union of India and Ors*³⁷, the Apex Court held that: "An enjoyment of life and its attainment, including right to life and human dignity encompasses, within its ambit availability of articles of food, without insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues etc. But the fact remains, many of the food articles like rice, vegetables, meat, fish, milk, fruits available in the market contain insecticides or pesticides, residues, beyond the tolerable limits, causing serious health hazardous". According to press Information Bureau Government of India, Ministry of Food Processing Industries the Annual public laboratory testing report/data for the year 2018-2019 found adulterated or misbranded 26,077 samples.

Types of Adulteration:

Adulteration means the action of making something poorer in quality by the addition of another substance³⁸. Basically there are two types of adulterants namely: intentional adulterants and incidental adulterants.

Intentional Adulterants: Intentional adulterants are sand, marble chips, stones, mud, chalk powder, water, mineral oil and coal tar dyes. These adulterants cause harmful effects on the body.

²⁹ Shaibya Sukla Vs State of U.P. And Others, AIR 1993 All 171.

³⁰ Food and Agriculture Organization of the United Nations. The state of Food Agriculture: Food System for better Nutrition, FAO 2013.

³¹ Michal J. Gibney, Introduction to Human Nutrition, John Wiley & Sons Ltd. Publication, U.S., 2nd Edition 2009.

³² Supra 18.

³³ Supra 31.

³⁴ Global Prevalence of Overweight and Obesity among adult women. (WHO, 2013).

³⁶ Supra 29.

³⁶ FSSA 2006 (2012); Food Safety and Standard Act, 2006. Rules 2008, Regulation 2011, 8th Edition, International Law Book Company, New Delhi.

³⁷ Centre for Public Interest Litigation & Ors Vs Union of India & ors, 2013 (8) SCC 18.

³⁸ Lexico dictionary, Oxford Publication.

Incidental Adulterants- Incidental adulterants are pesticides residues, tin from can droppings of rodents, larvae in food; and metallic contamination like arsenic from pesticide, mercury can also occur incidentally.

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Adulteration of Food stuff- Health Issue:

Adulteration of natural food products is one of the major challenges in today's society. Our country is facing various health issues and such issues are growing fastly. People are suffering from chronic diseases on account of adulterated food³⁹. Table-1 shows that the list of few adulterants added to the food products along with their harmful effects.

Table-1
Adulteration of Food stuff and its harmful effects:

Food Article	Adulterant	Harmful effect
Bengal gram Dhal & Thoor Dhal	Kesari Dhal	Iahyrisism Cancer
Tea	Used tea leaves processed and coloured	Liver Disorder
Coffee powder	Tamarind seed, date seed powder	Diarrhoea
“	Chicory powder	Stomach disorder Giddiness & joint pain
Milk	Unhygienic water & starch	Stomach Disorder
Khoa	Starch & less fat content	Less-nutritive value
Wheat and other food grains (bajra)	Ergot (a fungus containing poisonous substance)	Poisonous
Sugar	Chalk Powder	Stomach-Disorder
Black Powder	Papaya seeds Lightberrys	Stomach, Liver problems
Mustard Powder	Argemone Seeds	Epidemic dropsy & Glucoma
Edible oils	Argemone oil	Loss of eyesight, heart diseases, tumour
“	Mineral oil	Damage to liver, carcinogenic effects
“	Karanja oil	Heart problems, liver damages
“	Castor oil	Stomach problem
Asafoetida	Foreign resins galbanum, colophony resin	Dysentery
Turmeric Powder	Yellow aniline dyes	Carcinogenic
“	Non-permitted colourants like mentanil yellow	Highly carcinogenic
“	Tapioca starch	Stomach disorder
Chilli Powder	Brick power, saw dust	Stomach problems
“	Artificial Colours	Cancer
Sweets, juices, Jam	Non-Permitted coaltar dye, (Metanil yellow)	Matanil yellow is toxic and carcinogenic

³⁹ K. Manohar Vs The Designating Officer on 10 December 2021, Indiakanon.org/doc/127196336.

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Jaggery	Washing soda, Chalk powder	Vomiting , diarrhoea
Pulses (Green peas and dhal)	Coaltardye	Stomach Pain, Ulcer
Suapari	Colour and Saccharin	Cancer
Honey	Molasses sugar (Sugar plus water)	Stomach Disorder
Carbonator water beverages	Aluminum leaves	Stomach Disorder
Cloves	Cloves from which volatile oil has been extracted	Cheating waste of money

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source: www.chennaicorporation.gov.in

Constitutional Provisions:-

The constitutional philosophy of law is reflected in parts III & IV of the constitution. The rule of law under the constitution serves the needs of the people without unduly infringing their rights⁴⁰. Although the right to food does not feature directly as a fundamental right under part-III of the constitution of India, the Hon'ble Supreme Court has, through their numerous pronouncement read the right to food into Article 21 of the constitution⁴¹.

Article 21 provides that: No person shall be deprived of his life or personal liberty except according to procedure established by law⁴².

Article 47 of the constitution of India, which is one of the Directive Principle of the State policy, reads as under⁴³:- "47: Duty of the state to raise the level of nutrition and the standard of living and to improve public health :- The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health".

International Standards:

The right to an adequate standard of living recognised under Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acknowledge food as the first and foremost facet of health and well-being. Article 11(2) of the ICESCR also provides for the right of every person to be free from hunger⁴⁴.

Universal Declaration of Human Rights (UDHR), 1948:

Article 25 provides that:- (1) Everyone has the right to standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and

⁴⁰ I.C. Golak Nath And Ors Vs State of Panjab and Am, AIR 1976 SC 1643.

⁴¹ Court of its motion on the basis Vs The State of Bihar on September 2020, indiankanoon.org/doc/148693289.

⁴² V. N. Sukla, The Constitution of India, EBC Eastern Book Company, Lucknow, 13th Edition.

⁴³ Mamata Sharma Vs State of Chhattisgarh on 31 March 2017, indiankanoon.org/doc/7298254. ⁴⁴Ibid.

medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control

International Covenant on Economic, Social and Cultural Rights (ICESR), 1966:

Article 11:-

The state parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The state parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The state parties to the present covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures including specific programmes, which are needed:-

1. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such way as to achieve the most efficient development and utilization of natural resources;
2. Taking into account the problems of both food importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need⁴⁶.

Codex Alimentarius:

The codex Alimentarius commission is established by the food and agriculture organisation (FAO) of the United Nations and WHO, wherein India is a member state. The codex Alimentarius provides international food standards, guidelines and codes of practice contribute to the safety, quality and fairness of this international food trade. The codex Alimentarius provides standards for various food products. India being a member state, these standards are to be followed if there are no specific standards in FSS Act, of India. Therefore, in the absence of any specific standards in FSS Act, the Food Safety and Standards Authority of India are bound to follow the standards of the codex Alimentarius, if any, for determining the standards⁴⁷.

45 Khwaja Abdul muntaqim, Protection I^o Edition 2008.

⁴⁶ Ibid.

⁴⁷ M Mohammed Vs Union of India on of Human Rights, Law Publishers (India) Pvt. Ltd., Allahabad, 12 February 2015, indiankanoon.org/doc/53359931. 6

Article 1 provides that:

The codex Alimentarius commission shall, subject to article 5 below, be responsible for making proposals to, and shall be consulted by, the Directors-General of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) on all matters pertaining to the implementation of the joint FAO/WHO. Food standards programme, the purpose of which is:

- a. protecting the health of the consumers and ensuring fair practices in the food trade;
- b. promoting co-ordination of all food standards work undertaken by international governmental and non-governmental organizations;
- c. determining priorities and initiating and guiding the preparation of draft standards through and with the aid of appropriate organizations;
- d. finalizing standards elaborated under (c) above and publishing them in a codex Alimentarius either as regional or worldwide standards, together with the international standards already finalized by other bodies under (b) above, wherever this is practicable;
- e. amending published standards, as appropriate, in the light of developments.⁴⁸

The Food Safety and Standards Act, 2006:

The Parliament has enacted food safety and standard Act, 2006 which is exhaustive on laws relating to food and repeals two other earlier laws relating to prevention of food adulteration⁴⁹. The FSS Act is a consolidated law relating to food safety and standards in India. A right to have food without contamination or without any element which poses risk to human life can be treated as a larger right of a citizen in terms of Article 21 of the constitution. The statutory provisions in the FSS Act are only to supplement constitutional obligation of the state to protect a citizen by way of FSS Act. The FSS Act need not be under stood as a wholesome scheme or in

exclusive domain within the statutory scheme therein to protect human. Therefore, even in the absence of any statutory provisions, the paramount powers is invested with the state under the constitution, as an obligation to act to protect human from the possible contamination of adulterated food from stand point of view of health⁵⁰.

The FSS Act, as per its preamble has been enacted to inter-alia consolidate the laws relating to food and to regulate manufacture and storage etc. to ensure availability of safe and wholesome food for human consumption⁵¹.

⁴⁸ Codex Alimentarius Commissions Procedural Manual, World Health Organisation., 18th Edition, 2009.

⁴⁹ Swami Achyutananda Tirth & Ors Vs Union of India and Ors on 5 August 2016,

indiankanoon.org/doc/75522969.

⁵⁰ K.K.R. Food products Vs M/s. T.V. Anupama on 3 September 2015, indiankanoon.org/doc/74481304.

⁵¹ Food Safety and Standards Authority Vs United Distributors, on 22 April 2015,

indiankanoon.org/doc/70623437.

Some of the objectives of the Food Safety And Standards Act 2006 are as follows:-

1. To consolidate the laws relating to food;
2. To establish Food Safety and Standards Authority of India for laying down science based standards for articles of food.
3. To regulate their manufacture, storage, distribution, sale and import.
4. To ensure availability of safe and wholesome food for human consumption.

The Act, apart from making more stringent provisions (e.g. prescribing higher penalties etc.) to curb food adulteration, also ushers in new concepts such as putting in place Food safety management systems and food safety Audit to realise its ultimate goal of ensuring availability of safe and wholesome Food for human consumption. In order to ensure food safety, effective food safety systems implementation and to ensure that food procedure and suppliers operate responsibility and supply safe food to consumers, the Act further stipulates:-

1. Licensing for manufacture of food products, which is presently granted by the central agencies under various Acts and orders, would stand decentralised to the commissioner of food safety and his officer.
2. Single reference point for all matters relating to Food safety and standards, regulations and enforcement.
3. Shift from mere regulatory regime to self compliance through Food safety management systems.
4. Responsibility on Food Business Operators to ensure that food processed, manufactured, imported or distributed is in compliance with the domestic food laws⁵².

Offences And Penalties:

The Offences and Penalties are provided in Chapter IX of the Food Safety and Standards Act 2006. Section 59 of the Act provides for punishment for unsafe food.

Section 59: provides that-

Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable-

- a. Where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;
- b. Where such failure or contravention results in a non- grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

2. ⁵² Ibid.

- a. Where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;
- b. Where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees.

Food Adulteration Under The Bharatiya Nyaya Sanhita 2023⁵³

Section 274: 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 five thousand rupees, or with both.

Section 275: 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 five thousand rupees, or with both.

Judicial Interpretation On Food Adulteration:

In Centre for Public Interest litigation v. Union of India the Apex Court held that “we may emphasis that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article-21 of the Constitution of India. A paramount duty is cast on the states and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article-21 read with Article-47 of the Constitution of India.

In Municipal Corporation of Delhi Vs. Suraja Ram the Punjab High Court held that, the anti -social and anti-national conduct in fraudulently selling adulterated articles seems to tend to breed mistrust amongst the citizens and to that- extent of adversely affects democracy governed by the rule of law, that it tends to demoralize the nation and grievously obstructs her and moral and economics progress and that they have a duty not to adopt an indifferent attitude in this respect, are worth mentioning in the context. The anti-social and unscrupulous elements in the society with a view to get rich weak are indulging in nefarious activities adulterating food articles with all sorts of injurious and even poisonous articles and substances, thereby seriously injurious the health of the community and resulting in disease, disability and death.

⁵³The Bharatiya Nyaya Sanhita (BNS) is India’s new Criminal Code, which will replace the Indian Penal Code (IPC)

On July 1, 2024. The BNS was passed by the parliament in December 2023.

Legislation alone may not be able to effectively tackle this menace without an efficient and incorruptible machinery of inspection and analysis of articles of food and a conscious public opinion. It is a strange that big merchants, manufactures and distributors who are indulging in adulteration of articles of food, invariable escape the notice of the officers who are appointed for inspection and detection of the offences

under the Act and generally they lay hands only on retailers and petty traders. It is high time, for an effective eradication of this with, that the public especially those who are interested in the welfare of the country and its rapid social and economic developments, declare a crusade against the unscrupulous manufacturers, distributors and dealers of adulterated articles of food.

Conclusion:

Healthy food is a vital to human life, it allows a person to grow physically, mentally and intellectually. The right to food comprises part of the fundamental right to life under Article 21 of the constitution of India. The food safety and standard Authority of India (FSSAI) through its regional officers conducts regular surveillance, monitoring, inspection and random sampling of food product. In cases where food samples are found to be Non-conforming, Penal action is taken against the defaulting food business operators as per the provisions of the Food safety and standards Act.