

**Anti-Profiteering Law and Health Security in India:
Law, Policy and Process Perspectives**



REVISED SYNOPSIS

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Anti-Profiteering Law and Health Security in India: Law, Policy and Process Perspectives

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Introduction

Motive behind business transactions, industrials, agricultural or trade & commerce is earn more and more, to make profit for establishing professionally on firm footing in the competitive world without profit neither can survive and flourish. However, profiteering when reasonable and within legal arena is justified and good. Whereas means adopted based on greed to enrich oneself become illegal, causing health hazards, polluting, deteriorating healthy atmosphere by producing substandard goods. Indeed, eatables, pharmaceuticals drugs or cosmetics damaging humans mentally or physically, emotionally and financially create alarming problems invite concerned.

Consequences of such profiteering cause serious diseases, reduce human age, increase physical incapacibilities and mortality rates, indirectly leading to unemployment, poverty, lower the standard of living and development of the country.

In India, such a tendency is acute and serious in comparison to other developed or under-developing countries. This alarming fact has attracted the researcher to probe. Specifically, eatable food and oil adulteration, cosmetic and pharmaceutical drugs adulterations are most devastating and damaging hazards which the researcher tentatively proposes to investigate.

Human welfare, progress, development and overall vikas of a nation and the country depend upon good health. Health is pivotal, a main factor in the development of a human being. Health is regarded as a wealth. Everyone deserve for good, long and healthy life. The World Health Organization (WHO) defines health a state of complete physical, mental and social well being, the absence of disease and infirmity. Lack of nutrition and different types of nutrients affects the human health.

Under The Universal Declaration and Human Rights 1948 provides health is considered as an scale of measuring of standard of living of a nation. The international covenant on economic, social and culture right also recognises right to health. This shows it significance.

Article 38 of the Indian Constitution also provides liability on state to promote welfare of the people. The parliament has passed many laws for the protection of the health such as- The Drugs And Cosmetics Act, 1940, The Pharmacy Act 1948, The Prevention Of Food Adulteration Act, 1954 etc.

Adulteration not only in food but in drugs and cosmetics is very common in India, beautiful packagings, advertisement of contents do not resemble with the substance. It may be intentionally or accidently. Unwanted substitution in drugs and cosmetics sometimes become threatening to life.

Adulteration in cosmetics may be contaminated by chemical or poisonous substances in beauty products. Generally in rural markets in India the businessmen are freely making and selling these adulterated cosmetics. There is an adverse effect of such products. It can cause serious harm to skin or hair instead of enhancing beauty. Adulteration in food, drugs and even cosmetics cause many types of serious diseases such as asthma, ulcer, food poisoning, cancer in some case even death.

Rapid growth of industrialization and urbanization have ushered a new way of life. The developments in pharmaceutical and medical sciences have increased the scope for production of various toxic synthetic substances - a cause of alarm.

In the present 20th century markets, the vegetables are coloured with copper. Milk is diluted with dirty water, synthetic powder and unsafe flour. Now-a-day's food sellers are using different modern methods to increase their earning. There is a largest economic group of consumers markets which are full of a variety of contaminated food stuff. It is very difficult to the consumers purchasing a good quality of food or other eatable items from the markets. Reasons being misleading advertisement about the food items.

Vegetables are main ingredient of Indian people diet for maintain a good health, devoid of diseases. Farmers popularly use pesticide to prevent damaging the crops by worms. The pesticide relic finds their ways into human body through water, food and air. Good quality of food is necessary for maintenance of health in adults and proper growth of children. The pesticides relic damages the process.

Consumption of adulterated food causes different types of disease. In fact it is a challenge not only in India but all over the world. In 1994 the Institute of Public Health (IPH) in Dhaka and World Health Organization (WHO) tested 52 street vendors and it was found that all the vendors had contaminated food stuff.

There is chain of food preparation for consumption. Food manufactures, processors, restaurants, fast food outlets etc. all are involved in these corrupt practices at a high level. Foods are contaminated by using different type of chemicals and artificial colours. Besides this unsafe, unhygienic treatment of

food impact public health. There are hardly any food or drinking item which is spared from adulteration for sale in the market which is free from adulteration. Even branded water bottle is also reused with tube-well water. Contamination in food, drugs and cosmetics is due to gain more money. The Supreme Court has issued on many occasions directed to the central and state governments on recognising PIL to take stern steps to stop adulteration in food and make enforcement of adulteration laws to check adulteration.

Adulteration is a serious crime against the society but like other laws it is also rarely enforceable. The Prevention of Food Adulteration Act, 1954 is concerned with eradicating food adulteration which is a serious problem. The Act made provision of punishment for the adulteration of food. The act provides a comprehensive meaning of the 'adulteration' because of which it is difficult to escape from the offence on technical ground.

“Profiteering” is a socio-economic crime. “Profiteering” means selling a thing at an exorbitant rate more than the reasonable price. There are three stages of the adulteration in food, drugs and cosmetics that is production, distribution and consumption.

Law enacted for the enforcement of prevention of adulteration has made persons involved in production and distribution responsible but drawback lies in the enforcement process. Though prohibitions under the Prevention of Food Adulteration Act, 1954 are adequate but implementation is defective. The offence of profiteering affect the health of the consumers. The victim of this crime is the whole society. The motive behind it is earning more money and enjoy luxurious life. Unless the social reforms made in the society it is difficult, to change the particular setup of mind. This needs education and spread awareness among the masses of evil effects of this social malice.

Literature Review:

1. Books:

- **Adv. Mihir Desai and Adv. Kamayani bali: health care case law in India published in 2007 by CEHAT and ICHR-** The author focused on the civil, political and social rights as mentioned under the directive principles of the state policy of the Indian Constitution .Emergency Health care right, issues in medical practice care, medical negligence, drugs and public health, right of workers to occupational health and safety, National Human Right Commission, Judicial outcome and health care and other cases etc.
- **Ramesh V. Bhat and Pulkit Mathur:Changing scenario in food colours in India by current science, vol.74 no.3 (10 February 1998) -** This book focus on various Food laws, and synthetic food and also discussed about the industries involved in adulteration of food in manufacturing and processing. The toxicity, food industries and food consumption, etc.
- **Abu Norman Atahar Mohammad Ali, Food safety and Public Health Issues in Bangladesh: a regulatory concern, European food And Feed Law Review, Vol. 8 (2013) -** In this article, the problem persist at every level from food preparation to consumption.(Manufacturer, processor and retailer). It was concentrate on regulatory failures to combat the current food safety problem existing in Bangladesh.

2. Articles:

- **Prevention of Food Adulteration: a case Study by G.L.Wazir, Cochin University Law Review, Vol. XV 1991,PP 161-177-**The paper related to study about the adulteration of food in Town of Kishwar. The areas of study include the awareness of the people and existence of the anti-adulteration laws The factors which compel traders to indulge in food adulteration and compel consumers to purchase contaminated food items. Thus the reason for delay in prosecution frustrated the conviction under the Act.
- **Food Adulteration in India : Issues of Policy or Social System by Deviprasad Ghosh S.P. Jain Institute Management , Mumbai,(1994-1996),** In this paper, the author critically examined the causes and problem faced by the people due to adulteration of food products in the society. In this article also under observation by the researcher that how manufacturer, food seller and even reputed companies of food supply are taking advantages ?
- **Risk Assessment in Synthetic Food Colour:A case Study Hyderabad India,International Jornal Of Food Safety , Nutrition and Public Health by Pratima Rao, R.V. Sudarshan, 2008-**The paper is an attempt is to analysis the risk through synthetic food colour. The intake of colors like camoisine, ponceau 4R and arythrosine are consumed by intake of jam, jelly etc. It emphasized the need to evaluate the risk of taking colors.
- **Adulteration and Substitution in Herbal Drugs – A Critical Anaylsis: Poornima B, Bapuji Ayurvedic Medical College Shmoga Karnataka, India 14-06-2010-** This article through lights on adulteration and substitution of the herbal drugs. There is concept of prevailing

adulteration and substitution which caused major threat in research on commercial natural products.

- **Adulterated Food And Its Health Hazards: Prof. Dr. Karim Khan, 2012-** It is relating to adulteration of food and numerous harmful effect to our health and also discussed about excessive amount of multiple organs of human body.
- **Development And Application of Database of food ingredient fraud And Economically Motivated Adulteration From 1980-2010 : Jeffrey C. Moore, John Spik Markup Lipp, Journal Of Food Science, Vol. 77 Issues 4 , April 2012, Pages R118-R126.-** This paper provides baseline information and useful to governmental agencies and individual companies assessing the risk of specific product. The products that are distributed and sold in the regions.
- **Food Adulteration and Contamination in India: Occurrence, Implication and safety measures: R. T. Gahukar International journal of Basic and Applied Science, Arog biotech pvt. Ltd. plot 220 Reshimbog Nagpur, 2014** -In this paper food safety measures are emphasized with an objective of prevention of health hazards. The risk of food toxicity can be minimized at all level of food supply and consumption. Simple measures can prevent disease and health hazards in India.
- **Crude Drugs Adulteration- A Concise Review : Salman Ahmad and Mohammad Mahtasbeemul Hasan, Department of Pharmacognosy, Faculty of Pharmacy University of Karachi, 3 August 2015** – In this research paper the writer focus on the adulteration and substitution in the food products. Article also forwarded and adulteration caused by a variety of adverse effect.

- **Adulteration of Crude Drugs Burning Problem, International journal of applied research: Dr. Poonam, 2016 2(2): 99-101** – The author focus on different types of adulteration of food and drugs. How it became a great problem and what may be its effect on the society. Contamination in eatable items may be either by greed or carelessness in manufacturing and processing these items by the businessman .this article through lights on adulteration, types, common market adulteration and its further analysis.
- **Comparative Study of Buffalo and Cow milk Samples Containing Different Vitamins: Dadasaheb Navale, Shalley Gupta,Sinhgad jr college Vadgaon, pune, Parvatibai Genba Monz Engineering College Wagholt, Pune, volume V Issue iv 2016-** In this article the writer highlighted the adulteration in milk or milk made item such as sweat curd, rabri, paneer, khoa etc. In this paper the author mentioned various types of adulteration present in milk and milk products.
- **Food Adulteration laws in India and Government’s Response: Mr. M.R. Shamsad, August 12, 2016-** In this article the writer focus on various laws enacted by the government for the prevention of the adulteration of the food products. The penalties for the offences for the contamination of the food products and also discussed thoroughly.
- **Adulteration in Traditional Medicines in India Rampant, Study Reveal: N.B.Nai September 20, 2016** – The article focused on the herbal medicine used in crude drugs have to be taken for prolonged period. There is no regulatory system for traditional medicine. This is the comprehensive and large-scale study to demonstrate the widespread sample of Ashoka in India. The study published in International Journal of Legal Medicine.

- **Four Different Types Of Food Adulteration And Its Harmful Effects: Reena J, 6/1/2017-** The article mention the provisions as laid down in the Prevention of Food Adulteration Act, 1954 and definition and types of the adulteration of food.
- **Food Adulteration : A menace to the Society by Dr. Farrukh Khan, 1 July 2017-**In this article the writer discuss about the purpose of the Prevention of the Food Adulteration Acts, 1954 and other various laws enacted by the parliament for the welfare of the society.
- **Effect of food Adulteration on Community Health: Shariamshu, 2017** – It focus on the immediate effect as well as long term effect on the public health through adulterated food items. Adulterated food is made by mixing poisonous, spurious materials to lower the quality of the food. And to maximize the quantity of the food item.
- **Extent of Awareness in Food Adulteration and Detection in Selected Food Item purchased By Homemakers, Department of family resource Management : Nidhi Gupta and Priti Panchal S.M. Patel College of Homescience, Vallabh Vidhyanager Gujrat-** The paper focus on identifying adulteration in the food items purchased by the homemakers. And the extent of awareness of contamination of different food. Ultimate victim is consumer and there is lack of awareness of their rights and legal protection.
- **A Study Of Adulteration Of milk and Milk Products From Local vendor, Interenational Journal Of Biomedical And Advanced Research M.Sc. nutritient and diabetic department of Nutrition: J. K. Swathi And NaaZia Kauser OUCW Kori, Hyderabad, India—** This article is about the adulteration made by the local vendors in milk, butter, ghee, curd. Mostly water is found in milk as adulteration. Except

this urea and starch was also found as adulteration. Through study it was found that food brought from local vendors has adulterated simply.

Case Laws:

- **Kissan Trimbak Kothule and others v. state of Maharashtra, 1977 S.C. 397-** On food adulteration the apex court held that it was not enough to give just mechanical details. the important is that the prosecution has to show process by which the conclusion has been arrived at the public
- **Corporation of the city of Nagpur v. Neetam, Manikrao Kature and others, 1998 SCC (Cri) 564-**The Apex Court while disposing of appeal observed that the method of assuring the quality of food was not certified by Indian Standard Institute.
- **S.R. PVT. LTd. v. Prem Gupta, Drug Controller India (New Delhi), AIR 1993 P&h 28-** This case was dealing with a ban on spurious drugs. The petition challenged the order of central government under section 26 A of the Drugs and Cosmetics Act 1940. Which ban the manufacture and sale of fixed dose combination steroids.
- In the case of **State of Punjab v. Paranjit Singh, Vol XIX 1992, The criminal law times P 234.** It was observed that the witness was required to categorically state that he had used a clean stick for the purpose of measuring and siring the milk.
- In the case of **SardarMal Jain V. Nagar Nigam and Another, reported at 1990(2) Prevention of food Adulteration cases 203,**

The sample of “BURFI” taken from the respondent’s shop was found adulterated with Rhodamine- B which is a material used in printing process. While taking the sample, the Food inspector placed the whole lot of “BURFI” on a newspaper which had been given by the servant of the appellant. The possibility cannot be ruled out that the Rhodamine –B used in printing of that newspaper may after coming in contact with the “BURFI” have got transmitted on the “BURFI”, the newspaper after becoming soggy, normally transmits its imprints on the other object coming in contact with it. Hence, the benefit of doubt was given to the accused.

- In the case of **Satyanarayan Gupta v. Keshav Deo, reported at 1984 Prevention of Food Adulteration cases 370**, it was held that where the milk was poured into a jug and there from in the sample bottles, there was no evidence to prove that the jug was clean and dry and also that the three sample bottles were clean before the contents were poured into them. The accused could not be convicted.
- In the case of **Shew Chander Mathur and Anr. v.State of Assam and Anr, reported at 1991(1) Prevention of Food Adulteration Cases 9**, it was held that the prosecution had not proved that the polythene containers had been cleaned before the SuJi Laddoo sample had been weighed and kept therein . In such a scenario the accused is entitled to the benefit of doubt and is to be acquitted.
- **Delhi High Court in PUCL, v. Union of India (delivered on 30th July 2003)**, took serious note of the manufacture and sale of adulterated and spurious drugs. The Court directed appointment of a high level committee to screen the drugs before they are placed in the market.

- **The Supreme Court in Chimanlal v. State of Maharashtra, AIR 1963SC 665** stated that the Adulteration of medicines cannot be taken lightly as it is an ‘ anti-social’ act of a very serious nature and deserves to be punished severaly.

Objectives of the Present work:

The following are objectives of this research-

- To detect various adulterants in food items.
- To determine the different types of contamination in foods.
- To stop the trends of manufacturing, sale and distribution of adulterated and misbranded food items.
- To review penal provisions to curb white collar criminals and food adulteration.
- To spread awareness about the adulteration in eatable things.
- To protect people from consuming poisonous and harmful food.
- To make aware of the people about the dangerous diseases by consuming contaminated foods.

Hypothesis:

1. The consequences by the adulterated food, drugs and cosmetics things will not be serious, if penal law strictly followed.
2. The health of the people will not be affected through adulterate food, drugs or cosmetics, if there is awareness.
3. To earn more profit or lack of proper knowledge may be reason of selling contaminated food, drugs and cosmetics.

Work Plan and Research Methodology:

The Methodology adopted by the researcher is purely Doctrinaire arranging, reviewing, analyzing and critically assessing ten years Supreme Court and U.P. High Court cases chronologically with effect from 2005 onward. Data to be collected from articles, journals, reports, newspapers clippings, text books and websites. For data collections we have to go to reputed libraries of India, particularly Law Library, Faculty of Law, Agra College, Agra, Law Library, Faculty of Law, Aligarh Muslim University, Aligarh, Law Library, Indian Law Institute, New Delhi and Supreme Court library, New Delhi and Allahabad High Court of Judicature Library of U.P., etc.

Data collected is to be analysed and hypothecated. After assessment set theories are to be either accepted or rejected. On the basis of assessment and review new theories and jurisprudential contributions are to be suggested for reforming the existing laws and process for its implementation with and hope to have a healthy society devoid of corrupt practices.

Impact and Utility of Proposed Work:

For research conducted conclusions and suggestions would be jurisprudential contribution to make the existing legal structure more efficacious and fruitful for eradicating the social malice. The suggestions would definitely be a mile stone making the law and enforcement agencies to stand on firm footing eradicating, controlling and preventing the existing production and manufacturing, distribution and sale of health hazardous goods and changing the minds of money makers and consumers to know the means of improving the healthy growth of new generation.

Chapterization:

The thesis is divided into eight tentative rubrics which are as following -

First Chapter; is the introduction of the various types of adulteration in food, drugs and cosmetics. Adulteration in food items is common. Reason of the selling the contaminated things is to earn more profit in the business. Other side people who purchased the contaminated things face many kinds of the difficulties and there are adverse effects on the health of the consumers.

The Second Chapter; is discussed about the profiteering and nature of the business. Businessmen are selling adulterated food items, drugs and cosmetics. Selling of adulterated things may be intentionally and carelessly. Anything adding, mixing, substituting and colouring in the thing so that its value became high. Sometimes adulteration is by negligently. In both cases there is profit of the businessman and harm to the consumers.

The Third Chapter; is with the historical background, origin and status of adulteration in food, drugs and cosmetics in many countries i.e. USA, Britain, China, Australia, Kenya, Pakistan and India. It also discusses about the meaning and conceptual analysis of the Adulteration in Food, drugs and cosmetics. It also focuses the role of mens rea in adulteration of the food, drugs and cosmetics items.

The Fourth Chapter; is discuss about the adulteration in foods, milk, fats & oil, grains and other things. It renders by mixing with inferior or harmful quality of food and drink intended to sell. It also discuss about the health

security of the people. Adulteration means adding and substituting anything which may be injurious to health. The contaminated food cause serious disorder like diarrhea, asthma, ulcers, food poisoning, cancer and result on death. It can also cause mental disorder especially in children.

The Fifth Chapter; is about adulteration in medicine and cosmetics and health security. The Drugs and Cosmetics Act, 1940, provides for manufacturing and selling standard quality of drugs and cosmetics. The Act prohibits manufacturing & sale of misbranded and spurious drugs and cosmetics. Also discussed the power of central government to prohibit import of drugs and cosmetics in public interest. The adulteration in drugs and cosmetics causes various types of the skin disease due to most of the adulterant are very harmful.

The Six Chapter; is about the statutory laws to prevent adulteration such as The Food Adulteration Act, 1954, The Drugs and Cosmetics Act, 1940, etc. The acts prohibit manufacturing, selling, distribution of adulterated food, drugs and cosmetics. And also focuses on the damage or effect on health of the consumer's greed of earning more profits and lack of strict law to punish the culprits encourage of manufacturing, selling and distribution of foods in the market. And also discuss the remedial measures and role of enforcement agencies to curb this malice.

The seventh Chapter; is discusses the last ten years judicial pronouncements of the Supreme Court and High Court regarding adulteration of food, cosmetics and drugs chronologically with effect from 2005 onward.

The Eighth and the last chapter; is of conclusion and suggestions. As development of the technology the contamination of foods, drugs and cosmetics is became a burning problem. The research has shown there are hardly any food substance that is not adulterate, even fruits, vegetables, cereals are contaminated with high level of lead, nickel, cadmium, chromium.

There are certain rules and act like Prevention of food Adulteration Act and rules and food adulteration order should be strictly followed.

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2. The Drugs and Cosmetics Act, 1940.
3. Indian Penal Code 1860.
4. The Pharmacy Act 1948.
5. The Prevention of Food Adulteration Act, 1954.